

□ Procedure No.: PS/00192/2021

## 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 July 27, 2021, the Director of the Spanish Agency for  
Data Protection agreed to initiate a sanctioning procedure against Vodafone Spain,  
S.A.U. with NIF A80907397 which is transcribed below:

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Procedure no.: PS/00192/2021

## BACKGROUND

FIRST: D.A.A.A. (hereinafter, the complaining party) dated December 21,  
2020 filed a claim with the Spanish Data Protection Agency.

The claim is directed against Vodafone España, S.A.U. with NIF A80907397 (in  
hereafter, the party claimed).

The complaining party states that on October 19, 2020, around 6:38 p.m.

approximately hours, you receive a phone call from the line number

\*\*\*TELEPHONE.1, presenting itself as the Legal Department of the company

claimed, in said call they indicate that they are the holder of a Pack contracted with  
them being the following:

Line number \*\*\*TELÉFONO.2, Vodafone unlimited super.

Line number \*\*\*TELEPHONE.3, Fixed line.

Line number \*\*\*TELEPHONE.4, Vodafone Tv.

That they also demand the payment of three outstanding monthly payments, of the contracting said Pack.

That in said call he states to the claimed entity that said Pack has not been hired by him, nor authorized by him, so he tells them to send him the invoices pending payment previously mentioned, to contribute them in the complaint of the events described.

That being on October 19, 2020, at 19:46 p.m., you receive by email the aforementioned invoices.

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2/9

Line number \*\*\*TELEPHONE.2, does not recognize it as its own.

Line number \*\*\*TELEPHONE.3, does not recognize it as its own.

Line number \*\*\*TELEPHONE.4, does not recognize it as its own

That the claimed party informs him that those Lines were ported to his company in the month of May 2020 and that in the month of August 2020, were covers to another company, which they do not know.

That the invoices show the address located in CL. \*\*\*ADDRESS 1; which not acknowledge as their own

That the account number \*\*\*ACCOUNT.1 appears on the invoices, which he does not recognize as own.

That your name appears on the invoices, being (...) (the second surname not appearing), and the DNI number \*\*\*DNI.1; which it does recognize as its own.

Provide the following documentation:

- Complaint filed on October 19 before the police for the hiring of his name of telephone lines that he does not acknowledge having made and whose non-payment of invoices generated a debt that is claimed.

- Copy of three invoices for the services that you do not acknowledge having contracted.

- Claim made on October 27 to the party claimed by the hiring without your consent of telephony services.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), said claim was transferred to the claimed party, to to proceed with its analysis and inform this Agency within a month of the actions carried out to adapt to the requirements set forth in the regulations of Data Protection.

No response has been received to this letter.

THIRD: On April 23, 2021, the Director of the Spanish Agency for Data Protection agreed to admit for processing the claim presented by the party claimant.

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3/9

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 LOPDPGDD, the Director of the Spanish Data Protection Agency is competent to resolve

this procedure.

## II

The exposed facts may imply, on the part of the defendant, the commission of an infringement of article 6.1 of the RGPD that establishes the assumptions that allow consider the processing of personal data lawful.

Article 6 of the RGPD, "Legality of the treatment", details in its section 1 the assumptions in which the processing of third party data is considered lawful:

"1. The treatment will only be lawful if it meets at least one of the following conditions:

- a) the interested party gave their consent for the processing of their data personal for one or more specific purposes;
  - b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of the latter of measures pre-contractual;
- (...)"

The infraction for which the claimed entity is held responsible is typified in article 83 of the RGPD that, under the heading "General conditions for the imposition of administrative fines", states:

"5. Violations of the following provisions will be sanctioned, in accordance with 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 global total annual turnover of the previous financial year, opting for the largest amount:

- a) The basic principles for the treatment, including the conditions for the consent under articles 5,6,7 and 9."

The Organic Law 3/2018, on the Protection of Personal Data and Guarantee of the

Digital Rights (LOPDGDD) in its article 72, under the heading "Infringements

considered very serious" provides:

"1. Based on the provisions of article 83.5 of the Regulation (U.E.)

2016/679 are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in it and, in

particularly the following:

(...)

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4/9

a) The processing of personal data without the concurrence of any of the

conditions of legality of the treatment established in article 6 of the

Regulation (EU) 2016/679."

In the present case, it is proven that a third party contracted on behalf of the

claimant a package of services with the claimed party, appearing on the invoices

provided by the claimant a bank account and an address other than his own. So

because, the claimed, did not verify the personality of the one who hired, did not take the precautions

necessary to prevent these events from occurring.

It should be noted that the respondent has not responded to this

Agency, to the request for information.

According to the evidence currently available

procedural and without prejudice to what results from the investigation of the procedure, it is estimated

that the conduct of the complained party could violate article 6.1 of the RGPD

being able to constitute the infraction typified in article 83.5.a) of the aforementioned

Regulation 2016/679.

In this sense, Recital 40 of the GDPR states:

“(40) For the processing to be lawful, the personal data must be processed with the consent of the interested party or on some other legitimate basis established in accordance with Law, either in these Regulations or by virtue of another Law of the Union or of the Member States referred to in this Regulation, including the need to comply with the legal obligation applicable to the person responsible for the treatment or the need to execute a contract in which the interested party is a party or in order to take measures at the request of the interested party prior to the conclusion of a contract.”

III

The determination of the sanction to be imposed in this case requires observe the provisions of articles 83.1 and 2 of the RGPD, precepts that, respectively, provide the following:

"1. Each control authority will guarantee that the imposition of fines administrative actions under this article for violations of this

Regulation indicated in sections 4, 9 and 6 are in each individual case effective, proportionate and dissuasive.”

"two. Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or as a substitute for the measures contemplated in the Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine administration and its amount in each individual case will 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 such as the number of interested parties affected and the level of damages that have suffered;

- b) intentionality or negligence in the infringement;
- c) any measure taken by the controller or processor to pa-  
allocate 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,  
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 person in charge or the person in charge of the treatment;
- 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 person in charge or the person in charge notified the infringement and, in such case, in  
what measure;
- i) when the measures indicated in article 58, section 2, have been ordered  
given previously against the person in charge or the person in charge in question in relation  
with the same matter, compliance with said measures;
- j) adherence to codes of conduct under article 40 or mechanisms of  
certification approved in accordance with 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 infringement.”

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

"1. The penalties provided for in sections 4, 5 and 6 of article 83 of the Regulation (EU) 2016/679 will be applied taking into account the graduation criteria established in section 2 of the aforementioned 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 treatment of personal information.
- c) The profits obtained as a result of committing the offence.
- d) The possibility that the conduct of the affected party could have induced the commission of the offence.

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6/9

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

f) Affectation of the rights of minors.

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

h) Submission by the person in charge or person in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are disputes between them 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 transcribed precepts, and without prejudice to what results from the instruction of the procedure, in order to set the amount of the sanction of fine to impose on the claimed entity as responsible for an infraction typified in the article 83.5.a) of the RGPD and 72.1 b) of the LOPDGDD, in an initial assessment,

The following factors are considered concurrent in this case:

As aggravating factors:

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That the facts object of the claim are attributable to a lack of diligence of the claimed party (article 83.2.b, RGPD).

The degree of cooperation with the supervisory authority in order to remedy to the infringement and mitigate the possible adverse effects of the infringement (article 83.2f, GDPR).

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

It is appropriate to graduate the sanction to be imposed on the claimed party and set it at the amount of €70,000 for the infringement of article 83.5 a) RGPD and 72.1b) of the LOPDGDD.

Therefore, in accordance with the foregoing, by the Director of the Spanish Data Protection Agency.

HE REMEMBERS:

FIRST: INITIATE PUNISHMENT PROCEDURE against VODAFONE SPAIN,

S.A.U. with NIF A80907397, for the alleged infringement of article 6.1) typified in the

article 83.5.a) of the aforementioned RGPD.

SECOND: APPOINT D.A.A.A. as instructor. and as secretary to Ms. B.B.B.,

indicating that any of them may be challenged, where appropriate, in accordance with the provisions

established in articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime

Public Sector Co (LRJSP).

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7/9

THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the

claim filed by the claimant and his documentation, the documents

obtained and generated by the General Subdirectorate for Data Inspection.

FOURTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1

October, of the Common Administrative Procedure of the Public Administrations, the

sanction that could correspond would be for the violation of article 6.1 of the RGPD,

typified in article 83.5 a) of the RGPD, the corresponding sanction would be a

fine for an amount of 70,000 euros (seventy thousand euros) without prejudice to what results

of instruction.

FIFTH: NOTIFY this agreement to VODAFONE ESPAÑA, S.A.U. with NIF

A80907397 granting him a hearing period of ten business days to formulate

the allegations and present the evidence it deems appropriate. In his writing of

allegations you must provide your NIF and the procedure number that appears in the

header of this document.

If within the stipulated period it 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, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, in the event that the sanction to be imposed was a fine, it may recognize its responsibility within the term granted for the formulation of allegations to this initial agreement; it which will entail a reduction of 20% for the sanction to be imposed in this proceeding, equivalent in this case to fourteen thousand euros (€14,000).

With the application of this reduction, the amount of the sanction would be established in fifty-six thousand euros (€56,000), resolving the procedure with the imposition of this sanction.

Similarly, you may, at any time prior to the resolution of this procedure, carry out the voluntary payment of the proposed sanction, in accordance with the provisions of article 85.2 LPACAP, which will mean a reduction of 20% of the amount of the same, equivalent in this case to fourteen thousand euros (€14,000), for the imputed infraction. With the application of this reduction, the The amount of the penalty would be established at fifty-six thousand euros (€56,000) and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the penalty is cumulative with the corresponding apply for the acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. The 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 it were appropriate to apply both reductions, the amount of the penalty would be set at forty-two thousand euros (€42,000).

In any case, the effectiveness of any of the two reductions mentioned will be conditioned to the abandonment or renunciation of any action or resource in via

administrative against the sanction.

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8/9

In case you chose to proceed to the voluntary payment of any of the amounts indicated above, 56,000 euros or 42,000 euros, you must make it effective by depositing it in account number ES00 0000 0000 0000 0000 0000 open to name of the Spanish Data Protection Agency at CAIXABANK Bank, 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 is welcomed.

Likewise, you must send proof of payment to the General Subdirectorate of Inspection to proceed with the procedure in accordance with the quantity entered.

The procedure will have a maximum duration of nine months from the date of the start-up agreement or, where appropriate, of the draft start-up agreement.

Once this period has elapsed, it will expire and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPACAP, There is no administrative appeal against this act.

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Director of the Spanish Data Protection Agency>>

SECOND: It is stated that the Start Agreement was notified on August 2, 2021, proceeded on August 17, 2021 to pay the penalties in the amount of 56,000

euros making use of the reduction provided for in the Start Agreement, stating:

“That Vodafone has ordered the payment of €56,000 corresponding to the infringement initially planned, taking into account the 20% reduction for the payment voluntary sanction, and in this act desists and waives any action or resource in administrative proceedings in relation to this assumption of fact, in accordance with the established in art. 85 of the LPACAP”.

THIRD: The payment made entails the waiver of any action or resource in via against the sanction, in relation to the facts referred to in the Home Agreement.

## FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of The Spanish Agency for Data Protection is competent to resolve this process.

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9/9

II

Article 85 of Law 39/2015, of October 1, on the Procedure

Common Administrative of Public Administrations (hereinafter LPACAP), under the heading "Termination in sanctioning procedures" provides the following:

"1. A sanctioning procedure has been initiated, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the sanction

to proceed.

2. When the sanction is solely pecuniary in nature or fits

impose a pecuniary sanction and another of a non-pecuniary nature but it has been justified

the inadmissibility of the second, the voluntary payment by the alleged perpetrator, in

any time 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 infringement.

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 sanction, these being cumulative

each. The aforementioned reductions must be determined in the notification of

initiation of the procedure and its effectiveness will be conditioned to the withdrawal or

Waiver of any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased

regulations."

In accordance with the above, the Director of the Spanish Agency for the Protection of

Data RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00192/2021, of

in accordance with the provisions of article 85 of the LPACAP.

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

NIF A80907397.

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 process as

prescribed by art. 114.1.c) of Law 39/2015, of October 1, on Procedure

Common Administrative of Public Administrations, interested parties may

file a contentious-administrative appeal before the Contentious Chamber  
of the National High Court, in accordance with the provisions of article 25 and  
in section 5 of the fourth additional provision of Law 29/1998, of July 13,  
regulation of the Contentious-Administrative Jurisdiction, within a period of two months to  
count from the day following the notification of this act, as provided in the  
Article 46.1 of the aforementioned Law.

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