

SEE NEWSLETTER OF 19 MAY 2022

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Injunction order against Findomestic Banca spa - 7 April 2022

Record of measures

n. 122 of 7 April 2022

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by prof. Pasquale Stanzione, president, dr. Agostino Ghiglia and the lawyer Guido Scorza, members and the cons. Fabio Mattei, general secretary;

GIVEN the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (hereinafter the "Regulation");

GIVEN the legislative decree 30 June 2003, n. 196 (Code regarding the protection of personal data, hereinafter the "Code") as amended by Legislative Decree 10 August 2018, n. 101 on "Provisions for the adaptation of national legislation to the provisions of Regulation (EU) 2016/679";

GIVEN the complaint submitted to the Guarantor pursuant to Article 77 of the Regulations on 23 April 2021, with which Mr. XX complained of an alleged violation of the Regulations by Findomestic Banca spa;

EXAMINED the documentation in deeds;

HAVING REGARD to the observations made by the Secretary General pursuant to art. 15 of the regulation of the Guarantor n. 1/2000;

RAPPORTEUR prof. Pasquale Stanzione;

WHEREAS

1. The initiation of the procedure.

With the complaint presented to this Authority on April 23, 2021, Mr. XX, holder of three debt positions towards Findomestic Banca spa (hereinafter "the Company"), complained of an alleged violation of the Regulations by the Company which, in order to protect its credit interests, would have contacted Ms. XX (spouse of the complainant and guarantor for a single loan relationship in the name of Mr. XX) in relation to another loan for which, however, the complainant is the only one obliged.

With the communication of 23 September 2021, the Office invited the Company to provide observations in relation to what is

represented by the complainant.

The Company, in the acknowledgment note of 25 October 2021, stated, among other things, that "from our evidence we do not understand that, during the telephone contacts with Mrs. XX, any violations of the aforementioned legislation occurred, with the exception of for sending text messages, containing information referable to the payment status of the files in the name of Mr. XX only; these messages were sent exclusively on the dates of 13.10.2020 and 19.10.2020 to the telephone number of Mrs. XX which, for a mere internal misunderstanding, had been inserted among the useful contact details of the customer.

Sorry for the incident, it should be noted that the operators who used the address in question are no longer employees of Findomestic and that, in any case, a training intervention has already been carried out aimed at the structures involved, in order to raise awareness of the use of contacts referring to a customer overdue in payments ".

In relation to these findings, the Office notified the Company of the act of initiating the sanctioning procedure, pursuant to art. 166, paragraph 5, of the Code in relation to the violation of art. 5, par. 1, lett. a) and c) of the Regulations (note of 7 January 2022). According to the aforementioned provisions of the Regulation, the processing of personal data must take place in compliance with the principles of "lawfulness, correctness and transparency" as well as "minimization"; the same principles are the basis of the general provision "Lawfulness, correctness and relevance in credit recovery" of 30 November 2005 with which the Guarantor has prescribed to operators in the sector the necessary and appropriate measures to make the treatment compliant with the relevant legislation of protection of personal data.

On February 18, 2022, the Company sent its defense brief, pursuant to Article 18 of Law no. 689/1981 with which he provided further information and clarifications on the facts involved in the matter: "As already represented to this Authority, only with reference to one of the loans requested, the Complainant is obliged, towards the Company together with his spouse, Mrs. XX (hereinafter, for the sake of brevity, the "Mrs. XX" or the "Guarantor", Mrs. XX and Mr. XX, jointly, the "Interested"), who intervened in the contract as guarantor of the credit. However, the Complainant, who was - and is still today - in default with respect to two of the three positions (see page 1 of the Response) - from September 2020 was unavailable to the telephone numbers provided to Findomestic, thus preventing the Company from making an amicable recovery, so to speak, of the credit claimed. In fact, the Company, despite the breach of Mr. XX, first, and the unavailability of the same, after, has decided not to activate the judicial remedies for the protection of its credit and, with a view to protecting and safeguarding the its customers, has attempted further ways of contacting the Complainant, using methods, it is permitted to highlight it, which are anything but

invasive. In this context, the telephone contacts complained of by Ms XX are included, in the context of which, unlike what she feared, no reference was made regarding the loans activated by Mr. XX and the related debt positions (see *infra* , par. III). Following the aforementioned contacts, following the in-depth analysis and analysis carried out, it appears that the person in charge of the Complainant's file has, for a mere clerical error, entered the number of Ms. XX as the main address to contact for credit collection. This accidental circumstance has meant that, in the light of the system settings used by Findomestic, the messages normally aimed at reminding the customer of the payment deadline were sent to the Guarantor ... In light of the above, it is clear that the contacts complained of by the interested parties - far from being the result of a systematic conduct of the Company - they resulted from a single human error (that is, the insertion of Ms. XX's number as the main contact on the GE.CO. system) which nevertheless caused the " sending of the two SMS communications complained by the interested parties.

Following the aforementioned contacts, as known to the Authority, Ms XX sent Findomestic a complaint on 13 October 2020 (see Annex 1), simultaneously with the receipt of the first communication, which the Company promptly managed and complied with. to which he provided feedback on the following 21 October (see Annex 2), in full compliance with the deadlines set by the Regulations for responding to requests from interested parties. In the meantime, however, a subsequent communication was forwarded on October 19 to Ms XX, given that, at that time, the complaint handling procedure was still being processed by the competent company function. The Company promptly removed the personal data (the mobile user number owned by Ms. XX) from the aforementioned practice, which, in fact, did not subsequently receive further contacts from Findomestic. "

2. The outcome of the investigation.

Upon examination of the documentation produced and the declarations made by the party during the proceedings, provided that, unless the fact constitutes a more serious crime, anyone, in a proceeding before the Guarantor, falsely declares or certifies news or circumstances or produces false deeds or documents and is liable pursuant to art. 168 of the Code, it emerged that the Company sent messages to a third party containing information relating to the debt situation of the person concerned.

In dealing with the case, he notes that, with the general provision of 30 November 2005, the Guarantor has established that "anyone who carries out the processing of personal data as part of the credit recovery activity must observe the principle of

lawfulness in the processing: this precept is violated by the behavior (implemented by some economic operators) consisting in unjustifiably communicating to third parties with respect to the debtor (such as, for example, family members, cohabitants, work colleagues or neighbors), information relating to the condition of default in which the interested party (behavior sometimes required to exert undue pressure on the debtor in order to obtain the payment of the amount due) ".

The processing of personal data put in place by the Company in this case is therefore illegal as it is carried out in a manner that does not comply with the principles of "lawfulness, correctness and transparency", as well as "minimization" of data, in violation of art. 5, par. 1, lett. a) and c) of the Regulations.

3. Adoption of the injunction order (articles 58, paragraph 2, letter i), and 83 of the Regulation; art. 166, paragraph 7, of the Code).

The violation of art. 5, par. 1, lett. a) and c) "is subject to administrative pecuniary sanctions of up to 20,000,000 euros, or for companies, up to 4% of the total annual worldwide turnover of the previous year, whichever is greater" (Article 83, par. 5, lett. a) of the Regulation).

With reference to the elements listed in art. 83, par. 2, of the Regulations for the purposes of applying the pecuniary administrative sanction and its quantification, taking into account that the sanctions must "in any case [be] effective, proportionate and dissuasive" (Article 83, par. 1 of the Regulations), that, in the present case, the following circumstances were considered:

- a) with reference to the willful or negligent nature of the violation and the degree of responsibility of the owner, the conduct of the Company and the degree of responsibility of the same that has not complied with the regulations on data protection have been taken into consideration, with respect to which, since 2005, the Guarantor has provided clear indications to the banks;
- b) the absence of specific precedents against the Company and the circumstance that it is an isolated complaint, that the communication of data was made against the guarantor of a loan relationship and concerned only one interested party;
- c) the Company's decision to cancel Ms XX's mobile number from the file relating to the loan in the name of the complainant.

It is also believed that they assume relevance, in the present case, taking into account the aforementioned principles of effectiveness, proportionality and dissuasiveness to which the Authority must comply in determining the amount of the sanction (Article 83, paragraph 1, of the Regulation), the economic conditions of the offender, determined with reference to the financial statements for the year 2020.

In the light of the elements indicated above and the assessments made, it is considered, in this case, to apply the administrative sanction of payment of a sum equal to Euro 10,000 (ten thousand) to the Company.

In consideration of the nature and severity of the ascertained violation, it is also believed that, pursuant to art. 166, paragraph 7, of the Code and art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019, the publication of this provision on the Guarantor's website.

Finally, it is believed that the conditions set out in art. 17 of Regulation no. 1/2019 concerning internal procedures with external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

WHEREAS, THE GUARANTOR

notes the unlawfulness of the processing carried out by Findomestic Banca spa, based in Florence, Via Jacopo da Diacceto 48, in the terms set out in the motivation, pursuant to art. 143 of the Code, for the violation of art. 5, par. 1, lett. a) and c) of the Regulations;

ORDER

pursuant to art. 58, par. 2, lett. i), of the Regulations to Findomestic Banca spa, to pay the sum of € 10,000.00 (ten thousand) as a fine for the violation of art. 5, par. 1, lett. a) and c) of the Regulations;

INJUNCES

therefore, the same Company to pay the aforementioned sum of € 10,000.00 (ten thousand), according to the methods indicated in the annex, within 30 days of notification of this provision, under penalty of the adoption of the consequent executive acts pursuant to art. 27 of the l. n. 689/1981. Please note that the offender has the right to settle the dispute by paying - again according to the methods indicated in the annex - of an amount equal to half of the sanction imposed, within the term set out in art. 10, paragraph 3, of d. lgs. n. 150 of 1/9/2011 provided for the submission of the appeal as indicated below (Article 166, paragraph 8, of the Code);

HAS

the publication of this provision on the website of the Guarantor pursuant to art. 166, paragraph 7, of the Code and by art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019, and believes that the conditions set out in art. 17 of regulation no. 1/2019. Pursuant to art. 78 of the Regulations, as well as articles 152 of the Code and 10 of Legislative Decree no. 150/2011, an opposition to the ordinary judicial authority may be proposed against this provision, with an appeal filed with the ordinary court

of the place identified in the same art. 10, within thirty days from the date of communication of the provision itself, or sixty days if the applicant resides abroad.

Rome, April 7, 2022

PRESIDENT

Stanzione

THE RAPPOREUR

Stanzione

THE SECRETARY GENERAL

Mattei