

Injunction against Primo s.r.l. - July 26, 2018

Register of measures

no. 446 of 26 July 2018

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. 10768/114083 of 21 March 2017, formulated pursuant to art. 157 of the Code regarding the protection of personal data (legislative decree 30 June 2003, n. 196, hereinafter referred to as the "Code"), performed at the local unit of Primo s.r.l. (hereinafter "the company"), located in Livorno, via Scali degli Olandesi n. 32, the investigations referred to in the report of operations carried out on 4 April 2017, in order to acquire all useful information and documentation in relation to the processing of personal data carried out by the Company as a "dental centre";

HAVING REGARD TO the deeds relating to the inspections carried out at the company's headquarters and the note sent by the same on 19 April 2017, resolving the reservations formulated during the inspection visit, from which it resulted, in summary, that:

- the company Primo s.r.l., as data controller pursuant to articles 4 and 28 of the Code, carries out the processing of personal data referring to its patients through an application called Oris, which can be accessed by, in addition to the pro tempore legal representative, doctors and chair assistants "each in relation to the intrinsic authorizations of the credentials of personal access also with reference to one's duties";
- in the face of the processing of personal data carried out by the company with the aid of electronic tools, "the appointment as person in charge of processing has not yet been formalised, pursuant to art. 30 of the Code, of the employees who work at the facility, nor has the appointment as data processors been formalized, pursuant to art. 29 of the Code, of external professionals";

CONSIDERING that the company, in relation to the processing of personal data carried out with electronic tools, does not appear to have adopted the security measures relating to the designation of the persons in charge of the processing, as required by art. 30 of the Code;

CONSIDERING the report n. 33/2017 of 2 May 2017, which is referred to in its entirety here, with which Primo s.r.l., with registered office in Turin, via Santa Teresa n. 23, P.I. 10353600017, in the person of the pro-tempore legal representative, the administrative violation envisaged by art. 162, paragraph 2-bis, in relation to art. 33 of the Code, for which a short definition is not foreseen pursuant to art. 16 of the law of 24 November 1981 n. 689;

HAVING REGARD TO the written defenses, sent on 10 June 2017 pursuant to art. 18 of the law n. 689/1981, with which the company preliminarily noted "the inapplicability of articles 162 co. 2 bis and 33 of Legislative Decree 196/2003 to the case of failure to designate the appointees in writing. This fulfillment, in fact, is not a minimum security measure identified by art. 33 of the Code, is not governed by Chapter II, Title V of the Code, nor is it mentioned in the related Annex B) to Legislative Decree 196/2003". Therefore, the administrative sanction imposed would be void and the relative sanctioning procedure should be closed. The party also observed that from the report of the operations carried out and from the documentation subsequently sent to the inspectors, it is clear that, beyond the written designation of the persons in charge of processing and the relative instructions, the minimum security measures have essentially been observed, with particular reference to the rules referred to in the Technical Regulations referred to in Annex B) to the Code relating to the procedures for assigning and storing the authentication credentials necessary to access the Oris application. Therefore, he requested the dismissal of the sanctioning procedure and, alternatively, the application of the sanction to the extent of the statutory minimum, further reduced pursuant to art. 164-bis, paragraph 1, of the Code;

NOTING that, in response to the request for a hearing advanced in the written defense pursuant to art. 18 of the law n. 689/1981, the party, following two calls, did not appear at the scheduled meetings;

CONSIDERING that the arguments put forward are not suitable for excluding the liability of the party in relation to the disputed matter. The written designation of the persons in charge of the treatment, differently from what is believed, falls within the minimum security measures pursuant to art. 33 of the Code as it is an activity (which the data controller is required to carry out towards those who ordinarily operate on personal data) aimed at guaranteeing the minimum level of security in the processing operations. In particular, the Code prescribes that personal data can only be accessed by specifically authorized persons and,

for this to happen, it is necessary for the data controller to make the designations which, pursuant to art. 30 of the Code, must be in writing. Only in this way can it be guaranteed that those who operate do so following precise instructions and in a well-defined treatment area. In this regard, it should be noted that the instructions given to the persons in charge, through the designations, are aimed at providing indications on the correct processing of personal data, and contain a precise attribution of the tasks and operations to be performed in the permitted processing areas, and of the responsibilities connected. For this reason, the Authority has repeatedly underlined in its provisions that the designation of data processors is not a mere formal fulfillment, but an indispensable prerequisite for the application of minimum security measures. Therefore, the circumstance that the other security measures, including those relating to IT authentication and authorization procedures, have been correctly performed or that the appointment of the persons in charge has been made "orally" (in addition to not being supported by any factual evidence), they certainly cannot be considered as properly implemented security measures. Therefore, the ascertainment of the violation by the company must be considered founded, with the clarification that this violation cannot be included among the hypotheses of minor gravity and, therefore, the application of the extenuating factor pursuant to art. . 164-bis, paragraph 1, of the Code;

NOTING that Primo s.r.l. has processed personal data (art. 4 paragraph 1, letter a) and b) of the Code), failing to adopt the minimum security measures pursuant to art. 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, 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, of the personality and economic conditions of the offender and that therefore the amount of the pecuniary sanction for the violation of art. 33 of the Code must be quantified in the minimum amount of Euro 10,000.00 (ten thousand);

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 of the Office, formulated by the Secretary General pursuant to art. 15 of the

Guarantor's regulation n. 1/2000;

SPEAKER Prof. Licia Califano;

ORDER

a Primo s.r.l., with registered office in Turin, via Santa Teresa n. 23, P.I. 10353600017, in the person of the pro-tempore legal representative, to pay the sum of 10,000.00 (ten thousand) euros as an administrative fine for the violation pursuant to art. 162, paragraph 2-bis, as indicated in the motivation;

ENJOYS

to the same company to pay the sum of Euro 10,000.00 (ten thousand), 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, 26 July 2018

PRESIDENT

Soro

THE SPEAKER

Califano

THE SECRETARY GENERAL

Busia