

□ File No.: EXP202104500

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 November 29, 2022, the Director of the Spanish Agency
of 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.: EXP202104500

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: The claiming party 1, whose identity is stated in the Annex,
acting on its behalf the entity Association of Consumers and Users in Action-
FACUA, on 09/17/2021, filed a claim with the Spanish Agency for
Data Protection. The claim is directed against VODAFONE ESPAÑA, S.A.U.
with NIF A80907397 (hereinafter, the claimed party or VODAFONE). The reasons in
on which the claim is based are related to the non-attention of the right of access
to your personal data.

On this matter, the complaining party 1 states that it contracted
VODAFONE services by telephone on ***DATE.1 and that, for some

discrepancies in the billing issued by the company, requested a copy of the recording corresponding to the contract, receiving a response in which VODAFONE informs You don't have that recording.

With the claim you provide:

. Copy of the request for access to personal data that the complaining party 1

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addressed to VODAFONE, dated 07/26/2021. In this writing it is expressly requested "copy of the recording of the contract signed by telephone" in November 2020.

. Response to the previous request issued by VODAFONE on 08/04/2021. In this answer states:

“Vodafone service: ***PHONE.1, ***PHONE.2, ***PHONE.3 and ***PHONE.4

Dear Mrs.:

We are writing to you in relation to your letter dated July 26, 2021... First of all,

We wish to inform you that at this time it has not been possible

locate the recording of the call that corresponds to the conditions associated with the contract of... (first surname of the complaining party 1).

However, we attach to this writing a copy of the contract made and the accepted offer, electronically accepted by... (first surname of the claiming party 1)”.

SECOND: The claiming party 2, whose identity is stated in the Annex, with dated 10/01/2021 filed a claim with the Spanish Agency for the Protection of Data directed against VODAFONE for non-attention to the right of access to its personal data, by not having provided the recording of the telephone conversation

through which the contracting of the operator's services was formalized (not specifies the date your conversation took place).

This claim states that, due to discrepancies in the invoiced amounts, on several occasions requested the modification of the invoices and the sending of the file of voice to be able to substantiate your position; who does not have a copy of the contract and the one provided by the company later is not related to what was agreed in the recording voice.

He adds that he filed a complaint in the complaints book of a grocery store VODAFONE and, later, a claim before the OMIC of the Ayuntamiento de A coruña

Finally, it points out that the aforementioned entity's response did not provide the recording requested, but only a contract in paper format. He also notes that he received a "indemnity or compensation for amounts unduly collected".

With the claim you provide:

. Copy of the claim dated 09/15/2021 filed with the OMIC of A Coruña, to which he attached a copy of a "claim sheet" completed on the date 04/19/2021 and directed against VODAFONE, not against the distributor. In this last document, claimant 2 states that they have requested a "copy of the recording made on the day in which the offer is made by the company specifying options and prices, and the offer is accepted, without any occasion they have sent it".

THIRD: In accordance with article 65.4 of Organic Law 3/2018, of 5 December, Protection of Personal Data and guarantee of digital rights (in hereafter LOPDGDD), the claim formulated by claimant party 1 was transferred to the claimed party, to proceed with its analysis and inform this Agency in the period of one month, of the actions carried out to adapt to the requirements

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provided for in the data protection regulations.

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 Public (hereinafter, LPACAP), was collected on 11/23/2021 as stated in the acknowledgment of receipt in the file.

On 12/17/2021, this Agency received a written response in which the VODAFONE entity reports the following:

Confirm that you received the request to exercise the right of access on the date 08/03/2021 and states that he attended to said right by letter of 08/04/2021, in which communicated to the claiming party 1 that "it is not possible to recover the recording requested but that the contract derived from said recording and the offer are attached electronically accepted.

It adds that on the occasion of the transfer of the claim, it has proceeded to give a new response to the right of access exercised by the complaining party 1, making delivery of the personal data related to it that appear in its systems and informing that "he does not have the recording in which the contract was formalized."

It also refers that the contracting subject to controversy occurred on 11/19/2020 for lines ***PHONE.5, ***PHONE.1, ***PHONE.2, ***PHONE.6, ***TELEPHONE.4 and fiber 600 "Mb". It adds that the acceptance of the offer of Contracting took place on the same day 11/19/2020, at 6:31 p.m. through "PIN SMS" to the number ***PHONE.2. As he points out, this number was subject to

portability to VODAFONE at that time.

With its response, VODAFONE provides the following documentation:

. Copy of the contract signed by the complaining party 1. Contains the review of having

electronically signed by OTP ("One Time Password") on the day

11/19/2020, at 18:33:00, via "Pin SMS" sent to the phone number

***PHONE.2.

. Copy of the response to the right of access, dated 08/04/2021, which consists

reviewed in the First Antecedent.

. Copy of the response to the right of access sent by VODAFONE to the party

claimant 1 on the occasion of the transfer process, dated 12/17/2021. In this

response details the customer's personal data (name, ID, main address

and correspondence address), contracted services, customer account number and

bank account (holder, number and entity). In addition, it is reported on

data communications, the treatment period and the rights of the interested party. In

Regarding the requested recording, it is reported that "VODAFONE ESPAÑA does not have

said recording in their systems. However, attached to this letter are the

formalized contracts...".

FOURTH: The claim filed by claimant party 2 was likewise

transferred to the claimed party, in accordance with the provisions of article 65.4 of the

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LOPDGDD, so that within a month it would report the actions carried out

to adapt to the requirements established in the data protection regulations.

The transfer, which was carried out in accordance with the rules established in the LPACAP, was collected on 11/29/2021, as stated in the acknowledgment of receipt that works in the proceedings.

On 12/28/2021, this Agency received a written response in which the VODAFONE entity informs as follows:

Confirms that you received the request to exercise the right of access dated 09/21/2021, as a consequence of the claim filed by the claimant 2 before the OMIC of A Coruña, and states that it attended said right by means of a letter of the same date sent to said body.

It adds that on the occasion of the transfer of the claim, it has proceeded to give a new response to the right of access exercised by the complaining party 1, informing him that he has already adjusted the price of the contracted services and made a payment, and that "it is not possible to send you the recording made at the time of contracting since It could not be located in the systems", although the generated contract is sent as consequence of that recording.

Relevant documentation provided by VODAFONE with its response:

. Copy of the response dated 09/21/2021 addressed to the OMIC of A Coruña in which reports has made an adjustment to the invoices and a credit to the claiming party 2. In this answer does not indicate anything about the exercise of the right of access and the request for the recording corresponding to the contracting of services.

. Copy of the response to the right of access sent by VODAFONE to the party claimant 2 on the occasion of the transfer process, dated 12/28/2021. In this The response details the client's personal data (name, ID, email address, correspondence and telephone), contracted services, customer account number and bank account (holder, number and entity). Regarding the requested recording, informs "that it has not been possible to locate the recording requested, but attached

to this letter the contract derived from said recording". Also, it is indicated that

They attach a copy of the contract derived from the requested recording.

FIFTH: On 02/17/2022, a letter was received from claiming party 2 that makes

reference to the response to the right of access that was sent to you by VODAFONE in

dated 12/28/2021, and indicates that disciplinary proceedings be initiated against said

entity for breaching the obligation of custody of the personal data that was

they provide for the purpose of their commercial and mercantile activity. Consider the part

claimant 2 that the loss of the recording constitutes a breach of the

established in article 5.1.f) of the GDPR ("loss, destruction or accidental damage"),

classified as a very serious offense in article 72 of the LOPDGDD.

On the other hand, he states that he did not sign any contract in the terms and conditions

collected in the document that was sent to you with the response of 12/28/2021 before

cited.

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SIXTH: On 12/17/2021, in accordance with article 65 of the LOPDGDD, the

admitted for processing the claim presented by the claiming party 1.

SEVENTH: On 01/01/2021, in accordance with article 65 of the LOPDGDD,

The claim presented by claimant 2 was admitted for processing.

EIGHTH: The General Subdirectorate of Data Inspection proceeded to carry out

of previous investigative actions to clarify the facts in

matter, by virtue of the functions assigned to the control authorities in the

article 57.1 and the powers granted in article 58.1 of the Regulation (EU)

2016/679 (General Data Protection Regulation, hereinafter GDPR), and

in accordance with the provisions of Title VII, Chapter I, Second Section, of the

LOPDGDD, having knowledge of the following extremes:

1. Regarding the information systems of the claimant

VODAFONE, during the inspection carried out at its premises on date

10/11/2022, stated that to manage customer relations he uses a

CRM type system (Customer Relationship Management System),

internally called SMART, which is an adaptation of a tool

commercial; and that for the management of audio recordings it uses another tool

commercial called NICE, integrated with SMART. According to VODAFONE, both

systems are installed on their own servers.

2. Regarding the contracting procedure through the face-to-face channel

VODAFONE informs that this procedure begins and ends with the customer

in person at the store, which has the obligation, by contract, to verify the

identity of the client through an identification document, such as the DNI, without

keep a copy of it, to avoid irregular or fraudulent actions. Once

verified the identity of the client, we proceed to configure the offer and contract the

products.

VODAFONE explains that there are two ways to sign the contract, manual and

“certified”, which has “a greater probative capacity and a better traceability of

the consents granted by the client thanks to the intervention of a third party

that acts as a trusted service provider, this last method being the

set by default and priority”.

It adds that in the face-to-face channel there is no possibility of perfecting the contract through

through a voice recording.

3. Regarding the contracting procedure through the telephone channel, called

by VODAFONE as a "teleshopping channel".

The aforementioned entity describes this procedure in the following terms:

1. Telephone calls are made by agencies contracted by

VODAFONE to present the offer and collect the necessary data to

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continue with the recruitment. This conversation has a defined structure to

the correct explanation of the commercial offer, as well as a correct decision making

data and identity verification (provide a copy of the general argumentation

Following).

2. If the client accepts the commercial offer, "it would be uploaded to systems of the contracted services and the signing of the contract".

3. The signing of the contract can be done in two ways: certified signature or

Voice recording. The latter, according to VODAFONE, is executed in the case of

that the certified signature fails or cannot be completed. In these cases, send

an unsigned copy of the contract to the client. On occasions when it is used

certified signature, voice recording is not performed.

With regard to telephone conversations other than the acceptance of the

conditions of the contract, warns the claimed party, only "a

reduced percentage... due to quality issues".

4. Regarding the conservation of audio files in the systems of the defendant

According to VODAFONE, the recordings of telephone conversations through the

which the contracts are perfected are carried out from the SMART system,

managed by the NICE tool, integrated with SMART, and are kept

for a period of five years plus the remainder of the current year.

To ensure the availability of the files containing these conversations,

these files are stored on systems that incorporate recovery technologies

RAID-type disk errors and failures ("Redundant Array of Independent Disks", in

Castilian Matrix of Independent Redundant Disks), which allow to improve the

efficiency and error tolerance; and are replicated asynchronously in a second CPD

(Data Processing Center) physically located in another municipality.

During the inspection that took place on 10/11/2022, the Inspection Services

verified the correct playback from SMART of a set of recordings

hosted in the storage systems of the claimant chosen in a manner

random.

5. About the procedure of access to the recordings made

VODAFONE reported that when the contract is perfected through the

voice recording, the customer is not provided with the recording at that time, but

only a copy of the contract without signature, which is sent by mail

electronic.

Add, however, that it has a flow to facilitate recording if the client so

requests. SMART has the "Send Duplicate" option, through which you can proceed

the sending via email of the file corresponding to the recording

(during the inspection, the AEPD Services viewed the SMART system and the

"Send Duplicate" option).

It also clarifies that requests for recordings can be denied by

several reasons, among which he cites: "that the interested party does not provide a document

proof of your identity (if necessary)"; "that the Policy is not exceeded

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Security (in the case of the Customer Service channel)"; "that, due to a failure in the system, the recording is not available".

6. Regarding the contracting of VODAFONE services by the complaining party 1

VODAFONE informs that the contracting of its services by claimant party 1 was executed following the face-to-face channel (cite the specific point of sale in which the formalized this contract), and that the corresponding

contract, which shows the text "Electronically signed by OTP 11/19/2020

18:33:00 Pin SMS sent to the number ***PHONE.2", being the 3G entity the provider of the certified signature system.

VODAFONE warns that for this reason it was not possible to provide the recording requested by the claiming party 1, given that in the cases of certified signature, a voice recording, although he did provide the contract with his certified signature.

The "Purchase Summary" is provided to the actions, which describes the offer accepted and contains the note of having been electronically signed by OTP on 11/19/2020, at 6:31 p.m., through "Pin SMS" sent to the telephone number ***PHONE.2; and the Contract dated 11/19/2020 signed by the claiming party 1, which also includes the same review on the electronic signature.

On the other hand, it is included in the actions, provided by the 3G entity, the documentation that justifies the entire sequence of the electronic signature process, up to the electronic stamping of the documents subject to signature. This process, which took place on 11/19/2020, records the access by the claiming party 1 to the contract, prior to signing.

Likewise, during the repeated inspection of 10/11/2022, it was verified that among the interactions recorded in SMART was the perfection of the contract executed by claiming party 1 on 11/19/2020 through electronic signature.

In this inspection, it is also verified that there is an audio recording of date ***DATE.1, corresponding to the verification process carried out through an outgoing phone call from VODAFONE. The entries recorded in

In relation to this interaction, they refer to an argument in which the party is asked to claimant 1 the confirmation of the ownership of the line ***TELEPHONE.5 and the confirmation of the will to port it to VODAFONE.

During the inspection, an attempt was made to reproduce the audio corresponding to this recording and the system returned an error, not finding the corresponding file in the system.

The audio was searched through the NICE system, locating the record correspondent. It is observed in NICE that, even though it was a file generated from SMART and marked as ROD ("Record on Demand"), the file is not available in the storage system (Centera disk arrays).

According to this entity, this recording was not saved in their storage systems due to a specific connectivity problem between NICE and the devices of storage. It also states that as a consequence of this incident it has

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Established a daily review task.

7. Regarding the contracting of services by the complaining party 2

In this case, VODAFONE states that the contract was made through the

"Retention Telesales channel", whose purpose is to "retain those customers who have requested the portability of its services to another telecommunications company", the which follows the process described for contracting through the telephone channel (a Once the data collection has been carried out and the Security Policy has been passed, if the client accepts the commercial offer, as was the case, the service is loaded into the systems contracted and signing the contract).

This phase of the retention process, i.e. calling, recording and uploading data, is managed by a third party, acting on behalf of VODAFONE (indicates the name of the provider that intervened in this case).

As previously indicated, in this channel, the formalization of the contract can be by certified signature or voice recording, the second way being the one used with the complaining party 2. It is in this recording that the client accepts the contract conditions offered by the operator, always linked to the cancellation of portability.

In these cases, a copy of the recording is kept in the systems and a copy is sent of the contract to the client without signing.

According to the record, on August 21, 2019 a landline ***TELEPHONE.7 was contracted, Fiber and TV service, and lines ***TELEPHONE.8 and ***TELEPHONE.9, which are given registration by the Department of Telesales, Telephone Service; as well as the line ***TELEPHONE.10, which has a registration date of 09/04/2020, registered by himself Department. The "Summary of Order" provided to the proceedings, dated 09/04/2020 specifies the services that you had previously contracted and the discounts that will be applied to future invoices; contracts, without signature or specification of contracted services, has the same date.

On the other hand, in relation to the recording corresponding to claimant party 2, In its response to the VODAFONE Inspection Services, it reported that "it is not

possible to proceed with the recovery of this file, since an error has occurred system that does not allow reproduction or sending, which would be the methods usual for the provision of the contracting party" (provides screenshot); Yeah well, he has been able to "access another recording in the Retention action, in which informs... of the term to cancel the portability, as well as that it will proceed to give registration of a new line and the final price offered for 24 months" (provides impression of screen of their information systems that contains a summary of the file of audio dated 08/25/2020 and a duration of 13 minutes and 31 seconds).

Regarding this last recording, he informs that he could not access it previously, due to an error in the system, but he succeeded after several attempts, and provides a copy of it (provides an audio file of 56 seconds duration, which is referred to as the day of "today" on 08/25/2020 and it is indicated that this is the deadline to make the cancellation of fixed line portability. In addition, the price of the offer made is communicated.

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The interlocutor, addressed by the name of complaining party 2, confirms that what they tell you is correct).

Likewise, it provides a copy of the letter sent to the complaining party 2 in which the informs of the steps taken to resolve your claim and a copy is provided of said recording. This is a communication dated 08/26/2022, addressed to the claimant during the investigation phase, which contains the following text:

“Through this letter, we want to inform you that, after carrying out the timely checks, you cannot be provided with the recording you request for a

system error that occurs when trying to upload the recording file and that, consequently, it makes it impossible to send. However, it has been possible to access another recording in Retention action, in which you are informed of the term to cancel portability, as well as that a new line will be registered and the final price offered for 24 months. We attach said recording to this document.”

In the context of the inspection carried out on 10/11/2022, the Services of the AEPD agreed to SMART, to the interactions of the complaining party 2 with the party claimed registered for the day 08/25/2020. Among them is a single recording audio that, when trying to play it from SMART, returns an error. proceeded, likewise, with the functionality of "Send Duplicate" and the system also fails.

Among the interactions associated with the complaining party 2, there is also a review a request for the recording made on 10/22/2020. In the interaction log

It is clear that the operator notified the reproduction and duplicate error that had been produced and requested assistance in retrieving the file from personnel with access to NICE, which asked the operator to use a specific template to carry out the file request. After this, the request was closed without recording that it materialized the request definitively and the audio file will be recovered at that moment.

During the inspection there is direct access through the NICE system to the audio files associated with claiming party 2. The system retrieves a single audio file that coincides with that of 08/25/2020 mentioned above, which, according to VODAFONE, is the only one that was carried out as proof of the contracting.

According to the start and end data of the recording, it is an audio of a duration approximately 13 minutes. The Inspection Services verified that the audio was reproduces correctly and contains the conversation in which the date is communicated limit to cancel the portability, the products, the price of the offer made, as well as the acceptance of the client. The length of the audio to

play it is 56 seconds.

In relation to the disparity between the effective duration of the recording (56 seconds) and the time recorded in the systems (13 minutes and 31 seconds), VODAFONE has informed that “the reason the audio duration differs is that the calls prior to October 13, 2020 were recorded on an older version of the system NICE and are played with a different version of player. This player does not generates the silences of the unrecorded parts of the conversations, so the Silences before and after a recording are not represented.

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Competence

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in articles 47 and 48 of the LOPDGDD, the Director of the Spanish Data Protection Agency is competent to initiate and to solve this procedure.

Article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Data Protection Agency will be governed by the provisions of the GDPR, in this organic law, by the regulatory provisions issued in its development and, as long as they do not contradict them, on a subsidiary basis, by the rules general on administrative procedures".

breached obligation

The rights of individuals regarding the protection of personal data are regulated in articles 15 to 22 of the GDPR and 13 to 18 of the LOPDGDD. HE contemplate the rights of access, rectification, deletion, opposition, right to limitation of treatment and right to portability.

The formal aspects related to the exercise of these rights are established in the Articles 12 of the GDPR and 12 of the LOPDGDD.

Article 12 "Transparency of information, communication and modalities of exercise of rights" of the GDPR establishes the following:

"1. The person in charge of the treatment will take the appropriate measures to provide the interested party with all information indicated in articles 13 and 14, as well as any communication with according to articles 15 to 22 and 34 regarding the treatment, in a concise, transparent, intelligible and easily accessible, with clear and simple language, in particular any information directed specifically at a child. The information will be provided in writing or by other means, including, if applicable, by electronic means. When requested by the interested party, the Information may be provided orally as long as the identity of the interested party is proven. By other means.

2. The data controller will provide the interested party with the exercise of their rights under of articles 15 to 22. In the cases referred to in article 11, paragraph 2, the controller will not refuse to act at the request of the interested party in order to exercise their rights under Articles 15 to 22, unless you can demonstrate that you are not in a position to identify the interested.

3. The person responsible for the treatment will provide the interested party with information regarding their actions on the basis of a request under articles 15 to 22, without undue delay and, in In any case, within one month from receipt of the request. Said term may be extended by another two months if necessary, taking into account the complexity and the number

of requests. The person in charge will inform the interested party of any of said extensions in the

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within one month from receipt of the request, indicating the reasons for the delay.

When the interested party submits the application by electronic means, the information will be provided by electronic means when possible, unless the interested party requests that it be provided else."

4. If the person responsible for the treatment does not process the request of the interested party, he will inform him without delay, and no later than one month after receipt of the request, of the reasons for their failure to act and the possibility of filing a claim with a control authority and to exercise judicial actions.

5. The information provided under articles 13 and 14 as well as any communication and Any action carried out under articles 15 to 22 and 34 will be free of charge.

When the requests are manifestly unfounded or excessive, especially due to its repetitive nature, the data controller may: a) charge a reasonable fee in function of the administrative costs incurred to facilitate the information or communication or perform the requested action, or b) refuse to act on the request. The responsible of the treatment will bear the burden of demonstrating the manifestly unfounded or excessive request.

6. Without prejudice to the provisions of article 11, when the data controller has reasonable doubts regarding the identity of the natural person making the request to which Articles 15 to 21 refer to, you may request that additional information be provided necessary to confirm the identity of the interested party.

7. The information that must be provided to the interested parties under articles 13 and 14 may be transmitted in combination with standardized icons that make it possible to provide easily visible, intelligible and clearly legible form an adequate overview of the planned treatment. Icons presented in electronic format shall be legible mechanically.

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 92 in order to specify the information to be presented via icons and the procedures for providing standardized icons”.

For its part, article 12 “General provisions on the exercise of rights” of the LOPDGDD, in its sections 2 and 4, adds the following:

"2. The person in charge of the treatment will be obliged to inform the affected person about the means at his disposition to exercise the rights that correspond to him. The media should be easily accessible to the affected. The exercise of the right may not be denied for the sole reason if the affected party opts for another means”.

"4. Proof of compliance with the duty to respond to the request to exercise their rights formulated by the affected party will fall on the person responsible”.

It also takes into account what is stated in Considering 59 et seq. of the GDPR.

In accordance with the provisions of these regulations, the data controller must arbitrate formulas and mechanisms to facilitate the exercise of their rights by the interested party. rights, which will be free (without prejudice to the provisions of articles 12.5 and 15.3 of the GDPR); is obliged to respond to requests made no later than a month, unless you can demonstrate that you are unable to identify the interested; as well as to express their reasons in case they did not respond to the request.

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From the foregoing it can be deduced that the request for the exercise of rights made by the interested party must be answered in any case, falling on the person responsible for the proof of compliance with this duty.

This obligation to act is not enforceable when the data controller can demonstrate that it is not in a position to identify the interested party (in cases referred to in article 11.2 of the GDPR). In cases other than those provided for in this article, in which the data controller has reasonable doubts regarding with the identity of the applicant, may require additional information necessary to confirm that identity.

In this regard, Recital 64 of the GDPR is expressed in the following terms:

“(64) The data controller must use all reasonable measures to verify the identity of data subjects requesting access, in particular in the context of services online and online identifiers. The controller should not keep personal data with the sole purpose of being able to respond to possible requests”.

Regarding the right of access, the GDPR stipulates in its article 15 what following:

"1. The interested party shall have the right to obtain confirmation from the data controller as to whether whether or not personal data concerning you is being processed and, in such a case, right of access to personal data and the following information:

- a) the purposes of the processing;
- b) the categories of personal data concerned;
- c) the recipients or categories of recipients to whom they were communicated or will be communicated personal data, in particular recipients in third countries or

international organizations;

d) if possible, the expected period of conservation of personal data or, if not

possible, the criteria used to determine this term;

e) the existence of the right to request from the controller the rectification or deletion of data

personal data or the limitation of the processing of personal data relating to the interested party, or to

oppose such treatment;

f) the right to file a claim with a control authority;

g) when the personal data has not been obtained from the interested party, any information

available on its origin;

h) the existence of automated decisions, including profiling, to which

referred to in Article 22, paragraphs 1 and 4, and, at least in such cases, significant information

about applied logic, as well as the significance and intended consequences of that

treatment for the interested party.

2. When personal data is transferred to a third country or to an international organization,

the interested party shall have the right to be informed of the appropriate guarantees under article

46 relating to the transfer.

3. The person responsible for the treatment will provide a copy of the personal data object of

treatment. The person in charge may receive for any other copy requested by the interested party

a reasonable fee based on administrative costs. When the interested party submits the

application by electronic means, and unless the latter requests that it be provided otherwise, the

Information will be provided in a commonly used electronic format.

4. The right to obtain a copy mentioned in section 3 will not negatively affect the

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rights and liberties of others.

Like the rest of the rights of the interested party, the right of access is a very personal right. Allows the citizen to obtain information about the treatment what is being done with your data, the ability to obtain a copy of the data that concern you and that are being processed, as well as the information listed in the article cited above.

These proceedings begin as a result of the entry into the AEPD of two claims in which the claiming parties state that VODAFONE, entity of which they are clients, has not granted them access to the recordings telephone calls in which the conditions that would apply to the services were agreed hired, after exercising the right of access.

In relation to claimant 1, the evidence obtained shows that the contracting was carried out in person (in store) and that the perfection of the contract was made by electronic signature on 11/19/2020. This contract appears in the information systems of the requested entity as proof of the hiring.

Complaining party 1 exercised the right of access before VODAFONE on the date 07/26/2021, requesting a copy of the recording corresponding to the contract, receiving a response from said entity, dated 08/04/2021, within the term established, in which the impossibility of locating the recording was reported and provided a copy of the electronically signed contract.

Subsequently, the Inspection Services of this Agency were able to verify that in the information systems there were references to a call that took place in date ***DATE.1, one day after the acceptance of the offer by the party claimant 1 with contract signature, noted as a verification call

to confirm the portability of services from another operator. The inspection

The acting party also verified that the audio corresponding to this call was not found in VODAFONE systems.

The same is not true in the case concerning complaining party 2. In this case, the

The evidence obtained shows that the contracting was carried out by telephone, which entails, according to the process designed by the operating entity itself, the recording of the conversation in which the contracting of the services is accepted. According to verified details, during that telephone conversation the offer is presented, collect the necessary data to continue with the contracting and acceptance of the offer by the client, perfecting the contract through voice recording.

Subsequently, a copy of the contract without signature is sent to the person concerned. Only in

In the event that the interested party requests it, the copy is sent by email of the recording.

The perfection of the contract corresponding to the claiming party 2 was carried out through voice recording on 08/25/2020. According to VODAFONE, it is a call carried out through the "Retention Telesales channel", whose purpose is to "retain those customers who have requested the portability of their services to another company telecommunications", which follows the same process as contracting through the

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telephone channel

The Inspection Services of this Agency, during the inspection carried out in the dependencies of the claimed party on 10/11/2022, verified that there is

a single voice recording for that date and were able to play and download it, although initially the information system showed an error both when trying to play it as in the download process. Inspection Services verified that the audio plays correctly and contains the conversation in which communicates the deadline to cancel the portability, the products, the price of the offer made, as well as the acceptance of the client. Complaining party 2, in the claim made before this Agency, has stated that there were discrepancies in the billing and that, for this reason, he requested in several occasions to access the voice recording related to the contracting of services.

As the acting inspectors were able to verify, in the information systems of VODAFONE there is an access request dated 10/22/2020 and this same entity has declared that it received an access request on 09/21/2021 with the claim that the claiming party 2 formulated before the OMIC of the City Council of A A Coruña, from 09/15/2021.

In relation to the first of these requests, it is proven that the personnel of VODAFONE tried to respond to the access and requested help to recover the recording, receiving an internal response according to which it had to follow a certain template to make that request for help. After that, the request was closed without for the record that the petition was finalized and recovered at that time the audio file. Therefore, there is no record that this audio file was sent to the complaining party 2.

Regarding the second access request mentioned, VODAFONE indicates that it responded to the right of access on the same date of 09/21/2021 by letter sent to the mentioned consumer office. However, the response letter provided nothing indicates the exercise of the right of access and the request for recording.

Nor did VODAFONE comply with the right of access exercised by the complaining party

2 on the occasion of the transfer process of the claim presented by the same before this Agency. In the response directed by that entity at the request of this Agency, dated 12/28/2021, regarding the requested recording, it is reported "that no It has been possible to locate the recording you are requesting."

Consequently, it turns out that VODAFONE, up to three times, did not answer the right of access exercised by the complaining party 2 by sending a copy of the requested recording, despite the fact that this recording appears in their information and is accessible.

Proof of this is that, following the requests for information made within the framework of the research actions carried out, on 08/26/2022 the entity

The claimed party sends a new letter to the claiming party 2 indicating the following:

"Through this letter, we want to inform you that, after carrying out the

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timely checks, you cannot be provided with the recording you request for a system error that occurs when trying to upload the recording file and that, consequently, it makes it impossible to send. However, it has been possible to access another recording in Retention action, in which you are informed of the term to cancel portability, as well as that a new line will be registered and the final price offered for 24 months. We attach said recording to this document."

Consequently, in accordance with the evidence available in the present moment of agreement to start the disciplinary procedure, and without prejudice of what results from the instruction, the facts exposed in relation to the part

claimant 2 could imply a violation of the provisions of article 15 of the GDPR, which gives rise to the application of the corrective powers that article 58 of the Said Regulation grants the Spanish Data Protection Agency.

Classification and classification of the offense

II

Violation of the provisions of article 15 of the GDPR, if confirmed, would imply the commission of an offense classified in section 5.b) of article 83 of the GDPR.

Article 83.5 b), of the GDPR, under the heading "General conditions for the imposition of administrative fines" provides the following:

"5. Violations of the following provisions will be penalized, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, of an amount equivalent to a maximum of 4% of the total annual turnover of the previous financial year, opting for the highest amount:

b) the rights of the interested parties in accordance with articles 12 to 22".

On the other hand, Article 71 of the LOPDGDD considers any offense breach of this Organic Law:

"Infractions are the acts and conducts referred to in sections 4, 5 and 6 of the Article 83 of Regulation (EU) 2016/679, as well as those that are contrary to this organic Law".

Section 1.k) of article 72 of the LOPDGDD considers, as "very serious", a prescription effects:

"1. Based on what is established in article 83.5 of Regulation (EU) 2016/679, are considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

k) The impediment or the obstruction or the reiterated non-attention of the exercise of the rights established in articles 15 to 22 of Regulation (EU) 2016/679".

IV.

corrective powers

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In the event of an infringement of the provisions of the GDPR, among the corrective powers available to the Spanish Data Protection Agency, as supervisory authority, article 58.2 of said Regulation contemplates the following:

"2 Each control authority will have all the following corrective powers indicated to continuation:

(...)

b) send a warning to any person in charge or person in charge of the treatment when the processing operations have infringed the provisions of this Regulation;"

(...)

d) order the person in charge or in charge of the treatment that the treatment operations are conform to the provisions of this Regulation, where appropriate, of a given manner and within a specified period;

(...)

i) impose an administrative fine in accordance with article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each case particular;"

According to the provisions of article 83.2 of the GDPR, the measure provided for in letter d) above is compatible with the sanction consisting of an administrative fine.

Sanction proposal

This infraction can be sanctioned with a fine of a maximum of €20,000,000 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 of greater amount, in accordance with article 83.5 of the GDPR.

In order to determine the administrative fine to be imposed, the provisions of articles 83.1 and 83.2 of the GDPR, precepts that state:

"1. Each control authority will guarantee that the imposition of administrative fines with under this article for the infringements of this Regulation indicated in the paragraphs 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 case.

individually, in addition to or in lieu of the measures contemplated in article 58, section 2, letters a) to h) and j). When deciding to impose an administrative fine and its amount in each individual case due account shall be taken of:

- 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 the number of affected stakeholders and the level of damages they have suffered;
- b) intentionality or negligence in the infraction;
- c) any measure taken by the controller or processor to alleviate the damages suffered by the interested parties;
- d) the degree of responsibility of the controller or processor, taking into account of the technical or organizational measures that have been applied by virtue of articles 25 and 32;

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- 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 if the Controller or processor notified the infringement and, if so, to 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 certification mechanisms approved under 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, through the offence".

For its part, article 76 "Sanctions and corrective measures" of the LOPDGDD has:

"1. The sanctions provided for in sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679 will be applied taking into account the graduation criteria established in the section 2 of said article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679 also may be taken into account:

- a) The continuing nature of the offence.
- b) Linking the offender's activity with data processing personal.

- 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 infringement.
- e) The existence of a merger process by absorption subsequent to the commission of the infraction, that 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 disputes between those and any interested party”.

In addition to what is indicated, the provisions of article 83.1 of the GDPR, according to which "Each control authority will guarantee that the imposition of the administrative fines under this article for breaches of the this Regulation indicated in sections 4, 5 and 6 are in each individual case effective, proportionate and dissuasive”.

The fine imposed must be, in each individual case, effective, proportionate and dissuasive, in accordance with the provisions of article 83.1 of the GDPR. Thus considers, in advance, the condition of a large company and volume of business of VODAFONE.

In accordance with the precepts indicated, and without prejudice to what results from the instruction of the procedure, in order to set the amount of the sanction to be imposed in

In the present case, it is considered appropriate to graduate said sanction in accordance with the following criteria established by the transcribed precepts:

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In an initial assessment, the criteria for

following graduation:

. Article 83.2.a) of the GDPR: "a) the nature, seriousness and duration of the infringement, taking into account the nature, scope or purpose of the operation treatment in question as well as the number of interested parties affected and the level of damages they have suffered".

. The nature and seriousness of the infringement, since the non-delivery to the party

Claimant 2 of the recording corresponding to the hiring of the

services affects their ability to exercise true control over their

personal information; and limits any action that Complaining Party 2 could

exercise against VODAFONE in its defense.

. The level of damages suffered by the interested parties, to the extent that

that the non-attention of the right of access, with the non-delivery of the recording

requested by the complaining party 2, which harmed its defense capacity

in connection with the charges billed by the claimed party.

. Article 83.2.b) of the GDPR: "b) intentionality or negligence in the infringement".

In this case, the negligence of the claimed party must be classified as "serious".

The VODAFONE entity should have been particularly scrupulous in

retrieve and provide the audio file in question, as it involves a

essential element for the business relationship that binds both parties and their

loss influences the smooth running of that relationship.

This circumstance reveals the negligent behavior of VODAFONE in

not guarantee the delivery of that essential element for the business relationship. To this

In this regard, the statement of the National Court Judgment is taken into account

of 10/17/2007 (rec. 63/2006) that, based on the fact that these are entities whose

activity involves continuous data processing, indicates that "...the

The Supreme Court has understood that there is imprudence whenever

disregards a legal duty of care, that is, when the offender does not

behave with the required diligence. And in the assessment of the degree of diligence has

to weigh especially 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 be insisted on the

rigor and exquisite care to comply with the legal provisions in this regard".

It is a company that performs personal data processing in a

systematic and continuous and that it must take extreme care in fulfilling its

data protection obligations.

This Agency understands that the diligence must be deduced from facts

conclusive, duly accredited and directly related

with the elements that make up the infringement, in such a way that it can be deduced

that it has occurred despite all the means provided by the

responsible to avoid it. In this case, VODAFONE's action has no

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this character.

. Article 76.2.b) of the LOPDGDD: "b) Linking the offender's activity

with the processing of personal data".

The high link between the activity of the offender and the performance of treatments

of personal data. The level of implementation of the entity and the activity that it carries out, in which the personal data of thousands of interested parties are processed. This circumstance determines a greater degree of demand and professionalism and, consequently, the responsibility of the entity claimed in relation to data processing.

It is also considered that the circumstances concur as mitigating factors, the following:

. Article 76.2.h) of the LOPDGDD: "h) Submission by the person responsible or entrusted, on a voluntary basis, to alternative dispute resolution mechanisms or conflicts, in those cases in which there are controversies between those and anyone interested".

Various telecommunications operators, including VODAFONE, signed a Protocol with "Autocontrol" that, without prejudice to the competences of the AEPD, provides mechanisms for private resolution of controversies related to data protection in the field of contracting and advertising of electronic communications services, dated December 15, September 2017. Protocol whose effective application should be considered as mitigation.

Considering the exposed factors, the initial assessment that reaches the fine, for the violation of article 15 of the GDPR, is 70,000 euros (seventy thousand euros).

V

adoption of measures

If the infringement is confirmed, it could be agreed to impose on the person responsible the adoption of adequate measures to adjust its performance to the regulations mentioned in this act, in accordance with the provisions of the aforementioned article 58.2 d) of the GDPR, according to the powers which each control authority may "order the person responsible or in charge of the

processing that the processing operations comply with the provisions of the this Regulation, where appropriate, in a certain way and within a certain specified term...". The imposition of this measure is compatible with the sanction consisting of an administrative fine, according to the provisions of art. 83.2 of the GDPR.

It is noted that not meeting the requirements of this body may be considered as an administrative offense in accordance with the provisions of the GDPR, classified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent administrative sanctioning procedure.

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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 15 of the GDPR, typified in article 83.5.b) of the same Regulation and classified as very serious prescription effects in article 72.1.k) of the LOPDGDD.

SECOND: APPOINT as instructor C.C.C. and, as secretary, to D.D.D., indicating that any of them may be challenged, if applicable, in accordance with the 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 into the disciplinary file, for evidentiary purposes, the claims filed and their documentation, as well as the documents obtained and

generated by the General Sub-directorate of Data Inspection in the proceedings prior to the start of this sanctioning procedure.

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 70,000 euros (seventy thousand euros).

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, you may recognize your responsibility within the period granted for the formulation of allegations to the present initiation agreement; which will entail a reduction of 20% of the sanction that should be imposed in this proceeding. With the application of this reduction, the sanction would be established at 56,000 euros (fifty-six thousand euros), resolving the procedure with the imposition of this sanction.

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, which will mean a reduction of 20% of its amount. With the application of this reduction, the sanction would be established at 56,000 euros (fifty-six thousand euros) and its 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

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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

In this case, if both reductions were to be applied, the amount of the penalty would remain

established at 42,000 euros (forty-two thousand euros).

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 entering the account IBAN number: ES00 0000 0000 0000 0000 0000

(BIC/SWIFT Code: XXXXXXXXX) opened in the name of the Spanish Agency for

Protection of Data in the banking entity CAIXABANK, 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 it accepts.

Likewise, you must send proof of income to the General Subdirectorate 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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Complaining parties are identified by a number. This Annex provides the personal data -name, surname and NIF- of each one of them:

EXHIBIT

. Complaining party 1: A.A.A.. DNI ***NIF.1.

. Complaining party 2: B.B.B.. DNI ***NIF.2.

>>

SECOND: On December 23, 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

The 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.

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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 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 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 EXP202104500, 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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