



## GARANTE PER LA PROTEZIONE DEI DATI PERSONALI

In today's meeting, with the participation of [REDACTED], [REDACTED]  
[REDACTED]  
[REDACTED]

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 No 196 of 30 June 2003 (Personal Data Protection Code, hereinafter 'Italian DP Code' or the 'Code') as amended by legislative decree No 101 of 10 August 2018 containing 'Provisions to adapt the national legal system to Regulation (EU) 2016/679 (GDPR)';

Having regard to Regulation 1/2019 concerning internal procedures having external impact as related to discharge of the tasks and exercise of the powers committed to the Garante per la protezione dei dati personali, as approved by resolution No 98 of 4 April 2019 and published in Italy's Official Journal No 106 of 8 May 2019 and at [www.gpdp.it](http://www.gpdp.it) (web document No 9107633) (hereinafter the 'Garante's Regulation No 1/2019' or 'Regulation 1/2019');

Having regard to the complaint lodged with the Garante on 24 June 2020 by [REDACTED] an Italian national, against [REDACTED] regarding the receipt of marketing communications in spite of the complainant's having requested that his personal data be erased, whereby the complainant also reported the unavailability of the privacy notice on the [REDACTED] website that is owned by the said company;

Having regard to the preliminary European cooperation procedure under Article 56 of the Regulation whereby the case was submitted for assessment under the OSS-regime;

Taking note that the procedure started by the Garante under Article 56 of the Regulation led the Berlin Supervisory Authority to accept acting as the lead supervisory authority in the case at hand since the relevant controller has its single establishment in Berlin, and that the case was accordingly managed pursuant to the OSS-mechanism within the meaning of Article 60 of the Regulation;

Having regard to the mutual assistance procedure under Article 61 of the Regulation whereby the lead supervisory authority requested the Garante to supplement the complaint by providing the attachments referred to therein along with the evidence that unsolicited communications had been received after the complainant had requested the company to erase his personal data;

Having regard to the letter dated 5 March 2021 whereby the Office of the Garante requested the complainant to submit the additional documents in question;

Taking note that the complainant failed to provide any feedback to the above request;

Taking note that the Garante provided the attachments requested by the lead supervisory authority within the framework of the aforementioned mutual assistance procedure and also informed the said authority that the complainant had failed to reply to the request made by the Office of the Garante;

Having regard to the cooperation procedure within the meaning of Article 60(3) of the Regulation whereby the lead supervisory authority submitted a draft decision to the supervisory authorities concerned under Article 4(22) of the Regulation for their opinion;

Whereas the lead supervisory authority proposed that the complaint be dismissed on the following grounds:

*‘Based on the complainant’s description, three possible breaches of the GDPR could – in theory – be investigated:*

- 1. A breach of Article 12 (3) and 17 GDPR because of late erasure,*
- 2. A breach of Articles 6 (1), and 17, 21 or 7 (3) GDPR, because of marketing e-mails after objection or withdrawal of consent or erasure re-quest,*
- 3. A breach of Article 13 because the privacy policy was not available.*

*Unfortunately, the attachments provided are not sufficient to start any of these investigations.*

*In order to investigate a breach of Articles 12 (3) and 17 GDPR (late erasure), the Berlin DPA requires additional data, such as a copy of the earlier erasure requests. At least the Berlin DPA needs to know the approximate time frame in which the request(s) was/were made, in order to conduct a preliminary assessment whether Article 12 (3) GDPR was breached and confront the controller with it.*

*In order to investigate a breach of Articles 6 (1), and 17, 21 or 7 (3) GDPR, (marketing e-mails after an erasure request, objection or withdrawal of consent), the Berlin DPA requires a copy of either an objection or withdrawal of consent or erasure request raised before May 13th, 9 am or a copy of an advertisement e-mail received after May 13th, 2020.*

*Regarding the privacy settings page, which the complainant states was not reachable, the Berlin DPA found that currently, there’s a privacy policy available in Italian under [REDACTED]. The web archives show that the page was existent in June 2017 and August 2020. If the page was not available in the time in-between, the Berlin DPA requires screen-shots to prove this.*

*The Berlin DPA requested additional information and the Italian Supervisory Authority contacted the complainant in order to procure the additional information, but without success: The complainant did not provide the re-requested information. Therefore, the Berlin DPA cannot start the investigation and discontinues the proceedings.’*

Taking note that no relevant and reasoned objection was raised by the Garante and/or the other supervisory authorities concerned in respect of the said draft decision and that the latter is accordingly to be regarded as binding in pursuance of Article 60(6) of the Regulation;

Finding accordingly that a final decision is to be adopted under the terms of Article 60(8) of the Regulation in line with the aforementioned draft decision where the lead supervisory authority has held that the case is to be dismissed on the grounds mentioned in the foregoing paragraphs;

Having regard to Section 18(5) of the Garante’s Regulation No 1/2019, which provides that the proceeding shall be concluded in accordance with Article 60(8) of the Regulation by way of the adoption of the order referred to in Sections 14 to 16 of the said Regulation No 1/2019 whenever the Garante is a supervisory authority concerned on account of having received a complaint;

Having regard to the records on file;

Having regard to the considerations submitted by the Secretary General in pursuance of Section 15 of the Garante's Regulation No 1/2000;

Acting on the report submitted by [REDACTED];

BASED ON THE ABOVE PREMISES, THE GARANTE

PROVIDES

That the complaint lodged by [REDACTED] on 24 June 2020 against [REDACTED] shall be dismissed within the meaning of Article 60(8) of the Regulation on the grounds set out in the preamble hereof.

This order may be challenged under the terms of Article 78 of the Regulation as applied jointly with Section 152 of the Code and Section 10 of legislative decree No 150 of 1 September 2011 by lodging an appeal with the court of the place where the controller is resident or has an establishment or else with the court of the data subject's place of residence by thirty days from notification hereof, or by sixty days if the appellant is resident abroad.

Rome, 24 March 2022

THE PRESIDENT

[REDACTED]

THE RAPPORTEUR

[REDACTED]

THE SECRETARY GENERAL

[REDACTED]