

□ File No.: EXP202209201

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 December 13, 2022, the Director of the Spanish Agency
of Data Protection agreed to start a sanctioning procedure against VODAFONE ONO,
S.A.U. (hereinafter, the claimed party), through the transcribed Agreement:

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File No.: EXP202209201

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: D.A.A.A. (hereinafter, the claiming party) dated August 5,
2022 filed a claim with the Spanish Data Protection Agency. The
claim is directed against VODAFONE ONO, S.A.U. with NIF A62186556 (in
forward, the claimed party or Vodafone Ono). The reasons on which the
claim are as follows:

The complaining party states that the entity Vodafone Ono consulted the
Asnef credit information, in relation to your person.

He adds that Asnef sent him a history of queries made in relation to the
claimant, and in this figure Vodafone Ono.

In addition, it indicates that it does not have any type of contract with Vodafone Ono and that

neither did he at any time obtain their consent to carry out the consultation.

And, provide the following relevant documentation:

History of queries in the Asnef file, where the date 07/08/2022 is recorded Entity:

VODAFONE ONO, S.A.U.

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2/10

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

forward LOPDGDD), said claim was transferred to the claimed party, for

to proceed with 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 September 9, 2022

as stated in the acknowledgment of receipt in the file.

On October 11, 2022, this Agency received a written response

indicating: "The appropriate investigations are being carried out on what happened to

find out the reason why the common information system was consulted

credit, and adopt the measures that are necessary. However, for the moment

The source of the query could not be identified."

THIRD: On October 14, 2022, in accordance with article 65 of the

LOPDGDD, the claim presented by the claimant 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

breached obligation

The claimed party is accused of committing an offense for violation of the Article 6.1 of the GDPR, due to lack of legitimacy in the treatment.

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3/10

Article 6 of the GDPR, under the heading "Lawfulness of processing", details in its section

1 the cases in which data processing is considered lawful:

"1. Processing will only be lawful if it meets at least one of the following

conditions:

a) the interested party gave his consent for the processing of his 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 part of or for the application at the request of the latter of pre-contractual measures;

c) the processing is necessary for compliance with a legal obligation applicable to the responsible for the treatment;

d) the processing is necessary to protect vital interests of the data subject or of another

Physical person;

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

public or in the exercise of public powers conferred on the data controller;

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

by the person in charge of the treatment or by a third party, provided that on said

interests do not outweigh the interests or fundamental rights and freedoms of the

interested party that require the protection of personal data, in particular when the

interested is a child.

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

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

II

Classification and classification of the offense

The infringement for which the party claimed in this agreement is held responsible

of initiation is typified in article 83 of the GDPR which, under the rubric

"General conditions for the imposition of administrative fines", states:

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

section 2, with administrative fines of a maximum of 20,000,000 Eur or, in the case of

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4/10

of a company, of an amount equivalent to a maximum of 4% of the volume of overall annual total business of the previous financial year, opting for the one with the highest amount:

a) The basic principles for the treatment, including the conditions for the consent in accordance with articles 5,6,7 and 9.”

The LOPDGDD, for the purposes of the prescription of the infringement, qualifies in its article 72.1.

very serious infringement, in this case the limitation period is three years, "b)

The processing of personal data without the fulfillment of any of the conditions of legality of the treatment established in article 6 of Regulation (EU) 2016/679.”

The documentation in the file offers clear indications that the party claimed violated article 6 of the GDPR, since there is no legitimizing basis for the processing of the personal data of the complaining party, given that the responsible for the treatment indicates in its response to this Agency dated 11

October 2022 "The appropriate investigations are being carried out into what happened to find out the reason why the consultation was made to the common system of credit information, and adopt the necessary measures. However, for the

The source of the query could not be identified at this time."

It must be taken into account that the criteria of art. 20 of the LOPDGDD,

The person in charge does not indicate what his legitimate interest is or provide a weighting that allows to prove the prevalence of legitimate interest and no information is provided to the claimant on the possibility of consultation, so within their expectations

Reasonable is not that they consult their data.

Article 20 of the LOPDGDD, "Credit information systems", provides in its section 1 e):

"1. Unless proven otherwise, the processing of personal data will be presumed lawful.

related to the breach of monetary, financial or credit obligations by common credit information systems when the following are met requirements:

e) That the data referring to a specific debtor can only be consulted when the person consulting the system maintained a contractual relationship with the affected party that implies the payment of a pecuniary amount or this would have requested the conclusion of a contract that involves financing, deferred payment or periodic billing, as happens, among other cases, in those provided for in the legislation on consumer credit contracts and real estate credit contracts.

When the right to limitation of processing has been exercised before the system of the data challenging its accuracy in accordance with the provisions of article 18.1.a) of the www.aepd.es

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5/10

Regulation (EU) 2016/679, the system will inform those who could consult it with accordance with the previous paragraph about the mere existence of said circumstance, without provide the specific data with respect to which the right had been exercised, in both are resolved on the request of the affected party".

In short, it should be noted that respect for the principle of legality of the data requires for the record accredited that the owner of the data consented to the treatment of the

personal data or any other legitimizing cause of art. 6

GDPR and deploy a reasonable diligence essential to prove that point.

Failure to do so would result in emptying the legality principle of its content.

IV.

Sanction proposal

In order to establish the administrative fine that should be imposed, the following

provisions contained in articles 83.1 and 83.2 of the GDPR, which state:

"1. Each control authority will guarantee that the imposition of fines

administrative proceedings under this article for violations of this

Regulations indicated in sections 4, 5 and 6 are in each individual case

effective, proportionate and dissuasive.

2. Administrative fines will be imposed, depending on the circumstances

of each individual case, as an addition to or substitute for the measures contemplated

in article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case shall 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

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 alleviate the damages and losses suffered by the interested parties;

d) the degree of responsibility of the controller or the person in charge of the

processing, taking into account the technical or organizational measures that have

applied under articles 25 and 32;

e) any previous infringement committed by the person in charge or in charge of the

treatment;

f) the degree of cooperation with the supervisory authority in order to put
remedy the breach and mitigate the potential adverse effects of the breach;

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6/10

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, in 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
related to the same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or to mechanisms
of certification approved in accordance with article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the
such as the financial benefits obtained or the losses avoided, directly or
indirectly, through infringement.

In relation to letter k) of article 83.2 of the GDPR, the LOPDGDD, in its article 76,

"Sanctions and corrective measures" establishes that:

"2. In accordance with the provisions of article 83.2.k) of the Regulation (EU)

2016/679 may also be taken into account:

a) The continuing nature of the offence.

b) Linking the activity of the offender with the performance of processing

of personal data.

c) The benefits obtained as a consequence of the commission of the infraction.

d) The possibility that the conduct of the affected party could have led to the commission of the offence.

e) The existence of a merger process by absorption after the commission of the infringement, which cannot be attributed to the absorbing entity.

f) The affectation of the rights of minors.

g) Have, when it is not mandatory, a data protection delegate data.

h) The submission by the person in charge or in charge, with character voluntary, alternative conflict resolution mechanisms, in those cases 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 fine to impose in the present case for the infringement typified in article 83.5.a) of the GDPR

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7/10

for which the defendant is held responsible, in an initial assessment, it is estimated concurrent the following aggravating factors:

The evident link between the business activity of the defendant and the treatment of personal data of candidates in the selection processes, clients and third parties (article 83.2 K, of the GDPR in relation to article 76.2 b, of the LOPDGDD).

The balance of the circumstances contemplated in article 83.2 of the GDPR, with

regarding the offense committed by violating the provisions of article 6.1 of the

GDPR allows a penalty of 50,000 euros (fifty thousand euros) to be set.

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

Spanish Data Protection,

HE REMEMBERS:

FIRST: INITIATE SANCTIONING PROCEDURE against VODAFONE ONO, S.A.U.

with NIF A62186556, for the alleged violation of article 6.1. of the GDPR typified in

Article 83.5.a) of the aforementioned GDPR.

SECOND: APPOINT as instructor R.R.R. and as secretary to S.S.S.,

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 attached documentation, the

informative requirements that the General Subdirectorate of Data Inspection

sent to the entity claimed in the preliminary investigation phase, their respective

acknowledgments of receipt and their response.

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 50,000 euros (fifty thousand euros), without

prejudice to what results from the instruction.

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

A62186556, 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).

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8/10

In accordance with the provisions of article 85 of the LPACAP, in the event that the sanction to be imposed other than a fine, may recognize its responsibility within the term granted for the formulation of allegations to the present initiation agreement; it which will entail a reduction of 20% of the sanction that should 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.

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 40,000 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 30,000 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 previously indicated, 40,000 euros or 30,000 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 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 reducing the amount to which welcomes.

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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9/10

SECOND: On January 11, 2023, the claimed party has proceeded to pay of the sanction in the amount of 40,000 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.

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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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."

Termination of the procedure

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

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10/10

of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of

any administrative action or resource against the sanction.

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 EXP202209201, in

in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to VODAFONE ONO, 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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