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Injunction order against Municipality of Pozzallo - 21 June 2018

Register of measures

no. 390 of 21 June 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, following a complaint filed on 18 August 2015 which complained about the publication on the online praetorian register on the institutional website of the Municipality of Pozzallo of deeds and resolutions containing personal data including of a judicial nature, the Office sent a request for information to the Municipality of Pozzallo (prot. note n. 32352 of 19 November 2015), aimed at obtaining suitable elements of evaluation in relation to the conditions of lawfulness relating to the publication of personal and judicial data;

CONSIDERING that no response was provided to the aforementioned request for information, a new request was formulated by the Secretary General pursuant to art. 157 of the Code regarding the protection of personal data (legislative decree 30 June 2003, n. 196, hereinafter referred to as the "Code", prot. n. 3661/101118 of 10 February 2016), with which the Municipality was again invited to provide the information already requested, with an indication of the deadline for compliance and the consequences set forth in art. 164 of the Code in case of non-compliance;

CONSIDERING that the aforementioned request for information was duly notified on 10 February 2016, by certified e-mail, the delivery receipt of which is in the file's records, and that it has not received a response within the indicated deadline;

CONSIDERING the report n. 12275/101118 of 28 April 2016 with which the Municipality of Pozzallo, as data controller, with registered office in Pozzallo (RG), Piazza Municipio n. 1, tax code 00170330880, in the person of the pro-tempore legal representative, the administrative violation envisaged by art. 164 of the Code, in relation to art. 157, informing you of the right to make a reduced payment pursuant to art. 16 of the law of 24 November 1981 n. 689;

NOTING that from the report prepared by the Office of the Guarantor pursuant to art. 17 of the law of 24 November 1981 n.

689 the reduced payment has not been made;

CONSIDERING the documents of the inspection carried out by the Privacy Unit of the Guardia di Finanza on 18 May 2016, in implementation of the request for information formulated pursuant to art. 157 of the Code (prot. n. 12276 of 28 April 2016), and the documentation subsequently sent by the Municipality on 9 June 2016, to resolve the reservations expressed during the aforementioned assessment, from which it emerged that the Municipality did not carry out the designation of data processor, pursuant to articles 29 and 30 of the Code, towards its employees;

CONSIDERING that the designation of persons in charge of processing constitutes the most significant part of the security measures, as it is carried out with regard to those who ordinarily work on personal data and is aimed at providing them with the instructions to follow for the correct processing of personal data, while making them aware of the related responsibilities. Therefore, this omission results in the failure to apply all the minimum security measures attributable to the activities of the persons in charge.

CONSIDERING, therefore, that the failure to appoint persons in charge of the treatment is suitable to configure the violation provided for by art. 162, paragraph 2-bis, of the Code for the failure to adopt the minimum security measures pursuant to art. 33 of the same Code;

CONSIDERING the report n. 85/2016 of 22 July 2016 with which the Municipality of Pozzallo, in its capacity as data controller, in the person of its pro-tempore legal representative, was charged with the administrative violation envisaged by art. 162, paragraph 2-bis, of the Code, in relation to art. 33, for which a short definition is not foreseen pursuant to art. 16 of the law n. 689/1981;

HAVING REGARD TO the written defense of 14 June 2016, sent pursuant to art. 18 of the law of 24 November 1981 n. 689, with which the party, with reference to the dispute report n. 12275 concerning the violation of art. 157 of the Code, found that "the complainant was the same person who holds the position of data processing manager and responsible for their publication". Therefore, in response to the Guarantor's request for information, the person in charge, precisely in consideration of his involvement in the matter, "refused to take any administrative decision both on the receipt of the documents and on their assignment";

HAVING REGARD TO the minutes of the hearing of 27 February 2018, held pursuant to art. 18 of the law n. 689/1981, with which the party reaffirmed what had already been declared in the defense briefs;

NOTING that the party, with reference to the complaint report no. 85/2016, relating to the violation of art. 33 of the Code, has not sent written defenses or asked to be heard by the Authority;

CONSIDERING that, with reference to the dispute report dated 28 April 2016, the arguments put forward by the party in the written defense and in the report of the hearing are not suitable to exclude their liability. In the case in question, the constituent elements of good faith pursuant to art. 3 of the law n. 689/1981, since the request for information pursuant to art. 157 of the Code, the failure to reply to which led to the initiation of the sanctioning procedure, had been correctly notified to the data controller, as noted by the party, having been assigned both to the municipal secretary and to the person in charge of personal data processing (who, however, , as mentioned, also held the position of interested party in the present case). Therefore, the condition that allows to affirm that the party has done everything possible to observe the law and that no reproach can be leveled against him does not exist, so that the error was innocent or not capable of being avoided with ordinary diligence (Cass . Civil Labor Section 12 July 2010 n. 16320);

NOTING, therefore, that the Municipality of Pozzallo, as evidenced by the complaint reports of 28 April 2016 and 22 July 2016, has failed to respond to the Guarantor's requests, formulated pursuant to art. 157 of the Code, incurring the violation pursuant to art. 164, and has not made the appointments to data processors for its employees, in violation of the minimum security measures pursuant to art. 33 of the Code;

CONSIDERING the art. 164 of the Code, which punishes anyone who fails to provide the information or exhibit the documents required by the Guarantor pursuant to art. 157 of the same Code, with the administrative sanction of the payment of a sum from ten thousand euros up to sixty thousand euros;

CONSIDERING the art. 162, paragraph 2-bis, of the Code which punishes the violation of art. 33, with the administrative sanction of the payment of a sum from ten thousand euros to one hundred and twenty thousand euros;

CONSIDERING that, in consideration of the small size of the entity, the conditions for applying art. 164-bis, paragraph 1, of the Code according to which "if any of the violations pursuant to art. 161, 162, 162-ter, 163 and 164 is less serious, the minimum and maximum limits established in the same articles are applied to an extent equal to two fifths";

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 of 24 November 1981 n. 689, 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;

CONSIDERED having to determine, pursuant to art. 11 of the law of 24 November 1981 n. 689, the amount of the pecuniary sanction in the amount of 4,000.00 (four thousand) euros for the violation pursuant to art. 157 of the Code and in the amount of 4,000.00 (four thousand) euros for the violation pursuant to art. 33 of the Code, for a total amount of 8,000.00 (eight 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;

GIVEN 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 Dr. Giovanna Bianchi Clerici;

ORDER

to the Municipality of Pozzallo, with headquarters in Pozzallo (RG), Piazza Municipio n. 1, tax code 00170330880, in the person of the pro-tempore legal representative, to pay the sum of 8,000.00 (eight thousand) euros as an administrative fine for the violations set out in articles 164 and 162, paragraph 2-bis, of the Code;

ENJOYS

to the same to pay the sum of 8,000.00 (eight thousand) euros, 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 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, 21 June 2018

PRESIDENT

Soro

THE SPEAKER

Cleric Whites

THE SECRETARY GENERAL

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