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Injunction against Doctolib Srl - 10 November 2022

Register of measures

no. 368 of 10 November 2022

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by prof. Pasquale Stazione, 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");

CONSIDERING the Regulation n. 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor for the protection of personal data, approved with resolution no. 98 of 4/4/2019, published in the Official Gazette no. 106 of 8/5/2019 and in www.gpdp.it, doc. web no. 9107633 (hereinafter "Regulation of the Guarantor n. 1/2019");

Given the documentation in the deeds;

Given the observations made by the general secretary pursuant to art. 15 of the Regulation of the Guarantor n. 1/2000 on the organization and functioning of the office of the Guarantor for the protection of personal data, in www.gpdp.it, doc. web no. 1098801;

Speaker Dr. Agostino Ghiglia;

WHEREAS

1. Reporting

The Authority has received a report relating to possible violations of the regulations on the protection of personal data, concerning the processing carried out by the company Dottori.it Srl (hereinafter "Dottori.it") - object, during the proceeding, of

operations extraordinary corporate bodies, lastly, the merger by incorporation into the company Doctolib Srl, with effect from the xx (hereinafter "Doctolib" or "Company") - through the Dottori.it platform, whose services are accessible both through the website www. Dottori.it, and the "Doctors.it" application, available for Apple and Android operating systems.

The "Doctors.it" platform aims to put healthcare professionals and patients in contact "The doctor registers on the platform, and against payment of a fee, can publish a profile that defines the scope of his/her skills and the territory in which it operates. The potential patient (...), after registering his personal details, the specialization of interest (...), can access the database of available doctors, he is thus offered an agenda for appointments [and] the appointment is then sent to the doctor by e-mail". With specific reference to the registration of doctors on the aforementioned platform, the signing of a contract proposal is envisaged, aimed at regulating the relationship between Dottori.it and doctors.

In the aforementioned contractual document, doctors (defined as "Clients"), "are informed (...) that the Data Controller of third parties who intend to make use of the Client's professional services is the Client himself, while Dottori.it will carry out the role of external data processor of the Customer (pursuant to Article 28 of the GDPR)" and that "The mutual obligations of the Customer, as data controller, and of Dottori.it, as external data processor, (..) are set out in the attachment "Appointment deed of data processor and related contractual regulation (...)".

2. Preliminary and procedural activity

With reference to the reported incident, the Office has launched a preliminary investigation in order to know every useful element of evaluation in this regard and in particular the correct identification of the roles of owner and manager of the subjects involved in the processing in question, as well as compliance with the principles of lawfulness, correctness and transparency (articles 5, paragraph 1 letter a), 6,7, 9, 24 and 28 of the Regulation).

With the note of the XX, Dottori.it replied to the request for information from the Office (note of the XX, prot. n. XX), stating in particular that:

- the Dottori.it platform stands "as an intermediary for the meeting between the demand and supply of professional services by Professionals in compliance with the ethical standards in force. In this context, Dottori.it acts as an initial point of contact, and offers the Professional a tool to improve and make their organization more efficient in terms of managing online reservations and the agenda. With a view to continuous evolution, new functions were also added during the 20th century for the management of online payment of services and the relative invoicing";

- "On the XX date, the entire shareholding in the Company was sold by the previous shareholding structure to Doctolib S.r.l.";
- "a consolidation process is underway, the completion of which is expected during the first quarter of the twentieth which will lead to the gradual disposal of the Platform".

Specifically, the Company with reference to the processing of data of healthcare professionals has declared that it qualifies as data controller and that:

- such personal data (...) are acquired after signing an ad hoc contract, formalized "offline";
- following the formalization of the contract and the services chosen by the doctor "...), a personal account of the Professional is activated for access to his own reserved area of the Site (and of the App), the use of the services of the Platform depending of the type of contact subscribed, as well as for the management of the related account";
- "The legal basis on which this treatment is based is the execution of pre-contractual measures adopted at the request of the interested party and of the contract of which the interested party is a party (Article 6, paragraph 1, letter b) of the EU regulation 2016 /679)";
- "Limited to the processing of data related to the management of the Professional's appointment diary, the Company instead acts as data processor on behalf of the Professional on the basis of the service contract (...) stipulated between the Company and the Professional (or the Medical center) and the relative deed of appointment of data processor which forms an integral part of the contract";
- "This activity involves the processing of the following information: details of the reservations and services provided by the Professional originated through the Platform, as well as the display on the Platform of the time availability in the Professional's diary".

In relation to the "Processing of data of interested parties who book a health service through the Site", Dottori.it declared that:

- "(...) two macro-categories of treatments are distinguished: those functional to the management of the contractual relationship deriving from registration on the Platform and the related account, and treatments related to the medical-professional service";
- "Once the user of the Site (or of the App) has identified the Professional of his interest and the day and time to fix the appointment (...), he proceeds to book the visit (...) using the specific function that is presented to him", by "logging in, in the case of users already registered on the Platform" or proceeding "to register by creating a user account";

- “By registering, the user will be able to access their account settings and see their profile data as well as manage their privacy preferences”;
- "For these activities, the Company collects and processes the following personal data of the patient: personal data (such as name, surname), contact data (such as e-mail, telephone), data for managing payments where the patient uses the online payment service and the data for the invoice header if requested to the Professional, as well as the data that may derive from any requests for technical assistance”;
- "In relation to these treatments, carried out for the establishment and management of the contract, the Company qualifies as data controller”;
- “The legal basis on which this treatment is based is the execution of a contract of which the interested party is a party (Article 6, paragraph 1, letter b) of EU regulation 2016/679)”;
- "For all services strictly related to the visit, to booking the appointment (including the sending of notifications to confirm the appointment and to remember the same close to the fixed date), as well as for making the platform available for video call in the case of televisitation, the Company acts as data controller on behalf of the individual Professional on the basis of the service contract entered into between the Company (art. 12) and the Professional (or the Medical Centre) and the relative appointment deed of data controller who constitutes an integral part of the contract”;

In this regard, "the Company may process the following categories of personal data: details of reservations, messaging between patient and Professional relating to the visit, additional patient data acquired by the Professional (including C.f. address, date of birth), data necessary for guarantee the audio-video connection in the event of a televisit, annotations on the patient, the patient's file recorded by the Professional in his Appointments Diary, a copy of the consents issued by the patient to the Professional for the medical-health service carried out through the Platform".

Dottori.it has also declared that it does not carry out profiling treatments on the data acquired through the platform and that, if "allowed by the user", it carries out treatments aimed at sending commercial communications. In this regard, the Professional or patient who has given his consent can revoke it at any time.

In relation to the ways in which the aforementioned Company would have fulfilled the information obligations and the acquisition of any consent, the following documents were sent:

"Information on the protection of personal data”;

"Patient privacy policy issued to Professionals containing" the PRIVACY INFORMATION pursuant to art. 13 of Regulation (EU) 2016/679 and national adaptation legislation";

"Patient consent collection form collected by Professionals containing "PATIENT CONSENT COLLECTION FORM".

Specifically, Dottori.it represented that the patient, when registering on the site - necessary to proceed with booking the appointment with the selected professional - sees a section with the following content "We need you to view some authorizations on your privacy and the use of your personal data. These permissions will be requested only once. If you need it later, you can make changes, you can manage privacy requests in the personal area". Subsequent sections are then provided, with a single field to be selected, in which the patient expresses consent to the "processing of personal data relating to my health, aimed at providing the medical services requested by me - including the booking of my visit , the registration of my personal data and the provision of telemedicine services to me through the Dottori.it platform."

A link to the information on the processing of personal data is also provided here, followed by subsequent sections called "this field is required", in which, in particular, consent to the processing of data for commercial purposes is requested from the patient. of Dottori.it or aimed at sending commercial communications from third parties by Dottori.it. The aforementioned company also declared that "The information thus provided and the consents acquired up to now, where applicable, by the Company pertain to the treatments of which it is the owner (points B.2, B.3.1 and B.4 [of the note of response to the request for information of the XX], with the exception of what is specified on the consent to treatments for telemedicine purposes".

Dottori.it also represented that, with reference to the medical-professional services made available through the Platform, "(...) the Company makes a model of information on the processing of personal data available to Professionals". This information can be provided by the Professional "to the patient in paper format at the time of the visit to the professional studio". In this case "it will then be the Professional's responsibility to affix a specific flag on the patient file on the Platform with which it is confirmed that he has provided the patient with the information and the consents issued by the same are recorded. This is a function for the exclusive benefit of the Professional". In the case of visits carried out using the televisit method, "a process has been implemented whereby the online information is presented to the patient and the relative consents are recorded there".

Finally, Dottori.it highlighted that it had "directly, or through its service providers, (...), implemented a comprehensive system of security measures".

With specific reference to the impact assessment, Dottori.it declared that it had "conducted, with the support of external

consultants appointed for the purpose, an impact assessment with regard to the intermediation service for booking visits through the Platform (management of patient and physician data). (...) This impact assessment was initially carried out in the 20th century and was more recently revised during the 20th century to assess the need for any updates" also in light of the additional services offered by the platform such as payment and billing services for performance rendered through the platform.

On the basis of the elements acquired in the context of the preliminary investigation, the Office, with an act of the XX (prot. n. XX), notified on the same date by certified e-mail, which must be understood as reproduced in full here, initiated, pursuant to of the art. 166, paragraph 5, of the Code, with reference to the specific situations of illegality referred to therein, a procedure for the adoption of the provisions pursuant to art. 58, par. 2 of the Regulation, against Dottori.it inviting it to produce defense writings or documents to the Guarantor or to ask to be heard by the Authority (art. 166, paragraphs 6 and 7, of the Code, as well as art. 18, paragraph 1, law n. 689 of 24 November 1981).

With the aforementioned deed, the Office found that Dottori.it had processed personal data, including health data, in violation of articles 5, par. 1 lit. a), 6, 7 and 9, 12 and 13 of the Regulation, since, although the roles of owner and manager of the treatment of Dottori.it and of health professionals have been identified, this has not happened in the "information" that has been made to users/patients upon their registration on the Dottori.it platform and the consequent use of the services offered. In fact, the Office has highlighted that the aforementioned roles have not been correctly represented with reference to the various processing operations carried out through the platform and that this lack of clarity has inevitably reverberated on the correct identification of the legal basis of the processing in question and on the content of the information provided to patients.

3. The defensive memories

With a note dated XX, Doctolib, the company incorporating Dottori.it in the meantime, sent its defense briefs, also asking to be heard, pursuant to art. 166, paragraph 5 of the Code. Preliminarily and "Before proceeding with the presentation of the defensive arguments regarding the disputed facts" Doctolib highlighted that "with a deed of merger by incorporation stipulated on the XX date, (...), registered in the Milan Companies Register on XX, starting from that date, Dottori.it, addressee of the proceeding, has ceased to be a separate legal entity from the incorporating company Doctolib S.r.l., with registered office in Corso G. Matteotti 1, Milan ("Doctolib" or "Company")" .

On the merits, with specific reference to the objections raised by the Office in the deed of initiation of the sanctioning procedure

pursuant to art. 166 paragraph 5 of the Code, Doctolib highlighted the following in particular.

3.1 On the identification of privacy roles

In relation to this profile Doctolib stated that:

"the system built by Dottori.it in relation to the processing of patients' personal data carried out through the Platform has always been characterized by a precise desire by Dottori.it to maintain the dualism inherent in the type of service: - data controller, in relation to only those treatments on which it is entitled to offer services to end users, i.e. the provision of a contact channel with health professionals (brokerage) and consequent management of the account created on the Platform by [the patients] (...). The account is, in fact, necessary to ensure that the use of the Platform and the services offered therein by healthcare professionals takes place in complete safety; - responsible for the treatment for everything related to the services offered by healthcare professionals through the Platform (...)"

"The very setting of the Platform also helps to support this clear distinction of roles. The Platform was built from its origins in such a way as to ensure that: - the patient's personal data, collected in a "patient file" are accessible only to the reference professional and to any personnel authorized by the same by assigning a specific user, activated by Dottori.it at the request of the healthcare professional with the opening of the relative ticket. Similarly, the data relating to the health services booked are accessible only to the patient and the doctor of reference, excluding treatments by Dottori.it staff other than what is necessary in order to offer the technological service and assistance at the request of the patient. interested or professional. Only exceptionally, and within the limits of what is strictly necessary to provide support or maintenance, system administrators can access it following a rigorous security procedure and with strong authentication";

"Health care professionals can freely and independently modify the patient file on their account, manage reservations, etc. The patient file, in fact, can be compiled independently by the professional without any synchronization with the user's account which therefore remains completely separate";

"no data relating to the booking of the healthcare service is used for purposes other than those of managing the booking in the patient-professional relationship, nor are additional data deduced or obtained by Dottori.it" which does not carry out any profiling activity on these data of the user;

"(...) the company Dottori.it S.r.l. had therefore maintained, also in the subsequent formulations of its information on the processing of online data (such as the one, published in the XX (...) provided to the Company by the previous owner of

Dottori.it (...) the clarification regarding the fact that Dottori.it acted in quality of data processor in relation, for example, to the booking services of healthcare services. In fact, Dottori.it explicitly set out the circumstances in which it operated as data processor in favor of health professionals, including explicit mention was also made of the treatment deriving from the booking service for healthcare services";

"In the light of the above, it emerges quite clearly, as with a more careful analysis of the documentation produced (...), the alleged inconsistencies and contradictions regarding the definition of privacy roles by Dottori.it, subject of dispute, are not corroborated" ;

"Nor does it seem possible to derive the disputed lack of transparency towards patients of the online information from an alleged lack of linearity and clarity in the definition of roles, a circumstance which, as clarified above, is completely absent. On the contrary, it is believed that the responsible and consistent approach of Dottori.it in the construction of the privacy model of the Platform with a view to protecting personal data is amply demonstrated".

Given this, in view of the definition of the psychological element, it is considered useful to acknowledge to Dottori.it the original desire to prepare a disclosure text pursuant to articles 13 and 14 of the GDPR that was extremely simple in representing to the user the essential elements of the treatment related to the use of the entire set of services accessible through the Platform. In the light of the corporate events that have occurred, the Company, taking over the previous management of Dottori.it very recently, acknowledges that this simplification could have produced a partially different effect than the one desired and have contracted the effort of descriptive clarity of the treatments data connected to the use of the Platform, especially to the booking service for healthcare services, thereby involuntarily making the wording rather broad and susceptible to an unsuitable reading, if not contextualised";

"These considerations regarding the online information are not, in any case, such as to prejudice the conclusions set out above regarding the linearity, correctness and consistency of the setting of the privacy roles put in place by Dottori.it, also in consideration of the privacy information text available online until the XX, date of publication of the online information".

3.2 Absence of imputability of the ownership of the treatment by Dottori.it in relation to the health care booking service offered

In this regard, Doctolib has stated that:

"As already widely explained, it is evident that Dottori.it could never carry out medical examinations or provide other health services which can necessarily be offered and provided only by qualified operators in this sense";

"the fact that these services are mentioned in the online information provided by Dottori.it, which could have been presented in a clearer way if one wishes, could not, nor should, in the opinion of the writer, be in itself only an indication of a lack of clarity and correctness in the construction of the service by Dottori.it nor of the ownership of said treatment by Dottori.it";

"The fact that Dottori.it has prepared contractual standards and a standard act of designation as data controller, for the purposes of pursuant to art. 28 of the Regulation, to be included in one's own general contract conditions" since the rule must be adapted "to the concrete reality and to the innumerable business models and relational dynamics that companies adopt. (...) the same Committee for the Protection of Personal Data has deemed the adoption of organizational solutions based on a standard of designation deed prepared by the data controller and presented to customers for them to evaluate and adopt, or shops within reason. This approach does not conflict with the spirit of the law";

"The fact, then, that Dottori.it has prepared an example of information to be offered to healthcare professionals (...) was rather intended to serve as an (optional) example to facilitate healthcare professionals in fulfilling their information obligations as data controllers";

"Furthermore, the aforementioned information clarifies in the eyes of the patient the role of Dottori.it as the external manager of the individual professional. This is a document drawn up with a view to guaranteeing maximum transparency to the individual patients of the healthcare professional regarding the role that Dottori.it plays towards them and in which Dottori.it's role is expressly represented as data controller in relation to some treatments strictly owned by the healthcare professional, including the booking of visits".

"The elements described above attest, moreover, the attention and the spirit of accountability with which Dottori.it intended to set up the services of the Platform, paying attention in offering the data controllers the necessary collaboration and support that the spirit of the standard requests to the data controllers".

3.3 On the legal bases of the treatment

Doctolib reiterated that:

In relation to "the findings made regarding the first consent present during the patient's registration on the Platform (...) they seem to correctly recognize that it is a consent entered for the benefit of healthcare professionals (therefore not in favor of Dottori.it), as demonstrated above . However, with a syllogism that does not seem entirely evident (not considering the erroneous reference to the online information to be sufficient for this purpose), Dottori.it is contested for the unsuitability of the

consent acquired for the purposes of a treatment for which it fact is not titular. Therefore, it is not clear whether this Authority wanted to automatically derive an attribution of ownership of the treatment of data relating to the state of health (moreover extremely broad in scope as it would cover the main purposes of treatment of health professionals that Dottori.it would not be not even authorized by law to exercise) from the erroneous reference to the online information. However, this would seem to be the reading given, taking into account that it is immediately objected to Dottori.it that "the expressions of will requested from the interested parties do not concern the data on health in an autonomous and specific way, with the consequence that such consents cannot be considered validly provided in the light of the articles 6, 7 and 9 of the Regulation and the aforementioned Guidelines 5/2020 on consent";

"the design of the Platform was conceived by Dottori.it paying close attention to the fact that data relating to the state of health cannot be acquired and processed by Dottori.it through the Platform for independent purposes as data controller";

"In fact, the data relating to appointments acquired during the booking phase and relating to the type of health service requested from the professional selected by the interested party are diligently processed for exclusive use for the provision of diary management services and doctors' appointments, and for any subsequent telemedicine activities, as well as the registration and maintenance of the patient file by the professional. Dottori.it is indeed part of the process of processing such data, even indirectly through third party suppliers who offer the related hosting services, or management of the application, but only on behalf of the professional to whom the booking pertains";

"The online information of the Platform available to patients expressly excludes the processing by Dottori.it of such data as it limits itself to acquiring and processing the same, with the necessary guarantees of protection and encryption, exclusively on behalf of professionals healthcare: the data relating to the requested healthcare service, like any other interaction with such data due to the possible registration of such data by the professional on their patient file, takes place only in the context of the provision of the technological service requested by them";

"At no time does Dottori.it acquire or use data relating to the state of health of patients for its own purposes and independent of the management of the services the professional uses";

"In the present case, in fact, Dottori.it does not autonomously process data relating to the state of health of patients using the Platform functional to the service of booking health services since the data, including those relating to the state of health, related to said reservations and subsequent visits are treated by Dottori.it exclusively as responsible for the treatment of the

healthcare professional”;

"The consent formula for the processing of data relating to the state of health available during registration, (...) was never conceived by Dottori.it as a consent formula to legitimize a data treatment of which it would have been autonomous owner, the conditions are not met as amply explained”;

"Moreover, the wording of the same, although it can be improved, expressly refers to treatments that are, and can only be, of qualified subjects such as health professionals: "For the treatment of Personal Data relating to my health, aimed at providing medical services - health care requested by me - including the booking of my visit, the registration of my personal data and the provision of telemedicine services to me through the Dottori.it platform”;

the circumstance that this consent is given for the benefit of the professional, moreover, appears quite immediately in the context of the process of booking health services through the use of the App, in fact from the documentation in the documents "it is clear that the interested party can view the consent issued in favor of the individual professional via the consent management dashboard on their account”;

"The inclusion of the aforementioned consent at the time of registration on the Site and the App, and on the same screen of the collection of consents in favor of the separate and different processing activities for commercial purposes - these are owned by Dottori.it - results in each case clearly distinguished by providing a separate tick”;

"However, even if it were to be considered that this method of implementation had not been entirely linear and could have generated confusion, it should be noted that this method of implementation was implemented only starting from the twentieth, substantially in conjunction with the digitization of the processes of teleconsultation (moreover, as further proof of the correlation of this consent to the activity of health professionals). Any detriment to the interested parties that could possibly be inferred - where existing, and given that it is believed that the above provides sufficient clarification regarding the absence of actual unlawful conduct in this regard - would in any case have been a temporally limited conduct ”;

“This choice, moreover, would not be sufficient to infer an attribution of ownership of the relative treatment by Dottori.it in the absence of a correlated concrete activity of treatment of such data carried out by Dottori.it in full autonomy mode: this case it does not take place in the concrete case and, according to the principles of factual analysis which must underlie any assessment regarding the existence of a data controller or not, it should not be decisive for the purposes of qualifying the effective roles of the parties”;

"Taking into account the lack of relevance of this profile for the purpose of defining the roles of the parties, we can only reiterate that, based on the reconstructions that the Company was able to carry out, the inclusion of that link was due to an error, also considered that this occurred in the midst of the COVID-19 pandemic. We therefore believe that this aspect should not be interpreted as a voluntary act by Dottori.it to qualify as data controller. It is also worth noting that from this behavior Dottori.it has not obtained no advantage: which further proves the total good faith of the work of Dottori.it itself."

3.4. On information to data subjects and on the rights of data subjects

In relation to the information to be provided to interested parties, Doctolib declared that:

"Relationships with users were (...) governed by the online information, as reformulated at the beginning of the 20th century, following the introduction of electronic invoicing, teleconsultation and online payment services in order to highlight these new treatments";

"Until the 20th, in fact, the information available online was the one published in September 20th. This previous information provided more precise clarifications regarding the treatments for which Dottori.it acted as data controller and the treatments for which it acted as manager of the individual healthcare professional";

"It is true that in the elaboration of the new information, (...), the references to the different division of the roles performed by Dottori.it were expunged, but still the circumstance that Dottori.it also assumed the role of data controller was expressed in the information (an example of which was provided for convenience by Dottori.it, please refer to point C.2) produced by the healthcare professional in the capacity of owner.

In the example of information made available by Dottori.it to the professional, the role of Dottori.it as external manager of the healthcare professional was in fact repeatedly reiterated";

"in the unlikely event that the arguments set out in the present brief were not accepted by this Authority, the alleged confusion regarding the roles of manager and owner would in any case have continued only for a limited period of time, or starting from the dramatic months of the XX and not also in the previous moments";

"in this period of time, no specific report to the specific case was received either by the email of the DPO or by email relating to issues relating to personal data, but not even from XX to XX did any user ever complain of a lack of transparency in the documents prepared from Dottori.it.";

"it is clarified that the formula of consent to the processing of particular data (relating to the state of health) entered during the

account registration phase was not conceived with reference to any processing of such data by Dottori.it for the reasons set out ”;

“The processing of the particular data for which consent is requested is that of the professional for the related services provided using the Platform as data controller, and for which Dottori.it was merely responsible for the processing. (...) the collection of said consent was solely for the benefit of the healthcare professional”;

In relation to retention times, the Company has clarified that the online information contains the indication of a general data retention criterion of "10 years from the date of the last access to the Dottori.it site or App" with the exception of certain exceptions in case of revocation of the consent given for treatments carried out for commercial purposes and 2 years "from the request for deletion of data, in case of recalls or disputes regarding the use of the Platform in a fraudulent way”;

Doctolib also reiterated the imminent decommissioning of the Dottori.it platform, planned for the summer of the twentieth century, which will entail the termination of the services offered "with the consequent possibility for healthcare professionals to download, or in any case obtain the return of the personal data of which they holders, before their definitive cancellation". The corporate merger and the disposal activities in continuous evolution and progression, "testify the utmost attention that the Company is dedicating to the achievement of the objective of reaching as soon as possible the full cessation of the treatments object of the proceeding and the establishment of new relationships with the interested parties, through the different Doctolib platform, based on full transparency and lawfulness with the Company with the consequent overcoming of the circumstances to which it pertains". The Company also clarified that "the decommissioning of the Platform does not involve any automatic migration of patient accounts to the Doctolib platform, as any use of services by patients wishing to use the Doctolib platform requires an initial user registration directly on the platform Doctolib, without restrictions of any kind”.

Doctolib, in the light of the above, requested, as a preliminary step, the dismissal of the proceeding, without the application of any sanction and, alternatively, the adoption of a purely corrective measure or, in the event of the adoption of a sanctioning measure, of wanting to apply all the extenuating circumstances of the case.

4. The audition

On the 20th date, the hearing was held during which Doctolib -reserving the right to produce further documentation- in addition to what is already in the file, declared in particular that:

“In the acquisition of Dottori.it by Doctolib, which took place last September, the Company started a process aimed at adapting

the security standards of Dottori.it to those of Doctolib. The request for information from the Office of the Guarantor was received precisely at the same time as the purchase of Dottori.it by the Company, which led to an acceleration of the aforementioned adaptation process";

"the data collected is used by the Company exclusively to provide users, in its capacity as responsible for the treatment of healthcare professionals, with the booking services for healthcare services and that the data is processed by subjects authorized to process it (system administrators). It should be noted that all the processing activities carried out by the Company relating to the booking of healthcare services, including the display of the list of reservations made through the Platform, are carried out by Dottori.it as the manager of the treatment of healthcare professionals" ;

"in recent years, only a small number (less than 10) of requests for customization of the model for appointing the Company's data processor have been received from individual professionals, which have always been accepted; these requests did not concern substantial elements of the processing, but rather formal elements. The Company always tries to meet the requests of the owners";

"In the event of exercising the rights and in particular in the event of a request for cancellation from the platform, the user must exercise this right both against the Company and against the doctor. In particular, in relation to the performance history, it is necessary for the user to exercise the rights referred to in the Regulations directly against the doctor, who will satisfy the request. The only right that can be exercised against the Company is that relating to the cancellation of the account from the Platform";

Doctolib also represented that "the platform divestment program following the acquisition and incorporation of Dottori.it by the Company should be completed by the summer".

5. Supplementary documentation

With a note dated XX, Doctolib produced supplementary documentation, in particular a video previously projected during the hearing which is made up "of four short parts and simulates, for greater practicality, the experience of a user already registered on the Platform, so as to also display the experience related to the display of some information to ensure transparency on the relationship with the individual professional". In particular, it "helps to offer a clearer view of the fact that, as understood by the Platform, the only owners of the booking service remain the professionals who have full autonomy in the management of the bookings themselves, without binding automatisms of any kind, and who the consent collected for the processing of health

data during the registration phase of a new user/patient who books a visit, or a visit to a professional with whom no reservation has ever been made, is functional exclusively to the professional's performance, and collected on behalf of the latter, being uniquely associated with it. Dottori.it only acts as a data controller in this sense".

Doctolib also sent the documentation presented during the hearing regarding the platform disposal plan "which has now reached its final stages, with the definitive cessation estimated no later than XX". In fact, this divestment "simultaneously represents a key step to definitively address the cessation of those elements of dispute that have been moved by this Authority".

The aforementioned Company also illustrated the communication plan of the imminent decommissioning of the Platform intended for both patients and healthcare professionals and clarified, among other things, that "patient accounts will not be transferred to the Doctolib platform" they "will be informed well in advance of the discontinuation of the platform and will be able to exercise their rights in relation to the data of their accounts. In this regard, the Company has launched an articulated information plan for all users, including users/patients registered on the Platform, to make them aware of the upcoming termination of the Platform and the relative times of discontinuation" it being understood that "they can then decide to register on the Doctolib platform, if they come into contact with professionals using the Doctolib platform, it being understood that they will remain free to use any other channel to book their healthcare services with Doctolib healthcare professionals".

Doctolib has finally declared that "following the merger by incorporation, the Company has promptly changed the corporate references present on the site and in the legal documentation of the same (and of the Platform), including the reference to the data controller in the information privacy policy present on the site".

6. The outcome of the preliminary investigation: the violations ascertained

6.1. Legal framework of reference.

The preliminary investigation activity and the proceeding initiated by the Office, pursuant to art. 166, paragraph 5, of the Code, concerned the processing of personal data carried out by the company Dottori.it Srl, merged by incorporation into Doctolib Srl, with effect from the twentieth, through the Dottori.it platform accessible both from the website www.dottori.it and from the application of the same name "Dottori.it". This platform aims to put patients and healthcare professionals in contact to allow the former to book the chosen healthcare services. The preliminary investigation concerned in particular the concrete identification of the role played, in terms of owner or manager, by the subjects involved in the aforementioned processing operations.

The Regulation pays particular attention to the attribution of the roles of data controller (articles 4, n. 7 and 24) and manager (articles 4, n. 8 and 28), placing itself in continuity with what has already been established by the Directive 95/46/EC.

The owner is the subject who, in the light of the concrete context in which the treatment takes place, determines the basic decisions relating to the purposes and methods of a treatment carried out on the basis of one of the conditions of lawfulness referred to in articles 6 and 9 of the Regulation (see "Guidelines 07/2020 on the concepts of controller and processor in the GDPR", adopted by the European Data Protection Committee, on 7 July 2021).

On the other hand, the figure of the manager remains characterized by the performance of personal data processing operations delegated by the owner who, following his own organizational choices, can identify a particularly qualified subject to carry out the same in terms of specialist knowledge, reliability and resources to implement technical and organizational measures that meet the requirements of the Regulation (see recital 81 of the Regulation), delimiting the scope of the respective powers and providing specific instructions on the treatments to be carried out.

In particular, the different roles of the subjects involved in the processing operations must be correctly represented to the interested parties as this is reflected not only in the identification of the correct legal bases of the processing and in the attribution of the respective responsibilities, but also in the transparency obligations that they are the basis of the informative self-determination of the interested parties, also for the purpose of exercising the rights that the Regulation recognizes for the interested parties (articles from 15 to 22).

Pursuant to the Regulation, "data relating to health" are considered personal data relating to the physical or mental health of a natural person, including the provision of health care services, which reveal information relating to his or her state of health (art. 4, paragraph 1, no. 15, of the Regulation). Recital no. 35 of the Regulation then specifies that data relating to health "include information on the natural person collected during his registration in order to receive health care services"; "a specific number, symbol or element attributed to a natural person to uniquely identify him or her for health purposes".

With specific reference to the particular categories of data, which include health data, the art. 9 of the Regulation establishes a general prohibition on the processing of such data unless one of the specific exemptions to this prohibition applies, among which the consent of the interested party or the treatments carried out by health professionals for treatment purposes are foreseen (Articles 9, paragraph 2, letters a) and h) of the Regulation and see provision of "Clarifications on the application of the regulations for the processing of health-related data in the health sector", of 7 March 2019, doc. web no. 9091942).

Personal data must also be processed in compliance with the principle of transparency (Article 5, paragraph 1 letter a) of the Regulation) by providing the interested parties in advance with the information referred to in Article 13 of the Regulation, in the case of data collected directly from them, or pursuant to art. 14, in the case of data collected from third parties. This principle requires that information and communications relating to the processing of personal data be made in a concise, transparent, intelligible and easily accessible form, with simple and clear language (cons. 39, 58 and art. 12 of the Regulation).

The obligation to provide data subjects with information in a "concise and transparent" form implies that the data controller presents the information in an effective and succinct manner in order to avoid an information overload. They should be "concrete and certain, they should not be formulated in abstract or ambiguous terms nor leave room for multiple interpretations" (see points 8 and 12 of the Guidelines on transparency pursuant to regulation 2016/679, adopted by the Article 29 Working Party , November 29, 2017, amended version adopted April 11, 2018 and paragraph and paragraph 3.7). In accordance with the principle of transparency, both the purposes and the corresponding legal bases of the processing must therefore be clear before the processing begins.

6.2. The principle of fairness and transparency and the information to be provided to data subjects (articles 5, paragraph 1, letter a), 12 and 13 of the Regulation)

As a preliminary point, it should be noted that this provision relates to the processing of personal data carried out by Dottori.it Srl and as of the twentieth by Doctolib Srl through the Dottori.it platform, as this processing continued by the incorporating Company even after the merger by incorporation.

With specific reference to the present case, it should be noted that the activity of putting healthcare professionals in contact with patients carried out by companies through IT platforms and apps, such as the one in question, presupposes the involvement of various subjects, whose relationships, from point of view of the protection of personal data, they can be regulated in various ways. In compliance with the principle of accountability, the subjects involved for various reasons must clearly define the roles assumed in the treatment "in the light of the circumstances concretely relating to the relationship between the parties", or in relation "to the activities concretely carried out by this subject in a specific context" (see the aforementioned "Guidelines 07/2020 on the concepts of controller and processor in the GDPR").

From this it follows that there is not a single correct division of privacy roles that can always be followed in regulating relations in the context of services aimed at putting the patient in contact with health professionals, but that this regulation must reflect

the ways in which, from a substantive point of view, the processing operations are actually implemented, with an assessment that needs to be carried out on a case-by-case basis, avoiding "formally attributing the role of data controller to a subject who is in fact unable to "determine" the purposes and means of the processing" (see the aforementioned "Guidelines 07/2020 on the concepts of controller and processor in the GDPR").

In this regard, having taken note of what is represented by the aforementioned companies in the documentation in the deeds and in the defense briefs, the following is observed in relation to the treatments in question.

The processing activity carried out through the Dottori.it platform recalls that of the provision of the call center service by a subject external to the data controller, which involves the processing of personal data also on health collected during the offer of the health services booking service on which the Authority has intervened several times (see most recently, provision of 14.1.2021, web doc. n. 9542136).

In fact, in the present case, the aforesaid companies, according to what was declared in the deeds, acted as data processors of the health professionals to whom the interested party intends to contact with reference to "the booking services for health services".

This choice relating to the assignment of privacy roles, given the plurality of professionals to whom the interested party may decide to contact through the services offered by the Dottori.it platform, implies that the collection of personal data, also relating to the health of the interested parties, is carried out by the Companies, as data processors, even before the health professional (data controller) becomes aware of the choice made by the data subject.

By virtue of the principles of correctness and transparency, the interested party, at the time of booking, should therefore have been correctly informed by the Companies, on behalf of the chosen healthcare professional, about the treatments carried out by the latter, which also include the collection - when booking the health service requested by the same - of personal data on health by the Companies, in their capacity as data controllers.

However, in the information on the site and re-proposed to users during registration, the aforementioned companies have declared that they process patient data as data controllers, as well as for the purpose of creating the patient's personal account, also for that time to "provide patients who use the Site and the App with the booking service for medical visits or other health services, including the sending of emails and SMS notifications" (see Annex 4 to the note of the XX). This information provided to the interested parties through the aforementioned platform therefore appears to be in contradiction with the choices

made by the owners regarding the attribution of privacy roles documented in documents, according to which for the purpose of booking healthcare services Dottori.it/Doctolib does not operate as an autonomous data controller, but as manager of the healthcare professional (data controller).

In the first place, these companies should have provided data subjects who registered on the platform with clear information on the processing carried out by them as data controllers. From another point of view, they should have provided the same interested party, as data controllers of the healthcare professional chosen by the patient, with information relating to the data collection activity also on health carried out by them, for the booking of the healthcare service.

As already noted by the Office in the opening of the preliminary investigation procedure, even if the roles can be considered identified, Dottori.it/Doctolib, when booking the healthcare service by the interested party, did not provide the latter with clear information on the various treatments carried out both as owner and in the role of manager of the health professionals to whom the data subject could turn, thus not guaranteeing correct and transparent treatment (articles 5, paragraph 1, letter a), 12, and 13 of the Regulation).

The erroneous indication in the information to the interested party of the role of Dottori.it/Doctolib as data controller and not as data processor, with reference to the booking services, also led to an erroneous information to the interested party on the type of data processed by the Companies which in the disclosure declare that "The Data Controller does not process so-called particular data (data relating to the state of health) of the Users" (see annex 4 of the note replying to the request for information from this Authority of the XX).

Therefore, Dottori.it/Doctolib, in addition to not having correctly represented the roles, has not clearly indicated that it processes health data only in the activities it carries out as data controller on behalf of health professionals.

Therefore, incorrect and incongruous information was provided to the interested party, since on the one hand it was stated that Dottori.it/Doctolib is the data controller in the booking phase (although it has instead been designated as responsible) and on the other hand the same Companies do not process health data although even the simple booking of a specialist medical visit can reveal health data, such as, for example, in the case of oncological visits or for fertility treatment which can be booked through the platform made available by the Company.

Doctolib, moreover, in its defense briefs acknowledges in the documentation in the documents that the information given to the interested parties can be improved and that up to XX there was a disclosure on the site (available online from XX) which

"provided more precise clarifications regarding the treatments for which Dottori.it acted as data controller and the treatments for which it acted as manager of the individual healthcare professional".

A further critical element with reference to compliance with the principles of correctness and transparency concerned the indication in the information provided to the interested parties of the legal basis of the processing. In fact, Dottori.it/Doctolib, in addition to erroneously qualifying as independent data controller for the booking activities, has also requested for them the consent of the interested party given on the basis of the information provided as data controller and not instead on the basis of the information relating to the treatments carried out by the health professional.

This can be seen, in particular, in the sections relating to the consents requested from patients when registering on the platform and booking the visit with the chosen healthcare professional (see slide 19 of the "system screens" document, Annex 3 to note review of the XX). In this regard, it is in fact represented that these consents do not refer to the treatments carried out by Dottori.it/Doctolib as owner or manager, but to those aimed "at providing the medical and health services" requested by the interested party.

In any case, it should be noted that such manifestations of will are not preceded by suitable and complete information, as the link to the information of Dottori.it/Doctolib is provided, provided as data controller for treatments other than those relating to health services (such as account creation). These elements make it clear that what was claimed in relation to the fact that Dottori.it/Doctolib would limit itself to acquiring and processing patient data exclusively on behalf of healthcare professionals, was not correctly indicated to the interested parties to whom in the aforementioned information and in the registration form the platform was not disclosed the ownership of the treatments carried out for booking and treatment purposes by the health professionals to whom they were addressed, thus leading the interested parties to attribute such treatments as a whole to Dottori.it/Doctolib.

In fact, the information made available to the interested party does not represent that the consent to the processing of health data requested from the interested party before completing the registration process refers to an expression of will given towards the healthcare professional.

In any case, this forecast is in any case erroneous from both a substantial and a formal point of view. Firstly, the Guarantor has repeatedly clarified that for the diagnosis and treatment activities carried out by a healthcare professional subject to professional secrecy it is not necessary to obtain the consent of the interested party by applying the case referred to in art. 9,

par. 2, lit. h) of the Regulation. In addition, also for the treatments carried out by Dottori.it/Doctolib as an independent data controller (for the sole purpose of creating the account), since data on health is not processed, it is not necessary to acquire the consent of the interested party pursuant to the art. 6, par. 1, lit. b) of the Regulation.

From a formal point of view, therefore, the request for consent is in contrast with the principles of correctness and transparency, as this expression of will is not required both for the treatments carried out by Dottori.it/Doctolib as owner and for those carried out as responsible.

Having said that, it has been ascertained that the aforesaid disclosure violates, for the profiles illustrated above, the aforementioned principles of correctness and transparency. The information is not suitable, in fact, with regard to the transparent and correct identification of the various roles of owner and manager of Dottori.it/Doctolib and the related treatments carried out, going to invalidate the correct identification of the legal bases and purposes of the treatment and integrating a violation of the principles of correctness and transparency and of the articles 5, par. 1, lit. a), 12 and 13 of the Regulation.

7. Conclusions

In the light of the assessments referred to above, taking into account the statements made by Dottori.it/Doctolib, as owner during the investigation □ the truthfulness of which may be called upon to answer pursuant to art. 168 of the Code □ the elements provided by the data controller in the defense brief, although worthy of consideration, do not allow to fully overcome the findings notified by the Office with the deed of initiation of the procedure, since none of the cases envisaged by the 'art. 11 of the Regulation of the Guarantor n. 1/2019.

For these reasons, the illegality of the processing of personal data carried out by Doctolib Srl in violation of articles 5, par. 1 lit. a), 12 and 13 of the Regulation, in the terms illustrated above. The violation of the aforementioned provisions also renders the administrative sanction envisaged by art. 83, par. 5, of the Regulation, pursuant to articles 58, par. 2, lit. i), and 83, par. 3, of the same Regulation.

In this context, Doctolib declared that following the merger by incorporation of Dottori.it Srl into Doctolib Srl; the App is no longer active starting from the XX;

"the definitive cessation [of the platform is] estimated no later than XX";

"Healthcare professionals were warned on multiple occasions that the Platform was being discontinued and that it would not be

possible for patients to book appointments through the Platform for dates after the 20th.”

In this regard, it should be noted that the website www.dottori.it is no longer accessible, in fact an automatic redirection to the website www.doctolib.it is envisaged. These elements make it possible to believe that the conduct has exhausted its effects and that therefore the conditions for the adoption of the corrective measures pursuant to art. 58, par. 2, of the Regulation.

In relation to the processing of personal data carried out by Doctolib through the homonymous platform, accessible from the website www.doctolib.it and from the specific App, the Authority has launched a specific and independent investigation, still underway, in order to verify compliance of the treatments to the regulatory framework on the protection of personal data.

8. Adoption of the injunction order for the application of the pecuniary administrative sanction and accessory sanctions (articles 58, paragraph 2, letter i and 83 of the Regulation; article 166, paragraph 7, of the Code).

The violation of the articles 5, par. 1 lit. a), 12 and 13 of the Regulation, caused by the conduct put in place by the Company is subject to the application of the administrative fine pursuant to art. 83, par. 5, letter. a) and b) of the Regulation.

The Guarantor, pursuant to articles 58, par. 2, lit. i) and 83 of the Regulation, as well as art. 166 of the Code, has the power to "impose a pecuniary administrative sanction pursuant to article 83, in addition to the [other] [corrective] measures referred to in this paragraph, or instead of such measures, according to the circumstances of each single case" and, in this context, "the College [of the Guarantor] adopts the injunction order, with which it also orders the application of the ancillary administrative sanction of its publication, in whole or in part, on the website of the Guarantor pursuant to article 166, paragraph 7, of the Code" (art. 16, paragraph 1, of the Guarantor's Regulation no. 1/2019).

The aforementioned pecuniary administrative sanction imposed, depending on the circumstances of each individual case, must be determined in the amount taking into account the principles of effectiveness, proportionality and dissuasiveness, indicated in art. 83, par. 1, of the Regulation, in the light of the elements provided for in art. 83, par. 2 and, of the Regulation in relation to which it is observed that:

1. the processing carried out involved information suitable for detecting the state of health of over 630,000 data subjects (Article 4, paragraph 1, no. 15 of the Regulation and Article 83, paragraph 2, letters a) and g) of the Regulation);
2. under the profile concerning the subjective element, no intentional attitude emerges on the part of the data controller, in particular in fact "the setting of the information was generated with the exact intention of making the data subjects (users Simple/patients) of the treatments in any case related to the use of the Platform, with the appreciable intention of providing

healthcare professionals, data controllers, with the maximum possible collaboration in fulfilling their information duties "(Article 83, paragraph 2 , letter b) of the Regulation);

3. there are no previous relevant violations committed by Dottori.it Srl and Doctolib Srl, nor have any provisions pursuant to art. 58 of the Regulation (art. 83, paragraph 2, letter e) of the Regulation);

4. the Company cooperated fully with the Authority during the investigation and in the present proceeding (Article 83, paragraph 2, letter f) of the Regulation);

5. no complaints have been received, pursuant to art. 77 of the Regulation, to the Guarantor on the incident;

6. following the acquisition of Dottori.it, the Company intervened to definitively interrupt any new registration of healthcare professionals, a necessary initial prerequisite for the definitive termination of the service;

Based on the aforementioned elements, evaluated as a whole, it is decided to determine the amount of the pecuniary sanction provided for by art. 83, par. 5, letter. a) of the Regulations, in the amount of € 40,000.00 (forty thousand) for the violation of articles 5, par. 1, lit. a), 12, 13 of the Regulation, as a pecuniary administrative sanction, pursuant to art. 83, par. 1 and 3, of the Regulation, effective, proportionate and dissuasive.

It is also 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, also in consideration of the type of personal data subject to unlawful processing.

Finally, it should be noted that the conditions pursuant to 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 GUARANTOR

declares the illegality of the processing of personal data carried out by the company Dottori.it Srl and by the company Doctolib Srl, as incorporating company Dottori.it Srl, starting from the XX, for the violation of the articles 5, par. 1 lit. a), 12 and 13, of the Regulation in the terms referred to in the justification.

ORDER

pursuant to articles 58, par. 2, lit. i) and 83 of the Regulation, as well as art. 166 of the Code, to the company Doctolib Srl, with registered office in Corso Giacomo Matteotti 1 – 20121 Milan – VAT number and Tax Code: 11537360965, as the incorporating company of Dottori.it Srl with registered office in Milan, Via Marco d' Aviano, 2, Tax Code 08145180967 to pay

the sum of 40,000.00 (forty thousand) euros as an administrative fine for the violations indicated in this provision. It is represented that the offender, pursuant to art. 166, paragraph 8, of the Code, has the right to settle the dispute by paying, within 30 days, an amount equal to half of the fine imposed.

ENJOYS

To the company Doctolib Srl to pay the sum of 40,000.00 (forty thousand) euros - in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code -, 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 art. 27 of the law n. 689/1981.

HAS

pursuant to art. 166, paragraph 7, of the Code, the entire publication of this provision on the website of the Guarantor and believes that 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.

Pursuant to art. 78 of the Regulation, of the articles 152 of the Code and 10 of Legislative Decree no. 150/2011, against this provision it is possible to lodge an appeal before the ordinary judicial authority, under penalty of inadmissibility, within thirty days from the date of communication of the provision itself or within sixty days if the appellant resides abroad.

Rome, 10 November 2022

PRESIDENT

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THE SPEAKER

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THE SECRETARY GENERAL

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