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Order injunction against Stay Over s.r.l. - July 21, 2022

Record of measures

n. 255 of 21 July 2022

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 (hereinafter, the "Regulation");

GIVEN the Code regarding the protection of personal data, containing provisions for the adaptation of the national system to Regulation (EU) 2016/679 (Legislative Decree 30 June 2003, n.196, as amended by Legislative Decree 10 August 2018, no. 101, hereinafter the "Code");

GIVEN the complaint submitted pursuant to art. 77 of the Regulations on 5 September 2019 by Ms XX against Stay Over s.r.l .;

EXAMINED the documentation in 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 complaint against the Company and the preliminary investigation.

With a complaint of 5 September 2019, Ms. XX complained about alleged violations of the Regulations by Stay Over s.r.l. (hereinafter, the Company), with reference to the late and unsuitable response to a request for access to the data referring to the complainant processed by the Company and to the unlawful processing of the e-mail account XX carried out by the Company following the termination of the employment relationship between the complainant and the Company.

In particular, with reference to the request for access to data, it was complained that the Company allegedly declared, among other things belatedly, "there is no ongoing processing of data concerning the [complainant]"; with reference to the company email account assigned to the complainant during the employment relationship, it was complained that the Company would

have kept the same active following the termination of the employment relationship by redirecting incoming communications to another email address assigned to other employees of the Company. This in the absence of adequate information pursuant to art. 13 of the Regulation.

With a note dated 13 December 2019, in providing feedback to the Authority's requests of 28 October 2019, the Company stated that:

to. "With regard to the processing of the personal data of the former employee [...], the Company [...], following the termination of the employment relationship and the consequent obligations, is limited to the conservation of the personal data of the former employee, relating to the relationship of work with the same elapsed until 30.09.2018, for the purposes of observance and fulfillment of the conservation obligations, imposed on him by the legislation on labor, social security and social and fiscal assistance "(see note 13.12. 2019, p. 1);

b. “The company mail account [subject of the complaint] has always been used exclusively for business and non-personal purposes and contained exclusively company emails, necessary for the operations of [the Company]. Given the exclusively corporate content of the e-mails circulating on the corporate account, there is no illegal processing of personal data by the company "(see note cit., P. 2);

c. "After the termination of the employment relationship with the former employee, the Company [...], contacted [...] the system administrator [...], so that, in view of the deactivation of the company email account [subject of complaint], an automatic message was set up to inform third parties that the account was no longer active […], obtaining his commitment to immediately intervene, for the next day "(see note cited, p. 2);

d. the Company appointed as system administrator was “also designated as« Responsible for the processing of personal data, resulting from the management of company IT systems and related activities »” (see note cited, p. 3);

And. the legal representative of the Company appointed system administrator "on 11.10.2018 [...] he noticed that both the" inbox "and the" deleted items "folder of the company account [in question] did not contain emails. Having informed the Company of the anomaly, in order to allow [the Company] to recover company emails, constituting company assets, [the system administrator] [...] "blocked the account [...] without deactivating it, however, act of account protection measures, insertion of the automatic e-mail message not active, diversion of incoming e-mails to another company e-mail address, inhibition of sending e-mails ». It should be noted that the procedure for suspending the account for a period of 6 months

during which the same remains active in reception only has been implemented in the "Regulations for the use of IT tools", adopted on 20.10.2018. The Regulation was drafted and prepared with the specialist advice of the Company Ergon S.r.l., which provides advice on privacy [...], and was approved and endorsed by the DPO "(see note cit., P. 3);

f. “This allowed […] to initiate the procedure for the recovery of deleted company emails, which amounted to approximately 34,000” (see note cited, p. 3);

g. "The company account was deactivated on 17.03.2019" (see cit. Note, p. 3);

h. "The account was deactivated on 17.03.2019, to meet the following needs in the meantime: to allow the employer to recover deleted company emails, necessary to ensure company operations, and to be able to verify the causes of cancellation of company emails ; allow the protection of Stay Over S.r.l. in the dispute that has arisen in the meantime with the former employee in relation to the cancellation of the e-mails […] ensure medium tempore business continuity, pertaining to the former employee […] before the termination of her employment relationship; in this regard, it should be noted that the former employee dealt with the following relationships: personnel administration, verification of the attendance of employees employed in cleaning contracts, disciplinary procedures, all strategic for the concrete operation of the Company "(see note cit., p. 4, 5);

the. "With regard to the criteria for legitimizing the processing and the methods of processing the data circulating on the account until its deactivation and with reference to the authorized subjects, it is specified that, in addition to the Company [...] who as" system administrator "and of "Responsible for the processing of personal data resulting from the management of company IT systems and related activities" [...] carried out the activity referred to in the [a] report dated 07.11.2018 [...] and the attached report [...] [...] -, to ensure the continuity of the work carried out by the former employee [...], the incoming messages on the account were diverted to the account "XX", used by the employees [...], who took over from the [complainant] in the tasks that to this they had been entrusted ”(see cit. note, p. 5);

j. "Stay Over S.r.l. adopted the «Regulation for the use of IT tools» on 20.10.2018 […] ”(see cit. note, p. 5);

k. “Since the adoption subsequent to the termination of the relationship with the former employee […], said regulation was not handed over to the latter. It should be noted that the former employee had signed, on the date of her hiring, the privacy policy ”(see note cit., P. 6);

L. "It should be noted that the Regulation acknowledges the practice, already in use in the Company, regarding the use by

employees of company e-mail addresses, both as regards the purposes of using the accounts (exclusively as tools for work for business purposes), both as regards the ownership of the Company and the (business) content of the emails circulating on the accounts "(see note cited, p. 6).

On 11 June 2020, the complainant presented her counter-arguments.

On 6 August 2020, following the invitation to provide further clarifications from the Authority, the Company declared that:

to. "The request [pursuant to art. 15 of the Regulations] followed the termination of the employment relationship for more than 6 months (dating back to 30.09.2018): in this respect it was also highlighted that the former employee was aware that his personal data would be kept by the Company even after the termination of the employment relationship (to allow the fulfillment of all possible obligations connected with or deriving from the conclusion of the relationship itself), as shown in the privacy policy, signed by the complainant "(see cit. note, p. 2 , 3);

b. "It is therefore in this specific context that the reference to" the processing of personal data concerning the [complainant] is not in progress ", contained in the communication of 20.05.2019, which the Company intended to make not in the strictly literal sense indicated by Article 4.2 of the Regulation, but in the "non-technical" sense, referring, in the reply, not to the personal data for which the retention by law is mandatory following the termination of the employment relationship (retention of which the former employee was made aware [...]), but to the data whose processing was no longer necessary by the Company "(see cit. note, p. 3);

c. “The fact that Stay Over found the warning […] received by pec to the Company on 11.03.2019 […], with communication dated 20.05.2019, was determined by the following factors: the request pursuant to art. 15 EU Regulation 2016/679 was formulated in the body of a warning signed by the former employee's lawyers, without being reported […] in the subject of the communication […]; the request for access to the documents was therefore not immediately identifiable for the Company, which treated the warning received on 11.03.2019 as part of a legal dispute already pending, and not as an autonomous request pursuant to art. 15, which would have followed, if at least it had been well identified at least in the object, a different process; it should be added that, in the same period, a process of turnover and reorganization of the staff at headquarters was underway within the Company, so that the management of the response to requests suffered a general initial slowdown, due to this sudden and unexpected reduction of the company staff in charge, which caused a problem in the communication flow. This situation represented a completely isolated event, which the Company then faced by strengthening the organizational

mechanisms aimed at compensating for the temporary / sudden lack of personnel; in the meantime, there was also […] the alternation of new lawyers in assisting the Company in the dispute against the former employee; the lawyers of the complainant were promptly notified of this change by email dated 03.05.2019. The communication was received by the […] lawyer of the complainant, on 06.05.2019 […]; on 09.05.2019 the same [lawyer of the complainant] gave a reply to the new defenders of the Company, taking note of the intervention and declaring to await a reply to the aforementioned warning of 08.03.2019 "(see note cit., p. 4, 5);

d. with regard to the purposes and methods of storage of the e-mails sent and received through the complainant's company account "the purpose is related to the management of the organizational and production needs of the Company, with the use of electronic tools provided to provide employment […]. The retention of messages (sent and received) on all company accounts at the date of the transfer of the employment relationship with the complainant […] was the responsibility of the Microsoft OFFICE365 System; physically the mail resided in the cloud on Microsoft servers "(see note cit., p. 5, 6);

And. with regard to the Company's practice regarding the methods of storing e-mails sent and received through the company accounts of its employees "The messages received or sent, if not deleted, were present in the company accounts folder for a period not exceeding the deadline 10 years old "(see cit. note, p. 6);

f. "Before the adoption of the aforementioned policy, the Company adopted an operating procedure to be GDPR compliant, in which it was assisted by the specialist advice of the Company Ergon S.r.l. […], Which later resulted in the adoption of the Regulation in compliance with current legislation ”(see cit. Note, p. 6);

g. "In order to comply with art. 4 of Law 300/40, the Company has made the information pursuant to art. 13 of the Regulations to all interested parties and has complied with the provisions of the Provision of the Guarantor Authority 1 March 2007 also through the adoption of the Regulations for the use of IT systems in force since 2018, to which we refer. The Company also carried out a training course for employees on the "gdpr privacy legislation" "(see note cit., P. 6);

h. “No monitoring of electronic flows into and out of the Company is carried out” (see note cit., P. 7).

On February 2, 2021, the complainant presented her counter-arguments.

On October 19, 2021, following the Authority's invitation to provide further clarifications, the Company declared that:

to. "The retention period of 10 years for the account [subject of the complaint] and for all company accounts starts from the date of registration of the message in the e-mail box" (see note 19.10.2021, p. 2);

b. "The retention period of 10 years responds to the company's need for the conservation, also and above all for evidential purposes, of e-mail messages with legal and commercial content and relevance, since these are electronic documents, which, as correspondence, must be kept orderly for each deal according to the provisions dictated by art. 2214 cod. civ. The e-mails with commercial content must also be kept and kept for tax purposes according to art. 22 of the D.p.r. 600/1973. The legislation on certified e-mail messages (PEC) also imposes a 10-year retention obligation. Art. 43 of the Digital Administration Code (CAD) provides that the conservation of the same must be performed in digital mode according to the technical rules on the conservation system "(see note cit., P. 2);

c. e-mails "with jobs are deleted respecting the aforementioned retention period" (see cit. note, p. 2);

d. "The complainant [...] appears to have signed only the information on the processing of personal data [...], which contains the information that the processing could take place with the support of paper, computer or telematic means" (see note cit. , p. 2);

And. “The complainant […] resigned before the Company concluded the process of adopting the« Regulation on the use of IT tools »” (see note cit., P. 2, 3).

2. The initiation of the procedure for the adoption of corrective measures and the Company's deductions.

On January 24, 2022, the Office carried out, pursuant to art. 166, paragraph 5, of the Code, the notification to the Company of the alleged violations of the Regulations found, with reference to Articles 5, 6, 12, 13, 15, 88 of the Regulation and 114 of the Code.

With the defensive writings sent on February 22, 2022, the Company stated that:

to. "The access to the e-mail box of the former employee was not made in order to obtain financial benefits or profits of any kind, but was motivated by the need for the Company to guarantee the continuation of its business and at the same time for the purposes for the protection of their rights, in the context of a pre-litigation situation [...] as regards the subjective element for a possible sanction, the Company's conduct was characterized by negligence and not by fraud "(see note 22.2.2022 cit., p. 2);

b. "With regard to the protection of personal data, the Company has adopted a Regulation for the use of IT tools on 20.10.2018; made use - and still makes use of - of the specialized services of companies accredited in the sector and, in particular, of the specialist advice of Ergon S.r.l., also designated as D.P.O. [...], and, for the management of IT systems, the

performance of the Company [...] appointed "System Administrator" and "Responsible for the processing of personal data, resulting from the management of company IT systems and related activities" (see cit. note, p. 2);

c. "Despite the fact that in the last two years it has found itself operating in a very complicated context due to the ongoing health emergency, which has particularly affected the service sector in which it operates, Stay Over S.r.l. continued to pay attention to the issue of privacy and the protection of personal data "(see note cit., p. 2, 3);

d. with reference to the "results of the recent audits of 15 and 16 February 2022", the Lead Auditor acknowledged that "the Organization has achieved the objectives of maintaining compliance with the GDPR" and that "Based on the results of this audit, the 'Auditor therefore proposes that Stay Over S.r.l. is confirmed "(see cit. note, p. 3);

And. "The Company, with a view to complete collaboration with this Exc.ma Authority that has characterized its intervention in the procedure from the beginning, is fully available to accept and implement all the indications that may be received by the Guarantor" (see cit. note, p. 3);

f. "In the course of the procedure, the Company cooperated overall and actively with this Excellency Authority, finding every request and attaching extensive and detailed documentation as proof, with a view to a complete disclosure of the elements useful for providing any clarification requested" (see cit. note, p. 3);

g. "The Company does not have any precedents against it, much less specific (relating to the same type of treatment), nor has it ever been subjected to proceedings before the Guarantor Authority before" (see note cit., P. 3);

h "The Company is currently in a greatly compromised and substantially precarious economic situation, facing for the second consecutive year the important repercussions caused to its economic and financial equilibrium by the ongoing health emergency. Stay Over S.r.l. in fact, it operates in the hotel services sector, one of the most compromised areas and which has been most affected by the economic crisis resulting from the health emergency "(see cit. note, p. 3).

Following the request of the Company, the hearing of the same was held on 24 May 2022. On that occasion, the party represented that "it immediately took action to eliminate the consequences of the irregularities relating to the case subject to the complaint and that emerged during the investigation before the Authority" and that "since the second half of September 2018 the Company has adapted its data processing and company policies to the provisions of the 2016/679 EU Regulation […] also with the help of specialized consultants. The resignation of the complainant falls within the period in which the Company was adapting to these provisions. […] The behaviors put in place in this circumstance do not constitute company practice, but

have been limited to the specific case in consideration of the peculiarity of the case. [...] The system for re-forwarding e-mails sent to the complainant's account was set only on the account of the employee who replaced the complainant in the same functions ".

3. Outcome of the procedure.

3.1. Established facts and observations on the legislation on the protection of

personal data.

Upon examination of the declarations made to the Authority during the procedure as well as of the documentation acquired, it appears that the Company, as the owner, has carried out some processing operations relating to the complainant, which do not comply with the regulations on the subject of protection of personal data, both as regards the exercise of the right of access to data pursuant to art. 15 of the Regulations as the Company has provided the complainant with a late and unsuitable reply, both as regards the processing of the company email account.

In this regard, it should be noted that, unless the fact constitutes a more serious crime, whoever, in a proceeding before the Guarantor, falsely declares or certifies news or circumstances or produces false acts or documents, is liable pursuant to art. 168 of the Code "Falsehood in declarations to the Guarantor and interruption of the execution of the tasks or the exercise of the powers of the Guarantor".

Art. 5 of the Regulation, in stating the general principles of processing, specifies that the data must be processed "in a lawful, correct and transparent manner towards the interested party (" lawfulness, correctness and transparency ")", that data must be processed " adequate, relevant and limited to what is necessary with respect to the purposes for which they are processed ("data minimization") "and that the data must be" kept in a form that allows identification of the data subjects for a period of time not exceeding achievement of the purposes for which they are processed ". Art. 6 of the Regulation indicates the conditions of lawfulness for the processing of data so-called common.

Art. 12 of the Regulation, to be read also in close connection with the rules relating to the specific rights recognized by the legal system to the interested party, provides that "the data controller takes appropriate measures to provide the interested party with all the information referred to in articles 13 and 14 and the communications referred to in articles 15 to 22 and article 34 relating to processing "(par. 1) and that" the data controller facilitates the exercise of the data subject's rights pursuant to articles 15 to 22 " (par. 2). Paragraph 3 of the same article specifies that "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 deadline can be extended by two months, if necessary, taking into account the complexity and number of requests. The data controller informs the interested party of this extension, and of the reasons for the delay, within one month of receiving the request ". According to paragraph 4 of the same article, the data controller, if he does not comply with the request of the interested party, "informs the interested party without delay, and at the latest within one month of receiving the request, of the reasons for the non-compliance and possibility to lodge a complaint with a supervisory authority and to propose a judicial appeal ".

Based on art. 15, par. 1, of the Regulation "the interested party has the right to obtain from the data controller confirmation that the processing of personal data concerning him or her is in progress and in this case to obtain access to personal data and [...] information [indicated in the same article 15].

Art. 13 of the Regulation indicates the information relating to the processing that the data controller must provide to the data subject before processing.

Art. 88 of the Regulation is without prejudice to the national rules of greater protection ("more specific rules") aimed at ensuring the protection of rights and freedoms with regard to the processing of personal data of workers. The national legislator has approved, as a more specific provision, among other things, art. 114 of the Code which, among the conditions of lawfulness of the processing, established compliance with the provisions of art. 4, law 20 May 1970, n. 300.

3.2. Established violations.

3.2.1. Business email account.

From the elements acquired during the preliminary investigation, it emerged, in particular, that the Company, on the basis of what it declared, after the termination of the employment relationship with the complainant (relationship between 30.9.2018) maintained active, until March 17, 2019, the individualized e-mail account assigned to the complainant in order to retrieve the business e-mails of the aforementioned account to "guarantee business operations, and to be able to verify the causes of cancellation of corporate e-mails" as well as to "Allow the protection of Stay Over S.r.l. in the dispute that has arisen in the meantime with the former employee in relation to the cancellation of the e-mails [and] ensure medium tempore business continuity, pertaining to the former employee [...] before the termination of her employment relationship ".

It also emerged that the persistent activity of the company e-mail account allowed the Company to recover 34,000 e-mails

which, according to the Company's declaration, had been deleted from the aforementioned account, as well as that the Company proceeded to activate a system for the automatic redirection of the e-mails received from the aforementioned account, after the termination of the employment relationship, to another e-mail address of the Company managed by some employees of the same.

The Company also declared to keep the e-mails sent and received through the company accounts, including the one assigned to the complainant, for ten years "from the date of registration of the message in the e-mail box", "also and above all for evidentiary purposes […] Since these are electronic documents, which, as correspondence, must be stored in an orderly fashion for each deal in accordance with the provisions laid down by art. 2214 cod. civ. ", therefore for tax purposes pursuant to art. 22 of the Presidential Decree 600/1973 and based on art. 43 of the Digital Administration Code.

It is first noted that, in accordance with the constant orientation of the European Court of Human Rights, the protection of privacy also extends to the workplace, considering that it is precisely during the performance of work and / or professional activities that relationships develop where expresses the personality of the worker (see articles 2 and 41, paragraph 2, of the Constitution). Also taking into account that the borderline between the work / professional and the strictly private sphere cannot always be clearly drawn, the Court considers that art. 8 of the European Convention on Human Rights set up to protect private life without distinguishing between the private sphere and the professional sphere (see Niemietz v. Allemagne, 16.12.1992 (rec. No. 13710/88), spec. Para. 29; Copland v. UK, 03.04.2007 (ref. No. 62617/00), spec. Par. 41; Bărbulescu v. Romania [GC], 5.9.2017 (ref. No. 61496/08), spec. Par. 70 -73; Antović and Mirković v. Montenegro, 28.11. 2017 (rec. No. 70838/13), spec. Para. 41-42). Therefore, the processing of data carried out using information technology in the context of the employment relationship must comply with respect for fundamental rights and freedoms as well as the dignity of the interested party, to protect workers and third parties (see Recommendation CM / Rec (2015) 5 of the Committee of Ministers to the Member States on the processing of personal data in the employment context, spec. Point 3).

In relation to what emerged during the investigation, it should be noted that the Company has not previously adequately informed the complainant of the treatment put in place by Stay Over s.r.l. on the company email account assigned to you.

In fact, the Company declared that it had adopted the "Regulation for the use of IT tools" only on 20 October 2018, therefore after the termination of the employment relationship with the complainant and that it had not signed another document in subject to the processing of personal data with the exception of a document called "information pursuant to and for the

purposes of art. 13 of Legislative Decree 30/06/2003 n. 196 "Protection of persons and other subjects regarding the processing of personal data", dated 2 August 2013, which does not contain any indication regarding the processing of data relating to the e-mail account assigned to the employee nor references to the controls that the employer could have carried out on the same. This is in contrast with the provisions of art. 13 of the Regulation, according to which the data controller is required to provide the data subject in advance with all the information relating to the essential characteristics of the processing (see Provision March 1, 2007, no. 13 "Guidelines by e-mail and internet ", In G. U. n. 58 of 10.3.2007; with reference to specific cases, see among many others, Provv. 29.10.2020, n. 214, web doc. N. 9518890; Provv. 29.9.2021, n. 353 , in www.garanteprivacy.it web doc. n. 9719914; Provv. 16.12.2021, n. 440, web doc. n. 9739653) and with the provisions of art. 12 of the Regulations ("The data controller takes appropriate measures to provide the data subject with all the information referred to in Articles 13 and 14").

Furthermore, art. 5, par. 1, lett. a) of the Regulations as in the context of the employment relationship the obligation to inform the employee is also an expression of the general principle of fairness.

With reference to the content of the "Regulation for the use of IT tools", adopted by the Company on 20 October 2018, and in particular to the provisions contained therein dedicated to the processing of data relating to the company email account (specific object of assessment) it is also noted, and in any case, that it does not comply with the principles contained in art. 5 of the Regulations regarding the control activities that Stay Over s.r.l. intends to exercise towards its employees.

Specifically, the procedure indicated therein relating to the processing of the company e-mail account assigned to the worker after the termination of the employment relationship does not comply with the data protection regulations, according to which "in the event of termination of the employment relationship, the Company email entrusted to the person in charge will be suspended for a period of 6 months, subsequently deactivated. During the suspension period, the account will remain active and visible to a person appointed by the Company only in receipt, who will process the data and information received for organizational and production needs, for work safety and for the protection of company assets, transmitting them the content to other employees (if the message has business content) or by deleting it (if the message has no business content) "(p. 20). This is because this procedure is in contrast with art. 5, par. 1, lett. c) of the Regulation which sets out the principle of data minimization.

Furthermore, not even the envisaged "storage [cation] for ten years on its E-mail Servers [of] all e-mail messages with legal

and commercial content and relevance originating from and addressed to company domains "(p. 20), considering, among other things, that in the same company regulation it is specified that" in the event of sudden or prolonged absence of the employee or for essential organizational and production needs, for work safety and protection of company assets or for reasons of security of the IT system, the Company, through the System Administrator can, according to the procedures indicated in point 5 of these Regulations, access the company email account, viewing of messages, saving or deleting files ".

Through this processing - therefore the systematic storage of external data and the content of all e-mails exchanged by employees through company accounts -, in fact, the Company in violation of art. 5, par. 1, lett. a) of the Regulations (principle of lawfulness of processing) can reconstruct the activity of its employees and carry out a check on it, well beyond the purposes strictly permitted by art. 4, l. 20.5.1970, n. 300 (referred to in Article 114 of the Code) and in any case in the absence of the procedural guarantees provided therein.

This also taking into account the fact that the identification, among the e-mail messages sent or received, of those "... with legal and commercial content and relevance coming from and directed to company domains ..." presupposes an active analysis of the continuous and pervasive email.

Furthermore, the company's conduct violates the principle of data minimization. In relation to the needs envisaged by the e-mail retention company, the Authority has already had the opportunity to specify that the legitimate need to ensure the ordinary development and continuity of the company activity as well as to provide for the due conservation of documentation based on specific provisions of the legal system are ensured, first of all, by the preparation of document management systems with which, through the adoption of appropriate organizational and technological measures, identify the documents which, in the course of carrying out the work activity, must be gradually archived in a manner suitable for guaranteeing the characteristics of authenticity, integrity, reliability, legibility and availability prescribed by the applicable sector regulations (see the provisions of the D.P.C.M. 3 December 2013, containing the Technical Rules on the conservation system pursuant to of articles 20, paragraphs 3 and 5-bis, 23-ter, paragraph 4, 43, comm 1 and 3, 44, 44-bis and 71, paragraph 1, of the Digital Administration Code referred to in Legislative Decree no. 82 of 2005; likewise the documents that have the quality of "accounting records" must be memorized and kept in specific ways: art. 2214 of the Italian Civil Code; articles 43 and 44, d. lgs. 7 March 2005, n. 82, "Digital Administration Code").

Email systems do not allow, by their very nature, to ensure these characteristics. The purpose of providing tools for the

ordinary and efficient management of corporate document flows, therefore, can well be pursued, in accordance with the provisions in force, with less invasive tools for the right to privacy of employees and third parties, with respect to the above-described activity of systematic and extensive storage of e-mails carried out by the Company, which is therefore neither necessary nor proportionate with respect to the purpose (see provision February 1, 2018, n.53, web doc. 8159221).

The Company has also represented, with regard to the retention of e-mails for ten years, the need for retention, especially for evidential purposes.

In this regard, it should be noted that the processing of personal data carried out for the purpose of protecting one's rights in court must refer to ongoing disputes or pre-litigation situations, not to abstract and indeterminate hypotheses of possible defense or protection of rights (see among others, provision n.53 of 1 February 2018, web doc. 8159221 and 19 March 2015, web doc. 4039439).

With regard to what is reported in the aforementioned company regulation, it should be noted that the procedures described therein must be in compliance with the data protection regulations.

It was also ascertained that the Company, verified through the system administrator on 11 October 2018 for the absence of incoming and outgoing e-mails on the account assigned to the complainant during the course of the employment relationship, precisely by virtue of the storage of e-mails for ten years, recovered 34,000 e-mails that were present on the same account, thus viewing the communications sent and received by the complainant throughout the course of the employment relationship that were contained therein.

In this regard, it is therefore noted that the conduct of the Company which consisted in the recovery of 34,000 e-mails exchanged through the corporate e-mail account assigned to the complainant during the course of the employment relationship, considering the practice of keeping all the e-mails e-mails exchanged through company accounts for ten years starting "from the date of registration of the message in the e-mail box", was suitable to allow the reconstruction of the worker's activity and to carry out a check on the same activity beyond the strictly necessary purposes admitted by art. 4, l. 20.5.1970, n. 300 and in any case in the absence of the procedural guarantees provided for in the same article 4.

The conduct carried out by the Company therefore resulted in an illegal processing of personal data as it was carried out in violation of the principle of lawfulness of the processing (Article 5, paragraph 1, letter a) of the Regulation) in relation to art. 114 of the Code where it refers to art. 4 of the l. May 20, 1970, n. 300, as a condition of lawfulness of the processing, as well as art.

88 of the Regulation as art. 114 constitutes one of the provisions of national law "more specific to ensure the protection of rights and freedoms with regard to the processing of personal data of employees in the context of employment relationships" identified by art. 88 of the Regulation.

This discipline, in fact, even following the changes laid down by art. 23 of d. lgs. 14 September 2015, n. 151 does not allow the carrying out of activities suitable for achieving maximum, prolonged and indiscriminate control of the worker's activity (see "Guidelines by e-mail and internet", cit .; Council of Europe, Recommendation of 1 April 2015 , CM / Rec (2015) 5, spec. Principal 14) (see Provv. 1 February 2018, n. 53, web doc. 8159221).

The investigation also revealed that, following the termination of the employment relationship, the Company, in keeping the e-mail account assigned to the complainant active from the date of termination of the employment relationship (30 September 2018) until 17 March 2019 set up a system for the automatic redirection of incoming e-mails on the aforementioned account to another e-mail address ("XX") managed by the employees who had, as specified by the Company, "taken over from [the complainant] in the tasks that were been entrusted ".

Furthermore, despite the persistent activity of the account following the termination of the employment relationship aimed at allowing the data controller to activate an automatic reply message to inform third parties of the deactivation and subsequent removal of the e-mail account, it does not appear that the Company has actually activated such an automatic system. The Company, in fact, has limited itself to producing the report of the data controller from which it emerges that "the automatic e-mail message not active" had been activated, without however providing further evidence in this regard.

The Company's conduct therefore does not comply with the principle of minimization and the principle of limitation of conservation considering that the same has activated an automatic redirection system, moreover for a considerable period of time (almost five and a half months), without having , among other things, indicated the concrete needs underlying this decision; however, it is not proven that the Company has activated an automatic reply message warning of the imminent deactivation of the aforementioned account.

Furthermore, the redirection activity does not appear to have been implemented in the presence of any of the conditions of lawfulness provided for by art. 6 of the Regulations, considering that the Company has not adequately justified, with reference to the present case, the need for the aforementioned redirection.

In this regard, it is recalled that the exchange of electronic correspondence - unrelated to work or not - on an individualized

company account configures an operation that allows to know some personal information relating to the interested party (see "Guidelines of the Guarantor for e-mail and Internet ", cit., spec. point 5.2, lett. b), therefore the Guarantor has already deemed it compliant with the principles regarding the protection of personal data (see Provisions 4 December 2019, n. 216, doc web 9215890; 1 February 2018, n.53, web doc. aimed at informing third parties and providing the latter with alternative addresses referring to his professional activity.

Taken as a whole, the Company, with its conduct, violated art. 5, par. 1, lett. a), c), e) as well as art. 6 of the Regulation.

3.2.2. Right of access to data

It is also ascertained that the Company has not provided adequate and timely response to the request for access presented by the complainant, pursuant to art. 15 of the Regulations, on 11 March 2019.

A first (albeit formal) reply, in fact, was sent only on May 3, 2019; on that occasion, the Company's lawyers stated that "following the revocation of the mandate to the previous defendants, [the Company] appointed them to reply to the [...] communication [of the complainant]" and that "we will therefore respond in name and on behalf of the client, as soon as we have examined the documentation in our hands ". On 20 May 2019, then, the Company, with reference to the request for access, declared that "there is no processing of personal data concerning the [complainant] in progress".

It is therefore proven that the Company has violated Articles 12 and 15 of the Regulation as the first (formal) response to the request for access to the data was provided after one month from receipt of the request without the complainant having been notified of the need to extend the request within this period. same.

Art. 12, par. 3, of the Regulation specifies in this regard that the term of one month within which the data controller must provide the data subject with the information relating to the request to exercise the rights "can be extended by two months, if necessary, taking into account the complexity and the number of requests. The data controller informs the interested party of this extension, and of the reasons for the delay, within one month of receiving the request ".

Taking this into account, the reasons supported by the Company to justify its delay are not considered relevant and in particular that the request had been presented by the lawyer of the complainant, which did not specify in the subject matter that it was an application. to exercise the right of access, which was presented 6 months after the termination of the employment relationship and that the complainant was in any case aware of the treatment that the Company would have carried out on the data of the same once the employment relationship terminated.

The Regulation, in fact, does not require that the request for the exercise of rights must have a specific form or that the subject of the request must necessarily contain certain references (see on this point the Guidelines of the EDPB on the rights of interested parties - right of access, subjected to public consultation which ended on 11 March 2022 which specify that "It should be noted that the GDPR does not introduce any formal requirements for persons requesting access to data", "It should be noted that the general regulation on data protection does not introduces any formal requirement for persons requesting access to data ", unofficial translation, point 50)

Furthermore, the application can be presented by a third party suitably authorized by the interested party (see on this point the Guidelines of the EDPB on the rights of the interested parties - right of access, subject to public consultation which ended on 11 March 2022, point 79).

For these reasons, the application, also signed by the complainant, presented by the lawyer of the same who had received a specific assignment, making explicit reference to art. 15 of the Regulation, is considered suitable to be considered as an application to exercise the right of access pursuant to art. 15 of the Regulation and therefore as such the data controller should have provided feedback to the same within the terms of the law. In any case, it is emphasized that the Company did not contest the inadmissibility of the request for the reasons it indicated during the investigation, having limited itself, albeit belatedly, to informing the complainant of the change of its lawyers, at first, and then, with the response of 20 May 2019, to deny to process data relating to the same, despite the fact that a processing of data relating to the complainant actually took place.

With regard, in particular, to the feedback provided by the Company on May 20, 2019, in which it was stated that "the processing of personal data concerning the [complainant] is not in progress", it is considered unsuitable as the The Company, while continuing to process data relating to the complainant, including the company e-mail account, has denied the carrying out of any type of treatment referred to the same.

In this way, art. 15 of the Regulation which recognizes the right to the interested party to know the data relating to the same and the subject of processing as well as certain information relating to the processing itself.

It is specified, with reference to the request for access pursuant to art. 15 of the Regulation, which concerned, as the complainant herself observed in the counter-arguments of February 2, 2021, "on the illegitimate use of the account" specifying that "it is not true that it was a warning inserted in another context".

4. Conclusions: declaration of illegality of the treatment. Corrective measures pursuant to art. 58, par. 2, Regulations.

For the aforementioned reasons, the Authority believes that the statements, documentation and reconstructions provided by the data controller during the investigation do not allow to overcome the findings notified by the Office with the act of initiating the procedure and that they are therefore unsuitable. to allow the filing of this proceeding, however, as none of the cases provided for by art. 11 of the Guarantor Regulation n. 1/2019.

The processing of personal data carried out by the Company and in particular the late and unsuitable response to the request for access presented by the complainant and the processing carried out on the e-mail account assigned to the same, is in fact illegal, in the terms set out above, in relation to articles . 5, 6, 12, 13, 15, 88 of the Regulation and 114 of the Code.

The violation ascertained in the terms set out in the motivation cannot be considered "minor", taking into account the nature and gravity of the violation itself, the degree of responsibility, the way in which the supervisory authority has become aware of the violation (see Recital 148 of the Regulation).

Therefore, given the corrective powers attributed by art. 58, par. 2 of the Regulation, in the light of the specific case:

- the further processing of the data extracted from the company e-mail account referring to the complainant is prohibited, without prejudice to their conservation for the exclusive purpose of protecting rights in court, for the time necessary for this purpose, taking into account that , pursuant to art. 160-bis of the Code, "The validity, effectiveness and usability in judicial proceedings of deeds, documents and provisions based on the processing of personal data not in compliance with the provisions of the law or the Regulations remain governed by the relevant procedural provisions" (art . 58, par. 2, letter f) of the Regulations);

- the Company is hereby ordered to conform the company regulations for the use of IT tools to the data protection regulations, in the terms set out in the motivation (Article 58, paragraph 2, letter d) of the Regulations);

- there is the application of a pecuniary administrative sanction pursuant to art. 83 of the Regulation, commensurate with the circumstances of the specific case (Article 58, paragraph 2, letter i) of the Regulation).

5. Adoption of the injunction order for the application of the pecuniary administrative sanction and ancillary sanctions (Articles 58, paragraph 2, letter i), and 83 of the Regulations; art. 166, paragraph 7, of the Code).

At the outcome of the procedure, it appears that Stay Over s.r.l. has violated Articles 5, 6, 12, 13, 15, 88 of the Regulation and 114 of the Code. For the violation of the aforementioned provisions, the application of the pecuniary administrative sanction

provided for by art. 83, par. 5, lett. b) of the Regulations, through the adoption of an injunction order (Article 18, Law 11/24/1981, n. 689).

Considering it necessary to apply paragraph 3 of art. 83 of the Regulation where it provides that "If, in relation to the same treatment or related treatments, a data controller [...] violates, with intent or negligence, various provisions of this regulation, the total amount of the pecuniary administrative sanction does not exceed the amount specified for the most serious violation ", the total amount of the sanction is calculated in such a way as not to exceed the legal maximum provided for by the same art. 83, par. 5.

With reference to the elements listed in art. 83, par. 2 of the Regulations for the purposes of applying the pecuniary administrative sanction and its quantification, taking into account that the sanction must "in any case [be] effective, proportionate and dissuasive" (Article 83, par. 1 of the Regulations), it is stated that , in the present case, the following circumstances were considered:

a) in relation to the nature, severity and duration of the violation, the nature of the violation was considered relevant, which concerned, among other things, the general principles of processing, including the principles of lawfulness, correctness and minimization; in particular, the violations also concerned the sector regulations on remote controls; the violation also concerned the exercise of the right to access data;

b) with reference to the willful or negligent nature of the violation and the degree of responsibility of the owner, the conduct of the Company and the degree of responsibility of the same that has not complied with the rules on data protection relating to a plurality of provisions;

c) in favor of the Company, the cooperation with the Supervisory Authority demonstrated during the procedure was taken into account by providing all the information and documents required.

It is also believed that they assume relevance in the present case, taking into account the aforementioned principles of effectiveness, proportionality and dissuasiveness to which the Authority must comply in determining the amount of the sanction (Article 83, paragraph 1, of the Regulation), in firstly, the economic conditions of the offender, determined on the basis of the revenues achieved by the Company with reference to the ordinary financial statements for the year 2020. Lastly, the extent of the sanctions imposed in similar cases is taken into account.

In light of the elements indicated above and the assessments made, it is believed, in this case, to apply against Stay Over s.r.l.

the administrative sanction for the payment of a sum equal to Euro 10,000 (ten thousand).

In this context, it is also considered, in consideration of the type of violations ascertained that concerned the general principles of processing, the sector regulations regarding remote controls and the exercise of the right of access to data, that pursuant to art. 166, paragraph 7, of the Code and art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019, this provision should be published on the Guarantor's website.

It is also believed that the conditions set out in art. 17 of Regulation no. 1/2019.

WHEREAS, THE GUARANTOR

detects the unlawfulness of the processing carried out by Stay Over s.r.l., in the person of the legal representative, with registered office in Via Antonio Pacinotti, 1 / B, Villorba (TV), C.F. 04741030268, pursuant to art. 143 of the Code, for the violation of art. 5, 12, 13, 15 and 88 of the Regulation and 114 of the Code;

HAS

pursuant to art. 58, par. 2, lett. f) of the Regulations, the prohibition of the further processing of the data extracted from the company e-mail account referring to the complainant towards a Stay Over s.r.l., without prejudice to their conservation for the exclusive purpose of protecting rights in court, for the time necessary for this purpose, within the limits of art. 160-bis of the Code;

INJUNCES

to Stay Over s.r.l.,

pursuant to art. 58, par. 2, lett. d) of the Regulations, to conform the company regulations for the use of IT tools to the data protection discipline in the terms set out in the motivation within 60 days of receipt of this provision;

to pay the sum of € 10,000 (ten 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.

Please note that the offender has the right to settle the dispute by paying - again according to the methods indicated in the annex - of an amount equal to half of the sanction imposed, within the term set out in art. 10, paragraph 3, of d. lgs. n. 150 of 1.9.2011 provided for the submission of the appeal as indicated below (Article 166, paragraph 8, of the Code);

ORDER

pursuant to art. 58, par. 2, lett. i) of the Regulations to Stay Over s.r.l., to pay the sum of € 10,000 (ten thousand) as a

pecuniary administrative sanction for the violations indicated in this provision;

HAS

the publication of this provision on the website of the Guarantor pursuant to art. 166, paragraph 7, of the Code and art. 16, paragraph 1, of the Guarantor Regulation n. 1/20129, and believes that the conditions set out in art. 17 of Regulation no. 1/2019.

Request to Stay Over s.r.l. to communicate what initiatives have been taken in order to implement the provisions of this provision and to provide, in any case, adequately documented feedback pursuant to art. 157 of the Code, within 90 days from the date of notification of this provision; any non-response may result in the application of the administrative sanction provided for by art. 83, par. 5, lett. e) of the Regulations. In the event of non-compliance with the prohibition provision, the provisions of art. 170 of the Code.

Pursuant to art. 78 of the Regulations, as well as articles 152 of the Code and 10 of Legislative Decree no. 150/2011, an opposition to the ordinary judicial authority may be proposed against this provision, with an appeal filed with the ordinary court of the place identified in the same art. 10, within thirty days from the date of communication of the provision itself, or sixty days if the applicant resides abroad.

Rome, 21 July 2022

PRESIDENT

Stanzione

THE RAPPORTEUR

Peel

THE SECRETARY GENERAL

Mattei