

□ File No.: EXP202204287

## 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 23, 2022, the Director of the Spanish Agency  
of Data Protection agreed to start a sanctioning procedure against VODAFONE  
SPAIN, S.A. (hereinafter, the claimed party), through the Agreement that  
transcribe:

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File No.: EXP202204287

### AGREEMENT TO START THE SANCTION PROCEDURE

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

### FACTS

FIRST: Ms. A.A.A. (hereinafter, the claiming party) dated March 10,  
2022 filed a claim with the Spanish Data Protection Agency. The  
claim is directed against VODAFONE ESPAÑA, S.A.U. with NIF A80907397 (in  
forward, the claimed party or Vodafone). The reasons on which the claim is based  
are the following:

The claimant states that, on February 22, 2022, her mobile telephone line was  
was not operational, so he contacted Vodafone and they told him that he could  
be because your SIM card was damaged. Well, he went to a physical store and  
there they told him that said entity had provided a duplicate of his SIM card to a

third (having been tried before, on more occasions, without success).

Subsequently, on February 23, 2022, he filed a complaint with the Police and, he adds that the disputed SIM card was active until March 2, 2022, since that, despite the claimant having requested the blocking, said third party gave it again high.

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He adds that they accessed his bank details by carrying out various operations fraudulent transactions through electronic banking, in addition to accessing your account Gmail, among others.

And, provide the following relevant documentation:

Affected mobile phone number \*\*\*PHONE.1.

Copy of the complaint filed with the Police, as well as an extension of the same.

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, for

to proceed with its analysis and inform this Agency within a month of the

actions carried out to adapt to the requirements established in the regulations of Data Protection.

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 April 26, 2022 as

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

On May 27, 2022, this Agency received a written response indicating that it is recorded in the Vodafone systems that on February 22, 2022 a duplicate of the SIM card corresponding to the line \*\*\*TELEPHONE.1 was requested ownership of the claimant. Said request was processed by telephone by a alleged third party posing as the claimant and providing all their data personal.

They indicate that they have proceeded to send a letter to the claimant by which proceeded to inform him about the steps that were carried out by Vodafone to solve the incident and that it is currently resolved.

Vodafone adds that it is working on the review of internal processes and affirms Likewise, its objective is that all duplicates or card changes are made in person, since it is the safest way to guarantee that produce these events.

THIRD: On June 1, 2022, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant party was admitted for processing.

#### 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

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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:

"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:

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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 the present case, it is proven that on February 22, 2022, processed a change of SIM on the line \*\*\*TELEPHONE.1 belonging to the party claimant, and that said SIM change was requested by telephone. Therefore, Vodafone provided a duplicate of the claimant's SIM card to a third party, without your consent and without verifying the identity of the third party. Thus, the defendant did not verify the identity of the person who requested the duplicate SIM card, did not take the necessary precautions so that these events do not occur.

Based on the foregoing, in the case analyzed, the diligence used by the defendant to identify the person who requested a duplicate SIM card.

Well, it is accredited as recognized by the claimed party in its writ of response to this Agency dated May 27, 2022, which appears in its systems that on February 22, 2022 a duplicate SIM card was requested corresponding to the line \*\*\*TELEPHONE.1 owned by the claimant. said request was processed by telephone by an alleged third party posing as the claimant and providing all their personal data.

In accordance with the evidence available at this procedural moment and without prejudice to what results from the investigation of the procedure, 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

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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 have suffered;
  - b) intentionality or negligence in the infringement;
  - 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

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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 transcribed precepts, and without prejudice to what results from the instruction of the procedure, in order to set the amount of the fine to impose on the entity claimed as responsible for an infringement classified in the 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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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).

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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.”

As mitigations:

The claimed party proceeded to resolve the incident that is the subject of the claim effective (art. 83.2 c).

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 foregoing, by the Director of the Agency Spanish Data Protection.

HE REMEMBERS:

FIRST: INITIATE SANCTION PROCEDURE against VODAFONE SPAIN, S.A.U. with NIF A80907397, for the alleged violation of article 6.1) typified in the Article 83.5.a) of the aforementioned GDPR.

SECOND: APPOINT as instructor D. B.B.B. and as secretary to Ms. C.C.C., indicating that any of them may be challenged, if applicable, in accordance with the provisions established in articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime co of the Public Sector (LRJSP).

THIRD: INCORPORATE into the disciplinary file, for evidentiary purposes, the claim filed by the claimant and its documentation, the documents obtained and generated by the General Subdirectorate of Data Inspection.

FOURTH: THAT for the purposes provided for in art. 64.2 b) of Law 39/2015, of 1 October, of the Common Administrative Procedure of Public Administrations, the sanction that could correspond would be for the infringement of article 6.1 of the GDPR, typified in article 83.5 a) of the GDPR, the sanction that would correspond would be a fine for an amount of 70,000 euros (seventy thousand euros) without prejudice to what is of the instruction.

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

A80907397 granting a hearing period of ten business days to formulate the allegations and present the evidence it deems appropriate. In his writing of allegations must provide your NIF and the procedure number that appears in the heading of this document.

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If, within the stipulated period, he 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, on 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 other than a fine, may recognize its responsibility within the term granted for the formulation of allegations to the present initiation agreement; it which will entail a reduction of 20% for the sanction that should 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.

In the same way, it 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 alleged offence. With the application of this reduction, the

amount of the sanction would be established at fifty-six thousand euros (€56,000) and

Your payment will imply the termination of the procedure.

The reduction for the voluntary payment of the penalty is cumulative to the corresponding

apply for acknowledgment of responsibility, provided that this acknowledgment

of the responsibility is revealed within the period granted to formulate

allegations at the opening of the procedure. 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 both reductions were to be applied, the amount of the penalty would remain

established at forty-two thousand euros (€42,000).

In any case, the effectiveness of any of the two aforementioned reductions will be

conditioned to the withdrawal or resignation of any action or appeal via

administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts

previously indicated, 56,000 euros or 42,000 euros, you must make it effective

by depositing it in the account number ES00 0000 0000 0000 0000 0000 opened 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 reducing the amount to which

welcomes.

Likewise, you must send proof of income to the General Subdirectorate of

Inspection to continue with the procedure in accordance with the quantity

entered.

The procedure will have a maximum duration of nine months from the

date of the initiation agreement or, where appropriate, of the draft initiation agreement.

After this period, its expiration will occur and, consequently, the file of

performances; in accordance with the provisions of article 64 of the LOPDGDD.

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

Mar Spain Marti

Director of the Spanish Data Protection Agency

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SECOND: On October 21, 2022, the claimed party has proceeded to pay of the sanction in the amount of 56,000 euros using one of the two reductions provided for in the Commencement Agreement transcribed above. Therefore, there has not The acknowledgment of responsibility has been accredited.

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

## FUNDAMENTALS OF LAW

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### Competence

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: "The 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

### Termination of the procedure

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

Common for Public Administrations (hereinafter LPACAP), under the heading

"Termination in disciplinary proceedings" provides the following:

"1. Initiated a disciplinary procedure, if the offender acknowledges his responsibility,

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

2. When the sanction has only a pecuniary 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 presumed perpetrator, in

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any moment 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 offence.

3. In both cases, when the sanction is solely pecuniary in nature, the

The competent body to resolve the procedure will apply reductions of at least

20% of the amount of the proposed penalty, these being cumulative among themselves.

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 resource against the sanction.

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

According to what has been stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE the termination of procedure EXP202204287, in accordance with the provisions of article 85 of the LPACAP.

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

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 as prescribed by the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure Common of Public Administrations, interested parties may file an appeal administrative litigation before the Administrative Litigation 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.

Mar Spain Marti

Director of the Spanish Data Protection Agency

937-181022

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