

Injunction against Banca Cambiano 1884 S.p.A. - March 9, 2023

Register of measures

no. 67 of 9 March 2023

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by Prof. Pasquale Stanzone, president, prof.ssa Ginevra Cerrina Feroni, vice president, dr. Agostino Ghiglia and the lawyer Guido Scorza, components, and the cons. Fabio Mattei general secretary;

HAVING REGARD TO Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (hereinafter the "Regulation");

HAVING REGARD TO 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 containing "Provisions for the adaptation of national legislation to the provisions of Regulation (EU) 2016/679";

CONSIDERING the complaint presented by Mr. XX on 07/07/2021, pursuant to art. 77 of the Regulation, with which a violation of the regulations on the protection of personal data by Invest Banca S.p.A. was complained of. (now a company incorporated into Banca Cambiano 1884 S.p.A.);

HAVING REGARD TO the observations made by the general secretary pursuant to art. 15 of the Guarantor's regulation n. 1/2000;

SPEAKER the lawyer Guido Scorza;

WHEREAS

1. The initiation of proceedings.

With the complaint presented to this Authority on 07/07/2021, Mr. XX represented that, on 05/05/2021, he had formulated against Invest Banca S.p.A. (company canceled following the merger by incorporation into Banca Cambiano 1884 S.p.A., hereinafter "the Bank"), a request aimed at obtaining "a copy of the personal data being processed and the information pursuant to art. 15 of the Regulation". However, the request, duly notified to the Bank by certified email on 05/05/2021, as shown by the documentation produced in the deeds, was not found within the terms set out in art. 12, par. 3, of the Regulation.

With the note dated 02/09/2021 (prot. n. 44487), the Office invited the Bank to provide observations on what was represented

in the complaint and to comply with the requests of the complainant.

The Bank, with a note dated 21/09/2021, provided full response to the requests of the complainant, indicating in detail the categories of data being processed and the information relating to the same, his former employee, still in his possession, declaring at the same time that "the non-timely response to the first request for data access is due to technical problems, deriving from the current company situation (in extraordinary administration), and from the smart working method".

For the above, the Office proceeded to notify the Bank of the initiation of the sanctioning procedure, pursuant to art. 166, paragraph 5, of the Code in relation to the violation of articles 12, par. 3, and 15 of the Regulation (prot. n. 55878 of 08/11/2021).

On 01/12/2021, the Company sent its own written defenses, pursuant to art. 18 of the law n. 689/1981, with which he preliminarily declared that he had adequately responded to the requests made by the complainant with the request dated 05/05/2021. It was also reiterated that:

- "the late transmission [of the reply], far from being the result of willful misconduct or fault, was determined by a mere error on the part of the Bank which evidently was convinced that it had hesitated with the request in question when it was not" ;
- "Mr. XX, at the time of the request, was already aware of the procedures and purposes of the processing of his personal data (in his capacity as a single-firm financial advisor) (...). The agency agreement between Mr. XX and the Bank expressly provided for the appointment of the aforementioned XX as external manager of data processing for customers; at the time of the appointment of Mr. XX ample information was provided in accordance with the law and consent to treatment was acquired (...);
- "if the request has not been dealt with in a timely manner, this is the consequence of a mere material error and lack of coordination between the various offices in charge of the bank which, pending the receivership, has had all top management canceled and the replacement of the natural persons responsible for the top control functions at various levels".

2. The outcome of the investigation.

Following the examination of the documentation produced and the declarations made by the party during the proceedings, provided that, unless the fact constitutes a more serious offence, whoever, in a proceeding before the Guarantor, falsely declares or attests news or circumstances or produces false deeds or documents and is liable pursuant to art. 168 of the Code, it emerged that the Bank, in response to the request to exercise the rights formulated by the complainant on 05/05/2021,

did not provide any response within the terms of the law.

Preliminarily, it should be noted that, on 11/27/2021, Invest Banca S.p.A. was canceled following the merger by incorporation into Banca Cambiano 1884 S.p.A. (occurred on 10/25/2021) and that, therefore, on the basis of the provisions of art. 2504-bis of the Italian Civil Code and of the "Prescriptions concerning mergers and demergers between companies" adopted by the Authority on 04/08/2009 (available on the website doc. n. 1609999), this provision is adopted against the merging company that takes over in the assets and liabilities of the incorporated company.

Given this, having examined the merits of the question, it is observed that the art. 15 of the Regulation recognizes the interested party's right to obtain confirmation from the data controller that data concerning him or her is being processed and, consequently, 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 articles 12 of the Regulation, the data controller is required to provide the interested party with access to their data and to all the information requested by the latter pursuant to articles 15 et seq. of the Regulation "without unjustified delay and, in any case, at the latest within one month of receipt of the request" and that, within the same term, if 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 of the possibility of proposing a complaint to a supervisory authority and to lodge a judicial appeal".

It is therefore ascertained that the Bank, in its capacity as data controller, did not provide any information at the time, also regarding the reasons for the non-compliance, in violation of the provision pursuant to art. 12 of the Regulation.

It should be noted that the Bank has cited problems relating to the company organization as the main cause of the failure to respond to the request to exercise the rights of the complainant, which in the present case have caused a "lack of coordination between the various offices in charge" .

However, these arguments cannot lead to a valid reason for excluding the party's liability, on the basis of a consolidated jurisprudence which, in terms of administrative violations, establishes that good faith excludes liability, where "the offender is able to demonstrate having done everything possible for the purposes of compliance with the law" (among all, see Cass. II civ. section n. 10841/08). Furthermore, the provision contained in art. 24 of the Regulation, according to which "the data controller implements adequate technical and organizational measures to guarantee (...) that the treatment is carried out in compliance

with the Regulation".

Likewise, the argument according to which the applicant, as a former employee, was already aware of the methods and purposes of the processing carried out also on the basis of the information which, during the course of the employment report, were provided to him.

Indeed, from this point of view, it should be recalled that the art. 15 of the Regulation recognizes, preliminarily, the interested party "the right to obtain from the data controller confirmation as to whether or not personal data concerning him or her is being processed" 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.

In the light of the foregoing assessments, it should be noted that the statements made by the data controller in the defense writings ☐ for the truthfulness of which one may be called upon 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 initiating the procedure and are insufficient to allow it to be dismissed, since none of the cases envisaged by art. 11 of the Guarantor's regulation n. 1/2019, concerning the internal procedures of the Authority with external relevance.

For the above reasons, therefore, the complaint presented 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 application of a pecuniary administrative sanction pursuant to art. 83, par. 5, of the Regulation.

4. Injunction order.

The Guarantor, pursuant to art. 58, par. 2, lit. i) of the Regulation and of the 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, the illegality of which has been ascertained, within the terms exposed above.

With reference to the elements listed by art. 83, par. 2 of the Regulation for the purposes of applying the administrative fine and the related quantification, taking into account that the fine must be "in each individual case effective, proportionate and dissuasive" (art. 83, paragraph 1 of the Regulation), it is represented 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;
- the absence of previous relevant violations committed by the data controller;
- the circumstance that the holder has provided a response to the claimant's request, during the proceeding.

In consideration of the aforementioned principles of effectiveness, proportionality and dissuasiveness (Article 83, paragraph 1, of the Regulation) with 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 2021.

Based on the aforementioned elements, evaluated as a whole, it is decided to determine the amount of the pecuniary sanction in the amount of 10,000.00 (ten thousand) euros for the violation of articles 12 and 15 of the Regulation.

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 of the art. 16, paragraph 1, of the Guarantor's regulation n. 1/2019, this provision must be published on the Guarantor's website.

Finally, it should be noted that the conditions pursuant to art. 17 of regulation no. 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

ALL THAT BEING CONSIDERED, THE GUARANTOR

declares, pursuant to articles 57, par. 1, lit. f) and 83 of the Regulation, the illegality of the processing carried out, in the terms referred to in the justification, for the violation of the articles 12, par. 3. and 15 of the Regulation;

ORDER

to Banca Cambiano 1884 S.p.A., incorporating company Invest Banca S.p.A., in the person of its pro-tempore legal representative, with registered office in Florence, viale Antonio Gramsci n. 34, P.I. 02599341209, pursuant to art. 58, par. 2, lit. i), of the Regulation, to pay the sum of 10,000.00 (ten thousand) euros as a pecuniary administrative sanction for the violations indicated in this provision;

ENJOYS

to the same Company to pay the sum of Euro 10,000.00 (ten thousand) according to the methods indicated in the attachment, within 30 days of notification of this provision, under penalty of adopting the consequent executive deeds pursuant to art. 27 of

the law n. 689/1981.

It is represented that pursuant to art. 166, paragraph 8 of the Code, without prejudice to the offender's right to settle the dispute by paying - always according to the methods indicated in the attachment - an amount equal to half of the fine imposed within the term referred to in art. 10, paragraph 3, of Legislative Decree lgs. no. 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 of the art. 16, paragraph 1, of the Guarantor's regulation n. 1/2019, the publication of this provision on the Guarantor's website and believes that the conditions set forth in art. 17 of regulation no. 1/2019.

Rome, 9 March 2023

PRESIDENT

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THE SPEAKER

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THE SECRETARY GENERAL

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