

Injunction against Limit Call S.r.l.s. - October 20, 2022

Register of measures

no. 350 of 20 October 2022

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by prof. Pasquale Stanzione, president, prof.ssa Ginevra Cerrina Feroni, vice president, dr. Agostino Ghiglia and the lawyer Guido Scorza, components, and dr. Claudio Filippi, deputy secretary general;

HAVING REGARD TO Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data, as well as on the free circulation of such data and repealing Directive 95/46 /CE (General Data Protection Regulation, hereinafter "Regulation");

HAVING REGARD TO the Code regarding the protection of personal data (legislative decree 30 June 2003, n. 196), as amended by legislative decree 10 August 2018, n. 101, containing provisions for the adaptation of the national legal system to the aforementioned Regulation (hereinafter the "Code");

NOTING that the Office, with deed no. 18675/22 of 4 April 2022 (notified by the Guardia di Finanza on 11 May 2022), which must be understood as fully reported here, initiated, pursuant to art. 166, paragraph 5, of the Code, a procedure for the adoption of the provisions pursuant to art. 58, par. 2, of the Regulation towards Limit Call S.r.l.s. (hereinafter "Limit Call" or "Company"), in the person of its pro-tempore legal representative, with registered office in Milan, via Tertulliano 70, Tax Code 11508000962;

NOTING that, from the examination of the documents of the administrative procedure, the following emerged, in summary:

- with a complaint dated 28 January 2022, advanced to this Authority pursuant to art. 77 of the Regulation, Mr. XX, representing that he had received numerous unwanted telephone calls attributable to the Limit Call, complained about the unsatisfactory response of the aforementioned Company to the requests to exercise the rights formulated pursuant to articles 15 et seq. of the Regulation;
- Mr. XX attached to the complaint the communications exchanged with the Company from which it emerged that the Limit Call confirmed only three of the complained contacts "on the basis of the interest [...] shown" by the complainant in "being contacted again" and ensured that they have received the request for cancellation of the telephone number of the same;

- Limit Call, with a note dated October 12, 2021, stated that it had acted on the basis of a consent to communication to third parties for promotional purposes issued by the interested party on August 17, 2021 at 2.32.43 pm on the occasion of registration on a website ([https ://...](https://...)) owned by the Spanish company XX, of which the timestamp was also produced; the claimant has denied the portal to which he would have registered, reiterating that he has not given the aforementioned consent;

- Mr. XX subsequently contacted the company XX a in order to clarify the circumstance described above, with particular reference to the alleged consent given when registering on the aforementioned website, as well as to existing relationships with the Limit Call;

- from the interlocutions with XX, it emerged that the consent to the processing of personal data, evidence of which was produced with the relative registration log, would have been provided on a date other than that indicated by Limit Call (i.e. 11 October 2021 at 20.24.25) with which XX claimed not to have any contractual relationship;

- on 10 February 2022, the Office formulated a request for information and presentation of documents pursuant to art. 157 of the Code (note prot. n. 9268/22), notified on the same date via certified email, with which it invited the Company to provide any useful element for the complete assessment of the case, "with particular reference to the documentation certifying the actual release of consent by the claimant for promotional purposes also in the light of the evidence produced by XX which declared that it has no contractual relationship with Limit Call S.r.l.s.";

- since no response was received to this request, the Office proceeded to inform Limit Call of the start of the administrative procedure aimed at adopting the corrective and sanctioning measures envisaged by art. 58, par. 2, of the Regulation, inviting the same Company to send written defenses or a request for a hearing before the Guarantor within thirty days; given the previous omitted reply to the communication sent by certified email, the act of initiation of the procedure was notified by the Guardia di Finanza on 11 May 2022;

NOTING that with the aforementioned deed dated 4 April 2022, notified on 11 May 2022, the Company was charged with violating art. 157 of the Code, from which the application of the sanction provided for by art. 83, par. 5 of the Regulation, referred to in art. 166, paragraph 2, of the Code, and the start of the procedure for the adoption of the related corrective measures was also communicated;

HAVING ACKNOWLEDGED that the Company has not submitted written defenses nor has it requested to be heard by the

Authority, pursuant to art. 166, paragraph 6, of the Code and of the art. 13 of the Internal Regulation of the Guarantor n. 1/2019;

CONSIDERING that the inertia of the Company has resulted in a heavier burden of the preliminary fulfilments and a slowdown in the administrative action; this circumstance emerges per tabulas, given that the Office sent a request for information specifying that a lack of response could have led to the application of administrative sanctions;

NOTING that the aforementioned request for information pursuant to art. 157 of the Code was sent to the pec address of Limit Call as resulting from the information system of the Chambers of Commerce and, in this regard, it is useful to highlight that the d.l. 76/2020 (so-called "simplification decree"), converted with amendments of Law 120/2020, has qualified, in art. 37, the certified e-mail address of the companies as a "digital domicile" valid for the purposes of electronic communications having legal value (see provision no. 126 of 7 April 2022, web doc. no. 9771529; see provision no. 23 of 27 January 2022, web doc. n. 9746068);

NOTING that the certified e-mail address of Limit Call was found to be fully functional since upon sending the request for information, the system returned the acceptance and delivery certificates, which completed the notification of the deeds;

NOTING that the lack of response from the Company did not allow, however, to acquire a complete picture of information, nor was it possible to ascertain the legal basis that would have legitimized the treatment in question, given the conflicting declarations of the Companies involved;

CONSIDERING, therefore, on the basis of what is in the documents, that it is not possible to attribute with certainty a subjective responsibility for the conduct complained of in the complaint in relation to the lawfulness profiles of the processing in question and that, however, on this point, it appears necessary to enjoin Limit Call, pursuant to art. 58, par. 1 lit. a), of the Regulation, to provide feedback to the Guarantor's request for information pursuant to art. 157 of the Code remained unanswered, for a complete assessment of the aspects related to the lawfulness of the treatments;

NOTING, moreover, that the omitted response to the request for information referred to in the previous point, configuring the violation of art. 157 of the Code, requires the adoption of an injunction, pursuant to articles 166, paragraph 7, of the Code and 18 of the law n. 689/1981, for the application against Limit Call of the pecuniary administrative sanction provided for by art. 83, par. 5, of the Regulation;

CONSIDERING the articles 166, paragraph 2, of the Code and 83, par. 5 of the Regulation which, for the violation referred to

above, provides for the application of the administrative sanction of the payment of a sum up to € 20,000,000 or, for companies, up to 4% of the annual worldwide turnover of the previous year, if superior;

CONSIDERING that, for the purposes of determining the amount of the pecuniary sanction, it is necessary to take into account the elements indicated in art. 83, par. 2, of the Regulation;

CONSIDERING that, in the case in question, the following are relevant:

to. the seriousness of the violation due to the repeated failure to respond to the Guarantor's requests (in particular, to the request for information of 10 February 2022 and to the notification of the initiation of the procedure notified, by the Guardia di Finanza, on 11 May 2022) (art. 83, paragraph 2, letter a);

b. the grossly negligent, and apparently even willful, nature of the conduct, since the Company did not take any account of the consequences that could derive from the failure to respond to the Guarantor's requests, also in terms of the complete instruction of the complaint procedure (art. 83 , paragraph 2, letter b);

d. failure to cooperate with the Authority, despite the fact that the Company has been the recipient of communications whose response could have allowed a complete definition of the matter (Article 83, paragraph 2, letter f);

And. the economic conditions of the offender taking into account the value of production and the profit for the year with reference to the condensed financial statements for the year 2020 and taking into account that in that year the production activities were not undertaken (Article 83, paragraph 2, letter k);

CONSIDERING that, on the basis of all the elements indicated above, and the principles of effectiveness, proportionality and dissuasiveness indicated in art. 83, par. 1 of the Regulations, the administrative sanction of the payment of a sum of 10,000.00 (ten thousand) euros, equal to 0.05% of the maximum statutory sanction, must be applied to Limit Call;

CONSIDERING also that the ancillary sanction of publication on the Guarantor's website of this provision, provided for by art. 166, paragraph 7, of the Code and art. 16 of the Regulation of the Guarantor n. 1/2019, taking into account the subject matter of the preliminary investigation, namely the phenomenon of unwanted marketing, with respect to which this Authority has adopted numerous measures both of a general nature and aimed at specific data controllers and on which the attention of the 'user;

NOTING that the conditions pursuant to art. 17 of Regulation no. 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor;

HAVING REGARD to the documentation in the deeds;

HAVING REGARD TO the observations made by the general secretary pursuant to art. 15 of the Guarantor's regulation n. 1/2000;

SPEAKER Dr. Agostino Ghiglia;

ALL THIS CONSIDERING THE GUARANTOR

ascertained against Limit Call S.r.l.s., in the person of its pro-tempore legal representative, with registered office in Milan, via Tertulliano 70, C.F. 11508000962, the violation of the art. 157 of the Code for the reasons described in the introduction;

ENJOYS

a Limit Call, pursuant to art. 58, par. 1 lit. a), of the Regulation, to respond to the previous request for information sent on 10 February 2022 by certified email; any failure to comply with the provisions of this point may result in the application of a further administrative fine, as provided for by art. 83, par. 5, of the Regulation;

ORDER

to the aforementioned Company to pay the sum of 10,000.00 (ten thousand) euros as an administrative fine for the violation indicated in the justification, representing that the offender, pursuant to art. 166, paragraph 8, of the Code, has the right to settle the dispute, by paying, within the term of thirty days, an amount equal to half of the fine imposed;

ENJOYS

to the Company, in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, to pay the sum of 10,000.00 (ten thousand) euros, according to the methods indicated in the attachment, within 30 days of notification of this provision, under penalty of adopting the consequent executive deeds pursuant to art. . 27 of the law n. 689/1981;

HAS

a) pursuant to art. 17 of the Regulation of the Guarantor n. 1/2019, the annotation in the internal register of the Authority, provided for by art. 57, par. 1 lit. u), of the Regulation, of the violations and of the measures adopted;

b) pursuant to art. 166, paragraph 7, of the Code, the full publication of this provision on the Guarantor's website.

Pursuant to art. 78 of Regulation (EU) 2016/679, as well as articles 152 of the Code and 10 of Legislative Decree 1 September 2011, n. 150, opposition to this provision may be lodged with the ordinary judicial authority, with an appeal lodged with the ordinary court of the place where the owner of the processing of personal data has his residence, or, alternatively, with the

court of the place of residence of the interested party. , within the term of thirty days from the date of communication of the provision itself, or sixty days if the appellant resides abroad.

Rome, 20 October 2022

PRESIDENT

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THE SPEAKER

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THE DEPUTY SECRETARY GENERAL

Philippi