

□ Procedure No.: PS/00258/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) dated January 28, 2020
filed a claim with the Spanish Agency for Data Protection against
VODAFONE ESPAÑA, S.A.U. with NIF A80907397 (hereinafter, the claimed or VDF).

The grounds on which the claim is based are as follows:

The reception of unwanted commercial calls on behalf of VDF on your line of
fixed telephone ***TELEPHONE.1. It states that said receiving line is registered in the
Robinson list. Last call received was on 01/14/20 at 3:20 p.m. from the
telephone line ***PHONE.2.

SECOND: In view of the facts denounced in the claim and the
documents provided by the claimant / of the facts and documents of which he has
had knowledge of this Agency, the Subdirector General for Data Inspection
proceeded to carry out preliminary investigation actions for the
clarification of the facts in question, by virtue of the investigative powers
granted to the control authorities in article 57.1 of the Regulation (EU)
2016/679 (General Data Protection Regulation, hereinafter RGPD), and
in accordance with the provisions of Title VII, Chapter I, Second Section, of the Law
Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of
digital rights (hereinafter LOPDGDD).

As a result of the research actions carried out, it is found that the
responsible for the treatment is the claimed.

BACKGROUND

Claim entry date: January 28, 2020

Complainant: A.A.A. (the claimant)

Claimed: VODAFONE ESPAÑA, S.A.U. (the claimed or VDF)

The information contained in the information systems is as follows:

Dated March 9, 2020 and registration number 023219/2020 (procedure

E/02269/2020) notification of the claim filed by the

claimant in accordance with article 65.4 of Organic Law 3/2018, of 5

December, Protection of Personal Data and guarantee of digital rights

(LOPDGDD), to proceed with its analysis and respond to this Agency in the

term of one month.

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On April 15, 2020 (Registration No. 014615/2020), a response was received from the

entity claimed, alleging the following:

“We have verified that the claimant's phone line is on the Robinson list.

ADigital official since February 13, 2018, as well as on the Robinson list

Vodafone internal since March 7, 2019.

We have checked if the reported calling number is in our database.

data with the telephone numbers used by our collaborators to carry out

pickup calls. To this end, we have verified that one of them is

associated with the following partner of the door to door channel: Solivesa_Grupo Estradicall,

S.A.C. However, we want to emphasize that this collaborator does not deal with the bases of

data provided by Vodafone, but uses its own databases.

(...) we have verified that the indicated calls have been made by a partner of the door to door sector: Solivesa. The contract with said collaborator since it already appears within the documentation that works in the file E/9052/2019.”

On June 1, 2020, in procedure E/02269/2020, the Agency Spanish Data Protection Agency proceeds to notify the claimed party (Registration No. 043098/2020) the admission to processing of the claim and carry out the following investigation actions:

INVESTIGATED ENTITIES

During these proceedings, the following entities have been investigated:

□ GRUPO ESTRADICALL, S.A.C., with foreign NIF 20602658458, and with address in MZA. E, LOT 8 COOPEMAR CONST. Callao, Window, Lima, Peru.

□ VODAFONE ESPAÑA, S.A.U., with NIF A80907397, and with address at Avda. America 115, 28042 Madrid.

□ SOLIVESA MASTER FRANCHISE, S.L., with NIF 97154488, and with address at Calle Salamanca 60, 3º, pta 7, 46005 Valencia.

□

LEAST COST ROUTING TELECOM, S.L., with NIF B82470162, and with address at Calle Fernando Rey 8, Pozuelo de Alarcón, 28223 Madrid.

RESULT OF THE INVESTIGATION ACTIONS

As a result of the investigations carried out, the following information has been obtained:

According to

ADIGITAL's response

-

(check-in

O00007128e2000012120) upon request for information (document with denomination "Request. info Robinson", check-out, O00007128s2000020831) certifies that the claimant's line is enrolled in the Robinson list from February 08, 2019.

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Through information obtained from the operator numbering register telecommunications, on the CNMC website (document with denomination "Diligence"), it is verified that, at the date of investigation of this file, the operator of the originating number of the calls ***TELEFONO.2 is LEAST COST ROUTING TELECOM, S.L.

According to the response of LEAST COST (entry record

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O00007128e2000013131) indicates:

"The line is contracted by our "Reseller/Reseller" SOLIVESA MASTER FRANCHISE, S.L.

There has been a call to the line ***TELEFONO.1 on January 14, 2020 to 3:18 p.m."

According to a response from SOLIVESA MASTER FRANCHISE, S.L. (register of

-

entry O00007128e2000013826) indicates that:

“Ownership of the subscriber line ***TELEFONO.2

COMPANY NAME: ESTRADICALL GROUP... LOCATION: LIMA. COUNTRY: PERU.

The call to the number ***PHONE.1 is not registered on the indicated date.”

“The line ***TELEFONO.2 has been down since September 29, 2020.”

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Subsequently, a communication of correction is received from SOLIVESA

MASTER FRANCHISE, S.L. (input register O00007128e2000015523)

indicating:

“In relation to the request for information made by you about the

file with Ref. No.: E/09405/2020 we inform you that due to an error

human we gave them some of the wrong information. After making a new

checking the logs, we have detected that there is a call

made from the number ***TELEFONO.2 to the number ***TELEFONO.1 on the 14th

January 2020 at 3:18 p.m.

-

Request for information was sent to GRUPO ESTRADICALL SAC

(Lima, Peru) by certified international mail (Registration No.

O00007128s2000024610) for which no response has been received.

According to

response from ORANGE

-

(check-in

O00007128e2000013431) upon request for information on ownership of the

destination number and reception of calls from reported numbers

indicates that:

“In relation to the ownership of fixed line ***TELEFONO.1 this company comes to

confirm that the fixed number is assigned to "the claimant".

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Likewise, reception of the call is confirmed at the claimant's number.

from ***TELEFONO.2 to date January 14, 2020 at the indicated time.

According to contracts provided (input record O00007128e2100001230)

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by SOLIVESA MASTER FRANCHISE, S.L., we have:

Contract between SOLIVESA MASTER FRANCHISE, S.L. (RESELLER in forward) and LEAST COST ROUTING TELECOM, S.L. (LCRCOM or SELLER hereinafter) with the name "CONTRATO LCR.compressed.pdf":

According to the description of the contract, it is for the resale of products and electronic communications services provided by LEAST COST ROUTING TELECOM, S.L.

In clause 4.9, it specifies that, "The RESELLER shall establish its own expansion policy and, consequently, will establish, mark, fix and will determine the geographical area where it is proposed to establish or open the markets to which the resale of SERVICES acquired from LCRCOM that intends to resell."

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Through information obtained from E/09388/2020 (document with denomination "Diligencia2") of contracts provided by SOLIVESA MASTER FRANCHISE, S.L. you have:

From the contract between VODAFONE ESPAÑA S.A.U. (VODAFONE) and SOLIVESA MASTER FRANCHISE, S.L. (COLLABORATOR), the following is extracted:

In section II, it indicates that the Vodafone Group provides its services both through of VODAFONE-ES as VODAFONE ONO, S.A.U., existing between these two companies (jointly or indistinctly called "VDF") an agreement of commercial collaboration for the joint and/or reciprocal commercialization of services provided by each of them.

In section V it indicates that the COLLABORATOR declares to have the capacity and adequate technical means to form part of the VODAFONE commercial network.

In section VI it indicates that the scope of the contract is door-to-door promotion of the services in the name and on behalf of VDF.

In the SECOND clause, section 2.1 indicates that the object of the contract is the commercial promotion of VODAFONE services.

In the THIRD clause, it indicates that the contract will be valid from the 1st of May 2019 through March 31, 2020.

In clause 13.5, VODAFONE indicates that the COLLABORATOR undertakes to strict compliance with current regulations on data protection.

Clause 13.6 indicates that in accordance with current legislation, the COLLABORATOR will be considered as data processor.

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Clause 13.7 indicates that the COLLABORATOR shall hold harmless VODAFONE for any damage arising from the breach by the

COLLABORATOR or its third party collaborators of any of the obligations set forth in this clause and in particular for any sanction imposed by the Spanish Data Protection Agency.

The contract does not contain the possibility of subcontracting the services to entities outside the European Economic Area, and the person in charge (SOLIVESA) must comply at all times with the provisions of the RGPD. In Annex 2, it is stated that the location of the treatment is carried out in "Spain".

From the contract between SOLIVESA MASTER FRANCHISE, S.L. (SOLIVESA) and GROUP ESTRADICALL (SUBAGENT) must be:

In section 1.1 of the FIRST stipulation, it indicates that the SUB-AGENT is undertakes to develop intermediation activities in customer registrations for the VODAFONE operator.

In the SECOND stipulation it indicates that the contract will have a duration of 12 months counted from the day of its signature, which was September 27, 2018.

It also indicates that, after the initial term has elapsed, the contract will be extended for periods of equal duration, unless expressly denounced by one of the parties. In the request (registration number O00007128s2100007438) is requested from SOLIVESA current contract with ESTRADICALL in the last quarter of 2019, with which the contract should be renewed, as stipulated above, until 27 September 2020.

In the THIRD stipulation, it indicates that promotion and registration activities are will be carried out in accordance with the procedures established by SOLIVESA. The activities of the SUB-AGENT, in the exercise of the contract will be carried out in the Spanish territory.

In the SEVENTH stipulation related to the "Prohibition of commercialization inappropriate or fraudulent" indicates that (among others) it will be considered marketing

Inadequate non-observance in the commercialization of the regulations in force that is applicable to you.

In the FOURTEENTH stipulation, section of responsibility, it indicates that each party shall bear the responsibility arising from its own breach of LOPD 15/1999.

THIRD: By Agreement dated May 27, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate sanctioning procedure to the claimed by:

☐ For the alleged violation of art. 48.1.b) of the LGT in relation to art. twenty-one of the RGPD and 23 of the LOPDGDD, typified as serious in article 77.37 of the aforementioned LGT, without prejudice to what results from the instruction.

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☐ For the alleged violation of art. 28.1 of the RGPD, typified in the article 83.4.a) of said rule, without prejudice to what results from the investigation.

FOURTH: The respondent requested a copy of the file that was delivered to him and an extension of term to present arguments that was granted. On 06/21/2021 the claimed (VDF) submitted arguments to the agreement to initiate proceedings sanctioning, in summary, in the following terms:

1. The call to the claimant was made by a third entity unrelated to VDF, in specifically by the entity Grupo Estradicall SAC of Peruvian nationality, to which that SOLIVESA sold/awarded the calling line as operator of telecommunications authorized by the CNMC

2. Regarding the infringement of article 28 of the RGPD, VDF alleges the principle of “non bis in idem”, since it has already been sanctioned for the same acts with anteriority.

FIFTH: On 06/22/2021, a Resolution proposal was issued in the following terms:

□

<< That by the Director of the Spanish Agency for Data Protection
Proceed to the FILE of the actions related to art. 48.1.b) of the LGT, of
in accordance with the provisions of art. 31 of the aforementioned LRJSP.

□ That the Director of the Spanish Data Protection Agency
Proceed to the FILE of the actions related to art. 28 of the GDPR, of
in accordance with the provisions of art. 31 of the aforementioned LRJSP.>>.

SEVENTH: After the deadline for submitting allegations to the Proposal for Resolution, it does not appear in this AEPD that they have been presented.
Of the actions carried out in this proceeding, it has been accredited
the following,

PROVEN FACTS

FIRST: The claimant, on January 28, 2020, filed a claim with
the Spanish Data Protection Agency against VODAFONE ESPAÑA, S.A.U. by
the reception of unwanted commercial calls on behalf of VDF on your line of
landline ***PHONE.1 from the calling line ***PHONE.2

SECOND: According to ADIGITAL's response (input record e2000012120) to
request for information (document with the name “Request. info Robinson”,
check-out record, O00007128s2000020831) certifies that the claimant's line is
It has been registered on the Robinson list since February 8, 2019.

THIRD: According to response from LEAST COST (input record e2000013131)

indicates:

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“The line is contracted by our “Reseller/Reseller” SOLIVESA MASTER FRANCHISE, S.L.

There has been a call to the ***TELEFONO.1 line on January 14, 2020 at 3:18 p.m.”

FOURTH: According to response from ORANGE (input record e2000013431) to request for information on ownership of the destination number and receipt of calls from reported numbers indicates that:

“In relation to the ownership of fixed line ***TELEFONO.1 this company comes to confirm that the fixed number is assigned to "the claimant".

Likewise, reception of the call is confirmed at the claimant's number from on ***TELEFONO.2 on January 14, 2020 at the indicated time.

FIFTH: The contract between VODAFONE ESPAÑA S.A.U. (VODAFONE) and SOLIVESA MASTER FRANCHISE, S.L. (COLLABORATOR), the following is extracted:

☐ In section II, it indicates that the Vodafone Group provides its services both to through VODAFONE-ES as VODAFONE ONO, S.A.U., existing between these two companies a commercial collaboration agreement for the Joint and/or reciprocal marketing of the services provided by each of them.

☐ In section V it indicates that the COLLABORATOR declares to have the and adequate technical means to form part of the commercial network of

VODAFONE.

☐ In section VI, it indicates that the scope of the contract is door-to-door promotion.

door of the services in the name and on behalf of VDF.

☐ In the SECOND clause, section 2.1 indicates that the object of the contract is the

commercial promotion of VODAFONE services. Consequently, VFD

acts as data controller.

☐ In the THIRD clause, it indicates that the contract will be valid from the 1st of

May 2019 through March 31, 2020.

☐ Clause 13.6 indicates that in accordance with current legislation, the

COLLABORATOR will be considered as data processor.

SIXTH: The facts now analyzed regarding the violation of art. 48.1.b) of the

LGT, have already been filed by this Agency in similar files of

reference PS/0006/2021 and PS/00257/2021.

FOUNDATIONS OF LAW

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In accordance with the provisions of article 84.3) of the LGT, the competence to

initiate and resolve this Penalty Procedure corresponds to the Director of

the Spanish Agency for Data Protection.

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of

control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director

of the Spanish Agency for Data Protection is competent to initiate and to re-

solve this procedure.

The known facts could constitute an infraction, attributable to the claimed, for violation of article 48.1.b) of Law 9/2014, of May 9, General Telecommunications (hereinafter, LGT), included in its Title III, which points out:

II

<<Article 48. Right to the protection of personal data and privacy in relation with unsolicited communications, with traffic and location data and with subscriber guides.

1. Regarding the protection of personal data and privacy in relation to the unsolicited communications end users of communications services electronic will have the following rights:

(...)

b) To oppose receiving unwanted calls for commercial communication purposes that are carried out through systems other than those established in the previous letter and be informed of this right.>>

In relation to telephone calls, the exercise of the right of opposition is regulated.

tion in article 21 of the RGPD, where it is established that:

III

<<1. The interested party shall have the right to object at any time, for reasons related to related to your particular situation, to which personal data that concerns you is object of a treatment based on the provisions of article 6, paragraph 1, letters e) or f), including profiling on the basis of these provisions. The answer- Sable of the treatment will stop treating the personal data, unless it proves reasons legitimate compelling for the treatment that prevail over the interests, the rights rights and freedoms of the interested party, or for the formulation, exercise or defense of

claims.

2. When the processing of personal data is for the purpose of direct marketing

ta, the interested party will have the right to oppose at any time the treatment of the data.

personal data concerning you, including profiling to the extent

that is related to said marketing.

3. When the interested party opposes the treatment for direct marketing purposes,

personal data will no longer be processed for these purposes.

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4. At the latest at the time of the first communication with the interested party, the right

The data indicated in sections 1 and 2 will be explicitly mentioned to the interested party and

will be presented clearly and apart from any other information.

5. In the context of the use of information society services, and not

Notwithstanding the provisions of Directive 2002/58/EC, the interested party may exercise their right

Cho to oppose by automated means that apply technical specifications.

6. When personal data is processed for scientific or historical research purposes,

for statistical purposes in accordance with article 89, paragraph 1, the interested party

You will have the right, for reasons related to your particular situation, to oppose the treatment

processing of personal data that concerns you, unless it is necessary for the fulfillment

fulfillment of a mission carried out for reasons of public interest.>>

Article 23 of the LOPDGDD, regarding advertising exclusion systems, states

the next:

IV

<<Article 23. Advertising exclusion systems.

1. The processing of personal data for the purpose of preventing the sending of commercial communications to those who have expressed their refusal or opposition to receive them.

For this purpose, information systems, general or sectoral, may be created in the that only the essential data to identify those affected will be included. These systems may also include preference services, through which affected limit the reception of commercial communications to those from certain companies.

2. The entities responsible for the advertising exclusion systems will notify the competent control authority, its creation, its general or sectoral nature, as well as the way in which those affected can join them and, where appropriate, assert your preferences.

The competent control authority will make public in its electronic headquarters a list of the systems of this nature that were communicated to it, incorporating the information mentioned in the previous paragraph. To this end, the supervisory authority authority to which the creation of the system has been communicated will put it in knowledge of the remaining control authorities for publication by all they.

3. When an affected person expresses to a person in charge his desire that his data not are treated for the sending of commercial communications, it must inform you of the existing advertising exclusion systems, being able to refer to the information published by the competent control authority.

4. Those who intend to carry out direct marketing communications must previously consult the advertising exclusion systems that could affect your action, excluding from the treatment the data of those affected who would have

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expressed their opposition or refusal to it. For these purposes, to consider

Once the previous obligation has been fulfilled, it will be enough to consult the exclusion systems included in the list published by the competent control authority.

It will not be necessary to carry out the query referred to in the previous paragraph when the affected had provided, in accordance with the provisions of this organic law, his consent to receive the communication to whoever intends to make it.>>

v

Although the aforementioned article 48 of the LGT does not configure the right of opposition, therefore we must go to the data protection regulations in which the right is regulated of opposition: article 21 of the RGPD, (Regulation (EU) 2016/679, of the Parliament European and Council, of 04/27/2016, regarding the Protection of Natural Persons regarding the Processing of Personal Data and the Free Circulation of these Data) and article 23 of the LOPDGDD (Organic Law 3/2018, of December 5, Protection of Personal Data and Guarantee of Digital Rights).

The infraction is typified as serious in article 77.37 of said rule and may be sanctioned with a fine of up to 2,000,000 euros, in accordance with article 79.1.c) of the aforementioned LGT. It should be noted that the claimant line is not only was registered in the robinson advertising exclusion list of Adigital since the 02/13/2018, but also in the internal advertising exclusion list of the claimed since 03/07/2019, and the call occurred on 01/14/2020, which violates both the article 21 of the RGPD as art. 23 of the LOPDGDD.

Notwithstanding the foregoing, it appears in this Agency in the reference files PS/0006/2021 and PS/00257/2021 and both subject to filing, that the responsibility of the call made to the claimant from the ***TELEFONO.2 line is from exclusive responsibility of the entity Estradicall SAC of Peruvian origin and, in Consequently, the GDPR is not applicable. In this sense, there is no evidence that VDF has contracted in your CRM any product with the claimant through the action commercial now analyzed.

SAW

The exposed facts could also constitute an infraction, attributable to VDF as controller of the treatment now analyzed, for violation of the article 28.1 of the RGPD, typified in article 83.4 of said regulation, considered slight for prescription purposes in article 73.j) of the LOPDGDD, for the following reasons:

Article 28 of the GDPR states the following:

"Art. 28, Responsible for treatment.

1. When a treatment is going to be carried out on behalf of a person in charge of the treatment, this will only choose a person in charge who offers sufficient guarantees to apply appropriate technical and organizational measures, so that the treatment is in accordance with the requirements of this Regulation and guarantees the protection of the rights of the interested party.

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2. The person in charge of treatment will not resort to another person in charge without prior authorization

in writing, specific or general, of the person in charge. In the latter case, the manager will inform the person in charge of any change foreseen in the incorporation or replacement of other processors, thus giving the controller the opportunity to oppose to these changes.

3. The treatment by the person in charge will be governed by a contract or other legal act with under the law of the Union or of the Member States, binding the person in charge with respect to the person in charge and establish the object, duration, nature and purpose of the treatment, the type of personal data and categories of interested parties, and the obligations and rights of the controller. Said contract or legal act shall stipulate, in particular, that the person in charge:

a) will process personal data only following documented instructions of the responsible, including with respect to transfers of personal data to a third country or an international organization, unless required to do so under of the Law of the Union or of the Member States that applies to the person in charge; in In such a case, the person in charge will inform the person in charge of that legal requirement prior to the treatment, unless such Law prohibits it for important reasons of interest public;

b) will guarantee that the persons authorized to process personal data have committed to respecting confidentiality or are subject to an obligation of confidentiality of a statutory nature;

c) take all necessary measures in accordance with article 32;

d) will respect the conditions indicated in sections 2 and 4 to resort to another treatment manager;

e) will assist the person in charge, taking into account the nature of the treatment, through appropriate technical and organizational measures, whenever possible, so that this can comply with its obligation to respond to requests that are intended to

the exercise of the rights of the interested parties established in chapter III;

f) will help the person in charge to guarantee the fulfillment of the obligations established in articles 32 to 36, taking into account the nature of the treatment and the information available to the person in charge;

g) at the choice of the person in charge, will delete or return all personal data once

Once the provision of treatment services ends, and will delete the copies

existing unless the retention of personal data is required under

of the Law of the Union or of the Member States;

h) will make available to the person in charge all the information necessary to demonstrate

compliance with the obligations established in this article, as well as

to enable and assist in the performance of audits, including inspections, by

part of the person in charge or of another auditor authorized by said person in charge.

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In relation to the provisions of letter h) of the first paragraph, the person in charge will inform

immediately to the controller if, in his opinion, an instruction violates this

Regulation or other provisions on data protection of the Union or of

the member states.

4. When a person in charge of the treatment resorts to another person in charge to carry out

certain treatment activities on behalf of the person in charge, will be imposed on

this other manager, by contract or other legal act established in accordance with the

Law of the Union or of the Member States, the same obligations of

data protection than those stipulated in the contract or other legal act between the

responsible and the person in charge referred to in section 3, in particular the provision of sufficient guarantees of application of appropriate technical and organizational measures so that the treatment is in accordance with the provisions of this Regulation. If that other processor breaches its data protection obligations, the initial processor will remain fully accountable to the controller treatment with regard to the fulfillment of the obligations of the other duty manager.

5. The treatment manager's adherence to a code of conduct approved by under article 40 or to an approved certification mechanism under article 42 may be used as an element to demonstrate the existence of guarantees enough referred to in sections 1 and 4 of this article.

6. Without prejudice to the fact that the person in charge and the person in charge of the treatment celebrate a individual contract, the contract or other legal act referred to in sections 3 and 4 of this article may be based, totally or partially, on the clauses standard contracts referred to in sections 7 and 8 of this article, inclusive when they form part of a certification granted to the person in charge or in charge of in accordance with articles 42 and 43.

7. The Commission may establish standard contractual clauses for the matters to which it is referred to in sections 3 and 4 of this article, in accordance with the procedure of examination referred to in article 93, paragraph 2.

8. A supervisory authority may adopt standard contractual clauses for the matters referred to in sections 3 and 4 of this article, in accordance with the coherence mechanism referred to in article 63.

9. The contract or other legal act referred to in sections 3 and 4 shall be recorded by written, including in electronic format.

10. Without prejudice to the provisions of articles 82, 83 and 84, if a person in charge of the

treatment infringes this Regulation by determining the purposes and means of the treatment, will be considered responsible for the treatment with respect to said treatment."

Of the documentation in the file and, specifically, in the contracts of responsible, in charge and sub-in charge that govern the relations between VDF, SOLIVESA and GRUPO ESTADICALL, respectively, VDF infers a possible

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violation of art. 28.1 of the RGPD, as there is no record of any measure implemented by VFD, in quality of responsible for the treatment, which allows monitoring the performance of the managers of the treatment now analyzed during the execution of the contract that avoids infringing actions such as those mentioned.

However, in relation to the claim now analyzed and admitted for processing by this Agency, we inform you of the initiation of the sanctioning procedure of reference number PS/00059/2020 against the one claimed on 02/26/2020 and resolved on 02/11/2021, for facts similar to those now analyzed, coinciding subject, fact and basis.

Likewise, we inform you that on February 11, 2021, the resolution of the procedure, which has been published on the website of the Agency <http://www.aepd.es>, where you can access the text of the Resolution.

In the aforementioned resolution it is stated that "... The facts exposed, suppose the commission by VDF of an infringement of article 48.1.b) of the LGT Law,

included in its Title III, which indicates the right: (...) b) To oppose receiving calls unwanted for commercial communication purposes that are carried out through systems different from those established in the previous letter and to be informed of this right". Yes Well, the aforementioned article does not explicitly configure such right, you must go to the data protection regulations already indicated in the previous Foundations in which the right of opposition is regulated: article 21 of the RGPD, and article 23 of the LOPDGDD. This Infraction is typified as "serious", in article 77.37) of said norm, which considers as such: "37. The serious violation of the rights of consumers and end users, as established in Title III of the Law and its development regulations". being able to be sanctioned with a fine of up to €2,000,000, in accordance with article 79.1.c) of the aforementioned LGT."

In this way, compliance with the provisions of art. 77.2 of the Regulation (EU) 2016/679 (General Data Protection Regulation), which establishes that the control authority before which the claim has been filed will report on the course and outcome of the claim.

Finally, article 31 of Law 40/2015, on the Legal Regime of the Public Sector (LRJSP), on the concurrence of sanctions, establishes:

"1. The facts that have been penalized or administratively may not be sanctioned, in the cases in which the identity of the subject, fact and foundation is appreciated."

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of the sanctions whose existence has been proven, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST:

☐ FILE the actions related to art. 48.1.b) of the LGT, in accordance with the provisions of art. 31 of the aforementioned LRJSP.

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☐ FILE the actions related to art. 28 of the RGPD, in accordance

with the provisions of art. 31 of the aforementioned LRJSP.

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

In accordance with the provisions of article 50 of the LOPDGDD, this

Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the

LOPDGDD, 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.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP,

may provisionally suspend the firm resolution in administrative proceedings if the

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Agency for Data Protection, presenting it through

Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica->

web/], or through any of the other registers provided for in art. 16.4 of the
aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the
documentation proving the effective filing of the contentious appeal-
administrative. If the Agency was not aware of the filing of the appeal
contentious-administrative within a period of two months from the day following the
notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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