

TO THE IRISH DATA PROTECTION COMMISSION
21 FITZWILLIAM SQUARE SOUTH, DUBLIN 2 D02 RD28

Complaint pursuant to art. 77 of Regulation (EU) 2016/679.

The undersigned, Marco Scialdone, (omissis), hereby declares for the purposes of this proceeding that he wishes to receive any communications at the following address: (omissis), and sets out the following:

- a) The complainant is a resident of the Italian Republic and has been the holder of the LinkedIn account (<https://www.linkedin.com/in/marcoscialdone/>) since May 2007 (see image 1).

(Image 1)



- b) LinkedIn Ireland Unlimited Company, headquartered at Wilton Place, Dublin, Ireland, is the data controller for the European Union for the social network LinkedIn, whose mission is to connect professionals around the world to enable them to be more productive and successful.
- c) LinkedIn's privacy policy, updated on March 6, 2024, does not contain any reference to the training of generative artificial intelligence systems in the initial information level (see (<https://it.linkedin.com/legal/privacy-policy?>)).
- d) Only by choosing to view one of the links ("learn more") contained in point 5.3 of the privacy policy under the heading "Legal Basis for Data Processing" can one access the page "Data processing by LinkedIn on the basis of legitimate interests" (<https://www.linkedin.com/help/linkedin/answer/a1335592/?lang=it-IT>, see image 2).

(Image 2)

Trattamento dei dati da parte di LinkedIn sulla base di interessi legittimi

Ultimo aggiornamento: 1 settimana fa

Per saperne di più sul trattamento dei dati personali da parte di LinkedIn sulla base di interessi legittimi ai sensi dell'Articolo 6(1)(f) del GDPR, [clicca qui](#).

Informazioni correlate

- [Limitazione e opposizione al trattamento dei dati](#)

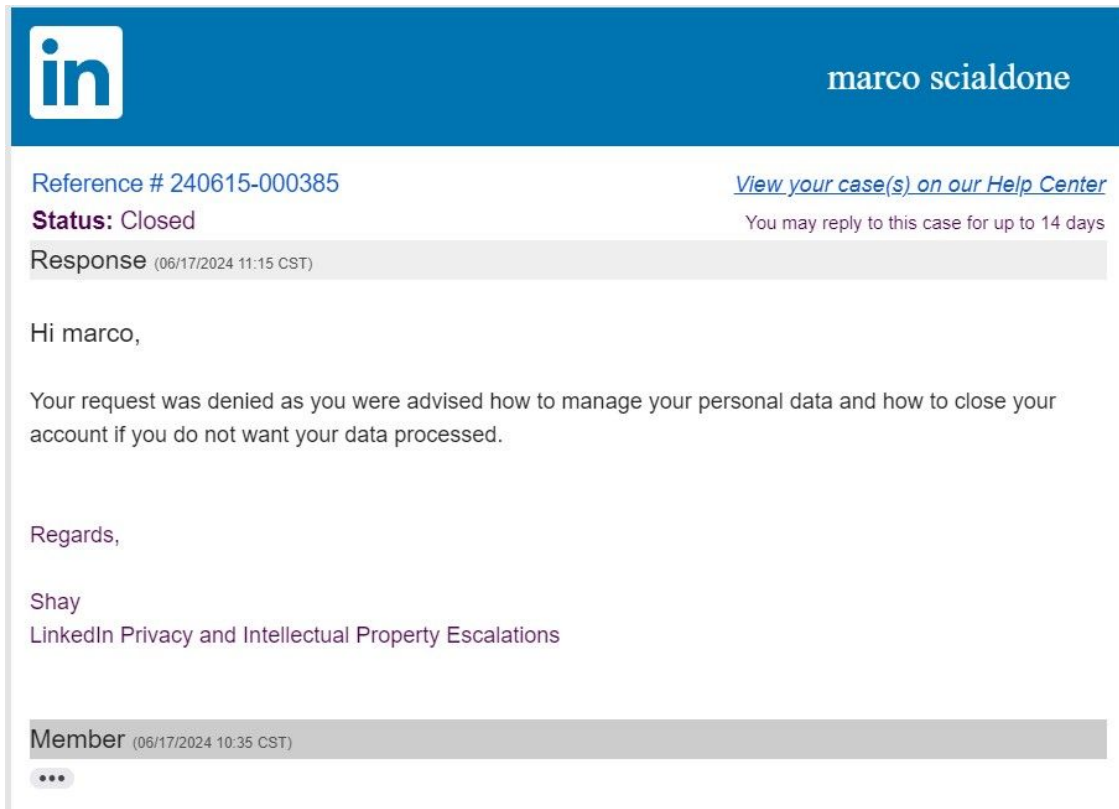
- e) From here, it is necessary to click further to ascertain which data is processed on the basis of the controller's legitimate interests pursuant to Article 6(1)(f) GDPR and for what purposes.
- f) Only after navigating this complex path does one become aware that a vast amount of personal data is used by the data controller to train its generative artificial intelligence systems (<https://www.linkedin.com/legal/1/legitimateinterests>, see image 3).
- g) Specifically, every photo, personal information, post, invitation, comment, and even private messages between users are used to train the data controller's generative artificial intelligence tools without any limitation on the type of data or any filter relating to the special categories of data referred to in Art. 9 of the GDPR.
- h) The legitimate interest pursuant to Art. 6(1)(f) on which the controller claims to rely is described as follows: *"To enable economic opportunities and help our members and customers to be more productive and successful; To improve the safety and security of our platform; To improve the efficiency and effectiveness in the provision of our services"*.
- i) While reserving the right to express our doubts about the correctness of the chosen legal basis, it is useful to focus on the inadequacy of the process inherent in exercising the right to object pursuant to Article 21 of the GDPR.
- j) As this respected Authority is aware, where the processing of personal data is carried out to satisfy a legitimate interest of the data controller, the data subject has the right to object at any time for reasons related to his or her particular situation. In such a case, the controller shall refrain from further processing the personal data unless the controller demonstrates compelling legitimate grounds for the processing which override the interests, rights, and freedoms of the data subject or for the establishment, exercise, or defense of legal claims.
- k) On 15 June 2024, the complainant formally exercised [Case: 240615-000620] the right to object to the processing of his personal data for the purposes of training Generative Artificial Intelligence tools and improving search functionality on the LinkedIn platform.
- l) Specifically, the complainant requested LinkedIn to: (1) cease processing his personal data for the purposes of training Generative Artificial Intelligence tools and improving search functionalities, and (2) confirm in writing that the requested cessation of processing has been implemented.

(Image 3)

<p>Generative AI tools and search:</p>	<p>Members or Customers may provide personal data as an input to a generative AI feature and/or our search features, which could result in personal data being provided as an output</p> <p>Automatically processing your profile data as an input for a generative AI powered feature (e.g. providing more relevant responses to your queries or in connection with your inputs to a generative AI feature)</p> <p>Using Members' feedback to improve, correct or modify our products, including for generative AI powered features</p> <p>Using automated techniques, including generative AI powered tools as part of our online safety and security efforts</p>	<p>To enable economic opportunity and help our Members and Customers be more productive and successful</p> <p>To enhance the safety and security of our platform</p> <p>To improve the efficiency and effectiveness of providing our services</p>	<p>Personal data manually input into an AI powered feature by Members</p> <p>Feedback you provide on AI features</p> <p>Data that you or others provide in your LinkedIn profile, such as your name, photo, current position, education, location, skills, endorsements, recommendations, and contact details</p> <p>Your connections and group memberships</p> <p>Your activity data including data that you or others provide in messages, posts, invitations, comments, articles, or other content on our services</p>
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- m) To his great surprise, on June 17, 2024, the complainant received a response from LinkedIn Customer Support which, instead of responding to the exercise of the right to object, suggested deleting all or some of his data.
- n) In response to the request for explanations, the following was communicated: "Hi Marco, your request has been denied because you have been explained how to manage your personal data and how to close your account if you do not want your data to be processed" (see image 4).

(Image 4)



- o) In essence, far from responding to the request pursuant to Article 21 of the GDPR, the data controller has communicated that there is no way for a user to continue using LinkedIn if they do not want their data to be used to train their generative artificial intelligence systems.
- p) The facts as described above reveal multiple violations of the GDPR.
- q) **VIOLATION OF ARTICLES 5(1)(a), 12, AND 13 OF THE GDPR FOR FAILURE TO BE TRANSPARENT AND FAIR TO THE DATA SUBJECT:** in general terms, the principle of transparency requires that the data subject is fully aware of the processing of any personal data. Recital 39 of the GDPR contains a number of explanatory statements regarding the principle of transparency. In particular, *"it should be transparent to natural persons that personal data concerning them is collected, used, accessed, or otherwise processed and to what extent personal data is or will be processed"*. Data subjects should be *"informed of the risks, rules, safeguards, and rights related to processing... and how to exercise their rights"*. All information communicated should be *"accessible and easy to understand"* and in *"clear and plain language"*. The principle of transparency is closely linked to more detailed provisions. For

example, Article 12(1) of the GDPR ensures that information must be provided in a *"concise, transparent, intelligible, and easily accessible form, using clear and simple language"*. Articles 13 and 14 of the GDPR provide for the right to receive information about the intended processing even before the processing takes place. Article 15 of the GDPR provides for the right to access information about the effective processing of the individual's data. In this case, based on the indications above, it is clear that the data controller failed to inform the complainant and other users of the LinkedIn service of the specific processing operations with reference to the training of its generative artificial intelligence systems. **In fact, the aforementioned operations, far from being directly reported in the privacy policy, are well hidden behind a series of links that effectively make the information *tamquam non esset*.** Similarly, with reference to the principle of fairness, the EDPB Guidelines 4/2019 have clarified that in order for the processing to be "fair," no form of deception is allowed in the processing of data, and that all options must be provided in an objective and neutral manner, avoiding any deceptive or manipulative language or design. Again, in the present case, such elements are entirely absent.

- r) **VIOLATION OF THE PRINCIPLE OF DATA MINIMIZATION PURSUANT TO ARTICLE 5(1)(c) OF THE GDPR:** as highlighted in the previous points, LinkedIn does not in any way limit the processing of personal data (scope, sources, types of data, or time limits), including private messages with other members of the social network. There is also no limitation by anonymization, pseudonymization, or other privacy-protecting technologies. On the contrary, the EDPB (cf. Guidelines 4/2019) has affirmed that the obligation of data minimization applies to the amount of personal data collected, the scope of processing, the retention period, and the accessibility of the data. With particular reference to the quantity, *"controllers should take into account both the volume of personal data and the types, categories, and level of detail of personal data required for the purposes of the processing. Their design choices should consider the higher risks to the principles of integrity and confidentiality, data minimization, and retention limitation associated with the collection of large amounts of detailed personal data compared to the lower risks associated with the collection of smaller amounts of data and/or less detailed information on data subjects. In any case, the default settings must not include the collection of personal data that is not necessary for the specific purpose of the processing. In other words, if certain categories of personal data are superfluous or if detailed data is not needed because less granular data is sufficient, then the excess data is not collected"*.
- s) **VIOLATION OF ART. 9 OF THE GDPR FOR THE INCLUSION IN THE PROCESSING OF SPECIAL CATEGORIES OF PERSONAL DATA WITHOUT ADEQUATE LEGAL BASIS:** As previously mentioned, LinkedIn identifies the legal basis for the processing of personal data as the legitimate interest under Article 6(1)(f) of the GDPR. Notwithstanding the subsequent discussion on the inapplicability of this legal basis, it is important to note that it cannot be invoked with reference to special categories of personal data under Article 9. Furthermore, the data controller cannot invoke the applicability of letter e) of the aforementioned provision ("the processing relates to personal data which are manifestly made public by the data subject"), as clarified by the Court of Justice of the European Union (cf. C-252/21, *Meta Platforms v. Bundeskartellamt*). The Court stated that *"Article 9(2)(e) of the GDPR must be interpreted as meaning that an online social network user, when consulting websites or applications related to one or more of the categories mentioned in Article 9(1) of the GDPR, does not manifestly make public, within the meaning of that provision, the data related to such consultation, collected by the operator of said online social network through cookies or similar tracking technologies"*. On this point, this esteemed

Authority should also consider the conclusions of the Advocate General of the CJEU in case C-446/21 Maximilian Schrems v. Meta Platforms Ireland Limited, where it is stated that the objective of the protection conferred by Article 9(1) is to prevent the data subject from being exposed to adverse consequences (such as public disdain or discriminatory acts) resulting, in particular, from a negative perception, from a social or economic point of view, of the situations listed therein. This provision therefore provides special protection for such personal data through a general prohibition, the application of which in the specific case is subject to the data subject's assessment, who is the one best placed to evaluate the adverse consequences that could arise from the disclosure of the data in question and who, if necessary, can waive this protection or choose not to avail of it, with full knowledge of the facts, by manifestly making public, within the meaning of Article 9(2)(e) of the Regulation, their situation. **In this case, such an assessment is, *ex ante*, precluded because the data subject is not even informed of the existence of such processing:** hence the inapplicability of the exception provided in letter e).

- t) **VIOLATION OF ARTICLE 6(1)(f) OF THE GDPR FOR INADEQUACY OF LEGITIMATE INTEREST AS A LEGAL BASIS:** article 6(1)(f) of the GDPR states that the processing of personal data is lawful if it is "*necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child*". According to established case law of the EU, this provision sets out three cumulative conditions for the lawfulness of personal data processing: first, the pursuit of a legitimate interest by the data controller or third party; second, the necessity of the processing of personal data for the realization of the legitimate interest pursued; and third, the condition that the interests or fundamental rights and freedoms of the data subject that require data protection do not override the legitimate interest. Regarding the necessity condition, it requires verifying that the legitimate interest pursued cannot reasonably be achieved as effectively by other means less prejudicial to the fundamental rights of the data subjects, particularly the right to privacy and data protection. In this context, it is also necessary to remember that the necessity condition must be examined in conjunction with the data minimization principle under Article 5(1)(c) of the GDPR. **In the case at hand, it is evident that this condition is not satisfied: since the data concerns only registered users of the social network and the processing is not necessary for the provision of the service, the same purpose could be more reasonably and effectively pursued by relying on another legal basis, namely the consent of the data subject.** Indeed, one must suspect that LinkedIn's choice, far from being the most GDPR-compliant, was dictated solely by the desire to "harvest" as much data as possible, avoiding the risk of facing data subjects' refusal (as evidenced by the "singular" manner in which the claimant's objection request was handled).
- u) **VIOLATION OF ARTICLE 21 OF THE GDPR FOR INADEQUATE HANDLING OF THE RIGHT TO OBJECT:** notwithstanding the clear violations stated above, in the feared but not believed event that this esteemed Authority considers them unfounded, there remains, in any case, a blatant violation of Article 21 of the GDPR insofar as the data controller did not provide an adequate response to the right to object correctly exercised by the claimant. As indicated in letter n) above, the data controller, in response to the claimant's request, did not bother to demonstrate the existence of compelling legitimate grounds for the processing that override the interests, rights, and

freedoms of the data subject or for the establishment, exercise, or defense of legal claims. **Instead, they simply invited the claimant to delete his data or delete his account: in an era dominated by the debate on "pay or consent," LinkedIn has invented "train or consent" (sic!),** without even relying on consent as the legal basis for processing.

All of the above considered, the undersigned:

REQUESTS

The Data Protection Authority, after examining the complaint and finding it well-founded, to take all appropriate measures, and in particular:

- I. To address LinkedIn Ireland Unlimited Company, based at Wilton Pl, Dublin, Ireland, with warnings or reprimands under Article 58(2)(a) and (b) of the GDPR, highlighting the unlawfulness of the processing;
- II. To order LinkedIn Ireland Unlimited Company, based at Wilton Pl, Dublin, Ireland, to cease the processing of personal data of the affected users for artificial intelligence purposes, pursuant to Article 58(2)(d) and (f) of the GDPR;
- III. In any case, to order LinkedIn Ireland Unlimited Company, based at Wilton Pl, Dublin, Ireland, to comply with the requests for the exercise of rights under Article 21 of the Regulation.

Rome, 21/06/2024

Signature

Marco Scialdone