

Injunction against STS Di Prisinzano s.r.l. - November 24, 2022

Register of measures

no. 391 of 24 November 2022

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by Prof. Pasquale Stanzione, president, prof.ssa Ginevra Cerrina Feroni, vice president, dr. Agostino Ghiglia and the lawyer Guido Scorza, components, and the cons. Fabio Mattei general secretary;

HAVING REGARD TO Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (hereinafter the "Regulation");

HAVING REGARD TO Legislative Decree 30 June 2003, n. 196 (Code regarding the protection of personal data, hereinafter the "Code") as amended by Legislative Decree 10 August 2018, n. 101 containing "Provisions for the adaptation of national legislation to the provisions of Regulation (EU) 2016/679";

HAVING REGARD TO the complaint presented by Ms XX on 01/14/2021, pursuant to art. 77 of the Regulation, with which an unlawful processing of personal data by STS di Prisinzano s.r.l. was complained of;

HAVING REGARD TO the observations made by the general secretary pursuant to art. 15 of the Guarantor's regulation n. 1/2000;

SPEAKER Dr. Agostino Ghiglia;

WHEREAS

1. The start of the procedure.

With the complaint presented to this Authority on 14/01/2021, Ms XX complained of an illegal processing of personal data put in place by STS Di Prisinzano s.r.l. (hereinafter "the Company").

In particular, the complainant represented that, in relation to the processing of their personal data, collected by the Company on the occasion of the roadside assistance service, the latter had failed to provide suitable information pursuant to art. 13 of EU Regulation 679/2016 (hereinafter "Regulation").

The Company, invited to provide observations regarding the facts subject to the complaint, formulated its observations with the note dated 05/18/2021, with which it highlighted, first of all, the groundlessness of the complaint presented.

This is because, against a request to exercise the rights, formulated by the complainant pursuant to art. 15 of the Regulation, a suitable response was provided by communicating to the same that the only data in possession (identified in the name, surname, tax code, telephone number and email address) had been used to prepare the estimate and the invoice relating to the work carried out on the car and that, in any event, the treatment had ceased.

Secondly, the Company has represented that it has correctly fulfilled the obligation to provide the information, pursuant to art. 13 of the Regulation, making it available to its customers on its website www.soccorsostradalests.it.

Also towards the complainant, this obligation had been correctly fulfilled by referring to the art. 13 of the Regulation included in the so-called "Work sheet", in which the data of the person concerned were collected at the time of the roadside assistance.

In the light of the above, the Office proceeded to notify the deed of initiation of the sanctioning procedure, pursuant to art. 166, paragraph 5, of the Code for the violation of articles 13 and 5, par. 1, lit. a), of the Regulation (prot. n. 50523 of 08/10/2021).

On 08/11/2021, the Company sent its own written defenses, pursuant to art. 18 of the law n. 689/1981, with which he confirmed what had already been declared in the previous acknowledgment notes and produced documentation relating to the measures to adapt to the regulations on the protection of personal data.

2. The outcome of the investigation.

Following the examination of the documentation produced and the declarations made by the party during the proceedings, provided that, unless the fact constitutes a more serious offence, whoever, in a proceeding before the Guarantor, falsely declares or attests news or circumstances or produces false deeds or documents and is liable pursuant to art. 168 of the Code, it has been ascertained that the Company has processed personal data referring to the complainant, by means of a form called "Worksheet", in which personal data relating to name and surname, e-mail address and telephone number, as well as data relating to the car (license plate and car model).

In view of the processing of personal data thus carried out, the absence of suitable information was verified, pursuant to art. 13 of the Regulation. In fact, the so-called "Worksheet" which has been produced in documents, contains, with a generic formula, only the wording "I authorize the processing of personal data pursuant to art. 13 of Legislative Decree 101/2018 and of the GDPR EU Regulation 679/2016"; this expression is completely meaningless in the absence of all the information specifically required by the aforementioned art. 13 of the Regulation.

As for the information on the website, it was verified during the investigation that the latter was not updated, still containing

references to legislation prior to the Regulation, and referred only to processing carried out via the web with regard to navigation data and cookies, without any reference to other treatments carried out by the Company, including those collected through the "job cards".

It should also be taken into account that the information given to the interested parties is an expression of the principle of correctness and transparency of the treatments pursuant to art. 5, par. 1, lit. a) of the Regulation and, therefore, the controller is obliged to provide data subjects with information relating to the essential characteristics of the processing he intends to carry out, in a "concise, transparent, intelligible and easily accessible form, with simple and clear language" (art. 12, paragraph 1 of the Regulation). Elements which, evidently, were completely disregarded in the present case.

3. Injunction order.

The Guarantor, pursuant to art. 58, par. 2, lit. i) of the Regulation and of the art. 166 of the Code, has the power to impose a pecuniary administrative sanction provided for by art. 83, par. 5, of the Regulation, through the adoption of an injunction order (art. 18. Law 24 November 1981 n. 689), in relation to the processing of personal data referred to the complainant, of which the illegality has been ascertained, in the terms exposed above.

With reference to the elements listed by art. 83, par. 2 of the Regulation for the purposes of applying the administrative fine and the related quantification, taking into account that the fine must be "in each individual case effective, proportionate and dissuasive" (art. 83, paragraph 1 of the Regulation), it is represented that, in the present case, the following circumstances were taken into consideration:

- with regard to the nature, seriousness and duration of the violation, the nature of the violation was considered relevant, which concerned the failure to fulfill the obligation to provide the interested party with suitable information, regarding the treatments carried out;
- the deficiencies relating to the information, detected in the context of the investigation relating to the complaint, generally concerned the processing of the data of all customers, up to the adjustment made during the procedure;
- the absence of previous relevant violations committed by the data controller;
- the measures adopted by the data controller who, during the investigation, documented that he had made the necessary changes and additions to the information that proved to be unsuitable;
- the degree of cooperation provided by the Company during the proceedings.

In consideration of the aforementioned principles of effectiveness, proportionality and dissuasiveness (Article 83, paragraph 1, of the Regulation) with which the Authority must comply in determining the amount of the sanction, the economic conditions of the offender were taken into consideration, determined based on the revenues achieved and referred to the financial statements for the year 2020.

Based on the aforementioned elements, evaluated as a whole, it is decided to determine the amount of the pecuniary sanction in the amount of 1,000.00 (one thousand) euros for the violation of articles 5, par. 1, lit. a) and 13 of the Regulation.

In this context, also in consideration of the type of violation ascertained, which concerned the basic principles of treatment and the rights of the interested party, it is believed that, pursuant to art. 166, paragraph 7, of the Code and of the art. 16, paragraph 1, of the Guarantor's regulation n. 1/2019, this provision must be published on the Guarantor's website.

Finally, it should be noted that the conditions pursuant to art. 17 of regulation no. 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

ALL THAT BEING CONSIDERED, THE GUARANTOR

declares, pursuant to articles 57, par. 1, lit. f) and 83 of the Regulation, the illegality of the processing carried out, in the terms referred to in the justification, for the violation of the articles 5, par. 1, lit. a) and 13 of the Regulation;

ORDER

to STS Di Prinszano s.r.l., in the person of its pro-tempore legal representative, with registered office in Parma, Via G. Giusti n. 13, P.I. 06397750826 pursuant to art. 58, par. 2, lit. i), of the Regulation, to pay the sum of 1,000.00 (one thousand) euros as an administrative fine for the violations indicated in the justification;

ENJOYS

to the same Company to pay the sum of Euro 1,000.00 (one thousand) according to the methods indicated in the attachment, within 30 days of notification of this provision, under penalty of adopting the consequent executive deeds pursuant to art. 27 of the law n. 689/1981. It is represented that pursuant to art. 166, paragraph 8, of the Code, without prejudice to the offender's right to settle the dispute by paying - always according to the methods indicated in the annex - an amount equal to half of the sanction imposed within the term referred to in art. 10, paragraph 3, of Legislative Decree lgs. no. 150 of 1 September 2011 envisaged for the filing of the appeal as indicated below.

HAS

pursuant to art. 166, paragraph 7, of the Code and of the art. 16, paragraph 1, of the Guarantor's regulation n. 1/2019, the publication of this provision on the Guarantor's website and believes that the conditions set forth in art. 17 of regulation no. 1/2019.

Pursuant to art. 78 of the Regulation, of the articles 152 of the Code and 10 of Legislative Decree 1 September 2011, n. 150, against this provision it is possible to lodge an appeal before the ordinary judicial authority, under penalty of inadmissibility, within thirty days from the date of communication of the provision itself or within sixty days if the appellant resides abroad.

Rome, 24 November 2022

PRESIDENT

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THE SPEAKER

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THE SECRETARY GENERAL

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