

□ File No.: PS/00697/2022

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 6, 2023, the Director of the Spanish Agency for
Data Protection agreed to start a sanctioning procedure against VODAFONE ONO,
S.A.U. (hereinafter, the claimed party), through the transcribed Agreement:

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File No.: PS/00697/2022

AGREEMENT TO START THE SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency and with
based on the following

FACTS

FIRST: A.A.A. (hereinafter, the claimant) on 02/25/2021 filed
claim before the Spanish Data Protection Agency (AEPD). The
The claim is directed against VODAFONE ONO, S.A., with NIF A62186556 (in
forward, the claimed party or VODAFONE ONO).

The reason on which the claim is based is the consultation of the solvency file
asset ASNEF that the claimed party made on 09/15/2020 using as
search criteria their NIF and without being legitimized for that treatment. The part
The claimant denies having been a customer of VODAFONE ONO.

In the claim that gives rise to this initiation agreement, the claimant recounted various
behaviors that, in his opinion, violated the regulations for the protection of personal data

personnel and for which two different entities were allegedly responsible: De one part, the current defendant, VODAFONE ONO, of the conduct that motivates the opening of this disciplinary file. And on the other, VODAFONE ESPAÑA, S.A., with NIF A80907397, of various treatments that gave rise to the processing in front of it of the disciplinary file PS/00281/2021.

The claimant submitted annexed to her claim numerous documents related to with the facts stated therein. As regards the conduct of which holds VODAFONE ONO responsible, provided a document bearing the anagram of EQUIFAX and the date "11/12/2020". It contains the results of the searches

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carried out in that patrimonial solvency file using the NIF as identifier

***NIF.1 (that of the claimant) In the document, in the section "Operations in the Asnef file", the legend "no data is available" is included. In the section "History of consultations" a consultation made on 09/15/2020 at 18:40.27.8 is registered. by "Vodafone Ono, S.A.U.".

SECOND: On 06/02/2021, the Director of AEPD agrees to admit the claim made by the claimant.

The claimant was notified of the admission for processing of the claim, in accordance with the provisions of article 65.5 of Organic Law 3/2018, of 5 December December, on Data Protection and guarantees of digital rights (LOPDGDD), electronically, the notification being accepted on 06/02/2021. This is stated in the certificate issued by the Support service of the Electronic Notification Service and

Authorized Electronic Address of the National Currency and Stamp Factory (in hereafter, FNMT certificate) that is in the file.

FUNDAMENTALS OF LAW

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Competence

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), grants each control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the 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 "Procedures processed by the Spanish Data Protection Agency will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures."

II

Applicable legal standards

The RGPD deals in its article 5 with the principles that govern the treatment of personal data. personal data, precept that provides:

"1. Personal data will be:

a) Treated in a lawful, loyal and transparent manner with the interested party (<<legality, loyalty and transparency>>)

[...]

2. The controller will be responsible for compliance with the provisions in section 1 and able to demonstrate it (<<proactive responsibility>>)"

Article 6 of the GDPR under the heading "Legacy of the treatment" specifies in its section

1 the cases in which the processing of third-party data is considered lawful:

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"1. Processing will only be lawful if it meets at least one of the following

conditions:

a) the interested party gave his consent for the processing of his personal data

for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party

is part of or for the application at the request of the latter of pre-contractual measures;

c) the processing is necessary for compliance with a legal obligation applicable to the

responsible for the treatment;

d) the processing is necessary to protect vital interests of the data subject or of another

Physical person.

e) the treatment is necessary for the fulfillment of a mission carried out in the interest

public or in the exercise of public powers conferred on the data controller;

f) the treatment is necessary for the satisfaction of legitimate interests pursued

by the person in charge of the treatment or by a third party, provided that on said

interests do not outweigh the interests or fundamental rights and freedoms of the

interested party that require the protection of personal data, in particular when the

interested is a child.

The provisions of letter f) of the first paragraph shall not apply to the treatment

carried out by public authorities in the exercise of their functions."

For its part, the LOPDGDD establishes in article 20, under the heading "Systems of

credit information”:

"1. Unless proven otherwise, the processing of personal data will be presumed lawful.

related to the breach of monetary, financial or credit obligations by

common credit information systems when the following are met

requirements:

to)

[...]

e) That the data referring to a specific debtor can only be

consulted when the person consulting the system maintained a contractual relationship

with the affected party that implies the payment of a pecuniary amount or this would have

requested the conclusion of a contract that involves financing, deferred payment or

periodic billing, as happens, among other cases, in those provided for in the

legislation on consumer credit contracts and real estate credit contracts.

When the right to limitation of processing has been exercised before the system

of the data challenging its accuracy in accordance with the provisions of article 18.1.a) of the

Regulation (EU) 2016/679, the system will inform those who could consult it with

accordance with the previous paragraph about the mere existence of said circumstance, without

provide the specific data with respect to which the right had been exercised, in

both are resolved on the request of the affected party.

f) That, in the event that the request for the conclusion of the contract is denied, or it

will not be held, as a result of the consultation carried out, whoever has

Once the system has been consulted, inform the affected party of the result of said consultation.”

Alleged infringement of article 6.1 of the GDPR

II

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The party claimed in this initiation agreement is charged with an alleged violation of the Article 6.1 of the GDPR derived from the processing of the personal data of the claimant that is specified in the query made to the solvency file asset ASNEF on 09/15/2020 using as search criteria the NIF of the claimant. According to what was stated by the claimant and without prejudice to the result of instruction, the aforementioned treatment would not be covered by any of the legal bases described in article 6.1. of the GDPR.

The GDPR requires that the processing of personal data be lawful (article 5.1.a); principle of legality that it develops in its article 6. Section 1 of this precept establishes that the treatment will only be lawful if any of the circumstances that are related in it through six sections.

On the other hand, article 5.2 of the GDPR introduces the principle of liability proactive according to which the person in charge is obliged to comply with the principles that preside over the processing of personal data (article 5.1) and must be in conditions to demonstrate compliance. In short, the person responsible for the treatment the burden of proof of compliance with the obligations imposed the GDPR.

In the factual case examined, taking into consideration the documentation that work in the file and without prejudice to the result of the investigation, there are no indications that the treatment carried out by VODAFONE ONO could be based on any of the legal bases of article 6.1 of the GDPR.

Based on the information provided by the claimant, it should be concluded that the treatment object of the claim could not be supported by the circumstance of the

section a) of article 6.1 of the GDPR, the consent of the owner of the data to that specific purpose, nor in the circumstance described in section f), that the treatment is necessary for the satisfaction of the legitimate interests of the party claimed as long as they prevailed over the rights and interests of the claimant.

In this regard, it is recalled that the claimant has denied that she had been a client of the claimed. And regarding the application of the legal basis described in section f) of article 6.1. of the GDPR, would require that VODAFONE ONO had carried out, with prior to treatment, an analysis, evaluation and consideration, on the one hand, of the legitimate interest held, and, on the other, of the interests, rights and freedoms of the owner of the data -the claimant-, and that, as a result of it would have concluded that their interests prevailed.

However, such weighting would not be necessary under article 20.1.e) of the LOPDGDD if an iuris tantum presumption of prevalence of the legitimate interest of VODAFONE ONO. Presumption that is applicable only when the requirements that configure it and that detail that provision of the LOPDGDD, precept that establishes:

Unless proven otherwise, the processing of personal data will be presumed lawful. related to the breach of monetary, financial or credit obligations by credit information systems when the following requirements are met:

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(...)

e) That the data referring to a specific debtor can only be consulted when the person consulting the system maintained a contractual relationship with the affected party that implies the payment of a pecuniary amount or this would have requested the conclusion of a contract that involves financing, deferred payment or periodic billing, as happens, among other cases, in those provided for in the legislation on consumer credit contracts and real estate credit contracts.”

(The underlining is ours)

Thus, the application of article 20 of the LOPDGDD would require that there had been a contract between the claimant and VODAFONE ONO that implied the payment of a pecuniary amount or that the claimant had asked the defendant to celebrate of a contract that implied financing, deferred payment or periodic invoicing.

Based on the statements of the claimant, who denies having been a client of VODAFONE ONO, the treatment could not rely on any of the causes of legality mentioned, so that the defendant would have incurred, presumably, in a violation of article 6.1 of the GDPR.

Thus, in accordance with the evidence available at this stage of agreement to start the disciplinary procedure, and without prejudice to what results from the instruction, the conduct analyzed, specified in the consultation of the solvency file asset ASNEF using as search criteria the NIF of the affected party, could be constitutive of an infringement of article 6.1 of the GDPR attributable to VODAFONE OR NOT.

IV.

Classification of the offense

Violation of article 6.1. of the GDPR that is attributed to the defendant is typified in article 83.5.a) of the GDPR:

Violations of the following provisions will be sanctioned, in accordance with the

paragraph 2, with administrative fines of maximum EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the total annual global business volume of the previous financial year, opting for the highest amount:

a) the basic principles for the treatment, including the conditions for the consent in accordance with articles 5, 6, 7 and 9;”.

For the purposes of prescription, article 72.1.b) of the LOPDGDD qualifies as a very Serious “The processing of personal data without the fulfillment of any of the conditions of legality of the treatment established in article 6 of Regulation (EU) 2016/679.”

The limitation period for very serious offenses (article 72.1) is three years.

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V

Sanction proposal

The LOPDGDD, article 70, "Responsible Subjects", provides in section 1 that "They are subject to the penalty regime established in Regulation (EU) 2016/679 and in this organic law: a) Those responsible for the treatments.”

The corrective powers attributed to the AEPD as control authority are related in article 58.2 of the GDPR, sections a) to j), among which the precept includes the power to impose an administrative fine in accordance with article 83 of the GDPR (article 58.2. i).

In the present case, without prejudice to what results from the investigation, it is estimated that, in if the alleged infringement of article 6.1 is confirmed. of the GDPR of which

holds VODAFONE ONO responsible, it would be appropriate to impose a fine administration (article 58.2.i, GDPR).

Article 83 of the GDPR, "General conditions for the imposition of fines administrative", it says in section 1 that the supervisory authority will guarantee that the imposition of fines for the infringements of this Regulation indicated in the sections 4, 5 and 6, comply, in each individual case, with the principles of effectiveness, proportionality and dissuasiveness.

The principle of proportionality implies a correlation between the offense and the sanction, with the prohibition of unnecessary or excessive measures, so that it must be fit to achieve the ends that justify it. Article 83.2. of the GDPR determines the technique to be followed to achieve that adequacy between the sanction and the infraction committed and offers a list of criteria or factors that must be taken into account to adjust the sanction.

Violation of article 6.1 of the GDPR, in accordance with the provisions of article 83.5 of the GDPR, can be penalized with a maximum fine of €20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the total annual global business volume of the previous financial year, opting for the of greater amount. In this regard, it should be noted that the net amount of the figure of business for VODAFONE ONO in 2019 amounted to €1,301,447,000.

In order to determine the amount of the sanction that would proceed to be imposed, the concurrence in the present case of the following circumstances that affect the demandable responsibility and that operate as aggravating circumstances, since they are a manifestation of greater unlawfulness or greater culpability:

1.- Article 83.2.a): "the nature, seriousness [...] of the offence, taking into account the nature, [...] or purpose of the processing operation in question, [...]".

The infringement must be classified as serious given the nature and purpose of the operation

of treatment in which the conduct is specified. The allegedly unlawful treatment of the claimant's NIF was intended to consult her economic solvency, which represents a serious intrusion into a person's privacy.

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This assessment is in accordance with the guidelines offered by the Committee's Guidelines 4/2022

European Data Protection Agency (CEPD) for the calculation of administrative fines

under the GDPR, approved for public consultation on 05/12/2022. they take in

Consideration of different factors that affect the seriousness of the infringement, such as the

nature of the treatment, and include in this factor the fact that the treatment

carries higher risks, for example, when the purpose is to monitor, evaluate the

personal aspects or take decisions or measures with negative effects for the

interested. The Guidelines also refer to the purpose of processing by saying

which may lead the supervisory authority to attribute more weight to this factor even in

cases in which the processing of personal data is distanced from what is the

main activity of the data controller, but significantly affects the

assessment of the seriousness of the infringement.

2.- Article 83.2.b): "intentionality or negligence in the offence".

In compliance with its legal obligations -for what is of interest here at the outset

of legality - the defendant has the obligation to act with the diligence that the

circumstances of the case require and to adopt the technical and organizational measures that

allow them to comply and be able to prove that they have observed the principles of protection of

data. Among the particular circumstances that occur, it should be noted that the

consultation of the solvency file was carried out within the framework of its activities

business.

The judgment of the National Court, Chamber of the

Administrative Litigation, of 10/17/2007 (Rec. 63/2006) that, regarding the degree

of diligence that the data controller is obliged to deploy, remember

that "...the Supreme Court has been understanding that imprudence exists whenever

disregards a legal duty of care, that is, when the offender does not behave

with the due diligence. And in assessing the degree of diligence, consideration must be

especially the professionalism or not of the subject, [...]". (The underlining is from the AEPD)

3.- Circumstance of article 83.2.k) GDPR in relation to article 76.2.b)

LOPDGDD: The evident link between the business activity of the defendant and the

processing of personal data, both clients and third parties.

The concurrence of extenuating circumstances is not appreciated.

Pursuant to the criteria of articles 83.1. and 83.2 of the GDPR, at this stage of the

procedure, and without prejudice to the outcome of the investigation, we believe that the

alleged violation of article 6.1 of the GDPR, typified in article 83.5.a) GDPR

that is attributed to VODAFONE ONO, could be sanctioned with the imposition of a

Administrative fine of €70,000 (seventy thousand euros)

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adoption of measures

If the infringement is confirmed, it could be agreed to impose on the person responsible the adoption of

adequate measures to adjust its performance to the regulations mentioned in this

act, in accordance with the provisions of the aforementioned article 58.2 d) of the GDPR, according to the

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which each control authority may "order the person responsible or in charge of the processing that the processing operations comply with the provisions of the this Regulation, where appropriate, in a certain way and within a certain specified term...". The imposition of this measure is compatible with the sanction consisting of an administrative fine, according to the provisions of art. 83.2 of the GDPR. It is noted that not attending to the possible order to adopt measures imposed by this body in the sanctioning resolution may be considered as a administrative offense in accordance with the provisions of the GDPR, classified as infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent administrative sanctioning procedure.

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

Spanish Data Protection,

HE REMEMBERS:

FIRST: INITIATE SANCTION PROCEDURE against VODAFONE ONO, S.A.U., with NIF A62186556, for the alleged infringement of article 6.1 of the GDPR typified in Article 83.2.a) of the GDPR.

SECOND: APPOINT instructor to R.R.R. and secretary to S.S.S., 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 into 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 Sub-directorate General of Inspection of Data in the process prior to the start of this disciplinary procedure.

FOURTH: THAT, for the purposes set forth in article 64.2 b) of the LPACAP, the sanction that could correspond would be an administrative fine (article 58.2.i, GDPR) for a amount of €70,000 (seventy thousand euros).

FIFTH: NOTIFY this agreement to VODAFONE ONO, S.A.U., with NIF A62186556, granting a hearing period of ten business days to formulate the allegations and present the evidence it deems appropriate. In his writing of allegations must provide your NIF and the procedure number that appears in the heading of this document.

If, within the stipulated period, he does not make allegations to this initial agreement, the same may be considered a resolution proposal, as established in article 64.2.f) of the LPACAP.

In accordance with the provisions of article 85 of the LPACAP, you may recognize your responsibility within the period granted for the formulation of allegations to the present initiation agreement; which will entail a reduction of 20% of the sanction that should be imposed in this proceeding. With the application of this

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reduction, the sanction would be established at €56,000 (fifty-six thousand euros), resolving the procedure with the imposition of this sanction.

In the same way, 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 (fifty-six thousand euros) and its payment

will imply the termination of the procedure.

The reduction for the voluntary payment of the penalty is cumulative to the corresponding apply for acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate allegations at the opening of the procedure. Voluntary payment of the referred amount in the previous paragraph may be done at any time prior to the resolution. In

In this case, if both reductions were to be applied, the amount of the penalty would remain established at €42,000 (forty-two thousand euros).

In any case, the effectiveness of any of the two aforementioned reductions will be conditioned to the withdrawal or resignation of any action or appeal via administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts previously indicated, €56,000 or €48,000, you must pay it through your

Payment in the account IBAN number: ES00-0000-0000-0000-0000-0000 opened in the name of the Spanish Data Protection Agency in the bank CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the reason for reducing the amount to which welcomes.

Likewise, you must send proof of income to the General Subdirectorate of Inspection to continue with the procedure in accordance with the quantity entered.

The procedure will have a maximum duration of nine months from the date of the initiation agreement or, where appropriate, of the draft initiation agreement.

After this period, its expiration will occur and, consequently, the file of actions, in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is noted that in accordance with the provisions of article 112.1 of the

LPACAP, there is no administrative appeal against this act.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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SECOND: On April 4, 2023, the claimed party has proceeded to pay

the sanction in the amount of 56,000 euros making use of one of the two reductions

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provided for in the Startup Agreement transcribed above. Therefore, there has not been

acknowledgment of responsibility.

THIRD: The payment made entails the waiver of any action or resource in the

against the sanction, in relation to the facts referred to in the

Commencement Agreement.

FUNDAMENTALS OF LAW

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Competence

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

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

control authority and as established in 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), is competent to

initiate and resolve this procedure the Director of the Spanish Protection Agency

of data.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Data Protection Agency will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures."

II

Termination of the procedure

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

Common for Public Administrations (hereinafter LPACAP), under the heading

"Termination in disciplinary proceedings" provides the following:

"1. Initiated a disciplinary procedure, if the offender acknowledges his responsibility,

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

2. When the sanction has only a pecuniary 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 presumed perpetrator, in

any moment 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 offence.

3. In both cases, when the sanction is solely pecuniary in nature, the

The competent body to resolve the procedure will apply reductions of at least

20% of the amount of the proposed penalty, these being cumulative among themselves.

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 resource against the sanction.

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

According to what has been stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE the termination of procedure PS/00697/2022, in

in accordance with the provisions of article 85 of the LPACAP.

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

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

Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations, interested parties may file an appeal

administrative litigation before the Administrative Litigation 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 for in article 46.1 of the

referred Law.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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