

Injunction order - December 16, 2021

Record of measures

n. 438 of December 16, 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 dr. Claudio Filippi, Deputy Secretary General;

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 submitted to the Guarantor pursuant to Article 77 of the Regulations on 19 May 2020, with which Mr. XX complained of an alleged violation of the Regulations by Ubi Banca S.p.a .;

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;

Rapporteur Prof. Ginevra Cerrina Feroni;

## WHEREAS

1. The initiation of the procedure.

1.1. With the complaint presented to this Authority on 19 May 2020 (prot. N. 18330/20), Mr. XX indicated that it had received from Ubi Banca S.p.a. (now Intesa Sanpaolo following the merger by incorporation with legal effects from 12 April 2021, hereinafter "the Company") a letter bearing on the outside, on the front of the envelope, the words "Chieti anomalous credit". With the note of January 21, 2021 (prot. No. 4148/21), the Office invited the Company to provide observations in relation to what is represented by the complainant.

The Company in the acknowledgment note dated 17 March 2021 (prot. No. 14412/21) stated that the "communication

contained in the envelope presented by Mr. XX, did not contain payment reminders, which were instead always sent by the branch where the relations of the interested party are based, but a communication on the transparency of banking and financial services, which is attached. As far as the matter in question is concerned, we mean that we have been promptly activated as per the reply, dated 21 May 2020, provided to Mr. XX. In the subsequent communication sent to Mr. XX, dated 01/02/2021, only the code of the Anomalous Credit Function was indicated, visible on the outside of the envelope, in order to anonymize the Operating Unit sending the message ".

1.2. The Office, therefore, 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. 5, par. 1, lett. a) and c) of the Regulation (prot. n. 49048/2021). Pursuant 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"; the same principles are the basis of 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 relevant legislation of data protection.

1.3. On 22 October 2021, the Company sent its defense brief, pursuant to Article 18 of Law no. 689/1981 with which he provided further information and clarifications on the facts involved in the matter: "Having ascertained that the shipping process of this type of correspondence could not be compliant with the confidentiality legislation, even if there were no complaints formalized by other Ubi Banca customers in the documents for similar cases, the anomaly was promptly removed and the communication processes (both ordinary and e-mail) to customers were analyzed with equal timeliness to verify the presence of any further anomalies, so as to prepare the immediate corrective actions that were found to be necessary; likewise, the attention of all Ubi Banca structures was then drawn to the strict compliance with the legislation on the protection of personal data. In reporting in any case the timeliness, reactivity and proactivity of the interventions implemented by the Structure in support of the Data Protection Officer of Ubi Banca in the face of the customer's complaint, we wish to highlight how after the integration into Intesa Sanpaolo the shipping methods of the correspondence have been brought back to the standard of the incorporating company, which does not require the sender Structure to be highlighted on the outside of the envelope used for shipping ".

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 used, in the header of the correspondence addressed to Mr. XX, the term "Chieti anomalous credit". This term, regardless of the content of the message, is likely to disclose to third parties information relating to the financial situation of the recipient of the communication.

With the aforementioned general provision of 30 November 2005, the Guarantor defined processing operations as illegal, consisting in soliciting payment in ways that reveal, to external observers, the content of the communication (use of postcards or sending envelopes bearing the written "credit recovery" or similar phrases from which to infer the information relating to the alleged state of default of the recipient of the communication) and prescribed, given the nature of the information processed and the high risk of disclosure to third parties of personal information relating to debtor, that the payment solicitations are brought to the attention of the debtor only, using closed envelopes, which carry only the information necessary to identify the sender, without data exceeding those necessary for the delivery of the communication.

2.2. The processing of personal data carried out by the Company is 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) of the Regulations.

3. Adoption of the injunction order for the application of the pecuniary administrative sanction and ancillary sanctions (Articles 58, paragraph 2, letter i), and 83 of the Regulations; art. 166, paragraph 7, of the Code).

3.1. The violation of art. 5, par. 1, lett. a) and c) "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 greater" (Article 83, par. 5, lett. a) of the Regulation).

3.2. 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 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:

to. with reference to the willful or negligent nature of the violation and the degree of responsibility of the owner, the conduct of

the company and the degree of responsibility of the same that did not comply with the regulations on data protection, with respect to which , since 2005, the Guarantor has provided clear indications to the banks;

b. the absence of specific precedents against the company and the circumstance that it is an isolated complaint;

c. the amendment put in place by the Company which introduced organizational changes by replacing the disputed wording with a code already in the preliminary investigation.

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 the payment of a sum equal to Euro 100,000 (one hundred thousand) to the Company.

3.3. 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.

Finally, it is 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 Ubi Banca spa, now Intesa Sanpaolo spa, based in Turin, Piazza S. Carlo, 156, in the terms set out in the motivation, pursuant to art. 143 of the Code, for the violation of art. 5, par. 1, lett. a) and c) of the Regulations;

ORDER

pursuant to art. 58, par. 2, lett. i) of the Regulations to Ubi Banca spa, now Intesa Sanpaolo spa, to pay the sum of Euro 100,000.00 (one hundred thousand) as a pecuniary administrative sanction for the violation of Articles 5, par. 1, lett. a) and c) of the Regulations;

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therefore, the same Company to pay the aforementioned sum of € 100,000.00 (one hundred 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 l. n. 689/1981. Please note that 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 1/9/2011 provided for the submission of the appeal as indicated below (Article 166, paragraph 8, of the Code);

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, and believes that the conditions set out in art. 17 of regulation no. 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, December 16, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Cerrina Feroni

THE DEPUTY SECRETARY GENERAL

Philippi