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Provision of April 14, 2023

Register of measures

no. 181 of 14 April

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 Dr. Agostino Ghiglia;

WHEREAS

1. THE INVESTIGATION ACTIVITY CARRIED OUT

1.1 Premise

With deed no. 10907/21 of 23 February 2021 (notified on the same date by certified email), which here must be understood as reproduced in full, the Office has launched, 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 Sorgenia S.p.a. (hereinafter "Sorgenia" or "the Company") in the person of its pro-tempore legal representative at the registered office of the Company in Milan, Via Alessandro Algardi, n. 4 (cap. 20148), Tax Code 07756640012.

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 a complaint 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, as well as, sometimes, the failure to respond to the exercise of rights by the Company.

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

In the aforementioned context, on 7 October 2020, Sorgenia 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 9 files (nos. 132135, 137322, 139511, 139794, 140489, 142840, 143671, 153721, 155380).

With a note dated 26 October 2020, Sorgenia provided feedback, reconstructing the events that involved the complainant and the whistleblowers. As a preliminary step, the Company intended to recall the existence of a phenomenon such as that of telephone contacts made with users by subjects unrelated to the service provider, but in the name and on behalf of the latter, on the basis of knowledge not only of the personal data and contact details of the interested parties, but also, in some cases, of the supply data (POD, PDR, supply address). According to the Company, during the telephone calls these subjects would introduce themselves to users as the "tariff office" or "user office" of the company providing the energy service, motivating the contact with the reduction of the cost of the supply.

Again in the same response, the Company also wanted to state that it had carried out awareness raising activities for its customers by providing tools for recognizing and protecting themselves with respect to the aforementioned phenomenon, as well as having informally reported the problem to the Regulatory Authority for Energy, Networks and the Environment (ARERA).

With regard to the specific complaints received by the Guarantor, the Company therefore highlighted how, in almost all cases (specifically with regard to files 132135, 137322, 139511, 139794, 140489, 142840, 143671, 155380), from the internal checks carried out, all the numbers from which the unwanted contacts were made were "neither directly nor indirectly attributable to

Sorgenia nor to third parties operating on behalf of the writer" and as from the investigations regarding the origin of the calling numbers, through the queries of the R.O.C. (Register of Communication Operators), it had not been possible to identify these numbers.

With respect, in particular, to a report (file 139511), the Company instead represented that the failure to respond to the exercise of the right to cancel data and the right to object was attributable to the fact that the e-mail address of the reporting party had not been assigned to the competent department due to a technical problem, preventing timely management and that in any case, also in this case, the whistleblower's account had not been used to make telephone contacts either by Sorgenia or by its partners.

With regard to another and different report (file 143671), the Company reiterated that, although the number used for repeated unwanted contacts was not attributable to either the Company or its partners, the email objecting to the processing of data and requesting of cancellation, forwarded to the Company and correctly received, would not have received the due acknowledgment due to a technical problem. Furthermore, internal checks on the Company's e-mail systems were unable to provide useful elements for reconstructing the story due to the automatic deletion of the e-mail system logs once a period of 90 days had elapsed.

Lastly, with respect to what was complained of in a further report (fasc.153721) it was highlighted that, although the number used for telephone contact was found to be attributable to a company duly appointed as responsible for data processing by Sorgenia, the user contacted did not had never been entered in the public register of oppositions, also with respect to the checks carried out in relation to the specific dates of the complained telephone contacts, and that, in the absence of such registration, since the numbering is present in the subscriber list, it was freely usable . However, the Company has acknowledged that it has registered the objection of the reporting party to the processing for direct marketing purposes.

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, pursuant to art. 166, paragraph 5, of the Code, on 23 February 2021, it adopted the act of initiation of the procedure referred to in the introduction, with which it charged the Company with violations of the following provisions:

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-traceability of the calling numbers to the list of those in use by the Company and its commercial partners, presented by Sorgenia (in 8 cases out of 9) as an element of response to the request sent by the Guarantor, is critical in reason of that proactive perspective which defines the principle of accountability of the data controller and which permeates the entire new data protection regulatory framework. In fact, the circumstance whereby telephone contacts are made in the name and on behalf of Sorgenia made it necessary and essential to carry out punctual and constant supervision and monitoring work.

From the context represented, no elements emerged that would certainly exclude that this activity, parallel and external to Sorgenia and apparently characterized by a certain systematic nature, could not derive advantages for the latter in terms of activating services or signing new contracts.

Moreover, the peculiarity of the data of which the aforementioned third parties appear to be aware (POD or PDR and delivery address), as also referred to by the Company itself in its reply, cannot fail to imply a punctual investigation and supervisory activity in order to identify possible responsibilities and incorrect practices and to implement all the precautions required by the reference regulatory and ethical framework.

2) Articles 12, par. 3, 17 and 21 of the Regulation for failing to fulfill the obligation to respond to requests to exercise the rights of the interested parties, formulated pursuant to articles 17 and 21 of the Regulation, although it is the owner's duty to evaluate the correct reception of the requests of the interested parties and the correct response to the requests received.

The Company justified the failure to exercise the right to cancel data and the right to object with the occurrence of technical problems occurring within its internal organizational network but this circumstance, however, is not sufficient, according to the Guarantor, to release Sorgenia from the aforementioned obligations towards the interested parties.

2. DEFENSIVE OBSERVATIONS AND ASSESSMENTS OF THE AUTHORITY

2.1. Defensive statement and hearing of Sorgenia S.p.A.

On 23 March 2021, Sorgenia 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 7 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 annexes to the defense brief.

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), Sorgenia, both in the brief and in the hearing, claimed its complete non-involvement in the unwanted calls object of the complaints presented to the Guarantor and underlined that precisely because it was completely extraneous to the phenomenon, it did not have any power of verification and supervision.

The Company first of all made it clear that its commercial policy in the reference period (and in place at the time of the declarations) is based on two different methods of acquiring customers in relation to the reference segment: a) the "residential" sector; b) the "business" sector. All natural persons can be traced back to the first, while all individuals who act in the context of an economic activity (companies, freelancers, self-employed workers with a VAT number) can be traced back to the second.

In case a), the Company specified, also reiterating it during the hearing, that the acquisition channel is exclusively digital (Digital Channel): the potential customer (prospect), via the website www.sorgenia.it, requests the activation of a supply, entering all the information and providing all the data necessary to complete the request. According to the Company, this method, defined by Sorgenia as "pull" or "non-push" during the hearing, does not envisage any telephone commercial activity.

The Company thus stated that one hundred percent of customers in the residential sector in the period from January 2019 to October 2020 come from the digital channel.

Sorgenia also represented that it availed itself of the services of the so-called "comparators", i.e. some websites that help users to compare the different offers provided by energy suppliers. In some cases, these comparators also offer a telephone assistance service to users, who are contacted for this purpose. In particular, the Company has specified that in the commercial agreements entered into with these subjects, it is envisaged that they can support prospective customers who intend to activate the electricity supply with Sorgenia. To this end, users can contact the comparators by telephone and, vice versa, at the user's request, the latter can be contacted by the website operators.

As for the acquisition of new customers in the "business" sector (sub b), Sorgenia has declared that it makes use of both agencies and agents responsible for carrying out "physical proposition" activities and telesellers who carry out sales activities via telephone channel. As for the use of telesellers, the Company then provided some clarifications regarding the functioning of this sales channel, reporting how this activity, in the reference period of the investigation, involved a total of 8 suppliers, all

selected also with reference to the guarantees offers in terms of compliance with the regulations on the protection of personal data.

The Company has also specified that the contact lists, acquired both from Sorgenia and directly from telesellers, are subjected to a verification mechanism regarding the origin, the contents of the information issued by the person who collected the data and in relation to the consent formula for the transfer to third parties for marketing purposes and verification of the same. Furthermore, according to the Company, a sample check is carried out on "the ways in which consent was collected and documented" (page 3 of the brief). Subsequently, the data is compared with that contained in Sorgenia's non-contact lists and, if the data derives from the DBU of telephony service contractors, then a comparison is also made with the Opposition Register.

The Company has also specified that indications have been provided to telesellers in the sense of "not to use numbers not present in the approved and previously verified lists" (page 3 memorandum). As proof of this, Sorgenia intended to highlight that only 0.2 percent of the contracts activated in the reference period can be traced back to contacts on non-permitted lists. This percentage - according to the Company to be considered "physiological" - explains why often whoever receives, in the first instance, the promotional call is not the one or the one who has effective decision-making power over the various supply offers and therefore provides the teleseller with the contact second subject.

In highlighting how, with the exception of a single case, none of the complainants/reporters appear to fall within the category of the business, Sorgenia pointed out that it had implemented, also for prospective customers belonging to the business branch, a "quality check" system which subordinates the activation of the contract to the verification of the willingness of the new customer to activate the supply through a "verification call". If the customer is not available after six attempts, then the vocal order is played back and only in the event of a positive verification is the supply activated.

Finally, Sorgenia reiterated its complete non-involvement in the phenomenon object of the investigation by the Guarantor and highlighted:

a) the absence of contractual relationships with third parties who make unwanted calls as well as the absence of any economic benefit in terms of signing contracts in the "residential" segment; on the contrary, the Company believes it suffers serious damage to the Company's image due to "the illegitimate use of its brand";

b) that the numbers from which the calls originated cannot be traced back to any of Sorgenia's partners;

c) the exclusive use, by its telesellers, only of numbers regularly present in the ROC;

d) in any case, the compilation of the authorized lists used for the teleselling activity only with contact data and not also with specific supply data (POD or PDR, for example).

Since we are dealing with prospective users, therefore only potential, the supply data is the exclusive responsibility of the customer's supplier and the distribution company.

According to the Company, therefore, the phenomenon of unwanted calls would be attributable to subjects who act "in disregard of the laws" and who damage it through unfair commercial practices and through illegal use of the name. All these circumstances were the subject of complaints presented by Sorgenia between March and December 2020 to the competent judicial police authorities (see attachment A to the report).

In addition to this legal protection, the Company stated that it has launched information initiatives aimed at making its customers aware of the phenomenon through a specifically dedicated section of the site where a reporting form has also been made available to customers.

As proof of what was claimed in the defense brief, the representatives of the Company also produced, during the hearing, four recordings provided by Sorgenia customers, precisely for the purpose of denouncing unfair commercial practices and illicit use of the personal data of customers of the company by part of subjects who identify themselves as "local distributors", "authorities", "public agency", "consumers' association" or who in various ways refer to the names of large operators in the electricity and gas supply service.

During the hearing, held on 7 April 2021, Sorgenia finally claimed the application of the most rigorous security and technical-organizational measures to protect the database of its residential customers, including a rigorous IT network monitoring service (SOC - Service Operating Center - which uses a SIEM system for 24/7 infrastructure monitoring). It is, therefore, conceivable, according to the Company, that there is a problem of unfair practices by some other party involved in the flow of customer data within the sector chain (for example local distributors or other parties involved in the supply who also have billing data and customers' PODs). However, not being able to substantiate these claims with direct and documented evidence, the party limited itself to reiterating the harmfulness and seriousness of the phenomenon and its extraneousness to it.

In support of what was stated during the hearing, the Company subsequently sent by certified email (on 12 April 2021; prot.

0019988/21) the four aforementioned recordings produced during the hearing (as well as other recordings of the same content) , examples of reports relating to unwanted phone calls sent via e-mail by users to the Company and, lastly, some facsimiles of attachments to the bill relating to the information campaign and screen shots of the Sorgenia app which presents the dedicated information space.

2) In relation to the contestations of the violations referred to in no. 2 of par. 1.3 regarding the exercise of the rights of the interested parties, Sorgenia claimed to have had the data of the whistleblowers available only following the individual reports or the request for information formulated by the Authority. It therefore considers the objections regarding the violation of articles 17 and 21 of the Regulation to be groundless and inexistent, since it does not originally have the data of the whistleblowers. The Company stated that it had in any case proceeded to record the will of the whistleblowers, entering their personal data in its non-contact list.

As for the failure to respond to the exercise of the right of access (files 139511 and 143671), Sorgenia said it was aware that it had not complied with the provisions of art. 12, par. 3. Recalling what was already stated when replying to the request for information formulated by the Guarantor, the Company attributed this failure to reply to "specific situations" and underlined the isolated nature of the conduct, in the face of the numerous requests received in the reference period (more than 800 according to the Company) all managed correctly within the times established by the Regulation.

2.2 Considerations in fact and in law

The defensive arguments put forward by Sorgenia do not completely exclude the Company's liability for the alleged violations for the following reasons:

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 are not fully convincing and are not valid to completely overcome the findings of the Authority.

The main argument put forward by the Company in defense of its position, through the reference to an undue spending of its name, is not supported by concrete elements capable of excluding the liability of the owner and remains, as such, a mere hypothesis. This is mainly because in none of the argumentative passages developed has the serious and binding declaration regarding the activity of competitors aimed at acquiring customers expressly presenting themselves as Sorgenia been

substantiated in a solid, convincing and incontrovertible manner.

In the absence of the aforementioned elements and in consideration of the requests of the interested parties, who have 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 art. 168 of the Code, the ownership of the processing in question must be attributed to Sorgenia and, consequently, the responsibility for conduct in violation of the protection of personal data.

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 probative elements, the conformity of any processing activity that he has carried out directly or that others have done on your behalf (see also recital 74, GDPR). It is therefore necessary to provide evidence and documented proof of overall assessments carried out 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 proven through structured and systematic reporting mechanisms, risk forecasting and verification of all the "links" - even the intermediate ones such as, for example, agencies or sub-agencies - of the processing chain, from the owner to the 'interested.

Indeed, the company's decision to promote, starting from 2016, its business in the "Residential" sector exclusively through the digital channel and through the method defined as "pull" or "non-push" - based, as far as it is understood, on the interest that the potential user demonstrates towards the Company and not vice versa - seems to reveal a sensitive approach to the intangibility of the sphere of privacy of individuals, originally avoiding creating opportunities for disturbance to the detriment of the interested parties, as well as indicating a certain attention towards the principles of lawfulness, correctness and transparency, on the one hand, and data minimization, on the other.

In this context, it is undeniable that the cited and alleged circumstance whereby one hundred percent of the contracts in the "residential" branch were stipulated via digital channel proves in favor of the Company. This, albeit in a concise manner, not only confirms what has just been stated regarding the particular choice of promotional tool but also demonstrates, in fact, a certain will and consequent ability on the part of the data controller to verify the correspondence between the origin of the personal data functional to the promotional purpose and the effective finalization of the contract, with consequent evident

economic advantage for the Company.

However, the elimination of the telephone promotional sales channel in the residential sector and the preference for the digital channel is not without problems in terms of data protection. The contact of the customer following the completion of an online form should only take place following an effective verification of the will to be contacted. This verification should be ensured through a procedure aimed at ascertaining that the user who enters the data inside of the form is actually the subject interested in receiving the contact, as, for example, it could be achieved through a confirmation mechanism to be implemented by sending a link on the address (email address or mobile number) indicated by the interested party in place of compilation of the form or through other methods of subsequent control, generalized or random, on the contacts retrieved via the online form.

On the other hand, as far as the "Business" sector is more broadly concerned, in which the owner, admittedly, still makes use of agencies and telesellers, he does not relieve Sorgenia of the liability deriving from the aforementioned regulatory provisions for having simply envisaged an activity of "Quality check" which, from what emerged during the preliminary investigation, does not contain specific references with respect to the verification of the legitimacy of the original acquisition of the data and/or of the first contact. The "Quality check" activity carried out by the Company appears, in fact, rather focused solely on verifying the regularity of the contractual profiles, in order to obtain confirmation of the will of the new business customer to obtain the supply. This circumstance, if it confirms the expression of a will of a contractual and civil nature, does not seem sufficient to support the lawfulness and legitimacy of the processing from the point of view of data protection regulations.

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 step of a real "privacy check" cannot be said to be a suitable and adequate measure to effectively implement the principles of data protection or to guarantee the fulfillment of regulatory requirements or to protect the rights of the interested parties.

Nor can the fact, although referred to by the Company, be valid as an exempting or mitigating circumstance, whereby, except in one case (file 153721), none of the whistleblowers appears to be immediately attributable to the business sector. Moreover, in three other cases (files 137322, 139794 and 142840) the references present in the reporting forms to the Guarantor (in

particular the e-mail addresses) or communications sent via e-mail (bearing the reporting forms attached) reveal that very probably also these users - beyond the qualification communicated by the reporting parties in the individual forms - can be traced back to the business sector, which, therefore, is the one that remains the least controlled and most exposed.

These arguments are irrelevant since it is not the juridical nature of the subject that is decisive nor the number of grievances received from the Supervisory Authority but rather the presentation made by the Company of a management system for promotional activities that does not fully comply with the aforementioned provisions regulatory.

Still with regard to the business segment, from the documentation provided by the Company and examined by the Guarantor, only a fleeting and somewhat concise reference can be deduced on the methods of access to the systems responsible for activating the offers and services by the Company's partners. In fact, the memory reads that. “the numbers used for the purpose of making the complained contacts are not attributable to any of Sorgenia's partners, who are the only ones who, in relation to the so-called business segment, they could have followed up on the activation of the supply being enabled to access the systems for entering such requests" (evidence added).

The principle of accountability, the main novelty of the regulatory framework, imposes, 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 prepared by the controller, 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.

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 subject or agency that has obtained the user's acceptance of the contractual proposal, represent valid measures aimed at demonstrating compliance with the regulatory provisions by the controller in carrying out of its 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.

In the case of Sorgenia's business sector, the absence of a concrete connection emerges between the information relating to the promotional activities that are implemented, in any manner and in any form, based on the different sales channels, by Sorgenia and the platform responsible for the validation and registration of contracts, so that the two different phases (promotional and contractual) remain substantially separate and this makes it possible for agents, even possibly not belonging to the direct and official sales network - who intend to convey the contractual proposals for the benefit of the Company - enter the same also in the event of unlawful or in any case unwanted promotional contact. This is the so-called phenomenon of unofficial procurers, repeatedly referred to by the Guarantor (Provisions against Vodafone Italia S.p.A. web doc. n. 9485681, Fastweb S.p.A. web doc. n. 9570997).

Finally, despite the company's choice to focus, as regards the residential sector, only on the electronic customer acquisition method, Sorgenia has not provided evidence that it has assessed the risk or that it has prepared all the appropriate measures aimed at preventing the Agencies and active partners in the business sector do not have any kind of involvement with the loading operations of the contractual proposals relating to the residential sector. Measures and expedients of this type would prevent any type of contamination in the management of promotional activities in the residential and business sectors.

2) In relation to the contestations of the violations referred to in n. 2 of par. 1.3 regarding the exercise of the rights of the interested parties, Sorgenia claimed to have had the data of the whistleblowers available only following the individual reports or the request for information formulated by the Authority. The Company stated that it had in any case proceeded to record the will of the whistleblowers, entering their personal data in its non-contact list. With regard limited to the profiles connected to the articles 17 and 21, the Guarantor takes note of the explanations provided by Sorgenia in the defensive phase and believes that the elements collected are pertinent and suitable for relieving the Company of liability for a failure to comply with the provisions of these articles.

As for the failure to respond to the exercise of the right of access (files 139511 and 143671), Sorgenia said it was aware that it had not complied with the provisions of art. 12, par. 3. Recalling what was already stated when replying to the request for information formulated by the Guarantor, the Company generically attributed the lack of replies to "specific situations" and "exceptional circumstances, without, however, providing any circumscribed and detailed element aimed at explaining and justify such circumstances. Nor can it be considered as an exempting circumstance what the Company underlines or the isolated nature of the conduct, in the face of the numerous requests received in the reference period (more than 800), all handled correctly within the times established by the Regulation, according to what is reported.

3. CONCLUSIONS

For the above, while the contestation of violations of Articles can be considered obsolete 17 and 21 (number 2 of par. 2.2.), Sorgenia's responsibility is deemed to have been established for the following violations:

1) articles 5, par. 2, and 25, par. 1 of the Regulation, for the reasons described in number 1 of the previous paragraph 2.2;

2) art. 12, par. 3 of the Regulation, for the reasons described in number 2 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) contact Sorgenia S.p.a. a warning, pursuant to art. 58, par. 2, lit. a), in order to prevent the Agencies and partners active in the "business" sector from having any kind of involvement with the loading operations of the contractual proposals relating to the residential sector;

b) order Sorgenia S.p.a., pursuant to art. 58, par. 2, lit. d) of the Regulation, to adopt, in the data collection phase of potential users in the residential sector (so-called "no-push" mode), suitable measures to obtain effective verification of the willingness

to be contacted; this verification should be ensured through a procedure aimed at ascertaining that the user who enters the data in the form is actually the subject interested in receiving commercial offers; in implementation of the principle of accountability, the owner will be able to identify these or other measures suitable for achieving the authentication purpose;

c) order Sorgenia S.p.a., pursuant to art. 58, par. 2, lit. d) of the Regulation, to adapt each treatment carried out by its sales network in the "business" segment to methods and measures suitable for providing for and proving that the activation of offers and services and the subsequent registration of contracts takes place, as highlighted in the previous paragraph . 2.2, no. 1) only following promotional contacts which, if they were made by telephone, were 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;

d) order Sorgenia S.p.a., pursuant to art. 58, par. 2, lit. d) of the Regulation, to adopt, with reference to the business sector, suitable and unambiguous technical-organizational 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 available the agencies and blocking or suspension of contractual offers resulting from illicit promotional contacts;

e) order Sorgenia S.p.a., pursuant to art. 58, par. 2, lit. d), to implement all the additional technical and organizational measures necessary for the management of the requests to exercise the rights of the interested parties which allow for timely and complete feedback to the interested parties;

f) ask Sorgenia 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;

g) 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.

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 Sorgenia S.p.a. of the pecuniary administrative sanction provided for by art. 83, para. 3, 4 and 5 of the Regulation 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 amount of the fine, reference must therefore be made to the turnover of Sorgenia S.p.A. detectable 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, as 135,391,320 euros.

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 (Article 83, paragraph 2, letter a) of the Regulation) - with reference to the disputes referred to in numbers 1 and 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), the level of damage actually suffered by the data subjects, who have been exposed to nuisance calls, in some cases repeated, and of the growing difficulties that they encounter to stem 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, with a duration exceeding six months of the violation referred to at number 2, if we consider that the reports refer to requests for the exercise of rights advanced in 2019 and never processed, at least until 2021 following the requests of the Guarantor;

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 9 interested parties who have filed 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, proposed in the brief and during the hearing, aimed at mitigating the consequences of the violations (Article 83, paragraph 2, letter c) of the Regulation), with reference, in particular : a) information initiatives aimed at making its customers aware of the phenomenon of wild telemarketing through a specifically dedicated section of the website, where a reporting form can also be found; b) the application of security and technical-organizational measures to protect the database of its residential customers, including a computer network monitoring service; c) preliminarily and originally, corporate choices which, as presented by the Company in its defense briefs and during the hearing as well as supported by specific probative elements, testify to an attention to the phenomenon of wild telemarketing;

6) as a mitigating factor, the collaboration shown by the Company towards the Guarantor, also testified during the hearing, through punctual and specific interventions as well as through the subsequent production, by certified email (on 12 April 2021), of further useful probative documentation (recordings, examples of reports concerning unwanted phone calls sent via email by users to the Company, facsimile of attachments to the bill relating to the information campaign and screenshots of the Sorgenia app which presents the dedicated information space);

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, even with relatively recent 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 Sorgenia S.p.a. the administrative sanction of the payment of a sum of Euro 676,956.00 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) addresses against Sorgenia S.p.a. a warning, pursuant to art. 58, par. 2, lit. a), in order to prevent the Agencies and partners active in the "business" sector from having any kind of involvement with the loading operations of the contractual proposals relating to the residential sector;

b) enjoins Sorgenia S.p.a., pursuant to art. 58, par. 2, lit. d) of the Regulation, to adopt, in the data collection phase of potential users in the residential sector (so-called "no-push" mode), suitable measures to obtain effective verification of the willingness to be contacted. This verification should be ensured through a procedure aimed at ascertaining that the user who enters the data in the form is actually the subject interested in receiving commercial offers. In implementation of the principle of accountability, the owner will be able to identify these or other measures suitable for achieving the authentication purpose;

c) enjoins Sorgenia S.p.a., pursuant to art. 58, par. 2, lit. d) of the Regulation, to adapt each treatment carried out by its sales network in the "business" segment to methods and measures suitable for providing for and proving that the activation of offers and services and the subsequent registration of contracts takes place, as highlighted in the previous paragraph . 2.2, no. 1) only following promotional contacts which, if they were made by telephone, were made by the aforementioned sales network through telephone numbers registered and registered in the ROC - Register of Communication Operators and in compliance with the provisions of art. 130 of the Code;

d) enjoins Sorgenia S.p.a., pursuant to art. 58, par. 2, lit. d) of the Regulation, to adopt, with reference to the business sector, suitable and unambiguous technical-organizational 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 available the agencies and blocking or suspension of contractual offers resulting from illicit promotional contacts;

e) enjoins Sorgenia S.p.a., pursuant to art. 58, par. 2, lit. d), to implement all the additional technical and organizational measures necessary for the management of the requests to exercise the rights of the interested parties which allow for timely and complete feedback to the interested parties;

f) requests Sorgenia 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 Sorgenia S.p.a., in the person of its pro-tempore legal representative, with registered office in Milan, via Alessandro Algardi n. 4, tax code 07756640012, to pay the sum of 676,956.00 euros (six hundred and seventy-six thousand, nine hundred and fifty-six/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 676,956.00 (six hundred and seventy-six thousand, nine hundred and fifty-six/00), according to the methods indicated in the attachment, within 30 days of notification of this provision, under penalty of adopting the consequent executive deeds 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 filed 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