

Injunction against Poste Italiane S.p.a. - 6 October 2022

Register of measures

no. 378 of 6 October 2022

## 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";

HAVING REGARD TO the complaint presented to the Guarantor pursuant to article 77 of the Regulation on 21 November 2021, with which Ms XX complained of an alleged violation of the Regulation, with specific reference to the failure to reply to the request for access to personal data formulated pursuant to articles 15 of the Regulation and 2-terdecies of Legislative Decree 196/2003 (Personal Data Protection Code, as updated by Legislative Decree 101/2018) against Poste Italiane S.p.a.;

HAVING EXAMINED the documentation in the deeds;

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 complaint and the preliminary investigation.

1.1 With the complaint presented to this Authority on 11/21/2021, Ms. XX complained that she had not received a response from Poste Italiane S.p.a. (hereinafter "Poste" or "the company"), to a request for access to personal data formulated pursuant to articles 15 of the Regulation and 2 terdecies of the Code as heir of the defunct XX and XX.

Following the invitation formulated by the Office to provide observations regarding the facts covered by the complaint as well

as to spontaneously comply with the requests formulated by the complainant, the Company, with a note received on 03/18/2022, represented that it had provided the interested party the data and information requested with the communications of 01/21/2022 (of which a copy was attached), specifying that, "due to a mere material and circumstantial error", the request for access advanced by the complainant with certified email dated 16 /10/2021 was taken over by the Privacy Service Center only on 12 January 2022; on the same date, in order to ascertain the existence of the subjective requisites of legitimacy of the interested party with respect to both positions requested, the same office asked her for additional documents (the death certificate, the copy of the deed notary or the substitutive declaration of a deed of notoriety certifying the status of heir in relation to both deceased as well as a copy of a valid identity document or equivalent); therefore, as soon as the requested documentation was acquired, the Company proceeded to send the above-mentioned checks to the interested party on 01/21/2022.

The company also highlighted how "the material and detailed error" which led to the delay in responding to the interested party was "probably also due to the number of requests in the period in question", also underlining - "as evidence of good faith" - to have provided all the necessary information "before the intervention of this Authority".

1.2 With a note dated 20/04/2022, the Office, on the basis of the documentation in the documents and the elements acquired during the investigation, proceeded to notify Poste Italiane S.p.a. the initiation of the procedure for the adoption of the provisions pursuant to articles 58, par. 2, and 83 of the Regulation, in compliance with the provisions of art. 166, paragraph 5, of the Code, in relation to the violation of articles 12 and 15 of the Regulation. With the same note, the company was requested to produce written defenses or documents or to ask to be heard by the Authority (art. 166, paragraphs 6 and 7, of the Code; as well as art. 18, paragraph 1, law no. 689 of the November 24, 1981).

With a note dated 20/05/2022, Poste Italiane S.p.a., in submitting a request for a hearing, sent its defense writings, which are referred to in full here, with which, in describing the procedures adopted "for the management of the rights of interested parties", reconstructed the specific circumstances relating to the violation that occurred in the present case, highlighting that:

a) for the management of access requests made by interested parties, the Company, with a view to accountability, has taken steps to adopt specific "Guidelines" also identifying "the Privacy Service Center (hereinafter also "CSP") as Structure which is responsible for managing and implementing, in collaboration with the competent corporate functions, the activities relating to the management of the rights of the interested parties in order to provide feedback to the requests received ", within the terms

established by the legislation; in particular, "the CSP, with a nucleus of dedicated resources within the Privacy Function of Poste Italiane, [...] adequately and specially trained, acts as a collection point, efficient and centralized management of the same requests [...]" also through the use of "a computerized platform that allows correct traceability and related monitoring (status of the request, terms of processing and outcome of the application presented); [...] nevertheless a parallel reporting activity is envisaged which aims to ascertain the correct progress of the processes, identify possible areas for improvement and plan any corrective actions. Furthermore, Poste Italiane, with reference to the information security management system, intends to represent to this Guarantor Authority how its CSP has obtained - since November 2015 - the ISO27001 Certification for the processes relating to the management of the alleged data breach and for the management of privacy instances";

b) the procedures and measures described above do not, however, allow the Company to "completely eliminate the risk that material and detailed errors may occur attributable to a mere and exceptional (human) inattention of an employee in charge of managing the requests, even if specifically educated and trained. In fact, following a careful internal analysis of the CSP aimed at verifying and proving the delay in the response that occurred in the present case, it was ascertained that the operator who took charge of the request entered an incorrect processing time of the same within the computerized platform [...], neglecting the sending of the request for documentary integration to the interested party necessary in the specific case. In fact, although Poste Italiane adopts every security measure adequate to mitigate and contain the risk to the rights and freedoms of the interested parties, adequately instructing its personnel, the present case, due to a mere individual error, represents an exceptional event, probably also due to the concurrent factor of the number of applications in the period in question". In this regard, it should be noted that "in the period January-December 2021 - a very large number of requests made by customers were handled, equal to no. 4,987 requests pursuant to articles 15 et seq. RGPD, against n. 2,469 of 2020 and no. 788 of 2019. The numerical increases recorded are therefore of solar evidence";

c) if therefore it is undisputed that in the present case "the CSP has exceeded - albeit for a short period - the thirty days envisaged by art. 12 par. 3 of the GDPR due to a material and detailed error in the management of the request through the IT platform in use as a support", however the Company, "ascertained the identity of the complainant and its legitimacy to exercise the right of access presented with respect to the positions of the deceased, took immediate action to provide prompt and complete response to Ms XX, before becoming aware of the complaint presented by the same and before receiving the invitation to join from this Authority. This circumstance is proof of the objective and clear good faith of Poste Italiane" which,

moreover, "is not aware of any complaints presented to this Authority concerning the same dispute; this proves the exceptional nature of the case".

The hearing requested by Poste Italiane S.p.a. was held on 22 June 2022. pursuant to art. 166, paragraph 6, of the Code.

During the same the Company, in referring in full to what has already been represented in the defense writings, underlined that it has always been engaged in a constant activity of training and raising awareness of the personnel in respect of the privacy legislation, also through "occasional" information meetings in the during which, starting from the analysis of events that occurred, the invitation to rigorous compliance with the operating procedures adopted by the company for the management of privacy requests is renewed.

In this regard, the party produced an extract from the "Guidelines for managing the rights of data subjects" concerning the "operating procedure for managing privacy requests" containing details of the procedure that each employee of the Privacy Service Center is required to observe in managing the requests themselves.

## 2. The outcome of the investigation.

2.1 As a result of the declarations made by the Company during the proceedings, provided that, unless the fact constitutes a more serious offence, whoever, in a proceeding before the Guarantor, falsely declares or certifies news or circumstances or produces false deeds or documents responds pursuant to art. 168 of the Code, it emerged that, in the case in question, Poste Italiane S.p.a. did not respond to the request for access to personal data formulated by the complainant within the deadline set by art. 12, par. 3 of the Regulation ("without unjustified delay and, in any case, at the latest within one month of receipt of the request"), nor did it proceed to inform the applicant, within the same term, of the reasons for the non-compliance as well as the possibility of proposing a complaint to a supervisory authority and to lodge a judicial appeal (Article 12, paragraph 4 of the Regulation), limiting itself to representing that the delay was caused by "a mere material and detailed error", without providing further elements of clarification in this regard .

However, during the proceeding, the Company illustrated in detail the circumstances of the "material error" which led to the delay in replying to the interested party and the consequent operation of the Privacy Service Center which, as soon as it became aware of the error, proceeded to request the documentation necessary for the correct investigation of the application and, subsequently, to provide you with the requested information.

## 3. Conclusions: declaration of illegality of the treatment. Corrective measures pursuant to art. 58, par. 2 of the Regulation.

For the aforementioned reasons, the Authority believes that the statements made by the data controller in the defense briefs - the truthfulness of which may be called upon to answer pursuant to the aforementioned art. 168 of the Code - although worthy of consideration, do not allow to overcome the findings notified by the Office with the act of initiation of the procedure and are insufficient to allow its archiving, since none of the cases provided for by art. 11 of the Guarantor's regulation n. 1/2019, concerning the internal procedures of the Authority with external relevance.

Failure to timely respond to the request for access formulated by the interested party is in fact unlawful, in the terms set out above, due to violation of art. 12, par. 3 and 4 of the Regulation; on the other hand, with regard to the request to "enjoin the data controller to satisfy requests to exercise the rights pursuant to articles from 15 to 22 of the Regulation", in consideration of the spontaneous fulfillment by the owner - albeit at a time following the presentation of the complaint - there is no prerequisite for the adoption of a provision by the Authority itself.

Therefore, the complaint presented pursuant to art. 77 of the Regulation must be considered founded and this Authority, in exercising the corrective powers attributed to the Authority pursuant to art. 58, par. 2 of the Regulation provides for 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 referred to the complainant, of which the illegality has been ascertained, in 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:

- a) the significant nature of the violation, which concerned the provisions relating to the exercise of the rights of the interested parties;
- b) the culpable nature of the violation, due to the error of an employee assigned to manage the requests and the degree of responsibility of the owner who, as soon as he became aware of the event, proceeded to request the documentation

necessary for the correct investigation from the interested party of the application and, therefore, to provide it with the requested information;

c) active collaboration with the Authority, taking into account that the owner during the procedure has amply illustrated the safeguards and organizational procedures adopted by the Privacy Service Center function for the management of requests for the exercise of rights advanced by customers;

d) the absence of previous violations committed by Poste Italiane S.p.a. or previous provisions pursuant to art. 58 of the Regulation.

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 (ten thousand) euros for the violation of art. 12, par. 3 and 4 of the Regulation.

In this context, also in consideration of the type of violation ascertained, which concerned the principles of protection of personal data, 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 unlawfulness of the processing carried out, in the terms referred to in the justification, for the violation of article 12, par. 3 and 4 of the Regulation.

ORDER

to Poste Italiane S.p.a., with registered office in Viale Europa n. 190 - Rome, VAT 97103880585, pursuant to art. 58, par. 2, lit. i), of the Regulation, to pay the sum of 10,000 (ten thousand) euros as an administrative fine for the violations indicated in this provision;

ENJOYS

to the same Poste Italiane S.p.a. to pay the sum of 10,000 (ten thousand) euros according to the methods indicated in the attachment, 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, 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 sanction 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 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.

Pursuant to art. 78 of the Regulation, of the articles 152 of the Code and 10 of Legislative Decree 1 September 2011, n. 150, against this provision it is possible to lodge an 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 appellant resides abroad.

Rome, 6 October 2022

PRESIDENT

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THE SPEAKER

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THE SECRETARY GENERAL

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