

Injunction against Tgroup s.r.l. - October 2, 2019

Register of measures

no. 183 of 2 October 2019

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 "Puglia" Postal and Communications Police Department, with no. 2 minutes of 30 October 2017 (notified on the same date), which must be understood as fully reported here, challenged Tgroup s.r.l. (hereinafter "Tgroup" or "the Company"), in the person of its pro-tempore legal representative, with registered office in Lamezia Terme (CZ), via dei Bizantini n. 215, tax code 03179810795, the violations envisaged by articles 13, 23, 33, 161, 162, paragraph 2-bis, and 167 of the Code regarding the protection of personal data (legislative decree 30 June 2003, n. 196, hereinafter "Code") in the formulation prior to the amendments introduced by d. lg. no. 101/2018;

NOTING that from the examination of the documents of the sanctioning procedure initiated with the contestation of administrative violation, the following emerged, in summary:

- following a complaint filed by Mrs. XX on 27 April 2017, relating to the activation without her knowledge of a sim card of the company Vodafone Italia S.p.A., the Postal Police Department indicated in the epigraph carried out investigations, acquiring the related contracts and ascertaining that the sim card had been activated at the Tgroup company;
- during the investigations, the Compartment acquired information from the owner of the Company, its employees and the complainant. From this information, suitable elements were obtained to contest the Company's violations in terms of information and consent, for the activation of a SIM without the complainant's knowledge, and in relation to the failure to adopt the minimum security measures, with reference to the failure designation of employees as data processors;

NOTING that with the aforementioned documents of 30 October 2017 the following violations were charged against Tgroup:

- a) pursuant to articles 13 and 161 of the Code, for having processed the complainant's data in order to proceed with the

activation of a sim card without having provided the complainant with suitable information;

b) pursuant to articles 23, 24, 162, paragraph 2-bis, and 167 of the Code, for having carried out the above treatments without having obtained the consent of the complainant, or in the absence of one of the conditions set forth in the following art. 24;

c) pursuant to articles 33 and 162, paragraph 2-bis, of the Code, for having failed to designate the employees of the Company who carry out processing operations as persons in charge and, for the effect for having failed to adopt all the minimum security measures that the Code and the technical specifications referred to in the relative annex B) refer to the activity of the appointees (art. 34 of the Code and rules nos. 1-10, 12-14, 15, 27-29 of the Technical specifications);

HAVING ACKNOWLEDGED that the Company has made use of the special procedure for the facilitated definition of the sanctioning procedure relating to the failure to adopt the minimum security measures (Article 18 of Legislative Decree No. 101/2018) which, following the payment of € 4,000 carried out on 26 October 2018, must be considered extinguished;

READ the minutes of the hearing of 11 April 2019, the written defenses of 30 November 2017 and 14 February 2019, the latter sent on the basis of the provisions of art. 18, paragraph 4, of Legislative Decree lg. no. 101/2018, as well as the brief of 24 June 2019, sent following the reservation expressed at the hearing, in which it is represented that:

- the Company has made the payment for the facilitated definition of only one sanctioning procedure for an error in good faith and therefore requests to be put back in time to make the further payments;
- the contestations of administrative violations are affected by incurable nullity as they are not carried out immediately, as prescribed by art. 14, paragraph 1, of the law n. 689/1981;
- the complainant actually went to the point of sale managed by the Company to activate a sim card but, due to a mistake, did not sign the forms to read the information and issue consent;
- the omission appears to be entirely accidental, the result of a clerical error by the operator;

HAVING ACKNOWLEDGED the arguments put forward by the Company, in relation to which it is observed that:

- the deadline for the facilitated definition of the sanctioning procedures expressly established by art. 18 of Legislative Decree lg. no. 101/2018 is peremptory in nature and does not provide for some derogation hypotheses to be agreed by the administrative authority. It must therefore be considered, in the case in question, that the facilitated settlement occurred only for the sanctioning procedure relating to the hypothesis of failure to adopt the minimum security measures, as explained by the party in the statement dated June 24, 2019 and that the further sanctioning procedures must be defined with a provision of the

Authority;

- the notification of the notices of contestation of the administrative violations was carried out on 30 October 2017 and therefore in full compliance with the terms indicated by art. 14 of the law n. 689/1981 (notification of violations immediately or within 90 days of their verification), if we consider that the last act of investigation by the Postal Police Department was carried out on the same date with the recording of summary information provided by the legal representative of the Company regarding the ownership of the treatments and the designation of the persons in charge;
- the circumstances referred to in the defense briefs, on the basis of which the activation of the sim card would have taken place in the presence of the complainant and that only for a mere mistake it would not have been possible to print the relative contractual forms capable of proving compliance with the provisions of the Code regarding information and consent, in addition to not being confirmed by the statements made by the Company's employees, they are also contradicted by what was stated by the complainant herself, who reported that she was not aware of the activation of the SIM in question and, therefore , that I have not received any information or signed any contract;
- on the basis of the above considerations, the responsibility of Tgroup must be confirmed in relation to the violations indicated in points a) and b) above;

NOTING, therefore, that Tgroup, on the basis of the above deeds and considerations, appears to have committed, in its capacity as data controller, pursuant to articles 4, paragraph 1, lett. f), and 28 of the Code, the violations indicated in the report of 30 October 2017 on the subject of information and consent in the processing of personal data;

CONSIDERING 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 statements to the Guarantor and interruption of the performance of the duties or exercise of the powers of the Guarantor";

CONSIDERING the art. 161 of the Code which punishes violations of art. 13, with the administrative sanction of the payment of a sum from Euro 6,000 to Euro 36,000;

CONSIDERING the art. 162, paragraph 2-bis, of the Code which punishes violations of the provisions indicated in art. 167, among which the art. 23, with the administrative sanction of the payment of a sum from Euro 10,000 to Euro 120,000;

CONSIDERING that, in the case in question, the decrease referred to in art. 164-bis, paragraph 1, of the Code, since the

violations appear to be particularly tenuous and of an episodic nature;

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;

WHEREAS, in the present case:

to. with regard to the aspect of gravity, with reference to the elements of the extent of the injury or danger and the intensity of the psychological element, the conducts do not appear framed in a broader design of illegality but seem to be traced back to a superficial management method of the overall processing of personal data;

b. for the purposes of evaluating the work performed by the agent, the fact that Tgroup has remedied the illicitness in terms of appointing the persons in charge of processing, by putting in place the relative fulfilments, must be considered in favorable terms;

c. regarding the personality of the author of the violation, the fact that Tgroup is not burdened by previous sanctioning proceedings defined in brief or following an injunction order must be considered;

d. with regard to the economic conditions of the agent, the financial statements for the year 2017 were taken into consideration;

CONSIDERED, therefore, of having to determine, pursuant to art. 11 of Law no. 689/1981, the amount of the pecuniary sanction, based on the aforementioned elements evaluated as a whole, to the minimum extent of:

- 2,400 (two thousand four hundred) euros for the violation pursuant to articles 13 and 161 of the Code;
- 4,000 (four thousand) euros for the violation pursuant to articles 23 and 162, paragraph 2-bis, of the Code;

HAVING REGARD to the documentation in the deeds;

CONSIDERING the law n. 689/1981, and subsequent modifications and additions;

HAVING REGARD TO the observations of the Office formulated by the Secretary General pursuant to art. 15 of the Guarantor's regulation n. 1/2000, adopted with resolution of 28 June 2000;

SPEAKER Prof. Licia Califano;

ORDER

to Tgroup s.r.l., in the person of its pro-tempore legal representative, with registered office in Lamezia Terme (CZ), via dei

Bizantini n. 215, tax code 03179810795, to pay the sum of 6,400 (six thousand four hundred) euros as an administrative fine for the violations indicated in the justification;

ENJOYS

to the aforementioned Company to pay the sum of Euro 6,400 (six thousand four hundred), according to the methods indicated in the attachment, within 30 days of notification of this provision, under penalty of the adoption of the consequent executive deeds 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, October 2nd 2019

PRESIDENT

Soro

THE SPEAKER

Califano

THE SECRETARY GENERAL

Busia