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Injunction against Gaypa s.r.l. - October 29, 2020

Register of measures

no. 214 of 29 October 2020

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 (hereinafter, the "Regulation");

HAVING REGARD TO the Code regarding the protection of personal data, containing provisions for the adaptation of the national legal system to Regulation (EU) 2016/679 (legislative decree 30 June 2003, n. 196, as amended by legislative decree 10 August 2018, n. 101, hereinafter "Code");

HAVING REGARD to the "Guidelines for e-mail and the Internet", adopted with provision no. 13 of 1 March 2007 (published in the Official Journal of 10 March 2007, n. 58);

HAVING REGARD to the complaint presented to the Guarantor pursuant to article 77 of the Regulation from XX concerning the processing of personal data relating to the interested party carried out by Gaypa s.r.l.;

HAVING EXAMINED the documentation in the deeds;

GIVEN the observations made by the deputy secretary general pursuant to art. 15 of the Guarantor's regulation n. 1/2000;

SPEAKER the lawyer Guido Scorza;

WHEREAS

1. The complaint against the company and the preliminary investigation.

1.1. With a complaint dated November 5, 2018, Mr. XX (represented and defended by the lawyer Anna Zavagnin) complained about alleged violations of the Regulation by Gaypa s.r.l. (hereinafter, the company), with particular reference to the persistent use of the individualized type e-mail account (XX) which would have remained active even after the interruption of the employment relationship (on 16.3.2018) and whose content it would have been accessible to the company even backwards in time (until 2017). Furthermore, the complainant would not have been informed of the possibility for the company to carry out

this access, and indeed the president of the company - with a letter dated 13 March 2018 - communicated that the aforementioned company mailbox would be deactivated from the date of definitive termination of the relationship of work and would no longer be the “recipient of email messages. Furthermore, after sixty days from the aforementioned date, all the contents of the [...] mailbox will be eliminated" (see Annex 9, complaint 11.05.2018). Only following the filing of some emails received on the company account in a case before the ordinary judicial authority would the complainant learn that the company, on the other hand, had not deactivated the account nor had it deleted the messages stored therein. With the complaint, the Guarantor was therefore asked to order the prohibition of the processing of personal data referring to the complainant contained in the aforementioned e-mail box, with "cancellation of one's personal data and prohibition of retention of the same data (including the production and 'usability of the same in the case pending before the Court of Venice - Specialized Section of Companies)".

1.2. The company, in response to the request for elements (of 29.4.2019) formulated by the Office, with a note dated 6.6.2019 stated that:

to. following the submission of the resignation by the complainant, "with a letter dated 13.3.2018 [the company] represented [...] that after 60 days from the date of definitive termination of the employment relationship, the contents of the company mailbox [...] would have been eliminated" (see note 6.6.2019, p. 3);

b. given that the employment relationship with the complainant effectively ceased on 21 March 2018, "in accordance with what was communicated, albeit with a slight delay [...], on 12.6.2018, the [...] Data Protection Officer [...] , was preparing to eliminate the contents of the complainant's mailbox by accessing the company server” (see cited note, p. 3);

c. "the DPO noted [...] the presence of two emails received on 4.6.2018 from a supplier [of the company] with the subject "request for start dates of work" [and] immediately communicated the presence of these emails to the company" (see note cit., p. 3);

d. from reading the emails "it emerged [...] that [the complainant], qualifying as chief operating officer [of another company], was in relations with a supplier of his previous employer" (see cited note, p. 3);

And. “this alarmed [the company] which at that point instructed the DPO: (i) to suspend the operations aimed at deleting the mailbox [...]; (ii) to carry out a search in the same box [...] aimed at identifying fraudulent acquisitions, undue use or disclosure of secrets [...] belonging exclusively to the company" (see cited note, p. 3);

f. "as a result of the search [...] a series of self-submissions emerged [...] containing attachments of a technical nature with confidential information [...]" (see cited note, p. 4);

g. the company subsequently initiated proceedings against the complainant before the Court of Venice (proc. RG 7642/2018) "using only 32 of the total 75 e-mails [...] thus recovered" (see cited note, p. 4);

h. in addition to the 34 emails (2 emails dated 4.6.2018 and the 32 extracted from the complainant's account) "at the end of the search, another 41 emails were extracted [which] were not produced in court because information pertaining to customers [of the company] with whom a specific confidentiality agreement has been stipulated [...]. The conservation of these e-mails is necessary so that [the company] can in the future protect itself from any disputes relating to the fraudulent use of such information" (see cited note, p. 5);

the. the treatment was carried out by the company for the purpose of protecting its rights "in accordance with letters f) and g) of the art. 24 of Legislative Decree 30 June 2003, n. 196, or also according to the combined provisions of art. 6 (1) lit. f and of the art. 23 (1) f of the Code" (see cited note, p. 6);

j. "to date, the contents of the mailbox [of the complainant] have been completely deleted from the company's server, like the company address [...], for which an automatic response system has been activated which informs the writer of the deactivation of the mailbox" (see cited note, p. 6); in particular "the definitive elimination of the box and its contents [has] taken place on 12/14/2018" (see note cited, p. 10);

k. "it is understood that the e-mails previously extracted and submitted to the examination of the Court of Venice are still in the availability [of the company]" (see cited note, p. 12);

L. in relation to the obligation to provide information to the interested party, the company "on 30 March 2010 [...] drew up and distributed among employees a «Programmatic document on security for the processing of personal data»"; also in 2010 the company "carried out an addition to the regulation entitled «Privacy checks and corrections» [...] which was posted on the bulletin board in a position easily visible to the workers" (see cited note, p. 7);

m. on 1 September 2018 the company "updated its data protection policies through a new company regulation" (see note cited, p. 9 and Annex C "Company regulation").

1.3. With a note dated 7 October 2019, the complainant, in confirming the requests already made with the complaint, claimed, among other things, that:

to. the facts that are the subject of the complaint "are located in June 2018 and are in any case subsequent to the entry into force of the Regulation";

b. the company has not provided the complainant with any information relating to the use of e-mail, also considering that the integration to the internal regulation called "Privacy checks and corrections" has no certain date nor has the company "proved that in 2010 it had actually posted complete and detailed information integration on the bulletin board";

c. the company "kept the mailbox active for more than 60 days and until 12.14.18 and still holds 75 e-mails";

d. the e-mails extracted by the company from the complainant's corporate account have, in part, "data belonging to third parties" and on the other hand the complainant "does not even know which e-mails [...] Gaypa has illegitimately acquired and kept".

1.4. With a note dated 22 October 2019, the company, in response to a request for further clarification formulated by this office, clarified that:

to. to rectify what was stated in the previous reply, no "Data Protection Officer" has been designated pursuant to art. 37 of the Regulation;

b. therefore the employee of 7Bridges s.r.l. "wrongly indicated as "Data protection officer" is actually [...] the system administrator appointed by the company";

c. on 7.12.2015, the company stipulated with 7Bridges s.r.l. a "Maintenance and technical assistance contract" relating to the performance of assistance and maintenance services for IT equipment, with which it proceeded to designate the same 7Bridges s.r.l. as data controller; an employee of 7Bridges s.r.l. was designated, in particular, system administrator by letter dated 11.1.2016;

d. also in the light of the decisions taken by the judicial authority in the proceeding initiated by the company against the complainant (RG 7642/2018 Court of Venice) it is clear that "the access by the system administrator took place on behalf of the data controller data, to protect a legitimate interest of Gaypa s.r.l. such as that of obtaining legal protection against one's unfaithful (former) employee".

1.5. On 2 March 2020, the Office carried out, pursuant to art. 166, paragraph 5, of the Code, the notification to the company of the alleged violations found, with reference to articles art. 5, par. 1, lit. a), 12, 13, 88 of the Regulation and 113 and 114 of the Code. With a note dated 1 April 2020, the company, represented and defended by the lawyer Vincenzo Palmisano, declared

that:

to. after receiving the notification of violation, the company "took note of the critical issues encountered with reference to its corporate regulation and immediately took steps to remedy them [...] despite being operating in a context [...] which is still very complicated due to the outbreak of the emergency linked to the spread of Covid-19"; in this regard, a new company regulation has been prepared "which will enter into force on 1 May 2020 [...] already communicated to all employees via email on 1 April 2020" (see note 1.4.2020, p. 3-4 and Annex J);

b. the new company regulation provides employees with information on the conditions of use of company e-mail accounts and the methods for storing the data contained therein; "the limited and specific cases in which access is possible [...] only by virtue of a collaboration [...] between the data controller and the system administrator [...]" (see cited note, p. 4);

c. with specific reference to the processing of company accounts after the termination of the employment relationship, the regulation provides for "the immediate deactivation of the account [...] of the former employee (within three days from the last working day) and the conservation of its content for a limited period of time (six months)", with the simultaneous identification of "a limited series of cases in which such access is possible" (see cited note, pp. 4-5);

d. in any case, the company declares its willingness "to implement further indications that may come from the Guarantor" (see cited note, p. 5);

And. out of 52 employees "only 36 [...] are assigned a named company e-mail account" (see cited note, p. 5);

f. in the present proceeding, the conduct of the claimant cannot be ignored given that "both in the interim measure granted [to the company] and in the measure rejecting the claim" proposed before the competent judicial authority, the claimant was "held unequivocally responsible of repeated conduct aimed at fraudulently stealing confidential information [from the company]" (see cited note, p. 5);

g. therefore the activities of "accessing the former employee's e-mail box, while integral to a violation of the legislation protecting the employee's privacy, were not carried out in order to obtain financial benefits or profits of any kind, but [...] are been solely aimed at protecting one's assets and rights in the courts" (see note cit., p. 6);

h. the company therefore asks the Authority to take these elements into consideration in relation to the decision on the measures to be adopted and, in particular, not to adopt "any fine of a pecuniary nature", it being understood that "any exercise by of the Guarantor of the power to request correctives [...] would find full and immediate response" by the company;

alternatively, the company asks to take into consideration all the mitigating elements already mentioned, as well as "the «open» mitigating circumstance referred to in lett. k), par. 2, of the art. 83 of the Regulation" considering that the company "[has] been and [is] still heavily penalized by the crisis linked to the Covid-19 epidemic" (see cited note, pp. 6-7).

2. The outcome of the investigation and of the procedure for the adoption of corrective and sanctioning measures.

2.1. As a result of the examination of the declarations made to the Authority during the proceeding as well as of the documentation acquired, it appears that the company, as owner, has carried out some operations of processing of personal data referring to the complainant which are not compliant with the regulations in regarding the protection of personal data, in the terms described below.

It should be noted first of all that, in accordance with the constant orientation of the European Court of Human Rights, the protection of private life also extends to the workplace, considering that it is precisely during the performance of work and/or professional activities that relationships develop where explains the personality of the worker (see articles 2 and 41, paragraph 2, of the Constitution). Also taking into account that the dividing line between the working/professional sphere and the strictly private sphere cannot always be drawn clearly, the Court considers art. 8 of the European Convention on Human Rights aimed at protecting private life without distinguishing between the private sphere and the professional sphere (see Niemietz v. Allemagne, 12.16.1992 (rec. n. 13710/88), spec. par. 29; Copland v. UK, 04.03.2007 (rec. n. 62617/00), spec. para. 41; Bărbulescu v. Romania [GC], 09.05.2017 (rec. n. 61496/08), spec. par. 70 -73; Antović and Mirković v. Montenegro, 11.28. 2017 (rec. n. 70838/13), specific par. 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 data subject, for the protection of 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).]

2.2. Given that, unless the fact constitutes a more serious offence, whoever, in a proceeding before the Guarantor, falsely declares or certifies news or circumstances or produces false deeds or documents is liable pursuant to art. 168 of the Code "False declarations to the Guarantor and interruption of the execution of the duties or the exercise of the powers of the Guarantor", on the merits it emerged that the company, on 12 June 2018, after having announced to the complainant (with letter dated 13.3 .2018, see previous point 1.2., letter a) that the contents of the company mailbox would have been eliminated after 60 days from the termination of the employment relationship, carried out, making use of the system administrator after the

latter had reported two communications deemed anomalous, a "search" on the emails contained in the aforementioned account and stored on the company server at least starting from 12 April 2017, the date of the oldest email. Of the emails thus recovered, 32 were used to start proceedings in court, while the other 41 are still kept by the company in view of possible future disputes. According to what was stated, the account was "deleted" on 12.14.2018, while an automatic messaging system would still be active in case of receiving messages (see previous point 1.2., letter j).

In this regard, it does not appear that the complainant was previously informed by the company that all e-mails in transit on the company account were kept on the company server and that the company itself reserves the right to check them. In fact, within the "Programmatic document on the security for the processing of personal data" of 30 March 2010 (see acknowledgment note of 6.6.2019, Annex A), there is no reference to this control procedure, and moreover the company has not produced documentation from which it emerges that this document has been disclosed to employees.

Also with reference to the «Privacy checks and corrections» document (see acknowledgment note cited, Annex B), adopted - according to what was declared - in 2010, no element has been provided from which emerges the successful adoption of methods suitable for guarantee the effective knowledge of the text by the employees concerned. In any case, with regard to what is indicated therein, it is observed − on the one hand − that in the aforesaid last document, section "Conditions for the use of e-mail" it is stated, among other things, that "the conditions of use of the mail are documented in a document delivered at the time of issuance of the box", however no model of this document has been produced in the records by the company. Furthermore, and in any case, the formulations used are not suitable to clearly represent to the interested parties the purposes and methods of the proposed conservation of the emails as well as the hypotheses in which the employer "reserves the right to carry out checks in accordance with the law indicating the reasons legitimate – specific and non-generic for which they would be carried out and the relative modalities" (see "Guidelines for e-mail and internet", provision 1 March 2007, n. 13, (Official Gazette 10.3.2007, n. 58). In fact, on the one hand, in the part of the document which underlines the importance of carrying out "regular backup operations" in order to "protect the data", it is represented that "The mail databases are archived on a protected server and it is possible to access previous versions of the databases which may also contain deleted e-mails". On the other hand, it is represented that "system administrators can access any e-mail box. i to the mailbox will be made exclusively for: configuring it, maintenance, automatic forwarding operations [...] and at the request of management".

The company has therefore failed to inform the complainant regarding the specific treatment method actually carried out, in

violation of the provisions of articles 12 and 13 of the Regulation, already in force at the time of access to the content of the account (12.6.2018), according to which the owner is required to provide the interested party - before the start of the treatments - all the information relating to the essential characteristics of the treatment. In the context of the employment relationship, the obligation to inform the employee is also an expression of the general principle of correctness of the processing (see Article 5, paragraph 1, letter a) of the Regulation).

2.3. It also emerged that the systematic storage of incoming and outgoing emails (both external data and their content) on the company server for a term that was not disclosed by the company, but which was in any case not less than one year and two months (since the oldest email produced in court is dated 12.4.2017), and the subsequent access made by the company to verify, through the subsequent execution of an internal investigation aimed at verifying possible "acquisitions fraudulent fraudulent use or disclosure of secrets", has allowed the employer to process the employee's personal data in violation of the provisions of the sector regulations on remote controls (art. 4, law 20.5.1970, n. 300).

This has also allowed the company to know information relating to the private life of the worker which is not relevant for the purposes of assessing the professional aptitude of the same, considering that at least one of the emails collected and filed in court contains documents referring to the complainant not pertaining to the working activity (see email no. 16 attached to the company's reply of 6.6.2019; see also appeal pursuant to art. 700 of the Code of Civil Procedure to the Court of Venice, section of the Company Court, filed by Gaypa s.r.l. on 23.7.2018, no. 15, where it is reported that "the former worker sent himself personal documents (car policy, car tax, data relating to gas/electricity utilities, etc.)").

This treatment therefore constitutes a violation of the articles 113 and 114 of the Code (which refer to the articles 4 and 8 of the law 20.5.1970, n. 300 and the article 10 of the legislative decree 10.9.2003, n. 276, as conditions of lawfulness of the treatment) . This labor discipline 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" referred to in art. 88 of the Regulation.

2.4.1. Finally, it emerged that the company has adopted a new company regulation, effective from 1 September 2018 (see point 1.2., letter m) above, relating, among other things, to the use of company e-mail (see point 5.7). Within this regulation it is provided that: (a) in the event of termination of the employment relationship "the documentation present in the profile of the individual user [...] will be considered presumptively belonging to the company, such as correspondence and work

documentation and not personal"; (b) the mailbox "is deactivated at the time of termination of the employment relationship [...]. However, Gaypa srl reserves the right to evaluate, at its own exclusive and unquestionable judgement, the need to keep the mailbox active for a suitable period of time in order to guarantee corporate functionality"; (c) "since the assigned mailbox constitutes a work tool [...] the messages contained therein, presumably having the nature of commercial correspondence, will be kept on the company servers for 3 years"; (d) "the user's hierarchical superior or, in any case, having heard the user, a person identified by the company will be allowed to access the user's e-mail box for any hypothesis in which it becomes necessary".

2.4.1.1. With reference to the treatments carried out on the e-mail account after the termination of the employment relationship, the envisaged "presumption" of belonging to the company of all correspondence present in the company e-mail account, of an individualized type, as well as the envisaged possibility to keep the aforesaid box active for an unspecified period in hypotheses that are not defined but identified (even from time to time) following a judgment, defined as "unquestionable", aimed at guaranteeing the "corporate functionality", do not comply with the principles minimization of data (Article 5, paragraph 1, letter c) of the Regulation) and limitation of retention (Article 5, paragraph 1, letter e) of the Regulation). This is also taking into account the fact that the sending of "emails to the senders with indication of the different company e-mail box to which to send the messages" is in any case foreseen, a measure already suitable for guaranteeing the continuity of relations with the company by the subjects interested.

The systematic conservation on the company server for an extended period of time, equal to three years, of all emails sent and received by company accounts (see provision 02.01.2018, no. 53, web doc. no. 8159221, spec. point 3.2.). As well as the envisaged possibility for the hierarchical superior or any other employee (although having "heard" the interested party) to access the mailbox in relation to an indefinite plurality of purposes.

Furthermore, the possibility for the company to access both external data and the contents of email boxes during the employment relationship entails an unlawful processing of personal data in violation of art. 4, the. 20.5.1970, no. 300, recalled by the art. 114 of the Code as a condition of lawfulness of the processing (by exercising control over the worker's activity), as well as the possibility of accessing irrelevant information relating to the interested party, in violation of art. 8, l. 20.5.1970, no. 300 and of the art. 10 of Legislative Decree 10.9.2003, n. 276, referred to in art. 113 of the Code as a condition of lawfulness of the processing (containing the prohibition of carrying out inquiries or in any case processing data that is not strictly pertinent

to the assessment of the employee's professional aptitude). This labor discipline 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 (and, as an appropriate and specific measure pursuant to paragraph 2 of the same art. 88, does not allow massive, prolonged and indiscriminate controls of the employee's activity).

This therefore constitutes a violation of the principle of lawfulness of processing (Article 5, paragraph 1, letter a) of the Regulation in relation to Articles 113 and 114 of the Code) and art. 88 of the Regulation as to the applicable discipline on the matter.

2.4.2. Following the notification of the alleged violations pursuant to art. 166, paragraph 5, the company has adopted new corporate regulations (see previous point 1.5., letter a.). The new section relating to the use of e-mail (point 5.7), in force since 1 May 2020, provides that "all incoming and outgoing messages in transit on the account [are] automatically saved on the company server. The retention of such data is limited [to] twelve [...] months", provided that "the e-mail box assigned to the user is a work tool". If, as a rule, access to the mailbox is reserved for the employee who is assigned the account, the system administrator can "have access to the accounts after resetting the password chosen by the assigned user". It is also specified that "in a very exceptional way, access to the contents of the email account is allowed to the data controller [through the system administrator]: in the event that the email box has been used by the employee for the commission of crimes or offenses of any kind"; as well as "in the event that there is a well-founded suspicion that the employee has used the e-mail box to leak company information, technical-industrial and commercial experience, confidential documentation of any kind, whether owned by the Company or of customers or suppliers of the Company, in order to acquire them, use them or disclose them to third parties".

The regulation also provides that in the event of withdrawal, the mailbox will be deactivated within three days from the last working day, with the simultaneous setting of an autoreplay service with indication of a different company account. Furthermore, "the contents of the deactivated e-mail box will be kept on the Company's server for the following six months" during which the company will be able to access the contents of the account in three cases (disputation by customers, suppliers, public administrations; in the event that the mailbox "has been used by the employee to whom it was granted to use for the commission of crimes or offenses of any kind" as well as "in the event that there is a well-founded suspicion that the

employee has used the mailbox to let company information, technical-industrial and commercial experiences, confidential documentation of any kind, both owned by the Company and by customers or suppliers of the Company, come out of the corporate network in order to acquire them, use them or reveal them to third parties") .

2.4.2.1. Also with reference to what was established by the company with the new company regulation, the systematic conservation for 12 months of all the emails present on the account, in continuation of the employment relationship, in view of possible future disputes that could affect the company does not comply with the principles of data minimization (Article 5, paragraph 1, letter c) of the Regulation) and limitation of retention (Article 5, paragraph 1, letter e) of the Regulation). The same assessment concerns the proposed conservation for six months of the contents of the box entrusted to the former employee (which would therefore be added to the 12 months envisaged during the employment relationship) in relation to hypothetical hypothesis of offenses (or suspicion of commission of offences) committed by the worker. Furthermore, it is noted that even in relation to the proposed access to the content of the account by the system administrator, the regulation does not identify any specific purpose, relating to the need to guarantee the correct functioning of the mail service, which legitimizes access.

The Guarantor reiterated 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, given that this extensive interpretation advanced by the company would be elusive of the provisions on the criteria for legitimizing the processing (see articles 6, paragraph 1, letter b), c) and f) and 9, par. 2, lit. b) of the Regulation; see, finally, provv. 1 February 2018, no. 53, doc. web no. 8159221).

In relation to the stated purpose of dealing with any complaints from customers, suppliers, public administrations, it is also noted that the Guarantor has already considered that the legitimate need to ensure the conservation of documentation necessary for the ordinary performance and continuity of the The corporate activity, also in relation to relations maintained with private and public subjects, as well as on the basis of specific provisions of the law, is ensured, in the first place, by the preparation of document management systems with which - through the adoption of appropriate organizational and technological measures − identify the documents which, during the performance of the work activity, must gradually be archived in a manner suitable for guaranteeing the characteristics of authenticity, integrity, reliability, legibility and availability prescribed by the applicable sector regulations. E-mail systems, by their very nature, do not allow these characteristics to be

ensured (see provision no. 53 of 1 February 2018, web doc. no. 8159221).

Furthermore, as already considered with regard to the previous version of the company regulation, the proposed access to both external data and the contents of the email box constitutes an illegal processing of personal data as it is in violation of art. 4, the. 20.5.1970, no. 300, recalled by the art. 114 of the Code as a condition of lawfulness of the processing (by exercising control over the worker's activity), as well as in violation of art. 8, l. 20.5.1970, no. 300 and of the art. 10 of Legislative Decree 10.9.2003, n. 276, referred to in art. 113 of the Code as a condition of lawfulness of the processing (containing the prohibition of carrying out inquiries or in any case processing data that is not strictly pertinent to the assessment of the employee's professional aptitude). As already explained above, the aforementioned labor law constitutes one of the provisions of national law referred to in art. 88 of the Regulation (and, as an appropriate and specific measure pursuant to paragraph 2 of the same art. 88, does not allow massive, prolonged and indiscriminate controls of the employee's activity).

For the aforementioned reasons, the processing of data relating to company e-mail accounts carried out starting from 1 May 2020 constitutes a violation of the principle of lawfulness of the processing (Article 5, paragraph 1, letter a) of the Regulation in relation to articles 113 and 114 of the Code) and art. 88 of the Regulation as regards the applicable discipline on the matter.

3. Conclusions: illegality of the treatment. Corrective measures pursuant to art. 58, par. 2, Regulation.

For the aforementioned reasons, the processing of personal data referring to the complainant carried out by the company through the storage and access to the content of the individualized e-mail account, as well as the processing relating to the management of employee e-mails carried out on the basis of company regulations adopted, respectively, on 1 September 2018 and 1 May 2020, it is illegal, in the terms set out above, in relation to articles 5, par. 1, lit. a), c) and e), 12, 13 and 88 of the Regulation and in articles 113 and 114 of the Code.

Therefore, given the corrective powers attributed by art. 58, par. 2 of the Regulation, in the light of the circumstances 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 that does not comply with the provisions of the law or the Regulations remain governed by the pertinent procedural provisions";

- the processing of data relating to the company accounts of employees stored on the company server is prohibited on the basis of the provisions of the company regulations of 1 September 2018 and 1 May 2020, taking into account that pursuant to art. 2-decies of the Code "personal data processed in violation of the relevant regulations on the processing of personal data cannot be used, except as provided for by art. 160-bis";

- the company is ordered to bring its processing into line with the Regulations with reference to the provisions of the company regulation of 1 May 2020 relating to the management of company e-mail;

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

4. Injunction order.

Pursuant to art. 58, par. 2, lit. i) of the Regulation and of the art. 166, paragraphs 3 and 7 of the Code, the Guarantor orders the application of the pecuniary administrative sanction provided for by art. 83, par. 5, letter. a) of the Regulation, through the adoption of an injunction order (art. 18, l. 11.24.1981, n. 689), in relation to the processing of the personal data of the complainant and of the employees carried out by the company through memorization on the company server and access to the contents of company e-mail accounts, which have been ascertained to be unlawful, in the terms set out above, in relation to articles 5, par. 1, lit. a), c) and e), 12, 13 and 88 of the Regulation and in articles 113 and 114 of the Code, following the outcome of the procedure pursuant to art. 166, paragraph 5 carried out jointly with the data controller (see point 1.5 above).

Considering it necessary to apply paragraph 3 of the art. 83 of the Regulation where it provides that "If, in relation to the same treatment or related treatments, a data controller [...] violates, with willful misconduct or negligence, various provisions of this regulation, the total amount of the pecuniary administrative sanction does not exceed amount specified for the most serious violation", considering that the ascertained violations of art. 5 of the Regulation are to be considered more serious, as they relate to the non-compliance with a plurality of principles of a general nature applicable to the processing of personal data, the total amount of the fine is calculated so as not to exceed the maximum prescribed for the aforementioned violation .

Consequently, the sanction provided for by art. 83, par. 5, letter. a), of the Regulation, which sets the statutory maximum in the sum of 20 million euros or, for companies, in 4% of the annual worldwide turnover of the previous year, if higher.

With reference to the elements listed by art. 83, par. 2 of the Regulation for the purposes of applying the pecuniary administrative sanction and the relative quantification, taking into account that the sanction must "in any case [be] effective,

proportionate and dissuasive" (art. 83, paragraph 1 of the Regulation), it is represented that In the present case, the following circumstances were considered:

a) in relation to the nature, gravity and duration of the violation, the nature of the violation which concerned the general principles of processing was considered relevant; the violations also concerned the conditions of lawfulness of the processing (more specific provisions regarding processing in the context of employment relationships) and the provisions on information;

b) with reference to the intentional or negligent nature of the violation and the degree of responsibility of the owner, the negligent conduct of the company and the degree of responsibility of the same was taken into consideration which did not comply with the data protection regulations in relation to a plurality of provisions;

c) the company has fully and actively cooperated with the Authority during the proceeding;

f) the absence of specific precedents (relating to the same type of treatment) against the company.

It is also believed that they assume relevance in the present case, taking into account the aforementioned principles of effectiveness, proportionality and dissuasiveness with which the Authority must comply in determining the amount of the fine (Article 83, paragraph 1, of the Regulation), in firstly, the economic conditions of the offender, determined on the basis of the revenues earned by the company with reference to the financial statements for the year 2018. Lastly, account is taken of the statutory sanction established, in the previous regime, for the corresponding administrative offenses and of the amount of sanctions imposed in similar cases.

In the light of the elements indicated above and the assessments made, it is believed, in the present case, to apply against Gaypa s.r.l. the administrative sanction of the payment of a sum equal to 20,000.00 (twenty thousand) euros.

In this context, it is also considered, in consideration of the type of violations ascertained that concerned the conditions of lawfulness of the processing and the obligation to provide suitable information to the interested party, who pursuant to art. 166, paragraph 7, of the Code and of the art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019, this provision must be published on the Guarantor's website.

It is also believed that the conditions pursuant to 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.

It is recalled that, pursuant to article 170 of the Code, anyone who fails to comply with this prohibition provision is punished with imprisonment from three months to two years; in any case, the sanction referred to in art. can be applied in the

administrative office. 83, par. 5, letter. e) of the Regulation.

ALL THAT BEING CONSIDERED, THE GUARANTOR

detects the illegality of the treatment carried out by Gaypa s.r.l. in the person of the pro tempore legal representative, with registered office in Quinto Vicentino, Via Monte Grappa 33, Tax Code 00285560249, pursuant to articles 57, par. 1, lit. f) and 83 of the Regulation, as well as art. 166 of the Code, for the violation of the articles 5, par. 1, lit. a), c) and e), 12, 13 and 88 of the Regulation as well as articles 113 and 114 of the Code;

IMPOSES

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

IMPOSES

pursuant to art. 58, par. 2, lit. f) of the Regulations to Gaypa s.r.l. the prohibition of further processing of data relating to the company accounts of employees stored on the company server on the basis of the provisions of the company regulations of 1 September 2018 and 1 May 2020;

ENJOYS

pursuant to art. 58, par. 2, lit. d) Regulation to Gaypa s.r.l. to bring their treatments into line with the Regulations with reference to the provisions of the company regulation of 1 May 2020 relating to the management of company e-mail, within 60 days of receipt of this provision;

ORDER

pursuant to art. 58, par. 2, lit. i) of the Regulation to Gaypa s.r.l. to pay the sum of 20,000.00 (twenty thousand) euros as an administrative fine for the violations indicated in this provision;

ENJOYS

also to the same Company to pay the sum of Euro 20,000.00 (twenty thousand), according to the methods indicated in the attachment, within 30 days of notification of this provision, under penalty of adopting the consequent executive acts pursuant to art. 27 of the law n. 689/1981. It should be remembered that the offender retains the right to settle the dispute by paying - always according to the methods indicated in the attachment - an amount equal to half of the fine imposed, within the term set

out in art. 10, paragraph 3, of Legislative Decree lgs. no. 150 of 09.01.2011 envisaged for the lodging of the appeal as indicated below (art. 166, paragraph 8, of the Code);

HAS

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

Request to Gaypa s.r.l. 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 90 days from the date of notification of this provision; any failure to reply may result in the application of the administrative sanction provided for by art. 83, par. 5, letter. e) of the Regulation.

Pursuant to art. 78 of the Regulation, as well as articles 152 of the Code and 10 of the legislative decree no. 150/2011, opposition to the ordinary judicial authority may be lodged against this provision, with an appeal lodged with the ordinary court of the place identified in the same art. 10, within the term of thirty days from the date of communication of the measure itself, or sixty days if the appellant resides abroad.

Rome, 29 October 2020

PRESIDENT

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THE SPEAKER

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THE DEPUTY SECRETARY GENERAL

Philippi