

Injunction order against Isinc S.r.l.s. - April 21, 2021

Record of measures

n. 149 of 21 April 2021

## THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by prof. Pasquale Stanzione, president, Professor Ginevra Cerrina Feroni, vice 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, concerning the protection of individuals with regard to the processing of personal data, as well as the free circulation of such data and which repeals Directive 95/46 / EC (General Data Protection Regulation, hereinafter the "Regulation");

GIVEN 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 national law to the aforementioned Regulation (hereinafter the "Code");

GIVEN the documentation in the deeds;

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

SPEAKER Attorney Guido Scorza .;

WHEREAS

### 1. THE INVESTIGATION ACTIVITY CARRIED OUT

The Authority received several requests - complaints and reports - from lawyers who complained about the receipt of promotional e-mails, most likely extracted from the INI Pec register (1), by Isinc S.r.l.s (hereinafter, Isinc).

An examination of the attached e-mails, all of the same content, reveals the presence of a disclosure in which it is noted that the data used for sending communications have been extracted from public databases.

In response to requests for information sent by the Office, the Company stated only that it had deleted the data of the applicants without, however, providing any clarification regarding the legal basis underlying the processing.

A note was therefore sent to initiate the procedure pursuant to art. 166, paragraph 5 of the Code with which the sending of

promotional communications without consent was contested.

With an e-mail dated November 30, 2020, the Company noted that "... the message received contained an extensive privacy statement, through which prompt information was given to the instants of our retrieval of their e-mail address which was freely available on line ". In addition, the same pointed out that it was possible to interrupt the reception by using a special link or by writing to the address [privacy@isinc.it](mailto:privacy@isinc.it).

The interested parties did not make use of this option and contacted the Guarantor: the Company promptly canceled the certified e-mail addresses, as soon as it received the requests for information from the Authority.

## 2. LEGAL ASSESSMENTS

With reference to the factual profiles highlighted above, also based on the statements of the Company to which the declarant responds pursuant to art. 168 of the Code, the following assessments are formulated in relation to the profiles concerning the regulations on the subject of personal data protection.

As just reconstructed, promotional communications were sent, using data extracted from public databases, in the absence of suitable consent from the recipients.

In this regard, reference is made to the provisions of art. 130 of the Code according to which the sending of communications with automated methods is allowed only with the consent of the contractor or user, being able to admit a derogation only in the event that the email address has been issued by the interested party in the context of a sale of similar goods or services. As also clarified by the Guarantor with the Guidelines on promotional activities and the fight against spam of 4 July 2013 (2) "without consent ... it is not possible to send promotional communications with the aforementioned tools even if personal data are processed from public registers, lists, websites, acts or documents known or known to anyone. Similarly, without the prior consent of the interested parties, it is not permissible to use the pec addresses contained in the national index of pec addresses of companies and professionals to send promotional e-mails ... established to facilitate the submission of applications, declarations and data, as well as exchange of information and documents between the public administration and businesses and professionals electronically ".

For these reasons, the violation of art. 130 of the Code and art. 6, par. 1, lett. a) of the Regulations and it is necessary to prohibit, pursuant to art. 58, par. 2 lett. f), the further use for promotional purposes of personal data that the Company has acquired without being able to document the existence of suitable consent. It is also considered necessary to order Isinc,

pursuant to art. 58, par. 2, lett. g), to delete personal data acquired from its archives without suitable consent for commercial purposes and it is believed that the conditions exist for the application of a pecuniary administrative sanction pursuant to Articles 58, par. 2, lett. i) and 83 of the Regulation.

### 3. INJUNCTION ORDER FOR THE APPLICATION OF THE ADMINISTRATIVE PECUNIARY SANCTION

Based on the above, art. 130 of the Code and art. 6, par. 1, lett. a) of the Regulations, for which the sanction provided for by art. 83, par. 5 of the Regulation.

For the purpose of quantifying the administrative sanction, for the violations referred to in point 2, the aforementioned art. 83, par. 5, in setting the maximum legal limit in the sum of 20 million euros or, for companies, in 4% of the annual worldwide turnover of the previous year, whichever is higher, specifies the methods of quantifying the aforementioned sanction, which must "in any case [ be] effective, proportionate and dissuasive "(art. 83, par. 1 of the Regulations), identifying, for this purpose, a series of elements, listed in par. 2, to be assessed when quantifying the relative amount.

In compliance with this provision, in the present case, the following aggravating circumstances must be considered:

1. the systemic nature of the violations found which therefore makes them potentially extended to a large number of interested parties, taking into account the fact that the promotional activity constitutes the corporate purpose of Isinc; it must also be noted that the use of the certified e-mail tool makes the processing suitable for causing greater interference to the professional activity of the interested parties and for this reason it is more serious (Article 83, paragraph 2, letter a) ) of the Regulations);
2. the degree of responsibility of the data controller, to be qualified as grossly negligent, taking into account that the Company has sent promotional messages without consent, deeming the presence of addresses in a public register to be sufficient, despite the clear provision of art. 130 of the Code and despite the countless pronouncements made over the years by the Guarantor to be considered by now widely known, at least in the principles, to the data controllers (Article 83, paragraph 2, letter b) and d) of the Regulation);
3. the absence of corrective measures proposed to avoid the recurrence of similar events: the Company, in fact, has not made any declarations regarding any corrective actions concerning the treatment in general (but has only limited itself to declaring that it has canceled the names of the complainants), so much so that it has become necessary to impose a ban on further sending of promotional messages to subjects whose acquisition of consent has not been demonstrated (Article 83, paragraph 2, letter c) of the Regulations).

As mitigating elements, it is believed that we must take into account:

1. the nature of the data subject to the breach (common data);
2. the level of damage suffered by the complainants, consisting in the receipt of unwanted promotional messages, which is however tempered by the possibility of opposing them through a specific link;
3. the degree of cooperation with the supervisory authority;
4. the micro-enterprise nature of Isinc, recently on the market, as well as the data of the 2019 financial statements;
5. the absence of previous proceedings initiated against the Company.

In an overall perspective of the necessary balancing between the rights of the interested parties and freedom of enterprise, and in the first application of the administrative pecuniary sanctions provided for by the Regulation, it is necessary to prudently evaluate the aforementioned criteria, also in order to limit the economic impact of the sanction on the needs. organizational, functional and occupational of the Company.

Therefore, it is believed that, based on the set of elements indicated above - taking into account that the maximum legal sanction, identified with reference to the provisions of art. 83, paragraph 5, is equal to 4% of turnover (which, in the case of Isinc is less than 20 million euros) - the administrative sanction of payment of a sum of 20,000.00 euros (twenty thousand / 00 ) and, due to the aggravating elements found, the ancillary sanction of the full publication of this provision on the website of the Guarantor as required by art. 166, paragraph 7 of the Code and by art. 16 of the regulation of the Guarantor n. 1/2019.

It is noted 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.

Please note that pursuant to art. 170 of the Code, anyone who, being required to do so, does not comply with this prohibition provision is punished with imprisonment from three months to two years and who, in the event of non-compliance with the same provision, the sanction referred to in the art. 83, par. 5, lett. e), of the Regulation.

WHEREAS, THE GUARANTOR

pursuant to art. 57, par. 1, lett. f), of the Regulations, declares the unlawfulness of the processing described in the introduction, carried out in the absence of a free, specific and preventive consent of the interested parties for the sending of promotional communications with automated methods by Isinc S.r.l.s., based in Reggio Calabria , via Nazionale Pentimele, 87, Tax Code and VAT number 03094710807 and, consequently:

- a) pursuant to art. 58, par. 2, lett. f) of the Regulations, prohibits any further processing for promotional purposes of data for which it is unable to document the existence of suitable consent;
- b) pursuant to art. 58, par. 2, lett. g) orders to delete personal data acquired from its archives without suitable consent for commercial purposes.

#### ORDER

to Isinc S.r.l.s., based in Reggio Calabria, via Nazionale Pentimele, 87, Tax Code and VAT number 03094710807, to pay the sum of € 20,000.00 (twenty thousand / 00) as a pecuniary administrative sanction for the violations indicated in the motivation, representing that the offender, pursuant to art. 166, paragraph 8, of the Code has the right to settle the dispute, with the fulfillment of the prescribed requirements and the payment, within thirty days, of an amount equal to half of the sanction imposed.

#### INJUNCES

to the aforementioned Company, in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, to pay the sum of € 20,000.00 (twenty thousand / 00), 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 law n. 689/1981.

#### HAS

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

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

The Guarantor, pursuant to art. 58, par. 1, of Regulation (EU) 2016/679, also invites the data controller to communicate within 30 days from the date of receipt of this provision, which initiatives have been undertaken in order to implement the provisions of this provision and to provide however, adequately documented confirmation. Please note that failure to respond to the request pursuant to art. 58 is punished with the administrative sanction pursuant to art. 83, par. 5, lett. e), of Regulation (EU) 2016/679.

Pursuant to art. 78 of Regulation (EU) 2016/679, as well as art. 152 of the Code and 10 of the legislative decree 1 September 2011, n. 150, opposition to this provision may be filed with the ordinary judicial authority, with an appeal filed with the ordinary

court of the place where the data controller is resident, or, alternatively, to the court of the place of residence of the person concerned. , within thirty days from the date of communication of the provision itself, or sixty days if the applicant resides abroad.

Rome, April 21, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Peel

THE SECRETARY GENERAL

Mattei

(1) National Index of Certified Electronic Mail Addresses established by the Ministry of Economic Development, at

<https://www.inipec.gov.it/cerca-pec>

(2) In [www.garanteprivacy.it](http://www.garanteprivacy.it) doc web n. 2542348