

Injunction order against Cparmi Credit Management s.r.l. - June 9, 2022

Record of measures

n. 215 of 9 June 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 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 report presented on February 4, 2021 with which Mr. XX complained about an alleged violation of the Regulations by Cparmi Credit Management srl;

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. The preliminary activity.

With the note sent to this Authority on February 4, 2021, Mr. XX, represented by Attorney XX, complained of an alleged violation of the Regulations attributable to the Company Cparmi Credit Management s.r.l. which, in the interest of Sky Italia srl, on 14 January 2021 sent, on Mr. XX, commercial manager of the company XX, an invitation to pay the amount of € 179.97, relating to the termination for arrears of the Sky subscription in the name of Mr. XX. A second e-mail was then sent to the same address on January 22, 2021.

With the communication of 15 July 2021, the Office invited Sky Italia s.r.l., as data controller, and Cparmi Credit Management

s.r.l. to provide observations in relation to what is represented by the applicant.

In the acknowledgment note of 29 July 2021, Sky Italia s.r.l. (hereinafter "Sky") declared "that it had never shared with CRIBIS - because it was not even present in its information systems either at the time of the facts or subsequently (Evidence 01) - the e-mail address object of sending the payment request to Mr. XX, nor having ever sent the communications mentioned in the complaint. There is therefore no illegitimate processing of the complainant's personal data by Sky and attributable to them (Article 82 of the GDPR)...".

"Sky has provided CRIBIS with dedicated instructions to protect personal data (Evidence 02 - Annex 12, p. 42), in terms of: a. technical and organizational measures to be adopted and respected, including the technical measures described by the Sky Supplier Security Standards (Evidence 02 - Annex C - p. 49); b. organizational measures, such as the adoption of personnel in possession of adequate professional requirements, instructions (Article 11 Evidence 02) and training for persons in charge on the adequate management of personal data (see Articles 2.1.1., 3.1., 3.4., 4.2.8., 4.2.12. Of the appointment document - Evidence 02 - Annex 12, p. 42); Sky has also provided dedicated procedures to regulate credit recovery activities, compliant with the relevant legislation (Evidence 03 - confidential). Finally, Sky has carried out periodic checks on the supplier, which are attached as a sample (Evidence 04) ...".

Following the reporting of the event by Cparmi, Sky also specified that it had "activated its Data Breach Notification Policy (Evidence 06 - confidential) and the Methodology for assessing the severity of the breach (Evidence 07 - confidential) ... against which the incident - considering the context of data processing, ease of identification, circumstances of the violation and seriousness of the violation - was assessed as low risk pursuant to art. 33 GDPR, therefore it is not necessary to notify the Guarantor. In fact, it was a matter of a few common data (ie: name, surname, email, debt position) relating to a single customer, shared due to a mere exceptional and unpredictable error of a single employee. Furthermore, the interested party did not appear to have suffered any damage, having settled the position itself and removed it ...".

Finally, Sky pointed out that it had also sent a formal letter of formal notice, in order to reduce the negative effects of the violation, recommending to Ceci the adoption of further corrective actions (Evidence 11), in particular, to update the document containing the privacy instructions. for operators, with the assistance of a person competent in the matter and to include "instructions that leave no room for initiative regarding the method of contacting the debtor, starting from the source of data retrieval. Among the precise indications, it will be necessary to specify the absolute prohibition for the operator to access the

web to search for the personal data of Sky's debtors in all the privacy documentation provided to the operator...".

With the acknowledgment note of August 3, 2021, Cparmi Credit Management s.r.l. (hereinafter "Cparmi" or the "Company"), in specifying that it had carried out the processing on behalf of Sky Italia s.r.l., stated that: "on 9 February 2021, the company function in charge of managing inbound mail flows certified forwarded internally to the writer the communication of the lawyer. XX, also sent to your certified email address, concerning a complaint pursuant to art. 77 of the GDPR in the name and on behalf of his client, Mr. XX. On that date, CRIBIS Credit Management S.r.l., therefore, became aware of the event described in the aforementioned communication from Attorney XX and, having made its own internal investigations, notified Sky Italia S.r.l., the data controller, on the following 12 February pursuant to art. 33 paragraph 2 of the GDPR.

In the notification to Sky Italia S.r.l., CRIBIS Credit Management S.r.l. reported that, from an immediate comparison with the collaborator, Dr. XX, it emerged that on 01/14/2021, given Mr. XX, debtor of Sky Italia S.r.l., to the contact details provided by the latter, Dr. XX identified the e-mail address XX on the web and, believing it belonged to the actual debtor, used it to send a recontact e-mail that instead it came to Mr. XX, employee of the company of which Mr. XX is representative. We specify, in any case, that the tracing of untraceable subjects is one of the activities covered by the contract with Sky Italia S.p.a. and that the undersigned is entitled by virtue of a license pursuant to art. 115 TULPS to carry out it in preparation for the recovery of the credits owned by the client. Mr. XX, having received this communication, proceeded to forward it to Mr. XX. On 18/01/2021, the lawyer of Mr. XX sent a certified e-mail message to the e-mail address of the CRIBIS Credit Management S.r.l. employee in which he contested the outstanding payment and proposed a final payment and excerpt to define the debt position of his client towards Sky Italia S.r.l. .

However, the collaborator, in total autonomy, decided to answer the Pec of the lawyer of Mr. XX and, on 01/22/2021, not having received the agreed payment, he sent an e-mail again with a request for re-contact to the e-mail address XX. On the same date, then, through the Arcadia portal (IT application of the client company) he reported to Sky Italia S.r.l. the registration of the payment made as agreed with the debtor's attorney. Although, Mr. XX erroneously transmitted to Mr. XX were minimal (ie: name, surname, credit claimed by Sky Italia S.r.l., default situation) and all belonging to "common" categories of personal data, CRIBIS Credit Management S.r.l. offered Sky Italia S.r.l. total availability and collaboration in the management and possible intervention to mitigate the event in question".

In the notification to Sky Italia s.r.l., CRIBIS Credit Management s.r.l. he also reported that "Dr. XX's conduct, which is also

carried out in teleworking due to the restrictions due to the health emergency, is unfortunately exceptional and unpredictable such as to have nullified all the organizational and safety measures implemented by CCM as well as those adopted by the same at the request of Sky Italia S.r.l. with the appointment as manager and therefore the company is currently evaluating what is the most appropriate measure to be taken against the latter. Dr. XX was cautiously suspended from the recovery activity pending the conclusion of the dispute process. We have started a process of control of the practices under management by the employee entrusted to the Team leader of the activity [...] who will take care of taking over the management and personally verifying the management with contact to the debt holders. We have also given a mandate to our IT to block the sending of e-mails outside our business organization from all email addresses with domain XX and structurally engaged in recovery activities on behalf of Sky Italia S.r.l. Today we also set up re-training classes for all collaborators working on behalf of Sky Italia S.r.l, in which, in addition to summarizing the basic concepts of the main rules and practices in force in the recovery activity, we will reiterate the operational manual of the activities of recovery for Sky Italia S.r.l and the procedures in place ".

2. The initiation of the sanctioning procedure

In relation to these findings, the Office noted a specific responsibility, in the present case, on the part of the data processor and consequently notified the act of initiating the procedure to CINESS, pursuant to art. 166, paragraph 5, of the Code in relation to the violation of art. 5, par. 1, lett. a) and c) and 6 of the Regulations (note of 18 January 2022).

According to the aforementioned provisions of the Regulation, the processing of personal data must take place in compliance with the principles of "lawfulness, correctness and transparency" as well as "minimization" and in the presence of an appropriate legal basis; the same principles are contained in the general provision "Lawfulness, correctness and relevance in credit recovery" of 30 November 2005 with which the Guarantor has prescribed to operators in the sector the necessary and appropriate measures to make the treatment compliant with the legislation on personal data protection.

On February 4, 2022, the Company sent its defense brief, pursuant to art. 18 of the law n. 689/1981, with which, in providing further information and clarifications on the facts of the case, he reiterated what had already been represented to the Authority: "It appears essential, to allow a correct evaluation of the event in question by this valuable Authority, extreme synthesis that Dr. XX, collaborator of CRIBIS Credit Management S.r.l. ("CCM"), traced an address on the web that he mistakenly believed belonged to the actual debtor, sending him two e-mails containing some personal data of the latter ... ".

"Therefore, an alleged violation of art. 5 par. 1 letter a) and c) as well as art. 6 par. 1 of the GDPR appears at most a consequence (natural and inevitable) of the mistake accidentally committed by the CCM collaborator despite the adoption of all the technical and organizational measures aimed at preventing similar cases but not a default violation of the aforementioned provisions rules being CCM entitled to carry out the activity in question on behalf of Sky Italia s.r.l....".

The Company also specified that its collaborator sent to a person other than the debtor of Sky Italia s.r.l. only two e-mail messages containing common personal data such as name, surname, credit claimed by Sky Italia s.r.l., state of arrears and that the event had occurred within a very limited time window and linked to two single episodes (message e-mail of 14 and 22 January 2021). "In the present case, Dr. XX used the e-mail address XX induced in error by the domain of the same:" XX "attributable at first glance to the name of the actual debtor, namely Mr. XX, legal representative of the homonymous company of which, instead, Mr. XX turned out to be an employee. This circumstance, attributable to the category of human error, can be traced back to lightness, lack of attention or negligence, but certainly not to malice. It should also be noted that the error on the part of the employee was absolutely not tolerated by CCM which, due to this, terminated the employment relationship with the latter".

Furthermore, Cecchini gave evidence of the technical and organizational measures transmitted to Sky Italia s.r.l. on 18 February 2021 (Annex 7 - technical and organizational measures) following a request for a documentary audit by the client. The Company declared that it had "adhered and respected as data processor also all the procedures and instructions received from Sky (Attachments 2 - Sky operating manual, 3 - appointment as manager and Sky contract). In this regard, it is also important to note that Sky Italia S.r.l., following a documentary audit carried out against CCM following the event in question, did not detect, found and / or contest any discrepancies or discrepancies of any kind (Annex 8). It seems also important to highlight in particular how the operator has complied with the provisions of the Sky Operating Manual (Annex 2), in particular art. 6 "Management of disputes" and 6.1 "Unmanaged termination" (see Annex 9). And again how it acted in good faith in compliance with the precepts of Ethics and Good Practices CCM (Annex 10) which reports best practices on the relevance and minimization of data (see paXX 4), contacts with any third parties during the recovery in accordance with the Provision of the Guarantor of 30 November 2015 (see page 6). In fact, in this regard, it is also important to highlight how Mr. XX, wrong recipient of the communications in question, never pointed out to the operator that the address used did not belong to Mr. XX, let alone the lawyer XX in his subsequent communication to Dr. XX took care to specify this ". "It should also be considered

that when CCM became aware of the event, an internal investigation was promptly opened by the DPO of CCM to reconstruct what happened, which allowed for timely and responsible management of the case characterized by an error of the CCM employee ".

3. The outcome of the investigation and the sanctioning procedure.

Upon examination of the documentation produced and the statements made by the party during the proceedings, the truthfulness of which may be called upon to respond pursuant to art. 168 of the Code, it is ascertained that Cparmi, in its capacity as data processing manager by Sky s.r.l. with the task of carrying out, on behalf of this company, the credit recovery activity, sent to a third party two e-mails containing information relating to the debt situation of the person concerned.

With particular reference to the question raised, it is also noted that, according to the provisions of the Guarantor with the general provision of 30 November 2005, "anyone who carries out the processing of personal data in the context of credit recovery must observe the principle of lawfulness in treatment: this precept is violated by the behavior (implemented by some economic operators) consisting in unjustifiably communicating to third parties with respect to the debtor (such as, for example, family members, cohabitants, work colleagues or neighbors), information relating to the condition of default in which the interested party pays (behavior sometimes required to exert undue pressure on the debtor in order to obtain the payment of the amount due) ".

The elements provided in the defense brief, although worthy of consideration, do not allow to overcome the findings notified by the Office with the act of initiating the procedure. The processing of personal data put in place by the Company in this case is therefore illegal as it is carried out in a manner that does not comply with the principles of "lawfulness, correctness and transparency", as well as "minimization" of data, in violation of art. 5, par. 1, lett. a) and c) and in violation of art. 6 par. 1 of the Regulation.

In this context, considering, in any case, that the conduct has exhausted its effects and that the Company has implemented specific measures to avoid the repetition of the disputed event, the conditions for the adoption of prescriptive or prescriptive measures do not exist. inhibitory, pursuant to art. 58, par. 2 of the Regulations.

4. Adoption of the injunction order (articles 58, paragraph 2, letter i), and 83 of the Regulation; art. 166, paragraph 7, of the Code).

The violation of articles 5, par. 1, lett. a) and c) and 6 par. 1 of the Regulation "is subject to administrative pecuniary sanctions

of up to 20,000,000 euros, or for companies, up to 4% of the total annual worldwide turnover of the previous year, whichever is higher" (art. 83, par. 5, lett. a) of the Regulation).

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 sanctions must "in any case [be] effective, proportionate and dissuasive" (Article 83, par. 1 of the Regulations), that, in the present case, the following circumstances were considered:

the culpable nature of the violation;

the degree of responsibility of the Company that has not complied with the regulations on data protection, with respect to which, since 2005, the Guarantor has provided clear indications to operators in the credit recovery sector;

the absence of specific precedents for the Company;

the circumstance that the party cooperated with the Authority during the procedure and that, in order to avoid the repetition of situations such as the one underlying the complaint, it has undertaken to take initiatives of a technical nature (blocking the sending of communications and external e-mails from all e-mail addresses with domain XX and structurally involved in credit recovery activities) and of an organizational nature (establishment of training classes for all collaborators operating on behalf of Sky Italia, in which, in addition to summarize the basic concepts to be followed in the exercise of the credit recovery activity, the correct procedures for the management of the activities and the operational manual of the recovery activities for Sky Italia will also be reiterated).

It is also believed that they assume relevance, in the present case, taking into account the aforementioned principles of effectiveness, proportionality and dissuasiveness to which the Authority must comply in determining the amount of the sanction (Article 83, paragraph 1, of the Regulation), the economic conditions of the offender, determined with reference to the financial statements for the year 2020.

In the light of the elements indicated above and the assessments made, it is considered, in this case, to apply the administrative sanction of payment of a sum equal to Euro 10,000 (ten thousand) to the Company.

In consideration of the nature and severity of the ascertained violation, it is also believed that, pursuant to art. 166, paragraph 7, of the Code and art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019, the publication of this provision on the Guarantor's website.

It is also believed 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

notes the unlawfulness of the processing carried out by Cparmi Credit Management s.r.l., based in via della Beverara 19 (Bologna) in the terms set out in the motivation, pursuant to art. 143 of the Code, for the violation of art. art. 5, par. 1, lett. a) and c) and 6 of the Regulations;

ORDER

pursuant to art. 58, par. 2, lett. i), of the Regulation to Cparmi Credit Management s.r.l., to pay the sum of € 10,000.00 (ten thousand) as a pecuniary administrative sanction for the violation of Articles 5, par. 1, lett. a) and c) and 6 of the Regulations;

INJUNCES

therefore, to the same Company to pay the aforementioned sum of € 10,000.00 (ten thousand), according to the methods indicated in the annex, as a pecuniary administrative sanction for the violations indicated in this provision.

It is represented that the offender, pursuant to art. 166, paragraph 8, of the Code, has the right to settle the dispute by paying an amount equal to half of the sanction imposed, again according to the methods indicated in the annex, within 30 days of notification of this provision, under penalty of the adoption of the consequent acts executive pursuant to art. 27 of the l. n. 689/1981.

HAS

the publication of this provision on the website of the Guarantor pursuant to art. 166, paragraph 7, of the Code and by art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019, as well as the annotation of violations in the internal register of the Authority pursuant to art. 17 of the Guarantor Regulation n. 1/2019.

Pursuant to art. 78 of the Regulations, as well as articles 152 of the Code and 10 of Legislative Decree no. 150/2011, an opposition to the ordinary judicial authority may be proposed against this provision, with an appeal filed with the ordinary court of the place identified in the same art. 10, within thirty days from the date of communication of the provision itself, or sixty days if the applicant resides abroad.

Rome, 9 June 2022

PRESIDENT

Stanzione

THE RAPPORTEUR

Peel

THE SECRETARY GENERAL

Mattei