

Order injunction against E-Mac Professional s.r.l. - April 7, 2022

Record of measures

n. 123 of 7 April 2022

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by Prof. Pasquale Stanzione, president, Prof. 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 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 presented by Mr. XX on 23/11/2020, regularized on 05/06/2021, pursuant to art. 77 of the Regulation, with which E-Mac Professional s.r.l. has complained of a violation of the rules on the protection of personal data;

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

Rapporteur Dr. Agostino Ghiglia;

WHEREAS

1. The initiation of the procedure.

1.1. With the complaint presented to this Authority on 23/11/2020, regularized on 05/06/2021, Mr. XX represented to have formulated, on 10/07/2020, against E-Mac Professional s.r.l. (hereinafter "the Company"), an application aimed at obtaining "access to all personal data for which processing is in progress, a copy of the same and all the information provided for in letters a) to h) of the art. 15, par. 1, of the Regulations; (...) links, copies or reproductions of (...) personal data relating to the processing in progress; pursuant to art. 20 of the Regulation to receive such data in a structured format of common use and readable by an automatic device; pursuant to art. 21, par. 2, of the Regulation, the opposition to the processing of data for direct marketing purposes (...) ". The complainant also specified that he had purchased products from the Company and that,

in the context of the subsequent dispute, the latter "recalled personal data referring to Mr. XX, of which the latter requested an account through the request in question" . However, the request, duly notified to the Company by pec on 10/07/2020, was not found within the terms set out in art. 12, par. 3, of the Regulation.

With the note dated 01/07/2021 (prot. No. 35160), the Office invited the Company to provide comments on what is represented in the complaint and to adhere to the complainant's requests.

The Company, with a note dated 07/15/2021, produced a copy of the information, prepared pursuant to art. 13 of the Regulation, from which to infer the main information relating to the treatments put in place and confirmed to be in possession of the personal data referring to the complainant, undertaking to "prepare the necessary material as soon as possible by charging a fee (...)", this is because "the request of the interested party is manifestly unfounded and aimed at causing damage to the company (...)". In the same note, the Company communicated to this Authority and to the complainant the categories of personal data being processed, including data relating to Mr. XX (consisting of name and surname, e-mail address and telephone number) and data relating to the commercial activity exercised by them (including headquarters and company name, bank details), without providing the interested party with details of the specific information processed .

1.2. With note prot. n. 49541 of 4/10/2021, 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. 12, par. 3, and 15 of the Regulations.

1.3. The Company, on 02/11/2021, sent its defense writings, pursuant to art. 18 of the law n. 689/1981, with which it preliminarily declared that:

- "between the parties, XX, as the legal representative of XX, there was a contractual relationship aimed at the purchase by the former of movable property in the availability of the Company addressee of today's complaint" which, however, resulted in a civil dispute ;
- "given the negotiations between the Parties, Mr. XX had full knowledge of the data in possession of E-Mac issued by him, as legal representative of XX;
- the request made by the complainant, therefore, must be considered a pretext, firstly because "the interested party already had the information requested" and, secondly, because he was well aware that "as of 10.07.2020 [date of presentation of the application for the exercise of rights], no further processing was in progress as the negotiations were concluded; no different use could be made in view of the lack of consent ";

- in particular, "it should be noted that Mr. XX has never provided the personal data for which access has been requested pursuant to art. 15 GDPR for himself but always and only as the legal representative of a legal person, therefore he was not even entitled to make the request of 10.07.2020 ".

2. The outcome of the investigation.

2.1. 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, in the face of the request to exercise the rights formulated by the complainant on 10/07/2020, did not provide the feedback required by the provisions.

2.2. Preliminarily, it is noted that art. 15 of the Regulation recognizes the right of the interested party to obtain from the data controller confirmation that data concerning him is being processed and, consequently, to obtain access to such data and to the information listed in letters a) - h) of the same article. It is also noted that pursuant to art. 12, par. 5 and 15, par. 3 of the Regulations, the owner may "charge a reasonable fee, taking into account the administrative costs incurred to provide the information (...)", where the data subject's requests are manifestly unfounded or excessive or in the case of further copies. It should also be noted that art. 12 of the Regulation provides that the data controller provides the data subject with access to their data and all the information requested by them pursuant to Articles 15 and ss. of the Regulation "without undue delay and, in any case, at the latest within one month of receipt of the request" and that, within the same term, where it deems it necessary to apply the envisaged two-month extension due to "the complexity and number of requests ", Must inform the interested party indicating the reasons; "If he does not comply with the request of the interested party, the data controller informs the interested party without delay, and at the latest within one month of receiving the request, of the reasons for the non-compliance and the possibility of proposing a complaint to a supervisory authority and to propose a judicial appeal ".

2.3. It is represented that, contrary to what is believed, the request to exercise the rights in question was formulated by the complainant with respect to personal data relating to his (natural) person and not to the company XX of which he is also the legal representative. This is clear from the request itself (formulated in the applicant's own name), but also on the basis of the elements that emerged in the context of the investigation, in which the complainant has in fact specified that he wishes to be aware of his personal data that may be processed by the Company . Among other things, the Company itself, in the reply

provided on 15/07/2021, declared that it was in possession, in addition to the data referring to the company (company name, address of the registered office, bank details and payment data), also of data referring to the natural person, such as name and surname, e-mail address and telephone number, without however communicating them to the complainant, even after the investigation has started by the Authority, as the Company has generically indicated the categories of personal data in your possession. In any case, it should be noted that the Company, as data controller, even in the event of denial, should have in any case informed the interested party of the reasons for the non-compliance and of the possibility to lodge a complaint with the authority and to propose a judicial appeal (art. 12, par. 4 of the Regulations).

2.4. The argument put forward by the Company on the basis of which the request pursuant to art. 15 of the Regulations remained unanswered because the information was already known to the interested party. In fact, as known, art. 15 of the Regulation recognizes, as a preliminary matter, to the interested party "the right to obtain from the data controller confirmation that the processing of personal data concerning him is in progress" and consequently, and if so, the right "to obtain access to the data "themselves and to further information. This also in order to verify the correctness and completeness of the data being processed.

3. Conclusions: illegality of the treatments carried out.

3.1. In light of the foregoing assessments, it is noted that the statements made by the data controller in the defensive writings ☐ the truthfulness of which one may be called to answer pursuant to art. 168 of the Code ☐ do not allow the findings notified by the Office to be overcome with the act of initiation of the procedure and are insufficient to allow archiving, however, none of the cases provided for by art. 11 of the regulation of the Guarantor n. 1/2019, concerning the internal procedures of the Authority having external relevance.

3.2. For the above reasons, therefore, the complaint submitted pursuant to art. 77 of the Regulation and, in the exercise of the corrective powers attributed to the Authority pursuant to art. 58, par. 2, of the Regulation:

- the Company is hereby ordered to provide feedback to the request to exercise the rights formulated by the complainant, with regard to the personal data referred to him, which he is still in possession of;
- there is the application of a pecuniary administrative sanction pursuant to art. 83, par. 5, of the Regulation.

4. Order of injunction.

4.1. 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. L. 24 November 1981 n. 689), in relation to the processing of personal data referring to the complainant, whose unlawfulness has been ascertained, within the terms shown above.

4.2. 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 sanction must be "in each individual case effective, proportionate and dissuasive" (Article 83, par. 1 of the Regulations), that, in the present case, the following circumstances were taken into consideration:

- with regard to the nature, gravity and duration of the violation, the nature of the violation was considered relevant, which concerned the provisions relating to the exercise of the rights of the interested parties; as well as the circumstance that the violation lasted for a long period and that, still today, the feedback provided is only partial;
- the absence of previous relevant violations committed by the data controller;
- the degree of cooperation provided by the Company during the procedure.

4.3. In consideration of the aforementioned principles of effectiveness, proportionality and dissuasiveness (Article 83, paragraph 1, of the Regulation) to which the Authority must comply in determining the amount of the sanction, the economic conditions of the offender were taken into consideration, determined based on the revenues achieved and referred to the financial statements for the year 2020.

4.4. Due to the aforementioned elements, assessed as a whole, it is believed to determine the amount of the pecuniary sanction in the amount of € 10,000.00 (ten thousand) for the violation of Articles 12 and 15 of the Regulation.

4.5. In this context, also in consideration of the type of violation ascertained, which concerned the rights of the interested party, it is believed 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 Guarantor's website.

Finally, 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.

WHEREAS, THE GUARANTOR

declares, pursuant to art. 57, par. 1, lett. f) and 83 of the Regulation, the unlawfulness of the processing carried out, in the terms set out in the motivation, for the violation of Articles 12, par. 3. and 15 of the Regulations;

ORDER

to E-Mac Professional s.r.l., in the person of the pro-tempore legal representative, with registered office in Busto Arsizio (VA), via Zappellini n. 6, P.I. 03359850124, pursuant to art. 58, par. 2, lett. i), of the Regulations, to conform their treatments to the provisions of art. 12 of the Regulations, providing feedback to the interested party within 30 days of receipt of this provision, as well as paying the sum of € 10,000.00 (ten thousand) as a fine for the violations indicated in this provision;

INJUNCES

to the same Company to pay the 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 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.

Rome, April 7, 2022

PRESIDENT

Stanzione

THE RAPPORTEUR

Ghiglia

THE SECRETARY GENERAL

Mattei