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Provision of April 14, 2023

Register of measures

no. 182 of 14 April 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 dr. Claudio Filippi, deputy secretary general;

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

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

HAVING REGARD to the documentation in the deeds;

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

SPEAKER the lawyer Guido Scorza;

WHEREAS

1. THE INVESTIGATION ACTIVITY CARRIED OUT

1.1 Introduction

With deed no. 0010911/21 of 23 February 2021 (notified on the same date by certified email), which here must be understood as reproduced in full, the Office has initiated, pursuant to art. 166, paragraph 5, of the Code, a procedure for the adoption of the provisions pursuant to art. 58, par. 2, of the Regulation towards Green Network S.p.a. (hereinafter "Green Network", "the Company" or "GN", for brevity) in the person of the pro-tempore legal representative at the Company's registered office in Rome, Via Giulio Vincenzo Bona n. 101 (cap. 00156), Tax Code 074551521004.

The proceeding, to be contextualized in the broader activity of the Guarantor aimed at combating illegal telemarketing in the energy sector, originates from an investigation conducted jointly and cumulatively by the Authority, pursuant to articles 10, paragraph 4 and 20, paragraph 2, of the internal regulation of the Guarantor n. 1/2019 (available on the website www.gpdp.it). This following two complaints and some reports from interested parties, who complained (as will be seen better infra par. 1.2) the receipt of telephone calls for promotional purposes by the Company, in some cases on reserved users and in others on entered in the public register of oppositions.

1.2. The request for information and presentation of documents, pursuant to art. 157 of the Code and the feedback provided by Green Network

In the aforementioned context, on 7 October 2020, Green Network S.p.a. was the recipient of a cumulative request for information, pursuant to the combined provisions of articles 58, par. 1, lit. a) GDPR and art. 157 of the Code, (infra par. 1.2), with regard to a total of 5 files (nos. 138510, 140542, 136536, 138871, 138907) in which unwanted telephone contacts on behalf of the Company were complained of.

With a note dated 26 October 2020 (prot. 0040112/20 of 27 October 2020) the Company provided a response, reconstructing the events that involved the complainants and whistleblowers. As a preliminary step, the Company intended to draw attention to the specific policies that commercial partners are required to comply with when operating on behalf of Green Network, as well as to the practice, adopted by the latter, of providing timely responses to all reports received regarding unwanted promotional contacts.

The Company has also specified that within its databases there have never been personal data of the interested parties who had reported the illicit calls, except for those who had sent complaints directly to the same (file 138510 and file 140542).

With regard to the specific complaints received by the Guarantor, Green Network therefore highlighted how in all cases in which the interested parties provided the number from which the contact was received (files 138510, 140542, 136536), the internal checks carried out made it possible to detect that all the aforementioned numberings do not appear to have been authorized by the Company.

More generally and with reference to all interested parties, the Company has represented that it must likewise be excluded that "the interested parties have been legitimately contacted (on our behalf) by the latter [the commercial partners, editor's note]".

With respect to the complaint referred to in file 138510, the Company represented that it had provided for the inclusion of the

number in the black list, the day following receipt of the request from the interested party.

With regard to the complaint referred to in file 140542, Green Network drew the attention of the Authority to the feedback provided directly to the interested parties, including a communication dated 17 July 2019, which highlighted how the number used for the unwanted promotional contact was not attributable to the Company or its partners .

Finally, the Company intended to underline its priority commitment aimed at countering "the phenomenon of calls from unauthorized numbers of third parties" who claim to act on its behalf; phenomenon which, to said Company, would cause numerous damages, not only to its image.

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

Having examined the feedback provided by the Company, the Office, as mentioned above, adopted on 23 February 2021, pursuant to art. 166, paragraph 5, of the Code, the act of initiation of the procedure referred to in the introduction, with which he contested the Company's violation of the following provisions and for the following reasons:

1) Articles 5, par. 2, and 25, par. 1 of the Regulations (Principle of accountability and privacy by design), for not having taken effective action to counteract the phenomenon of undue promotional contacts made in your name, exercising (and being able to prove) in a full and conscious manner, your attributions, to which the duties of accountability and privacy by design correspond (through elements of prevention, functionality, security, transparency of the treatment and centrality of the interested party).

The mere non-referability of the calling numbers to the list of those in use by the Company and its commercial partners, presented by Green Network (in 8 cases out of 9) as an element of response to the request sent by the Guarantor, is critical in reason for that proactive perspective that defines the principle of accountability of the data controller that permeates the entire new data protection regulatory framework.

In fact, the circumstance whereby telephone contacts are made in the name and on behalf of Green Network made it necessary and essential to carry out punctual and constant supervision and monitoring work.

In the opinion of this Authority, it appears unreasonable to believe that the complained activity – known, moreover, by Green Network, as the Company itself declared in the response provided to the Authority – is carried out using (presumably with significant outlays) an articulated type of data with the exclusive intention of damaging it and exposing it to sanctions by the Authority or to similar initiatives by other institutions, due to the alleged offences.

Nor did elements emerge from the context represented that are capable of excluding with certainty that from this activity, parallel and external to Green Network and apparently characterized by a certain systematic nature, there may be no advantages for the latter in terms of activating services or signing new contracts .

In the response provided by the Company, there was no evidence - apart from a generic reference to the commitment undertaken to combat this practice - regarding the adoption by the Company of technical and organizational measures suitable for combating the complained phenomenon.

Nor has Green Network shown to have fulfilled the aforementioned duties of accountability and privacy by design, in particular through the introduction of forms of control within the corporate organization both internally (also with regard to personnel) and with respect to the network of sales (partners), as well as on the systems responsible for activating offers and services for its customers.

2. DEFENSIVE OBSERVATIONS AND ASSESSMENTS OF THE AUTHORITY

2.1. Defense brief and hearing of Green Network S.p.A.

Pending the presentation of the defense brief, GN sent the Guarantor, on 11 March 2021, a request for extension of the deadline for the presentation of the aforementioned briefs, together with an application for access to administrative documents (prot. 0013753/21 of March 12, 2021) referring to "all the documentation that gave rise to the proceeding".

On 23 March 2021, the Authority (prot. 0015647/21), communicated the acceptance of the access request, while specifying that the relevant documentation relating to the procedure in question was already completely available to the Company, having been fully attached to the request for information formulated by the Office on 7 October 2020. In any case, also due to the epidemiological emergency still in progress at the time, a 15-day extension was granted for the production of the defense briefs.

On 8 April 2021, Green Network sent a defense brief to the Authority, accompanied by some annexes, pursuant to art. 166, paragraph 6, of the Code. Based on the same provision, on 13 April 2021, the hearing requested by the party for which the appropriate report was drawn up was held by videoconference. Both documents are to be understood here, for the protection of the party, fully referred to and reproduced, together with the attachments to the defense brief. In any case, the salient elements are reported below:

1) With reference to the dispute referred to in number 1 of par. 1.3 in relation to the principle of accountability and privacy by

design (Articles 5, paragraph 2, and 25, paragraph 1 of the Regulation), Green Network, both in the statement and in the hearing, contested that it had committed such a violation and has requested the dismissal of the entire proceeding, for the following reasons, which can be summarized in three defensive elements:

a) complete non-involvement of the Company in the unwanted calls object of the complaints presented to the Guarantor and lack of systematic conduct (Point II of the defense brief) - The Company has specified that in its databases there have never been personal data of the complainants and reporting subjects (except those received as a result of the complaints themselves) and that the calling numbers indicated in the complaints do not correspond to numbers authorized by GN (point 9 and more widely also points 21-22 of the brief). In addition to this, GN underlined how the small number of complaints/reports (five) and the large period of time in which they were presented must lead to the exclusion of the systematic character contested by the Authority;

b) presence of a detriment deriving to Green Network from the contested conduct and absence of advantages for the Company (Point III of the defense brief) - Given that, according to the Company, it is not correct to contest violations of the Regulations for the sole fact that the interested parties have reported telephone contacts allegedly made in the name and on behalf of Green Network, the Company reports a series of cases - one of these already known to the Authority - in which the Company's name has been confused with the similar one of other market operators ; on the merits, GN criticized the general formulation of the disputes formulated by the Authority, considering them entirely hypothetical and devoid of "probative or even circumstantial" elements. In particular, the impossibility for GN to demonstrate a "negative circumstance" was underlined, i.e. the absence of an advantage deriving for the Company from unwanted calls (point 13 defense brief).

Both in the brief and in the hearing, the Company represented how the effects of such commercial practices cannot be perceived as advantageous for Green Network, since, in addition to damage in terms of reputation and image, the conclusion of an illicit contract and its subsequent termination shall be borne entirely by the Company, not counting the costs for handling complaints and the risk of any sanctioning proceedings.

The Company was also keen to highlight some initiatives undertaken autonomously, in order to combat the phenomenon referred to, such as the collection of information and useful reports which are then also exchanged with other market operators, participation in roundtables attended by the various players of the energy sector as well as cooperation with business and consumer associations. Finally, GN also recalled the report made, in a specific case, to the AGCM and ARERA,

as well as a complaint for the crime of impersonation against "subjects who presented themselves as Green networks" (point 14 defense brief).

c) adoption of suitable measures by Green Network to contrast the practices referred to (Point IV of the defense brief) - the Company illustrated a series of measures which, in its opinion, would contradict the Authority's assertion regarding the absence of evidence proving the adoption of technical and organizational measures suitable for contrasting the complained phenomenon.

In the first place, GN recalled the central relevance of its "agency contract" model as the "first measure adopted to combat the phenomenon" (Point 16 of the defense brief and annex 12 to the brief, which however contains only a part of the contract of agency).

It has been reported that the agent, when acting on behalf of GN and appointed as a data processor, must before using any promotional contact:

- "verify that the contacts are not entered in the Public Register of Oppositions and must give evidence to Green Network of the verification;
- verify that the number is not present in the opposition lists (so-called blacklist) of Green Network, using the appropriate tools made available by the latter, in particular by filtering the contact lists using the appropriate tool."

Furthermore, GN reiterated that "To contact interested parties, the agent is required to use only numbers registered in the Register of Communications Operators; the numbers must be readable by the interested party, recontactable and suitable for identifying the calling subject and the reason for the call. The agent is also required to communicate to Green Network the numbers used to contact the interested parties, using and updating the appropriate tool (the so-called "Numbering Tool")." (Par. 16 defensive brief).

These checks are envisaged for teleselling activities (prospect customers) and for the physical sales channel (prospect customers with an appointment) and on the so-called lists. "supplied" [by the owner or GN, editor's note] both on the so-called "procured" independently by the agency (in this case we speak of self-supply), as can be seen from the model attached to the briefs (Annex 12, table contained therein).

Still with reference to the relationship with the agencies, the Company specified that each agent is required to observe the provisions of the "Code of conduct for operators who manage contacts with Green Network's end customers" (Annex 13 to the

defense brief) which is attached to the contract itself. Furthermore, the agency is required not to use automated contact systems (clause 17.8 of annex 11 to the memorandum). Sanctions are also envisaged for the agent in the event of breach of the contractual provisions.

Furthermore, the violation of the prohibition to resort to the use of partners (Companies, agencies/or networks of agents/agencies, etc), sub-agents, auxiliaries and any other collaborator without prior written authorization from GN is grounds for termination of the contract (clause 14, all. 11 to the defense brief).

Secondly, given that, as a company choice, GN has decided to limit the use of sub-agencies, the latter, where present, must be previously authorized by Green Network, must be located exclusively and permanently in Italy and "for they are activated an autonomous panel in order to allow GN to trace their work directly" (Point 17 of the brief).

As for the aforementioned measures to verify the work of the agencies, GN has expressly declared that there is the possibility for the Company, at any time, to "trace the person who uploads the contracts to its systems, blocking any non-compliant activation." (Point 17 of the statement).

The characteristics of these measures were partially clarified during the hearing, where the Company specified that it would be impossible for any sub-agencies to transfer contractual proposals to the Company through the interface of an agency with which Green Network has established a contractual relationship. Each sub-agency has "an autonomous upload panel that allows you to carry out the necessary checks." (minutes of the hearing of 13 April 2021).

In the same meeting, the Company also specified to carry out a cross-check of the following data which must necessarily correspond to each other: a) the telephone number used to contact the potential new customer; b) the telephone number relating to the agency that uploads the new contract proposal to the Green Network system.

The cross-checking, which at the time these declarations were made, took place on a sample basis and only in a phase following the stipulation of the contract, will take place in the future, according to what is reported "through an automated mechanism that will compare the number communicated by the customer in the vocal order registered with the one entered manually by the agency that will upload the contract proposal: if this number is not authorized by the Company, the uploaded contract proposal will be automatically rejected, without any further follow-up.".

The new system, according to what was declared by the Company only during the hearing (April 13, 2021), would have been completed and made fully operational by September 2021.

Coming to the preliminary checks for the conclusion of the contract with the user, a call from a third party (check call) or the signing of the contract with an electronic signature validated with OTP is envisaged, and this in order to avoid the activation of contracts whose origin has not been verified (Point 17 of the brief).

Just as the Company reports that its Sales Quality Control department carries out periodic spot checks on the contracts loaded: "contacting the interested parties by telephone and asking them to indicate the number from which they received the call/calls that led to the registration of the proposal contractual; and, consequently, in the event that the numbering reported by the customer does not correspond to those in use by the agency, requesting the same log of the call made to that customer with date, time and calling number used, in such a way as to contest any eventual discrepancy found." (always Point 17 of the memorandum).

In summary, the Company declares that it has prepared verification tools for both the Management Control function and that of Sales Quality Control in order to monitor the activities of the agencies. Any anomalies with respect to pre-established parameters would be promptly reported as could happen, for example, when certain thresholds were reached, such as the rate of non-recognition of contracts.

Lastly, again in relation to the activities of the agencies, GN stated that periodic visits are made by its representatives to the agencies. There, the GN representatives check and verify that the numbers called are previously filtered, so as to exclude those entered in the register of oppositions.

It was represented that of the 674 verification activities carried out by Green Network through the "check number" tool (on the website www.greennetworkenergy.it) in the years 2019, 2020 and 2021, only one was actually registered in the opposition register.

Lastly, the Company stated that it had activated, since 2015, a consumer assistance service through the "Green Network Ti Tutela" page on its website. On this page it is possible to check whether the number from which the user was contacted is authorized for Green Network commercial campaigns and it is also possible to report any problem relating to the sales process and formulate any request for cancellation and/or opposition to the processing of personal data towards the Company.

Although the party reserved the right, during the hearing, to send all the additional documentation in support of what was represented in that same venue, no subsequent additional communication has been received by the Authority.

2.2 Considerations in fact and in law

The defensive arguments presented by Green Network and referred to above do not completely exclude the Company's liability for the alleged violations for the following reasons, to be considered in conjunction with the observations already expressed in the aforementioned notice of dispute:

1) with reference to the complaints made by the Guarantor with regard to the accountability profiles of the owner and compliance with the principle of privacy by design (articles 5, paragraph 2, and 25, paragraph 1 of the Regulation), as referred to in inside number 1) of par. 1.3, the arguments presented by the Company, although partly relevant, are not sufficient to completely overcome the findings of the Authority.

The arguments of the Company in defense of its position, through the reference to the complete extraneousness to the conduct and the existence of a detriment for the Company itself deriving from the incorrect behavior of others (see above letters a) and b), number 1, par. 2.2), are not supported by concrete elements suitable to exclude the responsibility of the owner and remain, as such, a mere hypothesis. This is mainly because in none of the argumentative passages developed has the serious and binding declaration about the activity of competitors aimed at acquiring customers expressly presenting themselves as Green Network been proven in a solid, convincing and incontrovertible manner. Nor can the reference to a single case in which GN autonomously managed to trace a person who committed deceptive commercial practices to its detriment and whose activity was also reported to the AGCM and ARERA satisfy this probative requirement. Likewise, the few cases reported in memory are unable to explain the phenomenon as a whole, based on unsubstantiated reports from users in which it is probable that the data subject may have made inaccuracies in reporting facts, circumstances and subjects involved. However, these reports do not appear to have been communicated as a priority to the Guarantor by the company, despite the fact that they referred to illicit processing of personal data.

In the absence of the aforementioned elements and in consideration of the requests of the interested parties received by the Authority, who reported unwanted contacts by the Company, or by its sales network, with declarations in relation to which they also respond from a criminal point of view pursuant to of the art. 168 of the Code, the ownership of the treatments in question and, consequently, the responsibility for the conduct in violation of the protection of personal data must be attributed to Green Network.

Coming to the arguments presented regarding the measures adopted by the Company to combat the phenomenon (supra letter c), point 1, par. 2.2), it should first of all be noted that relying solely on the contractual instrument with respect to the

correct work of the agencies, albeit fundamental, is not sufficient to prove compliance with the obligations of the Regulation. In fact, the contractual ties between the Company and the Agents, if applied exclusively as the only instrument of governance and control, are not effective in countering the phenomenon, because they are not based on the protection of personal data, because they are limited, per se, to an action on the network only of official sale and because, finally, easily circumvented. In this regard it is necessary to remember that the regulatory provisions (articles 5, paragraph 2, and 25, paragraph 1 of the Regulation) outline a precise framework of general responsibility incumbent on the data controller, not only in the sense of imposing on this lastly the adoption of adequate and effective measures to ensure compliance with the regulations on the protection of personal data but also in the sense of requiring that the owner demonstrates, concretely and with evidentiary elements detectable in the system (as indicated in article 24 of the Regulation) and therefore constantly monitored by the owner himself, the compliance of any processing activity that he has carried out directly or that others have carried out on his behalf (see also recital 74, RGPD). It is, therefore, a proactive approach that engages each controller in activities of greater incisiveness precisely at the moment in which new elements suitable to prove the implementation of unlawful processing on behalf of or using the name of the controller himself are highlighted.

It is therefore necessary to provide evidence and documented proof of overall assessments carried out constantly on the characteristics of the treatments, on the risks connected to them and on the effectiveness and adequacy of the measures adopted on a case-by-case basis. Effectiveness and adequacy that must be clearly demonstrated through structured and systematic reporting, risk forecasting and verification mechanisms on all the "links" - even the intermediate ones such as, for example, agencies or sub-agencies - of the processing chain, by the owner up to the interested party.

In this context, it is undeniable that the cited and alleged existence of a control system between the teleselling circuit and that of uploading the contractual proposal proves in favor of the Company, because the statements made by GN demonstrate that the Company has correctly "intercepted" the problem and has understood the most harmful profiles for the interested parties. For these reasons, it has begun to prepare a series of measures - albeit still incomplete and imperfect - aimed at verifying the correspondence between the origin of personal data functional to the promotional purpose and the effective finalization of the contract.

Just as the company choice to limit the use of sub-agencies to a minimum, together with the provision, starting from September 2021, to automate the aforementioned control mechanism between calling numbers and agencies that physically

upload the contract proposal, seems to reveal an approach sensitive to the inviolability of the sphere of privacy of individuals, trying to avoid possible nuisance opportunities to the detriment of the interested parties to a minimum, as well as indicating a certain attention to the principle of lawfulness regarding the protection of personal data.

However, two important elements remain, which contribute to confirming the existence of the alleged violations against GN, albeit with extenuating circumstances.

In the first place, there is no documentary evidence either in the defensive statements or in the documentation produced of a specific reference in the context of the control calls, neither in the pre-contractual ones nor in the "sample" ones on verification activities unequivocally addressed to the lawfulness of the original acquisition of the data and/or of the first contact, focusing rather on the sole verification of the regularity of the contractual profiles and of the numbering from which the customer received the call that led to the registration of the contractual proposal.

On the contrary, the Company has documented that the preventive control activity on the legitimacy of the first contact is fully delegated to the agencies (point 17.3 of the Contract Model, as per attachment 11 of the brief), thus not fully fulfilling either the obligation to demonstrate compliance with the Regulation or a predetermination of adequate technical and organizational measures aimed at effectively implementing the principles of data protection.

Any verification call, if relating only to aspects of the will to contract, does not appear in itself sufficient to prove the legitimacy of the origin of the data from the first contact with potential customers and reveals, on this side, a merely formalistic and conservative based on an assessment pertaining only to the civil sphere of the contract and its characteristics, without the emergence of a proactive approach to protect the complex of rights not only of the consumer but also of the interested party. In other words, a "quality check" that does not also contemplate a specific and complete passage of a real "privacy check" cannot be said to be a suitable and adequate measure to effectively implement the principles of data protection nor to guarantee the satisfaction of the regulatory requirements or to protect the rights of the interested parties. The provision regarding the request for the calling number and the subsequent check represents a starting point but does not appear in itself sufficient to fully ensure control over the legitimacy of the first contact.

Secondly, from the documentation provided by the Company and examined by the Guarantor, the characteristics of the methods of access to the systems responsible for activating offers and services, through which the agencies can convey the results of their activities, do not emerge with unequivocal clarity. On the contrary, there are inconsistencies between what was

declared in the brief and during the hearing and what, on the other hand, can be deduced from reading the attachments to the brief, above all the already mentioned contractual model in attachment 11.

In fact, in the text of the defense brief and during the hearing, GN stated that an autonomous panel is activated for the sub-agencies in order to allow GN to trace their work directly (Point 17 of the brief) and that there is the possibility for the Company, at any time, to "trace the person who loads the contracts on its systems, blocking any non-compliant activation." (always Point 17 of the memorandum).

However, the declarations are not confirmed by any illustrative documentation and, on the contrary, by the documentation produced by the Company, in fact, it appears to delegate to the agencies the control and prevention of the improper and/or unauthorized use of the information systems made available by it (including use of access credentials to GN's information systems by unauthorized users; Point 5.8 of the Contract Model, as per attachment 11 of the brief).

Moreover, within the same contractual model there is clearly a sort of indemnity in favor of GN where it reads "The Agent will also be required to indemnify and hold harmless GN from any consequence deriving from failure to comply with the guarantees given above" [on the subject of personal data protection, editor's note, clause 17.3)].

This system does not appear consistent with the obligation to prove compliance with the provisions of the Regulation, as the Company has offered an overall picture where, although there are positive elements, the technical-organizational documentary demonstration still appears generic, insufficient and merely indicative.

At the same time, in such a system, according to what is produced in the documents, it does not appear that the data controller has taken steps to integrate those guarantees in each step of the processing in order to meet the requirements of the regulation and consequently protect the rights of the interested parties.

It is precisely on the control relating to the loading platform of the contractual proposals that the preventive and subsequent checks by the owner should concentrate, especially in a commercial system that provides for the use of an external sales network and cannot be considered responsive to an accountability logic nor of privacy by design to delegate this control, through a civil law constraint, to the agencies alone.

The principle of accountability, the main novelty of the new regulatory framework, imposes among other things, as repeatedly supported by the Guarantor, a series of subsequent checks by the data controller precisely in the loading phase of the contractual proposals or of the verification mechanisms set up by the owner, explainable and demonstrable to the Supervisory

Authority, in order to prove compliance with the law and the responsibility of the owner himself. In other words, if the promotional activity (generally and commonly referred to as falling within the so-called "contact" sector) is apparently different and split from that of data entry, on closer inspection these two distinct moments are linked together by an unrelated succession only temporal but also teleological.

The phenomenon of "wild" telemarketing, in fact, is not fueled only through the use of lists with numbers without consent, unfair commercial partners or blackout of calling numbers; it draws lifeblood and justification from the absence of controls on the lawfulness of the data acquisition at the moment of formalization of the contractual obligation as well as from the lack of standardized and strictly predefined procedures able to protect the personal data of potential customers at the moment of formulation of the contractual proposal, whether it is conveyed through a single multi-firm platform or several single-firm platforms. In other words, as long as it is technically possible to insert contractual proposals and activate services in the systems of the client companies by bypassing the official sales chain and inserting in the information assets of the same companies illicitly collected personal data from which unauthorized contacts originated, the so-called "undergrowth" will always have the possibility of finalizing its activities and realizing its undue economic gains, accruing the expected commissions.

By virtue of the principle of accountability and that of privacy by design, the data controller should take suitable measures to guarantee, at any time and, even more so, upon request of the Supervisory Authority, the traceability of all the operations carried out on those platforms. By way of example only, these measures could be identified in authentication procedures which: a) prevent access to the platform for uploading contractual proposals with the same credentials from multiple locations; b) prevent access from different IP addresses or through authentication methods that do not comply with those authorized for each call centre/teleseller or agency when attributing credentials or appointing a data controller; c) assign individual authentication credentials for each operator authorized to carry out the insertion operations; d) allow the identification of the authorized operator even in the event of telephone contact with the assistance service.

Only measures of this type, together with the possibility of unequivocally identifying the person or agency that obtained the user's acceptance of the contractual proposal (a circumstance that GN has declared but not demonstrated), represent valid measures aimed at proving the compliance with the regulatory provisions by the holder in the performance of his economic activity.

The Regulation therefore imposes a more comprehensive and unified vision, rather than a formalistic and partial one, of the path followed by the personal data of potential customers starting from the first contact up to the signing of the actual contractual proposal.

Finally, still on the subject of control and verification measures, it is not clear exactly what the aforementioned GN statement refers to regarding "the instrument controls the number", which appears to refer to the calling telephone number and not to the number on which it is received unwanted communication. Only the latter, in fact, can be referred to or not registered in the Opposition Register. The numerical data reported by GN in point 23 of the brief, therefore, in abstract significance, is not understandable and in any case the control effect carried out, over a three-year period, by just over 650 verification activities appears very small compared to about 300,000 customers throughout Italy.

3. CONCLUSIONS

For the above, the responsibility of Green Network S.p.a. with regard to the following violations: articles 5, par. 2, and 25, par. 1 of the Regulation, for the reasons described in number 1 of the previous paragraph 2.2;

Therefore, everything considered and ascertained the unlawfulness of the Company's conduct with reference to the treatments examined, it is necessary:

a) order Green Network S.p.a, pursuant to art. 58, par. 2, lit. d) of the Regulation, to adapt each treatment carried out by its sales network to methods and measures suitable for providing and proving that the activation of offers and services and the subsequent registration of contracts takes place only following promotional contacts which, if they have been operated by telephone, have been made by the aforementioned sales network through telephone numbers recorded and registered in the ROC - Register of Communication Operators and in compliance with the provisions of art. 130 of the Code;

b) order Green Network S.p.a., pursuant to art. 58, par. 2, lit. d) of the Regulation, to adopt suitable and unambiguous technical-organisational measures to establish clear and constant control mechanisms regarding the methods of use and access to the IT platform responsible for activating contracts and making them available to agencies and blocking or suspending contractual proposals resulting from illicit promotional contacts;

c) ask Green Network S.p.a. to communicate which initiatives have been undertaken in order to implement the provisions of this provision and in any case to provide adequately documented feedback, pursuant to art. 157 of the Code, within 40 days of notification of this provision; any failure to reply may result in the application of the pecuniary administrative sanction provided

for by art. 83, paragraph 5, of the Regulation;

d) adopt an order-injunction for the application of a pecuniary administrative sanction pursuant to articles 166, paragraph 7, of the Code and 18 of the law n. 689/1981.

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.

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

The violations indicated above require the adoption of an injunction order, pursuant to articles 166, paragraph 7, of the Code and 18 of the law n. 689/1981, for the application against Green Network S.p.a. of the pecuniary administrative sanction provided for by art. 83, para. 3, 4 and 5 of the Regulations (payment of a sum up to €20,000,000, or, for companies, up to 4% of the annual worldwide turnover of the previous year, if higher).

To determine the maximum statutory fine, it is therefore necessary to refer to the turnover of Green Network S.p.A., as obtained from the latest ordinary financial statements published in the information system of the Chambers of Commerce, in accordance with the previous provisions adopted by the Authority , and therefore this statutory maximum is determined, in the case in question, at Euro 47,561,905.00.

For the purposes of determining the amount of the fine, the elements indicated in art. 83, par. 2, of the Regulation;

In the present case, the following are relevant:

- 1) the seriousness of the violations (art. 83, paragraph 2, letter a) of the Regulation) - with reference to the disputes referred to in number 1 of par. 2.2.2, due to the pervasiveness of the illicit contacts made in the name of the owner (detrimental to various fundamental rights and, in particular, in addition to the right to the protection of personal data, the right to privacy and the right to individual tranquillity), of the level of damage actually suffered by the interested parties, who have been exposed to nuisance calls and of the growing difficulties that they encounter in stemming the phenomenon;
- 2) as an aggravating factor, the duration of the violations (Article 83, paragraph 2, letter a) of the Regulation), due to the repeated nature of the violations referred to in number 1;
- 3) as a mitigating factor the small number of subjects involved (Article 83, paragraph 2, letter a) of the Regulation) which in the present case mainly refers to the 5 interested parties who have submitted their complaints;
- 4) as a mitigating factor, the purely negligent nature of the conduct (Article 83, paragraph 2, letter b) of the Regulation);

5) as a mitigating factor, the adoption of measures, partially clarified during the hearing, aimed at mitigating the consequences of the violations (Article 83, paragraph 2, letter c) of the Regulation), with reference, in particular to the adoption of a control system between the teleselling circuit and the one for uploading the contractual proposal; these measures, although technically not better detailed and, to our knowledge, openly being adopted during the defensive phase, testify to a certain awareness of the existence of the wild telemarketing phenomenon;

6) as a mitigating factor, the collaboration shown by the Company towards the Guarantor, also testified during the hearing, through punctual interventions;

7) as additional factors to be taken into consideration to parameterise the sanction (Article 83, paragraph 2, letter k) of the Regulation), the ample time margin granted to all data controllers in order to allow them to complete and consistent adaptation of systems and procedures to the new European legislation, already in force since 25 May 2016 and fully applicable since 25 May 2018; the particular attention that the legislator has paid to the regulation of the telemarketing phenomenon, also with recently adopted regulatory interventions (e.g., law no. 5/2018) as well as the extensive reference provisional activity produced by the Guarantor; considerations regarding the overall economic value of the Company.

Based on the set of elements indicated above, and the principles of effectiveness, proportionality and dissuasiveness provided for by art. 83, par. 1 of the Regulation, and taking into account the necessary balance between the rights of the interested parties and the freedom to do business, also in order to limit the economic impact of the sanction on the organisational, functional and employment needs of the Company, it is believed that it should apply to Green Network S.p.a. the administrative sanction of the payment of a sum of Euro 237,800.00 equal to 0.5% 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 risks deriving from the treatments in question which affect the rights and freedoms of the interested parties;

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

ALL THIS CONSIDERING THE GUARANTEE

a) enjoins Green Network S.p.a., pursuant to art. 58, par. 2, lit. d) of the Regulation, to adapt each treatment carried out by its

sales network to methods and measures suitable for providing and proving that the activation of offers and services and the subsequent registration of contracts takes place only following promotional contacts which, if they have been operated by telephone, have been made by the aforementioned sales network through telephone numbers recorded and registered in the ROC - Register of Communication Operators and in compliance with the provisions of art. 130 of the Code;

b) enjoins Green Network S.p.a., pursuant to art. 58, par. 2, lit. d) of the Regulation, to adopt suitable and unambiguous technical-organisational measures to establish clear and constant control mechanisms regarding the methods of use and access to the IT platform responsible for activating contracts and making them available to agencies and blocking or suspending contractual proposals resulting from illicit promotional contacts;

c) requests to Green Network S.p.a. to communicate which initiatives have been undertaken in order to implement the provisions of this provision and in any case to provide adequately documented feedback, pursuant to art. 157 of the Code, within 40 days of notification of this provision; any failure to reply may result in the application of the pecuniary administrative sanction provided for by art. 83, paragraph 5, of the Regulation;

ORDER

to Green Network S.p.a., in the person of its pro-tempore legal representative, with registered office in Rome, Via Giulio Vincenzo Bona n. 101 (cap. 00156), Tax Code 074551521004, to pay the sum of Euro 237,800.00 (two hundred and thirty-seven thousand eight hundred/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 237,800.00 (two hundred and thirty-seven thousand eight hundred/00), according to the methods indicated in the attachment, within 30 days of notification of this provision, under penalty of the adoption of the consequent executive acts pursuant to the 'art. 27 of the law n. 689/1981.

HAS

The application of the ancillary sanction of publication on the website of the Guarantor of this provision, 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 lodged 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, 14 April 2023

PRESIDENT

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THE SPEAKER

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THE DEPUTY SECRETARY GENERAL

Philippi