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[doc. web no. 9106367]

Injunction order - February 14, 2019

Register of measures

no. 49 of 14 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 dr. Giovanna Bianchi Clerici and of prof. Licia Califano, members, and of 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, following some press articles which signaled the use, by Dr. XX, of the e-mail addresses of its patients in order to send them a letter containing electoral propaganda, the Office launched a preliminary investigation aimed at verifying compliance by the professional with the provisions contained in the "Measure concerning treatment of personal data from political parties and exemption from information for electoral propaganda purposes", adopted by the Guarantor on 6 March 2014 (in [www.gpdp.it](http://www.gpdp.it), web doc. n. 3013267);

GIVEN the note of 1 August 2018, with which the Office concluded the preliminary investigation, ascertaining the illegality of the processing of personal data put in place by Dr. XX. Indeed, it turned out that the e-mail addresses used to send electoral propaganda letters referred to patients that he had visited or followed up at the European Institute of Oncology (hereinafter "IEO"). Upon termination of the employment relationship with the aforementioned Institute, Dr. XX had acquired the e-mail addresses and, as independent data controller pursuant to art. 4, paragraph 1, lett. f), of the Code regarding the protection of personal data (legislative decree 30 June 2003, n. 196, hereinafter the "Code"), had used them to send the aforementioned letters, without, however, having to provide the information and to acquire the consent of the interested parties, in violation of the articles 13, paragraph 4, 23 and 26 of the Code;

CONSIDERING the report n. 28753/124370 of 2 October 2018 with which XX born in XX on XX, XX, residing in XX, was charged with the administrative violations envisaged by articles 161 and 162, paragraph 2-bis, of the Code, in relation to articles 13, paragraph 4, 23 and 26 of the same Code, for having failed to provide the information and to acquire consent

regarding the sending of electoral propaganda e-mails, informing him of the right to make a reduced payment pursuant to of the art. 16 of the law n. 689/1981;

HAVING EXAMINED the report prepared by the Office of the Guarantor pursuant to art. 17 of the law of 24 November 1981 n. 689, from which the reduced payment does not appear to have been made;

HAVING REGARD TO the written defense dated 12 November 2018, sent pursuant to art. 18 of the law n. 689/1981, with which Dr. XX specified that he had used his patients' e-mail addresses in order to inform them of the termination of his employment relationship with the IEO and, at the same time, of his travels to other structures in different regions of Italy, expressing, in one circumstance, his support for a candidate in the political elections of 4 March 2018. In sending these types of communications, the party observed that the provisions on the protection of personal data were always respected, adequately informing the interested parties and allowing them to object to the receipt of the aforementioned communications, via a link at the bottom of the e-mails;

READ the minutes of the hearing of 4 December 2018, held pursuant to art. 18 of the law n. 689/1981, with which the party reaffirmed what had already been declared in the defense briefs;

CONSIDERING that the arguments put forward are not suitable for excluding the party's liability for the alleged administrative violations. As regards the violation pursuant to art. 161 of the Code, it is noted that, based on art. 13, paragraph 4, of the Code, when the data are not collected from the interested party, the information must be provided at the time of recording the data or, when their communication is envisaged, no later than the first communication. In the present case, it is established that the party acquired from the IEO the mailing list containing the names and e-mail addresses of their patients, at the time of termination of their employment relationship; however, it is not proven or documented in documents that the information was given to the interested parties, at the time of acquisition by Dr. XX of the aforementioned data, as required by art. 13, paragraph 4, of the Code. On the other hand, as regards the violation pursuant to art. 162, paragraph 2-bis, of the Code, it is represented that the unlawful conduct contested by the party refers to the use of personal data for purposes other than those of treatment (which had justified the original treatment), without the interested parties having expressed their specific and autonomous consent. In fact, the letter that was the subject of the investigation did not limit itself to informing patients of the professional's movements, but clearly indicated support for a candidate in the electoral consultations that were to take place shortly thereafter in Lombardy. This aspect is certainly reprehensible from the point of view of the protection of personal data,

given that it is a purpose pursued by Dr. XX without the interested parties having expressed any manifestation of consent in this regard;

NOTING, therefore, that Dr. XX, in its capacity as owner, processed personal data concerning the patients it had visited or followed up at the IEO (Article 4, paragraph 1, letter a) and b) of the Code) by sending a communication by e-mail , concerning electoral propaganda, in violation of articles 13, paragraph 4, 23 and 26 of the Code;

CONSIDERING the art. 161 of the Code, which punishes the violation of art. 13 of the same Code with the administrative sanction of the payment of a sum from six thousand euros to thirty-six thousand euros;

CONSIDERING the art. 162, paragraph 2-bis, of the Code which punishes the violation of the provisions indicated in art. 167 of the Code, including that referred to in Articles 23 and 26 of the same Code, with the administrative sanction of payment of a sum from ten thousand euros to one hundred and twenty thousand euros;

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

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, the seriousness of the violation, the personality and economic conditions of the offender;

CONSIDERED having to determine, pursuant to art. 11 of the law n. 689/1981, the amount of the pecuniary sanction in the minimum amount of 6,000.00 (six thousand) euros for the violation pursuant to art. 161, and to the minimum amount of 10,000.00 (ten thousand) euros for the violation pursuant to art. 162, paragraph 2-bis, of the Code, for a total amount of Euro 16,000.00 (sixteen thousand);

HAVING REGARD to the documentation in the deeds;

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. Augusta Iannini;

ORDER

to XX, born in XX on XX, XX, residing in XX to pay the total sum of 16,000.00 (sixteen thousand) euros as a pecuniary administrative sanction for the violation provided for by articles 161 and 162, paragraph 2-bis, of the Code, as indicated in the

justification;

ENJOYS

to XX to pay the sum of Euro 16,000.00 (sixteen thousand) according to the methods indicated in the attachment, within 30 days of notification of this provision, under penalty of the adoption of 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, 14 February 2019

PRESIDENT

Soro

THE SPEAKER

Iannini

THE SECRETARY GENERAL

Busia