

Procedure No.: PS/00331/2018

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection before

VODAFONE ESPAÑA, S.A.U., by virtue of a claim filed by A.A.A. (in

hereinafter, the claimant) based on the following:

BACKGROUND

FIRST: The claim filed by the claimant has an entry dated the 20th of

April 2018 at the Spanish Data Protection Agency. The claim is directed

against VODAFONE ESPAÑA, S.A.U. with NIF A80907397 (hereinafter, the claimed). The

The reasons on which the claim is based are that the entity VODAFONE ESPAÑA S.A.U.

has violated the principle of data quality, by including your personal data in the file

of BADEXCUG equity solvency despite the claim filed on 11/22/2017 before

the SETSI due to discrepancies in the application of a call bonus contracted with

VODAFONE SPAIN S.A.U. and having resolved the SETSI on 04/11/2018, which VODAFONE

had to rectify the invoice issued and reimburse the claimant for the amounts invoiced in

excess, as well as restore the service at no cost to the claimant.

Together with the claim, it provides notification of inclusion in the BADEXCUG file of

date 04/10/2018 with reference to a situation of non-compliance with the entity

VODAFONE ESPAÑA S.A.U and detail of the debt whose registration date is 04/08/2018 and

whose unpaid balance amounts to 193.33 euros. It also informs about the possibility of

exercise the rights of access, rectification, cancellation and opposition.

SECOND: In view of the known data, the General Subdirectorate of Inspection of

Data proceeded to carry out preliminary investigation actions for the

clarification of the facts in question, in accordance with the power recognized in

the art. 58.1 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27

April 2016 on the protection of natural persons with regard to the treatment of personal data and the free circulation of these data and by which repeals Directive 95/46/EC (General Data Protection Regulation) (hereinafter, GDPR).

As a result of the inspection actions carried out, it has become known of the following extremes:

The entity VODAFONE ESPAÑA S.A.U. In response to the request of this Agency, provides supporting documentation of the payment made in the invoice dated 04/22/2018 for an amount of €1,662.55 as rectification of the invoices, in accordance with the SETSI resolution.

It is stated that, after a claim from the SETSI, the consumption of calls is paid (€161.97), the service was reestablished eliminating the temporary deactivation and Finally, a payment for service interruption has been processed, which represents an amount total of €1,662.55.

It is noted that all services have been deactivated after a telephone conversation of date 04/16/2018 with the claimant, but their personal data has not been cancelled.

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THIRD: On November 19, 2018, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of article 6.1 in relation to article 5.1 d), of the RGPD, infringement typified in article 83.5 of the RGPD.

FOURTH: After the period stipulated to make allegations, without receiving

any statement by VODAFONE ESPAÑA S.A.U. startup deal passes to be considered a resolution proposal, as established in article 64.2.f) of the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP).

In view of everything that has been done, by the Spanish Agency for Data Protection in

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST:

Inclusion of personal data of A.A.A. in the asset solvency file

BADEXCUG whose registration date is 04/08/2018 and whose unpaid balance amounts to 193.33 euros, despite the claim filed on 11/22/2017 with the SETSI for discrepancies in the application of a call bonus contracted with VODAFONE ESPAÑA S.A.U. and have resolved by the SETSI on 04/11/2018, that VODAFONE had to rectify the billing issued and refund to the claimant the amounts invoiced in excess, as well as restore the service at no cost to the claimant

SECOND:

VODAFONE SPAIN S.A.U. manifests in response to the request of the Agency Spanish Data Protection Agency that, after a claim from the SETSI, the consumption is paid of international calls (€161.97), the service was reestablished eliminating the temporary deactivation and finally a payment for service interruption has been processed which represents a total amount of €1,665.55.

It is noted that all services have been deactivated after a telephone conversation of date 04/16/2018 with the claimant, but their personal data has not been cancelled.

Likewise, it provides supporting documentation of the payment made in the invoice dated 04/22/2018 for the amount of €1,662.55 as rectification of the invoices, in accordance with the resolution of the SETSI.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGD recognizes to each authority of control, and as established in art. 37.1 of the Organic Law 15/1999, of 13 December, Protection of Personal Data (LOPD), the Director of the Spanish Agency for Data Protection is competent to resolve this process.

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II

The defendant is imputed the commission of an infraction for violation of article 5.1 d), of the RGD, of the RGD, which states that “personal data will be accurate and, if it were necessary, updated; All reasonable steps will be taken to remove or rectify without delay the personal data that are inaccurate with respect to the purposes for which they are treated ("accuracy"). The infraction is typified in article 83.5.a) of said norm, which considers as such those that violate: “

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

III

“The infractions of the following dispositions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, of an amount equivalent to a maximum of 4% of the turnover global annual total of the previous financial year, opting for the highest amount.

This infraction can be sanctioned with a fine of €20,000,000 maximum or, in the case of a company, 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, in accordance with article 83.5 of the RGPD.

IV

When deciding the imposition of an administrative fine and its amount, in each individual case

The aggravating and mitigating factors indicated in art. 83.2 of the RGPD, as well as any other that may be applicable to the circumstances of the case.

As mitigating factors:

☐ The claimant is included in the asset solvency file for the debt remaining, on 04/08/2018, that is, only three days before the SETSI issued the resolution indicating whether or not there was an outstanding debt, as well as its amount (article 83.2 a)

☐ As a measure taken by the person in charge or in charge of the treatment to alleviate the damages and losses suffered by the interested parties, the invoices are rectified, reimbursing the amounts improperly invoiced (article 83.2 c)

☐ Existence of recognized cooperation with the control authority, in this case the Spanish Agency for Data Protection, in order to remedy the infringement and mitigate the possible adverse effects of the infringement (article 83.2 f)

Therefore, in accordance with the applicable legislation and having assessed the graduation criteria of the 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 d) of the RGPD, typified in art. 83. 5 a) GDPR, a fine five thousand € (5,000 euros).

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SECOND: NOTIFY this resolution to VODAFONE ESPAÑA, S.A.U. Y, according to art. 77.2 of the RGPD, INFORM the claimant about the result of the claim.

This resolution will be made public through the Agency's website, once interested parties have been notified.

THIRD: Warn the sanctioned person that he must make the imposed sanction effective once that this resolution is enforceable, in accordance with the provisions of art. 98.1.b) of Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter LPACAP), within the voluntary payment period established in art. 68 of the General Collection Regulations, approved by Real Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003, of 17 December, 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 0000, opened on behalf of the Spanish Agency of Data Protection at Banco CAIXABANK, S.A. Otherwise, it will its collection in executive period.

Received the notification and once executed, if the date of execution is between on the 1st and 15th of each month, both inclusive, the deadline to make the voluntary payment will be until the 20th day of the following month or immediately after, and if it is between On the 16th and last day of each month, both inclusive, the payment term will be until the 5th of second following business month or immediately following.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 114.1 c) of the LPACAP, 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 Agency Spanish Data Protection Authority within a month from the day after notification of this resolution or directly contentious-administrative appeal before the Contentious-administrative Chamber of the National High Court, in accordance with the provisions in article 25 and in section 5 of the fourth additional provision of Law 29/1998, of July 13, regulating the Contentious-administrative Jurisdiction, within two months from the day following the notification of this act, as provided in the 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, it may be provisionally suspend the firm resolution in administrative proceedings if the interested party states its intention to file a contentious-administrative appeal. If this is the

In this case, the interested party must formally communicate this fact in writing addressed to the Spanish Agency for Data Protection, presenting it through the Registry

Electronic 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 1

october. You must also transfer to the Agency the documentation that accredits the

effective filing of the contentious-administrative appeal. If the Agency did not have

knowledge of the filing of the contentious-administrative appeal within two

months from the day following the notification of this resolution, I would consider

The precautionary suspension has ended.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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