

Injunction against Axa Assicurazioni S.p.A. - September 27, 2018

Register of measures

no. 457 of 27 September 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 Office of the Guarantor, with deed no. 173333/126252 of 7 June 2018 (notified on the same date by certified email), which must be understood as fully reported here, challenged Axa Assicurazioni S.p.A. (hereinafter "Axa" or "Company"), in the person of its pro-tempore legal representative, with registered office in Milan, Corso Como no. 17, tax code 00902170018, the violation provided for by articles 23, 24, 162, paragraph 2-bis, 164-bis, paragraph 1, and 167 of the Code regarding the protection of personal data (legislative decree 30 June 2003, n. 196, hereinafter referred to as the "Code");

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

- on 26 April 2018 Axa represented to the Guarantor that it had mistakenly sent, through its mailing service provider, no. 77 communications via e-mail intended for its customers, holders of insurance policies, to various subjects;
- a system misalignment would have been the basis of the mistake which would have resulted in an incorrect match between the e-mail and the pdf file attached to them;
- the Company, in addition to notifying the Guarantor of the incident, as mentioned, has also implemented a series of actions (suspension of communications and sending of corrections, revision of the email forwarding process and checks on sending) aimed at limiting the event and preventing further similar episodes;
- the Company, at the request of the Office, also highlighted that the mailing service provider acted as data processor, pursuant to art. 29 of the Code;
- on the basis of the procedural documents, the Office contested Axa, as data controller, for the violation pursuant to articles

23, 24, and 162, paragraph 2-bis, of the Code, for having made a communication of personal data in the absence of the appropriate legal bases (consent of the interested party or cases for which the acquisition of consent is not foreseen), evaluated the conduct as less serious pursuant to art. 164-bis, paragraph 1, of the Code;

NOTING that with the aforementioned deed of 7 June 2018, Axa was charged with the aforementioned violation, with the reduction pursuant to art. 164-bis, paragraph 1, of the Code;

HAVING ACKNOWLEDGED that the company has not made the reduced payment, as evidenced by the report drawn up pursuant to art. 17 of the law n. 689/1981;

READ the defense writings of 4 July 2018, in which he represents:

- "On 26 April 2018, AXA Assicurazioni reported to the Guarantor for the protection of personal data that it had found that 77 service communications, addressed to its customers and containing non-sensitive personal data, had been sent to incorrect recipients, specifying that a) the event had been brought to the attention of the Authority, with a view to transparency and ready to implement any indications in this regard, while aware that it did not fall within the cases for which the obligation to notify a data breach was in force; b) the service communications subject to report had been made in digital format in addition to the ordinary paper communication, providing for the sending of the amount of the "tax deductions" relating to insurance policies of the Damages, Accidents and Health, contained in an attachment - in pdf format - to the message addressed to the email address of the policy holder";
- "The communications that have been the subject of the report to the Guarantor Authority assume the nature of a service towards customers of AXA Assicurazioni and, more precisely, to policyholders of insurance policies to cover the risks of death or permanent disability for which, in based on current legislation (Legislative Decree No. 47 of 18 February 2000, Legislative Decree 168 of 12 April 2001 and Circular of the Minister of Finance No. 29 of 20 March 2001), the deductibility of tax charges on insurance premiums is envisaged";
- "Evidently, the communication we are dealing with has mandatory roots in tax legislation, as it is indispensable for identifying the full or partial deductibility of the premium paid, which cannot otherwise be known by the policyholder given the technicalities of composition of the premium itself" ;
- "These service communications, therefore, are sent, ordinarily, by paper mail to the policyholders of the policies specified above to fulfill the contractual obligations of the insurer-data controller, also in relation to the tax legislation indicated";

- "In this context, communications relating to tax charges sent by e-mail find their legal basis in the express consent expressed by the policyholder of the AXA policy by signing the so-called Consent Registry Document";

- "AXA Assicurazioni, therefore, deems it essential that it be assessed, unlike what was done in the administrative violation complaint report issued on 7 June 2018, that the treatments carried out have valid bases of legitimacy both in the provision of functional insurance services to the management of the policy to which the interested party is a party, and, as regards the transmission of communications by e-mail, in the explicit consent given to AXA Assicurazioni by the interested party. We believe in particular that the examination of the elements described above clearly shows the effective absence of non-compliance in our conduct, nor of infringement of the rights of the interested parties";

HAVING ACKNOWLEDGED that the arguments put forward by Axa are not suitable for determining the closure of the sanctioning procedure started with the dispute of administrative violation for the following reasons:

- on the basis of what was spontaneously represented by the Company, it emerged that on 26 April 2018 some e-mails intended for Axa customers who hold insurance policies were erroneously sent to different subjects who therefore had knowledge of the content of communications addressed to them unaddressed, in which personal data of the actual recipients were present;

- there can be no doubt that the technical problem underlying the incorrect sending of e-mails has led to a communication of personal data without suitable legal bases such as the consent of the interested party pursuant to art. 23 of the Code or the additional circumstances, indicated in the following art. 24, which allow the processing of personal data without the acquisition of consent;

- even if the communications sent by Axa to its customers, as described in the defense briefs, have a framework of legitimacy due to the contractual relationship between the Company and its customers, it is clear that this framework ceases to exist when the communications are delivered to the wrong recipients and, as a result, the personal data of customers are brought to the attention of third parties;

- it also emerged that, in the aforementioned processing, Axa acted as data controller while the mailing service provider, designated responsible pursuant to art. 29 of the Code, carried out the processing operations on the basis of the indications provided by the Company;

- for these reasons, Axa's responsibility for the disputed violation must be confirmed;

NOTING, therefore, that Axa Assicurazioni S.p.A., 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 violation indicated in the notice of dispute no. 173333/126252 of 7 June 2018;

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

Given the art. 164-bis, paragraph 1, of the Code, which provides, in less serious cases, the application of the decreasing amount equal to two fifths of the statutory limits of the established sanction;

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 violations are not characterized by profiles of gravity;

b. for the purposes of evaluating the work performed by the agent, the fact that Axa immediately involved the Guarantor regarding the incident and also implemented a series of actions (suspension of communications and sending adjustments, revision of the e-mail forwarding process and checks on mailings) aimed at limiting the event and preventing further similar episodes;

c. regarding the personality of the author of the violation, the circumstance that the Company is not burdened by previous sanctioning proceedings defined briefly or following an injunction must be considered;

d. with regard to the economic conditions of the agent, the ordinary financial statements for the year 2016 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 assessed as a whole, in the amount of 4,000 (four thousand) euros for the violation pursuant to art. 164-bis, paragraph 2, of the Code.

HAVING REGARD to the documentation in the deeds;

CONSIDERING the law n. 689/1981, 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 Axa Assicurazioni S.p.A., in the person of its pro-tempore legal representative, with registered office in Milan, corso Como no. 17, tax code 00902170018, to pay the sum of 4,000 (four thousand) euros as an administrative fine for the violations indicated in the justification;

ENJOYS

to the aforementioned Company to pay the sum of 4,000 (four 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 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, 27 September 2018

PRESIDENT

Soro

THE SPEAKER

Cleric Whites

THE SECRETARY GENERAL

Busia