

Injunction against the Casino di Venezia Meeting & Dining S.r.l. - February 28, 2019

Register of measures

no. 53 of 28 February 2019

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, in the presence of Dr. Antonello Soro, president, of dr. Augusta Iannini, vice president, of prof. Licia Califano, member and of dr. Giuseppe Busia, general secretary;

HAVING REGARD TO Legislative Decree 196/2003 containing the "Code regarding the protection of personal data" (hereinafter "Code");

CONSIDERING the law n. 689/1981 and subsequent amendments and additions and, in particular, the art. 1, paragraph 2, pursuant to which the laws that provide for administrative sanctions are applied only in the cases and for the times considered in them;

CONSIDERING the Legislative Decree 101 of 10 August 2018 containing the "Provisions for the adaptation of national legislation to the provisions of regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, concerning the protection of individuals with regard to the processing of personal data , as well as to the free movement of such data and repealing directives 95/46/EC (general regulation on data protection)" and, in particular, art. 18, concerning the "Simplified definition of violations regarding the protection of personal data" to which offenders have the right to access against whom a pending sanctioning procedure has not yet been defined as of 25 May 2018;

NOTING that the Special Privacy Unit of the Guardia di Finanza, in execution of the request for information from the Guarantor no. 29885/102969 of 7 October 2016, formulated pursuant to art. 157 of the Code, on 13 December 2016 it carried out inspections pursuant to art. 13 of law 689/1981 - formalized in the report of operations carried out bearing the same date - at the registered office of the "Casino di Venezia Meeting & Dining S.r.l." (hereinafter also "Company") located in XX, P. I. XX;

GIVEN the documents of the inspection assessment;

CONSIDERING that, on the basis of the declarations made during the inspection and the documentation produced by the Company to resolve the reservations formulated during the inspection, it was found that:

- the Company, wholly owned by "Casinò Gioco S.p.A", "(...) provides catering and canteen services at the two Casino

locations, as well as, since 2012, also manages the (...) section relating to "online gaming" acquired through the sale of a business unit from the Casinò Municipale di Venezia S.p.A. (...)” (report of operations carried out by the Special Privacy Unit of the Guardia di Finanza of 13 December 2016, point no. 1);

- the processing of data relating to customers is carried out by the Company through its website www.clickandplay.it; in order to play online, customers must first register on this website, entering their personal data;

- the aforementioned data are processed by 3 employees of the Company, 2 of whom passed through the "Casinò Municipale di Venezia S.p.A." to the Company with the sale of the business unit and the third party transferred to the latter through a secondment which took place, subsequently, during 2013;

- the Company, pursuant to art. 4, paragraph 1, lett. f), and 28 of the Code, is the owner of the processing of personal data carried out in the execution of the aforementioned activity relating to online gaming;

- the Company, following the transfer of the business unit from the "Casinò Municipale di Venezia S.p.A" has not proceeded to appoint the 3 employees indicated above "in charge of processing", nor has it provided them with instructions regarding the protection of personal data relating the work functions to be performed, in accordance with the provisions of art. 30 of the Code; the appointment of these employees as data processors, with the relative instructions, was carried out by the Company only on 21 December 2016, following the inspection by the soldiers of the Special Privacy Unit of the Guardia di Finanza;

CONSIDERING the report n. 18 of 8 February 2016 with which the Special Privacy Unit of the Guardia di Finanza contested the Company's violation of art. 33 of the Code, sanctioned by art. 162, paragraph 2-bis, of the same Code, for the failure to adopt the minimum security measures having failed to appoint "in charge of the treatment", as well as to promptly instruct, the personnel assigned to the processing of customer data registered on the website [www. clickandplay.it](http://www.clickandplay.it) for the purpose of playing online;

GIVEN the defense brief dated 20 March 2017 in which the party, taking care to "(...) retrace the excursus of the so-called "online gaming" sector (...)", managed over the years by various companies of the "Casinò di Venezia ", intended to highlight how the small number of employees assigned to it, which has only partially changed over time, had already been authorized by “Casinò Municipale di Venezia S.p.A.” as person in charge of processing in relation to the same type and scope of work functions, as well as the fact that the Company, immediately after the inspection by the soldiers of the Special Privacy Unit of the Guardia di Finanza, proceeded to formalize - with regard to the aforementioned employees assigned to the "online gaming"

section - the appointments of those in charge of processing customer data;

HAVING READ the minutes of the hearing of 3 July 2018 during which the Company, in reiterating what was represented in the defense briefs, and, therefore, the non-existence of the alleged failure to appoint the appointees as the appointments had been made prior to the transfer of the branch of company known as remote gaming (for the same activity and with reference to the same people who passed through the Company), highlighted that it had operated in the belief that the appointments already made were still effective, as well as having observed, in every aspect, the legislation on the protection of personal data, putting in place all security measures, including the training of personnel appointed by the previous Company. In relation to this, he highlighted the low seriousness of the violation and therefore requested, mainly, the dismissal of the sanctioning procedure and, subordinately, the application of the statutory minimum sanction, further reduced pursuant to art. 164-bis, paragraph 1, of the Code;

GIVEN the defense brief dated 28 September 2018, sent to the Guarantor pursuant to art. 18, paragraph 4, of Legislative Decree no. 101 of 10 August 2018, with which the Company, renewing what was represented and requested with the aforementioned defense brief, as well as during the aforementioned hearing, also highlighted how Regulation (EU) 2016/679 no longer requires "(...) the written appointment of those authorized to process the data (formerly in charge), for which we are witnessing a real abolition of crime (...);

CONSIDERING that the arguments put forward are not suitable for determining the closure of the sanctioning procedure in relation to the violation pursuant to art. 33 of the Code. In fact, in consideration of the change in the Data Controller following the transfer of the business unit from the "Casinò Municipale di Venezia S.p.A" to the Company, the latter, in compliance with art. 30 of the Code for which "The processing operations can only be carried out by persons in charge who operate under the direct authority of the owner or manager, following the instructions given" should have, in place of the previous owner, appointed the aforementioned, their own, employees. Nor does the belief that the appointments made by the previous company were still effective as a reason for the exclusion of the subjective element (Article 3 of Law No. 689/1981) matter. In fact, according to the established jurisprudence of the Supreme Court, formed in relation to art. 3 of law 689/1981, the error can be considered excusable, and therefore good faith exists, when this error is based on a positive element, unrelated to the agent and capable of determining in him the conviction of the legitimacy of his behavior, in addition on the condition that such agent has done everything possible to comply with the law so that this positive element must not be remediable by the

interested party with the use of ordinary diligence. The party, covering to all intents and purposes the qualification of data controller, was diligently required to know and fulfill the obligations required by the applicable legislation in the matter in question, considering that the personnel acquired with the transfer of the business branch would have operated under its direct authority. As for the reference to the abolitio Criminalis, it should be noted that the provision of art. 99, paragraph 2, of Regulation (EU) 2016/679 for which the latter applies from 25 May 2018, excludes that before that date the legislation contained in the Code applicable to violations ascertained under its validity can be considered repealed;

NOTING, therefore, that the Company, on the basis of the elements set out above, appears to have committed the violation of art. 33, sanctioned by art. 162, paragraph 2-bis, of the same Code, for the failure to adopt the minimum security measures having failed to appoint "in charge of the treatment", as well as to promptly instruct, the personnel assigned to the processing of customer data registered on the website [www. clickandplay.it](http://www.clickandplay.it) for the purpose of playing online;

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

CONSIDERING that, in the case in question, the conditions for applying art. 164-bis, paragraph 1, of the Code which provides that if any of the violations referred to in art. 161, 162, 162-ter, 163 and 164 is less serious, the minimum and maximum limits established in the same articles are applied in an amount equal to two fifths;

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 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:

a) with reference to the elements of the extent of the injury or danger and the intensity of the psychological element, the violation carried out is characterized by less seriousness;

b) about the personality of the author of the violation, the fact that the company has not been subject to previous sanctions and has taken immediate action to remedy the absence of the security measure object of the disputed violation must be considered;

c) with regard to the economic conditions of the agent, the elements of the ordinary financial statements for the year 2017 were taken into consideration;

CONSIDERED, therefore, of having to determine, pursuant to art. 11 of the law n. 689/1981, the amount of the pecuniary sanction, on the basis of the aforementioned elements evaluated as a whole, in the minimum amount of 10,000.00 (ten thousand) euros for the violation pursuant to art. 33 of the Code, sanctioned by art. 162, paragraph 2-bis, of the same Code applied in conjunction with art. 164-bis, paragraph 1, of the same Code for a total amount of 4,000.00 (four thousand) euros; HAVING REGARD to the documentation in the deeds;

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. Augusta Iannini;

ORDER

at "Casino di Venezia Meeting & Dining S.r.l." located in XX, P. I. XX, to pay the sum of 4,000.00 (four thousand) euros as an administrative fine for the violation indicated in the justification;

ENJOYS

to the same company to pay the sum of 4,000.00 (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 filed 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, 28 February 2019

PRESIDENT

Soro

THE SPEAKER

Iannini

THE SECRETARY GENERAL

Busia