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Register of measures

no. 93 of 23 March 2023

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 (hereinafter, the "Regulation");

HAVING REGARD TO the Code regarding the protection of personal data, containing provisions for the adaptation of the national legal system to Regulation (EU) 2016/679 (legislative decree 30 June 2003, n. 196, as amended by legislative decree 10 August 2018, n. 101, hereinafter "Code");

CONSIDERING the complaint presented pursuant to art. 77 of the Regulation by Dr. XX against La Risorsa Umana.it s.r.l.;

HAVING EXAMINED 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 Prof. Pasquale Stanzione;

WHEREAS

1. The complaint against the company and the preliminary investigation.

With a complaint dated December 31, 2020, regularized on May 25, 2021, Dr. XX complained about alleged violations of the Regulation by La Risorsa Umana.it s.r.l. (hereinafter, the Company), with reference to the processing of personal data carried out through the e-mail account XX, assigned to the complainant in the context of the employment relationship with the Company.

More specifically, with the complaint it was complained that the correspondence exchanged by the complainant through the aforementioned account, in the performance of his duties, would have been "daily controlled by the director [...]" through the latter's individualized account and was attached copious documentation in this regard.

This in the absence of any information provided to the Company's employees/collaborators regarding the visibility by the management of e-mail exchanges (between Company personnel, between the latter and the employees and collaborators of the subsidiary Form-App s.r.l. as well as with collaborators and external consultants), also using shared company accounts. These processing operations would have been carried out by the Company, therefore, in violation of art. 13 of the Regulation and the "principles of necessity, pertinence and non-excess which do not allow massive and prolonged controls".

The Company, in responding to the request for information from the Office, with a note dated 28 October 2021, stated that:

to. “the complainant has never been an employee or a collaborator of the undersigned company. The only contract actually signed by the [complainant] is the one stipulated with the company Form-App s.r.l. 100% controlled by La Risorsa Umana.it s.r.l.” (note 28/10/2021, p. 1-2);

b. the Company "has full ownership of the data processed by the various corporate offices, through mail accounts" (note cit., p. 2);

c. "there are no situations of e-mail control by the Management which, conversely, has the right to access e-mail communications deriving from shared accounts and used by multiple users" (note cit., p. 2);

d. the Company "has mapped its treatments, highlighted and authorized the people who can access the various treatments" (note cit., p. 3);

And. “since Form-App s.r.l. is the external manager of the treatment of La Risorsa Umana s.r.l. could also process the data of the writer" (note cit., p. 3);

f. "The owner of the data processed by the account [assigned to the complainant] is La Risorsa Umana s.r.l." (note cit., p. 4);

g. the complainant "performed services in favor of both companies", in relation to the treatments carried out on the basis of the relative contracts, a disclosure and a Code of conduct were provided; the document relating to the "procedure I.OP.26 currently under review [...] where the management of privacy obligations also linked to the use of e-mail is explained" (note cit., p. 4);

h. "There are many company accounts that are not personal, but are linked to specific operating sectors or offices and which are therefore visible by several people for greater operational functionality" (note cit., p. 4);

the. "the admin@larisorsaumana.it account is visible to system administrators and Management"; "the amministrazione@larisorsaumana.it account is shared and viewed by the personnel office, by external labor consultants [...]

and [...] by the company management"; "the sicurquality@larisorsaumana.it account is used not only by the Management, but also by the managers of the ISO900 quality safety system, by the manager of the prevention and protection service" (note cit., p. 5);

j. "internal staff [...] is qualified as authorized to process data [...]. External personnel [...] are qualified as external data processors" (note cit., p. 5);

k. "The company Form APP srl is part of the group of La Risorsa Umana.it srl [...] but each has different operational purposes and different types of activities, but connected to each other"; "The two companies also operate in the same operational headquarters, therefore they share the physical premises, and use many management functions also linked to the possibility that some employees can work both for a company and for activities that are also useful for the other company in the group [...] . As happened to the [complainant]" (note cit., p. 6);

L. "to meet this operational need [...] the appointment of an external data processor between the two companies was contracted and formalised. The documents formalizing the reciprocal appointment of external data processor are attached" (note cit., p. 6).

With counterarguments of January 17, 2022, the complainant argued that:

to. it is not true that "I did not collaborate with the aforementioned company, otherwise it would not explain either the presence of documentation proving my role [...], or the reason why I had activated an e-mail account from the Human Resource" (note 1/17/2022, p. 1);

b. the Company "does not explain why [...], through the address [XX] it could access and control all email communications in which it was not mentioned, intervening clearly and with communications that were out of place at times due to the type of role and function exercised" (note cit., p. 2).

With a subsequent note of 14 June 2022, sent in response to a request for further information formulated by the Office (of 26/5/2022), the Company represented that:

to. a "LIST AUTHORIZED FOR TREATMENT with the authorization profile" has been prepared (note 14/6/2022, p. 3);

b. "for the purposes of optimal management of corporate work [...] many corporate operating sectors use shared e-mail accounts" (note cit., p. 3);

c. "in order to improve the understanding of the shared accounts and the subdivision of the authorization profiles we have

prepared [...] organization chart with an indication of the shared accounts used by Operating Unit" (note cit., p. 3).

2. The initiation of the procedure for the adoption of corrective measures and the deductions of the company.

On 1 September 2022, the Office carried out, pursuant to art. 166, paragraph 5, of the Code, the notification to the Company of the alleged violations of the Regulation found, with reference to articles 5, par. 1, lit. a) and c), 6, 13 and 28 of the Regulation.

With defense briefs, sent on 28 September 2022, the Company represented that:

to. "all the documentation is attached, including that which is no longer in force, because it has been replaced in the meantime" referring to the "complete management of the privacy system" (note 28/9/2022, p. 2);

b. the complainant "exclusively for personal request and operational facilitation was provided with a company email" (note cit., p. 3);

c. "the information was provided verbally and postponing the formalities to a later time which unfortunately did not happen [...] due to mere forgetfulness" (note cit., p. 3);

d. "all operators [...] are aware of the fact that, as highlighted in the Quality Manual, and as in any work instruction, the Management must always be kept aware" (note cit., p. 3);

And. "staff is trained and informed about communication flows and the Company has preferred to favor operating practices and everyone's verbal knowledge is complete" (note cit., p. 3);

f. "the processing and operational management of communications sees e-mails as the only tool that can be used for intra-company communications, given that there are offices and offices scattered throughout the country and it is not always possible to hold face-to-face meetings"; "the intervention of the [Management] made all interested parties immediately informed of the decisions of the Management and without the need for further exchanges of e-mails, thus avoiding overlaps and saving time for the operators concerned" (note cit., p. 4);

g. in any case, the Company has currently taken steps "to better highlight the communication flow and the types of relationship between Management and offices and collaborators for important decisions or for more confidential interviews" (note cit., p. 4);

h. "it is believed that the management of the company Form-App srl and LaRisorsaUmana.it srl, identified in the same natural person as the [director], is justified and authorized to process the data in the name and on behalf of the two companies and in the specific case to be able to communicate also with operating personnel having an e-mail address with the form-app.it extension" (note cit., p. 4-5);

the. as for the relations between the Company and Form-App srl from 11/15/2017 "there was documentation that highlighted the operational needs between the companies and an indication of treatments related to these activities"; as required by the d. lgs. 196/2003 at the time in force "the appointment of an external data processor was formalized between the two companies, always in the form of an addendum to the contract" (note cit., p. 5);

j. "After 25 May 2018 [...] new contracts were therefore formalized in the form of an addendum [...] and, at the same time, having verified the structure of the two companies [...] it seemed logical and appropriate to formalize again the appointment between the two companies of Managers external with a view to a future possible contextualization of the joint ownership of data for certain types of processing"; given that both companies "have similar quality systems and are [...] managed by the same control group, a specific instruction on reciprocal data processing had not been formalized" (note cit., p. 6);

k. among the measures adopted during the proceeding, it should be noted that "the consistency of the emails shared with the individual operating sectors was verified by eliminating the emails no longer used and checking access permissions to the emails on the basis of the internal authorizations for data processing"; a "Code of conduct for the management of e-mail and the Internet has also been drafted which also includes information on shared e-mails and on the characteristics also linked to the possibility of access by multiple users to communications for work reasons" (cited note, p. 7);

L. the Company has, most recently, provided all the elements referred to in art. 83, par. 2 of the Regulation.

During the hearing, held on November 9, 2022, the Company further specified and stated that:

to. "the company is very sorry for the objections made by the Guarantor, also considering that it is the first objection of violations relating to the regulation on the processing of personal data";

b. “Any violations that it is believed that the company may have committed have never been put in place (not even at group level) to take an unfair advantage. If there have been violations, they have concerned the internal architecture in relation to the use of corporate e-mail";

c. "In this regard, the company produced with the defense briefs of 28.9.2022 annex 17 which contains the company regulation for the use of company e-mail and the internet. This regulation also included elements already present in documents previously processed by the company and made available to employees through the company server";

d. “The Form-App is a s.r.l. to the sole shareholder which is LaRisorsaUmana.it. The relationship between the two companies is contractualized through a service contract. [the director of the Company] is the owner of both companies”.

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

3.1. Outcome of the investigation.

As a result of the examination of the declarations made to the Authority during the proceeding as well as of the documentation acquired, it appears that the Company, as owner, has carried out some processing operations, referring to the complainant, which are not compliant with the regulations on the matter of personal data protection.

In this regard, it should be noted that, unless the fact constitutes a more serious offence, anyone who, in a proceeding before the Guarantor, falsely declares or attests news or circumstances or produces false deeds or documents, is liable pursuant to art. 168 of the Code "False statements to the Guarantor and interruption of the performance of the duties or exercise of the powers of the Guarantor".

On the merits, it emerged that the Company assigned the complainant an individualized type e-mail account (XX), in the context of an employment relationship (see professional assignment pursuant to Article 2222 of the Italian Civil Code signed by the parties on 23/4/ 2019, effective from 3/6/2019, provided in copy by the complainant with a note dated 17/1/2022).

The professional assignment lasted until 2 June 2020 (see cancellation of the professional assignment of 27/2/2020, with effects starting from 2/6/2020, provided in copy by the complainant with a note dated 17/1/2022).

On the same date, a professional assignment was also stipulated between the complainant and Form-App s.r.l., starting from the same date (3/6/2019). Also in relation to this contract, the cancellation took effect from 2/6/2020.

As part of his work as an employment consultant, the complainant has maintained, through his company account, correspondence with other employees and collaborators of the Company who used individualized or non-individualized accounts with the larisorsaumana.it extension. Exchanges of electronic correspondence also took place with other users who used e-mail addresses with the different extension form-app.it and with third parties (customers and consultants).

In numerous cases, documented in documents, the director of the Company also intervened during the correspondence, through her individualized account (XX), providing indications and formulating comments on what was stated in previous e-mails from the complainant (moreover expressing blame on the work of the latter and of other collaborators, even with the use of not very commendable expressions: see copy of the numerous e-mails attached to the complaint).

This entailed, on the part of the Company (in the person of the director, who holds the position of instigator and representative), the carrying out of personal data processing activities relating to the complainant contained in the electronic

correspondence exchanged by them through the company account.

As part of the investigation, it also emerged that, on 10 July 2018, the Company designated Form-App s.r.l. (a company 100% controlled by LaRisorsaUmana.it) responsible for the treatment "limited to the scope of the task entrusted to you and with reference to the personal data of which you may come to know in the performance of your activities and to those that will be entrusted to you in the future".

This document does not specifically indicate the processing operations entrusted to FormApp srl, nor does it contain instructions relating to the methods with which to carry out the processing.

It also emerged that, on the same date, Form-App s.r.l. has designated LaRisorsaUmana.it responsible for the treatment with the same formula which, equally, does not identify the operations pertaining to the owner entrusted to the responsible ("limited to the scope of the task entrusted to you and with reference to the personal data of which you can become aware in the performance of your activities and those that will be entrusted to you in the future": see Annexes 14 and 15, note from the Company 28/10/2021).

Attached to the defense briefs, a copy of the service supply contract was also produced, stipulated on 15 November 2017, between the Company and Form-App s.r.l., with which the parent company undertakes to provide services and services in relation to: accounting and administrative services; financial management services; use of the IT platform and multifunction copiers; telephone switchboard services; use of cars on a continuous basis upon specific request (see Annex 1, briefs of 28/9/2022; with Annex 3 a copy of the addendum dated 30/6/2018 was produced containing the assignment of further services and services).

A copy of two deeds of "appointment of the data controller, pursuant to and for the purposes of Article 29 of Legislative Decree 30 June 2003 n. 196", dated 15 November 2017, carried out, respectively, by the Company against Form-App s.r.l. and of the latter against the Company, both concerning the "management of electronic processing systems" (see Annex 2, briefs 28/9/2022).

3.2. Violation of articles 5, par. 1, lit. a) and 13 of the Regulation.

Upon examination of the preliminary findings, it is noted, first of all, that the Company does not appear to have informed the complainant about the possibility for the latter to carry out the described treatments, nor more generally does it appear that any information relating to the methods of use of the individualized e-mail account as well as the management of non-individualized

accounts with the larisorsaumana.it extension, all visible to the Company Management, as emerges from the copious correspondence attached to the complaint, even further than those expressly indicated by the Company in the acknowledgment note dated 28/10/2021: (see in particular: pesaro@larisorsaumana.it; commercialepesaro@larisorsaumana.it; amministrazionepesaro@larisorsaumana.it, but also accounts with extension attributable to a separate company, such as commerciale@form-app .it and pugliaformazione@form-app.it).

In fact, it emerged that the "Information notice for the processing of supplier personal data", provided by the Company, October 2021 version, in any case subsequent to the facts subject to the complaint, does not contain any reference in this regard (Annex 2, note from the company 10/28/2021).

Similarly, nothing is provided for in the information provided by Form App "Information pursuant to the Code regarding the processing of personal data", also in the October 2021 version, subsequent to the facts that are the subject of the complaint (the reference to this information would in any case not be relevant in the present case, given that the owner of the treatment carried out through the account assigned to the complainant, with the extension larisorsaumana.it, is the Company at the address, as also supported by the latter, see Annex 2A, note from the Company 28/ 10/2021).

The Code of Ethics and Behavior, approved on 8/5/2020, therefore also subsequent to the facts subject to the complaint, does not provide any indication in relation to the management of e-mail accounts (see Annex 3, note from the Company 28 /10/2021). Also the Operating Instruction - procedure for the correct application of the Gdpr 679-2016 - I.Op 26 (see Annex 4, note of the Company 28/10/2021), in any case subsequent to the facts object of the complaint given that the first issue is dated August 31, 2021, it does not contain references to the correct management of e-mail accounts.

The information documents attached to the defense briefs, bearing a date prior to the facts that are the subject of the complaint (Operating Procedure for the Management of Privacy Fulfillments, 25/5/2018; Programmatic document on security, 14/2/2917; Operating procedure instruction for the correct application of the GDPR 679 -2016, July 2018, see defense briefs, Annexes 10, 12 and 16), do not contain any information in this regard.

Nor can it be considered compliant with current legislation to have provided the information "verbally", as claimed by the Company in the defense briefs (see note of 28/9/2022), given that, based on art. 12, par. 1 of the Regulation, "the information is provided in writing or by other means, even if necessary by electronic means" and only at the request of the interested party can the information be provided orally.

In any case, it is noted that, during the proceeding, the Company prepared a "Company regulation for the use of e-mail and the internet", dated July 2022; a similar regulation has been prepared by Form-App s.r.l., which contains some signatures dated September 2022 for acknowledgment.

In relation to the content of these documents, the Company is invited, pursuant to art. 57, par. 1, lit. d) of the Regulation, to take into account the provisions of the Authority regarding the processing of data relating to employees' e-mail and web browsing, also with regard to the application of the regulations on remote controls and the prohibition of investigations on the opinions referred to in Articles 114 and 113 of the Code (in relation to art. 88 of the Regulation), most recently with the provisions of 1 December 2022, n. 409 (web doc. n. 9833530), 13 May 2021, n. 190 (web doc. n. 9669974) and 15 April 2021, n. 137 (web document n. 9670738).

It is therefore ascertained that the Company has failed to inform the complainant about the systematic visibility, by the company management, of the e-mail messages exchanged with non-individualized accounts (although in some cases associated with individual employees, e.g. 'Dott.ssa [...] - La Risorsa Umana.it' <sicurquality@larisorsaumana.it>) and, through these, of the correspondence exchanged, also using individualized accounts, between colleagues, with the Company's customers and with employees and collaborators who work for account of the subsidiary Form-App s.r.l..

The information relating to the account visibility regime by the company management should have been provided also, and above all, taking into account that access to exchanges of electronic correspondence made it possible not only to coordinate the activities (as declared by the Company) , but also to provide indications on conduct to be followed and assessments on the work of the complainant and other employees and collaborators.

The employer must in fact indicate to its employees and collaborators, in any case, clearly and adequately, which are the methods of use of the tools made available and which are considered correct and if, to what extent and with which methods controls are carried out that they must in any case comply with the principles of lawfulness, proportionality and gradualness (see Guidelines of the Guarantor for e-mail and internet, Provv. 1/3/2007, n. 13, in the Official Gazette n. 58 of 10/3/2007, doc web no. 1387522).

The conduct of the Company described above has therefore violated art. 13 of the Regulation, where it provides that the data controller has the obligation to inform interested parties about the specific treatment method actually put in place, in the specific case through the visibility of communications made through the company account and non-accounts individualized

(moreover also referring to a separate data controller, as in the case of e-mail addresses with the form-app.it extension: see in particular e-mails dated 10/15/2019, 10.36 am and 12/3/2019 2019, 08.53 am sent by the director of the Company).

In this regard, it should be noted that, in the context of an employment relationship, the obligation to inform the worker is an expression of the general principle of correctness of processing (Article 5, paragraph 1, letter a) of the Regulation).

3.3. Violation of the art. 5, par. 1, lit. c) of the Regulation.

Based on the regulations governing the protection of personal data in the context of the employment relationship, regardless of the nature of the relationship, the owner/employer can lawfully process personal data, as a rule, only if the processing is necessary for the management of the employment relationship or if it is necessary to fulfill specific obligations or tasks set by the applicable sector regulations (Article 6, paragraph 1, letter a) and c) of the Regulation, with reference to the so-called data common; art. 88 of the Regulation).

The data controller is, however, required to comply with the principles of data protection, in particular the principles of lawfulness, correctness and transparency (Article 5, paragraph 1, letter a) of the Regulation) and of minimisation, in on the basis of which the data processed are adequate, pertinent and limited to what is necessary with respect to the purposes for which they are processed (Article 5, paragraph 1, letter c) of the Regulation).

In particular, then, the processing of data carried out using information technology, in the context of the employment relationship, must comply with the respect for fundamental rights and freedoms as well as the dignity of the interested party, even more so if the processing concerns communications made through accounts of e-mail, considering the particular protections that the law reconnects to the various forms of communication (see Recommendation CM/Rec (2015)5 of the Committee of Ministers to the Member States on the processing of personal data in the employment context, spec. points 3 and 14).

In the present case it emerged that the company management, through the systematic vision (and consequent apprehension of the content) of the non-individualized accounts, even if they are used by individual employees or collaborators of the Company (as can be seen from the very denomination of accounts present in deeds , of the type 'Dott.ssa […] - La Risorsa Umana.it' <sicurquality@larisorsaumana.it> or 'Dott.ssa […] – Form App <commerciale@form-app.it>'), and consequently communications also made through individualized accounts (such as the one assigned to the complainant) by its employees and collaborators - but also, at least in two cases documented in the documents, by collaborators of the subsidiary Form App

s.r.l. – through the backward reconstruction of the "chain" of messages sent, he provided indications, asked for clarifications and expressed comments and evaluations (often of blame) on the work of employees and collaborators, leaving and/or copying all the interlocutors of the communication original (in some cases by inserting others), so that all participants in the conversation learned its content.

It is acknowledged that the Company has, according to what it deemed necessary to address a note of reminder to the company management for the behaviour, as emerged from the e-mails subject of this proceeding, considered "inappropriate [...]" and "censurable" (see defense briefs, p. 4 and 7).

Without prejudice to the need to guarantee the continuity of adequate communication flows within the company (see defense briefs and Annexes 13 and 14), the methods adopted by the Company in managing the e-mail messages subject to complaints do not comply with the mentioned principle of minimization and proportionality, with respect to the aims pursued, also considering that the aims actually pursued go beyond the need to ensure coordination of the activities carried out, resulting in systematic intervention on the work of individual employees and collaborators, also made known to other colleagues/collaborators, using in some cases expressions that are detrimental to the dignity, even professional, of the recipients and thus creating interference in the private and professional sphere of collaborators and employees.

The coordination of the activity and, a fortiori, the taking of decisions that fall within the sphere of competence of the company management and the relative communication to the recipients can well take place with individualized methods and which in any case do not involve the violation of the confidentiality of collaborators and employees .

The treatments therefore took place in violation of the art. 5, par. 1, lit. c) of the Regulation.

3.4. Violation of the art. 28 of the Regulation.

Finally, it emerged that the Company has designated the subsidiary Form-App s.r.l., as data controller, by virtue, as represented, of an "operational need" linked to the use of "many management functions" by employees and employees of the respective companies. At the same time Form App s.r.l. has, in turn, designated the Company as data controller.

This configuration appears to have already been carried out in November 2017, through the signing of two mirror deeds of mutual appointment, by the Company and Form-App s.r.l., as data controller, having the same object (the "management of processing systems electronics", see Annex 2, memorandum 28/9/2022).

On the same date (15/11/2017) a service contract was stipulated between the Company and Form-App srl, with which the

parent company undertakes to provide the subsidiary with a plurality of services and services, the number of which was subsequently expanded (on 6/30/2018: see Annexes 1 and 3, briefs 9/28/2022).

Both the reciprocal appointment as data controller for the same object (11/15/2017), and the subsequent reciprocal designation as data controller (7/10/2018), by deeds - also in this case drafted and signed in the same data – which also have a generic and purely formal content, do not comply with the provisions of the regulations governing the protection of personal data, given that the specific treatments that the owner entrusts to the management of the manager by issuing specific instructions in this regard have not been identified,

Given that this configuration contradicts the assignment by Form-App s.r.l. of specific services to the parent company (with contract dated 11/15/2017, as seen above), due to the latter's greater management capacity and availability of resources, it should be noted that, at present, pursuant to art. 28, par. 3 of the Regulation, the designation by the owner of a data processor chosen on the basis of the "sufficient guarantees" that he can provide, in relation to the carrying out of certain treatments in relation to which only the owner himself decides the ends and means, also in relation to security measures, does not represent a mere formal fulfilment.

In fact, the legal act at the basis of the designation must identify "the subject governed and the duration of the processing, the nature and purposes of the processing, the type of personal data and the categories of interested parties", this in view of effective compliance with the provisions of the Regulation also in relation to the need to protect the rights and freedoms of the interested parties (see recital 81 of the Regulation).

The responsibility for compliance with the rules on the protection of personal data must in fact be clearly attributed to the distinct subjects who carry out processing operations.

The reciprocal designation of the two companies in the terms that emerged from the investigation - and consequently the treatments carried out on the basis of the two deeds - is therefore not compliant with the provisions of art. 28 of the Regulation.

In this regard, the fact that the processing of personal data actually took place on the basis of the aforementioned deeds emerges both from the declarations of the Company (use of management functions by the employees of the respective companies) as well as from the fact that the management also had visibility of accounts having form-app.it extension, as noted above (see e-mails dated 10/15/2019, 10.36 am and 12/3/2019, 08.53 am, sent by management, in documents).

The processing operations carried out by the Company on the basis of the aforementioned deeds of reciprocal designation for

the reasons set out above are therefore carried out in violation of art. 28 of the Regulation.

Finally, with regard to the disputed violation of art. 6 of the Regulation, carried out in relation to the possibility for the Company's management to learn the content of communications which also took place with accounts with the form-app.it extension, i.e. attributable to a separate company (Form-App s.r.l.), and the consequent processing of data personal data of employees and collaborators who use the related accounts, having taken note of what was declared by the Company in the defense briefs ("the Management of the Company Form-App srl and La RisorsaUmana.it srl, identified in the same natural person [...], is justified and authorized to process the data in the name and on behalf of the two companies and in the specific case to also be able to communicate with operating personnel having email extension form-app.it") and having seen the attached documentation (Annex 1, Minutes of the meeting chaired by the Sole director of the company Form-App srl, dated 15/11/2017, containing the company organization chart where the institor of the company appears to assume the representation of the company and the function of company management), it is decided to file the relative dispute.

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

For the aforementioned reasons, the Authority believes that the declarations, documentation and reconstructions provided by the data controller during the preliminary investigation do not allow the findings notified by the Office to be overcome with the act of initiating the procedure and that they are therefore unsuitable to allow the filing of this proceeding, since none of the cases envisaged by art. 11 of the Regulation of the Guarantor n. 1/2019.

The processing of personal data carried out by the Company and in particular the processing of data via corporate e-mail and the processing carried out on the basis of reciprocal designations as data processors is in fact unlawful, in the terms set out above, in relation to articles 5, par. 1, lit. a) and c), 13 and 28 of the Regulation.

The violation ascertained in the terms set out in the reasoning cannot be considered "minor", taking into account the nature and seriousness of the violation itself, the degree of responsibility, the manner in which the supervisory authority became aware of the violation (see 148 of the Regulation).

Therefore, given the corrective powers attributed by art. 58, par. 2 of the Regulation, a pecuniary administrative sanction is ordered pursuant to art. 83 of the Regulation, commensurate with the circumstances of the specific case (Article 58, paragraph 2, letter i) of the Regulation).

5. 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; art. 166, paragraph 7, of the Code).

At the end of the proceeding it therefore appears that La Risorsa Umana.it s.r.l. has violated the articles 5, par. 1, lit. a) and c), 13 and 28 of the Regulation. For the violation of the aforementioned provisions, the application of the pecuniary administrative sanction envisaged by art. 83, par. 4, lit. a) and 5, lett. a) and b) of the Regulation, through the adoption of an injunction order (art. 18, law 11.24.1981, n. 689).

Considering it necessary to apply paragraph 3 of the art. 83 of the Regulation where it provides that "If, in relation to the same treatment or related treatments, a data controller [...] violates, with willful misconduct or negligence, various provisions of this regulation, the total amount of the pecuniary administrative sanction does not exceed amount specified for the most serious violation", the total amount of the fine is calculated so as not to exceed the maximum prescribed by the same art. 83, par. 5.

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

a) in relation to the nature and seriousness of the violation, the nature of the violation was considered relevant, which concerned the general principles of treatment (in particular the principles of correctness and minimization), the obligation to provide information and the provision on the controller (Article 83, paragraph 1, letter a) of the Regulation);

b) with regard to the degree of responsibility of the owner, the negligent conduct of the Company was taken into consideration, which did not comply with the regulations on data protection in the context of the employment relationship with its collaborators (art. 83, par. 1, letter b) of the Regulation);

c) with regard to the degree of cooperation with the Supervisory Authority, it was considered that the Company cooperated with the Guarantor during the proceeding (Article 83, paragraph 1, letter f) of the Regulation);

d) with reference to the intentional or negligent nature of the violation, it was considered that the Company, with its conduct, intended to monitor the communications of employees and collaborators (Article 83, paragraph 1, letter b) of the Regulation);

e) in favor of the Company, the absence of previous violations regarding the protection of personal data was also taken into account (article 83, paragraph 1, letter a), e) and g) of the Regulation).

It is also believed that they assume relevance in the present case, taking into account the aforementioned principles of

effectiveness, proportionality and dissuasiveness with which the Authority must comply in determining the amount of the fine (Article 83, paragraph 1, of the Regulation), in firstly the economic conditions of the offender, determined on the basis of the revenues achieved by the Company with reference to the ordinary financial statements for the year 2021.

In the light of the elements indicated above and the assessments made, it is believed, in the present case, to apply against La Risorsa Umana.it s.r.l. the administrative sanction of the payment of a sum equal to 40,000 (forty thousand) euros.

In this context, it is also considered, in consideration of the type of violations ascertained that concerned the general principles of treatment (in particular the principles of correctness and minimization), the obligation to provide information and the provision on the data controller, which pursuant to of the art. 166, paragraph 7, of the Code and of the art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019, this provision must be published on the Guarantor's website.

It is also believed that the conditions pursuant to art. 17 of Regulation no. 1/2019.

ALL THAT BEING CONSIDERED, THE GUARANTOR

notes the illegality of the processing carried out by La Risorsa Umana.it s.r.l., in the person of its legal representative, with registered office in Via Carlo Marx, 95, Modena (MO), P.I. 01971890353, pursuant to art. 143 of the Code, for the violation of the articles 5, par. 1, lit. a) and c), 13 and 28 of the Regulation;

DETERMINE

to file the dispute adopted against La Risorsa Umana.it s.r.l., in the person of its legal representative, with deed of 1 September 2022, limited to the violation of art. 6 of the Regulation;

ORDER

pursuant to art. 58, par. 2, lit. i) of the Regulations to La Risorsa Umana.it s.r.l., to pay the sum of 40,000 (forty thousand) euros as an administrative fine for the violations indicated in this provision;

ENJOYS

then to the same Company to pay the aforementioned sum of 40,000 (forty thousand), according to the methods indicated in the attachment, within 30 days of notification of this provision, under penalty of adopting the consequent executive deeds pursuant to art. 27 of the law n. 689/1981. It should be remembered that the offender retains the right to settle the dispute by paying - always according to the methods indicated in the attachment - an amount equal to half of the fine imposed, within the term referred to in art. 10, paragraph 3, of Legislative Decree lgs. no. 150 of 1.9.2011 envisaged for the lodging of the appeal

as indicated below (art. 166, paragraph 8, of the Code);

HAS

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

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

Rome, 23 March 2023

PRESIDENT

station

THE SPEAKER

station

THE SECRETARY GENERAL

Matthew