

Injunction against Go Internet S.p.A - July 19, 2018

Register of measures

no. 428 of 19 July 2018

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

AT today's meeting, in the presence of Dr. Augusta Iannini, Vice President, Dr. Giovanna Bianchi Clerici and Prof. Licia Califano, members and Dr. 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 Guardia di Finanza, special privacy unit, with minutes nos. 16, 17, 18 and 19 of 6 February 2015 (all notified on 6 March 2015), which must be understood as fully reported here, challenged the company Go Internet S.p.A., in the person of its pro-tempore legal representative, with registered office in Gubbio (PG), piazza Bernini s.n.c., Tax Code 02577660547, the violation of the provisions of articles 17, paragraph 2, 123, paragraph 2, 132, paragraphs 1 and 1-bis, 162, paragraph 2-bis, and 162-bis of the Personal Data Protection Code (legislative decree June 30, 2003, n. 196, hereinafter referred to as the "Code");

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

- the Guardia di Finanza carried out inspections, on 16 and 17 December 2014, against Go Internet S.p.A., as part of the six-monthly inspection activity scheduled by the Guarantor;
- during the inspection it was possible to detect that Go Internet, which carries out the activity of telephone operator and internet service provider providing telephone and internet connectivity services, processes telephone and telematic traffic data and stores the aforementioned data for billing and investigation and prosecution of crimes;
- with reference to the telephone traffic data processed for billing purposes, it has been found that the company keeps them for a period longer than that indicated in art. 123, paragraph 2, of the Code. In fact, it appears from the report of operations carried out on 16 December 2014 that "from the CRM management system it is possible to view the details of calls made by customers, attached to the invoice, with a "call detail" document, containing the number called, with the last three digits

asterisked, date , time and duration of the call; [...] one of the first customers, to whom the telephone service was activated, dates back to August 2011; the most remote "call detail" referring to the aforesaid customer dates back to January 2012"; it was also noted that the telephone traffic data relating to unanswered calls are kept for a period exceeding thirty days;

- with reference to telephone and telematic traffic data processed for the purpose of ascertaining and prosecuting crimes, it has been found that the company keeps them for a period longer than that indicated in art. 132, paragraph 1, of the Code. In fact, it appears from the report of operations carried out on 16 December 2014 that "the PC on which the data reside is kept in a dedicated room [...]; the "backup" folder has been opened; the same contains the telephone traffic tags, in "cdr" format, from 1 April 2011 to 4 December 2014, continuous in the years 2011, 2012, 2013 and 2014; [...] the DHCP system contains 50875 electronic traffic tags, in "csv" format, from 4 July 2013 to today; [...] the tags are kept in the clear; [...] for the accesses made to the electronic traffic data, no authentication procedure has been adopted for the machines by means of biometric recognition";

NOTING that with the aforementioned minutes of 6 February 2015 Go Internet was contested:

- (minute n. 16) pursuant to art. 162, paragraph 2-bis of the Code, the violation of the provisions of art. 123, paragraph 2, for having kept telephone traffic data processed for billing purposes, for a period exceeding six months;

- (minute n. 17) pursuant to art. 162-bis, of the Code, the violation of the provisions of art. 132, paragraph 1, for having kept telephone and telematic traffic data processed for the purpose of ascertaining and prosecuting crimes for a period exceeding twenty-four months (telephone traffic) and twelve months (telematic traffic);

- (minute n. 18) pursuant to art. 162-bis, of the Code, the violation of the provisions of art. 132, paragraph 1-bis, for having kept telephone traffic data relating to unanswered calls, for a period exceeding thirty days;

- (minute n. 19) pursuant to art. 162, paragraph 2-bis, of the Code, the violation of the provisions of art. 17, for having stored electronic traffic data without having adopted the strong authentication and data encryption measures, prescribed in the provision on the security of telephone and electronic traffic data of 17 January 2008 (in www.gpdp.it, doc. website no. 1482111);

HAVING ACKNOWLEDGED that the party has made the payment in a reduced amount, pursuant to art. 16 of the law n. 689/1981, of the sanctions envisaged for the violations contested with reports nos. 16 and 18;

READ the administrative reports drawn up pursuant to art. 17 of the law n. 689/1981, with reference to the violations contested

with reports nos. 17 and 19;

READ the written defense dated 3 April 2015 and the minutes of the hearing dated 9 November 2015, which are understood to be referred to in full here and which, in summary, represent:

- "the data collected from the databases on the aforementioned servers cannot technically be qualified as personal telematic data relating to customers but mere "network data", or radio data relating to the connection of the network devices constituting the Company's Wimax network, the whose conservation is necessary for the correct functioning of the network itself. In fact, the aforementioned database contains only two network data: the IP address and the MAC address; the first identifies the network connection address and is a dynamic element as it is assigned to multiple users while the second includes the addresses of the router network card, also assigned to multiple users. It follows that it is not a question of customer master data suitable for revealing sensitive data according to the meaning of the Personal Data Code but only of "network traffic information" or "router data" if you prefer. [...] The data in comment are therefore not suitable or to reveal the identity of the users: therefore they are not indicators that allow users to be profiled or to trace their contents and/or browsing preferences. of the dispute report and the sanction indicated therein, i.e. the processing of telematic data suitable for identifying the customer user, and the concrete harmfulness of the alleged behavior as the data kept beyond the terms established by the Code under anonymous technical data relating to the Company's WiMax network and not telematic data, as defined in the Code".

- "I would like to clarify how the company acted in absolute good faith. In fact, the company has never stored the traffic data itself, but has created a database using only a part of the traffic data, which did not have any characteristics suitable for identifying the user or providing any information on the navigation performed. This database had the sole function of providing information on the number of presences of subscriber users on the specific connection points in order to optimize their distribution. This analysis had the aim of optimizing the browsing performance of the users, allowing, through the analysis of the quantity of users connected to each individual distribution point, to redirect them to less populated nodes, in order to allow faster browsing";

- With reference to report no. 19 it is underlined that the Company has not taken steps in good faith to adopt the "strong authentication" and "data encryption" measures given that the data contained in the existing databases on the DHCP and Radius servers cannot be qualified, for the above reasons , such as "telematic data" but as mere "network data". In any case, it should be noted that, even in the absence of these security measures, the Company has in any case adopted a triple level of

security through multiple access passwords and the introduction of the so-called elevated privileges to ensure the inaccessibility of the collected network data”.

CONSIDERING that the arguments put forward are not suitable for determining the closure of the sanctioning procedure initiated with the above disputes, for the following reasons:

a) it emerges from the reports of operations carried out drawn up by the Guardia di Finanza during the course of the inspection (reports which are authentic up to a false lawsuit), that the telephone traffic records stored by the company in the various servers dedicated to the relative processing contain information relating to the number of the caller, the number of the called party, the date and time of the call;

b) it also emerges that the electronic traffic tags, stored by the company in the DHCP and Radius servers, contain information relating to the IP and MAC address of the connected device, as well as information relating to the start of the connection. This information is suitable for uniquely identifying the subject who made the connection since from the IP address, even if assigned dynamically, and from the date and time of the start of the connection it is possible to trace the user to whom, at a given moment, the aforementioned address has been assigned. The additional information of the Mac address also makes it possible to identify the device from which the connection was made;

c) it must also be remembered that the Guarantor, with the provision of 19 September 2007 containing "measures and precautions to guarantee data subjects regarding the conservation of telephone and electronic traffic data for the purpose of ascertaining and prosecuting crimes" (at www.gdpd.it, web doc. No. 1442463), recalling the provision pursuant to art. 4, paragraph 2, lett. h), of the Code, which defines traffic data as "any data subjected to processing for the purpose of transmitting a communication over an electronic communications network or for the related billing", further specified that they are subject to conservation obligations " the traffic data that are available [of the suppliers] as they derive from technical activities instrumental to the provision of a service, as well as its billing";

d) it must therefore be considered, in the case in question, that the data stored by Go Internet are fully attributable to the definition of "telephone and telematic traffic data" and are therefore subject to the regulatory provisions and provisions that regulate their conservation;

e) from the inspection, it emerges by tabulas that the telephone and electronic traffic data have been stored for a period of time longer than that indicated in art. 132, paragraph 1, of the Code and, in this circumstance, the exemption pursuant to art. 3 of

the law n. 689/1981 which excludes the agent's liability when the violation is committed by mistake not caused by his fault (in the case in question the party referred to a "malfunction of the automatic cancellation script"). The error, in fact, can be considered as a cause of exclusion of administrative liability only when it is inevitable, and for this purpose a positive element is needed suitable for inducing such an error, which cannot be remedied by the interested party with ordinary diligence (Civil Cassation, section I, 06/05/2001, no. 7603). In the case in question, it does not appear that Go Internet has operated with the recommended diligence, since the presence of telephone and telematic traffic data kept beyond the limit set by the provisions of art. 132, paragraph 1, of the Code could also be detected following sporadic checks on company databases, checks which evidently were not carried out;

f) as regards the security measures adopted for the conservation of electronic traffic data, it must be noted that these do not correspond to those indicated in the provision of January 17, 2008, which, moreover, does not provide for the adoption of alternative measures;

g) it therefore emerges that Go Internet has kept the electronic traffic data without having been "protected with cryptographic techniques, in particular against the risk of fortuitous acquisition or accidental alteration deriving from maintenance operations on IT equipment or from ordinary operations of system administration" and "solutions have been adopted which make the information, residing in the databases serving the IT applications used for processing, unintelligible to those who do not have access rights and suitable authorization profiles, resorting to forms of encryption or obfuscation of portions of the databases or indexes or other technical devices based on cryptographic technologies" and without "the use of specific computer authentication systems based on strong authentication techniques, consisting in the contextual use of at least two different authentication technologies" one of which "must e be based on the processing of biometric characteristics of the person in charge, in such a way as to ensure the physical presence of the latter at the workstation used for the treatment";

h) the above provisions, present in the justification of the provision of January 17, 2008, have been included in specific and timely provisions, adopted pursuant to art. 17 of the Code in the same provision, given the particular nature of the data and the methods of treatment, suitable for determining specific risks for the rights, fundamental freedoms and dignity of the interested parties. These prescriptions were disregarded by Go Internet;

NOTING, therefore, that Go Internet S.p.A., on the basis of the considerations referred to above, appears to have committed, in its capacity as data controller, pursuant to art. 4, paragraph 1, lett. f), and 28 of the Code:

a) the violation of the provisions of art. 132, paragraph 1, sanctioned by art. 162-bis, for having kept telephone and telematic traffic data processed for the purpose of ascertaining and prosecuting crimes for a period exceeding twenty-four months (telephone traffic) and twelve months (telematic traffic);

b) the violation of the provisions of art. 17, sanctioned by art. 162, paragraph 2-bis, of the Code for having stored electronic traffic data without having adopted the strong authentication and data encryption measures, prescribed in the provision on the security of telephone and electronic traffic data of 17 January 2008;

SEEN the articles:

- 162, paragraph 2-bis, of the Code, which punishes the violation of the provisions indicated in art. 167, which also includes those referred to in art. 17, with a fine ranging from 10,000 to 120,000 euros;

- 162-bis, of the Code, which punishes the violation of the provisions indicated in art. 132, paragraph 1, with a fine from 10,000 to 50,000 euros

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:

a) in terms of 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 characterized by specific elements, having regard to the objective seriousness of the failure to adopt the measures security for the conservation of electronic traffic data and the number of conducts implemented in violation of the regulatory provisions and provisions on the subject of data retention, capable of causing serious risks for the sphere of privacy of the interested parties;

b) for the purposes of evaluating the work performed by the agent, it must be noted that the company has not changed its operating practices and, in particular, the terms and methods for storing electronic traffic data;

c) about the personality of the author of the violation, the fact 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 elements of 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, to the extent of:

- 20,000 (twenty thousand) euros, for the violation pursuant to art. 162, paragraph 2-bis, of the Code;
- 20,000 (twenty thousand) euros, for the violation pursuant to art. 162-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 Dr. Giovanna Bianchi Clerici;

ORDER

to Go Internet S.p.A., in the person of its pro-tempore legal representative, with registered office in Gubbio (PG), piazza Bernini s.n.c., C.F. 02577660547, to pay the sum of 40,000.00 (forty thousand) euros as an administrative fine for the violations indicated in the justification;

ENJOYS

to the same company to pay the sum of 40,000.00 (forty 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 of 24 November 1981, n. 689.

Pursuant to articles 152 of the Code and 10 of Legislative Decree lg. 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, 19 July 2018

PRESIDENT

Iannini

THE SPEAKER

Cleric Whites

THE SECRETARY GENERAL

Busia