[doc. web n. 8341621]

Injunction order against Italy Consulting and Training s.r.l. - January 18, 2018

Record of measures

n. 19 of 18 January 2018

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, components and of Dr. Giuseppe Busia, general secretary;

NOTING that, following a report received by the Authority on 17 June 2015, complaining about the receipt of promotional e-mails concerning training courses from Italia Consulenze & Formazione s.r.l. (hereinafter ICF), the Office formulated a request for information from the aforementioned company (note no. 18339 of 23 June 2015), in response to which the same stated that the e-mail address of the reporting party had originally been acquired through Linkedin and to have in any case deleted it from their lists, following the request presented by the same reporting party pursuant to art. 7 of the Personal Data Protection Code (Legislative Decree no. 196 of 30 June 2003, hereinafter the "Code"). However, the promotional contacts had continued because the same name was also contained in a database of "profiled lists with consent (...), [in which] there are e-mail addresses with company name, contact person and region in Italy and in Europe with contact request ip address ", purchased on 8 May 2015 by N.J.L. & Time by Bernasconi Nadia (hereinafter "N.J.L.");

GIVEN the documents of the preliminary assessment, carried out pursuant to art. 157 of the Code by the Privacy Unit of the Guardia di Finanza against N.J.L., from which it emerged that N.J.L. holds "a database of users residing in Italy and a database of users residing in European Community countries, created through previous activities over time" which consists of about 883,000 total users, with respect to which it has not documented that it has provided the information and acquired the consent, pursuant to art. 13, 23 and 130 of the Code;

NOTING that the Authority has adopted provision no. 49 of 11 February 2016 [Doc. web n. 4885578], notified on 4 March 2016, which is referred to here in full, in which it is established that "the processing of the reporting party's personal data took place illegally", as "it is not proven that ICF has provided the same, as required by art. 13, paragraph 4, of the Code, suitable information. Furthermore, it does not appear that the reporting party has given his consent to ICF for sending the aforementioned promotional communications, as required by art. 130, paragraph 1 and 2, of the Code ".

CONSIDERING that the Authority, in the same provision, prohibited ICF, pursuant to art. 143, paragraph 1, lett. c) and 154, paragraph 1, lett. d), of the Code, the further processing for marketing purposes of the personal data contained in the database purchased by NCJ and has required it to take the necessary measures to ensure compliance with the right to object to the processing for marketing purposes expressed by the interested parties to pursuant to art. 7 of the Code, inviting you to notify the Guarantor, pursuant to art. 157 of the Code, of the cessation of treatment;

GIVEN the minutes n. 11812/100164 of 22 April 2016, which is referred to here in full, with which ICF, based in Milan, Viale Scarampo Lodovico n. 19, P.I. 08052680967, in the person of the pro-tempore legal representative:

- the administrative violation provided for by art. 161 of the Code, applied in conjunction with art. 164-bis, paragraph 3, for having carried out a processing of personal data in the absence of suitable information, in violation of art. 13 of the same Code;

- the administrative violation provided for by art. 162, paragraph 2-bis, applied in conjunction with art. 164-bis, paragraph 3, of the Code for having carried out a processing of personal data aimed at sending promotional communications to the e-mail address of the interested parties (including that of the reporting party), in the absence of consent pursuant to art. 130, paragraphs 1 and 2 of the Code;

NOTING that the report prepared by the Office pursuant to art. 17 of the law of 24 November 1981 n. 689 it does not appear that the payments have been made in a reduced amount;

GIVEN the defensive writings, sent on 18 May 2016, pursuant to art. 18 of the law n. 689/1981, in which the party represented how "it was induced, with obvious artifice, to believe that the database purchased was absolutely regular in terms of compliance with the legislation on the processing of personal data. It was therefore in good faith that ICF sent e-mails to the subjects present in the purchased database ", interrupting its use upon receipt of the first requests for cancellation, followed by sending the e-mails. With regard to the high disputes, the party noted that it has always provided the interested parties with the information pursuant to art. 13 of the Code, because it was inserted on the website managed by the company www.italiaconsulenzeeformazione.it, to which the text of the promotional communications expressly referred. With reference to the violation referred to in art. 162, paragraph 2-bis, the party reiterated that it had been misled by NJL as it believed that the data contained in the database were duly consented and, therefore, usable. Among other things, "the error in which ICF was induced by NJL Time represented an isolated fact in a context of regular observance of the sector regulations, to which ICF

paid and pays particular attention". Lastly, with respect to the application of the aggravating circumstance referred to in art. 164-bis, paragraph 3, of the Code, the party objected that the sending of messages took place on only three occasions and that, therefore, "the methods of sending and the frequency cannot be configured as aggressive or harbingers of actual damage for recipients (…) ", requesting the application, in the present case, of the mitigating circumstance referred to in art. 164-bis, paragraph 1;

READ the minutes of the hearing, held on 7 March 2017, pursuant to art. 18 of the law n. 689/1981, and the documentation subsequently sent to supplement what has already been declared, in which the party reiterated what has already been argued in the defense briefs, producing documentation suitable to demonstrate that it has introduced various privacy changes to supplement those already existing, also in compliance with the provisions of the guarantor with provision no. 49;

CONSIDERING that the arguments put forward do not allow to exclude the responsibility of the party in relation to the disputed, on the assumption that the database containing, among others, the data of the reporting party, has been purchased by a third company. In fact, in compliance with the provisions of the Authority with various measures adopted in the field of marketing (remember, in particular, the general provision dated 29 May 2003, web doc. No. 29840 and the Guidelines of 4 July 2013, doc. web n. 2542348), it is noted, in general, that the subject who uses personal data for the purpose of sending promotional messages must comply with the two fundamental rules relating to the obligation to provide the information and to acquire the consent of the interested. In the event that personal data are not collected directly from the interested party (as in the case that deals with us), the aforementioned general provision of 29 May 2003 expressly attributes to those who purchase a database the duty to "ascertain that each interested party has I have validly consented to the communication of my e-mail address and its subsequent use for the purpose of advertising material ". Furthermore, when registering the data, he must send all interested parties an information message specifying the elements referred to in art. 13 of the Code. This provision is referred to in the provision of 4 July 2013 (point 2.6.3), in the part which establishes that "third parties [or the subjects who have purchased the database] will be able to send the same interested parties the promotional communications in question only after the release of its own information that contains, in addition to the elements provided for by art. 13, paragraph 1, also the origin of the personal data communicated to them, so that each interested party can also contact the person who collected and communicated them , to oppose the processing pursuant to art. 7, paragraph 4, letter b), of the Code ". Well, in the case in question, it does not appear that, upon the acquisition of the database, suitable information was provided to the users /

interested parties, just as no documentary evidence was produced regarding the circumstance that this was subsequently provided. , or at the time of sending the first promotional communication. In fact, the text of the e-mail, produced by the party in the context of the defensive writings, shows at the bottom only the name of the data controller, but does not contain any other useful information to know, at least, the origin of the data and the methods of exercising art. 7 of the Code. Therefore, the obligation referred to in art. 13 of the Code must be considered not fulfilled. As for the violation of art. 130 of the Code, it is noted that, on the basis of the declarations made by the party, at the time of the acquisition of the database it was not verified that the interested parties had actually consented to the communication of their data and the subsequent use for promotional purposes, as required by Guarantor in the aforementioned provision of 29 May 2003. The provisions on consent, repeatedly reiterated by the Guarantor in the marketing measures, exclude that, in this case, the excusable error referred to in art. 3 of the law n. 689/1981, since, as is well known, the error of law, as a cause for exclusion of liability in reference to administrative violations, is highlighted only in the face of the inevitability of ignorance of the violated precept, to be appreciated in the light of knowledge and the obligation to know the laws that weighs on the agent in relation also to his professional qualities and his duty to inform about the rules and their interpretation (Cass. civ. 24803/2006; Cass. civ. 10621/2010) ;

NOTING, therefore, that I.C.F., as data controller pursuant to art. 28 of the Code, has carried out a processing of personal data, aimed at marketing activity, in the absence of suitable information and a specific acquisition of consent;

GIVEN 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;

GIVEN 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 art. 130 of the same Code, with the administrative sanction of the payment of a sum from ten thousand euros to one hundred 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 n. 689/1981, 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;

CONSIDERING that, in the case in question:

a) with regard to the severity aspect with reference to the elements of the extent of the injury or danger, the manner of conduct and the intensity of the psychological element, the violations committed by the party must be evaluated in consideration of the

significant number of data processed in the absence of suitable legal conditions;

b) for the purposes of evaluating the work carried out by the agent, it must be highlighted that the party has spontaneously suspended the use of the database, even before the prohibition contained in the provision of the Guarantor;

c) with regard to the economic conditions of the agent, the elements of the tax returns relating to the 2016 tax year were taken into consideration;

CONSIDERING, therefore, to have to determine, pursuant to art. 11 of the law n. 689/1981, the amount of the pecuniary sanction, based on the aforementioned elements assessed as a whole, to the extent of 12,000.00 (twelve thousand) euros for the violation referred to in art. 161, and to the extent of € 20,000.00 (twenty thousand) for the violation pursuant to art. 162, paragraph 2-bis, for a total amount of € 32,000.00 (thirty-two thousand);

GIVEN the documentation in the deeds;

GIVEN the law of 24 November 1981 n. 689, and subsequent amendments and additions;

GIVEN the observations of the Office, formulated by the Secretary General pursuant to art. 15 of the regulation of the Guarantor n. 1/2000;

Rapporteur Dr. Giovanna Bianchi Clerici;

ORDER

a Italia Consulting and Training s.r.l., with headquarters in Milan, Viale Scarampo Lodovico n. 19, P.I. 08052680967, in the person of the pro-tempore legal representative, to pay the sum of € 32,000.00 (thirty-two thousand) as a pecuniary administrative sanction for the violations provided for by art. 161 and 162, paragraph 2-bis, of the Code;

INJUNCES

to the same subject to pay the sum of 32,000.00 (thirty-two thousand) euros according to the methods indicated in the annex, within 30 days from the 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 art. 152 of the Code and 10 of Legislative Decree n. 150/2011, against this provision, opposition may be proposed to the ordinary judicial authority, with an appeal filed with the ordinary court of the place where the data controller resides, within thirty days from the date of communication of the provision itself. , or sixty days if the applicant resides abroad.

Rome, January 18, 2018

PRESIDENT

Soro

THE RAPPORTEUR

Bianchi Clerici

THE SECRETARY GENERAL

Busia