



Lawfulness, fairness and pertinency in the activity of debt collection – 30th November 2005

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

Today, in the presence of professor Francesco Pizzetti, chairman, of Mr Giuseppe Chiaravalloti, vice-chairman, of Mr Giuseppe Fortunato and Mr Mauro Paissan, members, and of Mr Giovanni Buttarelli, secretary-general;

The reports submitted by members and by associations for consumers protection regarding personal data processing within the field of debt collection have been considered;

Informations have been acquired following up inspections that have been carried out under Section 154 (1) (a) (b), of the Code on the subject of protection of personal data (law decree 30th June 2003, No. 195);

It is necessary to prescribe to the persons entitled to data processing some of the measures that are required for their compliance with the provisions in force (Section 154 (1) (c), of the Code);

The observations of the secretary-general have been taken into account under Section 15 of the Guarantor's Regulation No. 1/2000;

Rapporteur Mr Giuseppe Fortunato;

WHEREAS

1. Personal data processing in the field of debt collection

This Authority has received several reports regarding personal data processing (and behaviours) to the detriment of debtors (and more in general of persons required to fulfil obligations) in the field of debt collection. The said activity can be performed either by creditors themselves or by third parties which operate on their behalf under an agreement of cooperation (particularly with a mandate or a supply of services). In this case the activity of debt collection follows the acquisition of debtors' personal data, that is to say their personal details, informations that are considered to be useful in order to contact them (e.g. their personal telephone numbers), besides all the data regarding the amount due (reason for debt eventually stated, terms of the financial obligation, besides the grounds for the said obligation).

Results have highlighted the use of several procedures for extrajudicial debt collection, which are characterized by invasive researches and contacts that, sometimes, damage personal privacy and dignity.

Particularly, researches, contacts and requests for payment are carried out in various ways: creditors or third parties sometimes do house-to-house visits or go to debtors' place of employment; they call debtors on their mobile or house/work phone numbers or even send text messages in order to urge for payment; they use pre-recorded message phone calls to solicit the payment without the intermediation of an operator (therefore taking the risks that individuals other than the recipient may become acquainted with the contents of the call); they send personal letters to give notice of the start of the debt collection procedures that may let strangers understand its contents (for example covers with the notice "*debt collection*" or similar on the front) or even mislead the recipient about the amount of the debt and the origin of the request for payment (phrases such as "*notice of enforcement*" are often used and also the recall of the future involvement of "*bailiffs*"); they leave a default notice on the debtors' door.

The activity of debt collection often involves third parties letting them know the debtors personal affairs (e.g. members of the family, acquaintances or neighbours by the use of details that are not included in the contract and cannot be found in the public telephone directories).

It is necessary for the activity of debt collection to be in compliance with the provisions in force concerning the protection of personal data. Therefore the Guarantor, under Section 154 (1) (c) of the Code, prescribes that: any person involved in the activity of debt collection has to adopt all the measures required which are hereinafter specified; any creditor who turns to third parties for the activity of debt collection has to do his or her best in order to respect the provisions here stated; any party concerned shall apply to the ordinary

judicial authorities if the conduct held during the procedures of debt collection may cause a tort (as regards claiming for damages eventually suffered) or a criminal offence (as regards harassment or threats).

2. The principle of lawfulness in personal data processing

Whosoever is in charge of personal data processing in the activity of debt collection shall respect the principle of lawfulness. This principle is infringed when informations regarding the arrears in payment are given to third parties other than the debtor (e.g. members of the family, cohabitants, colleagues or neighbours) without a sensible reason (this unfair practice is adopted by some economic operators, sometimes with the aim of making pressure on the debtor to obtain the payment of the amount due).

It is also considered an illegal practice the use of pre-recorded message phone calls to urge payment without the intermediation of an operator, therefore taking the risk of letting other persons than the debtor know about the arrears in payment.

Another illegal practice is posting default notices (or request for payment) on the debtor's door, so exposing it to an unspecified number of people other than the recipient during an uncertain span of time (which sometimes may be prolonged).

3. The principle of fairness in the management of personal details

The activity of debt collection shall comply with the general clause of fairness (Section 11 (1) (a) of the Code): according to it, any practice that may affect debtors' dignity is not allowed, both when collecting informations on debtors, and attempting of getting in contact with them (also by third parties).

Therefore, any communication of request for payment that may show to people unconnected to the matter its contents is illegal: it may occur when using postal cards or sending covers with the notice "*debt collection*" on the front (or similar sentences that may reveal the state of default of the recipient).

Given the nature of the informations to handle, and the high risk of divulging personal informations on the debtor to third parties, it is then necessary that only the recipient of the communication shall become acquainted with any request for payment. Debt collectors shall use sealed covers, putting on the front the only informations that are requested to identify the sender, avoiding any exceeding detail (in order to avoid any useless dissemination of personal data, see for serving legal proceedings [Provision 22nd October 1998](#), in [Bulletin No. 6/1998](#), p. 13; or for a particular instance Provision 12th June 2000, in Bulletin. No. 13/2000, p. 38, 41).

Guidance is provided in this sense also by some provisions recently introduced in the Civil Procedure Code (see, in particular, Sections 137 (3), 140, and 250 (2) as amended by Section 174 of the Code), which were aimed at ensuring compatibility between the said Code and the protection of personal values referred to in Section 2 (1) of the Data Protection Code. Additionally, there are sector-related laws and regulations applying to the delivery of requests for payment that require the relevant communications to be carried out with closed covers.

4. Principles of pertinency and purpose

Personal data processing in the activity of debt collection shall be carried out respecting the principles of pertinency, purpose and quality of the data (Section 11 of the Code).

Thereby only the data requested for the execution of the assignment shall be used, particularly debtor's personal data, tax code (or VAT number), the amount due (together with the terms of payment), contact addresses (including phone numbers), that are usually provided by the interested party when stipulating the contract or that can be found in public lists or registers.

Except compliance with specific legal obligations (e.g. accounting for the activities carried out), which may require a prolonged retaining of the collected data, the said data shall not be subjected to further processes once the assignment is accomplished.

Any further retaining of the data shall be done with methods such as to avoid its usual examination by adopting logical suitable measures or by transferring the data to separated files.

5. Informative Report to the interested parties

In the implementation of the regulations for the protection of personal data, the man in charge of it shall acquaint the interested parties (usually during the stipulation of the contract) with informations referred to in Section 13 of the Code, including informations on the person entrusted with the task of handling personal data and debt collection (where appropriate by stating it in the website, under Section 13 (1) (f) of the Code, and underlining it in the informative report given).

If the data are collected from third parties, Section 13 (4) of the Code applies.

BASED ON THE ABOVE PREMISES, THE GUARANTOR

prescribes, under Section 154 (1) (c) of the Code, that any person in charge of the management of personal data in the activity of debt collection shall take all the appropriate and necessary measures referred to in this provision from point 1 to 5 in order to comply with the regulations in force.

Rome, 30th November 2005

THE CHAIRMAN
Mr Pizzetti

THE RAPPOREUR
Mr Fortunato

THE SECRETARY-GENERAL
Mr Buttarelli