

□ File No.: EXP202206094

## 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 21, 2022, the Director of the Spanish Agency for  
Data Protection agreed to start a sanctioning procedure against VODAFONE  
SPAIN, S.A.U. (hereinafter, the claimed party), through the Agreement that  
transcribe:

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File No.: EXP202206094

### AGREEMENT TO START THE SANCTION PROCEDURE

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

### FACTS

FIRST: D.A.A.A. (hereinafter, the claiming party) dated May 4, 2022  
filed a claim with the Spanish Data Protection Agency. The  
claim is directed against VODAFONE ESPAÑA, S.A.U. with NIF A80907397 (in  
forward, the claimed party or Vodafone). The reasons on which the claim is based  
are the following:

The claimant states that on March 31, 2022, he received on his tray  
Spam an email from Vodafone telling you that it has been  
created a user and gave access to "your Vodafone account" (despite not being a customer  
for more than a year), where they authorize an email address of

a third party ("\*\*\*EMAIL.1") to access your Vodafone account, being able to access with the same permits as the holder and, therefore, can make purchases or online subscriptions.

After what happened, he contacted Vodafone and they tell him that they have requested with his data the portability of four mobile phone lines in the name of a third party, the donor operator Lycamobile and also a fiber portability with a number of landline of the operator Ono (Auna), the fiber service was installed on the same day 31 March 2022 at an address that was not yours.

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Well then, Vodafone informs you that the contract was made by telephone and that it was signed virtually by SMS.

The complaining party requests the cancellation of the portability and the interruption of the service of the fiber line, proceeding Vodafone to open a file number for fraud for identity theft, which is subsequently closed without receiving explanations about it.

Subsequently, he receives two invoices generated, one charging the cancellation of the service and another for zero euros.

Thus, the Vodafone customer service department tells you that there are changes in your billing addresses and now data from other addresses with canceled services in their name and also showing a service canceled in your name at \*\*\*LOCATION.1.

After multiple claims, Vodafone told him by telephone that there had been no

an identity theft, but that what happened is due to an error of the company itself

entity when processing the portability requested by another user.

Well then, the claimant contacted the portability numbers listed at

your name and the user indicates that it was an error by Vodafone and that they requested

a portability in their name and they never provided their data to Vodafone.

Likewise, on May 3, 2022, he received another invoice for an amount of

XXX.XX euro.

Along with the claim, the following relevant documentation is provided:

Claim by the claiming party for identity theft addressed to Vodafone.

Vodafone's replies to the claimant via email.

Mail dated April 21, 2022, in which Vodafone states that they have been

Fixed services canceled on 04/14/2022 with a retroactive date of the same

03/30/2022.

Mail dated May 1, 2022, in which Vodafone states that the claim

is closed in their favor since "they inform us that we have verified that these services are not

they were purchased by you and right now you are solvent at the system level."

Complaint before the Civil Guard dated March 31, 2022.

Invoices generated by Vodafone in the name of the claimant. With the followings

billing periods:

From March 1 to March 31, 2022 for an amount of 0.00 euros, with address at

\*\*\*ADDRESS.1 and bank account \*\*\*\*\*XXXX.

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From March 1 to March 31, 2022 for the amount of X.XX euros, with address at

\*\*\*ADDRESS.2 and bank account \*\*\*\*\*XXXX.

From April 1 to April 21, 2022 for an amount of XXX.XX euros, with address at

\*\*\*LOCATION.1 and bank account \*\*\*\*\*XXXX.

Purchase summary, with the details of the claimant's request:

Installation data: 03/30/2022. Order number XXXXXXXXXX. Name and

surname: A.A.A.. Address: \*\*\*ADDRESS.1. Application start date 03/29/2022.

Email address \*\*\*EMAIL.2 with DNI \*\*\*NIF.1.

Indicating the four mobile lines to be ported to Vodafone from the donor operator

Lycamobile and a fixed line from ONO (AUNA), with address at: \*\*\*ADDRESS.2.

SEPA Direct Debit Mandate \*\*\*\*\*XXXX, dated March 29,

2022

Email from Vodafone addressed to the claimant informing him that it has been created

a new user in your My Vodafone account with NIF\*\*\*NIF.1.

New registered user: \*\*\*EMAIL.1, indicating that the new user has the

same permissions as the holder and, therefore, can make purchases or subscriptions

online and adding that, in the case of not having allowed this registration, you must eliminate

the new user as soon as possible.

Screenshots of the claimant's My Vodafone account, dated March 1 to December 31.

March 2022:

Orders from the address: \*\*\*ADDRESS.3 Location: \*\*\*LOCATION.1. High services:

Recruitment in store of \*\*\*MANAGEMENT.4. Completion date: 03/30/2022. Order

# XXXXXXXXXX. Bank address: \*\*\*\*\*XXXX. Commencement of contract 30

March 2022 End of contract April 1, 2023. Privacy: XXXXXXXX.

Contract for Postpaid Mobile Communications, Broadband, Landline and TV

for Business customers (Vodafone Business) dated March 29, 2022, in the name

of the claimant and address of the facility \*\*\*ADDRESS.3 Town:

\*\*\*LOCATION.1. SEPA Direct Debit Mandate \*\*\*\*\*XXXX.

Point of sale code (SFID) \*\*\*CODE.1. Vodafone point of sale name

Telesales CBU CIF XXXXXXXXXX.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, Protection of Personal Data and guarantee of digital rights (in

forward LOPDGDD), said claim was transferred to the claimed party, for

to proceed with its analysis and inform this Agency within a month of the

actions carried out to adapt to the requirements established in the regulations of

Data Protection.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of

October 1, of the Common Administrative Procedure of the Administrations

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Public (hereinafter, LPACAP), was collected on June 6, 2022 as

It appears in the acknowledgment of receipt that is in the file.

On July 9, 2022, this Agency received a written response indicating:

"That the claimed incident is currently resolved, having been

investigated by Vodafone's fraud department and declared fraudulent,

being, at present, annulled any debt related to the claimant and

returned the amounts invoiced, having also adopted measures of

security on the claimant to avoid that more invoices can be generated and

Debt payment claims on behalf of the claimant.

In any case, a letter has been sent to the claimant informing him about the steps taken by my client to clarify the situation and apologize for the events that occurred, as well as indicate that currently there is no record of any active service linked to his person. Attached as Document number 1, copy of the letter sent to the claimant.

In any case, it should be noted, as recognized in the complaint, that the complainant was aware of the allegedly fraudulent contracting that occurred on March 30, 2022, through the notification made by Vodafone on the 31st March in which he was informed of the registration of a new user in his profile, a measure of security proactively implemented by this entity and through which, in the moment in which the registration of a new user is detected, this is notified by email, which in this case allowed the claimant to become aware of the fraud and could report the suspected fraud to Vodafone.

Vodafone has not detected any unauthorized access by a third party to its systems or any other security incident that has led to data leakage personal information or the passwords or credentials of your clients.

The incident arose because it appears that the claimant, without having a relationship any contractual agreement with Vodafone, you receive at your email address, the day March 31, 2022, a communication from Vodafone, which informed him of the discharge of a new user in your customer area.

The claimant proceeded to contact Vodafone and request information in this regard, being informed that the portability of 4 telephone lines had been requested mobile, from LYCAMOBILE, on behalf of a third party, as well as a portability of a fixed telephone and fiber, from ONO (AUNA), which would have been installed at the address postcard from a third party. The same day that the incident is confirmed, the claimant files a complaint with the Civil Guard, dated March 31,

2022. around 7:00 p.m., indicating that their data from fraudulently, which is why he proceeded to close his bank account. Furthermore, at require explanations in this regard and the cancellation of this portability, states that Vodafone informed him that the contract had been made by telephone and there was confirmation by SMS but that they would open an incident to analyze the situation and, later and after contacting the entity again, he reports that the They conveyed the need to wait for its resolution. However, weeks After these events, the aforementioned incident had not been resolved, reaching receive new communications in your email address informing you of the availability bills in your name and changes to your billing address. After performing

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new requirements to Vodafone, claims not to have received a response satisfactory. Finally, the claimant considered it pertinent to file a claim before this Agency from which this requirement has been derived. In In any case, it should be noted, as recognized in the complaint, that the complainant was aware of the allegedly fraudulent contracting that occurred on March 30, 2022, through the notification made by Vodafone on the 31st March in which he was informed of the registration of a new user in his profile, a measure of security proactively implemented by this entity and through which, in the moment in which the registration of a new user is detected, this is notified by email, which in this case allowed the claimant to become aware of the fraud and could report the suspected fraud to Vodafone.

Accordingly, this party may conclude that the alleged offender who became with your personal information obtained the same through the claimant himself or any other source outside Vodafone's intervention and control, something that Vodafone cannot control, being the custody of your personal data and credentials of access responsibility of the claimant himself. Consequently, access to personal information of the claimant and the contracting of products and services at his name did not occur as a result of a data leak in the systems of Vodafone, but because of a phishing or social engineering attack or as consequence of negligent custody or inadequate conservation of this information on the part of the claimant, which allowed a third party to have access to their personal data and, with this, proceed to the contracting of different products and services on behalf of the claimant.

Thus, we understand that what happened is outside the scope of responsibility of my principal, since the interested parties have the responsibility of keeping properly your personal data, being only within the sphere of control of my principal the adequate definition of the procedures, systems, controls and Security measures applicable depending on the criticality of the treatment that ensure the correct identification of the owner of the personal data. proof of correct exercise of these tasks is that the claimant was aware of the fraudulent contracting that occurred on March 30, 2022 through the Communication sent proactively by Vodafone on March 31 upon detecting the registration of a new user in the customer profile of the claimant.

Also, at the time the claimant reported the fraudulent action, my principal proceeded to evaluate the facts reported, apply the security measures pertinent security and, after qualifying the action as fraudulent due to its fraud department, proceeded to cancel the portability requests of the



mobile telephone lines –as of April 5–, cancel telephone services

fixed and fiber -as of April 14 with effect from the day of contracting-, as well as

carry out the procedures to cancel any amount owed by the claimant to

cause of fraudulent contracting, the claimant recovering control of his

personal information processed in Vodafone systems.

Finally, Vodafone proceeded to cancel any invoice in the name of the claimant,

return the amounts paid by the latter –invoice dated June 8–,

include the claimant's data in their internal databases for the prevention of

fraud and thus avoid new fraudulent contracts and verify that the claimant

It was not registered in any file of negative patrimonial solvency. HE

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attached, as Document number 2, copy of invoice No. \*\*\*INVOICE.1, dated

of issue on June 8, 2022, for an amount of -XXX.XX €, in order to prove the

payment of amounts issued in favor of the claimant.

Therefore, my client acted as quickly as possible to resolve the

situation once he became aware of a possible fraud, after the

statements made by the claimant himself, since until now the

contracts formalized by the third party appeared to be correct. Being so, the

fraudulent action is a consequence of the fact that a third party stole or accessed the

personal data or credentials of the claimant without their consent, facts that are not

may be controlled or known by my client.

Regarding the additional security measures applied by Vodafone, from the

March 14, 2012 my principal acts under the Security Policy for the Hiring of Individuals, provided together with this document as a Document number 3. This Security Policy has been progressively updated, having implemented its last modification on January 4, 2022. Through Said Security Policy, my client establishes what type of information should be require the client for each requested management. Also included is how proceed in the event that a user does not exceed the Security Policy, as well as the preventive actions in fraud situations. The aforementioned Privacy Policy Security, is mandatory for all employees and agents of Vodafone, who are in charge of applying and respecting it.

On the other hand, in order to prevent similar incidents from occurring, Vodafone works continuously to improve the Security Policies implemented in the contracting of services and in any other process that entails possible risks of fraud or irregular actions for our clients.

Likewise, Vodafone is reviewing the internal processes to ensure that the defined Security Policies are complied with or introduce the changes necessary when deemed appropriate. Specifically, my client is working on the continuous improvement of:

- Review of internal processes to ensure compliance with the Security Policies and verification controls that are have been defining and incorporating, both in person and by telephone.
- 

Periodic reinforcement of communication of Security Policies and verifications that have been defined by Vodafone for contracting or modifying services and that must be applied by agencies, commercial stores and agents.

- Send of Periodic communications to the face-to-face and telephone channel, as well as to the operator logistics, where it is alerted to the risk scenarios detected, their characteristics and behavior patterns to prevent new cases.

These communications include details of how these requests are produced, channels through which they are requested, documentation provided, description of the handling, geographical areas where incidents are taking place. With all this, we can confirm that currently my client has carried out all the pertinent actions to solve the claim, estimating that it has been properly resolved."

THIRD: In accordance with article 65 of Organic Law 3/2018, of 5 December, Protection of Personal Data and guarantee of digital rights (LOPDGDD), when submitted to the Spanish Data Protection Agency [www.aepd.es](http://www.aepd.es)

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(hereinafter, AEPD) a claim, it must evaluate its admissibility for processing, must notify the claimant of the decision on the admission or non-admission to procedure, within three months from the date the claim was entered into this Agency. If, after this period, there is no such notification, it will be understood that the processing of the claim continues in accordance with the provisions of Title VIII of the Law.

Said provision is also applicable to the procedures that the AEPD would have to process in exercise of the powers attributed to it by other laws.

In this case, taking into account the foregoing and that the claim is filed with this Agency, on May 4, 2022, it is communicated that your claim has been admitted for processing, on August 4, 2022, having

Three months have elapsed since it entered the AEPD.

## FUNDAMENTALS OF LAW

Yo

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: "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

Well then, the defendant is accused of committing an offense for violation of the

Article 6 of the GDPR, "Legacy of the treatment", which indicates in its section 1 the

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

"1. Processing will only be lawful if at least one of the following is fulfilled

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;

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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.

application to processing carried out by public authorities in the exercise of their

functions”.

The infringement is typified in article 83.5 of the GDPR, which considers as such:

"5. Violations of the following provisions will be penalized, in accordance with the

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

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.”

The LOPDGD, for the purposes of the prescription of the infringement, qualifies in its article 72.1

very serious infringement, in this case the limitation period is three years, "b)

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".

II

In accordance with the available evidence, it is considered that, of the

denounced facts, it follows a treatment of data without legitimacy, since the

The requested entity carried out the portability that is the object of this complaint, without ascertaining whether the

The person requesting it was or was not the claimant, which constitutes a violation of the

Article 6 of the GDPR.

Based on the foregoing, in the case analyzed, the

diligence used by the defendant to identify the person who requested portability.

The claimant found out because he received an SMS indicating that they were

Accessing your "my Vodafone" profile but with another email.

Well, it is accredited as recognized by the claimed party in its writ of

response to this Agency dated July 20, 2022, << the incident has been

originated because apparently, the claimant, without maintaining any contractual relationship

with Vodafone, you receive in your email address, on March 31,

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2022, a communication from Vodafone, which was informed of the registration of a new

User in your customer area.

The claimant proceeded to contact Vodafone and request information in this regard,

being informed that the portability of 4 telephone lines had been requested mobile, from LYCAMOBILE, on behalf of a third party, as well as a portability of a fixed telephone and fiber, from ONO (AUNA), which would have been installed at the address postcard from a third party.>>

In any case, the operator must be able to prove that for this specific case has followed the verification protocols implemented when requesting the portability.

Subsequently, when making the claim, they proceeded to cancel the portability and refund of amounts collected. In short, it should be noted that respect to the principle of legality of the data requires that it be proven that the owner of the data data consented to the processing of personal data and display a reasonable diligence essential to prove that end. If he doesn't act like that The result would be to empty the content of the principle of legality.

In the explanation provided by the claimed party, it does not indicate which could have been the specific cause that led to the realization of portability, beyond some generic explanations.

Based on the foregoing, in the case analyzed, the diligence used by the defendant to identify the person who requested portability.

In accordance with the evidence available at this procedural moment and without prejudice to what results from the investigation of the procedure, it is estimated that the conduct of the claimed party could violate article 6.1 of the GDPR and may be constituting the offense classified in article 83.5.a) of the aforementioned Regulation 2016/679.

In this sense, Recital 40 of the GDPR states:

"(40) For processing to be lawful, personal data must be processed with the

consent of the interested party or on some other legitimate basis established in accordance  
a Law, either in this Regulation or under other Union law  
or of the Member States referred to in this Regulation, including the  
the need to comply with the legal obligation applicable to the data controller or the  
need to execute a contract to which the interested party is a party or for the purpose of  
take measures at the request of the interested party prior to the conclusion of a  
contract."

IV.

The determination of the sanction that should be imposed in the present case requires  
observe the provisions of articles 83.1 and 2 of the GDPR, precepts that,  
respectively, provide the following:

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

"2. Administrative fines will be imposed, depending on the circumstances of each  
individual case, in addition to or in lieu of the measures contemplated in  
Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine  
administration and its amount in each individual case shall 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 as



such as the number of interested parties affected and the level of damages that

have suffered;

b) intentionality or negligence in the infraction;

c) any measure taken by the person in charge or in charge of the treatment to

settle 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, habi-

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 controller or processor;

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, in what

extent;

i) when the measures indicated in article 58, paragraph 2, have been ordered

previously against the person in charge or the person in charge in relation to the

same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or to certification mechanisms.

fications approved in accordance with article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the case,

as the financial benefits obtained or the losses avoided, directly or indirectly.

mind, through infraction.”

Within this section, the LOPDGDD contemplates in its article 76, entitled "Sancio-

and corrective measures”:

"1. The sanctions provided for in sections 4, 5 and 6 of article 83 of the Regulation

(UE) 2016/679 will be applied taking into account the graduation criteria

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established in section 2 of said 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 data processing.  
personal information.
- c) The benefits obtained as a consequence of the commission of the infraction.
- d) The possibility that the conduct of the affected party could have led to the commission  
of the offence.
- e) The existence of a merger by absorption process subsequent to the commission of the  
violation, which cannot be attributed to the absorbing entity.
- f) The affectation of the rights of minors.
- g) Have, when it is not mandatory, a data protection delegate.
- h) Submission by the person responsible or in charge, on a voluntary basis, to  
alternative conflict resolution mechanisms, in those cases in which  
there are controversies between those 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 fine to impose on the entity claimed as responsible for an infringement classified in the article 83.5.a) of the GDPR and 72.1 b) of the LOPDGDD, in an initial assessment,

The following factors are considered concurrent in this case:

As aggravating factors:

-

The evident link between the business activity of the defendant and the treatment of personal data of clients or third parties (article 83.2.k, of the GDPR in relation to article 76.2.b, of the LOPDGDD).

The Judgment of the National Court of 10/17/2007 (rec. 63/2006), in which, with respect to entities whose activity entails the continuous processing of customer data, indicates that "...the Supreme Court has understood that recklessness exists whenever a legal duty of care is neglected, that is that is, when the offender does not behave with the required diligence. And in the assessment of the degree of diligence, special consideration must be given to the professionalism or not of the subject, and there is no doubt that, in the case now examined, when the appellant's activity is constant and abundant handling of personal data must insist on rigor and exquisite Be careful to comply with the legal provisions in this regard."

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As mitigations:

The claimed party proceeded to resolve the incident that is the subject of the claim

effective (art. 83.2 c).

It is appropriate to graduate the sanction to be imposed on the defendant and set it at the amount of 70,000 € for the alleged violation of article 6.1) typified in article 83.5.a) of the cited GDPR.

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

HE REMEMBERS:

FIRST: INITIATE SANCTION PROCEDURE against VODAFONE SPAIN, S.A.U. with NIF A80907397, for the alleged violation of article 6.1) typified in the Article 83.5.a) of the aforementioned GDPR.

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

THIRD: INCORPORATE into the disciplinary file, for evidentiary purposes, the claim filed by the claimant and its documentation, the documents obtained and generated by the General Subdirectorate of Data Inspection.

FOURTH: THAT for the purposes provided for in art. 64.2 b) of Law 39/2015, of 1 October, of the Common Administrative Procedure of Public Administrations, the sanction that could correspond would be for the infringement of article 6.1 of the GDPR, typified in article 83.5 a) of the GDPR, the sanction that would correspond would be a fine for an amount of 70,000 euros (seventy thousand euros) without prejudice to what is of the instruction.

FIFTH: NOTIFY this agreement to VODAFONE ESPAÑA, S.A.U. with NIF A80907397 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 Law 39/2015, of October 1, on 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 other than a fine, may recognize its responsibility within the term granted for the formulation of allegations to the present initiation agreement; it which will entail a reduction of 20% for the sanction that should be imposed in this proceeding, equivalent in this case to fourteen thousand euros (€14,000).

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

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In the same way, it 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 fourteen thousand euros (€14,000), for the alleged offence. With the application of this reduction, the amount of the sanction would be established at fifty-six thousand euros (€56,000) and Your 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 this case, if both reductions were to be applied, the amount of the penalty would remain established at forty-two thousand euros (€42,000).

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 euros or 42,000 euros, you must make it effective by depositing it in the account number ES00 0000 0000 0000 0000 0000 opened 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 reducing the amount to which welcomes.

Likewise, you must send proof of income to the General Subdirectorato 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 performances; 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 November 17, 2022, the claimed party has proceeded to the payment of the penalty in the amount of 56,000 euros using one of the two reductions provided for in the Commencement Agreement transcribed above. Therefore, there has not been an acknowledgment of responsibility has been accredited.

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

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of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of any administrative action or resource against the sanction.

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 EXP202206094, 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 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.

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