

Provision of 23 March 2023

Register of measures

no. 89 of 23 March 2023

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by prof. Pasquale Stanzione, 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 27/03/2021, pursuant to art. 77 of the Regulations, with which an unlawful processing of personal data by CAAF CGIL Lombardia s.r.l. was complained of, resulting from a request for cancellation of personal data;

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

SPEAKER Prof. Pasquale Stanzione;

WHEREAS

1. The initiation of proceedings.

With the complaint presented to this Authority on 03/27/2021, Mr. XX complained of unlawful processing of personal data by CAAF CGIL Lombardia s.r.l. (hereinafter "CAAF"), consisting of a purely formal response to the request for cancellation of personal data and withdrawal of consent, formulated on 02/15/2021.

In particular, the complainant represented that, after having received from the CAAF the confirmation of the revocation of the previously expressed consents, he had received from the same a further e-mail with promotional content.

With the note dated 24/05/2021 (prot. n. 28462), the CAAF was invited to provide observations regarding the facts subject to

the complaint, specifying the legitimacy conditions underlying the processing carried out.

In the response dated 06/23/2021, the CAAF stated that:

- the collection and storage of personal data of its members takes place on the basis of consent, pursuant to art. 6, par. 1, lit. a), of the Regulation which can be revoked at any time, also by sending an e-mail;
- in the specific case, following the request of the interested party, steps were taken to promptly cancel the name from the database containing the e-mail addresses used in the newsletter mailing list;
- however, "the database [containing the e-mail addresses of the newsletter] and the mailing list [with which communications are sent] have two different and independent update times" so that "the first is modified immediately, as soon as the request for revocation of consent, deleting the data inside. At a later time, the mailing list, as it updates, will adapt its content so that the e-mail addresses in the database coincide with those within the same mailing list";
- "this asynchronous mode presumably caused a technical error, which then resulted in the unwanted sending of the disputed newsletter".

In the light of the above, the Office proceeded to notify the deed of initiation of the sanctioning procedure, pursuant to art. 166, paragraph 5, of the Code for the violation of art. 17, par. 1, lit. b) and of the art. 6, par. 1, lit. a) of the Regulation (prot. n. 53037 of 10/21/2021).

The CAAF, on 11/18/2021, sent its own defensive writings, pursuant to art. 18 of the law n. 689/1981, with which it was reiterated that the sending of the promotional communication to the complainant's e-mail address had been caused by a technical error, mainly due to the failure to update the mailing list with respect to the database. In particular, the nature of the event was exclusively culpable, as the sending of the communication did not depend on the will of the owner. "In order to avoid other similar errors, the owner has set up an automatic unsubscribe system from the newsletter, in order to simplify the procedure and ensure greater efficiency of the system. Through this new link ("unsubscribe" button), the user who no longer wishes to receive communications of an informative-promotional nature can arrange for his e-mail to be removed from the mailing list".

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 is ascertained that the CAAF responded to the request for cancellation of personal data made by the complainant, declaring that it had removed the data from the mailing list but, in fact, continued to store and process your data, without a appropriate legal basis.

It appears from the documentation in the documents that, with the request of 02/15/2021, the complainant asked to proceed with the "withdrawal of consent for points 2, 3, 4 and 5 of the document Information and consent on the processing of personal data", signed on 03/06/2019. In particular, point 5 of the aforementioned document refers to the "processing of data by CAAF for the purpose of commercial communication or the sending of promotional material (...)".

The data controller, although with the e-mail of 02/23/2021 communicated instantly that "he had revoked the consent", thus determining the legitimate expectation of the termination of the promotional treatment, has instead continued to process his data.

From the moment the communication was sent to the interested party (which took place on 23/02/2021), since the assumption of legitimacy of the processing carried out up to that moment was no longer valid, the same should have ceased. It follows that the treatment subsequently put in place by the CAAF took place in violation of the will, expressed by the interested party, to revoke the consent and in an unlawful manner, as no legal basis, among those indicated in art. 6, par. 1 of the Regulation applies in the case in question.

Among other things, it should be noted that no evidence was provided by the CAAF to support what was declared in relation to the technical error that would have led to further processing of the data, following the acceptance of the withdrawal of consent.

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

In the light of the foregoing assessments, it is therefore 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 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.

The CAAF, in giving a purely formal reply to the request for revocation of consent presented by the interested party, has carried out a processing of personal data which is unlawful because it lacks an appropriate legal basis, with consequent

violation of art. 6, par. 1, of the Regulation.

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 relative quantification, taking into account that the fine must be "effective, proportionate and dissuasive in each individual case" (art. 83, paragraph 1 of the Regulation), we represent 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 conditions of legitimacy of the processing;
- the absence of previous relevant violations committed by the data controller;
- the degree of cooperation provided by the party during the proceedings;
- the measures adopted to avoid the recurrence of similar situations.

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 2018.

Based on the aforementioned elements, evaluated as a whole, it is decided to determine the amount of the pecuniary sanction in the amount of 30,000.00 (thirty thousand) euros for the violation of art. 6 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 art. 6 of the Regulation;

ORDER

to CAAF CGIL Lombardia s.r.l., in the person of its pro-tempore legal representative, with registered office in Milan, Via Palmanova n. 22, P.I. 02282990965, pursuant to art. 58, par. 2, of the Regulation, to pay the sum of 30,000.00 (thirty thousand) euros as an administrative fine for the violation indicated in the justification;

ENJOYS

to the same Company to pay the sum of Euro 30,000.00 (thirty 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 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'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.

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, 23 March 2023

PRESIDENT

station

THE SPEAKER

station

THE SECRETARY GENERAL

Matthew