

□ Procedure No.: PS/00112/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On March 6, 2020, D. A.A.A. report to ORANGE ESPAGNE,  
S.A.U. for the following facts: "After requesting duplicate SIM cards, a few days  
then you receive a WhatsApp message from a third person who sends you a  
photo of a documentation with your personal data. The claimant states that he has  
received the shipment from Jazztel, but the other person has received the documentation  
corresponding to the claimant, which he has not received. Expresses concern about  
the fact that a third person may have your personal data: number of  
DNI, address, telephone and code/IMEI."

According to the claimant, the events took place on January 2, 2020.

Attached is a copy of the WhatsApp conversation that he manifests he had with the  
mentioned third person, as well as the photograph of the letter with data  
received by that third person. It also indicates that it notifies  
events to the operator and she downplays it.

: In view of the facts denounced, in the phase of preliminary actions, by

### SECOND

the Inspection Services of this Agency, information is requested from the entity

ORANGE ESPAGNE, S.A.U., knowing that:

### INVESTIGATED ENTITY

ORANGE ESPAGNE, S.A.U. with NIF A82009812 with address in Paseo Club  
Deportivo, 1, Edif. 8, - 28223 Pozuelo de Alarcón, Madrid.

## RESULT OF THE INVESTIGATION ACTIONS

It is verified that the claimant provides a copy of a conversation held through WhatsApp in which the interlocutor contacts him on the occasion of having received a shipment of SIM cards with an attached document that does not correspond to you.

The personal data of the claimant appears in the document together with the data of two SIM cards that the claimant has received. They determine, during the conversation, that each has received their SIM cards, but the claimant has not received any attached sheet, having received it from that third person, and whose photograph is sent by WhatsApp.

During the conversation it becomes clear that the SIMs are only for access to Internet (data) as they are for weather stations. In the mentioned

The attached document contains the SIM card codes for these stations. Yes includes your ID number, address and a telephone number.

Made a request for information to the claimed entity its representatives they report the following:

-About the general procedure of enveloping and packaging the SIM cards:

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Jazztel's service of sending, enveloping and packaging SIM cards is provided by the supplier "Informacion Control yPlanación, S.A. (ICP)".

The procedure for managing SIM card orders made by customers of ORANGE is registered through a computer system, which generates a record for each order that contains the applicant's personal data and associates them with the

card number or cards assigned to it.

Once the order has been generated, the information on the file is read by the agents and automatically generates the issuance of the transport label.

Said transport label generated by the system is reviewed and it is verified that it coincides with the applicant's information, that is, the data and numbers of card that will be sent to you.

Reviewed the above, we proceed to print the letter that contains the data of the applicant and the assigned SIM card number. This process is carried out as automatically and consecutively, in such a way that the issuance of the letter coincides with the SIM card associated with it, and thereby ensure that the order is completed and associate correctly.

The referenced card is packaged together with the corresponding SIM cards, and Both are placed in the packaging.

Lastly, the packaging bag is closed, and on it the label of transport that corresponds to it, then going on to be sent.

-About the causes of the incident:

After inquiries were made by the respondent, her representatives have stated that it was possible to verify that the incidence caused with the letter corresponding to the claimant, which was received by another client, has as its origin a punctual error caused in the reader of the printer device in charge of issuing the letter of the claimant in the process of enveloping: the printer device reader was blocked at the time the letter with the personal data was printed of the claimant, thereby preventing it from being generated in the correct sequence and, therefore, Therefore, it will be attached to the requested SIM cards.

The printers that issue the letters associated with the SIM cards are programmed in such a way that they emit them in an ordered sequence to guarantee that

the letter issued matches the SIM card associated with the order. However, the error of the printer reader when generating the claimant letter caused the same lost the ordered sequence and, therefore, was associated with a different order. In conclusion, the error that occurred was the loss of the ordered sequence, so the claimant's letter was enclosed in an envelope along with another customer's order, which was spawned consecutively.

-On the measures adopted to prevent the incident from happening again:

The damaged printer that caused the incident was replaced by a new one, to thereby guarantee that the sequence of the enveloping and mailing procedure SIM cards to be produced correctly.

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An individualized review of all the printers in the logistics center was carried out, confirming that all of them worked correctly.

A copy of the contract for the provision of services signed has been required from the claimed with the supplier Information Control and Planning, S.A. (ICP) for the service of shipping, enveloping and packaging of Jazztel SIM cards, including all their data protection clauses or addenda.

The representatives of the claimed entity have provided a copy of the contract of provision of logistics services signed with ICP, including among the services rendered:

-Reception of goods and storage.

-Assembly of sets.

-Preparation of deliveries.

-Transport and distribution of goods. Transport and distribution services

of Goods will usually be provided within the national scope.

- Tracking of shipments.

It is verified that the contract includes a Data Protection clause (numbered as 25) which specifies among others:

“25.1 By virtue of this Contract, the Supplier, in its capacity as Processor Treatment, will carry out the processing of personal data necessary for the correct provision of the services object of this Contract.

25.2 In this sense, the provision of the services object of this Contract implies the performance by the Supplier of the following treatments: Collection, registration, consultation, conservation, dissemination, modification and deletion of data personal.

25.3 Personal data will be processed only to carry out the provision of contracted services. If the Supplier considers it necessary carry out data processing for a different purpose, you must request prior written authorization from OSP. In the absence of such authorization, the Provider may not carry out such treatment. [...]”

“25.6 In particular, the Supplier undertakes to comply with the following obligations:

a. Treat personal data, only, to carry out the provision of the contracted services, adjusting to the instructions that, at all times, indicate, in writing, OSP (unless there is a regulation that requires complementary treatments, in such a case, the person in charge will inform the person in charge of that legal requirement prior to treatment, unless such Law prohibits it by important reasons of public interest). In the event that the Provider considers

that any of the OSP instructions infringes the protection regulations in force of data, it will immediately notify OSP by the means and the person of contact indicated by it.

b. Maintain the duty of secrecy regarding the personal data to which have access, even after the contractual relationship has ended, as well as to

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ensure that their dependents have committed in writing to maintain the confidentiality of the personal data processed.

c. Guarantee the application of the technical and organizational measures described in the Information Security Annex attached to this Agreement, as well as any other security measures that OSP determines at any time and notify the Provider.

d. Save under your control and custody the personal data you access with reason for the provision of the Service and not to disclose, transfer, or in any way another way to communicate them, not even for their conservation to other outsiders to the same and to the provision of the service object of this Contract.

In general, subcontracting with third parties of the services that imply the access and/or treatment, partial or total, of data personal, unless the Supplier has the prior, express and by writing of OSP. In this case, the Provider must communicate to OSP the data identification (name, full registered office and NIF) of the subcontractor or sub-processor, as well as subcontracted services, with a

minimum notice of one (1) month before the beginning of the provision of services. The

In the same way, the Supplier will inform OSP of any foreseen change in the incorporation or substitution of Subcontractors, thus giving OSP the opportunity to oppose such changes.

In such case, the Supplier is obliged to transfer and communicate to the Subcontractor the set of obligations that for the Person in Charge of the Treatment derive of this Contract and, in particular, the provision of sufficient guarantees that apply appropriate technical and organizational measures, so that the treatment is in accordance with the applicable regulations.

and. At the option of OSP, delete or return all personal data to which it has had access to provide the service. Likewise, the Provider undertakes to delete existing copies, unless there is a legal rule that requires the conservation of personal data. However, the Supplier must keep the data duly blocked, insofar as responsibilities could arise of its relationship with OSP. [...]“

The respondent entity has been asked for the result of the call made by the aforementioned third person, made on 01/02/2020 between 10:28 p.m. and 10:31 p.m.

JAZZTEL customer service center and in which they inform you, according to the WhatsApp conversation, how to check the SIM numbers with the sheet received. It has been required to analyze the record of the call, and report the problem commented by the client and its result, as well as the impression of the comments recorded by the operator in the systems.

The representatives of the claimed entity provide in this regard a copy of the registration in the call information system and state that “from the record provided,

It can be concluded that everything indicates that the client did not express himself clearly when state the situation, or the agent who answered the call did not understand the

same, since the registered matter was the information that was provided about of the MultiSiM service”.

THIRD: On March 25, 2021, the Director of the Spanish Agency for Data Protection agrees to initiate sanctioning procedure to the claimed, for the

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alleged infringement of article 32 of the RGPD and article 5.1.f) of the RGPD, typified in article 83.5 of the RGPD.

FOURTH: Once the aforementioned initial agreement was notified, on April 21, 2021, the

The respondent files a pleadings brief, in which, in summary, it states that the

incident had its origin in an isolated and punctual error in the

operation of a printer from his supplier, alleges his lack of responsibility

in the facts claimed since the loss of confidentiality of the data of the

claimant is due to the action attributable to the supplier, which even when its

collaborator had been negligent in his action, an action would be required

negligent or intentional on the part of ORANGE that under no circumstances would have occurred

in the present case, and that the consequence of the punctual malfunction of the printer is not

was an access to data by third parties, but only the referral

of a letter addressed to the complainant to a third party, therefore there is only one third party

and only one affected.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

FACTS



FIRST: On March 6, 2020, it has entry in the Spanish Agency of

Data Protection, written by the affected person in which, in summary, he claims

the entity, the absence of confidentiality in the processing of your data.

SECOND: There is a copy of the conversation held through WhatsApp in the

that the interlocutor contacts him, on the occasion of having received a shipment

of SIM cards with an attached document that does not correspond to you. In the document

the personal data of the claimant appears along with the data of two SIM cards

that the claimant has received. They determine, during the conversation, that each has

received their SIM cards, but the claimant has not received any attached sheet,

having received it from that third person, and whose photograph is sent by WhatsApp.

## FOUNDATIONS OF LAW

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.

Law 40/2015, of October 1, on the Legal Regime of the Public Sector.

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Article 28.1. Responsibility.

"1. They may only be sanctioned for acts constituting an administrative infraction.

natural and legal persons, as well as, when a Law recognizes their capacity to

to act, the affected groups, the unions and entities without legal personality and the

independent or autonomous estates, which are responsible for them

title of fraud or guilt."

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

Public administrations.

Article 89.1.d). Proposal for a resolution in procedures of a nature

sanctioning

"1. The investigating body will resolve the completion of the procedure, with filing of the actions, without it being necessary to formulate the resolution proposal, when in the procedure instruction it becomes clear that there is any of the following circumstances:

- a) The non-existence of the facts that could constitute the infraction.
- b) When the facts are not proven.
- c) When the proven facts do not constitute, in a manifest way, an infringement administrative.
- d) When it does not exist or it has not been possible to identify the person or persons liable or appear exempt from liability.
- e) When it is concluded, at any time, that the infraction has prescribed."

In the present case, the events that occurred would imply a result not pursued, that was motivated by a printer failure and, therefore, the commission of an error.

We must bear in mind that, as the National High Court shows, and in the extent to which there is no voluntariness in the act, that there has been no re-especially harmful result, and that there is no evidence of lack of care in the actions of the company denounced in its activities and functions, would be contrary to the nature of the administrative sanctioning scope, subject to the principles of minimum intervention and proportionality, impose a sanction regarding the fact that occurred, not deserving

sanctioning action by not concurring the element of guilt.

In this sense, the Judgment of the National High Court of December 14, 2006, re-course nº 1363/2005, states in its Legal Foundations the following: "The resolution of this appeal is to recall, first of all, that guilt is an element essential element for the sanction that has been imposed on the plaintiff, as Article 130.1 of Law 30/1992 of November 26 prescribes, which establishes that can only be sanctioned for acts constituting an administrative infraction responsible for them, even by way of simple non-compliance."

It must be emphasized that this simple non-compliance cannot be understood as strict liability governs in the sanctioning administrative law. Indeed-

In sanction matters, the principle of culpability governs (SsTC 15/1999, of July 4). mess; 76/1990, of April 26; and 246/1991, of December 19), which means that it must concur some kind of fraud or fault. As the Supreme Court ruling says of January 23, 1998, "...we can speak of a decided line of jurisprudence that rejects in the sanctioning scope of the Administration the objective responsibility, ruling the concurrence of fraud or negligence, in line with the interpretation of the STC 76/1990, of April 26, stating that the principle of guilt can be inferred from the principles of legality and prohibition of excess (article 25 of the Constitution) or the requirements inherent to the rule of law.

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For all these reasons, taking into account that everything was due to an incident caused for a failure in the operation of a supplier's printer, in accordance with the

jurisprudential pronouncement, the filing of the proceedings must be agreed.

However, the claimed entity is reminded that it must take extreme precautions

tions and admonish your supplier in order to avoid behaviors such as those described in the claim filed.

Therefore, in accordance with the applicable legislation, the Director of the Agency

Spanish Data Protection RESOLVES:

FIRST: FILE this sanctioning procedure.

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

NIF A82009812.

THIRD

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

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

Against this resolution, which puts an end to the administrative procedure 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 reconsideration before the

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

counting 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 in article 46.1 of the

aforementioned Law.

Finally, it is pointed out 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 by writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registers 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 contentious-administrative within a period of two months from the day following the notification of this resolution would end the precautionary suspension.

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Director of the Spanish Data Protection Agency

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