

Injunction against Idroservice Italia s.r.l. - July 19, 2018

Register of measures

no. 430 of 19 July 2018

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

AT today's meeting, in the presence of Dr. Augusta Iannini, Vice President, Dr. Giovanna Bianchi Clerici and Prof. Licia Califano, members and Dr. 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, following the outcome of the administrative procedure initiated with an appeal presented on 12 December 2016, the Guarantor for the protection of personal data (hereinafter the Guarantor) adopted provision no. 147 dated 16 March 2017 with which, among other things, it was ascertained that Idroservice Italia s.r.l. VAT number: 04321710750, with headquarters in Presicce (Le), via Mazzini n. 161, in the person of the pro tempore legal representative, did not provide any response to the request for information formulated by the Secretary General pursuant to art. 157 of the Code regarding the protection of personal data - Legislative Decree 30 June 2003, no. 196 (hereinafter referred to as the Code) and duly notified via certified email on 6 February 2017;

HAVING REGARD to the report no. 15142/113670 of 21 April 2017 drawn up by the Guarantor's Office (which is understood to be referred to in full here) with which Idroservice Italia s.r.l., in the person of the pro-tempore legal representative, was notified of the administrative violation envisaged by the art. 164 of the Code, in relation to art. 157, informing you of the right to make a reduced payment pursuant to art. 16 of the law n. 689/1981;

NOTING, also, that the aforementioned provision of the Guarantor no. 147 of 16 March 2017 ordered, in acceptance of the appeal presented, the Company [...] to provide feedback to the appellant regarding the requests made by them [...] as well as, requested "[...] pursuant to art. 157 of the Code, to communicate, within thirty days of receiving the provision, what initiatives have been undertaken in order to implement the same [...], remembering that [...] the failure to respond to requests pursuant to art. 157 is punished with the administrative sanction pursuant to art. 164 of the Code [...]", without the aforementioned Idroservice Italia s.r.l., even in this circumstance, providing any response;

CONSIDERING the report no. 27714/113670 of 16 August 2017 drawn up by the Guarantor's Office (which is understood to be referred to in full here) with which Idroservice Italia s.r.l., in the person of the pro-tempore legal representative, was charged with the administrative violation envisaged by art. 164 of the Code, in relation to art. 157, informing you of the right to make a reduced payment pursuant to art. 16 of the law n. 689/1981;

READ the reports pursuant to art. 17 of the law n. 689/1981 drawn up, for the two disputed violations, following the non-payment to a reduced extent;

HAVING REGARD TO the written defense dated 14 September 2017 pursuant to art. 18 of the law of 24 November 1981, n. 689, with which, with regard only to dispute report no. 27714/113670 of 16 August 2017, the company, illustrating the methods with which it has fulfilled the provisions of the Authority's provision no. 147 of 16 March 2017, highlighted how "In the case that concerns us, as a preliminary point we inform you that the appeal and slavish provision of the G.p.P. they have never reached the company (..)" given that "(...) the non-receipt is probably attributable to mere computer errors (...)";

CONSIDERING that the arguments put forward regarding dispute no. 27714/113670 of 16 August 2017 are not suitable in relation to the disputed. While taking into account the illustrated procedures for fulfilling the provisions of the Authority's provision no. 147 of 16 March 2017 for the purposes of quantifying the fine, what the company asserted in the defense brief, in addition to not being supported by any element of proof, does not substantiate any of the constituent elements of the discipline of excusable error pursuant to art. 3 of the law n. 689/1981, also in the light of the jurisprudence of the sector;

CONSIDERING the art. 164 of the Code, which punishes anyone who fails to provide the information or exhibit the documents required by the Guarantor pursuant to art. 157 of the same Code, with the administrative sanction, for each of the two disputed violations, of the payment of a sum from ten thousand euros up to sixty 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 with reference to the violation pursuant to art. 164 must be quantified as 10,000.00 (ten thousand) euros for each of the two disputes for a total amount of 20,000.00 (twenty 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 of the Office formulated by the Secretary General pursuant to art. 15 of the Guarantor's regulation n. 1/2000, adopted with resolution of 28 June 2000;

SPEAKER Prof. Licia Califano;

ORDER

to Idroservice Italia s.r.l. VAT number: 04321710750, with headquarters in Presicce (Le), via Mazzini n. 161, in the person of the pro-tempore legal representative, to pay the sum of 20,000.00 (twenty thousand) euros as a pecuniary administrative sanction for the two violations envisaged by art. 164 of the Code;

ENJOYS

to the same subject to pay the sum of Euro 20,000.00 (twenty thousand), according to the methods indicated in the attachment, within 30 days of 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 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, 19 July 2018

PRESIDENT

Iannini

THE SPEAKER

Califano

The SECRETARY GENERAL

Busia