



IL GARANTE PER LA PROTEZIONE DEI DATI PERSONALI

In today's meeting, with the participation of [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED] and [REDACTED]; and [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.gdpd.it, web document No 9107633, (hereinafter the 'Garante's Regulation No 1/2019' or 'Regulation 1/2019');

Having regard to the complaint lodged on 13 May 2020 whereby [REDACTED], an Italian citizen, who complained the receiving of unwanted promotional phone calls for online trading services by [REDACTED], a company which, according to the telephone operator during the contact on 23 April 2020, would have been linked to [REDACTED], attributable to the company [REDACTED], with registered office in Cyprus;

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;

Whereas that the Cypriot authority initially declared the complaint inadmissible, having found no substantial elements of connection between the company [REDACTED] and [REDACTED], the latter established in Cyprus;

Taking note of the mutual assistance procedure under Article 61 of the Regulation whereby the Garante sent a communication to the Cypriot authority highlighting that the complaint was addressed to [REDACTED] and not to [REDACTED] and that the complainant had represented that he had spoken on the telephone with two employees of [REDACTED];

Whereas that, following these clarifications, the Cypriot authority confirmed on 11 April 2022, that it was acting as the lead supervisory authority since the data controller has its single establishment in Nicosia, Cyprus started the investigation into the case;

Having regard to the records through which the lead authority shared with the Garante the results of the investigation launched;

Having regard, in particular, to the documentation from which it emerged that [REDACTED] had already communicated to the complainant, following a request dated 15 Ottobre 2020, that it was not in possession of any of his personal data and that it wanted to proceed, in any case, with a further verification at the end of which, in the event that his personal data had been traced, they would have proceeded to their immediate cancellation;

Having regard to the records of the informal cooperation procedure pursuant to Article 60 (1) of the Regulation whereby the lead authority shared a preliminary proposal for the dismissal of the case;

Having regard that, in communicating its agreement with the preliminary draft decision by CY SA, the Garante has in any case asked the lead authority to monitor the phenomenon of unwanted calls aimed at promoting online trading activities and to prepare adequate measures to carry out an effective control action necessary in case of further complaints by Italian data subjects;

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;

Taking note that no relevant and reasoned objection was raised by 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 as the lead supervisory authority has decided that the case is to be dismissed on the grounds the following reasons:

“Having in mind the above facts, and specifically that:

(a) The complainant received calls from telephone numbers that we cannot examine their origin (not registered in Cyprus),

(b) The controller stated that does not recognize the phone numbers or the people which presented themselves as being their representatives, and in any event it strictly prohibits their online affiliates from using offline methods, particularly phone calls, to contact potential clients,

(c) The controller stated that it searched into their systems and found no data regarding the complainant,

We are of the opinion that the complaint cannot be established and consequently that shall be rejected as unsubstantial.”;

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 13 May 2020 against [REDACTED], shall be dismissed within the meaning of Article 60(8) of the Regulation on the grounds set out above.

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.

Roma, 27 April 2023

THE PRESIDENT [REDACTED]

THE RAPPORTEUR [REDACTED]

THE SECRETARY GENERAL [REDACTED]