

968-150719

□ Procedure No.: PS/00212/2019

RESOLUTION R/00338/2019 TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

In sanctioning procedure PS/00212/2019, instructed by the Agency

Spanish Data Protection Agency to VODAFONE ONO, S.A.U., given the claim

presented by A.A.A., and based on the following,

BACKGROUND

FIRST: On June 24, 2019, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against VODAFONE ONO,

S.A.U.. Having notified the initiation agreement and after analyzing the allegations presented, with

On July 25, 2019, the proposed resolution was issued as follows:

transcribe:

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Procedure no.: PS/00212/2019

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

to the following:

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) dated January 15, 2019

filed a claim with the Spanish Data Protection Agency. The

claim is directed against VODAFONE ONO, S.A.U. with NIF A62186556 (in

later, the claimed one).

The reasons on which the claim is based are that on January 15, 2019,

when the claimant accesses the client area with the username and password

corresponding to cancel a contracted service in the name of his mother,

discovers that the computer system of said entity, with said username and password,

It facilitates access to the data of a third party other than your mother.

That same day he communicated these facts by telephone, without until
moment have heard about it.

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Provides screenshots of the customer area.

SECOND: Upon receipt of the claim, the Subdirector General for Inspection of

Data proceeded to carry out the following actions:

On February 21, 2019, the claim filed was transferred to the defendant.

for analysis and communication to the complainant of the decision adopted in this regard.

Likewise, it was required that within a month it send to the Agency

certain information:

- Copy of the communications, of the adopted decision that has sent the claimant to
purpose of transferring this claim, and proof that the claimant has received
communication of that decision.

- Report on the causes that have motivated the incidence that has originated the
claim.

- Report on the measures adopted to prevent similar incidents from occurring.

- Any other that you consider relevant.

On February 21, 2019, the claimant was informed of the receipt of the
claim and its transfer to the claimed entity.

The respondent has not responded to any of the requests made

by the Spanish Agency for Data Protection.

THIRD: On May 14, 2019, in accordance with article 65 of the

LOPDGDD, the Director of the Spanish Data Protection Agency agreed to admit

processing the claim filed by the claimant against VODAFONE ONO, S.A.U.

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FOURTH: On June 24, 2019, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, with

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 (hereinafter,

LPACAP), for the alleged infringement of Article 32 of the RGD, typified in Article

83.4 of the GDPR.

FIFTH: Notification of the aforementioned initiation agreement, the claimed one, on July 15, 2019,

presented a pleadings brief in which, in summary, it stated that the facts

object of this procedure have occurred as a result of an error

human.

This entity argues that on January 15, 2019 the two people

involved made a call to the customer service department of

VODAFONE, and that as a result of said call, they were sent to each of

them a code so they could view their invoices.

It is likely that the agent, by mistake, provided the same code, which could

motivate access to the wrong information.

Said entity points out that in no case was there intentionality or culpability

in the way of acting, but insists that the events have been produced by a human error.

SIXTH: On July 23, 2019, the instructor of the procedure agreed to the opening of a period of practice tests, considering incorporated the previous investigation actions, E/01730/2019, as well as the documents provided by the respondent on July 15, 2019.

Of the actions carried out, the following have been accredited facts:

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FACTS

FIRST: On January 15, 2019, when the claimant accesses the client area with the corresponding username and password to unsubscribe from a contracted service name of his mother, discovers that the computer system of said entity, with said username and password, facilitates access to the data of a third party other than your mother.

SECOND: VODAFONE argues that on January 15, 2019 the two people involved made a call to the customer service department of VODAFONE, and that, as a result of said call, they were sent to each of them a code so they could view their invoices. For this reason, consider

It is probable that the agent, by mistake, provided the same code, which could have motivated the access to the wrong information. However, in no case was there intentionality or culpability in the way of acting, but that it is a fact isolated, caused by human error.

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In the present case, the defendant is accused of committing an infraction for violation of article 32 of the RGPD that establishes the following:

"1. Taking into account the state of the art, the application costs, and the nature, scope, context and purposes of the treatment, as well as risks of variable probability and severity for the rights and freedoms of individuals physical, the person in charge and the person in charge of the treatment will apply technical measures and appropriate organizational measures to guarantee a level of security appropriate to the risk, which in your case includes, among others:

a) pseudonymization and encryption of personal data;

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b) the ability to ensure the confidentiality, integrity, availability and permanent resilience of treatment systems and services;

c) the ability to restore the availability and access to the personal data of quickly in the event of a physical or technical incident;

d) a process of regular verification, evaluation and assessment of the effectiveness of the technical and organizational measures to guarantee the security of the treatment.

2. When evaluating the adequacy of the security level, particular account shall be taken of takes into account the risks presented by the processing of data, in particular as consequence of the accidental or unlawful destruction, loss or alteration of data data transmitted, stored or otherwise processed, or the communication or

unauthorized access to said data.

3. Adherence to an approved code of conduct under article 40 or to a certification mechanism approved under article 42 may serve as an element to demonstrate compliance with the requirements established in section 1 of the present article.

4. The person in charge and the person in charge of the treatment will take measures to guarantee that any person acting under the authority of the person in charge or the person in charge and has access to personal data can only process said data following instructions of the person in charge, unless it is obliged to do so by virtue of the Right of the Union or the Member States.

II

In accordance with the evidence available in this time, and without prejudice to what results from the investigation, it is considered that the Known facts could constitute an infraction, attributable to the defendant, for violation of art. 32 of the RGPD, transcribed in the Basis of Law I that states that "the person responsible and the person in charge of the treatment will apply technical measures and appropriate organizational measures to guarantee an adequate level of security".

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The infringement is typified in article 83.4 of the RGPD and is classified as Serious in article 73.1 g) of the LOPDPGDD for prescription purposes.

III

Article 58.2 of the RGPD provides the following: "Each supervisory authority

shall have all of the following corrective powers listed below:

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

warning when the processing operations have violated the provisions of

this Regulation;

d) order the person in charge or in charge of the treatment that the operations of

treatment comply with the provisions of this Regulation, where appropriate,

in a certain way and within a specified period;

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

instead of the measures mentioned in this paragraph, depending on the circumstances

of each particular case;

The art. 83.4 of the RGPD establishes that "violations of the provisions

following will be sanctioned, in accordance with section 2, with administrative fines

EUR 10,000,000 maximum or, in the case of a company, an amount

equivalent to a maximum of 2% of the total global annual turnover of the

previous financial year, opting for the highest amount:

a) the obligations of the person in charge and the person in charge in accordance with articles 8, 11,

25 to 39, 42 and 43;

b) the obligations of the certification bodies under articles 42 and

43;

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c) the obligations of the supervisory authority pursuant to article 41, section 4."

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with

with the following criteria established in article 83.2 of the RGPD:

As aggravating the following:

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

significant data that allows the identification of a person (article 83.2

b)

☐ Basic personal identifiers are affected (name, a

identification number, the line identifier), according to article 83.2 g)

In view of the foregoing, the following is issued

MOTION FOR A RESOLUTION

That by the Director of the Spanish Agency for Data Protection

sanction VODAFONE ONO, S.A.U., with NIF A62186556, for an infraction of the

article 32 of the RGPD, typified in article 83.4 a) of the RGPD, a fine of

€60,000.00 (SIXTY THOUSAND euros).

Likewise, in accordance with the provisions of article 85.2 of the LPACAP,

You are informed that you may, at any time prior to the resolution of this

procedure, carry out the voluntary payment of the proposed sanction, which

will mean a reduction of 20% of the amount of the same. With the application of this

reduction, the sanction would be established at 48,000.00 euros and its payment will imply the

termination of the procedure. The effectiveness of this reduction will be conditioned to the

Withdrawal or waiver of any administrative action or recourse against the

sanction.

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In case you chose to proceed with the voluntary payment of the amount specified above, in accordance with the provisions of article 85.2 cited, You must make it effective by depositing it in the restricted account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Agency for the Protection of Data in Banco CAIXABANK, S.A., indicating in the concept the number of reference of the procedure that appears in the heading of this document and the cause, by voluntary payment, of reduction of the amount of the sanction. Also, you must send proof of entry to the General Subdirectorate of Inspection for proceed to close the file.

By virtue thereof, the foregoing is notified, and the procedure so that within a period of TEN DAYS you can allege whatever you consider in his defense and present the documents and information that he considers pertinent, in accordance with article 89.2 in relation to art. 73.1 of the LPACAP).

RRR

INSPECTOR/INSTRUCTOR

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: On August 2, 2019, VODAFONE ONO, S.A.U. has proceeded to

SECOND

payment of the sanction in the amount of 48,000 euros making use of the reduction envisaged in the motion for a resolution transcribed above.

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 resolution proposal.

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 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.

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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."

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00212/2019, of in accordance with the provisions of article 85 of the LPACAP.

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

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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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