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Injunction order against the Abruzzo Region - May 6, 2019

Register of measures

no. 111 of 6 May 2019

#### 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 Privacy Unit of the Guardia di Finanza, in execution of the request for information no. 7227/123076 of 2 March 2018, formulated pursuant to art. 157 of Legislative Decree June 30, 2003 n. 196, bearing the Code regarding the protection of personal data (hereinafter the "Code"), carried out the investigations referred to in the report of operations carried out on 27, 28 and 29 March 2018 against the Abruzzo Region, with headquarters in L' Aquila, Via Leonardo da Vinci n. 6, tax code 80003170661, aimed at verifying compliance with the provisions on the protection of personal data with reference to the processing of personal data implemented by the Abruzzo Region in the context of the offer of public services implemented through the APPs;

HAVING REGARD to the documentation acquired during the inspection activities which show that the Abruzzo Region, as part of the offer of public services made to citizens, has created various apps including "Regione Abruzzo", managed by the Press Office of the Region, and "Allarmeteo" managed by the Functional Center of the Civil Protection of Abruzzo. Through the aforementioned apps, the Region, as data controller pursuant to articles 4, paragraph 1, lett. f), and 28 of the Code, processes the personal data of users who, after downloading the apps on their mobile devices, register, providing personal data including name, surname, e-mail address and password, and address in case of the "Allarmeteo" app;

HAVING ACKNOWLEDGED the documentation subsequently sent by the Abruzzo Region to dissolve the reservations formulated during the inspections, from which it emerged that the Abruzzo Region did not designate the persons in charge of processing, pursuant to art. 30 of the Code, against the employees of the Press Office and the employees of the Functional Center of the Civil Protection of Abruzzo, in relation to the processing of personal data of users collected through the apps

"Abruzzo Region" and "Allarmeteo";

CONSIDERING the report n. 55 of 24 May 2018 with which the Abruzzo Region, 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 of the same Code, for which a short definition is not envisaged pursuant to art. 16 of the law of 24 November 1981 n. 689;

CONSIDERING the written defense dated 3 July 2018, sent pursuant to art. 18 of the law of 24 November 1981, n. 689, with which the party, after having preliminarily described the characteristics and important functions of the app called "Allarmeteo", specified that the app in question "does not keep track of the user's position and does not record his movements in the db , but is limited to sending the alerts which are foreseen in the area in which the address indicated by the user during registration falls". Given this, the party observed that "with managerial determination n. 5 of 12/04/2016 notified to all employees of the Functional Center of Abruzzo involved in the processing of data collected by the Alarmteo platform, the Manual of the Functional Center was approved which contains instructions and procedures that regulate the operating methods of publication and dissemination of alert messages carried out through the ALLARMATEO platform". Therefore, the party believes that the dispute raised against the Region is unfounded, given that in the various documents prepared by the Region concerning the functionality of the app, the requirements of confidentiality and security have always been emphasized, in compliance with the provisions of art. . 33 of the Code. Finally, the party noted that the processing of personal data carried out by means of the aforementioned app must be considered of significant public interest, "since it concerns civil protection purposes for the protection of public and private safety, pursuant to and for the purposes of the art. 73" of Legislative Decree 196/2003;

READ the minutes of the hearing, held on 16 April 2019, pursuant to art. 18 of the law n. 689/1981, during which the party reaffirmed what had already been declared in the defense briefs, emphasizing how the Regional Council Resolution no. 172 of 4 March 2015, which approves the regional alert system, contains an analytical description of the procedures that the operators of the Civil Protection Functional Center must follow for inserting alerts and sending them to users;

WHEREAS the arguments put forward are not suitable for excluding the liability of the party in relation to the disputed matter.

First of all, it should be noted that the defensive observations made by the party concerned only the "Allarmeteo" app and not also the "Abruzzo Region" app, with respect to which, therefore, no clarifications were provided regarding the possible designation of the persons in charge of the treatment, carried out towards the employees of the Press Office who, on the basis

of the declarations made during the inspections, manage the requests for information that arrive from users who register on the app, thus carrying out a data treatment personal. As regards, however, the documentation that was produced by the party in relation to the "Allarmeteo" app, it is noted that, despite the accuracy of the operating instructions contained in the Functional Center Manual and, in particular, in the attachment called "Instructions operational for the alerting activities of the Functional Center of Abruzzo", dated 04/12/2016 and notified to all employees, these instructions cannot be evaluated in the same way as a designation of the persons in charge of processing pursuant to art. 30 of the Code. In fact, in the aforementioned documents, which also contain a precise description of the methods with which the operators must proceed with the compilation of meteorological criticality bulletins, with the insertion and sending of alerts, there is however no reference to the methods with which the employees of the Civil Protection Functional Center must process, store and manage the personal data provided by users who intend to make use of the weather alert service. In this regard, it is noted that the art. 30 of the Code establishes that the designation, made in writing, "punctually" identifies the permitted area of treatment; in the present case, no instruction relating to the processing of personal data is specified in any of the texts prepared by the Region. As regards the applicability to the case in question of the provision pursuant to art. 73 of the Code, which identifies the activities of significant public interest by reason of the purpose ("in the field of civil protection", art. 73, paragraph 2, letter h), it is noted that this provision does not exempt the data controller from compliance with the provisions on the protection of personal data, including those relating to minimum security measures, and the consequent application of administrative sanctions in the event that violations are identified;

NOTING, therefore, that the Abruzzo Region has processed personal data (Article 4, paragraph 1, letter a) and b) of the Code) by failing to adopt the minimum security measures referred to in Article 33 of the Code;

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

CONSIDERING that 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, of the seriousness of the violation and of the offender's personality;

CONSIDERED having to determine, pursuant to art. 11 of the law n. 689/1981, the amount of the fine for the violation of art. 162, paragraph 2-bis, of the Code in the amount of 4,000.00 (four thousand) euros, applied in conjunction with art. 164-bis, paragraph 1, of the Code;

HAVING REGARD to the documentation in the deeds;

HAVING REGARD to the law of 24 November 1981 n. 689, and subsequent modifications and additions;

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;

ORDER

to the Abruzzo Region, with headquarters in L'Aquila, Via Leonardo da Vinci n. 6, tax code 80003170661, in the person of the pro-tempore legal representative, to pay the sum of 4,000.00 (four thousand) euros as a pecuniary administrative sanction for the violation provided for by art. 162, paragraph 2-bis, of the Code indicated in the reasoning;

ENJOYS

to the same subject 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 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, 6 May 2019

PRESIDENT

Soro

THE SPEAKER

Califano

THE SECRETARY GENERAL

Busia