

□ Procedure No.: PS/00415/2020

RESOLUTION R/00649/2020 TERMINATION OF THE PROCEDURE FOR PAYMENT
VOLUNTEER

In the sanctioning procedure PS/00415/2020, 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 December 2, 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/00415/2020

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 claimant) dated July 9, 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 products contracted with the claimed, the
have put in the name of a third party, who has had your personal data since the month
May 2019.

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

Screenshot of the "My VODAFONE" application where it appears "B.B.B.

***NIF.1" associated with the postal address of the same.

Vodafone purchase summary where the name and surname of the claimant associated with your mailing address.

On September 13, 2019, the claimant expands his claim

stating that he sent an email to the data protection delegate of the claimed party, not receiving response.

Subsequently, they tell you that the products you contracted are once again at your disposal.

name, but the circumstance occurs that in the client area it continues to appear as authorized.

Thus, in the month of September he called the customer service and they addressed him with the name of the third.

Well, on September 11, 2019 at the OMIC they told him that they have the response to his complaint, but it turns out that they answered him with the resolution of a third.

Accompany the following documentation:

Screenshot of the "My VODAFONE" application where the CIF of the complainant and that of a third party.

Copy of letter sent by the OMIC of ***LOCALIDAD.1 dated August 19

of 2019 where the respondent communicates to the OMIC its response in relation to the Question raised by D. C.C.C.

Copy of 2 invoices of the claimed in the name of D. C.C.C. with issue dates

March 22 and May 22, 2019 respectively.

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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.

On July 29, 2020, the respondent stated to this Agency the following:

1. That he was aware for the first time of what happened on July 3, 2019 when the claimant contacted the claimed party to report the incident.
1. Add that the claim was due to an error in the Vodafone systems derived from the migration of their systems to Smart-Amdocs. that there was a data matching in the ID ***ID.1 associated with the claimant.
2. That they have been able to verify that the incident that is the subject of the claim was duly resolved on July 15, 2019, after having been solved the crossing of data that occurred in the Vodafone systems and

effectively process the deactivation of the third party that was listed as

Customer ID holder associated with the claimant.

Provide a copy of the letter dated July 29, 2020 with the Vodafone logo

addressed to the claimant where it is stated that the incident has been duly

resolved on July 15, 2019, that the services associated with the account

ID ***ID.1 are currently only linked to your personal data.

It is also stated that no copy of its response has been sent to any

third.

It provides a screenshot of its systems where the third person appears in

status "disconnected" associated with the ID ***ID.1.

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3. On the other hand, they point out that, regarding the response to the OMIC of August

2019, they have been able to verify that due to an error in the response process

the claimant was sent a copy of an answer that was not related

with the complainant's claim before the OMIC and not the answer

intended for it, which had its origin in a punctual error of a

human and that in no case has proceeded to send the answer

intended for the claimant to a third party.

They provide a copy of the letter of August 19, 2019 with the Vodafone logo

addressed to the OMIC in relation to the issue raised by the complainant.

On October 16, 2020, a request for information was sent to

reclaimed. The notification is recorded as delivered on October 19, 2020.

receive reply.

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

Article 6.1 of the RGPD establishes the assumptions that allow considering lawful processing of personal data.

For its part, article 5 of the RGPD establishes that personal data will be:

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“a) processed in a lawful, loyal and transparent manner in relation to the interested party ("legality, loyalty and transparency");

b) collected for specific, explicit and legitimate purposes, and will not be processed subsequently in a manner incompatible with those purposes; according to article 89, paragraph 1, the further processing of personal data for archiving purposes in public interest, scientific and historical research purposes or statistical purposes are not deemed incompatible with the original purposes ("purpose limitation");

c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization");

d) accurate and, if necessary, updated; all measures will be taken

reasonable to eliminate or rectify without delay the personal data that

are inaccurate with respect to the purposes for which they are processed ("accuracy");

e) maintained in a way that allows the identification of the interested parties

for no longer than is necessary for the purposes of data processing

personal; personal data may be kept for longer periods

provided that they are treated exclusively for archiving purposes in the public interest, purposes of

scientific or historical research or statistical purposes, in accordance with article

89, paragraph 1, without prejudice to the application of technical and organizational measures

measures imposed by this Regulation in order to protect the rights and

freedoms of the interested party ("limitation of the conservation period");

f) treated in such a way as to ensure adequate security of the

personal data, including protection against unauthorized or unlawful processing and

against its loss, destruction or accidental damage, through the application of measures

appropriate technical or organizational ("integrity and confidentiality").

The data controller will be responsible for compliance with the

provided for in section 1 and able to demonstrate it ("proactive responsibility")."

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III

In accordance with the evidence available in this

time, and without prejudice to what results from the investigation, it is considered proven that

in the systems of the defendant he appeared as the owner of the services contracted by the

claimant a third party.

In this way, it is fully accredited that the defendant violated the principle of accuracy, contained in article 5.1 d) of the RGPD, as recognized in his answer in which he states: “after having solved the crossing of data occurred in the Vodafone systems and effectively process the deactivation of the third party that was listed as the holder of the customer ID associated with the claimant”.

On the other hand, the documentation in the file shows that the respondent also violated the principle of confidentiality, article 5.1 f) of the GDPR.

In this sense, it is important to highlight that the complainant provided the answer to your claim, and it was found that the respondent replied with the resolution of a third.

It should also be taken into account that the respondent acknowledges said error and states that: “in the answering process, the claimant was sent a copy of a response that were not related to the complainant's claim before the OMIC and not the response intended for it, which had its origin in an error punctual of a human nature and that in no case has proceeded to send the response intended for the claimant to a third party”.

Therefore, there is no doubt, given the regulation that violates the duty of secrecy of the article 5.1.f) of the RGPD. It does not comply with security measures that give rise to breach of confidentiality article 5.1 LOPDGDD.

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In short, a third party could access the claimant's data, that is, had access to the information associated with the services contracted by the claimant which could constitute, by the defendant, two infractions, one against what provided in article 5.1 d) of the RGPD, in relation to article 4.1 of the LOPDGDD, and another against the provisions of article 5.1 f) of the RGPD, in relation to the Article 5.1 of the LOPDGDD that governs the principles of accuracy and confidentiality of Personal information.

IV

Article 72.1.a) of the LOPDGDD states that "according to what is established Article 83.5 of Regulation (EU) 2016/679 are considered very serious and Infractions that suppose a substantial violation will prescribe after three years.

of the articles mentioned therein and, in particular, the following:

a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679

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Article 58.2 of the RGPD 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 warning when the processing 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 a certain way and within a specified period;

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

instead of the measures mentioned in this paragraph, depending on the circumstances

of each particular case;

SAW

These infractions can be sanctioned with a fine of €20,000,000 as

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 of the RGPD.

Likewise, it is considered appropriate to graduate the sanctions to be imposed

in accordance with the following criteria established in article 83.2 of the RGPD:

As aggravating the following:

☐ In the present case we are dealing with unintentional negligent action, but significant active (article 83.2 b).

☐ Basic personal identifiers are affected (name, surname, two, domicile) (according to article 83.2g).

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 violations of articles 5.1.d) and

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

SECOND: APPOINT D. ***INSTRUCTOR.1 as instructor and secretary

to Ms. ***SECRETARY.2, indicating that any of them may be challenged,

where appropriate, in accordance with the provisions of articles 23 and 24 of Law 40/2015,

of October 1, of the Legal Regime 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 Subdirectorate General for Data Inspection

during the investigation phase, as well as the report of previous actions of

Inspection.

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 Administrations

Public, the sanctions that could correspond would be the following:

☐

☐

for the infringement of article 5.1 d) of the RGPD, typified in article 83.5 a)

of the RGPD the sanction that would correspond would be a fine for an amount of

60,000 euros (sixty thousand euros) without prejudice to what results from the

instruction.

for the infringement of article 5.1 f) of the RGPD, typified in article 83.5 a) of the

RGPD the sanction that would correspond would be a fine for an amount of

30,000 euros (thirty thousand euros) without prejudice to what results from the instruction.

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

NIF A80907397 granting a hearing period of ten business days for

formulate the allegations and present the evidence that it deems appropriate. In its statement of allegations must provide your NIF and the number of the procedure that appears at the top 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 Procedure

Common Administrative of Public Administrations (hereinafter, LPACAP).

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 of the term granted for the formulation of allegations to the present agreement of beginning; which will entail a reduction of 20% for each of the

sanctions to be imposed in this proceeding, equivalent in this

case twelve thousand euros (€12,000), for the first offense charged and six thousand euros (€6,000) for the second offense charged, that is, a total reduction

for this reason eighteen thousand euros (€18,000). With the application of this

reduction, the total amount of both sanctions would be established in

seventy-two thousand euros (€72,000), resolving the procedure with the imposition of this sanction.

Similarly, you may, at any time prior to the resolution of the

present procedure, carry out the voluntary payment of the proposed sanction,

in accordance with the provisions of article 85.2 LPACAP, which will mean

a reduction of 20% of the amount of the same, equivalent in this case to twelve thousand euros (€12,000), for the first offense charged and six thousand euros (€6,000), that is, a total reduction for this reason of eighteen thousand euros (€18,000). With the application of this reduction, the total amount of both sanctions would be established at seventy-two thousand euros (€72,000) and their payment will imply the termination of the procedure.

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 fifty-four thousand euros (€54,000).

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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 administrative route against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts indicated above, 72,000 euros or 54,000 euros, you must do so cash by depositing it in account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Agency for Data Protection 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 is accepted.

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 December 21, 2020, the claimant has proceeded to pay the

SECOND

the sanction in the amount of 54,000 euros making use of the two reductions provided for in the Start Agreement transcribed above, which implies the acknowledgment of 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.

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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 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 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/00415/2020, of in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to VODAFONE ESPAÑA, S.A.U.

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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 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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