

□ File No.: PS/00268/2021

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 September 27, 2021, the Director of the Spanish Agency
of Data Protection agreed to initiate a sanctioning procedure against VODAFONE
SPAIN, S.A.U. (hereinafter, the claimed party), through the Agreement that is
transcribe:

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File No.: PS/00268/2021

AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency and in
based on the following:

FACTS

FIRST: D.A.A.A. (hereinafter, the complaining party) dated December 20,
2020 filed a claim with the Spanish Data Protection Agency. The
claim is directed against VODAFONE ESPAÑA, S.A.U. with CIF A80907397 (in
hereafter, the party claimed). The grounds on which the claim is based are
following.

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The complaining party states that in September 2020 he began to receive text messages from the respondent party indicating that there was a debt derived from services contracted in your name with the claimed party.

Subsequently, he verified that said services were not contracted in his name and that the billing address corresponded to the address of an old house in the one who lived with her ex-partner.

And, among other things, it provides the following documentation:

- Mobile, Broadband, Landline and TV Service Contract for Private Clients

dated January 22, 2020, containing name, surnames, address and

Your ex's email.

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Invoices issued by the claimed party in your name.

SECOND: Prior to the acceptance of this claim for processing, it is transferred to the claimed, in accordance with the provisions of article 65.4 of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), in actions with reference E/01483/2021. The notification is made electronically, and is delivered on the 24th February 2021.

THIRD: In accordance with the provisions of article 65.2 of the Organic Law 3/2018, on Data Protection and Guarantee of Digital Rights (LOPDGDD), in On May 26, 2021, the agreement for admission to processing of the application is signed. claim.

FOURTH: When transferring the claim to the claimed party, he/she submitted a written document on the 25th June 2021, stating that once the claim was received, it proceeded to investigate what happened, ruling out that there had been an impersonation of

identity and confirming that the claimed incidence was derived from a data crossing originated in their systems which caused the claimant's data to appear as data of the holder of the customer account of your ex-partner, registered since January 2020.

The claimed party took the necessary steps to cancel the debt associated with the claimant, specifically, through the issuance of a credit note by those

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amounts that had been billed to the claimant. In this regard, attached as Document number 2 screenshot of the payment made to cancel the debt.

Additionally, and once the debt was cancelled, we proceeded to disassociate the personal data of the claimant of the customer account of his ex-partner and to the deletion of the claimant's personal data from the party's systems claimed.

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 claimed party, the

Commission of an infringement of article 6.1 of the RGPD that establishes the assumptions that allow the processing of personal data to be considered 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;

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(...)"

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:

(...)

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.”

The documentation in the file offers evidence that the party

claimed, violated article 6.1 of the RGPD, since it carried out the treatment of the

personal data of the claimant without having any legitimacy to do so.

It is stated that the complaining party as of September 2020

began to receive text messages from the respondent informing him

that there was a debt of his ownership derived from services contracted in his name

with the claimed party.

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It should be noted that the Mobile, Broadband, Landline and TV Service Contract

for Private Clients dated January 22, 2020, provided by the claimant,

contain the data of a third person (name, address, telephone, email electronic) and is signed by it.

It is clear that the personal data of the complaining party were incorporated to the company's information systems, without having accredited that it had of legitimacy for the collection and subsequent processing of your personal data.

Well, it is accredited as recognized by the defendant in his written response to this Agency dated June 25, 2021, "and confirming that the claimed incidence was derived from a crossing of data originating in the systems of the complained party that caused the complainant's data to appear as data of the holder of the customer account of your ex-partner, registered since January 2020".

On the other hand, the respondent acknowledges said error and states that it is of a computer error due to data crossing.

Thus, the respondent party did not take the necessary precautions so that these events did not occur.

Based on the foregoing, in the case analyzed, it remains in questioned the diligence used by the respondent.

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 short, the respondent has not provided a document or element any evidence that shows that the entity, in such a situation, would have deployed the minimum diligence required to verify that your interlocutor was indeed the one who claimed to hold

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Respect for the principle of legality that is in the essence of the fundamental right of protection of personal data requires that it be accredited that the responsible for the treatment displayed the essential diligence to prove that extreme. Failure to act in this way -and this Agency, who is responsible for ensuring for compliance with the regulations governing the right to data protection of personal character - the result would be to empty the content of the principle of legality.

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 allocate the damages suffered by the interested parties;

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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

whether the person in charge or the person in charge notified the infringement and, if so, to what extent.

gives;

i) when the measures indicated in article 58, section 2, have been ordered

previously against the person in charge or the person in charge in question in relation to the

same matter, compliance with said measures;

j) adherence to codes of conduct under Article 40 or to certification mechanisms

fication 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.

mind, through infraction.”

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.

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.

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

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 mitigating factors:

- Immediately proceeded to manage the cancellation of the services and the payment of the amounts invoiced (article 83.2.c, RGPD).

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, given that in the contract dated January 22, 2020

include the name, surnames, address and email of your ex-partner,

while the invoices were issued in the name of the claiming party

(article 83.2.b, RGPD).

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

€50,000 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.

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

indicating that any of them may be challenged, as the case may be, in accordance with

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

Legal Department of the Public Sector (LRJSP).

THIRD: INCORPORATE 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 50,000 euros (fifty thousand euros) without prejudice to what result of the instruction.

FIFTH: NOTIFY this agreement to VODAFONE ESPAÑA, S.A.U. with CIF 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 ten thousand euros (€10,000).

With the application of this reduction, the amount of the sanction would be established in forty thousand euros (€40,000), 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 ten thousand

euros (€10,000), for the imputed infraction. With the application of this reduction, the

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The amount of the sanction would be established at forty thousand euros (€40,000) 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 thirty thousand euros (€30,000).

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.

In case you chose to proceed to the voluntary payment of any of the amounts indicated above, 40,000 euros or 30,000 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 welcomes

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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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SECOND: On November 9, 2021, the claimed party has proceeded to payment of the sanction in the amount of 40,000 euros using one of the two

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reductions provided for in the Start Agreement transcribed above. Therefore, it has not acknowledgment of responsibility has been confirmed.

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

Yo

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

control, and as established in art. 47 of the Organic Law 3/2018, of 5

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

hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection

is competent to sanction the infractions that are committed against said

Regulation; infractions of article 48 of Law 9/2014, of May 9, General

Telecommunications (hereinafter LGT), in accordance with the provisions of the

article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and

38.4 d), g) and h) of Law 34/2002, of July 11, on services of the society of the

information and electronic commerce (hereinafter LSSI), as provided in article

43.1 of said Law.

II

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

Common to Public Administrations (hereinafter LPACAP), under the rubric

"Termination in sanctioning procedures" provides the following:

"1. Started a sanctioning procedure, if the offender acknowledges his responsibility,

the procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction is solely pecuniary in nature or it is possible to impose a

pecuniary sanction and another of a non-pecuniary nature, but the

inadmissibility of the second, the voluntary payment by the 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 with each other.

The aforementioned reductions must be determined in the notification of initiation

of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased regulations."

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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/00268/2021, of in accordance with the provisions of article 85 of the LPACAP.

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

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

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

Against this resolution, which puts an end to the administrative procedure as prescribed by the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of the Public Administrations, the interested parties may file an appeal contentious-administrative 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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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