

SEE NEWSLETTER OF 19 MAY 2022

[doc. web n. 9771529]

Order injunction against Made in Italy s.r.l.s. - April 7, 2022

Record of measures

n. 126 of 7 April 2022

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, adopted by resolution of June 28, 2000;

Rapporteur Prof. Ginevra Cerrina Feroni;

1. THE INVESTIGATION ACTIVITY CARRIED OUT

1.1. Premise

With act no. 56827/21 of 12 November 2021 (notified on the same date by certified e-mail), which here must be understood as fully reproduced, the Office has initiated, pursuant to art. 166, paragraph 5, of the Code, a procedure for the adoption of the measures referred to in art. 58, par. 2, of the Regulation towards Made in Italy s.r.l.s. (hereinafter "Made in Italy" or "the Company"), in the person of the pro-tempore legal representative, with registered office in Potenza, via Appia, n. 184, Tax Code 01888640768.

The proceeding originates from an investigation launched by the Authority, following the receipt of a complaint with which an

interested party complained of the failure of Made in Italy to reply to a request for the exercise of rights aimed at obtaining information on the processing of their data (Article 15 of the Regulation - in particular the origin of the data relating to their mobile telephone number), as well as the cancellation of the same from the company archives (Article 17) and to express opposition to further processing by the Company (Article . 21, par. 2).

As emerges from the complaint, the interested party would have received "a call from Made in Italy, despite a previous call in which I had clearly indicated that I was not interested and did not want to be disturbed anymore. Upon explicit request to communicate how Made in Italy had come into possession of my contact, the operator generically claimed that the company had obtained my number from a tele-marketing database. However, the undersigned has never consented pursuant to the Regulations to the publication of their data in public lists or directories, nor to the use of their contacts for commercial or marketing purposes ".

The complainant therefore sent Made in Italy, on 9 May 2021 by e-mail, the form for the exercise of rights downloadable on the website of the Guarantor, with which he requested to "indicate the precise reference of the telecommunications company. marketing who provided personal data ", opposed" the processing of data for any commercial purpose, and for placement and research of personnel "and requested the cancellation of their data from the Company's databases. The Company has not provided any feedback to these requests, despite a reminder sent, again by the interested party, on June 8, 2021.

1.2. The request for information formulated by the Authority

As soon as the complaint was received, the Office began the investigation by requesting the Company, pursuant to art. 157 of the Code, to express their observations regarding the complaints of the complainant and inviting the same to declare whether it intends to adhere to its requests for the exercise of rights. The deed pointed out that in the event of non-compliance, the pecuniary administrative sanction provided for by art. 166, paragraph 2, of the aforementioned legislative decree no. 196/2003 ". The request for information, notified on 15 July 2021 by certified e-mail, remained unanswered.

1.3. Challenge of administrative violations

The Office, having acknowledged the repeated non-responses of the Company, therefore adopted the aforementioned act of initiation of the administrative procedure no. 56827/21 of 12 November 2021, with which it challenged Made in Italy the following violations:

a) art. 157 and 166, paragraph 2, of the Code, for failing to provide a response to a request for information and presentation of

documents formulated by the Guarantor;

b) articles 15, 17 and 21 of the Regulation, for failing to respond to requests for access to personal data, cancellation and opposition to processing for direct marketing purposes, made by the complainant;

c) art. 130, paragraph 3, and 166, paragraph 2, of the Code, for having made two promotional calls to the complainant's telephone number, without having acquired the required consent pursuant to Articles 6 and 7 of the Regulation.

2. AUTHORITY ASSESSMENTS

It must be premised that the Made in Italy Company has not exercised its right of defense, in relation to the disputed charges, and therefore has not produced defensive briefs nor has it requested a hearing pursuant to art. 166, paragraph 6, of the Code and art. 13 of the internal regulation of the Guarantor n. 1/2019.

Although the Company has chosen not to initiate any dialogue with the Authority and with the complainant himself, the procedure initiated with the complaint must be considered sufficiently well-informed and full proof of the responsibility of Made in Italy with regard to the disputed charges has been acquired.

From the examination of the complaint, which contains declarations and documents about the truthfulness and genuineness of which the complainant is also liable under criminal law pursuant to art. 168 of the Code, it emerged what was reported in the notice regarding the failure of the Company to reply to the exercise of the rights promoted by the complainant: the same, in fact, in response to a request for information on the treatments, also with reference to the origin of the data of the mobile telephone numbering, deletion of data and registration of the complainant's opposition to subsequent processing, requested after 30 days, did not intend to give any type of reply to the interested party.

Furthermore, from the statements reported in the complaint, it emerges that the interested party, in the first of the two promotional calls made by the Company, expressed his opposition to receiving further phone calls to the operator who made the contact, but this was not enough to - that the Company took into account the will of the same: in fact, he was made the subject of another unwanted contact, again by Made in Italy.

The conduct of the Italy Company is therefore proven, which made two promotional contacts with the interested party without having acquired the consent to the relative data processing from the same and, subsequently, failed to provide feedback on the occasion of the subsequent exercise, by the interested party himself, of the rights referred to in art. 15, 17 and 21 of the Regulation (right of access, deletion of data and opposition to processing) thus making the exercise itself impossible and

depriving the complainant of control of their personal data.

The Company also failed to provide feedback to the requests for information and the presentation of documents formulated by the Guarantor, resulting in a burdening of the investigative requirements and a slowdown in administrative action. This circumstance also emerges by tabulas, given that the Office sent a request for information specifying that a failure to respond could result in the application of administrative sanctions.

The request for information was sent to the certified Made in Italy e-mail address as resulting from the information system of the Chambers of Commerce and, in this regard, it is useful to reiterate that the Legislative Decree 76/2020 (so-called "simplification decree"), converted with amendments by Law 120/2020, qualified, in art. 37, the certified e-mail address of companies as a "digital domicile" valid for the purposes of electronic communications with legal value.

It should also be noted that the certified e-mail address of Made in Italy is fully functional since upon sending the request for information and the subsequent act of dispute, the system returned the certificates of acceptance and delivery, which have not completed the notification of documents.

3. CONCLUSIONS

For the above, the responsibility of Made in Italy is deemed to be ascertained in relation to the following violations:

- a) art. 157 and 166, paragraph 2, of the Code, for failing to provide a response to a request for information and presentation of documents formulated by the Guarantor;
- b) articles 15, 17 and 21 of the Regulation, for failing to respond to requests for access to personal data, cancellation and opposition to processing for direct marketing purposes, made by the complainant;
- c) art. 130, paragraph 3, and 166, paragraph 2, of the Code, for having made two promotional calls to the complainant's telephone user, without having acquired the required consent pursuant to Articles 6 and 7 of the Regulation.

Having also ascertained the unlawfulness of the Company's conduct with reference to the treatments examined, it is necessary:

- send a warning to Made in Italy, pursuant to art. 58, par. 2, lett. a), of the Regulation, so that it does not carry out treatments of the same type as those described in the complaint, without acquiring the required consent from the interested parties pursuant to Articles 6 and 7 of the Regulations;
- order Made in Italy, pursuant to art. 58, par. 2, lett. c), of the Regulations, to satisfy and respond to the claims of the

complainant, with reference to the exercise of the rights referred to in Articles 15, 17 and 21 of the Regulations;

- to impose on Made in Italy, pursuant to art. 58, par. 2, lett. f) of the Regulations, the prohibition of any further processing of the complainant's data;

- adopt an injunction order, pursuant to Articles 166, paragraph 7, of the Code and 18 of law no. 689/1981, for the application to Made in Italy of the administrative pecuniary penalty provided for by art. 83, para. 3 and 5, of the Regulation

4. ORDER-INJUNCTION FOR THE APPLICATION OF THE ADMINISTRATIVE PECUNIARY SANCTION

The violations indicated above require the adoption of an injunction order, pursuant to Articles 166, paragraph 7, of the Code and 18 of law no. 689/1981, for the application to Made in Italy of the pecuniary administrative sanction provided for by art. 83, para. 3 and 5, of the Regulations (payment of a sum up to € 20,000,000);

To determine the amount of the penalty, the elements indicated in art. 83, par. 2, of the Regulation.

In the case in question, the following are relevant:

1) omissive conduct on the part of Made in Italy which did not provide feedback to the notes sent by the interested party and by the Authority and processed the data of the interested party for promotional purposes without having acquired the required consent from the same (Article 83, paragraph 2, letter a) of the Regulation);

2) as an aggravating factor, the duration of the conduct put in place (Article 83, paragraph 2, letter a) of the Regulation), which extended the time for processing the complaint and responding to the requests of the interested party, which has not yet taken place;

3) the fact that the Company was the recipient, in several stages of the procedure, of communications whose acknowledgment could have allowed a complete definition of the issue (Article 83, paragraph 2, letter f) of the Regulations);

4) which additional factors to take into consideration to parameterize the sanction (Article 83, paragraph 2, letter k) of the Regulation), the turnover, the useful content recorded by the Company in 2019 and the general socio-economic context , characterized by a profound economic crisis following the serious global epidemiological emergency.

Based on the set of elements indicated above, and the principles of effectiveness, proportionality and dissuasiveness provided for by art. 83, par. 1, of the Regulation, and taking into account the necessary balance between the rights of the interested parties and freedom of enterprise, in the first application of the administrative pecuniary sanctions provided for by the Regulations, also in order to limit the economic impact of the sanction on organizational needs, functional and occupational of

the Company, it is believed that the administrative sanction of the payment of a sum of € 20,000, equal to 0.25% of the maximum legal sanction, should be applied to Made in Italy.

In the case in question, it is believed that the ancillary sanction of the publication on the website of the Guarantor of this provision, provided for by art. 166, paragraph 7 of the Code and art. 16 of the Guarantor Regulation n. 1/2019, taking into account the nature of the treatments and conduct of the Company, as well as the elements of risk for the exercise of the rights of the interested parties who may be involved in the treatments considered;

Finally, 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, for the annotation of the provision in the internal register of the Authority provided for by art. 57, par. 1, lett. u), of the Regulation.

ALL OF THIS GIVEN THE GUARANTOR

a) issues a warning to Made in Italy, pursuant to art. 58, par. 2, lett. a), of the Regulation, so that it does not carry out treatments of the same type as those described in the complaint, without acquiring the required consent from the interested parties pursuant to Articles 6 and 7 of the Regulation;

b) orders Made in Italy, pursuant to art. 58, par. 2, lett. c), of the Regulations, to satisfy and respond to the claims of the complainant, with reference to the exercise of the rights referred to in Articles 15, 17 and 21 of the Regulations;

c) requires Made in Italy, pursuant to art. 58, par. 2, lett. f) of the Regulations, the prohibition of any further processing of the complainant's data;

d) orders Made in Italy, pursuant to art. 157 of the Code, to communicate to the Authority, within thirty days of notification of this provision, the initiatives undertaken in order to implement the measures adopted; any failure to comply with the provisions of this point may result in the application of the pecuniary administrative sanction provided for by art. 83, paragraph 5, of the Regulation

ORDER

to Made in Italy s.r.l.s., in the person of the pro-tempore legal representative, with registered office in Potenza, via Appia, n. 184, Tax Code 01888640768, to pay the sum of € 20,000.00 (twenty thousand / 00) as a fine 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

The application of the ancillary sanction of the publication on the website of the Guarantor of this provision, provided for by Articles 166, paragraph 7 of the Code and 16 of the Regulation of the Guarantor n. 1/2019, and the annotation of the same in the internal register of the Authority - provided for by art. 57, par. 1, lett. u), of the Regulations, as well as by 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 - relating to violations and measures adopted in accordance with art. 58, par. 2, of the Regulation itself.

Pursuant to art. 152 of the Code and 10 of Legislative Decree n. 150/2011, against this provision, opposition may be proposed to the ordinary judicial authority, with an appeal filed with the ordinary court of the place where the data controller is based, within thirty days from the date of communication of the provision itself. .

Rome, April 7, 2022

PRESIDENT

Stanzione

THE RAPPORTEUR

Cerrina Feroni

THE SECRETARY GENERAL

Mattei