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Order injunction against Ikea Italia Retail s.r.l. - February 25, 2021

Record of measures

n. 86 of 25 February 2021

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 complaints submitted to the Guarantor pursuant to Article 77 of the Regulation, by Mr. XX and Mrs. XX with whom alleged violations of the regulations on the protection of personal data have been complained, concerning, in particular, the failure to reply by Ikea Italia Retail s.r.l. to the requests submitted by them in order to obtain access to and portability of their personal data pursuant to Articles 15 and 20 of the Regulations;

EXAMINED the documentation in 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. Complaints and preliminary activities

1.1 With the complaints presented on 27 September 2019, Ms XX and XX represented that they had advanced, on 25 August 2019, against Ikea Italia Retail s.r.l. (hereinafter the "Company") two distinct instances aimed at obtaining access to their personal data and the portability of the same pursuant to Articles 15 and 20 of the Regulations, but that they have not received any feedback from the Company.

Specifically, the aforementioned requests for the exercise of rights were aimed at obtaining a copy of all personal data of the complainants, accompanied by the information referred to in letters a) to h) of art. 15, par. 1, of the Regulations, as well as the "requests for service or triplets or tracing" of the calls to the call center of the Company's assistance service and of all the contents sent by the delivery and monitoring team regarding the complainants.

The Office, therefore, sent two separate notes to the Company (prot.n.36258 of 23.10.2019 and prot. as well as adhering to access requests made by complainants. The Company, with the notes of 6 and 11 November 2019, confirmed that it was in possession of the personal data of the complainants, by reason of the purchase and distribution contract signed by them with the Company, and that it had not complied with their request. access on the basis of the provision pursuant to art. 2-undecies of the Code, considering that there is "an effective and concrete risk of prejudicing the exercise of one's right of defense in the face of the already expressed intention [of the interested parties] to take legal action to obtain the protection of their interests following a alleged behavior not compliant with the contract signed by IKEA Italia Retail srl in relation to the supply of goods ".

1.2. The Company sent, on 23 March 2020, following a specific request from the Office, suitable documentation regarding the identification of external subjects, indicated as data processors pursuant to art. 28 of the Regulation, to which the personal data of the complainants had been communicated to fulfill contractual obligations.

1.3. With the note of 22 June 2020 (prot. No. 22842) the Office, on the basis of the elements acquired during the investigation and subsequent assessments, carried out, pursuant to art. 166, paragraph 5, of the Code, the notification to the data controller of the alleged violations, with reference to art. 12, paragraph 3, and 15 of the Regulations, inviting you to produce defensive writings or documents or to ask to be heard by the Authority (Article 166, paragraphs 6 and 7, of the Code; as well as Article 18, paragraph 1, law no. 689 of November 24, 1981).

1.4. The Company, on July 17, 2020, sent its defense writings, which are referred to here in full, with which, in addition to formally requesting a hearing, it represented that:

- "in October 2019 IKEA (through its Information Security and Data Privacy Specialist) received a communication from its" Customer Support Center "about an alleged delay in finding an advanced request (presumably dating back to August 2019) from a subject concerned and relating to the exercise of privacy rights. Following this report, IKEA proceeded to reconstruct the entire affair ", verifying that the disputes relating to the exercise of the rights were two and came from two separate subjects, although sent from the same e-mail box and bearing the same content;

- following the requests made by the Authority, "IKEA prepared a structured acknowledgment communication (...) in which the full will of the Owner to adhere to the access request pursuant to art. 15 of the Regulations, as well as the confirmation of having processed the personal data relating to [the instants] by reason of the purchase and distribution contract signed by IKEA Italia Retail s.r.l. " and to have communicated "the personal data of [the interested parties] (in particular name, surname, residential address and mobile number) (...) to AF Logistic S.p.A. (...) specifically appointed as external data processor (...) ";

- "from the tenor of the communications that took place with the two instants (...)", of which the Guarantor was always aware, "one can only deduce the full and absolute correctness of the actions taken by IKEA (...)", for two orders of reasons:

1) "first of all because the data to which the dispute of the non-response refers and to which the two interested-complainants refer (see the recordings of the calls to the call center) are not in the material availability of IKEA and, indeed, are not not even exist within IKEA systems;

2) and, secondly, because the same - even if they had been in the material availability of the owner, could not have been transmitted to the interested-complainants due to the damage that such communication would have caused (...) in the litigation phase ";

- in particular, "the expressed willingness to take legal action has justifiably given rise to a concrete and effective fear in IKEA related to the prejudice for the exercise of its rights of defense against the two parties concerned". The subsequent communication of Mr. XX which underlined that there was no dispute with IKEA in progress, as “the prejudice regarding the right of defense [is] recognizable every time one is in a specific pre-litigation phase”;

- with reference to the criteria referred to in art. 83, par. 2, of the Regulation, the alleged violation concerns a small number of personal data, among other things to be considered irrelevant (because they refer to documents bearing mere chronological information) and in any case relating only to two interested parties.

1.5. At the hearing, held on 23 October 2020, the Company, in referring to its defense writings, also stated that it had adopted measures aimed at improving the feedback to the claims received from its customers and requested that it be evaluated favorably the circumstance that it has never incurred in previous violations of the regulations regarding the protection of personal data.

2. The outcome of the investigation and the sanctioning procedure

2.1. 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 Regulations "without undue delay and, in any case, at the latest within one month of receipt of the request itself"; within the same term, the owner, if he deems it necessary to apply the expected extension of two months due to "the complexity and number of requests", must inform the interested party indicating the reasons. The same art. 12 specifies that, "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 judicial appeal ". The data controllers are also required to adopt the necessary technical and organizational measures in order to guarantee the timeliness and completeness of the feedback provided.

2.2. In the present case, it is clear that, in the face of the requests to exercise the rights formulated by the two complainants, no feedback was provided by Ikea Italia Retail s.r.l. within the terms provided for by art. 12 of the Regulation. The Company first pointed out that it was informed of the requests regarding the exercise of rights by its Customer Support Center in October 2019; he then had the opportunity to specify how the failure to respond was determined by the prejudice to the exercise of a right in court that he would have suffered in the face of the will of the two applicants to take legal action. On this point, it should be noted that, where this prejudice had been effective and concrete for the Company, art. 2- undecies, paragraph 3, of the Code provides, however, that the limitation to the exercise of rights must be brought to the attention of the interested party "with motivated communication and made without delay (...)", a circumstance that did not occur in the case of species.

2.3. It should also be noted that the two requests for the exercise of rights, formulated pursuant to art. 15 of the Regulation, were aimed at knowing the existence of a processing of personal data put in place by the Company, as well as the recipients to whom the data had been communicated and the origin of the same, together with "all the information required by letter a ) -h) of art. 15 of the Regulation ". Elements that, to date, have only been partially communicated to the two interested parties (in fact, it does not appear that the personal data held by the Company have been provided).

With reference to the right to portability, it is noted that this was not the subject of a specific request by the Office as the request aimed at obtaining a copy of the rds in a structured format (i.e. the service requests made to the call center) was included in the application pursuant to art. 15. Regarding this request, beyond the fact that the rds were not in the material availability of the Company, it appears that the negative feedback was provided to the parties only after the invitation to join formulated by the Authority.

2.4. With specific reference to the configurability, in the case in question, of the case referred to in art. 2-undecies, lett. e), of the Code, it is noted, first of all, that art. 23 of the Regulation, in attributing to the law of the Union or of the Member State to which the data controller is subject the possibility of introducing, through legislative measures, limitations on the exercise of rights, establishes that "this limitation [must] respect [are] the essence of fundamental rights and freedoms and is a necessary and proportionate measure in a democratic society (…) ". In compliance with what has been stated, art. 2-undecies of the Code, in balancing interests, identifies a series of cases in which the exercise of rights cannot be fully achieved in the face of an effective and concrete prejudice to other legally relevant interests and, among these, figure the exercise of a right in court. Without prejudice to the foregoing (see 2.3. With particular reference to compliance with the timing provided for communications to interested parties), it is first noted that the limitations provided for by art. 2-undecies of the Code must not only be interpreted in a restrictive sense in order not to infringe "the essence of the fundamental rights and freedoms" protected by the Regulation but also concretely assessed with reference to the single right activated by the interested party in relation to the opposing parties interests referred to in lett. a) - f) of paragraph 1. In this sense, by way of example, if the exercise of the right to cancellation pursuant to art. 17 of the Regulation is abstractly susceptible to prejudice the right of defense in court of the owner, the same does not occur with reference to rights such as access or portability to the extent that, by not depriving the owner of the availability of the data, it does not limit any way the right of defense. Otherwise, sharing the thesis supported by the Company would lead to such a broad application of the limitation referred to in art. 2-undecies, paragraph 1, lett. e), of the Code to be sacrificed not only excessively the rights referred to in Articles. 15-22 of the Regulations, but also any judgment of proportionality between the actual right exercised by the interested party and the interests protected by lett. from a) to f) of the same article of the Code.

Therefore, for the aforementioned reasons, in the present case the hypothesis referred to in art. 2-undecies, lett. e), of the Code, invoked by the Company, also in consideration of the fact that no litigation has been formally initiated by the parties and that therefore the Company's right of defense has not been harmed either in abstract or in concrete terms, being the need to defend oneself in merely possible judicial seat.

3. Conclusions: illegality of the treatments carried out. Corrective measures.

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 complaints submitted pursuant to art. 77 of the Regulations, since the Company has not complied with the requests made by the complainants or communicated the existence of a hypothesis of limitation of the rights of the interested party, within the terms provided for by art. 2-undecies of the Code.

3.3. In exercising the corrective powers attributed to the Authority by art. 58, par. 2 of the Regulation:

- the Company is hereby ordered to provide feedback to the access requests made by the complainants, in relation to the personal data referred to them that are still in its possession; - there is also the application of a pecuniary administrative sanction, as provided for by 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 two complainants, whose unlawfulness has been ascertained, in the terms set out 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 fact that the violation continued for a long period, and that the feedback provided is still only partial;

- the Company has declared that it has taken measures to improve the management of requests aimed at exercising rights;

- the circumstance that the Company cooperated with the Authority during the procedure;

- the absence of specific precedents against the Company relating to violations of the regulations on the protection of personal data.

4.3. Furthermore, it is believed that they assume relevance in this case, 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, determined on the basis of the revenues achieved and referring 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 financial penalty in the amount of € 20,000.00 (twenty 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, by Ikea Italia Retail s.r.l., for the violation of Articles 12 and ss. of the Regulations;

ORDER

pursuant to art. 58, par. 2, of the Regulations, to Ikea Italia Retail s.r.l., in the person of the pro-tempore legal representative, with registered office in Carugate (MI), Provincial Road 208 - 3, C.F. 11574560154, to conform their treatments to the provisions of art. 12 of the Regulation itself, providing feedback to the interested parties within 30 days of receipt of this provision, as well as paying the sum of € 20,000.00 (twenty thousand) as a pecuniary administrative sanction for the violations indicated in the motivation;

INJUNCES

then to the same Company to pay the sum of € 20,000.00 (twenty 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 submission 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. 78 of the Regulation, of art. 152 of the Code and 10 of Legislative Decree 1 September 2011, n. 150, against this provision, it is possible to appeal before the ordinary judicial authority, under penalty of inadmissibility, within thirty days from the date of communication of the provision itself or within sixty days if the applicant resides abroad.

Rome, February 25, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Peel

THE SECRETARY GENERAL

Mattei