

□ Procedure No.: PS/00193/2021

## 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 30, 2021, the Director of the Spanish Agency for  
Data Protection agreed to initiate a sanctioning procedure against Vodafone Spain,  
S.A.U. with NIF A80907397 which is transcribed below:

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Procedure no.: PS/00193/2021

## BACKGROUND

FIRST: D.A.A.A. in the name and on behalf of D.B.B.B. (hereinafter the part  
claimant) on January 4, 2021 filed a claim with the Agency  
Spanish Data Protection.

The claim is directed against Vodafone España, S.A.U. with NIF A80907397 (in  
hereafter, the party claimed).

The complaining party states that he observes in the operations of his bank account a  
charge of the claimed party, and they inform him that he had been billed for the consumption of  
two mobile lines which were contracted in his name in the town of  
Avilés, and in addition a pack had been contracted, possibly of mobile terminals, the  
which had not yet been invoiced.

The claimant filed a complaint with the National Police of Seville and a  
claim before the Organization of Consumers and Users.

On the other hand, he states that he has not been a client of the defendant.

And, among other things, it provides the following documentation:

- Complaint filed with the National Police of Seville on January 2, 2021, by the hiring in your name of telephony services.

SECOND: Prior to the acceptance of this claim for processing, it is transferred to the claimed on February 17, 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

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actions with reference E/01375/2021. Notification is done electronically, and figure delivered on February 17, 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: When transferring the claim to the claimed party, he/she submitted a written document on the 14th May 2021, stating that it proceeded to investigate the reported facts and declared the claimed incident as fraudulent, finding all the lines affected permanently deregistered.

They attach as document number 1, the response provided to the complaining party, in

In this sense, they apologize for the events that occurred and inform them of the actions made.

The respondent states that, once the claim was received, they proceeded to give

temporary removal of the lines associated with the customer ID reported on January 11 2021 after verifying the indications of fraud, and formally communicated the Procedures made to the claimant on January 11 and February 18, 2021 by means of a letter sent to the OCU and attached as document number 2. Finally, on March 18, 2021, they proceeded to deactivate services subject to fraudulent registration after confirming that the incident had been due to a contracting of identity theft services of the claimant. Likewise, once the registrations were declared fraudulent, they proceeded to cancel the existing debt in their systems. In this sense, they attach as document number 3 the invoices issued, as well as the corresponding payment to cancel the debt. On the other hand, they state that they acted as quickly as possible to resolve the situation, since until that moment the client account associated with the N.I.F. of claimant and the services related to it appeared to be correct. In this sense are attached as document number 4 the contracts formalized with the alleged owner of the line. On the other hand, the defendant states that the Security Policy has been progressively updating, having implemented its last modification in

date November 21, 2019.

## FOUNDATIONS OF LAW

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.

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The exposed facts may imply, on the part of the claimed party, 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

conditions of legality of the treatment established in article 6 of the

Regulation (EU) 2016/679.”

The documentation in the file offers evidence that the

claimed, violated article 6.1 of the RGPD, since it carried out the treatment of the

personal data of the complaining party without having any legitimacy to

it.

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The personal data of the complaining party were incorporated into the systems

information of the company, without proving that it had contracted

legitimately, had legitimacy for the collection and subsequent treatment of

your personal data, or there is any other cause that makes the treatment lawful

effected.

Based on the foregoing, in the case analyzed, it remains in question the diligence used by the respondent to identify the person who made the contract on behalf of the complaining party.

Well, it is accredited as recognized by the defendant in his written response to this Agency dated May 14, 2021, which was produced fraudulent hiring.

It should be noted that the contracts provided by the party claimed as document number 4, appear unsigned and their data (address, date of birth), do not coincide with those of the claimant's DNI.

Likewise, it is known that the Sepa direct debit order is not signed.

Thus, the respondent did not verify the identity of the alleged contracting party, took the necessary precautions so that these events did not occur.

According to the evidence currently available procedural and without prejudice to what results from the investigation of the procedure, it is estimated that the conduct of the complained party could violate article 6.1 of the RGPD being able to constitute the infraction typified in article 83.5.a) of the aforementioned Regulation 2016/679.

In short, the respondent has not provided a document or evidence one that shows that the entity, in such a situation, would have deployed the minimum diligence required to verify that your interlocutor was indeed the one claimed to hold

Respect for the principle of legality that is in the essence of the fundamental right of protection of personal data requires that it be accredited that the responsible for the treatment displayed the essential diligence to prove that extreme. Failure to act in this way -and this Agency, who is responsible for ensuring for compliance with the regulations governing the right to data protection of

personal character - the result would be to empty the content of the principle of legality.

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

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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

The determination of the sanction to be imposed in this case requires observe 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

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)

the 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

i)

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.

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 sanction of fine to impose on the claimed entity as responsible for an infraction typified in the article 83.5.a) of the RGPD and 72.1 b) of the LOPDGDD, in an initial assessment,

The following factors are considered concurrent in this case:

As mitigating factors:

- Immediately proceeded to manage the cancellation of the services and the payment of the amounts invoiced (article 83.2.c, RGPD).

As aggravating factors:

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That the facts object of the claim are attributable to a lack of diligence of the claimed party (article 83.2.b, 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 sanction to be imposed on the claimed party and set it at the amount of

€50,000 for the infringement of article 83.5 a) RGPD and 72.1b) of the LOPDGDD.

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 NIF A80907397, for the alleged infringement of article 6.1) typified in the  
article 83.5.a) of the aforementioned RGPD.

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

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 for the violation of article 6.1 of the RGPD,  
typified in article 83.5 a) of the RGPD, the corresponding sanction would be a  
fine for an amount of 50,000 euros (fifty thousand euros) without prejudice to what  
result of the instruction.

FIFTH: NOTIFY this agreement to VODAFONE ESPAÑA, S.A.U. with NIF  
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 the sanction to be imposed

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in this proceeding, equivalent in this case to ten thousand euros (€10,000).

With the application of this reduction, the amount of the sanction would be established in forty thousand euros (€40,000), 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 ten thousand euros (€10,000), for the imputed infraction. With the application of this reduction, the

The amount of the sanction would be established at forty thousand euros (€40,000) 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 thirty thousand euros (€30,000).

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, 40,000 euros or 30,000 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 August 2, 2021,

proceeded on August 17, 2021 to pay the penalties in the amount of 40,000

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

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“That Vodafone has ordered the payment of €40,000 corresponding to the infringement

initially planned, taking into account the 20% reduction for the payment

voluntary sanction, and in this act desists and waives any action or resource

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/00193/2021, of in accordance with the provisions of article 85 of the LPACAP.

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

NIF 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.

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