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Injunction against GTL s.r.l. - July 2, 2020

Register of measures

no. 125 of 2 July 2020

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by Dr. Antonello Soro, president, Dr. Giovanna Bianchi Clerici and Prof. Licia Califano, members, and Dr. Giuseppe Busia, general secretary;

HAVING REGARD TO Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (hereinafter, the "Regulation");

HAVING REGARD TO the Code regarding the protection of personal data, containing provisions for the adaptation of the national legal system to regulation (EU) 2016/679 (legislative decree 30 June 2003, n. 196, as amended by legislative decree 10 August 2018, n. 101, hereinafter "Code");

HAVING REGARD to the complaint presented to the Guarantor pursuant to article 77 of the XX Regulation concerning the processing of personal data relating to the interested party carried out by GTL s.r.l.;

HAVING EXAMINED the documentation in the deeds;

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

SPEAKER Prof. Licia Califano;

WHEREAS

1. The complaint against the company and the preliminary investigation.

1.1. With a complaint dated 17 January 2019, Mr. XX, represented and defended by the lawyer XX, complained about alleged violations of the Regulation by GTL s.r.l. (hereinafter, the company), with reference to the omitted response to the access request, presented by the complainant pursuant to art. 15 of the Regulation dated 26 November 2018, to their personal data held by the company, in particular contained in the "registration sheets and printouts" extracted from the chronotachograph and those "downloaded from the driver's card relating to journeys made" by the complainant himself.

With a note dated 26 March 2019, the Office invited the company to provide feedback on the facts subject to the complaint,

indicating to the Authority the decisions adopted in relation to the complainant's request for access. The request, in the absence of a response from the company, was renewed with a note dated June 17, 2019 pursuant to art. 157 of the Code.

1.2. Since no reply was received from the company, the Office delegated to the Special Unit for the Protection of Privacy and Technological Frauds of the Guardia di Finanza to carry out an inspection in order to acquire the requested information, which was carried out on 2 October 2019 at the registered office of the company.

On the occasion (see report of operations carried out on 2.10.2019) the delegate of the legal representative of the company declared that:

to. "the complainant used only a vehicle with a paper parking disc";

b. from the registration certificate of the vehicle used by the complainant, provided in copy, it can be seen that "a tachograph disc system is installed on the vehicle in DDT hard copy mode";

c. the complainant "has never used vehicles with an automated system";

d. the employment relationship with the complainant ceased on 16 March 2018 following the resignation of the same;

And. "to the request for deposit of the tachograph discs [the complainant] replied that he would return them to the balance of his working dues";

f. "due to the collapse of the Morandi bridge in Genoa [...] the company has no longer made the payment, as there has been a sharp drop in work";

g. "verbally [the complainant] was notified [...] that the company is not in possession of the tachograph discs, since they were never delivered [by] the latter";

h. "the company for forgetfulness has not given a response to the Authority".

1.3. On 7 November 2019, the Office carried out, pursuant to art. 166, paragraph 5, of the Code, the notification to the company of the alleged violations of the Regulation found, with reference to articles 12 and 15 of the Regulation and art. 157 of the Code. With a note dated November 18, 2019, the company, through the lawyer Roberto Piazza, declared that:

to. as already specified in the minutes of 10.02.2019 "the Company, by mere oversight, did not proceed to provide an exhaustive reply to the [...] requests [of the Authority]";

b. the complainant "arbitrarily and unjustifiably withheld the documentation of the tachograph discs, fearing their return when the payment of his dues";

c. the company operated in "absolute good faith" and while "acknowledging its negligence in not having [...] given a timely response" to the Authority requests the possible "application of the sanctions referred to in Article 83 of the Regulation, to the extent of the statutory minimum".

2. The outcome of the investigation and of the procedure for the adoption of corrective and sanctioning measures.

After examining the statements made to the Authority during the proceedings as well as the documentation acquired, provided that, unless the fact constitutes a more serious offence, whoever, in a proceeding before the Guarantor, falsely declares or certifies news or circumstances o produces false deeds or documents and is liable pursuant to art. 168 of the Code "False declarations to the Guarantor and interruption of the execution of the duties or exercise of the powers of the Guarantor", it emerges that the company has not provided a response to the request for access presented pursuant to art. 15 of the Regulation dated 26 November 2018 by Mr. XX via Pec, concerning the "copy of the registration sheets and printouts" extracted from the chronotachograph and the "data downloaded from the driver's card relating to journeys made" by the complainant. Having "verbally" represented to the complainant, as declared to the Authority, that the company was not in possession of the required documentation, in addition to being an unproven or documented circumstance, does not in any case satisfy the requirements of the applicable data protection provisions personal. In fact, according to art. 12, par. 1, of the Regulation "The information is provided in writing or by other means, including, where appropriate, by electronic means. If requested by the interested party, the information can be provided orally, provided that the identity of the interested party is proven by other means". Furthermore, according to par. 3 of the art. 15 of the Regulation "If the interested party submits the request by electronic means, and unless otherwise indicated by the interested party, the information is provided in a commonly used electronic format". The company would therefore have had to provide feedback to the interested party, even negative, in a manner compliant with the provisions of the law, representing that it did not possess the data object of the request.

Therefore, the company has not complied with the obligation to provide feedback to the interested party following the exercise of one of the rights provided for by the Regulation - in this case the right of access pursuant to art. 15 -, as prescribed by art. 12 of the Regulation on the basis of which "the data controller provides the interested party with information relating to the action taken regarding a request pursuant to articles 15 to 22 without unjustified delay and, in any case, at the latest within one month of receipt of the request itself".

This therefore occurred in violation of articles 12 and 15 of the Regulation.

2.2. It also emerged that the company failed to respond to the request for information of 17 June 2019 formulated by this Authority pursuant to art. 157 of the Code, after the sending - which remained without response - of a previous invitation to join on 26 March 2019. On the basis of the aforementioned article 157 of the Code "Within the powers referred to in article 58 of the Regulation, and for the performance of its duties, the Guarantor may request the holder, [...] to provide information and produce documents". The art. 166, paragraph 2, of the Code establishes that the violation of art. 157 of the Code is subject to the administrative sanction referred to in article 83, par. 5, of the Regulation.

This therefore occurred in violation of art. 157 in relation to the provisions of art. 166, paragraph 2, of the Code.

3. Conclusions: illegality of the treatment. Sanction measure pursuant to art. 58, par. 2, Regulation.

For the aforementioned reasons, the processing of personal data referring to the complainant carried out by the company through the failure to respond to the access request presented by the latter, as well as the failure to provide response to the request for information formulated by the Authority pursuant to art. . 157, is unlawful, in the terms set out above, in relation to articles 12 and 15 of the Regulation and of the art. 157 of the Code.

Therefore, given the corrective powers attributed by art. 58, par. 2 of the Regulation, in the light of the circumstances of the specific case, a pecuniary administrative sanction is ordered pursuant to art. 83 of the Regulation, commensurate with the circumstances of the specific case (Article 58, paragraph 2, letter i) of the Regulation).

4. Injunction order.

Pursuant to art. 58, par. 2, lit. i) of the Regulation and of the art. 166, paragraphs 3 and 7 of the Code, the Guarantor orders the application of the pecuniary administrative sanction provided for by art. 83, par. 5, of the Regulation, through the adoption of an injunction order (art. 18, l. 11.24.1981, n. 689), in relation to the processing of personal data referring to the complainant carried out by the company through the omitted reply to the exercise request of the right of access in the terms established by the law, as well as in relation to the omitted reply to the request for information formulated by the Authority, the unlawfulness of which has been ascertained, in the terms set out above, in relation to articles 12 and 15 of the Regulation and of the art. 157 of the Code, following the outcome of the procedure pursuant to art. 166, paragraph 5 carried out jointly with the data controller (see point 1.3 above).

Considering it necessary to apply paragraph 3 of the art. 83 of the Regulation where it provides that "If, in relation to the same treatment or related treatments, a data controller [...] violates, with willful misconduct or negligence, various provisions of this

regulation, the total amount of the pecuniary administrative sanction does not exceed amount specified for the most serious violation", considering that the ascertained violations are subject to the sanction provided for by art. 83, par. 5 of the Regulation, the total amount of the fine is calculated so as not to exceed the maximum prescribed by the same art. 83, par. 5, fixed at the sum of 20 million euros or, for companies, at 4% of the annual worldwide turnover of the previous year where higher.

With reference to the elements listed by art. 83, par. 2 of the Regulation for the purposes of applying the pecuniary administrative sanction and the relative quantification, taking into account that the sanction must "in any case [be] effective, proportionate and dissuasive" (Article 83, paragraph 1 of the Regulation), it is represented that In the present case, the following circumstances were considered:

a) with reference to the intentional or negligent nature of the violation and the degree of responsibility of the owner, the negligent conduct of the company and the degree of responsibility of the same was taken into consideration which did not comply with the data protection regulations in relation to a plurality of provisions;

b) the absence of specific precedents (relating to the same type of treatment) against the company.

It is also believed that they assume relevance in the present case, taking into account the aforementioned principles of effectiveness, proportionality and dissuasiveness with which the Authority must comply in determining the amount of the fine (Article 83, paragraph 1, of the Regulation), in firstly, the economic conditions of the offender, determined on the basis of the revenues earned by the company with reference to the condensed financial statements for the year 2015. Lastly, account is taken of the statutory sanction established, in the previous regime, for the corresponding administrative offenses and the extent of the sanctions imposed in similar cases.

In the light of the elements indicated above and the assessments made, it is believed, in the present case, to apply against GTL s.r.l. the administrative sanction of the payment of a sum equal to 3,000.00 (three thousand) euros.

In this context, it is also believed, in consideration of the type of violation ascertained, which concerned the right of access to data and the failure to reply to the requests of the Authority, that pursuant to art. 166, paragraph 7, of the Code and of the art. 16, paragraph 1, of the Guarantor's Regulation n. 1/2019, this provision must be published on the Guarantor's website.

Finally, it is believed that the conditions set forth in art. 17 of Regulation no. 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

ALL THAT BEING CONSIDERED, THE GUARANTOR

declares the illegality of the conduct held by GTL s.r.l. pursuant to articles 57, par. 1, lit. f) and 83 of the Regulation, for the violation of articles 12 and 15 of the Regulation, as well as art. 157 of the Code;

ORDER

a GTL s.r.l., in the person of its pro-tempore legal representative, with registered office in via Gagarin 12, 92023 Campobello di Licata (AG) CF: 02764100844, pursuant to art. 58, par. 2, lit. i), of the Regulation, to pay the sum of 3,000.00 (three thousand) euros as an administrative fine for the violations indicated in this provision;

ENJOYS

also to the same Company to pay the sum of 3,000.00 (three thousand) euros, according to the methods indicated in the attachment, within 30 days of notification of this provision, under penalty of adopting the consequent executive acts pursuant to art. 27 of the law no. 689/1981. It should be remembered that the offender retains the right to settle the dispute by paying - always according to the methods indicated in the annex - an amount equal to half of the fine imposed, within the term set out in art. 10, paragraph 3, of Legislative Decree lgs. no. 150 of 09/01/2011 envisaged for the lodging of the appeal as indicated below (art. 166, paragraph 8, of the Code);

HAS

the publication of this provision on the Guarantor's website pursuant to art. 166, paragraph 7, of the Code and by art. 16, paragraph 1, of the Guarantor's Regulation n. 1/2019, and believes that the conditions set forth in art. 17 of regulation no. 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

Pursuant to art. 78 of the Regulation, as well as articles 152 of the Code and 10 of Legislative Decree no. 150/2011, opposition to the ordinary judicial authority may be lodged against this provision, with an appeal lodged with the ordinary court of the place identified in the same art. 10, within the term of thirty days from the date of communication of the measure itself, or sixty days if the appellant resides abroad.

Rome, July 2nd 2020

PRESIDENT

Soro

THE SPEAKER

Califano

THE SECRETARY GENERAL

Busia