

Injunction against SOGIMA S.r.l. - May 16, 2019

Register of measures

no. 120 of 16 May 2019

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, members, and of 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;

CONSIDERING the Legislative Decree 196/2003 containing the "Code regarding the protection of personal data" (hereinafter "Code");

GIVEN the report of 13 January 2018 with which the anomaly found by the reporting party on the website www.paccofacile.it, managed by SOGIMA S.r.l., was brought to the attention of the Guarantor. with registered office in Aprilia (LT), Via Nerva 38 – postal code 04011 – Fiscal Code and VAT number 02830440596 (hereinafter the "Company") for which " (...) by accessing the page relating to <https://www.paccofacile.it/contrassegni>, without having made any registration or other particular operations, (...)) (it was) possible to view a list of senders and recipients, with their names and surnames and with the amount that these people have paid or collected for cash on delivery, in addition to the payment and collection methods".

Furthermore, by selecting "(...) an item among those listed, you (...) (accessed) freely to further personal information such as the email address, the recipient's company, the date of collection, the coordinates of the supporting bank";

CONSIDERING the report prot. no. 1772 of 18 January 2018 with which the Communications and Telematic Networks Department ascertained the anomaly envisaged in the aforementioned report, consisting in a dissemination - via the Company's website - of personal data relating to "(...) a list containing six recipients of cash on delivery shipments, identified by name and surname, with an indication of the amounts relating to the service rendered together with the chosen payment method as well as, by selecting the customer account assigned to each, further personal information, including the email address and the coordinates of the support bank (...)"; this, so that anyone could access the identification section of the aforementioned website, without the need for any authentication procedure;

CONSIDERING that the Company, with reference to the activities from which the event object of the report originated, is the owner of the processing of personal data, pursuant to the combined provisions of articles 4, first paragraph, lett. f) and 28 of the Code;

CONSIDERING the provision n. 11 of 18 January 2018 - adopted under the signature of the President of the Guarantor in application of article 5, paragraph 8, of the Guarantor's Regulation no. 1 of 2000 in consideration of the particular urgency of the matter reported which did not allow the Board to be convened in good time - with which it was deemed necessary to order, vis-à-vis the Company, due to the aforementioned prejudicial consequences for the rights of the interested parties that could derive from the persistent dissemination of the aforementioned information on the internet, the blocking of this latter documentation, thus precluding it way the indiscriminate dissemination on the internet without delay and in any case within, and no later than, 24 hours from the receipt of the provision pursuant to article 154, paragraph 1, letter d) of the Code, deeming to evaluate the overall lawfulness of the treatment with a separate procedure carried out together with any sanctions resulting from the disclosure of the personal data in question;

HAVING REGARD to the protocol note no. 1854/123318 of 19 January 2018 with which the Communications and Telematic Networks Department transmitted to the Company the provision of the Guarantor no. 11 of 18 January 2018 mentioned above and also requested of the latter, pursuant to art. 157 of the Code, to provide proof, within 15 days, of any informed consent of the interested parties or of another legal basis for the successful dissemination of the report, as well as, in the absence of such elements, to communicate the reasons for such dissemination and the security measures adopted;

HAVING ACKNOWLEDGED the PEC of 22 January 2018 with which the Company communicated that it had promptly resolved the IT anomaly found and that, after this correction, access to the data could only take place following registration and therefore access through the insertion authentication credentials from the registered user;

HAVING REGARD to the protocol note no. 3014/123318 of 29 January 2018 with which the Department of Communications and Telematic Networks pointed out that it was still waiting to receive, within the deadline indicated in the aforementioned protocol note no. 1854/123318 of 19 January 2018, all the elements required pursuant to art. 157 of the Code;

HAVING REGARD to the Company's response note, dated 2 February 2018, which reiterated that free access to the data of no. 6 shipments purchased by customers and visible at the address <https://www.paccofacile.it/contrassegni> was derived from a code error during ordinary software maintenance and which, following the blocking order and the information request note on

the part of the Guarantor, the Company immediately took action to correct the anomaly;

GIVEN the note prot. no. 10891/123318 of 11 April 2018 with which the aforementioned Department, taking into account the corrective measures put in place by the Company following the blocking provision (for which from an audit carried out by this Department on 9 April, recorded and resulting documents in the file, at the electronic address <https://www.paccofacile.it/contrassegni> were no longer viewable to anyone for the personal data subject to the report), ordered the closure of the preliminary investigation, failing to recognize the conditions for the adoption of further measures by the Guarantor, and also communicated to send the file to the competent Inspection Activities Department for the verification of the conditions for the application of the sanctions provided for by law, with particular reference to the dissemination of personal data on the internet without consent of the interested parties referred to in article 23 of the Code and in the absence of another suitable legal basis for the treatment action referred to in Article 24 of the same Code;

GIVEN the note prot. no. 11019/123318 of 12 April 2018 with which the Communications and Telematic Networks Department sent the documents to the Inspection Activities Department, so that it could evaluate the conditions for the application of the administrative sanction referred to in article 162, paragraph 2-bis, of the Code in relation to the ascertained unlawful processing of personal data;

CONSIDERING the act prot. no. 16892/123318 of 4 June 2018 with which the Guarantor contested the Company's violation of the provision of art. 23 of the Code with reference to the dissemination of personal data through its website, in the absence of the consent of the interested parties;

NOTING that from the administrative report prot. no. 290707/123318 of 4 October, prepared by the Office of the Guarantor pursuant to art. 17 of the law of 24 November 1981 n. 689, the reduced payment has not been made;

HAVING REGARD TO the report of the hearing, during which the Company, in addition to reiterating that the disclosure occurred due to an error which occurred during the software maintenance phase, promptly corrected following the communication of the blocking order by the Guarantor, also present that she turned to "(...) a privacy consultancy company which has ensured full compliance" with the legislation on the protection of personal data. The Company has requested the filing of the proceeding or, in the extreme alternative, the application of the minimum statutory sanction, further reduced pursuant to art. 164-bis, paragraph 1, of the Code;

CONSIDERING that the justifications put forward by the Company are not suitable for determining the closure of the

sanctioning procedure, since in this circumstance all the elements constituting the offense are relied upon, despite having noted that the Company intervened promptly to correct the anomaly causing this offence;

CONSIDERING the art. 162, paragraph 2-bis, of the Code which punishes the violation of the provisions indicated in art. 167 of the same Code, including art. 23, with the administrative sanction of the payment of a sum from Euro 10,000.00 (ten thousand) to Euro 120,000.00 (one hundred and twenty thousand);

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;

CONSIDERING that the aforementioned verified disclosure of personal data involved a small number of people (6) and also had a short duration since from the date of the assessment (18 January 2018) - carried out by the Department of Communication and Telematic Networks regarding what was reported on 13 January 2018 - on the date of the correction of the anomaly by the Company (the immediacy of the correction was ensured with PEC dated 22 January 2018 by the Company to the Guarantor and ascertained by the Communication and Telematic Networks Department with minutes of 9 April 2018), a short period of time has elapsed;

CONSIDERING that, therefore, the conditions for applying art. 164-bis, paragraph 1, of the Code which provides that, if any of the violations referred to in articles 161, 162, 162-ter, 163 and 164, is less serious, the minimum and maximum limits are applicable in an amount equal to two fifths;

CONSIDERED, therefore, on the basis of the aforementioned elements evaluated as a whole, to have to determine, pursuant to art. 11 of the law n. 689/1981, the amount of the fine provided for by art. 162, paragraph 2-bis of the Code, to the minimum amount of 10,000.00 (ten thousand) euros for the violation of art. 23 of the same Code, reduced by two fifths, according to the provisions of art. 164-bis, paragraph 1, of the Code for the occurrence of the requirement of less seriousness, for an amount equal to Euro 4,000.00 (four thousand);

HAVING REGARD to the documentation in the deeds;

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 SOGIMA S.r.l. with registered office in Aprilia (LT), Via Nerva 38 – postal code 04011 – Fiscal Code and VAT number 02830440596 as a pecuniary administrative sanction, the sum of Euro 10,000.00 (ten thousand) provided for by art. 162, paragraph 2-bis of the Code, reduced by two fifths, according to the provisions of art. 164-bis, paragraph 1, of the same Code, for an amount equal to Euro 4,000.00 (four thousand), for the violation indicated in the justification;

ENJOYS

to the same to pay the sum of 4,000.00 (four thousand) euros according to the methods indicated in the annex, 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 lg. 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, 16 May 2019

PRESIDENT

Soro

THE SPEAKER

Califano

THE SECRETARY GENERAL

Busia