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Injunction order against solution Tasse S.p.A. - June 24, 2021

Record of measures

n. 257 of June 24, 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;

RAPPORTEUR prof. Pasquale Stanzione;

WHEREAS

1. THE INVESTIGATION ACTIVITY CARRIED OUT

With a complaint of 29 October 2019, presented to the Guarantor pursuant to art. 77 of the Regulations, Mr. XX complained about the receipt, on different dates, of three e-mails concerning the search for personnel and apparently coming from the address reclutamento@selezionecontabili.it. All e-mails bore the salutation addressed nominally to "XX" in the incipit. None of the three communications was signed by an identifiable person. The first (dated March 28, 2019) bore the words "Dep. Human Resource - SelezioneContabili.it via Lungaggine, 28 Rome, Italy, 00100 Italy "; the second (dated May 20, 2019) indicated “the solution tax HR team”; the third (of 25 July 2019) only the signature “the HR team”.

The complainant pointed out that, since there were no references in the e-mails received that would allow the identification of

the data controller, nor a link for unsubscribing, he could not do anything but send a request to exercise the rights to the address reclutamento@selezionecontabili.it, resulting as the sender of the e-mails. Having received no response, Mr. XX filed a complaint with the Guarantor.

The Office, in order to identify the data controller, carried out checks on the headers of the e-mails in question, going back to the Tasse S.r.l. (hereinafter "Tax Solution" or "the Company") and on the website www.soluzionetasse.com where, despite being indicated as the owner and contact person for the company SOLUTION TASSES S.p.A., the company SOLUTION TASSE S.r.l. was mentioned as the data controller, which however, it was canceled from the business register.

Therefore, with a note dated June 16, 2020, a request for information was sent to both companies (using the certified email address that the register of companies referred to both), asking for clarification on what is represented in the complaint as well as on the actual roles regarding the processing of personal data.

In the absence of feedback, the request was reiterated pursuant to art. 157 of the Code with pec of 14 October 2020.

With a note of the following 5 November, the Tasse S.p.A. declared his absolute extraneousness to the complained behaviors, specifying that the address reclutamento@selezionecontabili.it "... as can be seen from the submitted documentation, in reality it is fictitious and is aimed at preventing identification and concealing the actual email of origin, which corresponds to the address: selectecontabili.st@gmail.com ”to which the Company has sent an e-mail of formal notice.

However, nothing has been clarified regarding the ownership of the processing with particular regard to what is reported in the privacy policy on the site.

However, from the checks carried out by the Office, as mentioned, a direct responsibility of the Tax Solution had emerged. In fact, by examining the headers of the e-mails received by the complainant, which had also been sent to the Company as an attachment to the request for information, it was possible to trace the different platforms used for sending. Among these, in particular, the one made available by the XX has been identified. who, when asked about it, stated that the sending of the e-mail dated 20 May 2019 was requested by Mr. XX on behalf of SOLUTION TASSE S.r.l .; from the Company's chamber of commerce survey, Mr. XX appears to be a special attorney and therefore an extraneousness to the alleged conduct seemed difficult to hypothesize.

On these assumptions, on 11 February 2021 the notice of initiation of the procedure was notified pursuant to art. 166, paragraph 5 of the Code.

With the defense brief of March 13, 2021, Solution Tasse has preliminarily declared that it has corrected the privacy policy on its website by eliminating any reference to Solution Tasse S.r.l., specifying that the incorrect indication of the legal form was due only "to a mere typographical error occurred at the time of the revision of the company documentation, made necessary by the transformation events from S.r.l. in S.p.A. which have recently affected the Company ".

With regard, however, to the investigations carried out regarding the sending of e-mails, the Company clarified that the e-mail sent via the XX platform had not been requested by the Company's attorney but ".... by another employee of Tax Solution… who, upon entering the payment for the services on the platform made available by XX, used the name of Mr. XX and the details of the payment card in his name. Mr. ..., by reason of his function and qualification, acted in a totally autonomous way both as regards the retrieval of the address of Dr. XX, and as regards the choice of sending methods, to his mailbox electronic, of the communications that gave rise to this proceeding, disregarding the precise company provisions received on the subject of sending communications by e-mail to customers or collaborators. For these reasons, Tax Solution, following the opening of this proceeding, having carried out the checks made necessary by the violations alleged by the Guarantor, has notified Mr. ... a disciplinary dispute letter ".

Finally, the Company declared that it immediately called the attention of company managers to compliance with the rules on the protection of personal data to make any type of contact with customers, consultants and collaborators (including potential ones).

2. LEGAL ASSESSMENTS

With reference to the factual profiles highlighted above, also based on the statements of the Company to which the declarant responds pursuant to art. 168 of the Code, the following assessments are formulated in relation to the profiles concerning the regulations on the subject of personal data protection.

Based on what has been reconstructed in the introduction, it is clear that the Company's conduct is characterized by lack of transparency with a consequent obstacle to the exercise of the rights of the interested party and the investigation by the Authority. It is noted, in fact, that the complainant complained about the receipt of three e-mails with similar content, sent in the interest of Solution Taxes over a period of a few months. The office, as described, has ascertained the responsibility of the Company with regard to the sending of the single e-mail of 20 May 2019 for which the Company has attributed the responsibility to an independent initiative of its own employee. Nothing has been declared regarding the other two e-mails, of

which the origin and interest of the same Tax Solution is evident, given that they are all almost identical in content and are sent from the same apparent recruitment @ e-mail address. selecontabili.it, even if the sending was done using different digital platforms.

With regard to the e-mail subject to investigation, the Company attributed the conduct to an autonomous initiative of one of its employees who would have acted deviating from company indications. Even this justification is not sufficient to exclude the responsibility of the data controller. First of all, because it has not been described in any way which measures were adopted at the time of the facts that the employee allegedly failed to comply with. Furthermore, because it seems implausible the existence of a personal interest in the employee such as to push him to activate a service in the name of the Company's attorney using data, such as those of the payment card, which should be known and kept only by the holder.

As already described, the messages sent were devoid of any information regarding the sender and the origin address itself was modified; moreover, the first e-mail received by the complainant bore at the bottom the reference to a non-existent website (soluzionecontabili.it) and to a fictional physical address (via della Lungaggine, Rome). For these reasons, it was impossible for the interested party to exercise the right to access the data, as they could only attempt to send an e-mail to the apparent address reclutamento@selezionecontabili.it without obtaining any feedback. At the same time, the lack of transparency and collaboration led to an aggravation of investigations by the Office to identify the data controller.

As stated above, the violation of articles 5, par. 1, lett. a), 12 and 15 of the Regulation and it is necessary, pursuant to art. 58, par. 2, lett. b) of the Regulations, to issue a warning to the Company regarding the illegality of the conduct put in place, also having to inflict an administrative-pecuniary sanction pursuant to art. 58, par. 2, lett. i) and 83 of the Regulation.

Finally, taking into account that the Company does not currently appear to have responded to the complainant's requests to know the origin of the data and to confirm the presence of any consent to the processing, it is considered necessary, pursuant to art. 58, par. 2, lett. c), to order the Tax Solution to satisfy the claims of the complainant.

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

On the basis of what is represented above, the articles being violated. 5, 12 and 15 of the Regulations, the sanction provided for by art. 83, par. 5 of the Regulation.

For the purpose of quantifying the administrative sanction, for the violations referred to in point 2, 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, given that the e-mails were sent periodically over a period of four months without the complainant ever being able to contact the data controller and consequently having to lodge a complaint with the Guarantor to protect their rights; therefore, it seems legitimate to assume that, in the absence of an intervention by the Authority, the conduct could have been protracted or repeated;

2. the degree of responsibility of the data controller, to be qualified as grossly negligent, taking into account that the Company was not able to demonstrate its extraneousness to the facts complained about and considering that the same, according to what was declared, was not aware of the activities carried out on their own until the intervention of the Guarantor; it is also necessary to take into account the incorrect information reported in the privacy policy regarding the company name of the owner which, although confined to a mere error in the legal form, have contributed to represent a framework of little interest for the protection of the rights of the interested parties , so much so that the corrective action was acknowledged only after repeated requests by the Authority;

3. the degree of cooperation with the Supervisory Authority, taking into account that the Company has not provided any response to the request for information of 16 June 2020 (sent via certified e-mail and duly delivered), nor has it ever provided any explanation regarding this non-response; at the same time, the response provided in a note dated 5 November 2020, in which the Company limited itself to disavowing the e-mails sent without carrying out more detailed checks (despite having the e-mails complete with header available), involved a further extension of the time of the investigation; finally, also with regard to the clarifications requested by the Office regarding the information provided with the privacy policy published on the website, the Company only responded after having received the note dated 11 February 2021 with which the initiation of the procedure; in this context, the lack of collaboration led to an aggravation of the preliminary investigation, since the Office, to ascertain the facts and responsibilities, had to activate further investigation methods, instead of the expected ordinary cooperation of the data controllers ;

4. failure to comply with the complainant's requests given that, to date, it does not appear that the Company has ever

responded to the requests made by the interested party.

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

1. the nature of the data subject to the breach (common data);

2. the corrective measures adopted by the data controller;

3. the low level of damage suffered by the complainant, consisting in the receipt of messages containing, as far as is understood, offers of professional collaboration, although it is impossible to oppose them and receive information regarding the processing;

4. the particularly small number of subjects involved, since only the complaint of Mr. XX;

5. 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 - taking into account that the maximum legal sanction, identified with reference to the provisions of art. 83, paragraph 5, is equal to 4% of the turnover (which, in the case of the Tax Solution, is less than 20 million euros) - the administrative sanction of the payment of a sum of 30,000.00 euros (thirty thousand / 00) and, also due to the aggravating elements found, the ancillary sanction of the publication in full of this provision on the website of the Guarantor as provided for by art. 166, paragraph 7 of the Code and by art. 16 of the regulation of the Guarantor n. 1/2019.

It is noted 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.

Please note that, in the event of non-compliance with the order given with this provision, the penalty referred to in art. 83, par. 5, lett. e), of the Regulation.

WHEREAS, THE GUARANTOR

pursuant to art. 57, par. 1, lett. f), of the Regulation, declares illegal the processing described in the terms set out in the motivation by Solution Tasse S.p.A., with registered office in Milan, via San Gregorio, 55, Tax Code and VAT number

13812361007 and, consequently:

a) pursuant to art. 58, par. 2, lett. b) of the Regulations, warns said Company on the need to process personal data in a lawful, correct and transparent manner;

b) pursuant to art. 58, par. 2, lett. c) of the Regulations, orders to satisfy the requests of the interested party to know the origin of the data and the presence of any consent to the processing.

ORDER

to Solution Tasse S.p.A., with registered office in Milan, via San Gregorio, 55, Tax Code and VAT number 13812361007, to pay the sum of € 30,000.00 (thirty thousand / 00) as a pecuniary administrative sanction 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.

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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 € 30,000.00 (thirty 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, June 24, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Stanzione

THE SECRETARY GENERAL

Mattei