

Injunction order against Musicraiser S.r.l. - January 27, 2022

Record of measures

n. 22 of January 27, 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 (hereinafter the "Regulation");

GIVEN the Code regarding the protection of personal data, containing provisions for the adaptation of the national system to Regulation (EU) 2016/679 (Legislative Decree 30 June 2003, n.196, as amended by Legislative Decree 10 August 2018, no. 101, hereinafter the "Code");

GIVEN the complaint of a German citizen, sent by the German supervisory authority of the Land of Baden - Wurttemberg as it concerns a cross-border processing of personal data, with which the continuing receipt was complained of, following registration with the homonymous web platform, of the newsletter of the company Musicraiser S.r.l., despite the numerous requests for cancellation sent to the owner from 25 October 2013 to 18 July 2018;

NOTING that the Guarantor has declared to be the lead Authority in the procedure in question as the data controller has a single establishment in Italy;

NOTING that no pertinent and justified objection was raised by the supervisory authorities concerned with respect to the draft decision sent pursuant to art. 60, par. 3, of the Regulation and that, therefore, the Guarantor is entitled to adopt the final decision pursuant to art. 60, par. 7, of the Regulation;

GIVEN the note 21 May 2019, prot. n. 16921/19, with which the Guarantor asked the company for information, pursuant to art. 157 of the Code, never encountered by the company;

GIVEN the notes 18 September 2019, prot. n. 31446 and 31455 with which the Guarantor, through the Special Unit for the Protection of Privacy and Technological Fraud of the Guardia di Finanza, notified the Company of the act of initiating the sanctioning procedure for the violation of Articles 157 and 166, co. 2, of the Code for failure to respond to the Authority's

request for information as well as the renewal of requests for information previously requested;

HAVING REGARD to the minutes of the operations carried out drawn up on 2 October 2019 by the Economic and Financial Police Headquarters of the Guardia di Finanza of Milan in which the legal representative of the company, in response to the Authority's request for information, represented, producing adequate documentation support, to have received the original request for cancellation of the complainant dated 25 October 2013 and to have done so on 26 April 2017 and, after having received the request for information from the Authority on 14 March 2019, to have ordered a former employee to verify any non-fulfillment of the complainant's request and, if necessary, consequently delete the complainant from the newsletter

HAVING SEEN the same minutes in which the legal representative stated that, for economic reasons, although the registered office has been formally maintained, the activity of the company is carried out at the residence of the legal representative himself and that "precisely for economic reasons is considering the closure of the company ";

GIVEN the note 24 December 2019 prot. 45108 with which the Guarantor communicated to the company, in its capacity as data controller, pursuant to art. 166, paragraph 5, of the Code, the initiation of the procedure for the possible adoption of the measures referred to in art. 58, par. 2, of the Regulations and the alleged violations of the law were notified, identified, in this case, in the use of the complainant's e-mail address for sending the platform newsletter, in violation of art. 21, par. 2, 4 and 5, of the Regulation;

NOTING that the Company has not exercised its right to be heard recognized by the legislation in force following the notification of the violation;

CONSIDERING that, unless the fact constitutes a more serious crime, whoever, in a proceeding before the Guarantor, falsely declares or certifies news or circumstances or produces false acts or documents, is liable pursuant to art. 168 of the Code "False statements to the Guarantor and interruption of the execution of the tasks or the exercise of the powers of the Guarantor";

CONSIDERING that art. 21 of the Regulation provides for the interested party the right to object at any time to the processing of personal data concerning him for direct marketing purposes;

NOTING that the company has processed the complainant's e-mail address to send him the newsletter of the musicraiser.com music sharing platform despite repeated requests for cancellation sent by the complainant himself;

Hence the unlawfulness of the aforementioned processing has been detected as it was carried out in violation of art. 21, par. 2,

4 and 5, of the Regulation;

NOTING also that the company has not provided a response to the Authority's request for information pursuant to art. 157 of the Code, notified on 21 May 2019;

CONSIDERING, in terms of assessing the severity of the violations, that:

- the complainant's data were promptly deleted, following the intervention of the Guarantor, although this requirement was not communicated either to the Authority or to the interested party;
- the personal data being processed are common data and no other complaints or reports have been received by the Authority against the company;
- the company has actively collaborated with the Authority in the context of the investigation activities;
- the company is in the process of dissolution and liquidation;

CONSIDERING, therefore, that the violation of art. 21, par. 2, 4 and 5, in relation to art. 83, par. 2, last sentence and in recital 148 of the Regulation it can be classified as a "minor" grade;

CONSIDERING, therefore, in the light of the considerations summarized above, that it is necessary to proceed pursuant to art. 58, par. 2, lett. b), of the Regulations, to warn the company Musicraiser S.r.l. regarding the need to promptly comply with users in case of exercise of rights;

CONSIDERING that the Guarantor, pursuant to art. 58, par. 2, lett. i), of the Regulations and art. 166 of the Code, has the power to impose a pecuniary administrative sanction provided for by art. 83, par. 5 of the Regulation, through the adoption of an injunction order (art.18, law 24 November 1981, n.689), in relation to the processing of personal data referring to the complainant, whose unlawfulness has been ascertained, in the terms above exposed, of the articles 12 and ss. of the Regulations, at the outcome of the procedure referred to in art. 166, paragraph 5, carried out jointly with the data controller;

GIVEN art. 166, paragraph 2, of the Code which provides that the violation of art. 157 of the Code itself is subject to the administrative sanction referred to in Article 83, paragraph 5, of the Regulations;

CONSIDERING that, for the purposes of applying the administrative pecuniary sanction and its quantification also with respect to this violation, the elements listed in art. 83, par. 2, of the Regulations, taking into account that the sanctions must be "effective, proportionate and dissuasive in each individual case" (Article 83, paragraph 1 of the Regulations);

CONSIDERING that the legal representative of the Company reported that he did not respond to the Authority's request for

information, although he took action to follow up on the complainant's request for cancellation;

CONSIDERING the particular financial conditions in which the Company finds itself and the fact that it is currently in the process of winding up and liquidating;

NOTING that there are no previous relevant violations committed by the data controller or previous measures pursuant to art. 58 of the Regulations and that the Company has actively and comprehensively cooperated with the Authority during the procedure;

CONSIDERING to determine the amount of the pecuniary sanction in the amount of € 1,000 (one thousand / 00) for the violation of the combined provisions of Articles 157 and 166, 2nd co, of the Code;

CONSIDERING that sanction, pursuant to art. 83, par. 1, of the Regulation, effective, proportionate and dissuasive in relation to the present case;

CONSIDERING, also in consideration of the type of violation ascertained, which concerned the rights of the interested party, that, pursuant to art. 166, paragraph 7, of the Code and art. 16, paragraph 1, of the regulation of the Guarantor n. 1/2019, this provision should be published on the Authority's website;

NOTING 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;

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, THE GUARANTOR

a) pursuant to art. 57, par. 1, lett. f) of the Regulations, declares the unlawfulness of the processing carried out, in the terms set out in the motivation, by Musicraiser S.r.l. for the violation of art. 21, par. 2, 4 and 5, of the Regulation;

b) pursuant to art. 58, par. 2, lett. b), of the Regulations, warns Musicraiser S.r.l. regarding the need to promptly fulfill the requests of the interested parties in case of exercise of their rights;

c) pursuant to art. 58, par. 2, lett. i), of the Regulations, orders Musicraiser S.r.l., in the person of the pro-tempore legal representative, with registered office in Milan, Via Cosimo del Fante 10, C.F. and VAT no. 07915260967, to pay the sum of

1,000 euros (one thousand euros / 00) as a pecuniary administrative sanction for the violation of the combined provisions of art. 157 and 166, 2nd co, of the Code

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then to the same company to pay the sum of 1,000 euros (one thousand euros / 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. It is represented that pursuant to art. 166, paragraph 8 of the Code, the offender has the right to settle the dispute by paying - again in the manner indicated in the annex - of an amount equal to half of the sanction imposed within the term referred to in art. 10, paragraph 3, of d. lgs. n. 150 of 1 September 2011 envisaged for the filing of the appeal as indicated below.

HAS

pursuant to art. 166, paragraph 7, of the Code and art. 16, paragraph 1, of the regulation of the Guarantor n. 1/2019, the publication of this provision on the website of the Guarantor and believes that the conditions set out in art. 17 of regulation no. 1/2019.

Pursuant to art. 60, par. 7 of the Regulations, this provision is notified to the data controller who, pursuant to art. 78 of the Regulation, as well as art. 152 of the Code and 10 of the legislative decree 1 September 2011, n. 150, may lodge opposition to the ordinary judicial authority, with an appeal filed, alternatively, at the court of the place where he resides or has his headquarters or at that of the place of residence of the interested party within thirty days from the date of communication of the provision itself. or sixty days, if the applicant resides abroad.

Pursuant to art. 60, par. 7, of the Regulations, the supervisory authority to which the complaint was proposed informs the complainant about this provision.

Rome, January 27, 2022

PRESIDENT

Stanzione

THE RAPPORTEUR

Peel

THE SECRETARY GENERAL

