

□ File No.: EXP202100283

## RESOLUTION OF SANCTIONING PROCEDURE

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

### BACKGROUND

FIRST: D. A.A.A., in the name and representation of Ms. B.B.B. (hereinafter, the complaining party) on June 4, 2021 filed a claim with the Agency Spanish Data Protection. The claim is directed against ORANGE ESPAGNE, S.A.U. with NIF A82009812 (hereinafter, the claimed party or Orange).

The reasons on which the claim is based are the following:

The complaining party states that a contract was formalized with Orange without its consent or knowledge, and your personal data was included in the systems common credit information as a result of non-payment of these contracted services fraudulently.

Along with the claim, the following documentation is provided, among others:

Complaint before the General Directorate of the Police unit \*\*\*LOCATION.1-Center. Attestation No. \*\*\* ATTESTATE.1 dated July 24, 2019, in which the states:

"That he received a call from the Legal Department of Jazztel on 07/22/2019, notifying you of the non-payment of several fees for contracting several telephone lines for a total of XXX euros.

That she informed said department that she did not have nor had she ever contracted these lines and that therefore someone had usurped his identity.

That they have provided you with the invoices that cover the months of May to July 2018.

That their name and ID appear on them, but the lines were installed in another

home.

That the contracted lines are \*\*\*TELEPHONE.1 and the mobile line \*\*\*TELEPHONE.2”.

Invoices issued by Jazztel dated: 07/12/2018 for an amount of XXX.XX euros; of 06/12/2018 of XXX.XX euros; of 04/12/2018 of XX.XX euros and of 05/12/2018 of XX.XX euro.

Email dated July 25, 2019, sent by \*\*\*EMAIL.1 to

\*\*\*EMAIL.2. Attached complaint (Certificate: 5919/19) made in relation to the

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amounts in arrears claimed by Jazztel (Orange), indicating that it has not been the owner never from Jazztel (Orange) lines and could be phishing.

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

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

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

Orange, to proceed with its analysis and inform this Agency within the period of

one month, of the actions carried out to adapt to the requirements established in

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 July 12, 2021 as

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

On August 9, 2021, this Agency received a written response

indicating that: "In March 2018, a contract was made with Jazztel (Orange) on behalf of the

claimant a fixed line and fiber associated with the number \*\*\*TELEPHONE.1 as well as rate for the mobile line \*\*\*TELEPHONE.2 together with a mobile terminal. On the 22nd of July 2019, a call is received in which the owner of the line indicates that she does not recognize the contracted services claiming to have suffered an identity theft, explaining the need to submit the complaint to the Corps and Forces of State Security that exposes the facts object of the usurpation to be able to classify the contract as irregular and make the necessary adjustments, protocol established to detect cases of irregular hiring.

Notwithstanding the foregoing, and although it is true that the contracting of services both the JAZZTEL and ORANGE brands had a complete appearance of legality, as evidenced by the supporting documents of the contracts attached to the present, is also the fact that, after statements exposed by the complainant, the hiring in both merchants (JAZZTEL and ORANGE), ordering the corresponding adjustments in favor of the claimant, annulling the debt presented by the irregularly contracted services.

Furthermore, this Agency is informed that, as soon as the received this request for information, all actions have been stopped of recovery that could be carried out to date, as well as verified by this company that the data of the claimant does not appear registered in patrimonial solvency files, proof of this is attached as Document No. 3 and Document No. 4, certificates of non-inclusion in files of solvency.

All of the foregoing has been brought to the attention of the claimant by means of communication, a copy of which is attached as Document No. 5".

THIRD: On December 13, 2021, in accordance with article 65 of

the LOPDGDD, the claim presented by the complaining party was admitted for processing.

FOURTH: On April 25, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate disciplinary proceedings against the claimed party,

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in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1,

of the Common Administrative Procedure of Public Administrations (in

hereinafter, LPACAP), for the alleged infringement of Article 6.1 of the GDPR, typified in

Article 83.5 of the GDPR.

FIFTH: Notified of the aforementioned start-up agreement in accordance with the rules established in

Law 39/2015, of October 1, on the Common Administrative Procedure of

Public Administrations (hereinafter, LPACAP), the claimed party submitted a written

of allegations in which, in summary, he stated: that it is reiterated in the allegations

previously presented and states that it should be noted that all contracts

on behalf of the claimant have been carried out through a procedure of

portability.

On March 25, 2018, the contracting took place in the name of the claimant of the

following services under the JAZZTEL brand: - Fixed line and fiber associated with the

numbering \*\*\*PHONE.1. - Rate for the mobile line \*\*\*TELEPHONE.2 together with a

mobile terminal.

Contracting in Jazztel is done on the TELEVENTA channel, using an SMS

Certificate that includes attached the proof of sale and the recording of the

recruitment or VPT. Said hiring consisted of two portabilities from

the telecommunications company Vodafone: the fixed line (\*\*TELEPHONE.1) and the mobile (\*\*PHONE.2). Attached as Document No. 1 the certificate issued by DIGITEL ON TRUST SERVICES SL as a third party verifier of the contract.

Likewise, on May 25, 2018, the contracting takes place, in the name of the claimant, of the following services in the ORANGE brand: - Fee associated with the numbering \*\*PHONE.2. - Fixed line and fiber associated with \*\*TELEPHONE.1. It is about, again, from a contract on the TELEVENTA channel, in this case from Orange. This contracting also consists of two ports coming from Jazztel. consists also the proof of sale and the recording of the contract (VPT), since sent as documentation annexed to the allegations of this party to the request of information.

Therefore, both contracts derive from portability, so the procedure, as already mentioned, is stipulated by the regulations sectorial. In both cases, the personal data was compared with the person contracting party and identity verification was carried out through third parties (VPT), scrupulously complying with Circular 1/2009, in the interest of this party

specify that: - It was expressly confirmed with the claimant: the date of the hiring; Name and surname; home; National Identity Document (in go ahead, ID); and contracted product. - It indicates that the call is being recorded.

- The recording was made by DIGITEL ON TRUST SERVICES SL as a third party independent verifier.

The call has sufficient quality to allow the verifier to understand and the affirmative answers of the contracting party. - It is provided as Document No. 2 the recording where the contracting party itself is the one that indicates its full name and DNI, as they appear in the contractual documentation and in the certificates issued by DIGITEL ON TRUST SERVICES SL.

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Therefore, it is possible to affirm that the procedure was scrupulously followed described in the referenced Circular 1/2009.

In the internal records of this company, on July 22, 2019, the reception of a call for which the owner of the line indicates that she does not recognize the contracted services claiming to have suffered identity theft. Given this, Orange explains the need to receive a copy of the complaint in advance submitted by the claimant to the State Security Corps and Forces, in the one that exposes the facts object of the supposed usurpation to be able to catalog the recruitment as irregular and make the necessary adjustments, protocol established in Orange to detect cases of irregular hiring. This complaint is not contributes. The claimant does not contact again or respond to the instructions given to her request in order to proceed to classify the contracts as irregular. This fact, that Orange applies a previously established security procedure that requires the documentary accreditation of a possible illicit - through a complaint - prior to proceeding with the resolution and cancellation of a contract, is the one that the Agency includes in the Commencement Agreement as an aggravating circumstance. As the Agency will understand, prior to proceed to a contractual resolution with a consumer, of a service considered basic in many aspects, Orange must have a minimum guarantee documentary proof that there is a valid and sufficient motive such as the commission of fraud. It is precisely because of this obligation of diligence that Orange cannot cancel the services contracted by the claimant for a mere private manifestation that does not

It is accompanied by evidence or any document. The use of some statements by an unproven party as an aggravating circumstance of a sanction by the Agency contradicts legal logic and lacks foundation, and must be said dismissed argument. The aforementioned has been brought to the attention of of the claimant by means of communication, a copy of which has been attached as document attached to the allegations in this part to the information request.

There is evidence of a complaint filed with the General Directorate of the Police dependency

\*\*\* LOCATION.1 Center, with certificate no. \*\*\* CERTIFICATE.1 dated July 24, 2019. Said complaint is not sent to Orange by the claimant at any time.

The claimant has not provided any documentary evidence to prove the referral to this part of the said complaint. It has not been proven by the claimant, therefore, the referral of the complaint to this party: Orange is aware of it with the AEPD information requirement dated July 12, 2021.

The claimant files, on June 4, 2021, a claim before the Agency Spanish Data Protection. The claim is directed against ORANGE ESPAGNE, S.A.U. 9º.- Orange receives the information request from the AEPD previously mentioned on July 12, 2021, having knowledge of the commission of fraud at that very moment and not before, as is extracted from the documentation provided in this procedure. At that time, upon completion with the requirement of having knowledge of the complaint filed, the pertinent measures to classify the contract as fraudulent, in accordance with with the internal protocols that had been informed to the complainant, and not by the fact that the facts had been brought to the attention of the AEPD.

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That is why the protocol is activated and information is requested from the department of

Fraud regarding the reported contracts, the irregularity of the

contracts and they are classified as fraudulent, proceeding to carry out

the economic adjustments and execute the deregistration due to fraud.

It has been verified by Orange that the claimant's data is not registered in

patrimonial solvency files, as has been accredited through the

certificates of non-inclusion in solvency files provided with the allegations of

this part to the information request. The factual account allows us to conclude that

Orange carried out lawful personal data processing, in accordance with the protocol

established and the procedure - mandatory - stipulated by the Circular

1/2009 for portability; as well as that, as soon as he became aware of the

existence of fraud (with the annex to the complaint in the request for information

of the AEPD of July 12, 2021), acted diligently accordingly.

In this case, not only has compliance with the protocol been accredited

established and the applicable regulations, but the existence of a strict

control, before and after contracting, the establishment of measures before and after

posteriori, as well as the existence of specific measures aimed at avoiding

previously these practices (already indicated by this part in the allegations to the

information requirement of the AEPD): - Controls in requests for

registration/portability/flight migration: rules applied in Scoring. Therefore, if before

of the activation is rejected, the registration would not take place. - Daily checks on orders

processed from CCNNPPP (teleshopping and eshop). As in the previous case,

if it is rejected before activation, there is no registration. - Audits on platforms

FIDE suppliers, by supplier analysts, who report at the time of the



detection and weekly. - Periodic checks of unpaid customers or concentration of bank accounts. - Management of CRMs (systems of the company) of claims, escalated by different functional groups for unrecognized lines/orders. - Daily registration validation controls and identity portability, verifying in the census if the NIE or NIF matches the name and surname that appear in the application. - Management of claims for inclusion in patrimonial solvency files. That is why it is not possible appreciate Orange's guilt in the present assumption of fact, not being legally valid the assessment made by the Agency of commission of infringement for this mercantile

Orange has carried out lawful data processing, as long as it has evidenced through compliance with the protocol provided for in Circular 1/2009 data processing correctly legitimized in accordance with article 6.1 GDPR.

For all of the above, Orange: REQUESTS the Spanish Agency for Data Protection that this document is considered as presented, if it is admitted, considers as formulated the previous allegations and, after the appropriate procedures, issue a resolution through which indicates the file of the Procedure or completes the procedure by means of a warning and, ultimately, if it considers that the imposition of a sanction, moderate or modulate its proposal included in the Commencement Agreement notified to Orange, based on the arguments expressed in the body of this document of allegations”.

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SIXTH: On May 26, 2022, the procedure instructor agreed

perform the following tests:

The claim filed by the

claimant and its documentation, the documents obtained and generated during the

phase of admission to processing of the claim. 2. Likewise, it is considered reproduced to

probative effects, the allegations to the agreement to start the procedure

referenced sanctioner, presented by Orange, and the documentation that they

accompanies.

Of the actions carried out in this procedure and of the documentation

in the file, the following have been accredited:

#### PROVEN FACTS

FIRST: The claimant states that on July 22, 2019, she received a

call from the legal department of the claimed party notifying them of the non-payment of

several invoices for contracting several telephone lines for a total of XXX euros,

that I inform said department that she did not have nor had she ever contracted these

lines and therefore someone had usurped his identity.

SECOND: The claimant has provided a copy of the complaint that she filed in the

Police station for these facts

Complaint before the General Directorate of the Police unit \*\*\*LOCATION.1-

Center. Attestation No. \*\*\* ATTESTATE.1 dated July 24, 2019, in which the

states:

"That he received a call from the Legal Department of Jazztel on 07/22/2019,

notifying you of the non-payment of several fees for contracting several telephone lines

for a total of XXX euros.

That she informed said department that she did not have nor had she ever contracted

these lines and that therefore someone had usurped his identity.

That they have provided you with the invoices that cover the months of May to July 2018.

That their name and ID appear on them, but the lines were installed in another home.

That the contracted lines are \*\*\*TELEPHONE.1 and mobile line \*\*\*TELEPHONE.2”.

THIRD: The claimant has provided the email dated July 25,

2019, submitted by \*\*\*EMAIL.1 to `\*\*\*EMAIL.2`. Attach complaint (Certificate:

5919/19) made in relation to the amounts in arrears claimed by Jazztel,

indicating that it has never been the owner of the Jazztel lines and could be a identity fraud.

FOURTH: Orange states that on March 25, 2018, the contracting of

name of the claimant of the following services in the JAZZTEL brand: - Fixed line

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and fiber associated with the numbering \*\*\*TELEPHONE.1. - Rate for the mobile line

\*\*\*PHONE.2 together with a mobile terminal.

Contracting in Jazztel is done on the TELEVENTA channel, using an SMS

Certificate that includes attached the proof of sale and the recording of the

recruitment or VPT. Said hiring consisted of two portabilities from

the telecommunications company Vodafone: the fixed line (\*\*\*TELEPHONE.1) and the

mobile (\*\*\*PHONE.2). Attached as Document No. 1 the certificate issued by

DIGITEL ON TRUST SERVICES SL as a third party verifier of the contract.

Likewise, on May 25, 2018, the contracting takes place, in the name of the

claimant, of the following services in the ORANGE brand: - Fee associated with the

numbering \*\*\*PHONE.2. - Fixed line and fiber associated with \*\*\*TELEPHONE.1. It is about, again, from a contract on the TELEVENTA channel, in this case from Orange. This contracting also consists of two ports coming from Jazztel. consists also the proof of sale and the recording of the contract (VPT), since sent as documentation annexed to the allegations of this party to the request of information.

FIFTH: Orange acknowledged in the response brief that on July 22, 2019, the reception of a call for which the owner of the line indicates not to recognize contracted services claiming to have suffered an identity theft of information.

SIXTH: Orange states that it is not aware of the complaint filed by the claimant before the police, until she receives the request for information from this Agency on July 12, 2021.

SEVENTH: On June 27, 2022, a resolution proposal was formulated, proposing that the Director of the Spanish Data Protection Agency sanction ORANGE ESPAGNE, S.A.U. with NIF A82009812, for the alleged violation of article 6.1) typified in article 83.5.a) of the aforementioned GDPR. with a fine of 70,000 euros (seventy thousand euros).

EIGHTH: On June 30, 2022, they requested an extension of the term and on the 5th of same month and year required a copy of the file and on July 21, 2022 made allegations to the proposed resolution in which, in summary, stated that it reiterates in the allegations previously presented, that it was not certifies that Orange was aware of the complaint before the request for information from the AEPD and that Orange has acted with due diligence, trying to the data of the contracting party in a legitimate manner and in accordance with the procedure established, which complies with all the requirements required by Circular 1/2009,

assuming therefore a correctly legitimized data processing of

in accordance with article 6.1 of the GDPR.

On the other hand, that the sanction included in the Resolution Proposal is, in all case, disproportionate, taking into account the circumstances and content of the alleged violations, which Orange strongly denies.

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## FUNDAMENTALS OF LAW

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), grants each control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Protection Agency of data.

Likewise, article 63.2 of the LOPDGDD determines that: "Procedures processed by the Spanish Data Protection Agency will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures."

II

The defendant is accused of committing an infraction for violation of article 6

of the RGPD, "Legacy of the treatment", which indicates in its section 1 the assumptions in which that the processing of data by third parties is considered lawful:

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

conditions:

a) the interested party gave his consent for the processing of his personal data

for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party

is part of or for the application at the request of the latter of pre-contractual measures;

c) the processing is necessary for compliance with a legal obligation applicable to the

responsible for the treatment;

d) the processing is necessary to protect vital interests of the data subject or of another

Physical person;

e) the treatment is necessary for the fulfillment of a mission carried out in the interest

public or in the exercise of public powers conferred on the data controller;

f) the treatment is necessary for the satisfaction of legitimate interests pursued

by the person in charge of the treatment or by a third party, provided that on said

interests do not outweigh the interests or fundamental rights and freedoms of the

interested party that require the protection of personal data, in particular when the

interested is a child. The provisions of letter f) of the first paragraph shall not apply.

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

functions".

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

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

The basic principles for the treatment, including the conditions for the to)

consent in accordance with articles 5,6,7 and 9."

The Organic Law 3/2018, of Protection of Personal Data and Guarantee of the Digital Rights (LOPDGDD) in its article 72, under the heading "Infractions considered very serious" provides:

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

(...)

to)

The processing of personal data without the fulfillment of any of the conditions of legality of the treatment established in article 6 of Regulation (EU) 2016/679."

II

In response to the allegations made by the respondent entity, it must be reiterated, as stated in the proposed resolution that the documentation that works in the file offers evidence that the claimed party violated article 6.1 of the GDPR, since it processed the personal data of the complaining party without had no legitimacy to do so. The personal data was incorporated into the

information systems of the company, without having proven that there was contracted legitimately, had your consent for the collection and subsequent processing of your personal data, or there is any other cause that make the treatment carried out lawful.

Well, with respect to the facts that are the subject of this claim,

We must point out that the defendant in its allegations states that <<it requests information from the Fraud department regarding the reported contracts, the irregularity of the contracts is confirmed and they are classified as fraudulent, proceeding to make the economic adjustments and execute the deregistration for fraud>>. Hence, Orange concludes that the registration was fraudulent that the reported lines have been classified as fraudulent contracts, and the debts associated with them have been forgiven.

In this case, although the defendant says that the portability was recorded and that it was made through a third party verifier, does not provide the recording or elements that allow verification that the line was ported and that a third party intervened in the portability checker.

Therefore, in the present case, it is proven that a third party contracted on behalf of of the claimant a service package with the claimed party, appearing in the [www.aepd.es](http://www.aepd.es)

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invoices provided by the claimant at an address other than his own. So the claimed, did not verify the personality of the person who hired, did not take the precautions necessary for these events not to occur.



It should be noted that it was not until the receipt of the claim transferred by this Agency when the claimed party reacted and proceeded to catalog the contracting as irregular, making the necessary economic adjustments so that it does not appear any type of debt associated with non-payment of contracted services irregular name of the claimant and verified that her data is not registered in patrimonial solvency files.

The lack of diligence displayed by the entity in the fulfillment of the obligations imposed by the personal data protection regulations is, therefore, evident. Diligent compliance with the principle of legality in data processing of third parties requires that the controller be in a position to prove it (principle of proactive responsibility).

Based on the available evidence, it is estimated that the conduct of the claimed party could violate article 6.1 of the GDPR and may be constituting the offense classified in article 83.5.a) of the aforementioned Regulation 2016/679.

In this sense, Recital 40 of the GDPR states:

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

IV.

The determination of the sanction that should be imposed in the present case requires

observe the provisions of articles 83.1 and 2 of the GDPR, precepts that,

respectively, provide the following:

"1. Each control authority will guarantee that the imposition of fines

administrative proceedings under this article for violations of this

Regulations indicated in sections 4, 9 and 6 are in each individual case

effective, proportionate and dissuasive."

"2. Administrative fines will be imposed, depending on the circumstances of each

individual case, in addition to or in lieu of the measures contemplated in

Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case shall be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the

nature, scope or purpose of the processing operation in question, as well as

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

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have suffered;

b) intentionality or negligence in the infraction;

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

settle the damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the treatment, habi-

gives an account of the technical or organizational measures that have been applied by virtue of the

articles 25 and 32;

e) any previous infringement committed by the controller or processor;

- f) the degree of cooperation with the supervisory authority in order to remedy the infringement and mitigate the possible adverse effects of the infringement;
  - g) the categories of personal data affected by the infringement;
  - h) the way in which the supervisory authority became aware of the infringement, in particular whether the person in charge or the person in charge notified the infringement and, if so, in what extent;
  - i) when the measures indicated in article 58, paragraph 2, have been ordered previously against the person in charge or the person in charge in relation to the same matter, compliance with said measures;
  - j) adherence to codes of conduct under article 40 or to certification mechanisms.
- fications approved in accordance with article 42, and
- k) any other aggravating or mitigating factor applicable to the circumstances of the case, as the financial benefits obtained or the losses avoided, directly or indirectly.
- mind, through infraction.”

Within this section, the LOPDGDD contemplates in its article 76, entitled "Sancio- and corrective measures":

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

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

- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of data processing. personal information.
- c) The benefits obtained as a consequence of the commission of the infraction.
- d) The possibility that the conduct of the affected party could have led to the commission

of the offence.

e) The existence of a merger by absorption process subsequent to the commission of the violation, which cannot be attributed to the absorbing entity.

f) The affectation of the rights of minors.

g) Have, when it is not mandatory, a data protection delegate.

h) Submission by the person responsible or in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are controversies between those and any interested party.

3. It will be possible, complementary or alternatively, the adoption, when appropriate, of the remaining corrective measures referred to in article 83.2 of the Regulation (EU) 2016/679.”

In accordance with the precepts transcribed, for the purpose of setting the amount of the sanction of fine to be imposed on the entity claimed as responsible for a classified offense in article 83.5.a) of the GDPR and 72.1 b) of the LOPDGDD, in an initial assessment,

The following factors are considered concurrent in this case:

As aggravating circumstances:

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That the facts that are the subject of the claim are attributable to a lack of diligence of the claimed party (article 83.2.b, GDPR), the claimed party when it had knowledge of the fraud did not act and continued to process the claimant's data.

The Judgment of the National Court of 10/17/2007 (rec. 63/2006), in which,

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

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

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

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

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FIRST: IMPOSE ORANGE ESPAGNE, S.A.U. with NIF A82009812, for one violation of Article 6.1 of the GDPR, typified in Article 83.5 of the GDPR, a fine

of 70,000 euros (seventy thousand euros).

SECOND: NOTIFY this resolution to ORANGE ESPAGNE, S.A.U. with  
NIF A82009812.

THIRD: Warn the penalized person that they must make the imposed sanction effective

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

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

Common of Public Administrations (hereinafter LPACAP), within the payment period

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, by means of its income, 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, open in the name of the Agency

Spanish Data Protection Agency at the bank CAIXABANK, S.A.. In the event

Otherwise, it will proceed to its collection in the executive period.

Once the notification has been received and once executed, if the execution date is

between the 1st and 15th of each month, both inclusive, the term to make the payment

voluntary will be until the 20th day of the following or immediately following business month, and if

between the 16th and the last day of each month, both inclusive, the payment term

It will be until the 5th of the second following or immediately following business month.

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 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 reversal before the

Director of the Spanish Agency for Data Protection within a period of one month from

count 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 for in article 46.1 of the referred Law.

Finally, it is noted 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 through writing addressed to the Spanish Data Protection Agency, presenting it through of the Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registries 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

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contentious-administrative proceedings within a period of two months from the day following the Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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