

□ Procedure No. PS/00019/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) dated January 24, 2020

filed a claim with the Spanish Data Protection Agency. The

claim is directed against VODAFONE ONO, S.A.U. with NIF A62186556 (in

later, the claimed one). The grounds on which the claim is based are as follows:

The claimant files a claim for receiving commercial calls from

VODAFONE on the receiving line (***TELEFONO.1), registered on the Robinson List.

Provides a list of 4 calls received: on 01/16/2020 at 1:44 p.m. from the

line ***PHONE.3; on 01/16/2020 at 1:35 p.m. from the line

***TELEFONO.4, on 01/22/2020 at 1:29 p.m. from the line

***PHONE.2 and on 01/22/2020 at 1:45 p.m. Have you tried to express your

opposition, but the calls do not stop.

Date on which the claimed events took place: 01/16/2020 and 01/22/2020.

Relevant documentation provided by the claimant:

- Copy of the front of your ID.

- Copy of the certificate of your registration in the Robinson List issued on 01/22/2020, in which
your telephone line ***TELEFONO.1 registered against telephone calls
commercials from 10/29/2019.

- Screenshot of the call log of your mobile phone showing the calls
business phone calls that are the subject of your claim.

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).

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BACKGROUND

Claim entry date: January 24, 2020

Complainant: A.A.A. (the claimant)

Claimed: VODAFONE ONO, S.A.U. (the claimed one).

Dated 04/27/2020 and entry registration number 015255/2020, associated with the procedure E/02262/2020, the Spanish Data Protection Agency confirmed that the respondent acknowledged that the following telephone lines are associated with the following collaborators of yours to make advertising calls of customer acquisition:

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***PHONE 2: ATTENTION SPAIN HOLDCO.

***PHONE 3: ATTENTION SPAIN HOLDCO.

The person claimed in that same document stated that the claimant knew inscribed on the corresponding Robinson List. In addition, the respondent reports having included in the internal Robinson list of your entity to the telephone line

***TELEPHONE.1 of the claimant, as a result of the transfer of the claim, passing to be recorded as registered in it since 04/01/2020. The respondent provided the contract signed with ATENTO TELESERVICIOS ESPAÑA, S.A. as telesales collaborator and the data processing manager agreement signed between both parties. The claimed stated that they had not contacted the claimant to notify him of the steps taken for not having your contact information.

INVESTIGATED ENTITIES

ATENTO SPAIN HOLDCO, S.L.U., with NIF B86445731 and address at C/ Santiago de Compostela 94 - 9º, 28035 Madrid (hereinafter ASH).

ATENTO TELESERVICIOS ESPAÑA, S.A., with NIF A78751997 and address at C/ Santiago de Compostela 94 - 9º, 28035 Madrid (hereinafter the investigated).

RESULT OF THE INVESTIGATION ACTIONS

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The investigated states that the company that provides services to the claimed commercial telemarketing, as in charge of the treatment, corresponds to that of its business group: ATENTO TELESERVICIOS ESPAÑA, S.A., with NIF A78751997.

The investigated confirms the making of the following calls from her lines ***PHONE.4, ***PHONE.3 and ***PHONE.2, to line telephone number ***TELEFONO.1 of the claimant on the following dates and times:

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o 01/16/2020 (1:35 p.m.): attended by the claimant for 1 minute

and 31 seconds.

o 01/16/2020 (1:44 p.m.) and 01/22/2020 (1:09 p.m.): attended by the

claimant for 54 seconds and not answered by the claimant,

respectively.

o 01/22/2020 (1:29 p.m.): not answered by the claimant.

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The respondent states that the reason for carrying out the above

calls was to attract new clients for the claimed company, according to

in the contract for the provision of teleshopping services between them in the

condition of the person in charge of the treatment. The respondent provides a copy of said

contract signed by you and that of the investigated for the purpose of providing your

services in the telephone acquisition of clients for the claimed.

The investigated identifies the making of commercial calls from her

branch located in Tetouan, Morocco.

The respondent informs that the only data of the claimant that she has is her

phone number (***PHONE.1), found in the database

received from the claimed (a total of 36,992 contacts), via email

electronically on 01/03/2020 in a compressed and password-protected file,

to be contacted within the framework of the recruitment services contract

customers subscribed between them. The investigated provides a copy of the aforementioned email containing the database in question.

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The investigated literally determines that:

“The parameters of the campaign were established by Vodafone.

This company provides us with a BB.DD. with the registries to contact, in which

Only the phone number appears. The database is generated from

of random ranges, respecting the pertinent time of three (3) months for their

possible previous use and filtering it previously with the active clients in

the company and the Robinson listings in effect on the date of shipment.”

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The investigated literally establishes that:

“It is Vodafone that in the first instance compares telephone numbers

randomly generated that make up the BB.DD. with the Robinson List with

the objective of eliminating the matching numbers, making Atento a

additional and subsequent comparison to this, using for it a list of

exclusion periodically sent by Vodafone.

In the case of the telephone number under review, this was communicated by

Vodafone in the exclusion list sent on 02/05/2020.”

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The investigated provides a copy of said email in which they are updated

the telephone numbers registered in the Robinson List so as not to make calls to them

commercial.

THIRD: On February 9, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, with

in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the

Common Administrative Procedure of Public Administrations (hereinafter,

LPACAP), for the alleged violation of art. 48.1.b) of the LGT in relation to art. twenty-one

of the RGPD and 23 of the LOPDGDD, typified as serious in article 77.37 of the aforementioned

LGT, and for the alleged infringement of art. 28 of the RGPD, typified in article 83.4.a)

of said norm.

FOURTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written pleadings in which, in summary, he stated the following:

1.- ATENTO's activity focuses on the provision of services through

call centers, call centers, in order to carry out management and

telephone service to customers and users of the services marketed by

third parties.

These third parties - ATENTO clients - dictate the rules and guidelines that govern the

contacts made with end users, since the perception of these

latter is, in all cases, that the telephone call is made

directly by the entity for which ATENTO provides services.

There are no cases in which ATENTO identifies itself as the caller, nor in

which it is carried out within the framework of a work of obtaining or exploiting

of personal data for which it is responsible for the treatment.

Within the framework of said activity and as indicated in the response sent to the

initial information requirement, ATENTO is a service provider of the group

company VODAFONE (hereinafter, "VDF"), from which it follows that, by virtue of

the agreements reached, only the personal data of users that are well

maintain a contractual relationship with VDF or on which said entity is enabled to carry out contacts.

In the indicated context, on the date of the events that gave rise to the claim, ATENTO provided services to VDF, to carry out telephone contact with end users, for the purpose of offering them a VDF product.

The dynamic followed between both entities for the service provided has been exposed by ATENTO previously; VDF provides ATENTO with a database that contains phone numbers that should be targeted by the compromised campaign. Yes it is true that the business relationship between the two is based on the premise of that these phones are randomly generated, if they had a different origin (for example, that it was a list of potential clients of the VDF itself), the followed operational would not be affected, nor in the commitments acquired by VDF, with regard to the legitimacy of said data. For the

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Therefore, it is always VDF that carries out the filters related to the exclusion of clients who have opposed the reception of commercial communications.

In relation to this issue, VDF has referred in its attention to the requirement of information formulated by this Agency, that there are two different cases in the execution of commercial campaigns: one, in which it is she herself who provides the databases; another, in which its suppliers are the ones that generate and process the data on their own behalf.

Without prejudice to the fact that this party does not doubt that said differences concur, it is

relevant to state that the procedure followed by ATENTO is circumscribed, exclusively to the first casuistry. Therefore, there is no casuistry in which ATENTO processes data that is not provided by VDF.

Consequently, all the databases provided by VDF have to be subjected to a purification process before sending it to ATENTO, both with its own list of internal exclusions, as with the one contained in Adigital. this end It is corroborated by the VDF itself, stating that: "For campaigns made by the teleshopping platform, it is Vodafone who provides the database object of the campaign and is the entity in charge of previously filtering it through the lists Robinson, both from ADigital and from Vodafone itself" (Page 24 of the file administrative of this procedure).

As regards the specific circumstances giving rise to the claim, the January 3, 2020 VDF sends ATENTO by email a database with the telephone numbers to which it gives instructions to call, referenced as Document No. 1. Said database, which according to the procedure mentioned above should be previously filtered with the lists of internal and external advertising exclusion, includes the telephone number of the claimant, registered on the Robinson List since November 29, 2019.

ATENTO calls on behalf of VDF to the claimant's number twice on January 16 2020, and twice on January 22 of the same year, without the last two calls are answered. Next, on February 5, 2020, VDF sends ATENTO by email a file containing data that ATENTO must exclude from the database sent to him on January 3, for being included in the Robinson List, among which is the number of the claimant. This email and its attachments are provided as Document No. 2. As of that date, ATENTO has VDF instructions not to impact, and therefore do not impact, the claimant.

Therefore, from the above it follows that the lists that were used by ATENTO for the provision of its services and from which, as a result, the facts that motivated the present procedure must have been filtered by VDF, by virtue of the agreements contractually reached, without ATENTO having power to process the data to carry out any crossing of the information with any other databases (internal or external). That is, the data that are subject to treatment by ATENTO are exclusively those that, in the specific case, it provides you with VDF. Which, according to the agreements contractually reached, they had to be duly filtered and be legitimate for the treatment of the same for the provision of services agreed.

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2.- The attribution of the infraction to ATENTO seems to be based on the breach of the obligations assumed in his role as manager, due to the fact of transfer data outside the European Union, at the discretion of the AEPD, without the requirements defined in GDPR are met.

3.- Thus, the present administrative file contains a copy of the regularization of international data transfer (pages 188 to 196) (Reference TI/00052/2018), in light of the standard contractual clauses for the transfer of personal data to those in charge of the treatment established in third countries, in accordance with Directive 95/46/EC of the European Parliament and of Council.

FIFTH: On 04/19/2021, the examining body agreed to open a practice period

of tests, agreeing to practice the following:

<1. The claim filed by the

claimant and his documentation, the documents obtained and generated by the

Inspection Services before ATENTO TELESERVICIOS ESPAÑA, S.A., and the Report

of previous inspection actions that are part of file E/09378/2020.

2. Likewise, it is considered reproduced for evidentiary purposes, the allegations to the agreement

of initiation PS/00019/2021 filed by ATENTO TELESERVICIOS ESPAÑA, S.A., and

the accompanying documentation.

3. Incorporate into the file the resolution of the AEPD referenced TD/00052/20218,

regarding the authorization to make an international transfer to Morocco in the

within the data processor contract with Vodafone ONO according to the contract

identified as 2017MA007124 and between Atento Teleservices Spain, S.A. branch office

in Morocco, reference 2017MA007315, provided by Vodafone ONO. The

The result of these tests may lead to the performance of others>.

PROVEN FACTS

FIRST: The claimant filed a claim with the AEPD for receiving

unwanted commercial calls from VODAFONE. receiving line

(***TELEFONO.1) is registered in the Robinson List of ADigital. Provides a

list of 4 calls received:

☐ On 01/16/2020 at 1:35 p.m. from the line ***TELEFONO.4.

☐ On 01/16/2020 at 1:44 p.m. from the line ***TELEFONO.3.

☐ On 01/22/2020 at 1:29 p.m. from the ***TELEFONO.2 line.

☐ On 01/22/2020 at 1:45 p.m. from the line ***TELEFONO.3.

SECOND: Copy of the certificate of your registration in the Robinson List issued on

01/22/2020, stating the claimant's telephone line ***TELEFONO.1 registered

against business phone calls from 10/29/2019.

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It is known that for the commercial campaign the telephone number was added to the list of calls.

of the claimant on 12/12/2019 and they were sent (a total of 36,992 contacts) to the

entity in charge of treatment in Morocco through its parent company in Spain

(investigated).

THIRD: The investigated confirms the making of the following calls from

your lines ***TELEFONO.4, ***TELEFONO.3 and ***TELEFONO.2, to the telephone line

***Claimant's PHONE.1:

☐ On 01/16/2020 at 1:35 p.m. from the line ***TELEFONO.4 (1m 31

☐ On 01/16/2020 at 1:44 p.m. from the line ***TELEFONO.3 (54

☐ On 01/22/2020 at 1:29 p.m. from the line ***TELEFONO.2 (not

☐ On 01/22/2020 at 1:45 p.m. from the ***TELEFONO.3 line (not

sec).

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attended).

attended).

FOURTH: The reason for making the previous calls was to attract

new customers as stated in the contract for the provision of telemarketing services

signed with Atento Teleservices Spain, S.A.U. -in the capacity of person in charge of the

treatment of the claim- through the branch in Morocco.

FIFTH: The defendant and the investigated allege that the advertising action now

analyzed was due to a specific error in the filtering of telephone numbers with the Adigital's Robinson List, due to the changes in the access operation to said Listed since the beginning of 2020 outside the merchant. Once the claimed had knowledge of the error, proceeded to communicate its correction to the investigated for the cessation of calls

SIXTH: In this advertising action, 36,992 telephone numbers were crossed with the Robinson list and only one has been reported to this AEPD.

SEVENTH: This AEPD contains the document with entry registration 000007128e2100006171, relating to another procedure in progress in this AEPD and subject to reserved information as it contains internal operations of the entity that has provided, in which he confirms within the scope of his powers in relation to the operational access and crossing with the Robinson List, which produced failures punctual -although not systemic- in the transitory internal process of consulting the Robinson List during 2020 and until February 2021.

EIGHTH: It is authorized by this AEPD, in the reference file TI/00052/2018 dated 04/24/2018, to the entity Atento Teleservices Spain, S.A.U. -entity in charge of data processing now analyzed on behalf of the investigated-, the international transfer of personal data personnel to the entity Atento Teleservices Spain, branch in Morocco, with the purpose of providing telecare services (CallCenter).

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FOUNDATIONS OF LAW

In accordance with the provisions of article 84.3) of the LGT, the competence to initiate and resolve this Penalty Procedure corresponds to the Director of the Spanish Agency for Data Protection.

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and according to 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 resolve this procedure.

II

Article 89.1.c) of Law 39/2015, of October 1, on Administrative Procedure Common of the Public Administrations, indicates the following:

<Article 89. Resolution proposal in sanctioning procedures.

1. The investigating body will resolve the completion of the procedure, with a file of the actions, without it being necessary to formulate the resolution proposal, when in the procedure instruction it becomes clear that there is any of the following circumstances:

c) When the proven facts do not constitute, in a manifest way, an infringement administrative.>

In the present case, the provisions of art. 89.1.c) cited above, as reasons on the following rights foundations, so it is appropriate to resolve the present sanctioning procedure.

The facts detailed in the background could constitute an infraction, attributable to the defendant, for violation of article 48.1.b) of Law 9/2014, of 9 May, General de Telecomunicaciones (hereinafter, LGT), included in its Title III, That points:

III

<<Article 48. Right to the protection of personal data and privacy in relation with unsolicited communications, with traffic and location data and with subscriber guides.

1. Regarding the protection of personal data and privacy in relation to the unsolicited communications end users of communications services electronic will have the following rights:

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(...)

b) To oppose receiving unwanted calls for commercial communication purposes that are carried out through systems other than those established in the previous letter and be informed of this right.>>

Although the aforementioned article does not configure such a right, so we must go to the data protection regulations in which the right of opposition is regulated: article 21 of the RGPD, (Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/2016, regarding the Protection of Natural Persons with regard to the Treatment of Personal Data and the Free Circulation of these Data) and article 23 of the LOPDGDD (Organic Law 3/2018, of December 5, on Data Protection Personal and Guarantee of Digital Rights).

Notwithstanding, of the instruction of the present procedure and especially of the evidence practiced in it, the allegation made by both the by the claimed as by the one investigated in the allegations phase regarding the fact that the alleged violation of art 48.1.b) of the LGT was due to a specific error of the

Numbering filtering system with the Adigital Robinson list not existing
culpability in his behavior, since it was due to a change in the system of
filtering of Adigital's Robinson numbers during the period between the
year 2020 and February 2021 beyond their control, as stated by the entity
in charge of the treatments of the information system Robinson of Adigital.

In this regard, it is clear that the inclusion of the claimant's line in the list
Robinson of Adigital is dated 10/29/2019, so the Robinson record of Adigital
of exclusion of advertising calls, according to its own regulations, it was not
updated with the line of the claimant until 12/29/2019 (two months from the
inclusion according to the old ADigital Robinson listing access system).

It is also stated that on 12/12/2019 the respondent took from the Robinson list
of Adigital the number of the claimant and provided it to the person in charge of the treatment
(Investigated), therefore, since the period of two months has not elapsed since its
inclusion the claimant's line did not appear in the list.

Once the data has been crossed with the Adigital Robinson list and the campaign has started
customer acquisition with the investigated, the claimed sent by email
dated 01/03/2020 the list of numbers to the person in charge of the treatment
(investigated) which in turn sent it to its branch in Morocco, who proceeded in the
framework of the customer acquisition services contract signed to carry out
materially the commercial action in the name and on behalf of the claimed party.

It is proven that due to the changes that were imposed by the
ADigital in relation to the query system of the official Robinson list -which went from
a system of downloads of the complete databases to a system of consultations of
databases- the entities have had to develop specifically under the
requirements imposed by Adigital an API and, once detected that the SQL applied to
the database in question was not correctly updating all the

Robinson, the defendant identified the incident in order to update the applied SQL, completely correcting the incident and updating the databases daily (new access system to Adigital's robinson list).

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Therefore, the respondent sent on 02/05/2020 an updated list to Atento

SUC-MOROCCO, correcting the error of the inclusion of the telephone number of the claimant.

Consequently, the defendant, before knowing the incidence in the downloads of the

Adigital's Robinson listing, proceeded to diligently correct that error, as

deduces from the chronology of the events and the content of the administrative file,

reason why the conduct initially imputed to the defendant lacks

volitional element of guilt as a result of an error of others and in

Consequently, the person under investigation lacks responsibility for the events

initially charged.

In this sense, the SAN dated 02/26/2021 pronounces:

< THIRD.- We proceed to analyze the question regarding the existence

of guilt, invoked its absence by the plaintiff. It is said by society

appellant that in order to be attributed the responsibility foreseen by the

legal system for the commission of an administrative infraction, a

double imputation title: (i) the objective imputation, that is, that it can be attributed

from the point of view of the material accusation, and (ii) the subjective imputation, that is,

volitional attribution. It is not enough, then, with the pure worthlessness of the result or

with the objective injury of a protected legal interest, the impairment of the action for the intentional or negligent commission of the conduct. The simple disregard can be understood as referring to a norm, but the objective non-observance of the norm does not alone justifies the imposition of the penalty.

Thus, it is known that liability can be incurred for the infraction that we are examining both intentionally or maliciously or negligently (art. 28 of the Law 40/2015, of October 1, on the Legal Regime of the Public Sector-). and proceeds now remember that, as indicated by the Supreme Court in the Judgment of January 23 of 1998, "... although the culpability of the conduct must also be proven, must be considered in order to assume the corresponding load that ordinarily the volitional and cognitive elements necessary to appreciate they are part of the typical behavior tested, and that their exclusion requires that the absence of such elements is proven, or in its normative aspect, that it has been used the diligence that was required by the person who alleges its non-existence; not enough, in sum, for the exculpation in the face of a typically unlawful behavior the invocation of the absence of guilt".>

In the present case, it is clear that the respondent, once she had knowledge of the errors that were occurring in the data crossing with the Robinson list of Adigital acted with due diligence correcting the error detected by sending date 02/05/2020 a new list corrected to the investigated and incorporating into its internal list the numbering object of claim, ceasing henceforth the calls to the claimant. Consequently, the investigated element is not appreciated volitional guilt in the initially imputed conduct.

IV

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Known facts could also constitute an infringement, attributable to the one investigated as the person in charge of the treatment now analyzed, for violation of article 28.3.h) in fine of the RGPD, typified in article 83.4 of said norm, considered minor for prescription purposes in article 74.j) of the LOPDGDD, for the following reasons:

Article 28 of the GDPR states the following:

"Art. 28, Responsible for treatment.

1. When a treatment is going to be carried out on behalf of a person in charge of the treatment, this will only choose a person in charge who offers sufficient guarantees to apply appropriate technical and organizational measures, so that the treatment is in accordance with the requirements of this Regulation and guarantees the protection of the rights of the interested party.
2. The person in charge of treatment will not resort to another person in charge without prior authorization in writing, specific or general, of the person in charge. In the latter case, the manager will inform the person in charge of any change foreseen in the incorporation or replacement of other processors, thus giving the controller the opportunity to oppose to these changes.
3. The treatment by the person in charge will be governed by a contract or other legal act with under the law of the Union or of the Member States, binding the person in charge with respect to the person in charge and establish the object, duration, nature and purpose of the treatment, the type of personal data and categories of interested parties, and the obligations and rights of the controller. Said contract or legal act shall stipulate, in particular, that the person in charge:

- a) will process personal data only following documented instructions of the responsible, including with respect to transfers of personal data to a third country or an international organization, unless required to do so under of the Law of the Union or of the Member States that applies to the person in charge; in In such a case, the person in charge will inform the person in charge of that legal requirement prior to the treatment, unless such Law prohibits it for important reasons of interest public; b) will guarantee that the persons authorized to process personal data have undertaken to respect confidentiality or are subject to an obligation confidentiality of a statutory nature;
- c) take all necessary measures in accordance with article 32;
- d) will respect the conditions indicated in sections 2 and 4 to resort to another treatment manager;
- e) will assist the person in charge, taking into account the nature of the treatment, through appropriate technical and organizational measures, whenever possible, so that this

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- can comply with its obligation to respond to requests that are intended to the exercise of the rights of the interested parties established in chapter III;
- f) will help the person in charge to guarantee the fulfillment of the obligations established in articles 32 to 36, taking into account the nature of the treatment and the information available to the person in charge;
- g) at the choice of the person in charge, will delete or return all personal data once Once the provision of treatment services ends, and will delete the copies

existing unless the retention of personal data is required under

of the Law of the Union or of the Member States;

h) will make available to the person in charge all the information necessary to demonstrate

compliance with the obligations established in this article, as well as

to enable and assist in the performance of audits, including inspections, by

part of the person in charge or of another auditor authorized by said person in charge.

In relation to the provisions of letter h) of the first paragraph, the person in charge will inform

immediately to the controller if, in his opinion, an instruction violates this

Regulation or other provisions on data protection of the Union or of

the member states. (the underlining is from the AEPD).

4. When a person in charge of the treatment resorts to another person in charge to carry out

certain treatment activities on behalf of the person in charge, will be imposed on

this other manager, by contract or other legal act established in accordance with the

Law of the Union or of the Member States, the same obligations of

data protection than those stipulated in the contract or other legal act between the

responsible and the person in charge referred to in section 3, in particular the provision

of sufficient guarantees of application of appropriate technical and organizational measures

so that the treatment is in accordance with the provisions of this

Regulation. If that other processor breaches its data protection obligations,

the initial processor will remain fully accountable to the controller

treatment with regard to the fulfillment of the obligations of the other

duty manager.

5. The treatment manager's adherence to a code of conduct approved by

under article 40 or to an approved certification mechanism under article

42 may be used as an element to demonstrate the existence of guarantees

enough referred to in sections 1 and 4 of this article.

6. Without prejudice to the fact that the person in charge and the person in charge of the treatment celebrate a individual contract, the contract or other legal act referred to in sections 3 and 4 of this article may be based, totally or partially, on the clauses standard contracts referred to in sections 7 and 8 of this article, inclusive when they form part of a certification granted to the person in charge or in charge of in accordance with articles 42 and 43.

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7. The Commission may establish standard contractual clauses for the matters to which it is referred to in sections 3 and 4 of this article, in accordance with the procedure of examination referred to in article 93, paragraph 2.

8. A supervisory authority may adopt standard contractual clauses for the matters referred to in sections 3 and 4 of this article, in accordance with the coherence mechanism referred to in article 63.

9. The contract or other legal act referred to in sections 3 and 4 shall be recorded by written, including in electronic format.

10. Without prejudice to the provisions of articles 82, 83 and 84, if a person in charge of the treatment infringes this Regulation by determining the purposes and means of the treatment, will be considered responsible for the treatment with respect to said treatment."

In the present case, and according to the documentation in the

PS/00017/2021 now brought to the procedure in the evidence practice phase, it consists accredited that the investigated was authorized by the AEPD in the procedure of

reference TI/00052/2018 resolved on 04/24/2018 to make the transfer

data transfer to Morocco in the name and on behalf of the claimed party. In

Consequently, the infringement of art. 28.3.h) of the RGPD initially imputed to the investigated.

Consequently, it is appropriate to file this sanctioning procedure.

In view of the aforementioned precepts and others of general application, the Director of the Agency

Spanish Data Protection RESOLVES:

FIRST: FILE this procedure to ATENTO TELESERVICIOS

ESPAÑA, S.A., with NIF A78751997.

SECOND: NOTIFY

this resolution to ATENTO TELESERVICIOS

ESPAÑA, S.A., with NIF A78751997 and address at C/ Santiago de Compostela 94 - 9º,

28035 Madrid (hereinafter the investigated).

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 (article 48.6 of the

LOPDGDD), and in accordance with the provisions of articles 112 and 123 of the Law

39/2015, of October 1, of the Common Administrative Procedure of the

Public Administrations, the interested parties may optionally file

appeal for reconsideration before the Director of the Spanish Data Protection Agency

within one month from the day following the notification of this

resolution or directly contentious-administrative appeal before the Chamber of the

Contentious-administrative of the National Court, in accordance with the provisions of the

Article 25 and in section 5 of the fourth additional provision of Law 29/1998, of

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July 13, regulatory of the Contentious-administrative Jurisdiction, in the term of

two months from the day following the notification of this act, as

provided for in article 46.1 of the aforementioned legal text.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of Law 39/2015,

of October 1, of the Common Administrative Procedure of the Administrations

Public, the firm resolution may be provisionally suspended in administrative proceedings if

the interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Agency for Data Protection, presenting it through

Electronic Register of the Agency [[https://sedeagpd.gob.es/sede-electronica-](https://sedeagpd.gob.es/sede-electronica-web/)

[web/](https://sedeagpd.gob.es/sede-electronica-web/)], or through any of the other registers provided for in art. 16.4 of the

aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the

documentation proving the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative within a period of two months from the day following the

notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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