

□ Procedure No.: PS/00188/2021

RESOLUTION

OF TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

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

BACKGROUND

FIRST: On July 12, 2021, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against Vodafone Spain,
S.A.U. with CIF A80907397 which is transcribed below:

<<

Procedure no.: PS/00188/2021

BACKGROUND

FIRST: Ms. A.A.A. (hereinafter, the claimant) dated December 22,
2020 filed a claim with the Spanish Data Protection Agency. The
claim is directed against Vodafone Spain, S.A.U. with CIF A80907397 (in
later, the claimed one).

The claimant states that on September 10, 2019, she received calls from the
ISGF business claiming, on behalf of the claimed, a debt whose amount
amounted to XXX euros and was contracted by a third party for an ADSL line to
a house located on the street ***ADDRESS.1.

Thus, on September 12, 2019, he denounced before the
Mossos d'Esquadra this impersonation because a third party using their surnames and their DNI,
had fraudulently hired a service. The day after the complaint, he sent
an email to ISGF and asked that the contracted services be unsubscribed

fraudulently and the debt, as well as to be informed in writing of the resolution.

On September 8, 2020, he sent a burofax to the respondent requesting that delete your personal data, but they have not replied.

Provide the following documentation:

- Claim made against the person claimed for the impersonation of their identity in the service contracting.
- Police report filed for the same facts.
- Burofax, denounced identity theft and exercising the right to deletion dated September 8, 2020 and admission time 10:17:53.
- Proof of delivery of the burofax sent to the claimed party, delivered on the 9th of September 2020 at 08:45 a.m.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/12

SECOND: Prior to the acceptance of this claim for processing, it is transferred to the claimed on January 28, 2021, in accordance with the provisions in article 65.4 of the Organic Law 3/2018, of December 5, on Data Protection Personal and guarantee of digital rights (hereinafter, LOPDGDD), in the actions with reference E/00611/2021. Notification is done electronically, and figure delivered on February 1, 2021.

THIRD: In accordance with the provisions of article 65.2 of the Organic Law 3/2018, on Data Protection and Guarantee of Digital Rights (LOPDGDD), in On April 23, 2021, the agreement to process the claim is signed.

FOURTH: It is stated that outside the term granted on July 6, 2020, the part

Respondent responds to the transfer of the claim, stating the following:

On the one hand, it states that it has taken the appropriate steps to verify whether

The receipt of the request to exercise the right of suppression was recorded, which,

According to what is stated in the claim, it appears that the claimant sent

by burofax on September 9, 2020. In this way, as has been

verify, in the systems of the defendant there is no record of the presentation of

the said request.

At the same time, it indicates that they attach as document number 1 a copy of the letter that,

have been sent to the claimant in compliance with her exercised right of suppression

and informing you that the data relating to your person that appear in the

claimed systems associated with its NIF, have been duly eliminated.

Likewise, the claimant is informed that the unacknowledged steps that

were carried out using your personal data, specifically, your surnames and your ID,

were classified as fraudulent: In this way, the associated debt has been

correctly cancelled, excluding the personal data of the claimant of

any file of negative patrimonial solvency in which, in its case, you had

registered by the claimant.

On the other hand, information is included on the procedures regarding

security available to the claimed for the contracting of services. In

In particular, you are informed about the mandatory Security Policy of

which it has to prevent the carrying out of its fraudulent procedures.

Likewise, they point out that in order to prevent similar incidents from occurring,

the respondent works continuously to improve the Security Policies

implemented in the contracting of services and in any other process that

entails possible risks of fraud or irregular actions for its clients.

FOUNDATIONS OF LAW

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/12

Yo

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

In the first place, the exposed facts may imply on the part of the claimed, the commission of an infringement of article 6.1 of the RGPD that establishes the assumptions that allow the processing of personal data to be considered lawful.

Article 6 of the RGPD, "Legality of the treatment", details in its section 1 the assumptions in which the processing of third party data is considered lawful:

"1. The treatment will only be lawful if it meets at least one of the following conditions:

- a) the interested party gave their consent for the processing of their data personal for one or more specific purposes;
- b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of the latter of measures pre-contractual;

(...)"

The infraction for which the claimed entity is held responsible is

typified in article 83 of the RGPD that, under the heading “General conditions for the imposition of administrative fines”, states:

"5. Violations of the following provisions will be sanctioned, in accordance with section 2, with administrative fines of a maximum of 20,000,000 Eur or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

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

The Organic Law 3/2018, on the Protection of Personal Data and Guarantee of the Digital Rights (LOPDGDD) in its article 72, under the heading "Infringements considered very serious" provides:

"1. Based on the provisions of article 83.5 of the Regulation (U.E.) 2016/679 are considered very serious and the infractions that suppose a substantial violation of the articles mentioned in it and, in particularly the following:

(...)

a) The processing of personal data without the concurrence of any of the

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/12

conditions of legality of the treatment established in article 6 of the Regulation (EU) 2016/679.”

On the one hand, it is proven that the respondent processed the personal data

of the claimant (name, surnames and NIF). Thus, the defendant, when contracting not took the necessary precautions to prove the legitimacy of the contracting party.

The respondent acknowledges the facts in her letter to this Agency dated June 6, May 2021, in which it states: "the claimant is informed that the steps unacknowledged that were carried out using your personal data, in particular, their surnames and their DNI, were classified as fraudulent: In this way, the associated debt has been correctly cancelled, excluding the personal data of the claimant of any file of negative patrimonial solvency in which, in its case, you would have registered for the claimed one".

Hence, the absence of legitimacy for the treatment is confirmed, for how much they show that there was no contract between the two.

It must be taken into account that the documentation in the file offers evidence that the complained party violated article 6.1 of the RGPD, all once it processed the personal data of the claimant without legitimacy.

The lack of diligence displayed by the entity in complying with the obligations imposed by the personal data protection regulations it is therefore evident. Diligent compliance with the principle of legality in the treatment of third-party data requires that the data controller be in a position to prove it (principle of proactive responsibility).

According to the evidence currently available procedural, for the first infraction, and without prejudice to what results from the instruction of the procedure, it is estimated that the conduct of the respondent could violate the Article 6.1 of the RGPD may be constitutive of the infringement typified in article 83.5.a) of the aforementioned Regulation 2016/679.

In this sense, Recital 40 of the GDPR states:

“(40) For the processing to be lawful, the personal data must be processed

with the consent of the interested party or on some other legitimate basis established in accordance with Law, either in these Regulations or by virtue of another Law of the Union or of the Member States referred to in this Regulation, including the need to comply with the legal obligation applicable to the person responsible for the treatment or the need to execute a contract in which the interested party is a party or in order to take measures at the request of the interested party prior to the conclusion of a contract.”

III

Secondly, the facts exposed may imply the commission of a infringement of article 17 of the RGPD.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/12

The right of deletion is contained in article 17 of the RGPD as a right of the interested party, or concerned with their data, and supposes at the same time an obligation of the controller (of the treatment), indicating:

1. The interested party shall have the right to obtain, without undue delay, from the controller of the treatment the deletion of the personal data that concerns you, which will be obliged to delete personal data without undue delay when any of the following circumstances:

a) the personal data is no longer necessary in relation to the purposes for those that were collected or otherwise treated;

b) the interested party withdraws the consent on which the treatment of in accordance with Article 6(1)(a) or Article 9(2)(a) and

it is not based on another legal basis;

c) the interested party opposes the treatment in accordance with article 21, paragraph 1, and other legitimate reasons for the treatment do not prevail, or the interested party object to processing pursuant to Article 21(2);

d) the personal data has been illicitly processed;

e) the personal data must be deleted for the fulfillment of a legal obligation established in the Law of the Union or of the Member States that applies to the data controller;

f) the personal data has been obtained in relation to the offer of services of the information society referred to in article 8, paragraph 1.

3. Sections 1 and 2 will not apply when the treatment is necessary:

a) to exercise the right to freedom of expression and information;

b) for the fulfillment of a legal obligation that requires the treatment of data imposed by the Law of the Union or of the Member States that are applies to the data controller, or for the fulfillment of a mission carried out in the public interest or in the exercise of public powers vested in the responsible;

c) for reasons of public interest in the field of public health of in accordance with article 9, paragraph 2, letters h) and i), and paragraph 3;

d) for archival purposes in the public interest, scientific research purposes or historical or statistical purposes, in accordance with article 89, paragraph 1, in the to the extent that the right indicated in paragraph 1 could make it impossible or seriously impede the achievement of the objectives of said treatment, or

e) for the formulation, exercise or defense of claims.

IV

It has been proven that the claimant exercised the right of suppression before

the claimed entity and its request did not obtain the legally required response.

The respondent states in her allegations that she is not aware that in her systems includes the record of the presentation of the burofax on September 9, 2020.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/12

It should be noted that the burofax is a reliable communication with value evidence, the content of the text is accredited, as well as the sender, the addressee and the date of shipment.

In this sense, in the text of the burofax sent to the entity claimed on 9 September 2020, it is indicated by the claimant "I exercise the right to suppress my personal information".

The postal service certifies that it was delivered, the burofax, at the address of the one claimed on September 9, 2020 at 08:45 a.m. and was signed by his representative and includes the name, surnames and DNI of the person who took charge of same.

v

Article 83.5 b) of the RGPD considers that the infringement of "the rights of the interested parties according to articles 12 to 22"; is punishable, "with fines administrative fees of €20,000,000 maximum or, in the case of a company, a amount equivalent to a maximum of 4% of the total global annual turnover of the previous financial year, opting for the highest amount."

Article 58.2 of the RGPD provides: "Each control authority will have

all of the following corrective powers indicated below:

- 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;
- 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;

The infraction is typified in article 74 c) of the LOPDGDD, which indicates:

They are considered minor and the remaining infractions of a character will prescribe after a year.

merely formal of the articles mentioned in paragraphs 4 and 5 of article 83 of Regulation (EU) 2016/679 and, in particular, the following:

- a) Failure to respond to requests to exercise the rights established in Articles 15 to 22 of Regulation (EU) 2016/679, unless it resulted from application of the provisions of article 72.1.k) of this organic law.”

SAW

The determination of the sanctions that should be imposed in this case requires observing the provisions of articles 83.1 and 2 of the RGPD, precepts that, respectively, provide the following:

"1. Each control authority will guarantee that the imposition of fines administrative actions under this article for violations of this

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/12

Regulation indicated in sections 4, 9 and 6 are in each individual case

effective, proportionate and dissuasive.”

"two. Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or as a substitute for the measures contemplated in the Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine administration and its amount in each individual case will be duly taken into account:

- a) the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operation in question, as well 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 allocate the damages suffered by the interested parties;
- d) the degree of responsibility of the person in charge or of the person in charge of the treatment, gives an account of the technical or organizational measures that have been applied by virtue of the articles 25 and 32;
- e) any previous infringement committed by the person in charge or the person in charge of the treatment;
- f) the degree of cooperation with the supervisory authority in order to remedy the infringement and mitigate the possible adverse effects of the infringement;
- g) the categories of personal data affected by the infringement;
- h) the way in which the supervisory authority became aware of the infringement, in particular whether the person in charge or the person in charge notified the infringement and, if so, to what extent. gives;
- i) when the measures indicated in article 58, section 2, have been ordered previously against the person in charge or the person in charge in question in relation to the same matter, compliance with said measures;
- adherence to codes of conduct under article 40 or mechanisms of

g)

certification approved in accordance with article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the case,

such as financial benefits obtained or losses avoided, directly or indirectly.

mind, through infraction.”

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

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

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/12

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679 may also be taken into account:

a) The continuing nature of the offence.

b) The link between the activity of the offender and the performance of treatment of 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 disputes between them and any interested party.

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

In accordance with the transcribed precepts, and without prejudice to what results from the instruction of the procedure, in order to set the amount of the penalties of fines to impose on the claimed entity as responsible for two infractions typified in the article 83.5.a) of the RGPD and 72.1 b) of the LOPDGDD, and in article 83.5 b) of the RGPD and 74 c) of the LOPDGDD in an initial assessment, they are considered concurrent in the present case the following factors:

As aggravating factors:

-
-
-

That the facts object of the claim are attributable to a lack of diligence of the claimed party (article 83.2.b, RGPD).

Basic personal identifiers (personal data (art.83.2. g) of the RGPD).

The evident link between the business activity of the respondent and the processing of personal data of clients or third parties (article 83.2.k, of the RGPD in relation to article 76.2.b, of the LOPDGDD)

It is appropriate to graduate the sanctions to be imposed on the claimed party and set them in the amount of €70,000 for the infringement of article 83.5 a) RGPD and 72.1b) of the LOPDGDD and of

€50,000 for violation of article 83.5 b) and 74 c) of the LOPDGDD.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

9/12

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

HE REMEMBERS:

FIRST: INITIATE PUNISHMENT PROCEDURE against VODAFONE SPAIN, S.A.U. with CIF A80907397, for the alleged violations of articles 6.1) and 17.1 of the RGPD typified in article 83.5.a) and 83.5b) of the aforementioned RGPD.

SECOND: APPOINT D. B.B.B. as instructor. and as secretary to Ms. C.C.C., indicating that any of them may be challenged, where appropriate, in accordance with the provisions established in articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime Public Sector Co (LRJSP).

THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the claim filed by the claimant and his documentation, the documents obtained and generated by the General Subdirectorate for Data Inspection during the investigation phase, as well as the report of previous Inspection actions.

FOURTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1 October, of the Common Administrative Procedure of the Public Administrations,

The sanctions that could correspond would be the following:

for the infringement of article 6.1 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 70,000 euros

(seventy thousand euros) without prejudice to what results from the instruction.

for the infringement of article 17.1 of the RGPD, typified in article 83.5 b) of the

□

RGPD the sanction that would correspond would be a fine for an amount of 50,000 euros

(fifty thousand euros) without prejudice to what results from the instruction.

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

A80907397 granting him a hearing period of ten business days to formulate

the allegations and present the evidence it deems appropriate. In his writing of

allegations you must provide your NIF and the procedure number that appears in the

header of this document.

If within the stipulated period it does not make allegations to this initial agreement, the same

may be considered a resolution proposal, as established in article

64.2.f) of Law 39/2015, of October 1, of the Common Administrative Procedure 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 the

term granted for the formulation of allegations to this initial agreement; it

which will entail a reduction of 20% for each of the sanctions that

it is appropriate to impose in this proceeding, equivalent in this case to fourteen thousand

euros (€14,000) for the first offense charged and ten thousand euros (€10,000) for the

second imputed infringement, that is, a total reduction for this reason of

twenty-four thousand euros (€24,000). With the application of this reduction, the total amount

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

of both two sanctions would be established at ninety-six thousand euros (€96,000), resolving the procedure with the imposition of this sanction.

Similarly, you may, at any time prior to the resolution of this procedure, carry out the voluntary payment of the proposed sanction, 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 fourteen thousand euros (€14,000), for the first offense charged and ten thousand euros (€10,000), this is, a total reduction for this reason of twenty-four thousand euros (€24,000). With the application of this reduction, the total amount of both sanctions would be established at ninety-six thousand euros (€96,000) and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the penalty is cumulative with the corresponding apply for the acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. The voluntary payment of the referred amount in the previous paragraph may be done at any time prior to the resolution. In this case, if it were appropriate to apply both reductions, the amount of the penalty would be set at seventy-two thousand euros (€72,000).

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 via administrative against the sanction.

In case you chose to proceed to the voluntary payment of any of the amounts indicated above, 96,000 euros or 72,000 euros, you must make it effective by depositing it in account number ES00 0000 0000 0000 0000 0000 open to name of the Spanish Data Protection Agency at CAIXABANK Bank,

S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the reason for the reduction of the amount to which is welcomed.

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>>

SECOND: It is stated that the Start Agreement was notified on July 13, 2021, proceeded on July 28, 2021 to pay the penalties in the amount of 96,000

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

11/12

euros making use of the reduction provided for in the Start Agreement, stating:

“That Vodafone has ordered the payment of €96,000 corresponding to the infringement

initially planned, including the 20% reduction for making the voluntary payment

of the proposed sanction, and hereby desist and waive any action or recourse

in administrative proceedings in relation to this assumption of fact, in accordance with the

established in art. 85 of the LPACAP”

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

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of The Spanish Agency for Data Protection is competent to resolve this process.

II

Article 85 of Law 39/2015, of October 1, on the Procedure

Common Administrative of Public Administrations (hereinafter LPACAP), under the heading "Termination in sanctioning procedures" provides the following:

"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.

2. When the sanction is solely pecuniary in nature or fits

impose a pecuniary sanction and another of a non-pecuniary nature but it has been justified 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

each. The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or Waiver 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/00188/2021, of in accordance with the provisions of article 85 of the LPACAP.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

12/12

SECOND: NOTIFY this resolution to VODAFONE ESPAÑA, S.A.U. with CIF A80907397.

In accordance with the provisions of article 50 of the LOPDGDD, the

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 process as

prescribed by art. 114.1.c) of Law 39/2015, of October 1, on Procedure

Common Administrative of Public Administrations, interested parties may

file a contentious-administrative appeal before the Contentious Chamber

of the National High Court, in accordance with the provisions of article 25 and

in section 5 of the fourth additional provision of Law 29/1998, of July 13,

regulation of the Contentious-Administrative Jurisdiction, within a period of two months to

count from the day following the notification of this act, as provided in the

Article 46.1 of the aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es