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Injunction order against the sole proprietorship Petta Fabio Giovanni - May 26, 2022 \*

Record of measures

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## 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 dr. Claudio Filippi, Deputy Secretary General;

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");

GIVEN the documentation in the deeds;

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

SPEAKER Attorney Guido Scorza;

WHEREAS

### 1. THE INVESTIGATION ACTIVITY CARRIED OUT

The Guarantor has received several requests - reports and complaints (files 146161, 148223, 149086, 149398, 150008, 149543) relating to the unauthorized publication of personal data (name, address, telephone number) on the website [www.inLista.com](http://www.inLista.com), the owner of which, following specific investigations, was identified in the sole proprietorship Petta Fabio Giovanni (hereinafter "Petta" or "firm").

In particular, the reporting agents have represented that they have never authorized the insertion of their data on this site but rather that they have learned of their existence, most of the time, only following searches of their name on the Internet through

the search engine. Google. The reporting parties also represented that they tried (even several times) the cancellation using the form on the site but did not get it even after several months. A reporter also added that the data relating to his telephone number were erroneously attributed to a company unknown to him.

All complained that in the aforementioned website there was no data that would allow identification of the owner of the site and the data controller and therefore turned to the Guarantor having not found any other way to obtain the deletion of data.

Given the lack of any type of identifying element on the site in question, the Office had to carry out a preliminary investigation to identify the data controller through the hosting provider that provided the service called "Dedicated server" connected to the IP address of the website www.in Lista.com. This, in particular, communicated that the service was "in use by Mr. Fabio Giovanni Petta ". Subsequent investigations in the business register made it possible to identify the sole proprietorship connected to Mr. Petta's tax code.

With a note dated May 14, 2020, the latter was requested to provide clarifications regarding the complained treatment. With an e-mail of the following 26 May, the owner provided a laconic reply stating that on each page of the website there is a "delete data" link from which you can access a form to be used to enter the number to be deleted, obtaining the removal automatically within 72 hours. In the same note, the same stated that the data would be entered manually by the users and therefore requested to receive a copy of the requests received in order to verify the date and IP address of the (alleged) registrations. By registered letter dated 1 September 2020, sent in advance by e-mail, the Office forwarded a copy of six requests to the holder, asking for appropriate feedback within 20 days of receipt. The request was not answered and the registered letter was in storage for a long time before being returned to the sender.

On 2 April 2021 - due to various unlawful profiles found in the processing - Petta was sent, by registered letter in advance by e-mail, the communication of the initiation of the procedure for the adoption of corrective and sanctioning measures pursuant to art. . 166, paragraph 5, of the Code.

This too remained in storage for a long time and then was sent for return to the sender.

Therefore, the Office had to request the Special Privacy Unit of the Guardia di Finanza to provide notification of the deeds that remained unfulfilled. The notification was made on 20 12.2021.

With an e-mail dated January 12, 2022, Petta replied that "on the site in Lista.com there is a data cancellation request form and a data entry form. Furthermore, InElenco.com is a search engine just like Google but a niche one. The site uses particular

headers of the standard ISO-OSI http Server side protocol commonly used on high traffic sites to lighten the workload of the server called Cache-Control, caching directives that could display an old deleted page . Our system, through a Crontab that is activated every 72 hours, launches a program that automatically deletes the data of all users who have requested deletion. We do not make phone calls to users of any kind and for any reason " .

Furthermore, with regard to the reporting persons, the company stated that all the data were automatically deleted from the system after the request made by them directly on the website; however, no documentation was provided proving what was declared.

Following the dispute and even after the defensive observations of the company, complaints continued to be received by the Guarantor complaining of the presence of personal data within the website www.in Lista.com without the knowledge of the interested parties. Also in these cases it was represented that, despite the repeated requests for cancellation made through the link on the site, the data continued to be published. Furthermore, the interested parties continued to complain about the lack of information on the site aimed at allowing the identification of the owner.

The Office verified that, still on May 4, 2022, the website did not contain any information regarding the data controller and how to exercise the rights.

## 2. VIOLATIONS FOUND

With reference to the factual profiles highlighted above, also based on the statements of the company for 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.

The laconic answers provided by the owner during the proceedings, together with the absence of documentation proving the claims made, do not allow to overcome the findings made by the Office when contesting the violations which are therefore considered confirmed as follows.

### 2.1 Dissemination of personal data in the absence of a suitable legal basis

The numerous reports received and the examination of the content of the website itself outline a treatment consisting in the creation of a telephone directory that does not originate from the single database of electronic communication operators (d.b.u. - already provided for by Agcom resolution no. CONS) and which gives rise to the dissemination of personal data on the Internet in the absence of a suitable legal basis.

The concise answers provided during the proceedings were not sufficient to clarify with certainty the origin of the data, as the alleged autonomous entry by various reporting agents is unlikely, which has not been documented in any case; all the whistleblowers complained about the presence of their personal data on the website without their having given any authorization and, in many cases, even without even knowing that their data were present there. Furthermore, it is not clear what usefulness an interested party should derive from the inclusion in a generic telephone directory given that those who have visibility needs can already see them met by the official telephone directories, the only ones authorized by law on the basis of the assumptions mentioned below. On the other hand, the economic interest of the company in carrying out this type of processing appears more evident due to the possibility of publishing advertising banners on the pages of the website. And in any case, while wanting to admit the existence of an initial consent, this legal basis would certainly not be invocable after the (countless) requests for cancellation sent by the interested parties. Requests that, it must be remembered, were made through the only channel made available on the site (a link to a form), without, according to the instants, any error message being returned and without, however, having any effect.

With regard to the creation of telephone directories, reference is made to the special regulations referred to in art. 129 of the Code, adopted in transposition of the community directive n. 2002/58 / EC, which is implemented, as required by the provision itself, by specific decisions of the Guarantor and Agcom. In particular, with the provision July 15, 2004 (web doc 1032381) on the subject of "alphabetical" telephone directories of the universal service, the Guarantor clarified that "only the formation, distribution and dissemination of directories, in any form created, based on consultation and access is permitted" to d.b.u. (as well as provision of 7 April 2011, web document no. 1810351 and provision of 14 January 2016, web document no. 6053915) and that, for the inclusion of personal data in such lists, express, free consent is required , specific, informed and documented in writing by the contracting parties. At the same time, the creation of generic telephone directories is allowed only in the manner described in the aforementioned Agcom resolution no. 36/02 / CONS.

That said, it is believed that the conduct described integrates the violation of the following articles of the Regulation: art. 5, par. 1, lett. a) and d); art. 5, par. 2; art. 6.

## 2.2 Failure to respect the right to erasure

The requests received complained, among other things, of the impossibility of exercising the right to cancellation - as well as potentially any other right connected to the protection of personal data - since no contact channel with the owner and the only

one could be found on the site. tool available, an on-line form where to enter the number to be deleted, would never have had any effect. Contrary to what was declared (but not documented) by the company, the requests for cancellation sent through the form on the site were not handled within the indicated times. The reporting agents stated that they had tried several times to cancel the number using the procedure described in the form, but that they did not obtain the cancellation even after months. A complainant has attached screenshots of the cancellation process which ends with the message "request made successfully. Will be removed n. 1 data from the database as you requested. The file will be processed within 48 hours "(also indicating a deadline other than the 72 hours declared by the owner in the answers given to the Guarantor).

With an e-mail dated 12.1.2022, as mentioned, the owner declared that all the data of the reporting persons were automatically deleted from the system after the cancellation request entered by them on the site. This statement, of which no computer evidence has been provided, seems difficult to sustain in the face of the fact that many people have been forced to contact the Guarantor precisely because they were unable to delete their data even after several attempts.

Furthermore, given the lack on the website of any other suitable reference to identify the data controller, it is impossible to exercise the right to cancellation, as well as any other right, using alternative channels.

That said, it is believed that the conduct described integrates the violation of articles 12, par. 2, 15, 16 and 17 of the Regulation, it being impossible for the interested parties to know the origin of the data and the methods and purposes of the processing, as well as request the correction of inaccurate data or cancellation.

What has been described also configures a total lack of adequate technical and organizational measures to ensure that the processing is carried out in compliance with the rules on the protection of personal data and, for these reasons, the violation of art. 24 of the Regulation.

In addition, the preparation of a contact form that has proved ineffective in acknowledging the cancellation requests (the only right that can be exercised, even if only formally) also integrates the violation of art. 25 of the Regulation since the technical measure adopted was not able to protect the rights of the interested parties.

### 2.3 Inadequacy of the information

On the website there is a link "enter private" through which it would be possible to request the entry of the data of a natural person. This link leads to a form in which you are asked to enter the following data (some of which are optional): name, surname, telephone, mobile phone, full address, any social network contacts. At the bottom of the form there are the options -

already selected and cannot be deselected - "I accept the privacy conditions" (with link to the information) and "I authorize the publication of my data online". The privacy policy, provided pursuant to the no longer current version of the Code, does not contain any information that allows the data controller to be identified. At the same time, the site does not contain any information relating to the name and VAT number of the economic operator owning the website, as is also required by current business legislation (see Article 35, paragraph 1, of the Presidential Decree October 26, 1972, no. 633 and art. 2250 of the Italian Civil Code).

Finally, it is noted that in the text of the information - which lacks the information referred to in art. 13 of the Regulation but also contains a consent formula - clauses describing the terms of the service are also included.

That said, it is believed that the conduct described integrates the violation of articles 12, par. 1 and 13 of the Regulation.

#### 2.4 Lack of cooperation with the supervisory authority

The lack of essential information on the website aggravated the procedure by forcing the Authority to carry out a preliminary investigation aimed at identifying the owner of the site.

In addition, to the two requests for information sent by registered mail by the Office, only the first received a response, within the limited terms described above, while the second, although anticipated by e-mail, was returned to the sender.

The opening note, containing the description of the disputed profiles, was also sent by registered letter in advance by e-mail but was returned to the sender. Therefore, in order to guarantee the owner the knowledge of the acts to exercise the right of defense, it was necessary to provide for the notification by appointing the special privacy unit of the Guardia di Finanza.

Also in this case the company - to which the notification of the request for integration of information had also been repeated at the same time - limited itself to providing stringent clarifications without attaching any documentary evidence.

That said, it is believed that the described profiles integrate the violation of art. 31 of the Regulations and art. 157 of the Code.

### 3. CONCLUSIONS AND CORRECTIVE MEASURES TAKEN

The treatment put in place by the company through the website [www.inLista.it](http://www.inLista.it) presents, as seen, numerous and serious profiles of illegality even though the violation referred to in point 2.1 must be considered decisive among them. In fact, considering the very premise of the treatment, it is to be considered absorbent and already sufficient in itself to invalidate the entire treatment, taking into account the fact that any rectification of the illegalities described in the following points, which also aggravates the conduct, does not it would be sufficient to remedy the fact that the processing itself is carried out in the

absence of a suitable legal basis and above all in violation of the law.

It should in fact be remembered that the current regulatory framework (described above) does not allow the creation of generic telephone directories that are not extracted from the d.b.u. and that do not comply with the decisions adopted by the Guarantor and Agcom.

It should be added that the methods of carrying out the service offered by the site [www.inLista.com](http://www.inLista.com) do not in any way guarantee the confidentiality of users even assuming that such processing is carried out on the basis of consent. As observable by operating on the site and as described by the owner, it is in fact quite easy for anyone to enter personal data, even of unsuspecting subjects and make them public, through the site itself and through indexing in search engines, without any need to prove to be the owner of the user. In this way it would also be possible to make public data (personal data, contact data and registration to social networks) of people who have higher confidentiality requirements without their being informed and without being able to oppose this treatment.

The presence of complaints of similar content indicates that the conduct is generalized and extended to a large number of subjects; in particular, from the examination of the website carried out on 6 May 2022, adding the results returned by the "search by surname" function, it emerges that the subjects whose data are present in that list amount to 357,046. Furthermore, the conduct involves a particularly invasive treatment for the right to the protection of personal data, in consideration of the easy availability of the same also through the common search engines and the possibility that other subjects may use the data thus made available for further processing, difficult to verify and stem, such as unwanted marketing activities.

It follows that the processing causes widespread prejudice deriving from the unsolicited and unauthorized publication of contact data, aggravated by the fact that any attempt to cancel or correct it has proved useless.

Having said that, taking into account that the conduct described integrates all the violations specified in the previous paragraph and is committed in violation of the law, it is necessary, pursuant to art. 58, par. 2, lett. f), impose on the data controller the prohibition to collect, further store and publish personal data for the establishment and online dissemination of a telephone directory whose data has not been taken from the d.b.u. ..

Finally, due to the seriousness of the treatments already carried out and taking into account the fact that no changes have been made to the website still online, it is believed that the conditions exist for the application of a pecuniary administrative sanction pursuant to Articles 58, par. 2, lett. i) and 83 of the Regulation.

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

On the basis of the above, various provisions of the Regulation and of the Code are violated in relation to related processing carried out by Petta, for which it is necessary to apply art. 83, par. 3, of the Regulation, according to which, if, in relation to the same treatment or related treatments, a data controller violates, with willful misconduct or negligence, various provisions of the Regulation, the total amount of the pecuniary administrative sanction does not exceed the amount specified for the most serious violation with consequent application of the only sanction provided for by art. 83, par. 5 of the Regulation.

For the purposes of quantifying the administrative sanction, the aforementioned art. 83, par. 5, in setting the maximum legal limit in the sum of 20 million euros or, for companies, in 4% of the annual worldwide turnover of the previous year, whichever is higher, specifies the methods of quantifying the aforementioned sanction, which must "in any case [ be] effective, proportionate and dissuasive "(art. 83, par. 1 of the Regulation), 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 seriousness of the violation due to the fact that the conduct is in violation of the law and, in particular, in violation of the provisions of the provision referred to in art. 129 of the Code and is likely to cause significant prejudice to the interested parties by reason of the dissemination of personal contact data on the internet;
2. the high number of people whose data have been published (357.46 as of May 6, 2022);
3. the duration of the violation since the conduct lasted for several years: the company has been registered in the business register since 8 October 2012; furthermore, from a check carried out on [www.archive.org](http://www.archive.org), the [www.in Lista.com](http://www.inLista.com) site was detected from March 27, 2015 and already reported the same contents of today's site;
4. the grossly negligent nature of the data controller, as described in point 2, since the rules for the protection of personal data have been completely ignored and have not been taken into consideration even after the intervention of the Guarantor;
5. the total absence of corrective measures and the lack of cooperation with the Authority to remedy the alleged violations;
6. the degree of responsibility of the data controller who did not allow the interested parties to exercise their rights and did not indicate any identifying element of the company or contact data on the site;
7. the economic benefit deriving from the publication of personal data on the site deriving from the presence of advertising banners on the site itself.



As a mitigating element, it is considered necessary to take into account the economic size of the owner who holds the qualification of small business owner pursuant to art. 2083 of the civil code.

In quantifying the sanction, consideration was given to the elements described above as ascertained by the investigation activity in the absence of economic information, as there are no financial statements in the register of companies and no information has been provided on the part of Petta, which was also expressly requested in the opening note.

Therefore it is believed that, on the basis of all the elements indicated above, due to the severity and number of violations found and above all the fact that the treatment was carried out in violation of the law, the individual company Petta Fabio Giovanni should apply the administrative sanction for the payment of a sum equal to € 50,000.00 (fifty thousand / 00), equal to 0.25% of the maximum legal limit of € 20 million and, due to the aggravating elements noted, the ancillary sanction of the publication in full of the this provision on the website of the Guarantor as required by art. 166, paragraph 7 of the Code and by art. 16 of the regulation of the Guarantor n. 1/2019.

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

Please note that pursuant to art. 170 of the Code, anyone who, being required to do so, does not comply with this prohibition provision is punished with imprisonment from three months to two years and who, in the event of non-compliance with the same provision, the sanction referred to in the art. 83, par. 5, lett. e), of the Regulation.

WHEREAS, THE GUARANTOR

pursuant to art. 57, par. 1, lett. f), of the Regulations, declares illegal the treatment described in the terms set out in the motivation by the sole proprietorship Petta Fabio Giovanni, based in XX, VAT no. 02500600909, and consequently:

- pursuant to art. 58, par. 2, lett. f), of the Regulation, prohibits the collection, storage and publication of personal data for the establishment and online dissemination of a general telephone directory whose data has not been taken from the d.b.u. ;

ORDER

to the individual company Petta Fabio Giovanni, based in XX, VAT no. 02500600909, to pay the sum of € 50,000.00 (fifty thousand / 00) as a fine for the violations indicated in the motivation, representing that the offender, pursuant to art. 166, paragraph 8, of the Code, has the right to settle the dispute, with the fulfillment of the prescribed requirements and the

payment, within thirty days, of an amount equal to half of the sanction imposed.

## INJUNCES

to the aforementioned Company, in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, to pay the sum of € 50,000.00 (fifty 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.

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, an opposition to this provision may be proposed to 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, May 26, 2022

## PRESIDENT

Stanzione

## THE RAPPORTEUR

Peel

## THE DEPUTY SECRETARY GENERAL

Philippi

\* The provision was challenged