

□ File No.: PS/00280/2021

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 October 29, 2021, 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
transcribe:

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File No.: PS/00280/2021

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 complaining party) dated February 25,
2021 filed a claim with the Spanish Data Protection Agency. The
claim is directed against VODAFONE ESPAÑA, S.A.U. with CIF A80907397 (in
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hereinafter, the claimed party or Vodafone). The grounds on which the claim is based

are the following.

The claimant states that on January 15, 2021 he called Vodafone with the order to make a query. During the verification process, you were asked for some data and it was then that they told him that with his DNI there was a line of mobile phone, a landline and an internet service.

It adds that on February 1, 2021, it filed a claim with the Secretary of State of Telecommunications and Digital Infrastructures.

On February 11, 2021, the Secretary of State for Telecommunications and Infraestructuras Digitales proceeded to send him a report issued by Vodafone in which he was informed that under his ownership there was no record of any active service in his systems.

Subsequently, on February 15, 2021, he requested the right of access to Vodafone.

On February 24, 2021, he received a response by email from Vodafone in which they inform you of the following: "The above data has its origin in the contract formalized by you with Vodafone/ONO, and are used in accordance with the uses and purposes established therein for the lines ***TELÉFONO.1, ***PHONE.2, ***PHONE.3, ***PHONE.4, ***PHONE.5, Service Fiber and T.V. ***FIBRE AND TV.).

Thus, he does not recognize any of those numbers and states that he has never formalized that contract to which they refer.

Attach to your statement of claim:

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☐ Response to the exercise of the right of access to your personal data

date February 24, 2021, where the following services are listed

hired:

Number of Vodafone ONO phones that the claimant does not recognize:

***TELEPHONE 1,

***PHONE.4,

***TELEPHONE.5, Fiber Service and T.V. *** FIBER AND TV. Ono Customer Account

*** FIBER AND TV.

***PHONE.2,

***PHONE.3,

The above data have their origin in the contract formalized with

Vodafone/Ono.

Vodafone telephone number ***TELÉFONO.6, Fiber and landline service

***PHONE.7. Vodafone Customer Account: ***ACCOUNT.1.

Consisting of the services ***TELEPHONE.6, Fiber and landline service

***PHONE.7, already deactivated.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in

hereinafter LOPDGDD), said claim was transferred to the claimed party, to

to proceed with its analysis and inform this Agency within a month of the

actions carried out to adapt to the requirements set forth in the regulations of

Data Protection.

THIRD: On June 2, 2021, the Director of the Spanish Agency for

Data Protection agreed to admit for processing the claim presented by the party

claimant.

FOURTH: It is stated that outside the term granted on June 9, 2021, the part claimed responds to the transfer of the claim, stating that Vodafone could verify that the Interested Party was a client of the entity from April 28 to December 9, December 2016. They provide as document number 1 invoice issued by Vodafone for the service provided to the Interested Party.

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On the other hand, they point out that due to an error the claimant's client ID was assigned to another Vodafone customer, causing the data of the Interested Party to appear associated with the record of this third party. They provide as document number 2 capture of the State of Interested in Vodafone systems.

Likewise, they state that the claim filed by the claimant before the Secretary of State for Telecommunications and Digital Infrastructures (hereinafter, "SETID") for the alleged contracting of a line in Vodafone without its consent.

Said claim was dismissed since the claimant is not the owner of any line.

However, their data appeared in the file of another client when the IDs were associated.

They provide as document number 3 the SETID resolution.

Subsequently, the claimant requested to exercise his right of access on February 15 of 2021, being answered on the 24th of the same month and year.

In the answer you are informed of a series of services related to your ID of client that due to an error were related to the services in which it appears

as a potential customer, not as an owner. They provide as document number 4 the Vodafone's response to the right of access.

Lastly, the claimed party states that he has proceeded to block his data and respond to the complainant in this regard. They provide as document number 5 the Blocking of the data of the Interested Party and the answer provided to the claimant.

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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 as established in arts. 47 and 48.1 of the LOPDPGDD, the Director of the Spanish Data Protection Agency is competent to resolve this procedure.

II

The exposed facts can suppose on the part of Vodafone, of the commission of an infringement of article 6.1 of the RGPD that establishes the assumptions that allow consider the processing of personal data lawful.

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:

"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

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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 respondent party acknowledges the facts that are the subject of this claim, in its brief of allegations to this Agency dated July 4, 2021, stating that due to an error the claimant's Client ID was assigned to another Vodafone client, causing the data of the Interested Party to appear associated with the record of this third party.

It is confirmed in the answer given by Vodafone on February 24, 2021 to the claimant:

We inform you that the personal data relating to your person that appear in the Vodafone systems are the following: 2. Contracted services: Vodafone ONO phone numbers: ***PHONE.1, ***PHONE.2, ***PHONE.3, ***PHONE.4, ***PHONE.5, Fiber Service and T.V. ***FIBRE AND TV, the www.aepd.es

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claimant does not recognize any of those numbers and states that he has never formalized that contract to which they refer.

It must be taken into account that the documentation in the file offers evidence that the party complained against violated article 6.1 of the RGPD, whenever that processed the personal data of the complaining party without legitimacy, given that their

personal data appeared in the file of another client when associating him to the account of the client *** FIBER AND TV.

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 complained party could violate article 6.1 of the RGPD being able to constitute the infraction typified in article 83.5.a) of the aforementioned Regulation 2016/679.

IV

The determination of the sanction to be imposed in this case requires observe the provisions of articles 83.1 and 2 of the RGPD, precepts that, respectively, provide the following:

"1. 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."

"two. 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

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such as the number of interested parties affected and the level of damages that have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor to pa-

allocate 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, gives an account of the technical or organizational measures that have been applied by virtue of the articles 25 and 32;

e) any previous infringement 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 remedy the infringement and mitigate the possible adverse effects of the infringement;

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 whether the person in charge or the person in charge notified the infringement and, if so, to what extent. gives;

i) when the measures indicated in article 58, section 2, have been ordered previously 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 to certification mechanisms. certification 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 obtained or losses avoided, directly or indirectly.

mind, through infraction.”

Within this section, the LOPDGDD contemplates in its article 76, entitled "Sanctions and corrective measures”:

"1. The penalties provided for in sections 4, 5 and 6 of article 83 of the Regulation (EU) 2016/679 will be applied taking into account the graduation criteria established in section 2 of the aforementioned article.

2. 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 treatment of

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personal information.

- 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) 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 disputes between them and any interested party.

3. It will be possible, complementary or alternatively, the adoption, when appropriate, of the remaining corrective measures referred to in article 83.2 of the Regulation (EU) 2016/679.”

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 the article 83.5.a) of the RGPD and 72.1 b) of the LOPDGDD in an initial assessment,

The following factors are considered concurrent in this case:

As aggravating factors:

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The intentionality or negligence of the infringement (article 83.2.b, RGPD). Given that the personal data of the claimant appeared in the file of another client of Vodafone.

The evident link between the business activity of the respondent 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)

It is appropriate to graduate the sanctions to be imposed on the claimed party and set them in the amount of €50,000 for the infringement of article 83.5 a) RGPD and 72.1b) of the LOPDGDD.

Therefore, in accordance with the foregoing, by the Director of the Spanish Data Protection Agency.

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HE REMEMBERS:

FIRST: Start sanctioning procedure against Vodafone España, S.A.U. with CIF A80907397, for the alleged infringement of article 6.1. of the RGPD typified in the article 83.5.a) of the aforementioned RGPD.

SECOND: 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 the provisions established in articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime Public Sector Co (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 investigations phase.

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

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).

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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 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 30,000 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, 40,000 euros or 30,000 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.

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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 AEPD, P.O. the Deputy Director General for Data Inspection, Olga

Pérez Sanjuán, Resolution 4/10/2021

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SECOND: On November 11, 2021, the claimed party has proceeded to payment of the sanction in the amount of 40,000 euros using one of the two reductions provided for in the Start Agreement transcribed above. Therefore, it has not acknowledgment of responsibility has been confirmed.

THIRD: The payment made entails the waiver of any action or resource in via against the sanction, in relation to the facts referred to in the Home 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 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 www.aepd.es

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information and electronic commerce (hereinafter LSSI), as provided in article 43.1 of said Law.

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/00280/2021, 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

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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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