



GARANTE PER LA PROTEZIONE DEI DATI PERSONALI

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

Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (hereinafter the 'GDPR');

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 the complaint lodged by [REDACTED] with this supervisory authority (SA) against [REDACTED];

Taking account of IMI Article 56 procedure No 350195, which was opened by this Authority (Garante per la protezione dei dati personali, hereinafter the 'Garante') insofar as an instance of cross-border data processing was at issue, and which was notified to the other European concerned supervisory authorities on 27 December 2021;

Taking account that the Dutch SA, "*Autoriteit Persoonsgegevens*", accepted to act as the lead supervisory authority in the said procedure since the controller has its main establishment in The Netherlands;

Having regard to the draft decision No 470953 and revised draft decision No 480872 adopted by the Dutch SA and shared with the other supervisory authorities concerned (France, German Land of Rhineland-Palatinate, Spain) in compliance with the cooperation and consistency principles set out in Article 60 of the GDPR;

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 Regulations No 1/2000;

Acting on the report submitted by [REDACTED];

WHEREAS

1. The complaint and the relevant inquiries

On 19 July 2021, [REDACTED] lodged a complaint, through her lawyer, with the Italian SA under Article 77 of the GDPR against [REDACTED] (hereinafter, "[REDACTED]"), complaining that on 19 February 2021 she had received a credit card registered in her name by post from [REDACTED], although she had never applied for a credit card and never provided any information to

██████████. Moreover, she alleged the failure by ██████████ to reply to her access request according to art. 15 GDPR, sent by certified e-mail on 21 April 2021, and to her subsequent reminder.

Since the controller, ██████████, has its main establishment in Amsterdam, The Netherlands, the Italian SA activated the cooperation procedures as required by Article 60 of GDPR and transmitted the complaint to the Dutch SA on 27 December 2021. The Dutch SA accepted to act as the lead supervisory authority (LSA), being competent accordingly for starting the relevant inquiries and determining lawfulness of the processing at issue.

By way of a letter dated 1 September 2022, the controller was invited to provide the Dutch SA with any and all information regarding the processing of ██████████'s personal data.

Further to the above request for information, the controller replied by a letter dated 12 September 2022, which was transmitted to the Garante on 19 September 2022 together with the initial assessment by the Dutch SA.

In its letter ██████████ clarified the following:

- a) a request for opening a ██████████ account was received on 30.1.2021 in the name of the complainant; a week later (6.2.2021), following the outcome of the identity verification procedure for anti-fraud purposes, the account was reported as fraudulent in connection with a possible identity theft;
- b) as a result, the account opened in the name of the complainant was immediately blocked and still remains blocked;
- c) during the week in which the account was open, a card bearing the complainant's name was sent to the address indicated in the account. The card has never been activated and no transaction has taken place;
- d) moreover, the Dutch supervisory authority highlighted how it could not contribute to prosecuting the perpetrator of the fraudulent act, being in no way competent in this regard.

Regarding the data access request by the data subject pursuant to art. 15 of GDPR, the internal investigation carried out by ██████████ in its systems showed that there was no request from the complainant or any communication between the latter and ██████████; in this regard, the Dutch supervisory authority asked ██████████ to carry out the relevant checks on the basis of the name of the complainant and of her lawyer. In any case, the Dutch authority believes that the complainant's request was not submitted in the form of a proper request for access pursuant to art. 15 of the GDPR. Indeed, the letter to ██████████, dated 21 April 2021, contained a generic request 'to communicate the details of the owner and the person responsible for data processing', reserving the right to take legal action regarding the unlawful processing of data and warning the company not to use and/or disseminate the complainant's data; therefore, there was apparently no breach of art. 15 GDPR.

On the basis of the preliminary investigation conducted, and considering the circumstances of the case, the Dutch SA concluded that the controller had provided an adequate response to the request for information and that a violation of article 6 (1) of the GDPR was not proved. In any case, the Dutch SA made itself available to assist the data subject in any request for erasure of her data addressed to ██████████.

The Dutch SA, therefore, shared with this SA and with the other authorities concerned its intention to close the case, having found no violations of the GDPR such as to justify the continuation of the proceeding, by deciding to reject the complaint.

The Garante shares the Dutch authority's conclusions, having decided likewise in a similar manner on the complaint sent at the same time by the same data subject against another controller – namely, a bank headquartered in Italy. As highlighted above, a violation of personal data by the controller could not be found, whereas the facts would point to a possible scam as the predicate offence in whose respect the processing of personal data plays an ancillary role; indeed, the complainant informed this SA that she had already turned to Italian judicial authorities in this regard ('on 10.05.2021 she filed a police report against unknown persons').

By way of a letter dated 10 November, 2022, both the reply from [REDACTED] and the initial assessments made by the Dutch SA and endorsed by this Authority were communicated to the complainant.

The latter, via her lawyer, confirmed that a judicial proceeding was underway before the Italian judicial authority concerning the possible fraud/scam and, whilst not contesting the assessments by the Dutch supervisory authority, requested that the latter would make sure that [REDACTED] would retain her personal data for the whole duration of the investigations by the Italian judicial authority, at the end of which the data would have to be cancelled.

Having received the data subject's feedback, the Dutch supervisory authority, submitted a draft decision to the other supervisory authorities concerned pursuant to Article 60(3) GDPR, providing in particular as follows:

- following the investigation into the complaint against [REDACTED], the Dutch supervisory authority did not find a violation of the requirements pursuant to articles 6(1) and 15 of the GDPR; since a further continuation of the procedure was not necessary, the authority rejected the complaint pursuant to art. 60 (8) GDPR;
- moreover, the Dutch supervisory authority, as requested by the data subject, gave assurances that it would ask [REDACTED] to keep the information relating to the data subject only for the purposes of the ongoing investigation by the Italian Public Prosecutor's Office concerning the alleged fraud, and to delete the data once the investigation was concluded.

Under Article 60(6) GDPR, the said draft decision – after being revised in the form of a Revised Draft Decision following a comment added by this SA to clarify the scope of the request submitted by the complainant - became binding on the CSAs including the Garante as no relevant and reasoned objections were submitted in accordance with Article 60(4) GDPR.

2. Assessment by the Garante and decision

The Italian SA agrees to the revised draft decision in the light of the findings and the assessment submitted by the Dutch SA.

BASED ON THE FOREGOING PREMISES, THE GARANTE

acting pursuant to Articles 57(1)(f) and 60(8) GDPR as well as pursuant to Section 143(3) of the Italian DP Code and Sections 11, 14(1) and 18(5) of the '*Garante's Regulations No 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the 'Garante'*', in its capacity as complaint-receiving SA competent for adopting the final decision,

rejects the complaint

on the foregoing grounds and decides to close the related proceeding.

In accordance with Article 60(8) GDPR, this decision will be notified to the complainant, and the data controller will be informed thereof.

The complainant may challenge this decision under the terms of Article 78 of the GDPR 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, 23 March 2023

[signed]

THE PRESIDENT

THE RAPPORTEUR

THE SECRETARY GENERAL