

□ Procedure No.: PS/00172/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and based on  
to the following:

### BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant) dated November 24, 2020  
filed a claim with the Spanish Data Protection Agency. The  
claim is directed against Vodafone Servicios, S.L.U. with NIF B87539284 (in  
hereinafter, the claimed or Vodafone).

The claimant states that Vodafone had improperly included his data  
in the delinquency files, specifically, in the solvency file  
patrimonial and credit Asnef, despite having paid the debt within the term  
granted for this purpose by the claimed party.

Provide the following documentation:

- Letter from Vodafone dated November 17, 2020 in which it is required  
the payment of XX.XX euros warning of the possibility of including your data  
personal in the Badexcug file.
- Letter from Asnef-Equifax dated November 19, 2020 in which it was  
communicates that on November 18, 2020, the respondent has requested the  
registration in the Asnef file for an unpaid amount of XX.XX euros.
- Proof of payment.

SECOND: Prior to the acceptance of this claim for processing, it is  
transferred to the claimed party on January 22, 2021, in accordance with the  
established in article 65.4 of Organic Law 3/2018, of December 5, of  
Protection of Personal Data and guarantee of digital rights (hereinafter,

LOPDGDD), in the actions with reference E/00268/2021. The notification is performed electronically, and figure delivered on the same date.

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 13, 2021, the agreement to process the claim is signed.

FOURTH: On April 23, 2021, the respondent states that it proceeds to send a letter to the claimant informing him of the investigation carried out by Vodafone.

Enclosing as document number 1 the aforementioned letter, putting in knowledge of the claimant that their data is not included in any file of negative equity solvency and that your customer account has no active services and up to date with payments in Vodafone systems.

FIFTH: On June 9, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party,

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2/6

for the alleged infringement of Article 5.1 d) of the RGPD, in relation to article 20.1

d) of the LOPDGDD typified in Article 83.5 a) of the RGPD.

SIXTH: Once the initiation agreement has been notified, the entity claimed, by means of a letter of dated June 30, 2021, made, in summary, the following allegations:

“On the alleged inclusion in the Asnef file, the claimant maintained a debt pending payment for the amount of XX.XX€. As a result of this debt, the

On September 14, 2020, you were sent a letter from Equifax informing you that if

did not pay within the established period, it would be included in the Asnef file. attached as

Document number 2 evidence of sending the letter by Equifax. Not receiving payment in the planned term, dated November 18, 2020, was included in the Asnef file.

On the other hand, dated November 17, 2020, a letter was sent to him by Experian, informing the interested party that, if he does not pay within the established term, he will be will include in the Badex file. The claimant made the payment of the debt on the 23rd of November 2020, date on which said payment was recorded by updating the systems in order to eliminate the claimant's debt. For this reason, it was not included in the BADEX file and the removal of the claimant from the Asnef file was requested, becoming effective on November 26, 2020.

The Claimant, as he himself indicates in his pleadings, made the payment of the amount owed on November 23, 2020, the date on which there was already

After the term offered in the procedure initiated by Equifax (14

September 2020). For this reason, the Complainant was included in the Asnef file. By

On the contrary, the payment of this amount was made on time with respect to the procedure initiated by Experian, which is why in no case your data was included in the

BADEX file. As a result of the payment made by the Claimant on December 23,

November 2020, Vodafone requested its removal from the ASNEF file, becoming effective on November 26, 2020.

FIFTH: On July 12, 2021, the respondent was notified of the opening of the testing period, considering all the previous actions incorporated, as well as as the documents provided by the claimed entity.

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

In this proceeding, the following are considered proven facts:

#### PROVEN FACTS

FIRST: On November 24, 2020, the claimant states that the respondent had improperly included their personal data in the information file

credit Asnef, despite having paid the debt on November 23, 2020 within

of the period granted for this purpose.

SECOND: The payment request notification was made on the 14th

September 2020 by Vodafone, in which they demanded payment of the debt

contracted by the claimant for an amount of XX.XX euros and warned that his

Data could be included in the Asnef file if the non-payment situation is maintained,

giving a period of less than 30 calendar days from the date of the letter (14

September 2020) to regularize the situation.

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3/6

THIRD: There is proof of transfer made by the claimant on November 23,

2020 to Vodafone for an amount of XX.XX euros, and remittance of proof of payment

of the operation carried out to the one claimed, on the same date.

FOURTH: It is stated that the high and low date in Asnef was November 18 and 26,

2020.

FIFTH: It is verified that the claimant paid the debt outside the granted period, the

November 23, 2020, with a deadline of October 14, 2020.

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 arts. 47 and 48.1 of the LOPDPGDD, the Director of

The Spanish Agency for Data Protection is competent to resolve this

process.

## II

Law 39/2015, of Common Administrative Procedure of the Administrations

(LPACAP) establishes in its article 89.1 that "the termination of the

procedure, with filing of the actions, without the need to formulate

of the proposed resolution, when in the instruction of the procedure it is stated

I declare that any of the following circumstances exist:

a) The non-existence of the facts that could constitute the infraction".

## III

The defendant is charged with the commission of an infraction for violation of article 5 of

the principles that must govern the processing of personal data and mentions among

them the one of "Accuracy". The provision provides:

"1. The personal data will be:

(...)

d) "accurate and, if necessary, updated; all measures will be taken

reasonable to eliminate or rectify without delay the personal data that

are inaccurate with respect to the purposes for which they are processed (<<accuracy>>)"

The LOPDGDD, in its article 20, under the rubric of "Information systems

credit" provides:

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

related to the breach of monetary, financial or

credit through common credit information systems when the requirements are met.

following requirements:

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a) That the data have been provided by the creditor or by someone acting on his behalf.

account or interest.

b) That the data refer to certain, overdue and payable debts, whose

existence or amount had not been the subject of an administrative or judicial claim for

the debtor or through an alternative dispute resolution procedure

binding between the parties.

c) That the creditor has informed the affected party in the contract or at the time

to require payment about the possibility of inclusion in said systems, with

indication of those in which it participates.

The entity that maintains the credit information system with relative data

non-compliance with monetary, financial or credit obligations must notify

to the affected the inclusion of such data and will inform you about the possibility of exercising

the rights established in articles 15 to 22 of Regulation (EU) 2016/679

within thirty days after notification of the debt to the system,

The data remains blocked during that period.

d) That the data is only kept in the system while the problem persists.

default, with a maximum limit of five years from the expiration date of

monetary, financial or credit obligation.

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

consulted when the person consulting the system maintained a contractual relationship

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

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

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

legislation of consumer credit contracts and real estate credit contracts.

When the right to limit the

processing of the data contesting its accuracy in accordance with the provisions of article

18.1.a) of Regulation (EU) 2016/679, the system will inform those who may

consult it in accordance with the previous paragraph about the mere existence of said

circumstance, without providing the specific data with respect to which

exercised the right, while it is resolved on the request of the affected.

f) That, in the event that the request to conclude the contract is denied, or

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

consulted, the system informs the affected party of the result of said consultation.

2. The entities that maintain the system and the creditors, regarding the

treatment of the data referred to their debtors, will have the condition of

co-responsible for data processing, being applicable what is established by

Article 26 of Regulation (EU) 2016/679.

It will be up to the creditor to ensure that the requirements for

the inclusion in the debt system, answering for its non-existence or inaccuracy.

3. The presumption referred to in section 1 of this article does not cover the

assumptions in which the credit information was associated by the entity that

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5/6

kept the system to additional information to those contemplated in said

section, related to the debtor and obtained from other sources, in order to carry out

out a profiling of the same, in particular through the application of techniques of

credit rating.”

The infringement is typified in Article 83.5 of the RGPD, which considers as such:

"5. Violations of the following provisions will be sanctioned, in accordance with section 2, with administrative fines of a maximum of EUR 20,000,000 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 particular the following:

a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679."

IV

In the case at hand, after a detailed study of the documents arising in this proceeding, and the allegations of the claimed party, We must point out that the file shows that the notification of the request for payment was made on September 14, 2020 by the claimed party, in the that the payment of the debt contracted by the claimant for an amount of XX.XX euros and warned that their data could be included in the Asnef file of maintain the non-payment situation, giving a period of 30 calendar days from from the date of the letter (September 14, 2020) to regularize the situation.



On the other hand, there is evidence of a transfer made by the claimant on November 23, 2020 to Vodafone for an amount of XX.XX euros, and remittance of proof of payment of the operation carried out to the one claimed, on the same date.

It is verified that the high and low date in Asnef was November 18 and 26, 2020.

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6/6

Finally, it should be noted that the claimant paid the debt after the deadline granted, on November 23, 2020, with a term until October 14, 2020.

Therefore, the file of this sanctioning procedure proceeds.

In view of the aforementioned precepts and others of general application, the Director of the Agency Spanish Data Protection RESOLVES:

FIRST: FILE sanctioning procedure PS/00172/2021, instructed to

Vodafone Services, S.L.U. with NIF B87539284, for having proven that the claimant paid the contracted debt outside the granted period.

SECOND: NOTIFY this resolution to Vodafone Servicios, S.L.U. with NIF B87539284.

In accordance with the provisions of article 50 of the LOPDPGDD, 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 in accordance with art. 48.6 of the LOPDPGDD, 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 Spanish Agency for Data Protection within a month from

counting from the day following the notification of this resolution or directly  
contentious-administrative appeal 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  
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.

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Director of the Spanish Data Protection Agency

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