

Injunction order against Mario Scaramuzza - 25 January 2018

Record of measures

n. 33 of 25 January 2018

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, in the presence of Dr. Antonello Soro, president, of Dr. Giovanna Bianchi Clerici and of Prof. Licia Califano, members and of Dr. Giuseppe Busia, general secretary;

NOTING that the Finance Police, Compagnia di Monfalcone, with report no. 1 of 23 February 2016 (notified on the same date), which must be understood as fully reported here, challenged Mr. Scaramuzza Mario, born in Palmanova (UD), on March 13, 1975 and residing in Grado (GO), via G. Leopardi n. 41, C.F. SCRMRA75C13G284B, owner of the homonymous sole proprietorship based in Grado (GO), via Fabio Severo n. 26, n. 7 violations provided for by arts. 23 and 162, paragraph 2-bis, of the Personal Data Protection Code (Legislative Decree no. 196 of 30 June 2003, hereinafter referred to as the "Code");

NOTING that the examination of the acts of the sanctioning procedure initiated with the notification of administrative violation revealed, in summary, the following:

- in the course of a judicial police activity, the Compagnia di Monfalcone della Guardia di Finanza collected the testimonies of seven subjects who, after having learned of the existence of numerous "Lottomaticard" payment cards in their own name, have declared that he has never signed any form for requesting such cards, or that he has never owned and / or activated them;
- in particular, from the aforementioned testimonies it was possible to ascertain that no. 19 Lottomaticard payment cards and that only in two cases did the holders declare that they had signed the relative forms;
- the two people who declared that they had signed the forms for the activation of two payment cards have acknowledged that several additional payment cards have been activated in their name without their knowledge;
- all the other people heard by the Guardia di Finanza declared that they had not signed any forms for the activation of payment cards in their own name and that they had never used them for credit top-up operations;
- on the basis of what was represented by the Guardia di Finanza in the complaint report, it appears that all the above payment cards were activated in the commercial operation managed by Mr. Mario Scaramuzza, in Grado (GO), via Fabio Severo n. 26, authorized to carry out such operations;

- the P.M. of Gorizia, Dr. Valentina Bossi, on February 2, 2016, authorized the Finance Police, Compagnia di Monfalcone, to use the documents of criminal proceedings no. 1799/14 r.g.n.r., relating to the improper activation of Lottomaticard and Postepay payment cards, for the establishment of today's sanctioning procedure against Mr. Scaramuzza;

NOTING that with the aforementioned deed of 23 February 2016 Mr. Mario Scaramuzza, pursuant to art. 162, paragraph 2-bis, of the Code, seven distinct violations of the provisions of art. 23, with reference to the activation of n. 19 payment cards without the knowledge of the seven holders, therefore using the personal data of the same without the consent of the interested parties;

HAVING REGARD to the report relating to the aforementioned contestation deed, prepared by the Office pursuant to art. 17 of the law of 24 November 1981, n. 689, from which it appears that the reduced payment was not made for the violations contested above;

NOTING that Mr. Scaramuzza, with regard to the alleged violations, did not submit defensive briefs nor did he ask to be heard by the Authority, as required by art. 18 of the law n. 689/1981

CONSIDERING that, on the basis of the documentation on file, the responsibility of Mr. Scaramuzza regarding the alleged violations for the following reasons:

- it emerged, from the investigations carried out by the Guardia di Finanza, Compagnia di Monfalcone, that in the commercial establishment managed by Mr. Scaramuzza and located in Grado (GO), via Fabio Severo n. 26, n. 19 "Lottomaticard" payment cards which were held by seven people, all heard by the Guardia di Finanza;
- these people have declared that they have never signed the forms for requesting and activating the aforementioned cards (with the exception of two people who, limited to two payment cards, have declared that they have signed the relative activation forms but have denied having requested and activated a further eight payment cards in their name);
- it follows that the personal data of the payment card holders were used without the consent of the interested parties and in the absence of other circumstances that could authorize their processing without consent;
- the unlawful conduct is attributable to Mr. Scaramuzza since all the activations were carried out by the sales point, authorized to carry out these operations, of which Mr. Scaramuzza, located in Grado (GO), via Fabio Severo n. 26.

NOTING, therefore, that Mr. Mario Scaramuzza, on the basis of the above considerations, appears to have committed, as data controller, pursuant to art. 4, paragraph 1, lett. f), of the Code, n. 7 contested violations, pursuant to art. 162, paragraph 2-bis,

of the Code, for having carried out processing of personal data aimed at activating n. 19 "Lottomaticard" payment cards, using the personal data of n. 7 subjects without having acquired the required consent from the interested parties pursuant to art. 23 of the Code and in the absence of the conditions dictated by the following art. 24 to carry out the processing without the prior acquisition of consent;

GIVEN art. 162, paragraph 2-bis, which punishes the violation of the provisions indicated in art. 167, including art. 23, with the administrative sanction of the payment of a sum from € 10,000 to € 120,000;

CONSIDERING that, for the purposes of determining the amount of the pecuniary sanction, it is necessary to take into account, pursuant to art. 11 of the law n. 689/1981, of the work carried out by the agent to eliminate or mitigate the consequences of the violation, the seriousness of the violation, the personality and economic conditions of the offender;

CONSIDERING that, in the case in question:

a) with regard to the severity aspect with reference to the elements of the extent of the injury or danger and the intensity of the psychological element, the violations are characterized by serious specific elements since they have resulted in activities of improper use of another's identity in order to proceed with the activation of numerous payment cards without the knowledge of the holders, with evidently elusive intentions of the regulations in force aimed at monitoring, for the various purposes of prevention and repression of crimes, financial movements and transactions electronic;

b) for the purposes of evaluating the work carried out by the agent, the fact that the offender has disinterested himself in the sanctioning procedure and has failed to establish a path with the Authority aimed at eliminating or mitigating the consequences of illicit conduct must be considered unfavorably ;

c) regarding the personality of the perpetrator of the violation, the circumstance that the offender is not burdened by previous sanctioning proceedings, defined with reduced payment or with an order-injunction, must be considered;

d) with regard to the economic conditions of the agent, the tax return for the year 2016 was taken into consideration;

CONSIDERING, therefore, to have to determine, pursuant to art. 11 of Law no. 689/1981, the amount of the pecuniary sanction, based on the aforementioned elements assessed as a whole, to the extent of Euro 20,000 (twenty thousand) for each of the no. 7 violations pursuant to art. 162, paragraph 2-bis, of the Code, for a total of 140,000 euros;

HAVING REGARD to the documentation on file;

GIVEN the law n. 689/1981, and subsequent amendments and additions;

GIVEN the observations of the Office 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 Dr. Antonello Soro;

ORDER

to Mr. Scaramuzza Mario, born in Palmanova (UD), on March 13, 1975 and residing in Grado (GO), via G. Leopardi n. 41, C.F. SCRMRA75C13G284B, owner of the homonymous sole proprietorship based in Grado (GO), via Fabio Severo n. 26, to pay the sum of 140,000 euros (one hundred and forty thousand) as a pecuniary administrative sanction for the violations indicated in the motivation;

INJUNCES

to the aforementioned Mr. Scaramuzza to pay the sum of € 140,000 (one hundred and forty thousand), according to the methods indicated in the annex, within 30 days from the notification of this provision, under penalty of the adoption of the consequent executive acts pursuant to art. 27 of the law of 24 November 1981, n. 689.

Pursuant to art. 152 of the Code and 10 of Legislative Decree n. 150/2011, against this provision, opposition may be proposed to the ordinary judicial authority, with an appeal filed with the ordinary court of the place where the data controller resides, within thirty days from the date of communication of the provision itself. , or sixty days if the applicant resides abroad.

Rome, 25 January 2018

PRESIDENT

Soro

THE RAPPORTEUR

Soro

THE SECRETARY GENERAL

Busia