SEE NEWSLETTER OF 27 APRIL 2021

[doc. web n. 9577065]

Order injunction against Mediacom s.r.l. - March 11, 2021

Record of measures

n. 99 of 11 March 2021

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by prof. Pasquale Stanzione, president, Professor Ginevra Cerrina Feroni, vice president, dr. Agostino Ghi-glia and the lawyer Guido Scorza, members and the cons. Fabio Mattei, general secretary;

GIVEN the Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016, concerning the protection of individuals with regard to the processing of personal data, as well as the free circulation of such data and which repeals Directive 95 / 46 / EC (hereinafter the "Regulation");

GIVEN the Code regarding the protection of personal data (Legislative Decree 30 June 2003, n.196), as amended by Legislative Decree 10 August 2018, n. 101, containing provisions for the adaptation of national law to the aforementioned Regulation (hereinafter the "Code");

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

GIVEN the numerous complaints received by the Authority, contained in reports and complaints, regarding the receipt of unwanted promotional calls on behalf of TIM s.p.a. (hereinafter: "TIM");

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

GIVEN the communications sent by Mediacom on April 3 and November 17, 2020, regarding the measures adopted to improve the compliance of the treatments as well as the economic losses caused by the termination of the contract with the client Tim;

GIVEN the overall documentation on file;

HAVING REGARD to the observations made by the Secretary General pursuant to art. 15 of the regulation of the Guarantor n. 1/2000, adopted by resolution of June 28, 2000;

RAPPORTEUR prof. Pasquale Stanzione;

WHEREAS

1. The complaints of the interested parties

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

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

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

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

2. The investigation of the Office and the related results

2.1. Disputes and replies

Due to this situation, the Authority deemed it appropriate to carry out a detailed investigation activity in order to acquire more elements of evaluation with respect to the aforementioned complaints, proceeding with inspections at Tim and its partners, including Mediacom, where the operations were initiated. on 14 May and continued on 12 June 2019. Subsequently (on 30 September 2019) the Office sent a request for additional information, in relation to which Mediacom provided a reply on 18 October 2019.

On the basis of the overall documentation acquired, it was found that Mediacom - in the period from January 1, 2016 to September 30, 2019 - contacted a total of 15,410 "referenced" telephone numbers (i.e. unrelated to the contact lists, as suggested by the subjects contacted) for several clients, and in particular 11,232 on behalf of Tim, in the absence of "detailed instructions" from the same.

With respect to this quota of contacts, no consent was acquired from the interested party for the promotional purposes, nor was any other legal basis applicable (see Articles: 6, paragraph 1, Regulation - 130, Code); with respect to this treatment, therefore, a possible violation of the principle of lawfulness has emerged, pursuant to art. 5, par. 1, lett. a, of the Regulation.

The Office therefore, with a communication dated December 27, 2019, initiated the administrative procedure to contest the violation of the aforementioned provisions, consequently envisaging the applicability of the administrative sanctions provided for by art. 83 of the Regulation, as referred to in art. 166, paragraph 2, of the Code.

With the brief presented on 24 February 2020, Mediacom - in reiterating that it has made up for the gaps in instructions from the client Tim regarding the methods of contacting users outside the lists delivered by the same, suggested ('referenced') by the subjects in list at the time of telephone contact, in accordance with what emerged during the inspection - illustrated the procedure for contacting these referenced subjects, conceived and applied by the same, providing more details than what was declared during the investigations in loco. In particular, it emerged that the Company:

- used, in addition to the TIM lists, the lists of personal data acquired from third parties; lists that were verified, as regards the information and consents issued by the interested parties, analyzing a "large sample" before their use for promotional purposes;

- with specific regard to the users of the 'referenced' subjects, these (before the promotional contact) were filtered by comparison with the lists of personal data, acquired from third parties, provided - to say by Mediacom - with a "free, specific and optional "- as well as documented for communication to third parties for their marketing purposes.

The formula for acquiring the consent in question was characterized by the following text:

I consent to the processing of personal data by ClickADV for sending promotional and marketing communications, including the sending of newsletters and market research, on own and third party products and services, through automated tools (e-mail, sms , fax, mms, messages on social networks, whatsapp, messenger, online instant messaging applications) and not (paper mail, telephone with operator).

I consent to the communication of personal data by ClickADV to autonomous third parties who are data controllers, belonging to the categories indicated in the information, for the sending of their own promotional and marketing communications on own or third party products and services, including sending newsletters and market research, through automated tools (e-mail, sms, fax, mms, messages on social networks, whatsapp, messenger, online instant messaging applications) and not (paper mail, telephone with operator)

The Company, as mentioned above, would have subjected only a "large sample" of the lists to the described filtering; sample not better identified and quantified. It also produced the documentation relating to the consent of the interested parties only

with regard to 1000 of the users purchased and processed for telemarketing purposes, showing, however, its willingness to provide similar documentation for other users.

The Company then pointed out various aspects - connected to its relations with the client Tim, recipient of the aforementioned provision of 15 January 2020 - of significant negative impact on its economic and financial situation (Tim's failure to renew the contract in be since 2015; the significant reduction in turnover; "the downsizing of the organizational structure", also in terms of the workforce employed: for more details, see memoirs February 24, 2020 and November 17, 2020, cit.).

He also illustrated various measures that he decided to devise and adopt to improve the awareness and compliance of his treatments (see, for more detail, communication of 3 April 2020).

2.2. The measures adopted by the Company to improve the compliance of the treatments with the current legislation

It must be considered that with the aforementioned communications the Company - in accordance with what was partially anticipated in the hearing of February 17, 2020, as well as in the memorandum of February 24, 2020 - represented, consequently assuming criminal responsibility for any false declarations pursuant to art. 168 of the Code, not only of having suffered heavy losses due to the termination of the contract with Tim and the related failure to make the expected payments in their favor, but also of having adopted a complex series of measures aimed at ensuring compliance of the treatments with the law .

In particular, in addition to the appointment of a new DPO, the Company declared that it has embarked on a process of overall re-evaluation and revision of its commercial strategy and related privacy policies. In particular, it communicated that it had established the prior verification of the presence of detailed instructions in the agreement schemes prepared by the client, taking into account the reference market sector as well as the provisions of this Authority. In the event of absence or inadequacy, the Company has undertaken to propose appropriate clauses that provide for the commitment of the client, within a certain period, to provide detailed instructions, to be submitted for evaluation by the counterparty.

The Company also represented that it has prepared a web form for the management of "referenced", possibly usable by customers who decide (as mentioned above) to endorse the internal procedure of Mediacom. With this procedure, the following were regulated: “the process of acquiring and archiving the referent's personal data by the referrer; the contact of the latter via SMS, on a legitimate interest basis, by means of which it can be redirected to the web form, the methods of providing any consent on the form, after viewing the information, for the purposes of the individual re-contact for the commercial

campaign ". The same Company also pointed out: the improvement in the quality check phase of the vocal orders; the precise regulation of the verification process relating to the purchase of lists by list providers, which provides for "an escalation system from the legal office to the DPO, aimed at verifying, before the conclusion of the contract with the supplier , information, consensus formulas, consensus channels and a significant (possibly obscured) sample of 'consensed'; the review of the procedure for managing the rights of the interested parties of the Company .. to manage the revocation of consents in the blacklist of customers in an appropriate manner ", through specific clauses provided for in the contracts with customers, as well as through IT implementations in the management of blac-klists.

Finally, Mediacom represented that it had implemented the training and updating of the staff assigned to data processing.

3. Evaluation of the overall conduct of the Company

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

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

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

corporate choice of the Company and not referable to outstanding initiatives from the staff.

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

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

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

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

(EU) 2016/679, 10 April 2018, WP 259 rev.01) ".

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

Moreover, under a different but related profile, it should be pointed out that that (acquired by a third company and exhibited by Mediacom with regard to the data lists purchased by that company) is not a specific consent for the promotional purposes of third parties, and therefore not even free, considering the aforementioned formulation, used by the transferring subject to acquire it. In particular, in fact, the interested parties were required to consent to promotional communications relating to "own and third party products and services", not distinguishing between products and services and not even with regard to the subjective imputability of advertising (1. company which has collected the data; 2. third parties on behalf of which the former carries out the advertising), moreover with regard to numerous product sectors, even completely heterogeneous from each other.

In this sense, this simplified consent - exhibited by invoking the aforementioned Guidelines of 4 July 2013 - is inconsistent with the very rationale of the simplification introduced by them, which is - and must be - that of facilitating the acquisition of consent to communicate to third parties. while respecting certain limits (such as the indication, in the information provided, of the individual recipients of the data or of the product categories of reference for the same). Without prejudice to the fact that, obviously, any simplification with respect to the legislation must be considered as an exception to the rule of free and specific consent (as well as having been previously informed and documented), and therefore is not susceptible of extensive and even less analogical application.

In this perspective, the consent for communication to third parties - to be effectively specific and therefore also free - cannot in any way be mixed, and confused, with the consent for further processing, which cannot be superimposed or absorbed, which is the sending. promotional for third parties, which constitutes further processing, therefore also requiring a further specific free and specific consent.

Moreover, the Company stated that it had subjected to filtering - aimed at verifying the existence of documented consent - only a "large sample", without however providing further elements. The relevant legislation (in particular: articles 6 and 7 of the

Regulation; 130 of the Code) does not, as a rule, allow the purchasers of data lists to be exempt from the obligation to verify the obligations in force on the matter (in particular that of the free, specific and documented consent) with respect to all the personal data acquired (see also provision Jan. 29 May 2003 [web doc. n. 29840], Spamming. Rules for correct sending of advertising e-mails, based on which: "... whoever acquires the database must ensure that each interested party has validly consented to the communication of their e-mail address and its subsequent use for the purpose of sending advertising material"; in these terms, also provision 22 May 2018, web doc. 8995274).

This rigorous approach is confirmed by the general provision on electoral propaganda and political communication, 18 April 2019 [doc. web n. 9105201], in the analogous subject of 'political' marketing, according to which: "The verification, depending on the case, must concern, in the case of databases of modest size (in the amount of a few hundred or thousands of personal data) all interested parties or, in the case of more substantial databases, at least, a sample objectively congruent with respect to the quantity of the same, and must also concern the quality, with reference to the accuracy, correctness and updating of the data processed. " Furthermore, pursuant to the same provision, "the transferee must verify that: - the transferor has issued the information to the interested party pursuant to art. 13 of the Regulation, also with regard to the purpose of communicating your data to third parties belonging to the political and / or propaganda sector; - the same subject has acquired a specific consent from the interested party for communication to third parties for propaganda purposes electoral and related political communication (articles 6, paragraph 1, letter a) and 7, Regulations) ... Consent must be clearly and freely expressed, and, to this end, formulated in differentiated terms, with respect to the various other purposes that can be pursued (for example, that of sending advertising material / direct sales / market research; that of profiling; that of communication to third parties for their promotional or profiling purposes). "

The same reasoning envisaged therein for political propaganda also applies to commercial propaganda for purposes and contents analogy. Therefore, with this provision, the Authority reiterates that - if correct processing for promotional purposes is to be carried out - the verification - as a rule, where possible - must be carried out for each user and must also guarantee the accuracy, correctness and updating of the data processed., also because each of the relevant interested parties must be indefinitely recognized the effective protection of the fundamental rights to data protection and individual peace of mind that can often come into relief in the performance of telemarketing activities. Moreover, the data controller and the data processor must - in the correct exercise of accountability (pursuant to Article 25, paragraph 2, of the Regulation) - keep a clear and

precise track of the checks carried out, also with regard to : the logic and parameters used, the results obtained; to the data actually verified; the assessments made in this regard, together with the related arguments.

In addition, the contact procedure used by Mediacom presents an additional structural criticality. In fact, the Company stated that it had checked the presence of the aforementioned referenced users, as well as in the lists purchased from third parties, also in its own black list. In order to carry out a correct and effective verification, the Company would have had to filter these users also in the TIM black list, obviously much wider and in any case to be considered the most suitable black list to be able to trace users who cannot be contacted for promotions on behalf of Tim.

In fact, it should also be noted that dissent or opposition to the processing against a specific owner prevails over the generally expressed consent for communication to third parties for their promotional purposes (consent however invalid, if acquired within the aforementioned terms, that is by combining, in the object of consent, also the promotional activity of the subject who directly acquires the data).

This responds to a logical-juridical principle of prevalence of a determined and specific will (with a positive or negative content) with respect to generic expressions of will of different content, in compliance with the clear ratio of effective protection of the will of the interested party, clearly expressed. from art. 7 of the Regulation. In a similar vein of favor towards the will expressed in relation to the treatments of a particular owner - so-called one to one - and not to an entire merchandise category of holders, what is established, in a coherent and consolidated way, by this Authority, to be considered still valid, considering that the Regulation, for consent, has substantially reaffirmed -punctualizing it through art. 7 and exemplifying it thanks to the recitals - the discipline already inherent in the repealed Directive 95/46 / EC. In particular, provision is made here. gen. January 19, 2011, on the basis of which: "the interested parties who, in the period prior to the entry into force of the new regime, have received suitable information and given specific consent to a specific data controller for the aforementioned purposes, (provided that the owner is able to document this consent in writing ...), they can be contacted by that owner for these purposes even if they are registered in the Register, without prejudice to the possibility of subsequently opposing such processing ".

In light of this regulatory and interpretative framework, the processing procedure, followed as a whole and represented by Mediacom, was not suitable for guaranteeing compliance with the legislation, with specific reference to the fulfillment of consent as an essential tool to guarantee the freedom of self-determination of the interested. In this sense - considering the defect of consent as acquired by the transferring business partner - it is of little importance that the Company has produced

elements only with reference to 1,000 personal data purchased from third parties.

Based on the overall findings, it is therefore considered - in accordance with the assessments already made with the aforementioned communication of 27 December 2019 - that the following violations by Mediacom are identifiable in this case:

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

- art. 6, paragraph 1, of the Regulation (130 of the Code).

Therefore, pursuant to art. 58, par. 2, lett. d) and f), of the Regulations, to have to adopt towards Mediacom the definitive limitation of the treatments described above, also ordering them to comply with the regulations in force.

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

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

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

- the limited duration of the violation (Article 83, paragraph 2, letter a), of the Regulation);

- the limited number of interested parties involved, if related to the very considerable number of promotional telephone calls made by the call center companies, partners of TIM (Article 83, paragraph 2, letter a), cit.);

- the limited number of violations found and their affiliation only to the restricted sector of the telemarketing sector on behalf of third parties (Article 83, paragraph 2, letter a), cit.);

- the subjective dimension of the conduct, which must be considered more appropriately culpable rather than malicious, i.e. aimed at violating the relevant legislation on the subject, considering the measures taken to carry out this processing activity, also due to the lack of explicit operational instructions by the of the customer (Article 83, par. 2, letter b), of the Regulation);

- the timely adoption of measures aimed at mitigating or eliminating the consequences of the violation as well as ensuring the correct processing for the future, for promotional purposes, with particular regard to 'off-list' data and data on the black list (Article 83, par. 2, letter c), of the Regulation);

- the absence of previous violations and provisions of the Authority against the Company (Article 83, paragraph 2, letter e), of

the Regulations);

- prompt cooperation with the Authority in the course of the inspections and the procedure (Article 83, paragraph 2, letter f), of the Regulations);

- the categories of personal data affected by the violation, identifiable, essentially, in common contact data (Article 83, paragraph 2, letter g), of the Regulation);

- the economic conditions of the offender, taking into account the strong contraction of the activity in question, also due to the notice received from the important client TIM; as well as, in more general terms, the current very serious economic and financial crisis, also due to the ongoing health emergency (Article 83, paragraph 2, letter k, of the Regulation).

The aforementioned mitigating factors are suitable to prevail over the only aggravating circumstance detectable in the conduct of Mediacom, namely the discrepancy of the same with respect to the substantial provisional activity, with which indications and clarifications on the matter have been provided (see general provisions and Guidelines cited in this provision), and the constant dialogue of the Authority with the subjects operating in the telemarketing sector - can reasonably ensure that all operators (including Mediacom) have achieved sufficient awareness of the provisions that must be unfailingly observed (art. 83, par. 2, letter k, cit.).

Based on the set of elements indicated above, in application of the principles of effectiveness, proportionality and dissuasiveness indicated in art. 83, par. 1, of the Regulation, taking into account the objective of combating the phenomenon of undesired telemarketing as well as the necessary balance between the rights of the interested parties and the freedom of enterprise, in the first application of the administrative pecuniary sanctions provided for by the Regulation, also for the to limit the economic impact of the sanction on the organizational, functional and employment needs of the Company, it is believed that the administrative sanction of the payment of a sum of 15,000.00 (fifteen thousand) euros, equal to 0.075% of the maximum legal sanction (€ 20,000,000).

This amount takes into account, in comparative terms with similar cases, the relatively high number of referenced users treated without a legal basis and the specific employment and operational crisis.

In the case in question, it is believed that the ancillary sanction of the publication on the website of the Guarantor of this provision, provided for by art. 166, paragraph 7 of the Code and art. 16 of the Guarantor Regulation n. 1/2019, taking into account the subject matter of the investigations, namely the aforementioned phenomenon of unwanted marketing, the subject

of numerous complaints and consequent investigations by this Authority, despite the repeated measures both of a general nature and aimed at certain holders.

Finally, the conditions set out in art. 17 of Regulation no. 1/2019 concerning internal procedures with external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

ALL OF THIS GIVEN THE GUARANTOR

pursuant to art. 57, par. 1, lett. f), of the Regulation, declares the processing described in the terms set out in the motivation unlawful and adopts the following corrective measures against Mediacom s.r.l. - with registered office in Viale Jenner n. 51, Milan, (VAT number 0346703121):

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

2. pursuant to art. 58, par. 2, lett. d), of the Regulation, orders the implementation of technical and organizational measures such as to ensure that only personal data for which it has a free and specific consent for this purpose or another suitable and documented one are processed for the promotional purpose. legal basis pursuant to art. 6 and 7 of the Regulations;

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

ORDER

to Mediacom s.r.l., in the person of the pro-tempore legal representative, to pay the sum of € 15,000.00 (fifteen thousand), as a pecuniary administrative sanction for the violation indicated in the motivation, representing that the offender, pursuant to art. 166, paragraph 8, of the Code, has the right to settle the dispute by paying, within thirty days, an amount equal to half of the sanction imposed;

INJUNCES

to the aforementioned Company, in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, to pay the sum of € 15,000.00 (fifteen thousand), according to the methods indicated in the annex, within 30 days of notification

of this provision, under penalty of the adoption of the consequent executive acts pursuant to art. . 27 of the law n. 689/1981;

HAS

as an ancillary sanction, pursuant to art. 166, paragraph 7 of the Code and art. 16 of the Guarantor Regulation n. 1/2019, the publication on the website of the Guarantor of this provision, and, pursuant to art. 17 of the Guarantor Regulation n. 1/2019, the annotation in the internal register of the Authority, provided for by art. 57, par. 1, lett. u) of the Regulations, violations and measures adopted.

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

Rome, March 11, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Stanzione

THE SECRETARY GENERAL

Mattei

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

(2) In this sense, see: the aforementioned provision. of 15.1.2020, as well as, previously, the Guidelines of the Guarantor on promotional matters, 4 July 2013, and even before that, the prov. gen. January 19, 2011, "Requirements for the processing of

personal data for marketing purposes, through the use of the telephone with operator, following the establishment of the public register of oppositions", doc. web n. 1784528.