

Injunction against CAA Liberiprofessionali s.r.l. - July 11, 2018

Register of measures

no. 417 of 11 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. 10765/114083 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"), carried out at the operational headquarters of CAA Liberi Professionisti s.r.l. (hereinafter "CAA"), located in Alghero (SS), via Oristano n. 7, the investigations referred to in the reports of operations carried out on 9 and 10 May 2017, in order to acquire all useful information and documentation in relation to the processing of personal data carried out by the aforementioned agricultural assistance centre;

HAVING REGARD TO the deeds relating to the inspections carried out at the operational headquarters of the CAA and the note sent by the same on 24 May 2017, resolving the reservations formulated during the inspection visit, from which it resulted, in summary, that:

- the CAA processes the personal data of subjects who go to the operational headquarters in Alghero to receive assistance in processing cultivation and production declarations, for the submission of applications for admission to Community, national and regional benefits;
- to carry out its duties, the CAA makes use of the collaboration of the head of the Alghero office and one of his collaborators, to whom it has assigned the authentication credentials necessary to access the SIAN portal (made available to the paying agency AGEA and within which the so-called company file is created) without, however, having designated them as persons in charge of processing, pursuant to art. 30 of the Code;
- the information that the CAA provides to users who make use of the services offered and included in the mandate that the

users themselves sign, was found to be unsuitable because the operational headquarters in Alghero are the data controller and the registered office in Turin is the data controller ;

CONSIDERING the report n. 62/2017 of 2 August 2017, which is referred to in its entirety here, with which CAA Liberi Professionisti s.r.l., with registered office in Turin, via Carlo Alberto n. 30, P.I. 08268610014, in the person of the pro-tempore legal representative, the administrative violations envisaged by articles 161 and 162, paragraph 2-bis, in relation to articles 13 and 33 of the Code;

WHEREAS, with reference to the violation of art. 33 of the Code, the short term definition pursuant to art. 16 of the law of 24 November 1981 n. 689;

NOTING that from the report prepared pursuant to art. 17 of the law n. 689/1981 from the aforementioned Nucleus it does not appear that the CAA has made the payment to a reduced extent in relation to the violation of art. 13 of the Code;

HAVING REGARD TO the written defense dated 31 August 2017, sent pursuant to art. 18 of the law n. 689/1981, which highlighted "the error in which the tax collectors made the ownership of the data processing and consequently also in relation to the failure to designate the persons in charge of the processing, which in the case in question, given the obvious lack of ownership of the headquarters of the CAA Liberi professionals s.r.l. it was not prescribed". In particular, it was underlined that "the CAA Freelancers of Turin has no real decision-making power on the treatment carried out at the Alghero office, not even having a copy of the company files and of the data acquired, processed and stored there". Rather, according to the party, "data controller, with regard to what is contained in the company files, is clearly (...) the paying agency AGEA (...)", as shown by the documentation produced as part of the inspection from which it is clear that the CAA acts as a delegated body and not as a data controller;

READ the minutes of the hearing, held on 4 May 2018 pursuant to art. 18 of the law n. 689/1981, in which the party reiterated the observations already formulated in the defense writings regarding the ownership of the treatment which must be recognized by the AGEA paying agency, producing in deeds a copy of the Agreement stipulated between them on 4 May 2016 ;

CONSIDERING that the arguments put forward are not suitable for excluding the liability of the party in relation to the disputed matter. The note, produced in deeds, with which AGEA indicates the ISO security requirements that the CAAs, as delegated bodies, must possess for the performance of certain operational activities, indicates how "the [delegated] bodies provide for the

treatment and management of data belonging to the paying agency (...). The paying agency remains responsible for the security of the information systems". On the basis of the above, therefore, it can be seen that AGEA assumes the task of preparing all the rules and measures necessary to guarantee access, by the CAAs, to the SIAN system, intervening under the profile of the authorization and control of the accesses. On the other hand, as regards the performance of the activities delegated to the CAA, Annex 1 to the aforementioned note, containing "Information security requirements to which the delegated bodies must refer during the performance of the activities covered by the agreement with AGEA", specifies the minimum security measures that each CAA must put in place in the performance of its duties, both with reference to the treatments carried out with the aid of electronic instruments and with reference to those carried out on paper, and still with reference to access to the SIAN system. In particular, with respect to the latter aspect, in point 4 of the aforementioned Annex 1, the CAA is expressly assigned the task of "identifying and formally appointing the Head of utilities, as the person responsible for assigning utilities for access to the SIAN system to the officials in charge of carrying out the activities delegated to the delegated body". This designation, which presupposes the identification of the data processors and their appointment in writing accompanied by specific instructions, does not appear to have been made by the CAA in question with respect to those who work on its behalf even in the operational offices. Therefore, the full traceability of the processing to the CAA must be confirmed, in the person of its pro-tempore legal representative, as the subject responsible for carrying out the activities carried out at the operational headquarters and, in particular for what is of interest here, of the designations of the persons in charge of accessing the IT systems. Even the violation of the art. 13 of the Code must be considered founded where the figures of the data controller and data processor have not been correctly indicated in the information provided. With reference to the request for application of art. 164-bis, paragraph 1, of the Code, must be considered applicable only to the violation of art. 13, on the assumption that this violation is considered less serious, a circumstance that cannot be found with respect to the violation of art. 33;

NOTING that CAA Liberiprofessionals 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 and providing unsuitable information pursuant to art. 13 of the Code itself;

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 by art. 167, among which the 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, limited to the violation referred to in art. 161, 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, the seriousness of the violation, the personality and economic conditions of the offender;

CONSIDERED, therefore, of having to determine, pursuant to art. 11 of the law n. 689/1981, the amount of the pecuniary sanction, based on the aforementioned elements evaluated as a whole, in the amount of 10,000.00 (ten thousand) euros for the violation pursuant to art. 162, paragraph 2-bis, and 2,400.00 (two thousand four hundred) euros for the violation pursuant to art. 161 applied in conjunction with art. 164-bis, paragraph 1, of the Code, for a total amount of Euro 12,400.00 (twelve thousand four hundred);

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

to CAA Liberi Professionisti s.r.l., with registered office in Turin, via Carlo Alberto n. 30, P.I. 08268610014, in the person of the pro-tempore legal representative, to pay the sum of 12,400.00 (twelve thousand four hundred) euros as an administrative fine for the violations pursuant to articles 161 and 162, paragraph 2-bis, as indicated in the justification;

ENJOYS

to the same subject to pay the sum of Euro 12,400.00 (twelve thousand four hundred), 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, 11 July 2018

PRESIDENT

Soro

THE SPEAKER

Califano

THE SECRETARY GENERAL

Busia