

□ Procedure No.: PS/00450/2019

938-300320

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: Ms. A.A.A. (hereinafter, the claimant) dated May 14, 2019  
filed a claim with the Spanish Data Protection Agency. The  
claim is directed against Xfera Móviles, S.A. with NIF A82528548 (hereinafter, the  
claimed).

The claimant states that, on May 14, 2019, she received a  
call from a Masmovil client who stated that said entity had charged him  
in your bank account an invoice of yours, and therefore your data appears in it  
personal. He adds that he contacted the respondent and she told him that  
everything had been motivated by a mistake.

Provide the following documentation: screenshot (related to the charge made on 10  
May 2019) sent by the third party to the claimant.

In the position appears the name, surnames, DNI and telephone number of the  
claimant

SECOND: In view of the facts denounced in the claim and the  
documents provided by the claimant and the facts and documents of which he has  
had knowledge of this Agency, the Subdirectorate 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 confirmed that the data controller is the claimed party.

The respondent party is informed of this claim on the 7th of August 2019, requiring you to submit to this Agency, within a period of one month, information on the response given to the claimant when exercising the rights regulated in articles 15 to 22 of the RGPD, the causes that have motivated the incident that gave rise to the claim and the measures taken to prevent it from occurring.

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similar incidents occur, dates of implementation and controls carried out to check its effectiveness.

After the given period has elapsed, no response has been received from the claimed.

THIRD: On January 24, 2020, having not received any type of information to the requirement made within the framework of the previous actions of investigation by the claimed entity, the Director of the Spanish Agency of Data Protection agreed to initiate sanctioning proceedings against Xfera Móviles, S.A., by virtue of the powers established in art. 58.2 of the RGPD and in art 47, 64.2 and 68.1 of Organic Law 3/2018, of December 5, on Data Protection

Personal and Guarantee of Digital Rights (LOPDGDD), for the infringement of the article 5.1 f) of the RGPD, typified in article 83.5 a) of the RGPD and considered very serious in 72.1.a), for prescription purposes, and order Xfera Móviles S.A. , of in accordance with the provisions of article 58.2 d) of the RGPD, so that within ten days proceed to order the person in charge or in charge of the treatment, that the treatment operations comply with the provisions of the RGPD, setting a initial penalty of 70,000 euros (seventy thousand euros).

FOURTH: The agreement to start the sanctioning procedure was sent by means of electronic notification, Notific@, dated February 3, 2020, resulting in Expired ten days later.

#### FIFTH

: Formal notification of the start agreement, the claim at the time of the

This resolution has not submitted a brief of arguments, so it is application of what is stated in article 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations, which in its section f) establishes that in the event of not making allegations within the stipulated period on the content of the initiation agreement, it may be considered a proposal for resolution when it contains a precise statement about the responsibility imputed, reason why a Resolution is issued.

#### PROVEN FACTS

FIRST: The claimant on May 14, 2019, received a call from a client of Masmovil that explained to him that said entity had charged him to his bank account an invoice of yours, and therefore your personal data appears on it, and that it was put into contact with the claimed and she told him that everything had been motivated by a mistake.

SECOND: It appears in the screenshot file (related to the charge made on 10

May 2019) sent by the third party to the claimant.

In the position appears the name, surnames, DNI and telephone number of the claimant

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THIRD: On August 7, 2019, the respondent was informed

this claim, by means of electronic notification, Notific@, resulting

accepted on the 14th of the same month and year, not responding to this requirement.

FOURTH: On January 24, 2020, this sanctioning procedure was initiated by the

infringement of article 5.1 f) of the RGPD (integrity and confidentiality), being

notified. Not having submitted a brief of arguments.

FOUNDATIONS OF LAW

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

control authority, and as established in arts. 47 and 48.1 of the LOPDGDD, the

Director of the Spanish Data Protection Agency is competent to resolve

this procedure.

II

Organic Law 3/2018, of December 5, on the Protection of Personal Data

and guarantee of digital rights, in its article 4.11 defines the consent of the

interested party as "any manifestation of free will, specific, informed and

unequivocal by which the interested party accepts, either by means of a declaration or a

clear affirmative action, the treatment of personal data that concerns you".

In this sense, article 6.1 of the RGPD, establishes that “in accordance with the provisions of article 4.11 of Regulation (EU) 2016/679, means consent of the affected party, any manifestation of free will, specific, informed and unequivocal by which it accepts, either by means of a declaration or a clear affirmative action, the processing of personal data that concerns you”.

On the other hand, article 5 regulates the principles relating to the treatment of personal data, establishing that they must be:

a) processed in a lawful, loyal and transparent manner in relation to the interested party ("legality, loyalty and transparency");

b) collected for specific, explicit and legitimate purposes, and will not be processed subsequently in a manner incompatible with those purposes; according to article 89, paragraph 1, the further processing of personal data for archiving purposes in public interest, scientific and historical research purposes or statistical purposes are not deemed incompatible with the original purposes ("purpose limitation");

c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization");

d) accurate and, if necessary, updated; all measures will be taken reasonable to eliminate or rectify without delay the personal data that are inaccurate with respect to the purposes for which they are processed ("accuracy");

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e) maintained in a way that allows the identification of the interested parties

for no longer than is necessary for the purposes of data processing

personal; personal data may be kept for longer periods

provided that they are treated exclusively for archiving purposes in the public interest, purposes of scientific or historical research or statistical purposes, in accordance with article 89, paragraph 1, without prejudice to the application of technical and organizational measures measures imposed by this Regulation in order to protect the rights and freedoms of the interested party ("limitation of the conservation period");

f) treated in such a way as to ensure adequate security of the personal data, including protection against unauthorized or unlawful processing and against its loss, destruction or accidental damage, through the application of measures appropriate technical or organizational ("integrity and confidentiality").

The data controller will be responsible for compliance with the provided in paragraph 1 and able to demonstrate it ("proactive responsibility").

### III

It is considered that the facts denounced, that is, the visualization of the data of the claimant by an outside third party, allow verifying that the claimed has not been able to guarantee adequate security in the treatment of the personal data of the claimant, thus incurring in the violation of article 5.1 f) of the RGPD, which governs the principles of data integrity and confidentiality personal data, as well as the proactive responsibility of the data controller demonstrate compliance.

### IV

Article 72.1.a) of the LOPDGDD states that "according to what is established Article 83.5 of Regulation (EU) 2016/679 are considered very serious and Infractions that suppose a substantial violation will prescribe after three years. of the articles mentioned therein and, in particular, the following:

a) The processing of personal data violating the principles and guarantees

established in article 5 of Regulation (EU) 2016/679

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Article 58.2 of the RGPD provides the following: "Each supervisory authority shall have all of the following corrective powers listed below:

b) sanction any person responsible or in charge of the treatment with

warning when the processing operations have violated the provisions of this Regulation;

d) order the person in charge or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate,

in a certain way and within a specified period;

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i) impose an administrative fine under article 83, in addition to or in

instead of the measures mentioned in this paragraph, depending on the circumstances of each particular case;

SAW

This infraction can be sanctioned with a fine of €20,000,000 as

maximum or, in the case of a company, an amount equivalent to 4% as

maximum of the overall annual total turnover of the previous financial year,

opting for the highest amount, in accordance with article 83.5 of the RGPD.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established in article 83.2 of the RGPD:

As aggravating the following:

In the present case we are dealing with unintentional negligent action, but

identified significant (article 83.2 b)

Basic personal identifiers (name,

surnames), according to article 83.2 g)

Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE XFERA MÓVILES, S.A., with NIF A82528548, for a

infringement of Article 5.1.f) of the RGPD, typified in Article 83.5 of the RGPD, a

fine of €70,000 (seventy thousand euros).

SECOND: ORDER Xfera Móviles, S.A. with NIF A82528548, in accordance with

provided for in article 58.2 d) of the RGPD, so that within ten days proceed to

order the person in charge or in charge of the treatment, that the operations of

treatment comply with the provisions of the RGPD.

THIRD: NOTIFY this resolution to XFERA MÓVILES, S.A.

FOURTH: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, through its entry, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency

Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in the executive period.



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Received the notification and once executed, if the date of execution is  
is between the 1st and 15th of each month, both inclusive, the term to carry out the  
voluntary payment will be until the 20th day of the following month or immediately after, and if  
is between the 16th and last day of each month, both inclusive, the term of the  
payment will be until the 5th of the second following month or immediately after.

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

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 period of

month 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, the firm resolution may be provisionally suspended in administrative proceedings

if the interested party expresses his intention to file a contentious appeal-

administrative. If this is the case, the interested party must formally communicate this made by writing to the Spanish Agency for Data Protection, introducing him to the agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also must transfer to the Agency the documentation that proves the effective filing of the contentious-administrative appeal. If the Agency were not aware of the filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, it would end the precautionary suspension.

Electronic Registration of

through the

Sea Spain Marti

Director of the Spanish Data Protection Agency

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