

□ File No.: PS/00111/2022

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## 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 March 14, 2022, the Director of the Spanish Agency for  
Data Protection agreed to initiate a sanctioning procedure against VODAFONE  
SPAIN, S.A.U. (hereinafter, the claimed party), through the Agreement that is  
transcribe:

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Procedure no.: PS/00111/2022

### AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Agency for Data Protection, and in  
based on the following:

### FACTS

FIRST: Mrs. A.A.A. (hereinafter, the complaining party), dated December 16  
2020, filed a claim with the Spanish Data Protection Agency. The  
claim is directed against VODAFONE ESPAÑA, S.A.U. with NIF A80907397 (in  
hereafter, the party claimed). The grounds on which the claim is based are  
following:

You are billed receipts by the Respondent for the months of September, October, and November  
2020, when in his previous claim filed with the Spanish Agency for  
Data Protection (file E/06981/2020) had confirmed the non-existence of

debt and the deletion of your personal data.

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Along with the notification is provided:

1. Debit for an amount of €25.75, made by the claimed party on the 21st October 2020 in the claimant's bank account at the Ibercaja entity Banco, S.A., as well as the return of this made by the claimant party in date December 7, 2020.

1. Debit for an amount of €28.01, made by the claimed party on the 19th of November 2020 in the claimant's bank account in the entity Ibercaja Banco, S.A., as well as the return of this made by the claimant, as well as return of this made by the claimant party in date December 7, 2020.

Along with the notification, no documentation is provided regarding the receipt for the month of September to which the complainant alludes.

SECOND: Prior to the acceptance of this claim for processing, it is transferred the claimed, in accordance with the provisions of article 65.4 of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD).

THIRD: In accordance with article 65 of Organic Law 3/2018, of 5 December, Protection of Personal Data and guarantee of digital rights (LOPDGDD), the claim was admitted for processing on March 16, 2021, having after three months have elapsed from its entry into the Spanish Agency for

Data Protection (hereinafter, AEPD) without notifying the complaining party of the decision on its admission or inadmissibility for processing, continuing the processing of the claim in accordance with the provisions of Title VIII of the LOPDGDD).

FOURTH: The General Subdirectorate for Data Inspection proceeded to carry out of previous investigative actions to clarify the facts in matter, by virtue of the investigative powers granted to the authorities of control in article 57.1 of Regulation (EU) 2016/679 (General Regulation of Data Protection, hereinafter RGPD), and in accordance with the provisions of the Title VII, Chapter I, Second Section, of the LOPDGDD, having knowledge of the following ends:

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Due to a technical error in the billing system of the claimed party, the ID

\*\*\*ID.1 owned by the claimant, which in turn has been recorded since 2018 as

discharged, continued to generate invoices in his name. Processed the

corresponding fault to ensure that the system would not issue new

invoices, paying all amounts erroneously invoiced and

suppressing the personal data, the claimed party understood that the incidence

was duly resolved as it was communicated to the AEPD on 15th of

September 2020, and to the claimant party itself on October 15, 2020,

within the framework of his previous claim (file E/06981/2020), and that for such

reason, it was not admitted for processing by the AEPD according to the resolution of October 21,

2020.

However, after being required by the AEPD, information to the complaining party resulted of a new claim (file E/03645/2021), it is verified that, due to a new incidence in the systems, this time in relation, not with the system of billing, but with the cancellation process, the cancellation of the account was not completed correctly. the line object of the claim, reason for which invoices were issued to the party claimant in the months of October and November 2020, that is, after low and ineffective deletion of your personal data in the files of the party claimed.

## FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), recognizes each Control Authority, and according to the provisions of articles 47, 48.1, 64.2 and 68.1 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), the Director of the Agency Spanish Data Protection is competent to initiate and resolve this process.

Article 63.2 of the LOPDGDD determines that: «The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions of the

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Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a

subsidiary, by the general rules on administrative procedures.”

## II

The General Data Protection Regulation deals in article 5 with the principles that must govern the processing of personal data and mentions among them that of "legality, loyalty and transparency". The provision provides:

"1. The personal data will be:

a) Treated in a lawful, loyal and transparent manner with the interested party;"

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 violation of article 6.1 of the RGPD is typified in article 83 of the RGPD that, under the heading "General conditions for the imposition of fines administrative", says:

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"5. Violations of the following provisions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of 20,000,000 Eur or, in the case of

of a company, of an amount equivalent to a maximum of 4% of the volume of

Total annual global business of the previous financial year, opting for the one with the highest amount:

a) The basic principles for the treatment, including the conditions for the consent 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 72.1.b) qualifies this infraction, for the purposes of prescription, as a very serious infraction.

The documentation in the file offers evidence that the party claimed violated article 6.1 of the RGPD, since it processed the personal data of the claimant party billing him for services (months of October and November 2020) after their cancellation (year 2018) and the theoretical suppression of your personal data in the information system of the claimed party as well as informed this AEPD and the claimant on September 15 and December 15 October 2020, respectively. The lack of diligence displayed by the entity in compliance with the obligations imposed by data protection regulations of a personal nature is, therefore, evident, since on two occasions he carried out a processing of personal data of the complaining party to bill services with after the withdrawal and deletion of personal data, that is, without a basis for legitimacy that protects said treatment. A diligent observance of the principle of legality in the treatment of data of third parties requires that the person in charge of the treatment is in a position to prove it (principle of proactive responsibility).

In short, there is evidence in the file that the defendant dealt with the personal data of the claimant without legitimacy to do so. The behavior described violates article 6.1. of the RGPD and is subsumable in the sanctioning type of the article 83.5.a, of the RGPD

### III

In order to determine the administrative fine to be imposed, the provisions of article 83 of the RGPD, which states:

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#### “Article 83

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

1. Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or as a substitute for the measures referred to in article 58, section 2, letters a) to h) and j). When deciding the imposition of an administrative fine and its amount in each individual case shall take due account of:

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 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;

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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, 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;

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 this last section k) of article 83.2 of the RGPD, the LOPDGDD, article

76, "Sanctions and corrective measures", provides:

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

2016/679 may also be taken into account:



- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of treatments of personal data.
- 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.

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- e) The existence of a merger by absorption process after the commission of the infringement, which cannot be attributed to the absorbing entity.
- f) Affectation of the rights of minors.
- g) Have, when it is not mandatory, a delegate for the protection of data.
- h) The submission by the person in charge or person in charge, with voluntary, to alternative conflict resolution mechanisms, in those assumptions in which there are controversies between those and any interested."

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 sanction of fine to impose on the claimed entity as responsible for an infraction typified in the article 83.5.a) of the RGPD, in an initial assessment, they are estimated to be concurrent in the present case the following factors:

As aggravating factors:

- The intentionality or negligence of the infringement (article 83.2.b, RGPD), given that the complained party processed the personal data of the complaining party after confirm the removal and suppression of these and this on two consecutive occasions.
- The evident link between the business activity of the defendant 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 sanction to be imposed on the claimed one and set it at the amount of 70,000 € for the infringement of article 6 of the RGPD typified in article 83.5 a) RGPD and 72.1b) of the LOPDGDD

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

Spanish Data Protection,

HE REMEMBERS:

FIRST: INITIATE PUNISHMENT PROCEDURE against VODAFONE SPAIN, S.A.U., with NIF A80907397, for the alleged infringement of for the alleged infringement of article 6.1. of the RGPD typified in article 83.5.a) of the aforementioned RGPD.

SECOND: APPOINT R.R.R. as instructor, and S.S.S. as secretary. indicating that any of them may be challenged, where appropriate, in accordance with the provisions of the Articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of the Sector Public (LRJSP).

THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the claim filed by the claimant and its documentation, as well as the

documents obtained and generated by the Subdirector General for Inspection of Data.

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 sanction that could correspond would be 70,000 euros (seventy thousand euros), without prejudice to what results from the instruction

Likewise, the imputed infraction, if confirmed, may lead to the imposition of measures in accordance with the provisions of the aforementioned article 58.2 d) of the RGPD.

FIFTH: NOTIFY this agreement to VODAFONE ESPAÑA, S.A.U., granting him a hearing period of ten business days to formulate the

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pleadings and submit any evidence you deem 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% of the sanction to be imposed in

the present procedure. With the application of this reduction, the sanction would be established at 56,000 euros, 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, which will mean a reduction of 20% of its amount. With the application of this reduction, the sanction would be established at 56,000 euros and its payment will imply the termination of the process.

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 amount referred to in the preceding paragraph may be made in any time prior to resolution. In this case, if it were appropriate to apply both reductions, the amount of the penalty would be established at 42,000 euros. Throughout case, the effectiveness of any of the two mentioned reductions 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 with the payment volunteer of any of the amounts indicated above, 56,000 euros or

42,000 euros, you must make it effective by depositing it in account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Agency for the Protection of

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Data in Banco CAIXABANK, S.A., indicating in the concept the number of reference of the procedure that appears in the heading of this document and the cause of reduction of the amount to which it is accepted. Also, you must send the proof of admission to the Subdirector General for Inspection to continue with the procedure in accordance with the amount entered.

The procedure will have a maximum duration of nine months from the start agreement date.

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.

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Director of the Spanish Data Protection Agency

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SECOND: On March 30, 2022, the claimed party has proceeded to pay of the sanction in the amount of 42,000 euros making use of the two reductions provided for in the Start Agreement transcribed above, which implies the acknowledgment of responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or resource in via administrative action against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Initiation Agreement.

FOUNDATIONS OF LAW

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), grants each

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control authority and as established in articles 47 and 48.1 of the Law

Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of

digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve

this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures

processed by the Spanish Agency for Data Protection will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations issued in its development and, as long as they do not contradict them, with a

subsidiary, by the general rules on administrative procedures."

## II

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

Common to Public Administrations (hereinafter, LPACAP), under the rubric

"Termination in sanctioning procedures" provides the following:

"1. Started a sanctioning procedure, if the offender acknowledges his responsibility,

the procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction is solely pecuniary in nature or it is possible to impose a

pecuniary sanction and another of a non-pecuniary nature, but the

inadmissibility of the second, the voluntary payment by the alleged perpetrator, in

any time prior to the resolution, will imply the termination of the procedure,

except in relation to the replacement of the altered situation or the determination of the

compensation for damages caused by the commission of the infringement.

3. In both cases, when the sanction is solely pecuniary in nature, the competent body to resolve the procedure will apply reductions of, at least, 20% of the amount of the proposed sanction, these being cumulative with each other.

The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased regulations."

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00111/2022, of in accordance with the provisions of article 85 of the LPACAP.

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

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.

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Against this resolution, which puts an end to the administrative procedure as prescribed by the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure Common of the Public Administrations, the interested parties may file an appeal contentious-administrative before the Contentious-administrative Chamber of the National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the Contentious-Administrative Jurisdiction, within a period of two months from the day following the notification of this act, as provided in article 46.1 of the aforementioned Law.

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