

□ File No.: PS/00269/2021

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 October 29, 2021, 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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File No.: PS/00269/2021

AGREEMENT TO START A SANCTION PROCEDURE

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

FACTS

FIRST: Ms. A.A.A. (hereinafter, the complaining party) dated February 15,
2021 filed a claim with the Spanish Data Protection Agency. The
claim is directed against Vodafone Spain, S.A.U. with NIF A80907397 (in
hereinafter, the claimed party or Vodafone). The grounds on which the claim is based
are the following.

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The claimant states that there has been a change in the ownership of her line mobile phone, without your consent.

On the other hand, the claimant's account has been debited with amounts belonging to a third party's phone line and the third party's receipts have been linked to your account banking.

And, provide the following documentation:

- Receipts charged to your bank account.
- Contract for Postpaid Mobile, Broadband, Landline and TV Services for Clients Companies on behalf of the third party, as the holder of the charge account claimant's name.
- SEPA direct debit order, the claimant appears as the name of the debtor.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), said claim was transferred to the claimed party, to proceed with its analysis and inform this Agency within a month of the actions carried out to adapt to the requirements set forth in the regulations of Data Protection.

THIRD: On May 28, 2021, the Director of the Spanish Agency for Data Protection agreed to admit for processing the claim presented by the party claimant.

FOURTH: It is stated that outside the term granted on June 25, 2021, the part claimed responds to the transfer of the claim, stating that the incidence claimed is fully resolved since April 26, 2021, having proceeded to deactivate and cancel the debt. Also, it has been restored the claimant as the owner of her mobile line, which had undergone a change of

ownership due to a technical incident.

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They provide as document number 1, a letter addressed to the claimant informing her of the steps taken by Vodafone to resolve the incident.

Vodafone adds that on February 10, 2021, there is in its systems a claim filed through the Secretary of State for Telecommunications and Digital Infrastructures (hereinafter, the "SETSI"), in which the claimant denounces the aforementioned incident. For these purposes, after investigating the facts, Vodafone sent letter to SETSI, dated February 11, 2021, informing the claimant that the events originated due to a technical incident that caused a change of ownership of the Client Account ***CUENTA.1 and, as a consequence, mistakenly invoices in the name of the claimant and a third Vodafone customer.

In this sense, through said letter, they informed the claimant that the

The issue had been corrected, returning ownership of the affected Customer ID.

On the other hand, on April 23, 2021, they received notification of the resolution adopted by the SETSI requesting the reimbursement of the amounts collected for the invoices issued as a result of the technical incident and the disconnection of the claimant's data from the ID of client of a third party not recognized by the claimant.

In this regard, Vodafone carried out the above steps and sent a letter to the

claimant, on April 26, 2021, informing him that he had been paid the amount of ***AMOUNT.1 € as cancellation of the charges issued in the bank account owned by you.

Likewise, he was informed that, on the same date that the letter was sent, proceeded to the payment of ***AMOUNT.2 € as an invoice cancellation issued on February 11, 2021 regarding the client account ***ACCOUNT.2, keeping this account up to date with payments and Vodafone proceeding to deactivate the same.

Lastly, the complainant is informed that the unique Client ID on her name is ***ACCOUNT.1 whose only associated active service is the mobile line ***TELEPHONE.1, recognized by the claimant.

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In this sense, they attach as Document number 2, the responses of Vodafone to both requirements of the SETSI. Likewise, they attach as Document number 3 invoices and payments made in which you can see that the incident has been solved correctly by returning the ownership of client ID ***ACCOUNT.1 to the claimant.

They provide, as Document number 4 of these allegations, an internal report carried out by Vodafone in which the internal investigations can be verified that they have carried out to resolve the incident that is the subject of this claim.

FOUNDATIONS OF LAW

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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

The exposed facts may imply, by the claimed party, the commission of an infringement of article 6.1 of the RGD that establishes the assumptions that allow consider the processing of personal data lawful.

Article 6 of the RGD, "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;

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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 RGD 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.”

III

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The defendant acknowledges the facts that are the subject of this claim, in his letter of allegations to this Agency dated June 9, 2021, in which states that on February 10, 2021, Vodafone systems record a claim filed through the Secretary of State for

Telecommunications and Digital Infrastructures (hereinafter, the "SETSI"), in which the

The claimant denounces the aforementioned incident. For these purposes, after investigating the facts, Vodafone sent a letter to the SETSI, dated February 11, 2021, in which informed the claimant that the events originated due to an incident technique that caused a change of ownership of the Client Account ***ACCOUNT.1 and,

As a result, invoices were issued by mistake in the name of the claimant and a third Vodafone customer.

On the other hand, they state that later on April 23, 2021, received notification of the resolution adopted by the SETSI requesting the reinstatement of the amounts collected for the invoices issued as a result of the technical incident and the unlinking the claimant's data from a third party's customer ID does not recognized by the claimant.

In this regard, they proceeded to send a letter to the claimant, dated March 26, April 2021, informing him that he had been paid the amount of ***AMOUNT.1€ as cancellation of the charges issued in the account bank owned by him.

Likewise, they informed him that, on the same date of sending the letter, had proceeded to the payment of ***AMOUNT.2 € for cancellation of the invoice issued on February 11, 2021 relating to the customer account ***ACCOUNT.2, keeping this account up to date with payments and Vodafone proceeding to deactivate the same.

Finally, they informed the complainant that the only client ID that appears in your name is ***ACCOUNT.1 whose only associated active service is the mobile line ***TELEPHONE.1, recognized by the claimant.

Hence, it has not given an answer with a reliable explanation of the reasons why the ownership of the mobile phone line of the company was changed

claimant and the receipts of a third party were linked to the bank account of the claimant.

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Likewise, it does not provide any evidence that would allow estimating that the treatment of the claimant's data had been legitimate.

It must be taken into account that the documentation in the file offers evidence that the party complained against violated article 6.1 of the RGPD, whenever that 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, 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.

IV

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

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have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor to pa-

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;

j) Adherence to codes of conduct under Article 40 or to certification mechanisms. 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.

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- 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 aggravating factors:

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The intentionality or negligence of the infringement (article 83.2.b, RGPD). In the In this case, we are faced with the lack of verification of the request for change of ownership which led to the linking of receipts from a third party to the account claimant's bank account.

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

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

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HE REMEMBERS:

FIRST: Start sanctioning procedure against Vodafone España, S.A.U. with NIF A80907397, for the alleged infringement of article 6.1. of the RGD typified in the article 83.5.a) of the aforementioned RGD.

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 investigations phase.

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 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 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

The same may be considered a resolution proposal, as established in the

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure

Common to Public Administrations (hereinafter, LPACAP).

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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 40,000 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 40,000 euros and its payment will imply the termination of the process.

The reduction for the voluntary payment of the sanction is cumulative to the one

It is appropriate to apply for the acknowledgment of responsibility, provided that this

acknowledgment of responsibility is revealed within the period

granted to formulate arguments at the opening of the procedure. The pay

volunteer of the amount referred to in the preceding paragraph may be made at 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 30,000 euros.

In any case, the effectiveness of any of the two reductions mentioned

will be conditioned to the withdrawal or renunciation of any action or resource in via

administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the

amounts indicated above, 40,000 euros or 30,000 euros, you must do so

cash by depositing it in account number ES00 0000 0000 0000 0000 opened at

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

welcomes

Likewise, you must send proof of payment to the General Subdirectorate of

Inspection to proceed with the procedure in accordance with the quantity

entered.

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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 AEPD, P.O. the Deputy Director General for Data Inspection, Olga

Pérez Sanjuán, Resolution 4/10/2021

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SECOND: On November 11, 2021, the claimed party has proceeded to payment of the sanction in the amount of 40,000 euros using one of the two reductions provided for in the Start Agreement transcribed above. Therefore, it has not acknowledgment of responsibility has been confirmed.

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

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to sanction the infractions that are committed against said

Regulation; infractions of article 48 of Law 9/2014, of May 9, General

Telecommunications (hereinafter LGT), in accordance with the provisions of the

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article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and

38.4 d), g) and h) of Law 34/2002, of July 11, on services of the society of the

information and electronic commerce (hereinafter LSSI), as provided in article

43.1 of said Law.

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."

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/00269/2021, 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.

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

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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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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