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Injunction against Mercati s.p.a - 26 July 2018

Register of measures

no. 445 of 26 July 2018

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, in the presence of Dr. Antonello Soro, president, of dott.ssa Augusta Iannini, vice president, of dott.ssa Giovanna Bianchi Clerici and of prof.ssa Licia Califano, members and of dott. Giuseppe Busia, general secretary;

CONSIDERING the art. 1, paragraph 2, of the law of 24 November 1981, n. 689, pursuant to which the laws that provide for administrative sanctions are applied only in the cases and for the times considered in them;

NOTING that the Special Privacy Unit of the Guardia di Finanza, in execution of the request for information pursuant to art. 157 of the Code regarding the protection of personal data - Legislative Decree 30 June 2003, no. 196 (hereinafter referred to as the Code) (n. 18683/91026 of 16 June 2014), carried out the investigations referred to in the report of transactions carried out on 28 August 2014 against Mercati s.p.a. VAT number: 02158801007, with headquarters in Rome, via Ulisse Aldrovandi n. 15, in the person of the pro-tempore legal representative, from which it emerged that the company, at the hotel in via Ulisse Aldrovandi no. 15, carried out a collection of users' personal data, using a link called "reservation" present on the site www.aldrovandi.com/it which allows the opening of the web page www.yourreservation.net where there was a data collection form from use for room reservations, without being given the information pursuant to art. 13 of the Code.

The same control activity made it possible to ascertain that Mercati s.p.a. carried out, as owner, a processing of personal data through the use of a video surveillance system, failing to provide appropriate information pursuant to art. 13 of the Code) and the provision on video surveillance dated 8 April 2010 (published in the Official Journal no. 99 of 29 April 2010, and in www.gpdp.it, web doc. no. 1712680).

It was also ascertained that the same company carried out, as owner, a processing of personal data of customers who, despite not having made a prior reservation, presented themselves at the reception desk of the hotel structure, through the passport scan procedure envisaged for the customer registration, without providing them with the required information pursuant to art. 13 of the Code;

HAVING REGARD TO the three separate minutes nos.rr. 62, 63 and 64 all dated 28 August 2014 with which Mercati s.p.a.

was charged with three distinct administrative violations, all provided for by art. 161 of the Code, in relation to art. 13, informing you, for the three disputes, of the right to make a reduced payment pursuant to art. 16 of the law of 24 November 1981, n. 689; DETECTED from the report prepared pursuant to art. 17 of the law of 24 November 1981, n. 689, relating to the aforementioned dispute reports, that the reduced payment does not appear to have been made;

HAVING REGARD to the written defenses sent pursuant to art. 18 of the law of 24 November 1981, n. 689, with which the company, with reference to dispute no. 62, noting how "(...) on the day of the aforementioned inspection (...) there were not present (...) the subjects who could better clarify the privacy procedures adopted by the structure (...)" and illustrating the initiatives adopted in any case aimed at "(...) integrate and update the information pursuant to art. 13 of the aforementioned law (...)", highlighted how "Mercati S.p.A. has always used a reservation system provided by the German company (...), a service company of the better known (...), of which the Aldrovandi Villa Borghese hotel is a member. The system operates through the website www.youreservation.net which already observes by default a policy dedicated to privacy, containing a disclosure and a subsequent request for consent. Therefore, Mercati Spa already believed to comply with the provisions of the European directive 95/46/CE".

With reference to dispute no. 63, after mentioning the initiatives undertaken in relation to the provisions of art. 4 of the law n. 300/1970, reiterated that "(...) on the day of the aforementioned inspection (...) there were not present (...) the subjects who could have better clarified the privacy procedures adopted by the structure (...)" and illustrated the initiatives aimed at "(...) integrate and update the information pursuant to art. 13 of the aforementioned law (...)", highlighted how "The Guardia di Finanza carried out a check only at the main entrance in the entrance hall, where the information signs were missing, as the Management, shortly before the inspection de quo, had recently decided to replace the old billboards with others in line with the image of the hotel".

With regard to dispute no. 64, after reiterating how "(...) on the day of the aforementioned inspection (...) there were not present (...) the subjects who could have better clarified the privacy procedures adopted by the structure (...)", he noted that "The information pursuant to art. 13 of the former TULPS Code exists and is available at reception on word files in a special network folder called N shared between operators, available for printing (...). There is also a service order from 2013 which provides for the supply of the same document upon customer request. (...) Summary information available via passportscan system. Since there is no longer the obligation to print the notification form pursuant to art. 109 of the TULPS, the practice of

the hotel has been simplified, no longer providing for its printing, unless expressly requested";

CONSIDERING that the arguments put forward by Mercati s.p.a. they are not suitable to exclude the liability of the party in relation to the disputed matter.

With reference to dispute no. 62, what has been argued, does not allow to qualify the constituent elements of the discipline on excusable error pursuant to art. 3 of the law n. 689/1981, given that the error on the legitimacy of the fact, commonly referred to as good faith, can be considered as a cause for exclusion of liability only when he is found to be innocent. To this end, that is, a positive element is required which is suitable for inducing such an error, which cannot be remedied by the interested party with ordinary diligence, an element which cannot be found in the present case (Cass. Civ. section I of 21 February 1995 n. 1873; Civil Cassation Section II of 13 March 2006, No. 5426).

With reference to dispute no. 63, it should be noted that the Guardia di Finanza promptly ascertained, pursuant to art. 13 of the law n. 689/1981, the omissive conduct object of the dispute acknowledging the outcome of the inspection carried out in the report of the operations carried out drawn up on 27 August 2014.

With regard to dispute no. 64, it should be noted that, what has been argued does not allow to qualify any of the constituent elements of the discipline on excusable errors commonly definable as good faith, pursuant to art. 3 of the law n. 689/1981, also on the basis of what is asserted by the jurisprudence (Cass. Civ. section I of 15 May 2006 n. 11012; Cass. Civ. section II of 13 March 2006, n. 5426);

NOTING that the company has therefore processed personal data (art. 4 paragraph 1, letter a) and b) of the Code) without providing the required information to the interested parties pursuant to art. 13 of the Code against: a) a collection of users' personal data, using a link called "reservation" on the site www.aldrovandi.com/it which allows you to open the web page www.yourreservation.net where it was present a data collection form to be used for booking rooms; b) the use of a video surveillance system; c) the processing of personal data of customers who, despite not having made a prior reservation, presented themselves at the reception desk of the hotel structure, using the passport scan procedure envisaged for customer registration;

CONSIDERING the art. 161 of the Code which punishes the violation of the provisions of art. 13 with the administrative sanction of the payment of a sum from six thousand euros to thirty-six thousand euros for each contestation;

WHEREAS, for the purpose of determining the amount of the fine, it is necessary to take into account, pursuant to art. 11 of

the law of 24 November 1981 n. 689, of the work carried out by the agent to eliminate or mitigate the consequences of the violation, of the seriousness of the violation, of the personality and economic conditions of the offender and that therefore the amount of the pecuniary sanction for the violation of art. 161 of the Code must be quantified in the minimum amount of 6,000.00 (six thousand) euros for each of the three disputes, for a total amount of 18,000.00 (eighteen thousand) euros;

HAVING REGARD to the documentation in the deeds;

HAVING REGARD to the law of 24 November 1981 n. 689, and subsequent modifications and additions;

HAVING REGARD TO the observations of the Office, formulated by the general secretary pursuant to art. 15 of the Guarantor's regulation n. 1/2000;

SPEAKER Dr. Giovanna Bianchi Clerici;

ORDER

to Mercati s.p.a. VAT number: 02158801007, with headquarters in Rome, via Ulisse Aldrovandi n. 15, in the person of the pro-tempore legal representative, to pay the sum of 18,000.00 (eighteen thousand) euros as a pecuniary administrative sanction for the violation, provided for by art. 161 of the Code, indicated in the motivation;

ENJOYS

to the same subject to pay the sum of 18,000.00 (eighteen thousand) euros 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 of 24 November 1981, n. 689.

Pursuant to articles 152 of the Code and 10 of Legislative Decree no. 150/2011, opposition to this provision may be lodged with the ordinary judicial authority, with an appeal lodged with the ordinary court of the place where the data controller has his residence, within the term of thirty days from the date of communication of the provision itself or sixty days if the appellant resides abroad.

Rome, 26 July 2018

PRESIDENT

Soro

THE SPEAKER

Cleric Whites

THE SECRETARY GENERAL

Busia