

Procedure No.: PS/00093/2019

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and
in consideration of the following

BACKGROUND

FIRST: On 08/07/2018 it has entry in the Spanish Protection Agency
of Data (AEPD), sent by the Catalan Authority for Data Protection, a
claim made by Ms. A.A.A. (hereinafter, the claimant) against
VODAFONE ESPAÑA, S.A.U., with NIF A80907397 (hereinafter the claimed or
VODAFONE).

The claimant filed a complaint on 06/18/2018 with the OMIC of the
Town Hall of *** TOWN HALL.1 -who in turn forwards the complaint to the
Catalan Data Protection Authority- in which it states that at the beginning of June
2018 receives a phone call from an unknown person informing him of
that VODAFONE has sent you, in your name and at your address, documentation relating to
a contract of the claimant in which their personal data is included.

A copy of the following documents is attached to the claim:

- The NIF of the claimant: ***NIF.1
- Various documents with the VODAFONE anagram: a letter welcoming
to the client and thanking the trust placed in the entity; a document
contract ("Installment Sales Contract for private customers"), which bears the
indication "copy for the client" and in which the following information appears: "No. Line
associate" ***PHONE.1; as "Customer Data", A.A.A., NIF ***NIF.1, number of
VODAFONE telephone number ***PHONE.1 and address "Calle ***ADDRESS.1".

- An envelope with the VODAFONE logo and Postage stamps addressed to

B.B.B., ***ADDRESS.2

SECOND: In view of the facts exposed, the AEPD deployed the following performances:

A.- Within the scope of reference file E/6509/2018, the AEPD, in accordance with the provisions of article 9.4 of Royal Decree-Law 5/2018, on urgent measures for the adaptation of Spanish Law to the regulations of the European Union in matters of data protection -norm that entered into force on 07/31/2018 and was in force until its repeal by Organic Law 3/2018, of December 5, on Data Protection of personal nature and guarantee of digital rights (LOPDGDD) - gave notice to VODAFONE of a copy of the claim. In that letter, dated 09/27/2018, it was requested VODAFONE to report on the causes that had motivated the

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incident that gave rise to the claim, on the measures adopted to prevent similar events occur in the future and that it proves to have communicated these ends to the claimant.

The notification, through notific@, was accepted by the operator on 04/10/2018.

VODAFONE responds on 10/09/2018 and states that the written claim it was written entirely in Catalan and, furthermore, it was illegible.

On 11/26/2018, the claim was accepted for processing.

B. Within the framework of the reference file E/10517/2018, Actions of

Prior investigation under article 11 of Royal Decree-Law 5/2018,

currently article 67 of the LOPDGDD.

An informative request is addressed to VODAFONE by the Data Inspection

on 01/28/2019 that responds on 02/01/2019.

The Investigative Actions Report is issued by the Acting Inspector

(signed on 02/15/2019) from which the following excerpt is reproduced:

<<On October 4, 2018, the complaint was transferred to the entity

denounced, in the framework of actions E/6509/2018.

On October 9, 2018, a response was received from VODAFONE to the transfer,

indicating that the complaint is not legible and that it is written in Catalan.

On December 28, these investigative actions begin.

On January 28, 2019, a request for information is sent to

VODAFONE in relation to the reported facts:

On February 1, 2019, VODAFONE sends the Agency the following

information in relation to said facts:

In the absence of a response to the transfer, dated December 12, 2018, the

the present investigative actions.

On December 21, 2018 and January 29, 2019, TELEFONICA DE

SPAIN S.A. has sent this Agency the following information in relation to the

facts reported:

1 They provide a copy of the three addresses that appear in their files associated with

the complainant, which are those that appear in the contracts signed with the

company, where it is verified that none of them coincides with the address to which

that the contract documentation was sent.

1. Regarding the sending of the documentation by postal mail to another address

different:

a. They provide a copy of the information they have regarding the incident,

among which is:

☐ Dated June 6, 2018, "There is a case of fraud, no

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classified as fraud, it seems a shipping error and that they were confused

several letters to a couple of clients".

☐ With the same date "Client indicates that a person called him

unknown, that he received a letter with his personal information".

☐ Dated June 12, 2018, "I speak with the tit. says he has received

an envelope with his name on it, but inside the envelope

the data of another client appeared, the other client has received

also an envelope with the data of the client xxxxxx, they have to go in the

shop with the envelopes to direct them to the dep. enabled. The situation

cannot be managed from the dep. of fraud".

2. Regarding the causes of the incident, they state that: It has been a

punctual error when sending the contract. Initially, it was investigated

situation in case it was a case of recruitment fraud, but

finally it was concluded that it had been a punctual error.>>

THIRD: On 04/01/2019, the Director of the Spanish Protection Agency

of Data agrees to initiate a sanctioning procedure against VODAFONE for the alleged

infringement of article 5.1.f) of the RGPD, typified in article 83.5 of the Regulation

(EU) 2016/679. The amount of the sanction of administrative fine established in the agreement

start is 55,000 euros.

FOURTH: On 04/16/2019, the allegations of VODAFONE to the agreement to initiate file PS/00093/2019 for "the alleged breach of the provided in articles 5.1.f) of the RGPD and article 72.1.a of the LOPDGDD".

The respondent says in her second allegation:

"Vodafone acknowledges its responsibility in the face of the facts denounced, the which have been motivated by human error when sending the contract to the Mrs. A.A.A., inserting in the envelope the wrong address belonging to another person. As can be understood, in no case is there intentionality or much less fraud in the actions of my client, but that the events have occurred due to human error, as evidenced in the allegations made presented in the request for information E/10517/2018" (The underlining is from the AEPD)

"Therefore, although my client acknowledges the events that occurred and the error that motivated them in accordance with article 85 of Law 39/2015 of October 1, ...want to emphasize that, in accordance with the AEPD's own doctrine, it is necessary to relationship between the existence of a human error and the absence of guilt that must be govern all sanctioning actions.

The respondent requests the "dismissal of the file and consequent file of actions" and "Subsidiarily" "impose on my client the sanction for amount of 44,000 euros as my client recognized the facts that have motivated the present sanctioning procedure, applying therefore the reduction of the 20% of the amount of the penalty in accordance with article 85 of the LPACAP." (The underlined is from the AEPD)

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FIFTH: On 12/12/2019 there is an entry in the AEPD Registry with a letter of the one claimed in which, after stating that it formulated on 04/05/2019 the pertinent allegations for his defense against the agreement to initiate the procedure sanctioning PS/0093/2019, makes this statement:

"Having recognized my represented the facts that have motivated the present sanctioning procedure, and therefore requesting the application of the reduction of the 20% of the amount of the sanction in accordance with article 85 of the LPACAP, of In accordance with the aforementioned article, my client now proceeds to withdraw or Waiver of any administrative action or recourse in relation to this course of fact" (The underlining is from the AEPD)

SIXTH: Article 82.4 of Law 39/2015 of Common Administrative Procedure of Public Administrations (LPACAP) has:

"The hearing process may be dispensed with when they do not appear in the procedure, nor are other facts or other facts taken into account in the resolution. allegations and evidence than those adduced by the interested party.

In turn, article 85.1 of the LPACAP says: "Initiated a procedure sanctioning party, if the offender acknowledges his responsibility, the procedure with the imposition of the appropriate sanction". (The underlining is from the AEPD)

Of the actions carried out, the following have been accredited

FACTS

1.- A.A.A., with DNI

***NIF.1 -a copy of which is in the file-, presented the

06/18/2018 claim against VODAFONE before the OMIC of the City Council of its

home. In your letter of claim, you provide these personal data: address

street ***ADDRESS.1 and phone ***PHONE.1. The claimant stated that

At the beginning of June, he receives a phone call from a person who informs him that

VODAFONE has sent to your address, addressed to your attention, a letter with

documents containing personal data of the claimant.

On 07/17/2019 the City Council transfers the claim against VODAFONE

and the documents provided by the claimant to the Catalan Authority for

Data Protection. This sends the documentation to the AEPD on 08/07/2018.

2.- The documents that the claimant provided with her claim are the following:

- The copy of the front of an envelope with Postage stamp that is in the

lower left corner the anagram of VODAFONE and these details of the recipient:

B.B.B., Avenida de ***ADDRESS.2”.

- A document with the VODAFONE logo called "Agreement of sale to

terms for private clients. In the upper right corner is the indication

“Customer copy”, on the left “EU-5/87/6”. In the body of the document

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two boxes appear. In the first of them, “Terminal data” is indicated as

“Associated line number” the ***TELEPHONE.1. In the second, "Client Data", there is the

name and surname of the claimant (A.A.A.); your NIF (***NIF.1) the telephone number

Vodafone (***TELEPHONE.1) and address (street ***ADDRESS.1”.

- Two documents with the anagram of the related operator claimed,

respectively, to the "Withdrawal" of the contract and the "general conditions of your rate without promotions applied".

3.- In the course of the preliminary investigation actions E/10517/2018, VODAFONE responded in the following terms to the information request made in relation to the causes for which the documentation related to a contract of the complainant had been sent by post to a third party (B.B.B.):

<< There is a case of fraud, it is not classified as fraud, it looks like a shipping error and that several letters to a couple of customers were mixed up. I hit your case and transcript.

I79853853 06/06/2018 21:01:00 06/12/2018 18:54:43 Not applicable FRAUD

06/12/2018 21:01:00 No subcases.

*** TELEPHONE REGISTRATION 06/06/2018 21:04:16 rparien

Konecta Family ***

Client indicates that an unknown person called him.

That you received a letter with your personal information from VF.

***PHONE.2 -□ Client with document (client number of the person who has your data arrived)

L A letter has arrived with the data of another person

***NOTES 06/06/2018 21:07:16 rparien. Type of action: Record of Notes

Konecta Family***

THE TELEPHONE OF THE CUSTOMER THAT HAS ARRIVED DOCUMENTATION FROM ANOTHER PERSON – ***PHONE.3 [for internal use only]

***NOTES 06/12/2018 18:53:53 cmtite. Type of action: Record of Notes

FRAUD***

***NIF.1

I talk to the tit, she says that she has received an envelope in which her name appeared, but inside the envelope the data of another client appeared the other client has received

also an envelope with customer data

they have to go to the store with the

envelopes to be addressed to the enabled dep the situation cannot be managed from the dep
of fraud>>

(The underlining is from the AEPD)

***NIF.1

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 LOPDGDD, the
Director of the Spanish Data Protection Agency is competent to resolve
this procedure.

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II

The RGPD deals in its article 5 with the principles that must govern the
treatment of personal data and mentions among them those of "integrity and
confidentiality". The provision provides:

"1. The personal data will be:

(...)

f) Treated in such a way as to guarantee adequate security of the
personal data, including protection against unauthorized or unlawful processing
against its loss, destruction or accidental damage, through the application of measures

appropriate technical or organizational (<<integrity and confidentiality>>)"

Recital 39 of the GDPR says about this:

"All processing of personal data must be lawful and fair. For the people
physical data must be made absolutely clear that they are being collected, used, consulted
or treating in another way personal data that concerns them, as well as the extent
in which said data is or will be processed. The principle of transparency requires that all
information and communication regarding the processing of said data is easily
accessible and easy to understand, and that simple and clear language is used. Saying
principle refers in particular to the information of the interested parties on the identity
of the person in charge of the treatment and the purposes of the same and to the information added to
ensure fair and transparent treatment with respect to natural persons
affected and their right to obtain confirmation and communication of the data
personal data that concern them that are subject to treatment. natural persons
must be aware of the risks, standards, safeguards and rights
regarding the processing of personal data as well as the way to assert their
rights in relation to treatment. In particular, the specific purposes of the
processing of personal data must be explicit and legitimate, and must
be determined at the time of collection. Personal data must be
adequate, pertinent and limited to what is necessary for the purposes for which they are
treated. This requires, in particular, ensuring that their use is limited to a strict minimum.
conservation period. Personal data should only be processed if the purpose of the processing
treatment could not reasonably be achieved by other means. To ensure that
personal data is not kept longer than necessary, the person responsible for the
treatment must establish deadlines for its suppression or periodic review. must
take all reasonable steps to ensure that they are rectified or deleted
personal data that is inaccurate. Personal data must be treated in a

way that guarantees adequate security and confidentiality of the data including to prevent unauthorized access or use of such data and of the equipment used in the treatment. (The underlining is from the AEPD)

The infringement of article 5.1.f) of the RGPD is typified in the article 83 of the aforementioned legal text. Under the heading “General conditions for the imposition of administrative fines”, says:

"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,

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in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

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

The Organic Law 3/2018, on the Protection of Personal Data and Guarantee of the Digital Rights (LOPDGDD), for prescription purposes, qualifies as very serious (article 72.1.) “the infractions that suppose a substantial violation of the articles mentioned in it and, in particular, the following: a) The treatment of personal data violating the principles and guarantees established in article 5 of the Regulation (EU) 2016/679.”

III

VODAFONE is attributed in this sanctioning file a

violation of article 5.1.f) of the RGPD.

The documentation in the administrative file offers evidence

that VODAFONE violated the principles of integrity and confidentiality.

According to the documentation in the file, it is proven that

VODAFONE sent to a third party (B.B.B.) documentation that included data

personal information of the claimant: name and two surnames; NIF; mobile phone number and

postal address.

In this regard, we refer, on the one hand, to the documents provided by the

claimant: the copy of the envelope with the VODAFONE logo on which it appeared

as recipient the name, surnames and address of the third party and a copy of a contract

in the name of the claimant -"copy for the client"- that incorporated their data

personal. On the other hand, what was stated by the claimant in her complaint before the OMIC

-that an unknown person had contacted her by telephone to

inform you that I had received in an envelope addressed to your attention documents from the

affected-. Explanation that fully coincides with the annotations from

the VODAFONE systems that the defendant provided to the AEPD in the course of the

prior investigation.

The annotations provided by VODAFONE are an internal document that

judgment of the entity explains what happened. From the examination of such annotations it is evident

that a third party called the operator on 06/06/2018. According to the annotation: "Client indicates

An unknown person called him. That a letter arrived with your information

VF staff. ***PHONE.2 -□Client with document (number of the client of the

person who has received your data) L A letter has arrived with the data of another

person

"THE CUSTOMER'S PHONE PHONE THAT HAS ARRIVED DOCUMENTATION OF

ANOTHER PERSON – ***PHONE.3 [for internal use only]"

It is also evident from the notes of VODAFONE that the claimant

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(holder of NIF ****NIF.1) contacted the operator's service by telephone on

06/12/2018 and explained, not only that another client had received an envelope with their data

but also added that she had received an envelope containing

his name but containing documents relating to the person who in turn had

received hers: “****NIF.1 I speak with the tit, she says that she has received an envelope in which

His name appeared, but the details of another client appeared inside the envelope. the other

The client has also received an envelope with the client's data ****NIF.1”

It seems obvious, then, that both parties, the claimant and the third party who received

their documents, they had to access the information contained in the envelope

received from VODAFONE in his name, but which concerned the other person, since only

thus they were able to learn that the documentation they had received from the entity

claimed was not his.

Proved that VODAFONE violated the principles of integrity and

confidentiality in relation to the personal data of the claimant - taking into account

that he sent documents with personal data of the affected party to a third party and that the

third party had to access those data as the only means to contact her or

identify it before the claimed entity- it has to be assessed if the fault of the

claimed or if he omitted the due diligence, taking into account the circumstances of the

case, essential for the behavior analyzed to be subsumable in the type

violation of article 83.5. of the GDPR.

Our sanctioning law governs the principle of culpability, which prevents impose sanctions based on the strict liability of the alleged offender. The presence of the element of guilt in the broad sense, as a condition for sanctioning responsibility arises, has been recognized by the Court Constitutional Court, among others, in its STC 76/1999, in which it states that the sanctions administrative participate in the same nature as criminal ones, being one of the manifestations of the ius puniendi of the State and that, as a requirement derived from the principles of legal certainty and criminal legality enshrined in articles 9.3 and 25.1 of the C.E., its existence is essential to impose it.

Law 40/2015 on the Legal Regime of the Public Sector provides in the article 28, under the heading "Responsibility":

"1. They may only be sanctioned for acts constituting an infraction.

natural and legal persons administratively, as well as, when a Law recognize capacity to act, affected groups, unions and entities without legal personality and independent or autonomous estates, which result responsible for them by way of fraud or negligence." (The underlining is from the AEPD)

The respondent has stated in its pleadings to the initial agreement that we are facing a mere human error in which intentionality or fraud has not intervened for his part, reason for which, in his opinion, the filing of the proceedings would proceed.

Let us remember in this regard that according to article 5.2 of the RGPD (principle of proactive liability) the respondent entity should have provided the pertinent documentation that accredits that it had implemented the technical measures and organizational structures that guaranteed the adequate level of security against the loss of

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data or unauthorized treatment. However, VODAFONE has contributed nothing in such sense limiting itself to affirming that we are facing a "mere human error".

In compliance with the obligations that the RGPD imposes on the person responsible for the treatment, it must display the minimum diligence required by the circumstances of the case adopting the pertinent technical and organizational measures. Illustrative is the SAN of 04/29/2020 -which, although it was issued in a matter of fraudulent hiring and under the previous regulations, it is perfectly extrapolated to the one that concerns us- whose Sixth Legal Basis says: "The question is not to clarify whether the appellant dealt with the personal data of the complainant without her consent, such as whether she used or failure to exercise reasonable diligence in trying to identify the person with whom He signed the contract." (The underlining is from the AEPD)

Regarding the element of culpability in the administrative procedure sanctioning party it seems appropriate to refer to the SAN of 05/30/2015 (Rec. 163/2014) that connects the "reproachability" to a legal person of a certain conduct with the circumstance that it "had or had not provided effective protection to the legal good protected by the norm". The Second Legal Basis of the aforementioned Sentence says:

<<However, the mode of attribution of responsibility to people legal does not correspond to the forms of fraudulent or reckless guilt that They are attributable to human behavior. So, in the case of violations committed by legal persons, although the element of guilt, it is necessarily applied differently from the way it is applied with respect to natural persons. According to STC 246/1999 "(...) this construction, different from the imputability of the authorship of the infraction to the legal person arises from the

nature of legal fiction to which these subjects respond. missing in them
volitional element in the strict sense, but not the ability to break the rules to the
that they are subjected. Capacity for infringement and, therefore, direct blame that
derives from the legal right protected by the norm that is violated and the need for
said protection is really effective and for the risk that, consequently, must
assume the legal entity that is subject to compliance with said rule">> (The
underlined is from the AEPD)

In short, the conduct of VODAFONE, materialized in the infringement of the
principles of integrity and confidentiality regarding the personal data of the
claimant –name, two surnames, NIF, mobile phone and address–, since he sent the
the claimant's contract that contained her personal data to a third party without having
accredited that he had implanted when the facts occurred the measures
technical and organizational measures necessary to guarantee the security and confidentiality of
the data of its clients in order to prevent events such as those that concern us,
violates article 5.1.f) of the RGPD, action subsumable in the sanctioning type of the
article 83.5 of the RGPD.

IV

Article 58 of the RGPD, "Powers", establishes in point 2:

"2 Each supervisory authority shall have all of the following powers

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corrections listed below:

(...)

i) impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, depending on the circumstances of each particular case;”

In order to determine the administrative fine that is appropriate to impose, observe the provisions of articles 83.1 and 83.2 of the RGPD, precepts that point out:

“Each control authority will guarantee that the imposition of fines administrative actions under this article for violations of this Regulation indicated in sections 4, 9 and 6 are in each individual case effective, proportionate and dissuasive.”

“Administrative fines will be imposed, depending on the circumstances of 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 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 suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the treatment, taking into account the technical or organizational measures that they have applied under of articles 25 and 32;

e) any previous infraction committed by the person in charge or the person in charge of the treatment;

- f) the degree of cooperation with the supervisory authority in order to put remedying the breach and mitigating the possible adverse effects of the breach;
- g) the categories of personal data affected by the infringement;
- h) the way in which the supervisory authority became aware of the infringement, in particular whether the person in charge or the person in charge notified the infringement and, if so, in what measure;
- 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 mechanisms of 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, through the infringement.”

Regarding section k) of article 83.2 of the RGPD, the LOPDGDD, article 76,

“Sanctions and corrective measures”, provides:

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"two. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679

may also be taken into account:

- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of treatment of 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 officer.
- 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 controversies between them and any interested party."

In accordance with the precepts transcribed, in order to set the amount of the fine to be imposed on VODAFONE ESPAÑA, S.A.U., as responsible for an infraction typified in article 83.5.a) of the RGPD, it is necessary to make two clarifications. The First, that article 83.2 RGPD requires the control authority to guarantee that the sanction to be imposed is in each case "effective, proportionate and dissuasive" and, the second, that the amount of the sanction provided for in the RGPD for infractions referred to in article 83.5 has as its maximum limit the greater of these two amounts: 20,000,000 euros or 4% of the total global annual turnover of the previous financial year. During the 2017 financial year, the turnover of VODAFONE amounted to 4,978 million euros, so 4% of this amount amounts to 199,120,000 euros.

As indicated in the agreement to initiate the file, the concurrence of the following factors that affect the unlawfulness and culpability of the action of VODAFONE and therefore in determining the amount of the penalty:

- The merely local scope of the data processing carried out by the claimed party.
- The people affected by the conduct of VODAFONE that allegedly violates the

GDPR have been two.

-The damage caused to those affected by the processing of their data is not very significant.

-VODAFONE's lack of diligence can be described as slight. The facts are not due to the inaccuracy of the data contained in the entity's files. In this sense the requested provided this Agency with the three addresses that appear in its files associated with the claimant -none of which coincides with the address of the third party to whom the document of the claimant with her personal data - and also explained what was the

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origin of each of them.

- The obvious link between the business activity of VODAFONE 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)

- The business volume or activity figure of the entity (article 83.2.a, of the RGPD)

We are in the presence of a large company in the telecommunications sector. The Total global annual volume for the financial year 2017 amounted to 4,978,000,000 euros.

- The scope of the treatment (article 83.2.a, RGPD) since the personal data of the claimant affected by the infringement of article 5.1.f) RGPD were several: the name and two surnames, NIF, home address and mobile phone number.

Article 85 of the LPACAP establishes:

v

"1. A sanctioning procedure has been initiated, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the sanction to proceed.

(...)

3.(...) when the sanction is solely pecuniary in nature, the body competent to resolve the procedure will apply the reductions of, at least the 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."

In his allegations to the agreement to initiate the sanctioning procedure, dated 04/16/2019, VODAFONE acknowledged its responsibility for the events denounced and requested that the 20% reduction in the amount of the penalty, in accordance with article 85 LPACAP.

In a letter dated 12/12/2019, VODAFONE has stated that having requested the application of the reduction of the amount of the sanction in accordance with article 85 LPACAP proceeds, in relation to the factual assumption analyzed, to the resignation of any administrative action or recourse against the sanction.

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE VODAFONE ESPAÑA, S.A.U., with NIF A80907397, for a infringement of article 5.1.f) of the RGPD, typified in article 83.5 of the RGPD, after the application of article 85.1 and 3 of the LPACAP, a fine of 44,000 euros (forty four thousand euros).

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

THIRD: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, through its entry, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000, opened on behalf of the Spanish Agency

of Data Protection at Banco CAIXABANK, S.A. Otherwise, it

will proceed to its collection in executive period.

Received the notification and once executed, if the date of execution is

is between the 1st and 15th of each month, both inclusive, the term to carry out the

voluntary payment will be until the 20th day of the following month or immediately after, and if

is between the 16th and last day of each month, both inclusive, the term of the

payment will be until the 5th of the second following month or immediately after.

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 in accordance with art. 48.6

of the LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the

Interested parties may optionally file an appeal for reconsideration before the

Director of the Spanish Agency for Data Protection within a month from counting from the day following the notification of this resolution or directly contentious-administrative appeal 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.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, the firm resolution may be provisionally suspended in administrative proceedings if the interested party expresses his intention to file a contentious appeal-administrative. If this is the case, the interested party must formally communicate this made by writing to the Spanish Agency for Data Protection, introducing him to the agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also must transfer to the Agency the documentation that proves the effective filing of the contentious-administrative appeal. If the Agency were not aware of the filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, it would end the precautionary suspension.

Electronic Registration of
through the

Sea Spain Marti

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

14/14

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

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