

Injunction against Enel Energia s.p.a. - March 19, 2019

Register of measures

no. 68 of 19 March 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 Office of the Guarantor for the protection of personal data (hereinafter the Guarantor) has carried out an articulated control activity towards, among others, Enel Energia s.p.a. VAT number: 06655971007, with headquarters in Rome, viale Regina Margherita n. 125, in the person of the pro-tempore legal representative. This control activity made it possible to ascertain that Enel Energia s.p.a. has allowed access to the CRM and massive downloads, carried out by a "third-party company" signing an agency contract, with the use of credentials of subjects with whom the relationships have been resolved and which, in the case it occupies, have led to the total download of a large amount of data (841,805 rows), unauthorized. The described operation continued even after the receipt, by the "third-party company", of a formal notice dated February 16, 2017. What was ascertained regarding the methods of access to the CRM and massive downloads constitutes an omission of the security measures referred to in articles 33 et seq. And in annex B) of the Code in relation to: 1) the absence of the "access limit" of the authorization profiles of the "third party company" "only to the data necessary to carry out the processing operations" (see point 13, annex B, to the Code); 2) the failure to periodically verify the "existence of the conditions for the conservation of the authorization profiles" (see point 14, annex B, to the Code);

HAVING REGARD TO the report drawn up by the Guarantor's Office on April 13, 2018, in which Enel Energia s.p.a. was notified of the administrative violation, which cannot be briefly defined pursuant to art. 16 of the law of 24 November 1981, n. 689, provided for by art. 162, paragraph 2-bis of the Code, in relation to the measures indicated in art. 33;

CONSIDERING that the party does not appear to have made use of the faculties provided for by art. 18 of the law n. 689/1981 (by not presenting defense writings to the Authority or asking to be heard);

NOTING, therefore, that Enel Energia s.p.a. has carried out personal data processing (art. 4 paragraph 1, letters a) and b) of the Code) consisting of accesses to the CRM and massive downloads, carried out by a "third party" signing an agency contract, with the use of credentials of subjects with whom relations have been terminated and which, in the case in question, have led to the total downloading of a large quantity of data (841,805 rows), unauthorized, this resulting in the failure to adopt the minimum security measures pursuant to of the art. 33 of the Code, namely:

- the absence of the "access limit" of the authorization profiles of the "third party company" "only to the data necessary to carry out the processing operations" in violation of point 13, annex B, to the Code;
- the failure to periodically verify the "existence of the conditions for the conservation of the authorization profiles", in violation of point 14, annex B, to 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, 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 or of the fact that the company has fulfilled the instructions given pursuant to art. 169, paragraph 2 of the Code;
- the seriousness of the violation;
- the personality of the offender or the fact that the company appears to have, in 2015, specific precedents regarding the violation of large databases pursuant to art. 164-bis, paragraph 2, of the Code or of the injunction order n. 81 of 12 February 2015 (in www.garanteprivacy.it, web doc n. 3986109);
- of its economic conditions on the basis of which revenues of Euro 12,355,965,015.00 and a profit for the year of Euro 792,597,429.00 have been accounted for in the 2017 financial statements;

and that, therefore, the amount of the pecuniary sanction with reference to the violation pursuant to art. 162, paragraph 2-bis must be quantified as 80,000.00 (eighty thousand) euros;

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 Dr. Giovanna Bianchi Clerici;

ORDER

to Enel Energia s.p.a. VAT number: 06655971007, with headquarters in Rome, viale Regina Margherita n. 125, in the person of the pro-tempore legal representative, to pay the sum of 80,000.00 (eighty thousand) euros as a pecuniary administrative sanction for the violation envisaged by art. 162, paragraph 2-bis of the Code, as indicated in the justification;

ENJOYS

to the same subject to pay the sum of 80,000.00 (eighty 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, prescribing that, within 10 (ten) days from the payment, receipt of the payment must be sent to this Authority, in original or certified copy.

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 March 2019

PRESIDENT

Soro

THE SPEAKER

Cleric Whites

THE SECRETARY GENERAL

Busia