SEE NEWSLETTER OF 27 APRIL 2021

[doc. web n. 9577371]

Injunction order against Planet Group spa - 11 March 2021

Record of measures

n. 98 of 11 March 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");

CONSIDERING, among the most relevant provisions of the Guarantor with general content, the Guidelines on promotional activities and the fight against spam, 4 July 2013, doc. web n. 254234 and the prov. gen. January 19, 2011, Requirements for the processing of personal data for marketing purposes, through the use of the telephone with operator, following the establishment of the public register of oppositions, doc. web n. 1784528;

GIVEN the numerous complaints received by the Authority, contained in reports and complaints, also concerning the receipt of unwanted promotional calls on behalf of TIM s.p.a., some directly attributed to the operators of "Planet Group";

GIVEN the results of the investigations carried out at Tim s.p.a., addressee of the corrective and sanctioning measure, dated January 15, 2020 [Doc. web n.9256486], as well as at call center companies - such as Planet Group spa (hereinafter referred to as: "Planet Group" or "the Company") - in charge of carrying out promotional campaigns;

GIVEN the memorandum of November 13, 2020 as well as the Planet Group hearing minutes of November 30, 2020;

GIVEN the overall 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 complaints of the interested parties

From 2017 to the first months of 2019 (moreover, according to a trend confirmed also in the following months), the Authority received numerous complaints (in the order of several hundreds), contained in reports and complaints, in particular regarding the receipt of calls promotional, on behalf of TIM s.p.a. occurred:

a) in the absence of consent of the interested parties; or:

b) despite the registration of telephone numbers in the public register of oppositions; that is to say

c) even after the exercise of the right of opposition.

In some cases (XX; XX; XX) particularly insistent repeated telephone calls were highlighted, precisely with regard to Planet Group operators, and not very attentive to the needs and commitments even envisaged by the interested parties at the time of contact.

2. The preliminary investigation of the Office and related outcomes.

Because of this situation, the Authority has deemed it appropriate to carry out an articulated investigation activity, in order to acquire more elements of evaluation with respect to the aforementioned complaints, proceeding with inspections at Tim and its partners, including Planet Group, where the operations are were launched on 27 March 2019. Subsequently (on 30 September 2019) the Office sent an initial request for additional information regarding the methods of processing, in relation to which the Company provided feedback on 13 December 2019. They were subsequently formulated some further requests for information regarding other complaints (received through reports and complaints), with respect to which the Company provided feedback on 17 December 2019 and 1 July 2020 respectively.

On the basis of the aforementioned findings as well as the overall documentation acquired, the Office, on October 12, last year, sent a notice of the initiation of the procedure to Planet Group, pursuant to art. 166, paragraph 5, of the Code, setting out the following.

Planet Group - in the period between 1 January 2016 and 13 December 2019 - contacted, on behalf of its customers (including Tim) a total number of 47,981 "referenced" telephone numbers (i.e. unrelated to the contact lists provided by Tim, but

suggested by the subjects contacted included in them).

With reference to these contacts, Planet Group has not substantiated or demonstrated the status of "referenced" for the individual users contacted "off the list" (including, among the elements, the origin and the exact methods, even temporal, of data acquisition in question), but limited itself to defining them, generically and without distinction, as "referenced" users, in the sense identified above (see reply 13 December 2019, cit.) and to indicate the 'referencing' user.

The same Company has declared that it has carried out this activity on the basis of its contractual role as data processor, highlighting that it has in any case interrupted this data collection and subsequent use for promotional contacts and that it has provided training sessions for its operators, targeted to the correct processing of data (see reply 13 December 2019).

In the aforementioned communication, the Office highlighted that, with specific regard to some complaints (Messrs. XX; XX; XX; XX; XX; XX; XX; XX; XX), the Company, in general (except for some specific contacts, for which he affirmed the non-traceability of the calling line used), did not contest the circumstances (date, time, method, i.e. telephone call with operator) relating to the promotional communications complained of by the interested parties nor the denial of the treatment formulated by the same (see reply 1 July 2020, cit.). Furthermore, some telephone calls referred to some of the aforementioned interested parties (XX; XX; XX; XX) have been expressly confirmed by Planet Group (see minutes 28 March 2019).

With regard to the phone calls in question, the Company declared that it had acted as data processor pursuant to art. 28 of the Regulations, highlighting - except in the case of XX - that the numbers contacted belonged to the lists received by TIM spa for the carrying out of its promotional campaigns (see reply 1 July 2020, cit.). With this in mind, Planet Group has indicated the user code as resulting in the aforementioned lists (except for the user in the name of XX).

With reference to XX, the Office therefore considered - based on the feedback provided by the Company - that the contact, not having been provided by Tim, was acquired by Planet Group in another way. It can therefore be said that this user falls within the so-called 'unlisted' users, referred to above and which do not result in any evidence regarding the possible acquisition of the necessary subject to specific consent for the promotional purposes.

The same - it has already been said in the note of 12 October u.s. - it can be said for the users of XX (see reply 17 December 2019, cit.), In relation to which the Company has not denied neither the phone calls complained nor the opposition made by the interested party within the same; has not provided any information on the origin of the data or regarding the necessary consent

or other suitable prerequisite of lawfulness. The same argument also applies to the user of XX, who is contacted on the basis of an unauthorized initiative of an operator of this Company, a circumstance generally indicated and not clarified (see: reply 30 January 2019, provided by the Company and conveyed by Tim spa as part of the preliminary investigation launched: provision January 15, 2020, par. 2.3).

It was therefore found that Planet Group processed the data of the aforementioned interested parties (with particular regard to off-list users) in the absence of the necessary specific prior consent for the promotional purpose, but also of another suitable legal basis (see articles: 6, paragraph 1, Regulation - 130, Code), with simultaneous violation of the principle of lawfulness (Article 5, paragraph 1, letter a, Regulation).

For other users (XX; XX; XX), the Office observed that - even assuming the same ones validly approved for Tim's promotional purposes - a treatment following the opposition clearly formulated, sometimes in repeated form, was carried out by the interested.

Having specified that the opposition - relevant for the purposes of the current legislation on the subject - is already that which may be made by the interested party during the telephone call and that it must therefore be promptly and promptly acknowledged by the data controller / manager, it must be reiterated that the aforementioned conduct integrates the violation of the right to object to processing for marketing purposes (art.21, par. i2 and 3, of the Regulation) as well as the principle of correctness (art.5, par. 1, lett. a, Reg. cit.).

For some other interested parties (in particular, XX; XX; XX; XX) the opposition made cannot be considered acknowledged, given that the relevant user is not present in the black list (see minutes of 28 March 2019, cit.). A similar gap (absence in the black list) emerged for 45 users, found to be present in the Company's systems as recipients of promotional calls, for which the Office, during the inspection (see minutes of 29 March 2019), had requested to carry out a check (see reply dated 12 April 2019, annexes "1_Check_Controllo_Utenze" and "2_Check_Controllo_Utenze").

Moreover, during the investigation activities relating to the data processing carried out on behalf of Tim, it was found that the Company carried out telephone activities in an insistent and concentrated manner (up to 4 telephone calls per day: see cases of XX and XX, finding 1 ° July 2020; up to 155 phone calls to another user, moreover in the restricted period of one month), also in this case violating the aforementioned principle of correctness and also endangering the right to individual peace of mind, connected to that to the protection of data (see provision January 15, 2020, cit., par.3.2).

Overall, the violations indicated above also revealed an inadequate design and governance of the treatments and measures put in place to safeguard their compliance with the law, also in contrast with the fundamental principle of privacy by design (Article 25, paragraph 1, of the Regulation).

Therefore, the Office, with the aforementioned notice of initiation of the procedure, on 12 October last year, found the contestability to Planet Group of the violation of the following provisions indicated below:

- art. 5, par. 1, lett. a), of the Regulations;

- art. 6, paragraph 1, of the Regulations;

- 130 of the Code;

- art. 21, paragraphs 2 and 3, of the Regulations;

- art. 25, par. 1, of the Regulation.

With the defense brief presented on November 13, u.s. in the context of the procedure established, Planet Group represented that: "For the vast majority of users referred to in the communication in question, and precisely for 36,039 users contacted of the 47,981 contested, as can be seen from the identity of the tax codes, present in the lists of the users to contact communicated to Planet Group, which are also found in the contracts activated on behalf of Telecom. In other words, a third party (family member and / or cohabitant of the same) was contacted, in second instance and on the indication of the contacted person, who entered into the contract upon delegation of the contacted person. This circumstance can be seen from the records of the stipulated contracts which, in consideration of their 'weight', cannot be produced there and which will be sent, on computer media, to the address of the Authority. Therefore, the number of users that would have been illegitimately contacted must be considered completely wrong. ".

With specific regard to the violation of articles 5, par. 1, lett. a) and 6, par. 1, of the Regulation, the Company stated that the same should "be applied taking into account not 47,981 users, but at the most, where the undersigned company is unable to find conditions that legitimize the processing, exclusively of 11,943 users. "

Moreover, Planet claimed to have acted “against the aforementioned 47,981 users…. as data processor, by contacting numbers on the lists transmitted by Telecom Italia and using the scripts assigned by the data controller company ", asking to take into account" these aspects ... in the eventual imposition of the sanction, in light of art . 82, par. 2, lett. a) where, among the elements to be taken into account, the number of interested parties is mentioned. ", noting, in correlation, that" with regard

to the notion of "damage", it is important to note that the interested parties have not suffered any compensable damage and , therefore, it must be concluded that 'the level of damage suffered by them' referred to in the last sentence of the provision in question, is in fact non-existent. …. At the same time, on several occasions the case law on the merits has pointed out that commercial telephone calls, unless they integrate the details of the harassment, are not compensable: therefore, in the present case, the only cases in which damage could be theoretically hypothesized, they could be those of reporting persons XX and XX. ".

With regard to the violation of art. 21, para. 2 and 3 of the Regulations, Planet Group highlighted that it "cooperated immediately with the Authority and ... proceeded, up to the days following the inspection, to implement IT and organizational measures that could facilitate both the exercise of the rights of the interested parties, and the cancellation of users who had expressed their desire not to be contacted for commercial purposes. " . Furthermore, not disputing the fact that "45 users would not have been included in the black list," he pointed out, however, that "this is a very small number in proportion to the complained and alleged violations ...." and that "the lack of presence on the black list does not in any way prove - also because there are no further complaints - that these interested parties were contacted after their request not to receive further commercial communications."

The Company also - with specific regard to the alleged violation of art. 25, par. 1, of the Regulation - objected to the generic nature of the related motivation as well as the application of the rule in question only to the data controller and not to the data controller, a role played by the same, according to him, in the context of TIM's campaigns.

In the context of the hearing held on November 30, Planet Group, referring entirely to what has already been stated in the note of November 13, 2020, represented that:

- "As proof of the correct behavior assumed, as well as for a correct quantification of the number of users contacted", he would have "deposited computer memories (in the total number or a significant sample, based on what is technically possible for the Company and consequently the Authority will deem it established) of the telephone recordings with the users contacted "; documentation which, however, has not been received by this Authority;

- with reference to the application of any sanction: "art. 25 GDPR on privacy by design ... it seems a legal reference lacking the necessary reasons, as the corporate conduct complied with its role as data controller - and not owner - and made the phone calls on the assumption of the necessary legal basis. "

Furthermore, with express reference to the sanctioning criterion of 'damage' referred to in Article 83, paragraph 2, lett. a), Planet Group highlighted:

- to consider the number of subjects contacted to be small and the damages inconsistent, however difficult to ascertain, possibly caused to the interested parties, citing again some judgments regarding liability for violation of the relevant legislation;

-that: " …. it does not appear…. that no person has filed any claim for compensation against it, nor has any compensation action taken ... and that, in this case, no social alarm seems to emerge regarding the general behavior of the company in the context of the management of personal data. "

3. Evaluation of the overall conduct of the Company

It should be noted in advance that, in the specific case, Planet Group is to be considered the de facto owner, together with Tim, of the promotional treatments aimed at "off-list" or "referenced" numbers, with the consequent applicability of principles and obligations regarding data protection; in this sense, it is not important to qualify his role as an independent owner or joint with Tim.

In fact, from the documents it emerged that Planet Group contributed to establishing both the promotional purposes and the contact methods (see Article 28 of the Regulations), organizing the latter in the absence of operational instructions formalized by the client; de facto procedures then accepted by Tim, who acknowledged the contracts concluded and received the related benefits. Planet Group appears to have operated by exceeding, in fact, with respect to the role of mere responsible "of the treatment formally entrusted for the execution of promotional campaigns aimed at the interested parties on the TIM lists and determining" purposes and means of the treatment ", within of a unitary and de facto shared design, at least with regard to the purpose of acquiring new customers and its operational effects, with TIM (see provision February 1, 2018, web doc. 7810723). This is also in consideration of the irrefutable circumstance, that the use of "off-list" numbers was functional to the pursuit of a shared interest, both of TIM and its partners, from which each drew an economic advantage ": v . prov. January 15, 2020, cit., Par. 3).

However, even if Planet Group is recognized as responsible (rather than owner or co-owner) of the treatment, the evaluation of its conduct in terms of illegality would not change. In fact, with specific regard to the telephone calls made to "unlisted" users, it was found that "referenced" subjects were contacted, on the basis of a constant operating practice attributable to a conscious corporate choice of the Company and not attributable to exceptional initiatives by the staff.

At the same time, however, it is clear how the role of call centers that, like Planet, have carried out the promotional campaigns must be distinguished from that of the client (Tim, in this case), indeed preponderant and much more incisive, with regard to dynamics and practices shared operating procedures as well as the revenue from promotional campaigns.

It is then necessary to re-propose the considerations already formulated by this Authority with the provision. January 15, 2020 (paragraph 3.1., Cit.). In particular, “it cannot be invoked as a legal basis…. that of the 'legitimate interest' in marketing activities, perhaps together with the alleged interest of the 'referring' subject, which involves the friend or relative in the promotion. It should then be highlighted that the legitimate interest, pursuant to art. 6, par. 1, lett. f), of the Regulation - already provided for by both the repealed Directive 95/46 / EC, as well as by the Code prior to the amendments made by Legislative Decree no. 101/2018 (Legislative Decree no. 196/2003, art. 24, paragraph 1, letter g) - cannot - in general - subrogate the consent of the interested party as the legal basis for marketing. Indeed, the Regulation itself - as already Directive 95/46 / EC in art. 7, paragraph 1, lett. f) - only admits it 'on condition that the interests or fundamental rights and freedoms of the interested party that require the protection of personal data do not prevail'. ... In any case, the existence of legitimate interests requires careful evaluation also with regard to the possibility that the interested party, at the time and in the context of the collection of personal data, can reasonably expect that a treatment will take place for this purpose . ".

It should also be reiterated also in the case of Planet Group what has already been clarified in the aforementioned provision. January 15, 2020, namely that: "The application of the legal basis of legitimate interest therefore presupposes the prevalence in practice (based on a balance given to the owner, but always assessable by the Supervisory Authority) of the latter on the rights, freedoms and mere interests of the interested parties (specifically, the recipients of promotional communications not assisted by consent). In this comparison, it is necessary to carefully weigh the impact of the processing, which is intended to be carried out on these rights, freedoms and interests (among which, in the case of marketing, first of all the right to data protection and the right to peace of mind are recognizable. individual of the interested party "(1).

Moreover, always recalling the prov. January 15, 2020: "the data controller cannot retroactively resort to the basis of legitimate interest in the event of problems in the validity of the consent. Since he has the obligation to communicate [in the information issued to the interested party] the legitimate basis at the time of the collection of personal data, the data controller must have decided on the legitimate basis before the data collection (so see Guidelines of the Group Art. 29 on consent pursuant to Regulation (EU) 2016/679, 10 April 2018, WP 259 rev.01) ".

Therefore - if the aforementioned conditions are not met for the legitimate interest and with the exception of the hypotheses of the so-called "Soft spam" (Article 130, paragraph 4, Code), as well as the "opt-out" system for data in the public lists - it must be considered that the general rule to be followed for processing for promotional purposes is that of subject to the informed, free, specific and documented consent of the interested parties (2).

It should also be noted that Planet Group represented, with regard to 'off-list' users, that a third party (family member and / or cohabitant of the same) who entered into the contract was called "in second instance and on the indication of the person contacted. upon delegation of the contacted party.

The delegation mechanism in question is not suitable for subrogating the fulfillment of the obligation to acquire a prior free and specific consent to marketing by the subject contacted, secondly, as a delegate (e.g. to activate a product or service) by the first person contacted (present in the client's lists), nor can it be used as another suitable legal basis, and in fact it is not included in the list of lawfulness conditions pursuant to art. 6 of the Regulations. In this perspective, it does not assume any significance that Planet Group did not then produce the computer memories suitable for proving such conduct of telephone contacts. In particular, this mechanism cannot - as a rule - integrate the condition of 'legitimate interest' (as set out above in its correct size and operational limits).

Differently from what is asserted and argued by Planet Group, the conduct of the Company - like the similar promotional activities carried out by other call centers - causes social alarm, and is in fact the subject of numerous complaints (still today characterized as the most recurrent problem among those pertaining to this Authority) and source of consequent, and sometimes complex, preliminary activities, despite the repeated measures, both of a general nature and aimed at specific owners.

Furthermore, in some concrete cases, it is certainly recognizable - even in this regard the Company's argument is not acceptable - a serious and appreciable damage, whose concrete configurability, as regards the conditions and also the relative quantification, also for compensation purposes, obviously belongs to to the competent assessment of the judicial authority.

With specific regard to the failure to promptly implement the right of opposition, it is necessary to remember that, pursuant to art. 12, paragraph 3, of the Regulations: "The data controller provides the data subject with information relating to the action taken regarding a request pursuant to articles 15 to 22 without undue delay and, in any case, at the latest within one month of receipt of the request itself ". This applies to all instances of exercising the rights of the interested parties, but assumes even

greater importance - with a view to combating unwanted marketing - with specific regard to applications for opposition to processing for marketing purposes, object not to case of most of the most critical complaints received and still received by the Authority.

It should also be highlighted how serious the multiple cases of repeated and insistent contact with the related violation of the right to object to processing, but also of the aforementioned fundamental principle of correctness, due to methods that appear invasive of the fundamental rights to privacy and individual tranquility. . It should also be noted that, although in the documents, it does not appear that the Company - unlike other call centers appointed by Tim - has adopted measures to try to govern - and promptly prove - the phenomenon of unlisted calls, leading it in the correct tracks of the current legislation.

Based on the overall findings, the Authority therefore believes - in accordance with the assessments already formulated with the aforementioned communication from the Office of 12 October this year - that the following violations by Planet Group are recognizable in this case:

- art. 5, par. 1, lett. a), of the Regulations;

- art. 6, paragraph 1, of the Regulations;

- 130 of the Code;

-art. 21, par. 2 and 3, of the Regulation, the disvalue of which can be considered absorbing with respect to the violation of art. 12, paragraph 3, Regulations;

- art. 25, par. 1, of the Regulation.

Therefore, pursuant to art. 58, par. 2, lett. d) and f), of the Regulations, of having to adopt the definitive limitation of the treatments described above towards Planet Group, also agreeing to comply with the regulations in force.

4. Ordinance-injunction for the application of the pecuniary administrative sanction

The violations, as indicated above, also require the adoption of an injunction order, pursuant to Articles 166, paragraph 7, of the Code and 18 of law no. 689/1981, for the application to Planet Group of the pecuniary administrative sanction provided for by art. 83, para. 4 and 5, of the Regulations (payment of a sum of up to € 20,000,000 or, for companies, up to 4% of the annual worldwide turnover of the previous year, if higher).

These violations are integrated in relation to related processing carried out by Planet Group, for which the more favorable provision provided for by art. 83, par. 3, of the Regulation, according to which, if, in relation to the same treatment or related

treatments, various provisions of the Regulation have been violated, with willful misconduct or negligence, the sanction imposed for the most serious violation (referred to in art. 83, paragraph 5, letters a and b, of the Regulation) can absorb the one applicable for the less serious violation (see Article 83, paragraph 4, letter a, of the Regulation).

To determine the amount of the sanction in the specific case, it is necessary to take into account the elements indicated in art. 83, par. 2, of the Regulation, which, in this case, can be considered in the following terms:

- the limited duration of the violation (Article 83, paragraph 2, letter a), of the Regulation);
- the limited number of interested parties involved, if related to the considerable amount of promotional telephone calls made by the call center companies, partners of TIM (Article 83, paragraph 2, letter a), cit.);
- the subjective dimension of the conduct, which must be considered non-malicious, but negligent, with particular reference to the repeated and insistent nature of some telephone contacts and the failure to promptly implement the right to object to processing (Article 83, par. 2, letter b), of the Regulation);
- the declared interruption of the contact activities of the 'referenced' subjects since 9 October 2019, based on the prohibition communicated to it by Tim (Article 83, paragraph 2, letter c), of the Regulations);
- the absence of previous violations and provisions of the Authority against the Company (Article 83, paragraph 2, letter e), of the Regulations);
- prompt cooperation with the Authority in the course of the inspections and proceedings (Article 83, paragraph 2, letter f), of the Regulations);
- the categories of personal data affected by the violation, essentially identifiable in mere contact data (Article 83, paragraph 2, letter g), of the Regulation);
- the current very serious economic and financial crisis, also due to the ongoing health emergency (Article 83, paragraph 2, letter k, of the Regulation).

These mitigating circumstances are contrasted by the following aggravating circumstances:

- the non-adoption, as far as acts are concerned, of measures aimed at regulating and governing the contact activities of 'off-list' users before, on 9 October 2019, Tim's prohibition on this activity took place (Article 83, par. 2, letter c), of the Regulation);
- the discrepancy of the Company's conduct with respect to the substantial provisional activity, with which indications and

clarifications were provided on the matter (see general provisions and Guidelines cited in this provision), and the constant dialogue of the Authority with the subjects who operate in the telemarketing sector - they can reasonably lead to believe that all operators (including Planet Group) have reached a sufficient awareness of the provisions that must be unfailingly observed (Article 83, paragraph 2, letter k, cit.).

Based on the set of elements indicated above, in application of the principles of effectiveness, proportionality and dissuasiveness indicated in art. 83, par. 1, of the Regulation, taking into account the necessary balance between the rights of the interested parties and freedom of enterprise but also the seriousness of the conduct found, in the first application of the administrative pecuniary sanctions provided for by the Regulations, also in order to limit the economic impact of the sanction on the organizational, functional and employment needs of the Company, it is believed that the administrative sanction of the payment of a sum of 80,000.00 euros (eight thousand) equal to 0.40% of the maximum legal sanction (20,000,000 euros) should be applied to Planet Group).

This percentage takes into account, in comparative terms with similar cases, the high number of referenced users treated without a legal basis, the ascertainment of further serious violations, in particular the right to object and the principle of correctness in the management of some telephone calls. promotional; as well as the failure to adopt appropriate timely measures to remedy such violations

In the case in question, it is believed that the ancillary sanction of the 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 Guarantor Regulation n. 1/2019, taking into account the subject matter of the investigations, namely the phenomenon of unwanted marketing on behalf of telephone companies, object, as noted above, of numerous complaints and consequent investigations by this Authority, despite the repeated measures being of a nature general is directed to certain owners.

Finally, 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.

ALL OF THIS GIVEN THE GUARANTOR

pursuant to art. 57, par. 1, lett. f), of the Regulation, declares the processing described in the terms set out in the motivation unlawful and adopts the following corrective measures against Planet Group S.p.a., with registered office in Milan, viale Monza n. 265 (p.i. 07483620964):

a) pursuant to art. 58, par. 2, lett. f), of the Regulations, provides for the definitive limitation of the processing of personal data of interested parties, for whom they do not have a free and specific consent for the promotional purpose or another suitable and documented legal basis pursuant to Articles 6 and 7 of the Regulations;

b) pursuant to art. 58, par. 2, lett. d) of the Regulations, orders the implementation of technical and organizational measures to ensure:

1. the processing for promotional purposes only of personal data for which you have a free and specific consent for this purpose or another suitable and documented legal basis pursuant to Articles 6 and 7 of the Regulations;

2. the correct management, as well as adequately and promptly documented, of the phenomenon of any calls addressed to so-called users "Off the list";

3. the inclusion in the black list, without undue delay, of the data of the interested parties who in any way oppose the processing as well as the prompt communication to the client of the promotional campaign;

4. the documented verification, at regular intervals, of the effective registration, without undue delay, of the will of the interested parties regarding the promotional activity and of the actual consequent inclusion in the black list of the numbers reached by commercial contacts with the result of refusal to treatment;

5. correct and non-invasive methods in carrying out promotional phone calls and in the possible use of other means for the same purpose;

c) pursuant to Article 58, paragraph 1, lett. a), of the Regulations as well as art. 157 of the Code, orders the same Company to provide, within 30 days of receipt of this provision, documented feedback with regard to the initiatives undertaken in order to implement the provisions of points 1 and 2; any failure to comply with the provisions of this point may result in the application of the pecuniary administrative sanction provided for by art. 83, paragraph 5, lett. e, of the Regulations;

ORDER

to Planet Group spa, in the person of the pro-tempore legal representative, to pay the sum of 80,000.00 (eighty thousand) euros, as a pecuniary administrative sanction for the violation indicated in the motivation, representing that the offender, pursuant to art . 166, paragraph 8, of the Code, has the right to settle the dispute by paying, within thirty days, 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 € 80,000.00 (eighty thousand), 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

as an ancillary sanction, pursuant to art. 166, paragraph 7 of the Code and art. 16 of the Guarantor Regulation n. 1/2019, the publication on the website of the Guarantor of this provision, and, 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.

Pursuant to art. 78 of the Regulation, as well as art. 152 of the Code and 10 of d. lg. 1 September 2011, n. 150, against this provision, opposition may be proposed to the ordinary judicial authority, with an appeal filed, alternatively, at the court of the place where the data controller resides or is based or at that of the place of residence of the interested party within the deadline of thirty days from the date of communication of the provision itself or sixty days if the applicant resides abroad.

Rome, March 11, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Stanzione

THE SECRETARY GENERAL

Mattei

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(1) See, to this effect: Annual Report 2018, p. 107, the provision. 22 May 2018, doc. web n. 8995274, as well as the Opinion of the Group Art. 29, no. 6/2014, - WP 217, p. 35, according to which the institution of legitimate interest "guarantees greater protection of the interested party; in particular, it establishes that not only the fundamental rights and freedoms of the interested party are taken into consideration, but also his 'interest' - mere and unqualified. ... all the categories of interests of the interested party must be taken into consideration and evaluated comparatively with those of the data controller, insofar as they are relevant within the scope of the directive ".

(2) In this sense, see: the aforementioned provision. of 15.1.2020, as well as, previously, the Guidelines of the Guarantor on promotional matters, 4 July 2013, and even before that, the prov. gen. January 19, 2011, "Requirements for the processing of personal data for marketing purposes, through the use of the telephone with operator, following the establishment of the public register of oppositions", doc. web n. 1784528.