[doc. web n. 9719914]

Order injunction against Solera Italia s.r.l. - September 29, 2021

Record of measures

n. 353 of 29 September 2021

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by prof. Pasquale Stanzione, president, Professor Ginevra Cerrina Feroni, vice president, dr. Agostino Ghiglia and the lawyer Guido Scorza, members and the cons. Fabio Mattei, general secretary;

GIVEN the Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016 (hereinafter, the "Regulation");

GIVEN the Code regarding the protection of personal data, containing provisions for the adaptation of the national system to Regulation (EU) 2016/679 (Legislative Decree 30 June 2003, n.196, as amended by Legislative Decree 10 August 2018, no. 101, hereinafter the "Code");

GIVEN the report submitted pursuant to art. 144 of the Code on 22 November 2018 and regularized on 10 January 2019 by Mr. XX towards Solera Italia s.r.l .;

EXAMINED the documentation on file

HAVING REGARD to the observations made by the Secretary General pursuant to art. 15 of the regulation of the Guarantor n. 1/2000;

SPEAKER Attorney Guido Scorza;

WHEREAS

1. The content of the report that initiated the investigations.

On 22 November 2018, Mr. XX filed a report pursuant to art. 144 of the Code towards Solera Italia s.r.l. (hereinafter, the Company), regularizing it following a specific invitation from the Authority on 10 January 2019, in which he complained about alleged violations of the Regulations and in particular: the persistent activity, after the interruption of the employment relationship with the Company, individualized corporate e-mail accounts assigned to the same ("XX" and "XX"); access to the "XX" account by "other employees of the company on behalf of the latter" and the absence of information regarding the processing of their data by the Company.

2. The preliminary investigation towards the Company.

The Company, in response to a request for elements (dated 17.5.2019) made by the Office, in a note dated 25 June 2019 stated that:

to. the reporting party carried out his / her work "mainly through the e-mail address XX" (note 25.6.2019, p. 2);

b. following the merger by incorporation of AUTOonline s.r.l., "towards the middle of July 2018 [...] the new company email account (XX) was assigned [to the reporting party] which, however, was actually activated only towards the end of July […]. Therefore, even after the merger and until the summer holidays, the [reporting person] continued to use the e-mail address: XX "(cit. Note, p. 2);

c. "At the end of the summer holidays and in particular on August 28 [2018 the reporting party] was fired for objective reasons" (cit. Note, p. 2);

d. "With a letter dated 4 October [2018, the reporting party] complained that the Company had accessed, after the termination of the relationship, to the e-mail address XX [...] against this deduction, the [reporting person] did not formulate any requested, in terms of privacy, towards the company, nor did it require the cancellation of this e-mail account. The company, although not required, acknowledged this communication with a letter dated November 20 [2018] "(cit. Note, p. 2);

And. "The company e-mail account: XX is still active, exclusively to allow the receipt of e-mails from the outside, after installing the automatic reply message" (cit. Note, p. 3);

f. "The company e-mail account: XX was instead deactivated, with the definitive inhibition of both incoming and outgoing messages, on 21 June 2019 [...] this account was never used by the [reporting party] and, as far as the company is aware, it should not even have been communicated to subjects outside the company "(cit. note, p. 3);

g. "Account XX was kept active, despite the termination of the relationship, exclusively to allow the receipt of any e-mail messages from customers, suppliers and other subjects external to the company who, in the past, used to interface directly with the [reporting person] "(cit. note, p. 3);

h. “The company keeps, via server, the e-mail messages relating to both addresses (both XX and XX). This is due to the importance of the duties performed by the [reporting person] and the related degree of autonomy enjoyed by the executive in constant relationship, in particular in relations with customers and suppliers of the company. Furthermore, the need for conservation is also related to the legitimate interest of the company - pursuant to art. 2-undecies, co. 1, lett. e) of the Code -

to be able to defend oneself in relation not only to the pending labor law dispute (which [...] concerns the mere declaration of unjustified dismissal), but also to other potential disputes that could be initiated by customers and / or suppliers and / or partner of the company "(cit. note, p. 3);

the. "On November 28, 2018, the company set an automatic reply message on address XX" (cit. Note, p. 4);

j. "On the e-mail address XX, on the other hand, no automatic reply message was activated as [...] this address was substantially not used by the [reporting person]" (cit. Note, p. 4);

k. "We do not know that AUTOonline, at the time of hiring the [reporting person], nor subsequently, delivered to the reporting person [a copy of the company regulations and / or information documents relating to the use of the company e-mail account]" (cited note ., p. 4);

L. "The company is implementing a specific procedure on the use of corporate e-mail accounts" (cit. Note, p. 4).

On March 17, 2020, following a request for further clarification sent by the Authority on February 26, 2020, the Company declared that:

to. account XX "has been deactivated, blocking both incoming and outgoing messages" (note 17.03.2020, p. 1);

b. "Currently, the only form of processing relating to the account [XX] consists in the storage, via the server, of the e-mail messages sent and received. In particular, the e-mail software is «Microsoft Exchange Server 2016» "(cit. Note, p. 1);

c. "No employee of the company currently has access to such e-mails. To this end, in cases of actual need, previously verified by the company, it is possible to request - through a ticketing system that allows the tracing of requests - to a system administrator the assignment of the necessary privileges to access stored e-mail messages. This authorization is granted with the prior approval of the IT and HR manager. It should be noted that not even system administrators have direct access to e-mail messages, having only the right to grant the necessary privileges for access "(cit. Note, p. 1);

d. "E-mail messages sent and received [through account XX] have been kept since November 29, 2010" (cit. Note, p. 1);

And. "The retention period of e-mail messages [relating to account XX] is 10 years from the termination of the employment relationship of the [reporting person]. And this, by reason of the legitimate interest of the company to be able to defend itself, not only in the labor law dispute brought by the [reporting person] against the same [...], but also in other potential disputes that could be initiated by customers and / or suppliers and / or partner of the company "(cit. note, p. 1, 2);

f. account XX "was definitively deactivated, with the blocking of both incoming and outgoing messages on 21 June 2019" (cit.

note, p. 1, 2);

g. "All e-mail messages (sent and received) relating to [the] account [XX] have been deleted, without any more access by the company. Therefore, no personal data circulates on this account and in relation to the same [...] the company does not carry out any processing "(cit. Note, p. 2).

3. The initiation of the procedure for the adoption of corrective measures and the Company's deductions.

Based on the elements collected during the investigation, on 24 June 2020, the Office found that the Company carried out a treatment in violation of the data protection regulations because:

after the termination of the employment relationship with the reporting party, the Company kept the individualized "XX" and "XX" e-mail accounts active respectively until June 21, 2019 and on a date, not better specified, between the company's reply of 25 June 2019 and the feedback of 17 March 2020;

the Company keeps, via the server, the e-mail messages relating to the "XX" account starting from November 29, 2010 and the retention period of the same is ten years from the termination of the employment relationship; the Company kept the incoming and outgoing messages relating to account XX, until their cancellation (21 June 2019); this by virtue of the legitimate interest of the company in defending itself in the pending judgment with the reporting party and in other potential disputes with customers, suppliers, partners;

the Company has not provided adequate information to the whistleblower regarding the processing of data with reference to the use of the company email account and the possible controls exercised on it by the employer during the relationship and at the end of this.

In relation to the above, pursuant to art. 166, paragraph 5 of the Code, the Company was notified of the initiation of the procedure for the adoption of corrective measures for violation of articles 5, par. 1, lett. a), c), e), 12, 13, 88 of the Regulation, 113 and 114 of the Code.

With a note dated 26 July 2020, the Company with defensive briefs stated that:

to. the reporting party "was hired by AUTOonline S.r.l." "With the qualification of executive and the role of General Manager" (note 26.7.2020, p. 1);

b. "On May 28, 2018, AUTOonline S.r.l. was merged by incorporation into Autosoft S.r.l. which, at the same time, took on the new corporate name of Solera Italia S.p.A. " (see cit. note, p. 1);

c. "As a result of this merger, the employment relationship of the [reporting person] continued with [Solera Italia S.p.A.] pursuant to art. 2112 of the Italian Civil Code Consequently, from September 2007 to May 2018, any event relating to the employment relationship of the [reporting person], including the related privacy profiles, cannot be attributed [to Solera Italia S.p.a.]. And in fact, if it is true that the Company is the data controller for privacy purposes, it is equally true that the same, as an entity, can only operate by means of persons in charge, natural persons to whom the implementation of the provisions is entrusted. by legislation. The alleged omissions relating to privacy attributed to the Company certainly fell within the activities "necessary for the launch of AUTOonline" and, therefore, in consideration of the role held and the responsibilities entrusted to the [reporting person], it must be concluded that all legal obligations, including to provide the information pursuant to art. 12 and 13 of the Regulation, substantially falls on the same "(see cit. Note, p. 1, 2);

d. "On May 7, 2020, Solera Italia and the [reporting person] concluded a general novative settlement [which] therefore confirms that the [reporting person] has never suffered any damage as a result of the conduct subject to the report of November 22, 2019 and that, even if this had happened, he would have definitively renounced it "(the Company has not produced a copy of the aforementioned settlement deed, see note cit., p. 2, 3)

And. "The deed of merger by incorporation of AUTOonline S.r.l. in the undersigned Company was concluded only on May 28 [2018] - immediately after the entry into force of the Regulation - with the consequence that, especially from a substantial point of view, Solera Italia cannot be blamed for the failure to deliver to [reporting] of the information on the use of the "XX" account, also taking into account that the compliance of the legislation on the protection of personal data was also the responsibility of the reporting party, as General Manager of AUTOonline S.r.l. "(v. cit. note, p. 3);

f. "Following the merger, the [reporting person] remained employed by Solera Italia until 28 August 2018 and therefore, net of summer holidays, for just over two months. Moreover, during this period the reporting party used exclusively the "XX" account as the new "XX" account was activated only towards the end of July 2018 [...] and, therefore, was never used "(see note cit., p. 3);

g. "As regards the e-mails sent and received from the" XX "account, the latter were kept due to the legitimate interest of the Company - pursuant to art. 2-undecies, co. 1, lett. e) of the Code - to be able to defend oneself in relation not only to the labor law dispute (now reconciled), but also and above all to other potential disputes that could be initiated by customers and / or suppliers and / or partners of the Company "(see note cit ., p. 3);

h. "The Company has determined the duration of storage of these e-mail messages in compliance with the 10-year prescription period, considering precisely that the relationships with third parties managed by the [reporting person] in the name and on behalf of the Company are of a contractual nature and that , therefore, this is the term within which the Company could receive disputes and, in the event of cancellation of all communications sent and received, it could not defend itself "(see note cited, p. 4);

the. “The Company has never carried out any remote control of the work of the [reporting person], nor a violation of the prohibition of investigating opinions pursuant to the aforementioned art. 8 of the Workers' Statute. So much so that the [reporting person] did not make any report or other dispute on this point. Furthermore [...] no employee of the Company has access to the stored e-mail messages, having to request - after verifying the actual need - the authorization of a system administrator who provides for the assignment of the necessary privileges. In any case, the corporate e-mail account can only be considered as a work tool "(see cit. Note, p. 4);

j. "For the purposes of art. 83, paragraph 2 of the Regulations "it is specified that" the "alleged violations" subject to the notification of 24 June 2020 can at the most be attributed to the Company by way of negligence, as there is no suitable element to support the intentional nature [...] the [reporting party] has never suffered any damage as a result of such "alleged violations" [...] these "alleged violations" nevertheless never concerned sensitive data [...] the Company has demonstrated the highest degree of cooperation with the Guarantor [...] the Company has never received from this Illustrious Authority any provision pursuant to 58, paragraph 2 of the Regulations "(see note cit., p. 4, 5).

4. The outcome of the investigation and the procedure for the adoption of corrective measures.

Upon examination of the declarations made to the Authority during the procedure as well as of the documentation acquired, it appears that the Company, in its capacity as owner, has carried out some processing operations of personal data, referring to the reporting party, which do not comply with the regulations on the protection of personal data. In this regard, it is recalled that, unless the fact constitutes a more serious crime, whoever, in a proceeding before the Guarantor, falsely declares or certifies news or circumstances or produces false deeds or documents, is liable pursuant to art. 168 of the Code "Falsehood in declarations to the Guarantor and interruption of the execution of the tasks or the exercise of the powers of the Guarantor".

4.1. It is first noted that, in accordance with the constant orientation of the European Court of Human Rights, the protection of privacy also extends to the workplace, considering that it is precisely during the performance of work and / or professional

activities that relationships develop where expresses the personality of the worker (see articles 2 and 41, paragraph 2, of the Constitution). Also taking into account that the borderline between the work / professional and the strictly private sphere cannot always be clearly drawn, the Court considers that art. 8 of the European Convention on Human Rights set up to protect private life without distinguishing between the private sphere and the professional sphere (see Niemietz v. Allemagne, 16.12.1992 (rec. No. 13710/88), spec. Para. 29; Copland v. UK, 03.04.2007 (ref. No. 62617/00), spec. Par. 41; Bărbulescu v. Romania [GC], 5.9.2017 (ref. No. 61496/08), spec. Par. 70 -73; Antović and Mirković v. Montenegro, 28.11. 2017 (rec. No. 70838/13), spec. Para. 41-42). Therefore, the processing of data carried out using information technology in the context of the employment relationship must comply with respect for fundamental rights and freedoms as well as the dignity of the interested party, to protect workers and third parties (see Recommendation CM / Rec (2015) 5 of the Committee of Ministers to the Member States on the processing of personal data in the employment context, spec. Point 3).

4.2. On the basis of the elements acquired during the investigation, it emerged, first of all, that the interested party has never received any information regarding the processing of data, carried out by the data controller, with reference to the data processed as a result of the assigning corporate email accounts. The processing of personal data, even in the context of the employment relationship, must respect, among others, the principles of transparency and fairness; this implies, in particular, that the essential characteristics of the treatments must be made known to the workers before the treatment is carried out (see point art. 5, par. 1, lett. a) of the Regulation and, in this regard, Provv. 1 March 2007, n. 13 "Guidelines for electronic mail and internet", in G. U. n. 58 of 10.3.2007). The processing of data in the absence of information implies its unlawfulness.

With regard to the attribution of the violation, taking into account the corporate transformations that occurred during the employment relationship, it is noted that the violation, even if it began when the ownership of the treatment was in the hands of AUTOonline s.r.l. and in the period prior to the application of the Regulation, it certainly continued afterwards, given that even after the merger by incorporation of AUTOonline s.r.l. in Solera Italia s.r.l. (effective from 22 May 2018, as shown in the Company's search in the register of companies) the provisions of art. 13 of the Regulation. In fact, it does not appear that any information document has been provided to the interested party with reference to the use of company e-mail accounts and the possible controls exercised over them by the employer during the relationship and at the end of this, including the management of the same after the termination of the relationship and data retention.

In this regard, the allegations made by the Company with reference to the managerial role covered by the reporting party within

the company structure are not relevant: the Regulation, in fact, specifies that it is the person who holds the role of data controller that bears the obligation to provide the so-called information to interested parties (see articles 13 and 14; of similar content to article 13 of the Code in the formulation prior to the changes made by Legislative Decree 101 of 2018) and the data controller is "the natural or legal person, the public authority, service or other body which, individually or together with others, determines the purposes and means of the processing of personal data "(see art. 4, point 7 of the Regulation).

In this regard, it is also recalled that based on the provisions of art. 2504-bis of the Italian Civil Code "The company resulting from the merger or the acquiring company assumes the rights and obligations of the companies participating in the merger, continuing in all their relationships, including procedural ones, prior to the merger".

The conduct held by the Company is therefore in contrast with the provisions of Articles 5 par. 1, lett. a), 12 and 13 of the Regulation, on the basis of which the owner is required to provide the data subject in advance with all the information relating to the essential characteristics of the processing (see Provision March 1, 2007, no. 13 "Guidelines by mail electronics and internet ", cit.). Article 12, par. 1, in particular, provides that "the data controller takes appropriate measures to provide the data subject with all the information referred to in Articles 13 and 14".

The above violations must also be examined taking into consideration that, in the context of the employment relationship, fully informing the worker about the processing of his / her data is an expression of the general principle of correctness of processing (see art.5, par. 1 , letter a) of the Regulation).

4.3. From another point of view, the investigation revealed that the Company, after the termination of the employment relationship with the reporting party (dating back to 28.8.2018), kept active the individualized e-mail accounts assigned to the same - "XX" and "XX" - respectively until 21 June 2019 and on an unspecified date, between the reply of the Company of 25 June 2019 and the reply of 17 March 2020, for the declared purpose, as regards the account "XX", to "allow the receipt of any e-mail messages from customers, suppliers and other subjects external to the company"; nothing, however, was declared regarding the reasons why the "XX" account was kept active until 21 June 2019. Only with reference to the "XX" account, moreover, and in any case only from 28 November 2018, the Company has set up an automatic response system aimed at informing third parties of the imminent deactivation of the same.

Considering in this regard that the exchange of electronic correspondence - unrelated to work or not - on an individualized company account configures an operation that allows to know some personal information relating to the interested party (see

"Guidelines of the Guarantor by mail electronics and Internet ", cit., spec. point 5.2, lett. b), the Guarantor has, with constant orientation, deemed necessary, for the purposes of compliance with the principles on the protection of personal data (see Provisions of 4 December 2019, n.216, web doc. 9215890; 1 February 2018, n.53, web doc. 8159221, point 3.4.), That after the termination of the employment relationship the data controller removes the account , after deactivation of the same and simultaneous adoption of automatic systems aimed at informing third parties and providing the latter with alternative e-mail addresses referring to his professional activity. This in application of art. 5, par. 1, lett. c) of the Regulations.

The conduct held by the Company does not, for this reason, comply with the principle of data minimization pursuant to art. 5, par. 1, lett. c) of the Regulations.

4.4. It also emerged that the Company keeps, via the server, the e-mail messages relating to the "XX" account, starting from November 29, 2010, and that the retention period of the same is ten years, from the termination of the relationship. work "considering [...] that the relationships with third parties managed by the [reporting person] in the name and on behalf of the Company are of a contractual nature and that, therefore, this is the term within which the Company could receive disputes and, in case of cancellation of all communications sent and received, he could not defend himself ". As regards the "XX" account, however, it emerged that the Company kept, through the server, until their cancellation (June 21, 2019, on the basis of what was declared by the Company), all incoming and outgoing messages, again for the legitimate interest of the same in defending itself in the pending judgment with the reporting party and in other "potential disputes that could be initiated by customers and / or suppliers and / or partners of the company" (see note dated 25 June 2019 and 17 March 2020). This conduct does not comply with the principles of data minimization (Article 5, paragraph 1, letter c of the Regulation) and limitation of conservation (Article 5, paragraph 1, letter e) of the Regulation).

The Guarantor has in fact affirmed on several occasions that the processing of personal data carried out for the purpose of protecting one's rights in court must refer to ongoing disputes or pre-litigation situations, not to abstract and indeterminate hypotheses of possible defense or protection of rights, given that this extensive interpretation, advanced by the Company, would be elusive of the provisions on the criteria for legitimizing the processing (see articles 6, par. 1, letters b), c) and f) and 9, par. 2, lett. b) of the Regulations; see, lastly, prov. 29 October 2020, n. 214, doc. web 9518890).

In relation to the represented purpose of dealing with any complaints from customers, suppliers, it is also noted that the Guarantor has already considered that the legitimate need to ensure the conservation of documentation necessary for the

ordinary performance and continuity of the company activity, also in relation to relationships with private and public subjects, as well as on the basis of specific provisions of the legal system, is ensured, first of all, by the preparation of document management systems with which - through the adoption of appropriate measures organizational and technological - identify the documents that during the course of the work activity must be gradually archived in a manner suitable for guaranteeing the characteristics of authenticity, integrity, reliability, legibility and availability prescribed by the applicable sector regulations. The e-mail systems, by their very nature, do not allow to ensure these characteristics (see provision 29 October 2020, n.214 cit. And provision 1 February 2018, n.53, web doc. 8159221) .

4.5. Finally, it emerged, with regard to the "XX" account, that the company has kept and systematically keeps, through a server, the incoming and outgoing e-mails since November 29, 2010, for the entire duration of the relationship. of work and for ten years following its termination. This "because of the legitimate interest of the company to be able to defend itself not only in the labor law dispute brought by the [reporting person] against the same [...], but also in other potential disputes that could be initiated by customers and / or suppliers and / or partners of the society". In this regard, it also emerged that the company has the possibility of accessing both external data and the content of the e-mail box during an employment relationship: the Company, in fact, stated that "in cases of actual need, in advance verified by [itself], it is possible to request […] a system administrator to assign the necessary privileges to access stored e-mail messages. This authorization is granted upon approval by the IT and human resources manager "(see note 17.3.2020, see also what was reiterated in the defense briefs of 26.7.2020). The preventive and systematic storage of external data and the content of the e-mails sent and received during the performance of the work activity is suitable to allow the reconstruction of the employee's activity and to carry out a check on it, even indirectly, beyond beyond the purposes strictly admitted by art. 4, l. 20.5.1970, n. 300 and in any case in the absence of the procedural guarantees provided therein. In any case, the data controller must always respect the principles of data protection (Article 5 of the Regulation). This implies that the controls (indirect or unintentional), within the limits established by the sector regulations, and the related processing of personal data that can be lawfully carried out by the employer, must in any case be configured gradually, after experimenting with less restrictive measures. the rights of the interested parties.

The conduct of the company has therefore resulted in an illegal processing of personal data as it is carried out in violation of art. 114 of the Code where it refers to art. 4 of the l. May 20, 1970, n. 300, as a condition of lawfulness of the processing. This labor discipline, even as a result of the changes laid down by art. 23 of the legislative decree 14 September 2015, n. 151,

does not allow the carrying out of activities suitable for carrying out massive, prolonged and indiscriminate control of the employee's activity (see provision 1.2.2018, cit., Point 3.3.).

Through the aforementioned systematic storage of e-mails, the Company may also know information relating to the private life of the worker that is not relevant for the purposes of assessing the professional attitude of the same. This also considering that no policy relating to the use of the corporate e-mail account has been provided to the reporting party, in particular with reference to the limits of the permitted use, even outside the workplace, of the account itself, with the consequent formation of a legitimate expectation of confidentiality, also in relation to any private contents of the e-mails. In this regard, it should be noted that the distinction between the work / professional sphere and the strictly private sphere is not always easily identifiable, especially in the current work context.

This treatment therefore occurred in violation of art. 113 of the Code which refers to art. 8, l. May 20, 1970, n. 300 and 10 of the d. lgs. 10 September 2003, n. 276.

This therefore constitutes the violation of the principle of lawfulness of processing (Article 5, paragraph 1, letter a) of the Regulation in relation to Articles 113 and 114 of the Code) as well as art. 88 of the Regulation as the articles. 113 and 114 constitute provisions of national law "more specific to ensure the protection of rights and freedoms with regard to the processing of personal data of employees in the context of employment relationships" identified by art. 88 of the Regulation.

Finally, it is recalled that, based on art. 2-decies of the Code, "personal data processed in violation of the relevant regulations regarding the processing of personal data cannot be used, except as provided for in Article 160-bis".

5. Obligations imposed by the Regulation regarding information and storage times.

Please note, pursuant to art. 57, par. 1, lett. d) of the Regulations, that the Company, as data controller, must conform its processing to the Regulations regarding the correct preparation of the documents containing the information relating to the use of company e-mail accounts and the possible controls exercised on themselves by the employer in constant relationship and at the end of this. The data controller must also conform their treatments to the principles of data retention limitation and data minimization, as well as to the provisions of art. 113 and 114 of the Code, the conditions being met.

6. Conclusions: declaration of illegality of the treatment. Corrective measures pursuant to art. 58, par. 2, Regulations.

For the aforementioned reasons, the Authority believes that the declarations, documentation and reconstructions provided by the data controller during the investigation do not allow to overcome the findings notified by the Office with the act of initiation

of the procedure and which are therefore unsuitable to allow the filing of this proceeding, since none of the cases provided for by art. 11 of the Guarantor Regulation n. 1/2019.

The processing of personal data carried out by the Company is, in fact, illegal, in the terms set out above, in relation to articles 5, par. 1, lett. a), c) and e) (principles of lawfulness, correctness, minimization and limitation of conservation); 12 and 13 (information); 88 (processing of data in the context of employment relationships) of the Regulation, 113 (collection of data and relevance) and 114 (guarantees regarding remote control) of the Code.

Given the corrective powers attributed by art. 58, par. 2 of the Regulation, in light of the circumstances of the specific case, there is a ban on further processing of the data extracted from the company email account referring to the reporting party in relation to which the Company has declared to continue to keep the emails of the itself ("XX"), without prejudice to their conservation for the exclusive purpose of protecting rights in court, for the time necessary for this purpose, taking into account that, pursuant to art. 160-bis of the Code, "The validity, effectiveness and usability in judicial proceedings of deeds, documents and provisions based on the processing of personal data not compliant with the provisions of the law or the Regulations remain governed by the relevant procedural provisions".

7. Adoption of the injunction order for the application of the pecuniary administrative sanction and ancillary sanctions (Articles 58, paragraph 2, letter i), and 83 of the Regulations; art. 166, paragraph 7, of the Code).

At the outcome of the procedure, it appears that Solera Italia s.r.l. has violated Articles 5, par. 1, lett. a), c) and e) of the Regulations; 12 and 13 of the Regulations; 88 of the Regulation; 113 and 114 of the Code. For the violation of the aforementioned provisions, the application of the administrative sanction pursuant to art. 83, par. 5, of the Regulation.

Considering it necessary to apply paragraph 3 of art. 83 of the Regulation where it provides that "If, in relation to the same treatment or related treatments, a data controller [...] violates, with intent or negligence, various provisions of this regulation, the total amount of the pecuniary administrative sanction does not exceed the amount specified for the most serious violation ", considering that the ascertained violations of art. 5 of the Regulation are to be considered more serious, as they relate to the non-compliance with a plurality of general principles applicable to the processing of personal data and the applicable sector regulations, the total amount of the sanction is calculated in such a way as not to exceed the maximum legal notice provided for the aforementioned violation. Consequently, the sanction provided for by art. 83, par. 5, lett. a), of the Regulation, which sets the maximum legal limit in the sum of 20 million euros or, for companies, in 4% of the annual worldwide turnover of the

previous year, whichever is higher.

With reference to the elements listed in art. 83, par. 2, of the Regulations for the purposes of applying the pecuniary administrative sanction and its quantification, taking into account that the sanction must "in any case [be] effective, proportionate and dissuasive" (Article 83, par. 1 of the Regulations), is that, in the present case, the following circumstances were considered:

a) in relation to the nature, gravity and duration of the violation, the nature of the violation was considered relevant, which concerned the general principles of processing, including the principle of lawfulness (more specific provisions regarding processing in the context of employment relationships) , fairness and transparency;

b) with reference to the willful or negligent nature of the violation and the degree of responsibility of the owner, the conduct of the Company and the degree of responsibility of the same was taken into consideration, which did not spontaneously comply, even after the initiation of the procedure, with the data protection regulations relating to a plurality of provisions;

c) the absence of specific precedents was taken into account in favor of the Company.

Furthermore, it is believed that they assume relevance, in the present case, taking into account the aforementioned principles of effectiveness, proportionality and dissuasiveness to which the Authority must comply in determining the amount of the sanction (Article 83, paragraph 1, of the Regulation), first of all the economic conditions of the offender, determined on the basis of the revenues achieved by the company with reference to the financial statements for the year 2020 (which recorded operating losses).

In light of the elements indicated above and the assessments made, it is believed, in the present case, to apply against Solera Italia s.r.l. the administrative sanction for the payment of a sum equal to € 10,000.00 (ten thousand).

In this context, it is also believed, in consideration of the nature and seriousness of the violations ascertained, that pursuant to art. 166, paragraph 7, of the Code and art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019, this provision should be published on the Guarantor's website.

It is also believed that the conditions set out in art. 17 of Regulation no. 1/2019 concerning internal procedures with external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

WHEREAS, THE GUARANTOR

detects the unlawfulness of the processing carried out by Solera Italia s.r.l., in the person of its legal representative, with

registered office in Via Duccio di Boninsegna, 10, Milan (MI), Tax Code 01664900592, pursuant to art. 143 of the Code, for the violation of art. 5, par. 1, lett. a), c) and e); 12 and 13; 88 of the Regulation; 113 and 114 of the Code;

IMPOSES

to Solera Italia s.r.l., pursuant to art. 58, par. 2, lett. f) of the Regulation, the prohibition of further processing of data extracted from the company e-mail account referring to the reporting party in relation to which the Company has declared to continue to keep the e-mails of the same, without prejudice to their conservation for exclusive purposes for the protection of rights in court, for the time necessary for this purpose, within the limits of art. 160-bis of the Code;

ORDER

pursuant to art. 58, par. 2, lett. i) of the Regulations to Solera Italia s.r.l., to pay the sum of € 10,000.00 (ten thousand) as a pecuniary administrative sanction for the violations indicated in this provision;

HAS

the publication of this provision on the website of the Guarantor pursuant to art. 166, paragraph 7, of the Code and art. 16, paragraph 1, of the Guarantor Regulation n. 1/20129, and believes that the conditions set out in art. 17 of Regulation no. 1/2019.

He requests Solera Italia s.r.l. to communicate what initiatives have been taken in order to implement the provisions of this provision and to provide, in any case, adequately documented feedback pursuant to art. 157 of the Code, within 60 days from the date of notification of this provision; any non-response may result in the application of the administrative sanction provided for by art. 83, par. 5, lett. e) of the Regulations. In the event of non-compliance with the prohibition provision, the provisions of art. 170 of the Code.

Pursuant to art. 78 of the Regulations, as well as articles 152 of the Code and 10 of Legislative Decree no. 150/2011, an opposition to the ordinary judicial authority may be proposed against this provision, with an appeal filed with the ordinary court of the place identified in the same art. 10, within thirty days from the date of communication of the provision itself, or sixty days if the applicant resides abroad.

Rome, 29 September 2021

PRESIDENT

Peel

THE RAPPORTEUR

Stanzione

THE SECRETARY GENERAL

Mattei