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Injunction against Powerplay S.r.l. - January 27, 2021

Register of measures

no. 37 of 27 January 2021

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, concerning the protection of natural persons with regard to the processing of personal data, as well as the free movement of such data and which repeals Directive 95/46/ EC (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;

SPEAKER the lawyer Guido Scorza;

1. INVESTIGATION ACTIVITY CARRIED OUT

1.1 Introduction

Mr. XX on 20 March 2019 filed a complaint with the Guarantor, pursuant to art. 77 of the Regulation, against Powerplay S.r.l. (hereinafter "Powerplay" or "Company") complaining of a violation of current regulations on the protection of personal data with regard to the receipt of numerous promotional telephone calls, concerning the supply of photovoltaic systems and accumulators, on their telephone numbers, both landline and mobile, despite the expressed and repeated desire, during telephone contacts, not to receive further promotional communications and also after the formal questioning addressed to the company in order to know the origin of your data and to obtain its cancellation.

The interested party also represented the impossibility of identifying, on the Powerplay website, the necessary information on

the company's privacy policy and in particular the contact details of the person responsible for the protection of personal data;

1.2 Request for information and feedback provided by Powerplay S.r.l.

With a note dated 8 July 2019, Powerplay responded to the request for information formulated by the Authority on 24 June 2019 (prot. note no. 21748/19), highlighting that:

- the company, active in the sector of "sales promotion on behalf of third parties and management of promotional campaigns, provision of call center services (...), carrying out market research and provision of administrative and secretarial services on behalf of third parties", is part of an entrepreneurial group, made up of the parent company Tempus S.r.l. and by Solarplay S.r.l., which deals with renewable energies;

- the group has taken steps to comply with the Regulation by adopting a common privacy policy and a specific personnel training program (completed on 11 April 2019) with respect to the related obligations;

- the complainant's personal data, present in the company databases, had been acquired as part of a "door-to-door" marketing activity aimed at promoting the products and services offered by the group, in particular during a meeting, on 25 May 2017, in which the complainant filled in an energy audit request;

- although the contractual relationship had not been completed, the interested party did not in any way express the wish to be canceled from the company's databases;

- the subsequent request of the complainant dated 8 March 2019 to obtain the cancellation of their data from the company databases, immediate response was provided on the same date, "also by placing your number in the so-called blacklist", with the assurance that said entry "technically prevents a telephone number from being contacted by our operators";

- the indication of the contact details of a "privacy manager", whose absence had been complained of by the complainant, would have been the subject of intervention, since at the time of the Authority's request, the business group "was in the process of appointing a Data Protection Officer";

- in order to avoid the occurrence of episodes similar to those complained of by the complainant, the adoption was ensured "with the utmost urgency" of the interventions relating to the "immediate appointment and publication of the contact details of the DPO within the information on the websites Internet of the entrepreneurial group, as well as communication to the Guarantor for the protection of personal data in the manner indicated on your site";

- it was also assured that in the future the training sessions on the protection of personal data and the control over the work of

the personnel of the business group and external collaborators would be "intensified".

1.3 Closure of the investigation and start of the procedure for the adoption of corrective measures

On the basis of the foregoing and in the absence of subsequent replies from the complainant, it was therefore found that the latter's data were freely provided by them for marketing purposes and that the company promptly responded to his formal requests

However, no clarification emerged from the Company's findings with regard to the circumstance relating to the complainant's receipt of further telephone contacts, in particular on the following 20 March 2019, as indicated in the complaint and in the documentation attached to it, despite, on the on the basis of what was expressly declared by Powerplay, the name of the interested party had been included in the company black list and the request for deletion of the data had also been acknowledged.

Further gaps were also found with respect to the appointment of a single person responsible for the protection of personal data (DPO) for the business group of which the company declared it belongs; this appointment, permitted pursuant to art. 37, par. 2 of the Regulation, should have taken effect as early as 25 May 2018 with full operation of the latter, similarly to the necessary communication to the Guarantor of the related contact details, carried out only on 15 July 2019, by only the parent company Tempus S.r.l. and in any case Powerplay, as independent owner, should have made this communication to the Authority, as expressly provided for by art. 37, par. 7 of the Regulation.

Furthermore, the contact details of the data protection officer were not found to be present even on the Powerplay website (at the address http://www.powerplay.cloud) and, from the checks carried out by the Office during the investigation preliminary, it emerged that the information referred to in art. 13 of the Regulation, despite the possibility, through the compilation of a specific online form present therein, of acquiring the personal data of users;

Therefore, with a note from the Office of 19 May 2020 (prot. n.18329/20), pursuant to art. 166, paragraph 5, of the Code, Powerplay was notified of the initiation of the procedure for the possible adoption of the provisions pursuant to art. 58, par. 2, of the Regulation and notified the alleged violations of the law, due to the lack, for the treatments carried out by the company, of a suitable regulatory prerequisite, in violation of articles 6 and 7 of the Regulation, as well as the failure to comply with the principles of lawfulness and correctness of the processing, in violation of the art. 5, par. 1, lit. a) and of the following articles 17, par. 1 and 21, par. 3, with specific regard to the exercise, by the interested party, of the right to cancel their data and to oppose

the processing for direct marketing purposes.

With this note, the violation of art. 37, paragraphs 1 and 7, of the Regulation, with regard to both the late appointment of the person responsible for the protection of personal data of the business group to which Powerplay belongs, and the absence of a communication from the latter to the Guarantor, of the related contact data, as well as the violation of the art. 13 of the Regulation for the total lack of information on the website of the company, including the contact details of the DPO, which the data controller is required to release to the interested parties if he acquires the data.

2. DEFENSIVE OBSERVATIONS AND ASSESSMENTS OF THE AUTHORITY

2.1 Defense brief and hearing of Powerplay S.r.l.

With a communication dated June 18, 2020, Powerplay responded to the aforementioned communication from the Office, specifying, in the context of its defense briefs, that “Tempus S.r.l. holds 100% of both Powerplay S.r.l. that of Solarplay S.r.l.” and in particular that:

- unwanted contacts on the complainant's telephone number following the inclusion of the name in the company black list would have been attributable to a "mere clerical error" of inclusion in said list only of the interested party's landline number and not also that of mobile telephony also held by the company and that, therefore, the latter allegedly "acted negligently and without any will to perpetrate an illegitimate interference in the personal sphere of the interested party";
- once the error was verified, the company "promptly proceeded to definitively cancel Mr. XX's contact details" from whom, moreover, no complaints were received;
- to provide an effective response to the exercise of the rights of opposition and cancellation of data subjects, the company has put in place technical-organizational measures which have also been implemented following the adoption, by the business group, "of a policy on privacy matters and the preparation of a specific training program aimed at staff on the obligations set forth by the GDPR";
- for the purpose of communicating to the Authority the name and contact details of the person responsible for the protection of personal data of the group and "of the fact that the appointment should be understood as applicable to the entire business group", in the appropriate communication form, do not there was no item that would allow the structure of the entrepreneurial group to be specified;
- the landing page http://www.powerplay.cloud is not managed directly by Powerplay but by an external manager, who is

required to maintain it and insert the contents and which the company has repeatedly requested from the latter an intervention aimed at "upload all the documentation necessary for privacy purposes, including the information relating to the processing of personal data", just as he would have repeatedly requested, without obtaining a reply, the credentials to be able to independently proceed with the publication of the information in the aforementioned landing page;

- moreover, the same person responsible for the protection of personal data, during his first intervention, already on 25 July 2019, had expressly noted that "the site http://www.powerplay.cloud does not bear the contact details of the DPO in the policy which is absent and therefore to be inserted";

In the aforementioned communication, Powerplay also provided the elements useful for the assessments pursuant to art. 83 par. 2 of the Regulation, highlighting in particular that:

- the violation was attributable to an unintentional error of failure to enter the mobile telephone number of the recipient of unwanted promotional contacts in the appropriate black list and resulted in "a minor injury to a single interested party and for a modest period of time ";

- "no previous violations of the privacy legislation have been found nor previous sanctions imposed" against the company and that the latter has not "gained any direct or indirect benefit" from the alleged conduct;

- "every measure necessary to mitigate the damage suffered by the interested party has been adopted, with full cooperation with this Authority";

- failure to communicate the name and contact details of the Group DPO pursuant to article 37, par. 7 of the Regulation was attributable to "a situation of uncertainty relating to the instructions provided regarding the compilation of the contact data communication form of the DPO (...) present on the website of this Authority";

- the violation of the art. 13 of the Regulation took place in the absence of fault, as the company "solicited several times the manager of the landing page to publish all the documentation necessary for privacy purposes";

During the hearing pursuant to art. 166, paragraph 6, of the Code, which took place on 8 July 2020, the company substantially reiterated what had already been represented in its defense writings, assuring that in the following days the information relating to the presence of the DPO would be supplemented also for the companies Solarplay and Powerplay and, with regard to the information" absent on the site of the latter, that it has activated itself to request the reset of the passwords for access to the contents of the site and that it has provided for the insertion of the necessary information as required by the Regulation , dated

July 6, 2020.

2.2 Considerations in fact and in law

In the light of what has emerged, the legitimacy of the complaint presented to the Authority and the unlawfulness of the processing carried out by Powerplay, in its capacity as data controller, are confirmed, given the violation of the provisions of articles 6 and 7 of the Regulation, as well as art. 5, par. 1 lit. a), and of the following articles 17, par. 1 and 21, par. 3.

However, we acknowledge what is represented by Powerplay in its defense briefs made pursuant to art. 168 of the Code "False statements to the Guarantor and interruption of the execution of the duties or the exercise of the powers of the Guarantor", and in particular that:

- the case submitted for examination by the Authority with regard to the receipt of unwanted promotional telephone calls also following the opposition to the treatment by the interested party and despite the cancellation of the relative data was justified by the failure to enter the relative mobile number in the company black list due to a mere and episodic clerical error in registration;
- the Company has taken steps to definitively remove the prejudicial effects of its conduct, both by proceeding with the definitive cancellation of the complainant's data from its databases and by ensuring the implementation of the technical-organizational measures necessary to effectively guarantee the exercise of the rights of the interested parties provided by the articles 17 and 21 of the Regulation, also through the preparation of a specific training program aimed at personnel on the obligations required by law, regarding the protection of personal data. Therefore, it is believed that it is not necessary to adopt specific measures on this point.

Instead, it must be emphasized, in particular with regard to the ascertained violation of art. 13 of the Regulation:

- the irrelevance of the reference to generic difficulties in contacting the Company with the external manager of the landing page for the necessary insertion of privacy information;
- the absence of objective elements aimed at proving the aforementioned difficulties, as well as any other initiative undertaken by Powerplay to comply with the provisions referred to in the aforementioned provision;
- the circumstance that the original lack of said information continued until the intervention of the Authority due to the complaint received.

The same conclusion must be reached with regard to the violation of art. 37, paragraphs 1 and 7 of the Regulation, with respect to both the appointment of the Group DPO and the dutiful communication of the related contact details to the

Guarantor, resulting confirmed, on the basis of the circumstance that said appointment as well as said communication, were made only following of the Authority's requests in the context of the specific case and only by the parent company Tempus S.r.l. and that, regardless of the intermediate changes made to the forms prepared by the Guarantor, Powerplay could not be considered, precisely as an independent data controller, exempt from the obligation to make the due communication, having to distinguish this fulfillment from the simplification measure linked to the possibility of designating a single Group DPO pursuant to paragraph 2 of the aforementioned regulation.

3. CONCLUSIONS

Therefore, in consideration of the above and with respect to the specific violations pursuant to articles 5, par. 1, lit. a), 6 and 7 of the Regulation and the following articles 17, par. 1 and 21, par. 3 of the same, considering the limited impact of the conduct ascertained on the treatments carried out by the Company, it is considered:

- to be able to disregard the application of pecuniary sanctions against Powerplay S.r.l., however reprimanding the latter pursuant to art. 58, par. 2 lett. b) of the Regulation so that through the concrete adoption of the technical-organizational measures already identified and the implementation of any further and necessary precautions, with respect to the processing of personal data for direct marketing purposes, as well as the management of the rights of the interested parties, there is no repetition conducts similar to those carried out in violation of the aforementioned rules;

- to order Powerplay S.r.l, pursuant to art. 58, par. 2 letter d), to communicate which specific technical-organizational measures have been adopted to guarantee the compliance of the aforementioned treatments with the legislation, with particular regard to the correct management of the rights of the interested parties and in particular of the right of opposition pursuant to article 21 and the right of cancellation pursuant to art. 17 of the Regulation and to reply to the Authority within 30 days of notification of this provision, pointing out that any failure to reply may lead to the application of the administrative fine provided for by art. 83, paragraph 5, of the Regulation;

- to impose on Powerplay S.r.l, pursuant to art. 58, par. 2 lett. f) of the Regulation, the prohibition of any processing of all interested parties whose personal data have been acquired through the online form on the company's website, with regard to the period in which the necessary information was absent. provided for by art. 13 of the Regulation, as well as to communicate if so, pursuant to art. 157 of the Code, the number of interested parties involved in the processing of data, as well as the initiatives undertaken in order to implement the prohibition adopted, within the same term of 30 days from notification of this

provision and with the same warnings highlighted above.

With reference to the violations pursuant to articles 13 and 37, par. 1 and par. 7 of the Regulation, it is instead deemed necessary to adopt an injunction order in the terms referred to in the following paragraph.

4. INJUNCTION ORDER FOR THE APPLICATION OF THE PECUNIARY ADMINISTRATIVE SANCTION

In view of the above, it is deemed necessary to adopt an injunction order pursuant to art. 166, paragraph 7 of the Code and 18 of the law n. 689/1981 for the application against Powerplay S.r.l. of the pecuniary administrative sanction provided for by art. 83, par. 4, lit. a) and par. 5, letter. b) of the Regulation for the violations referred to in the aforementioned art. 13 and 37, par. 1 and par. 7 of the Regulation.

In order to determine the amount of this sanction, it is necessary to take into account the elements indicated in art. 83, par. 2 of the Regulation and, in particular, as aggravating factors:

1) the seriousness and duration of the violation (article 83, paragraph 2, letter a) of the Regulation) with reference to the detected violation pursuant to art. 13 of the Regulation, taking into account the permanent absence of the information referred to in the aforementioned provision, including the contact details of the DPO, on the company's website until the Authority's dispute has been raised and, in particular, until 6 July 2020 , as declared during the hearing of 8 July 2020;

2) the significantly negligent nature of the conduct (art. 83, paragraph 2, letter b) of the Regulation) held by the company with respect to a fulfillment of primary importance, such as that referred to in art. 13 of the Regulation, with respect to which the same has not given proof, having delegated the management of its landing page to an external manager, not only that it has not taken action to verify any possible technical difficulty, but also that it has not activated, over time, in order to make up for the deficiencies found, also through appropriate and timely monitoring;

3) the seriousness and duration of the violation (article 83, paragraph 2, letter a) of the Regulation) with reference to the detected violation pursuant to art. 37, par. 1 and par. 7, taking into account the obligation to appoint the person responsible for the protection of personal data of the Group as early as 25 May 2018 with the full operation of the Regulation and the relative fulfillment only following the intervention of the Authority in the specific case, as well as for the communication due to the Guarantor directly from Powerplay, in its capacity as independent data controller, which occurred only on 10 July 2020;

as mitigating factors:

4) the adoption of measures aimed at mitigating the consequences of the violations (Article 83, paragraph 2, letter c) of the

Regulation), in particular through the inclusion of the privacy information, including the contact details of the DPO, pursuant to art. 13 of the Regulation on the company's website;

5) cooperation with the Authority during the preliminary investigation (Article 83, paragraph 2, letter f) of the Regulation);

6) the non-malicious nature of the violation (art.83, par.2, letter b) of the Regulation).

On the basis of all the elements indicated above, and the principles of effectiveness, proportionality and sufficient dissuasiveness indicated in art. 83, par. 1, of the Regulation, and taking into account the necessary balance between the rights of the interested parties and the freedom to conduct a business, in the initial application of the pecuniary administrative sanctions envisaged by the Regulation, also in order to limit the economic impact of the sanction on the organisational, functional and occupational characteristics of the Company, it is believed that it should apply to Powerplay S.r.l. the administrative sanction of the payment of a sum of Euro 20,000.00 (twenty thousand), equal to 0.15% of the maximum statutory sanction.

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 conduct of the Company, its partners, as well as the high number of subjects potentially involved in the treatments examined;

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.

In the event of non-compliance with the provisions of the Guarantor, the administrative sanction referred to in art. 83, par. 5, letter. e), of the Regulation:

ALL THAT BEING CONSIDERED, THE GUARANTOR

a) declares the complaint founded for the reasons mentioned in the introduction and, as a result, pursuant to art. 58, par. 2, lit. b) of the Regulation, admonishes Powerplay S.r.l., so that through the concrete adoption of the technical-organizational measures already identified and the implementation of any further and necessary precautions, with respect to the processing of personal data for direct marketing purposes, as well as the management of the rights of interested parties, conducts similar to those carried out in violation of the provisions of articles 5, par. 1, lit. a), 6 and 7 of the Regulation, as well as articles 17 par. 1 and 21, par. 3 of the Regulation;

b) enjoins Powerplay S.r.l., pursuant to art. 58, par. 2 lett. d) to communicate which specific technical-organizational measures have been adopted to guarantee the compliance of the aforementioned treatments with the legislation, with particular regard to the correct management of the rights of the interested parties and in particular of the right of opposition pursuant to art. 21 and the right of cancellation pursuant to art. 17 of the Regulation and to reply to the Authority within 30 days of notification of this provision, pointing out that any failure to reply may lead to the application of the administrative fine provided for by art. 83, paragraph 5, of the Regulation;

c) requires Powerplay S.r.l, pursuant to art. 58, par. 2 lett. f) of the Regulation, the prohibition of any processing of all interested parties whose personal data have been acquired through the online form on the company's website with regard to the period in which the necessary information required by the law was absent 'art. 13 of the Regulation, as well as to communicate if so, pursuant to art. 157 of the Code, the number of interested parties involved in the processing of data, as well as the initiatives undertaken in order to implement the ban adopted, within the same term of 30 days from notification of this provision and with the same warnings highlighted above;

ORDER

To Powerplay S.r.l. in the person of the pro-tempore legal representative, with registered office in Torri di Quartesolo (VI), via Bolzano 5, Tax Code 04161040243, to pay the sum of euro 20.oo0,oo (twenty thousand/00) 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 Company, in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, to pay the sum of Euro 20,oo0,oo (twenty 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 of this provision on the website of the Guarantor, provided for by art. 166, paragraph 7 of the Code and art. 16 of the Regulation of the Guarantor n. 1/2019, 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 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, 27 January 2021

PRESIDENT

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THE SPEAKER

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THE SECRETARY GENERAL

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