

Injunction against the Rescue Drones Network ODV Association - 6 October 2022

Register of measures

no. 325 of 6 October 2022

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

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

HAVING REGARD TO Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data, as well as on the free circulation of such data and repealing Directive 95/46 /CE (General Data Protection Regulation, hereinafter "Regulation");

HAVING REGARD TO the Code regarding the protection of personal data (legislative decree 30 June 2003, n. 196), as amended by legislative decree 10 August 2018, n. 101, containing provisions for the adaptation of the national legal system to the aforementioned Regulation (hereinafter the "Code");

HAVING REGARD to the documentation in the deeds;

HAVING REGARD TO the observations made by the general secretary pursuant to art. 15 of the Guarantor's regulation n. 1/2000, adopted with resolution of 28 June 2000;

SPEAKER the lawyer Guido Scorza;

1. THE INVESTIGATION ACTIVITY CARRIED OUT

1.1. Premise

With deed no. 24331/2 of 3 May 2022 (notified on the same date by certified email), which here must be understood as reproduced in full, the Office has launched, pursuant to art. 166, paragraph 5, of the Code, a procedure for the adoption of the provisions pursuant to art. 58, par. 2, of the Regulations against the Rescue Drones Network ODV Association, (hereinafter "RDN" or "the Association"), in the person of its pro-tempore legal representative, with registered office in Piacenza, via Verdi 13, Tax Code 91120900336.

The proceeding originates from an investigation initiated by the Authority, following the receipt of a complaint in which Mr. XX reported that he was one of the founding members of the Association and that, like all members, he had the availability of a

nominative e-mail account with domain "rescuedrones.net". He also reported that on 6 October 2021, he was informed by the legal representative of RDN of the adoption of a disciplinary measure against him with consequent loss of shareholder status. Following this communication, the complainant realized that his e-mail account, assigned by the Association, was no longer accessible to him, so he requested the President to be able to return to his temporary availability in order to retrieve e-mails and other documents to prepare the opposition action against the disciplinary measure and also to be able to represent his reasons to the other shareholders. No response was received from the Association but only a system warning, dated 8 October 2021, which attested to the change in the password for accessing Mr. XX. On the same day of 8 October 2021, the complainant represented to the Association that he had not received a reply to the request to restore his account, in order to recover his mail, and that this conduct constituted a violation of the provisions on the protection of personal data. After a further period without feedback from the Association, Mr. XX therefore proposed the aforementioned complaint to the Authority, complaining of the violation of the provisions of the Regulation regarding the exercise of the right of access to one's data (Article 15, paragraph 3).

1.2. Requests for information formulated by the Authority

Once the complaint was received, the Office proceeded to start the relative investigation, inviting the Company to provide its version of the facts and possibly to comply with the requests of the complainant.

The President of the Association, Mr. Jacopo Giudice, provided feedback within the terms, representing that:

- "on 05.10.2021, following the outcome of the disciplinary procedure initiated [against Mr. XX], the Board of Directors has approved the exclusion from the association, formally communicating it via PEC to the person concerned on 06.10.2021";
- "on the same 06.10.2021 I consistently instructed the RDN managers of the Google Gsuite platform [...] to exclude the XX account from the possibility of access and use [...];
- "a system anomaly was found (the size of the documents was equal to "0 bytes" with "no. 0 documents owned" [...] a second access of a strictly technical nature was necessary for the sole purpose of verifying the congruence of the number and size of the documents, so as to verify that nothing had been lost and that everything was therefore recoverable tomorrow if under the law of the XX. To this end, it was necessary to change the password";
- "Having carried out this technical check, which lasted only a few minutes, the account was then immediately suspended again and since then there have been no other accesses, as can also be seen from the system log".

The complainant replied to the information provided by the Association, first of all by pointing out that "all the personal archive connected to my nominative account (hundreds of documents) has been deleted; the Chairman refers to a "system anomaly" without specifying what and without demonstrating that no one caused the destruction of personal data; it does not even specify whether the data were then recovered" and then representing that "there was a "change of password" (confirmed by the President in the note referred to) which is reserved exclusively for the person concerned. It is quite clear that this new password was in the possession of someone other than myself, someone who therefore had full access to all my personal data".

1.3. Claiming Violations

At the conclusion of the investigation, the Office acknowledged that Rescue Drones Network ODV, owner of the data processing of its members, carried out processing of personal data aimed, first of all, at attributing to Mr. XX, in his capacity as a member, an e-mail account to be used for association purposes, and then, following the provision for revocation of member status, to inhibit the latter from accessing the aforementioned account. He also noted that despite repeated requests from Mr. XX, in which explicit reference was made to the regulations on the protection of personal data and to the will of the complainant to exercise the right of access pursuant to art. 15, par. 3, of the Regulations in order to regain possession of its mail, the Association did not take into consideration the requests, which therefore remained unanswered just as the invitation from the Authority to evaluate acceptance of the requests did not appear to have been accepted access of Mr. XX.

The Office has therefore adopted the aforementioned act of initiation of administrative procedure no. 24331/2 of 3 May 2022, with which it challenged RDN for the following alleged violation:

- articles 12 and 15, par. 3, of the Regulation, for not having allowed the complainant to exercise the right of access to their personal data, with reference to the e-mail account assigned by the Association to the complainant.

2. OBSERVATIONS OF THE OWNER

The party requested a hearing before the Authority, based on the provisions of art. 166, paragraph 6, of the Code and by art. 13 of the Guarantor's regulation n. 1/2019, hearing which took place on 1 June 2022.

The Association reiterated that the exclusion of the complainant from the list of RDN members prevents him from still exercising associative functions and from freely using not only the account but also the data contained therein. In fact, these data are to be considered not of personal pertinence of the complainant but of RDN. In any case, the Association said it was

available, subject to specific indication by the XX of the documents it wishes to obtain, "to make them available but in any case it is necessary for the complainant to forward a specific request and an equally exhaustive motivation: this, it is reiterated, in consideration of the fact that Mr. XX, compared to the Association, is, to date, an extraneous third party".

RDN also observed that in the event that Mr. XX had kept personal messages in the Association's mail account, this would certainly constitute a violation of the statutory provisions because, it is reiterated, the account was only for association purposes.

Finally, with reference to the episode of access to the mail account with consequent change of password, complained of by the XX, RDN pointed out that this access was made by the ICT department after the suspension of the account, since it had been recognized a system anomaly that valued both the memory space occupied and the number of documents present at zero.

Access lasted a few minutes and the password change was necessary because the functionality of Mr. XX had been blocked: once you entered and found that the values indicated on the account size were incorrect due, presumably, to a bug on the G-Suite platform, you proceeded to exit the account without changing anything. The results of the access were recorded in specific log files.

3. ASSESSMENTS OF THE AUTHORITY

In the light of what emerged during the investigation, the matter brought to attention with the complaint of Mr. XX can be summarized as follows: the Rescue Drone Network Association, after adopting a provision for the exclusion of the complainant from the list of its members, "frozen" the e-mail account made available to it at the time and did not proceed to the various requests for access to personal data that the complainant has formulated on several occasions. These requests were unequivocally made with reference to the regulations on the protection of personal data (for example, in the email dated 7 October 2021, addressed to the Association, the complainant writes "I hereby ask to be immediately put in a position to recover the mail managed by the aforementioned account [...] Failing that, the provisions of EU Reg. 2016/679 and of the Privacy Code as amended by Legislative Decree 101/2018 will be applied").

That the complainant's requests were aimed at exercising the right of access to one's data was in any case clarified both in the complaint, an act brought to the attention of the Association, and in the dispute deed adopted by the Office, so that it is clear that the non-access, still ongoing, is not the result of an anomaly in RDN's internal procedures but of a conscious choice, fully illustrated during the hearing.

This choice appears to be incorrect in law and capable of causing damage to the rights and freedoms of the complainant, given that the same has not been enabled to re-appropriate the personal information present in the Association's account and therefore to reconstruct the information assets that in the course of his activity as a member he has created within the RDN (also in order to oppose the expulsion measure adopted against him).

In this respect, it must also be noted that the alleged traceability of the information in the account of Mr. XX to the exclusive relevance of the Association, as well as the related prohibition to use the account for personal purposes, are not reflected, both for the fact that the aforementioned prohibition is not found in reading the Statute and the Code of Ethics of the Association itself (present on the web at the web page <https://www.rescuedrones.net/documenti-associativi/>), and because the owner does not appear to have clarified the methods of use of the e-mail accounts by the shareholders by adopting a specific specification or by drafting suitable information on the point.

In any case, it must be noted that the art. 15 of the Regulation establishes that "the interested party has the right to obtain from the data controller confirmation as to whether or not personal data concerning him is being processed and, in this case, to obtain access to personal data" and the exercise of this right cannot be deferred or denied, except in particular cases or if the request for access is manifestly unfounded or excessive, which must be excluded in the case in question considering the limited nature of the access, functional to contrast with legitimate tools the disciplinary measure adopted against the complainant.

The existence of the violation contested by the Office must therefore be considered confirmed.

4. CONCLUSIONS

For the above, the responsibility of RDN is deemed to have been established for the following violation:

- articles 12 and 15, par. 3, of the Regulation, for not having allowed the complainant to exercise the right of access to their personal data, with reference to the e-mail account assigned by the Association to the complainant.

Having also ascertained the illegality of the conduct of the Association with reference to the facts under examination, it becomes necessary:

- order RDN, pursuant to art. 58, par. 2, lit. c), of the Regulation, to satisfy and respond to the requests of the complainant, with reference to the exercise of the rights pursuant to art. 15 of the Regulation;
- adopt an injunction order, pursuant to articles 166, paragraph 7, of the Code and 18 of the law n. 689/1981, for the

application against RDN of the pecuniary administrative sanction provided for by art. 83, para. 3 and 5, of the Regulation

5. ORDER-INJUNCTION FOR THE APPLICATION OF THE PECUNIARY ADMINISTRATIVE SANCTION

The violation indicated above requires the adoption of an injunction, pursuant to articles 166, paragraph 7, of the Code and 18 of the law n. 689/1981, for the application against RDN of the pecuniary administrative sanction provided for by art. 83, para. 3 and 5 of the Regulations (payment of a sum up to €20,000,000.00);

In order to determine the amount of the fine, it is necessary to take into account the elements indicated in art. 83, par. 2, of the Regulation;

In the present case, the following are relevant:

1) the seriousness of the violation (Article 83, paragraph 2, letter a) of the Regulation), taking into account the nature of the data processed, subject to constitutional protection also in relation to the freedom of correspondence, and the recurrence of omissive conduct by part of RDN which did not allow access to the complainant despite repeated requests, some of which remained unanswered;

2) as an aggravating factor, the duration of the conduct implemented (art. 83, paragraph 2, letter a) of the Regulation), which considerably prolonged the times for processing the complaint and responding to the requests of the interested party, which it has not yet taken place, with potential prejudice to the right of defense in relation to the disciplinary measure adopted against the complainant;

3) as mitigating factors to be taken into consideration when setting the fine (Article 83, paragraph 2, letter k) of the Regulation), the non-profit purpose of the Association and the general socio-economic context, characterized by a profound crisis economy following the serious emergencies still in progress.

Based on the set of elements indicated above, and the principles of effectiveness, proportionality and dissuasiveness provided for by art. 83, par. 1, of the Regulation, and taking into account the necessary balance between the rights of the interested parties and freedom of association, in the process of first application of the administrative pecuniary sanctions envisaged by the Regulation, also in order to limit the economic impact of the sanction on the organizational and functional needs of an Association engaged in the field of Civil Protection, it is believed that the administrative sanction of the payment of a sum of 3,000.00 euros, equal to 0.025% of the maximum statutory sanction, should be applied to RDN.

In the case in question, it is believed that the ancillary sanction of publication on the Guarantor's website of this provision

should be applied, provided for by art. 166, paragraph 7 of the Code and art. 16 of the Regulation of the Guarantor n. 1/2019, taking into account the nature of the treatments and the conduct of the Association, as well as the elements of risk for the exercise of the rights of the interested parties

Finally, the conditions set forth in art. 17 of Regulation no. 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

ALL THIS CONSIDERING THE GUARANTEE

a) enjoins RDN, pursuant to art. 58, par. 2, lit. c), of the Regulation, to satisfy and respond to the requests of the complainant, with reference to the exercise of the rights pursuant to art. 15 of the Regulation;

b) enjoins RDN, pursuant to art. 157 of the Code, to communicate to the Authority, within thirty days of notification of this provision, the initiatives undertaken in order to implement the measures adopted; any failure to comply with the provisions of this point may result in the application of the administrative fine provided for by art. 83, paragraph 5, of the Regulation

ORDER

to the Rescue Drones Network ODV Association, in the person of its pro-tempore legal representative, with registered office in Piacenza, via Verdi 13, C.F. 91120900336, to pay the sum of 3,000.00 (three thousand/00) euros as an administrative fine for the violations indicated in the justification, representing that the offender, pursuant to art. 166, paragraph 8, of the Code has the right to settle the dispute, with the fulfillment of the instructions given and the payment, within the term of thirty days, of an amount equal to half of the fine imposed.

ENJOYS

to the aforementioned Association, in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, to pay the sum of Euro 3,000.00 (three thousand/00), according to the methods indicated in the attachment, within 30 days of notification of this provision, under penalty of the adoption of the consequent executive acts pursuant to the 'art. 27 of the law n. 689/1981.

HAS

The application of the ancillary sanction of publication on the Guarantor's website of this provision, provided for by articles 166, paragraph 7 of the Code and 16 of the Regulation of the Guarantor n. 1/2019, and the annotation of the same in the internal register of the Authority - provided for by art. 57, par. 1, lit. u), of the Regulation, as well as by art. 17 of Regulation no. 1/2019

concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor - relating to violations and measures adopted in compliance with art. 58, par. 2, of the Regulation itself.

Pursuant to articles 152 of the Code and 10 of Legislative Decree no. 150/2011, opposition to this provision may be lodged with the ordinary judicial authority, with an appeal filed with the ordinary court of the place where the data controller has its registered office, within the term of thirty days from the date of communication of the provision itself .

Rome, 6 October 2022

PRESIDENT

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THE SPEAKER

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THE SECRETARY GENERAL

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