

Order injunction against La Duomo S.r.l.s. - December 2, 2021

Record of measures

n. 425 of 2 December 2021

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

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

GIVEN the Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016, concerning the protection of individuals with regard to the processing of personal data, as well as the free circulation of such data and which repeals Directive 95/46 / EC (General Data Protection Regulation, hereinafter the "Regulation");

GIVEN 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 national law to the aforementioned Regulation (hereinafter the "Code");

HAVING REGARD to the documentation on file;

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

SPEAKER Attorney Guido Scorza;

WHEREAS

1. THE INVESTIGATION ACTIVITY CARRIED OUT

During 2020, the Guarantor received some requests and complaints relating to the receipt of promotional text messages for the Evo24 service, a trademark attributable to Omnia 24 S.r.l. .. In one case, the name and surname of the complainant and the Municipality were indicated in the text of the message. of belonging.

In particular, with notification of 8 May 2020, the lawyer XX complained that he had received a text message following which he exercised his right of access to the data towards Omnia 24. The latter replied that he had acquired such data from La Duomo S.r.l.s. that "has guaranteed and certified the regularity of the acquisition", ensuring that the data has been deleted.

The lawyer XX therefore sent La Duomo a request to have proof of the consent issued for marketing purposes; in the absence

of a reply, he sent a reminder the following month, forwarding the pec also to Omnia 24. Not getting any response, he sent the report to the Guarantor.

With a complaint dated February 14, 2020, Mr. XX complained about receiving a text message following which he exercised the right of access to data towards Omnia 24 asking to know, among other things, how to acquire consent and the source of the data. Omnia 24 sent the following reply: "Hello, we apologize for the inconvenience and we inform you that we will not disturb you further for info and commercial promotions. Sincerely". Dissatisfied with this response, Mr. XX reiterated his requests with pec but received no response, therefore having to contact the Guarantor.

As part of the investigations initiated by the Office on the basis of the aforementioned requests, Omnia 24 replied that "our company engages external companies in relation to marketing activities, including the sending of promotional text messages. In the present case, ..., the marketing activity had been outsourced to the company La Duomo Srls [...] In providing the assignment, we request that the external company comply with current legislation and La Duomo Srl itself had guaranteed us that the lists of subjects contacted were correct. We therefore declare ourselves completely unrelated to the story".

The company La Duomo declared - in both cases - that it had acquired a consent but that it was unable to provide documentary proof of this acquisition and that it had deleted the data. No other information was provided regarding the origin of the data.

2. VIOLATIONS DETECTED

Based on the laconic answers provided, both by Omnia 24 and by La Duomo, and in the absence of contractual documentation (never provided to the Guarantor) useful for assessing the roles and responsibilities of the parties overall, with a note dated 9 April 2021, delivered with pec, La Duomo was notified of the act of initiating the procedure pursuant to art. 166, paragraph 5 of the Code.

Account was taken of the fact that neither Omnia 24 nor La Duomo provided clarification regarding the role covered in the specific treatment but both declared that they had taken note of the opposition expressed by the complainants.

Even in the absence of an express qualification of the roles, it is still possible to infer from the documents that La Duomo has had autonomous ownership in the processing with regard to the data collection and communication phase while, with regard to the specific treatment put in place to carry out the promotional campaign for Omnia 24, it was not possible to concretely ascertain whether the Company acted as manager or co-owner.

Therefore, the Company was challenged that the conduct described gave rise to the sending of promotional messages and the communication of data to third parties without consent - since in both cases La Duomo declared that it did not have the documentary evidence - thus integrating the violation of art. 6, par. 1, lett. a) of the Regulations and art. 130 of the Code.

Furthermore, as described in the introduction, in one case the failure to respond to the request for access to data submitted directly to the Company was complained. The violations of articles 12 and 15 of the Regulation.

Furthermore, it must be remembered that the data controller is required to implement adequate technical and organizational measures to guarantee, and be able to demonstrate, that the processing is carried out in compliance with the Regulations. In the present case, however, it does not appear that the Company has adopted suitable measures to acquire the consent of the interested parties and to provide feedback to the exercise of rights. Therefore, the violation of art. 5, par. 2 and art. 24 of the Regulation.

3. CONCLUSIONS

Having acknowledged that the Company has not presented defensive writings or requested to be heard by the Authority, the alleged violations are considered confirmed.

Taking into account the fact that the Company has not provided any assurance regarding the origin of the data and the methods of acquiring consent for promotional purposes, it is necessary, pursuant to art. 58, par. 2, lett. f), prohibit the processing for promotional purposes of the personal data of subjects for which it is unable to prove the origin of the data and the acquisition of appropriate consent to the processing for promotional purposes.

Furthermore, since the Company has not provided a response to the (repeated) request of an interested party, unless after the intervention of the Guarantor, it is necessary to order La Duomo, pursuant to art. 58, par. 2, lett. d), to adopt appropriate procedures to ensure full and effective feedback to the exercise of rights.

Finally, with regard to the treatments already carried out and with dissuasive intent, it is believed that the conditions exist for the application of a pecuniary administrative sanction pursuant to Articles 58, par. 2, lett. i) and 83 of the Regulation.

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

On the basis of the above, given the violations referred to, the sanction provided for by art. 83, par. 5 of the Regulation.

For the purposes of quantifying the administrative sanction, the aforementioned art. 83, par. 5, in setting the maximum legal limit in the sum of 20 million euros or, for companies, in 4% of the annual worldwide turnover of the previous year, whichever is

higher, specifies the methods of quantifying the aforementioned sanction, which must "in any case [be] effective, proportionate and dissuasive "(art. 83, par. 1 of the Regulations), identifying, for this purpose, a series of elements, listed in par. 2, to be assessed when quantifying the relative amount.

In compliance with this provision, in the present case, the following aggravating circumstances must be considered:

1. the duration of the violation and the number of subjects involved since, on the basis of what emerged from the reports, the processing lasted for a few months from 2019 to 2020 and, in the absence of assurances in this regard by the Company, probably involved a large number of mobile users (all those affected by promotional campaigns);
2. the degree of responsibility of the Company which has not demonstrated that it has put in place any measures to ensure the presence of an appropriate legal basis for the processing of personal data;
3. the degree of cooperation shown in the discussions with the Authority since the Company has limited itself to declaring that it cannot document the consents without providing any clarification regarding the origin of the data and the role played in the processing.

As mitigating elements, it is believed that we must take into account:

1. the nature of the data processed, of a common type, and the consequent level of potential prejudice for the data subjects;
2. the economic results recorded in the financial statements in 2019 and the nature of the Company's micro-enterprise;
3. the absence of previous proceedings initiated against the Company.

In an overall perspective of the necessary balancing between the rights of the interested parties and freedom of enterprise, and in the first application of the administrative pecuniary sanctions provided for by the Regulation, it is necessary to prudently evaluate the aforementioned criteria, also in order to limit the economic impact of the sanction on the needs. organizational, functional and occupational of the Company.

Therefore it is believed that, based on the set of elements indicated above, the administrative sanction of the payment of a sum equal to € 20,000.00 (twenty thousand / 00), equal to 0.1% of the maximum legal limit, should be applied to La Duomo and, due to the aggravating elements found, the accessory sanction of the publication in full of this provision on the website of the Guarantor as required by art. 166, paragraph 7 of the Code and by art. 16 of the regulation of the Guarantor n. 1/2019.

Please note that pursuant to art. 170 of the Code, anyone who, being required to do so, does not comply with this provision of prohibition of processing is punished with imprisonment from three months to two years and who, in the event of

non-compliance with the same provision, the sanction referred to in administrative office is also applied. to art. 83, par. 5, lett. e), of the Regulation.

Finally, it is believed that the conditions set out in art. 17 of Regulation no. 1/2019 concerning internal procedures with external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor, for the annotation of the violations found here in the internal register of the Authority, provided for by art. 57, par. 1, lett. u) of the Regulations.

WHEREAS, THE GUARANTOR

pursuant to art. 57, par. 1, lett. f), of the Regulations, declares the processing described in the terms set out in the motivation unlawful by La Duomo S.r.l.s., with registered office in Rimini, Via Eugenio Curiel 11, VAT no. 04155290408, and consequently:

a) pursuant to art. 58, par. 2, lett. f), prohibits the processing for promotional purposes of the personal data of subjects of which it is unable to prove the origin of the data and the acquisition of appropriate consent to the processing for promotional purposes;

b) pursuant to art. 58, par. 2, lett. lett. d), orders the adoption of appropriate procedures to ensure full and effective feedback to the exercise of rights;

ORDER

to La Duomo S.r.l.s., with registered office in Rimini, Via Eugenio Curiel 11, VAT no. 04155290408, to pay the sum of € 20,000.00 (twenty thousand / 00) as a fine for the violations indicated in the motivation, 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 prescribed requirements and the payment, within thirty days, of an amount equal to half of the sanction imposed.

INJUNCES

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 € 20,000.00 (twenty thousand / 00), according to the methods indicated in the annex, 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

a) pursuant to art. 17 of the Guarantor Regulation n. 1/2019, the annotation in the internal register of the Authority, provided for

by art. 57, par. 1, lett. u) of the Regulations, violations and measures adopted;

b) pursuant to art. 166, paragraph 7, of the Code, the full publication of this provision on the website of the Guarantor.

The Guarantor, pursuant to art. 58, par. 1, of Regulation (EU) 2016/679, also invites the data controller to communicate within 30 days from the date of receipt of this provision, which initiatives have been undertaken in order to implement the provisions of this provision and to provide however, adequately documented confirmation. Please note that failure to respond to the request pursuant to art. 58 is punished with the administrative sanction pursuant to art. 83, par. 5, lett. e), of Regulation (EU) 2016/679.

Pursuant to art. 78 of Regulation (EU) 2016/679, as well as art. 152 of the Code and 10 of the legislative decree 1 September 2011, n. 150, opposition to this provision may be filed with the ordinary judicial authority, with an appeal filed with the ordinary court of the place where the data controller is resident, or, alternatively, to the court of the place of residence of the person concerned. , within thirty days from the date of communication of the provision itself, or sixty days if the applicant resides abroad.

Rome, 2 December 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Peel

THE SECRETARY GENERAL

Mattei