

Order injunction against Fit-Star Prato 1 s.r.l. - 11 January 2018

Record of measures

n. 5 of 11 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 the Guardia di Finanza, Special Privacy Unit, with minutes no. 94/2015 of 4 November 2015 (notified on 2 December 2015), which must be understood as fully reported here, challenged Fit-Star Prato 1 s.r.l. (hereinafter "Fit-Star"), in the person of the pro-tempore legal representative, with registered office in Bolzano, via Antonio Pacinotti n. 4, C.F. 02684460211, the violation provided for by art. 162, paragraph 2-ter, of the Code regarding the protection of personal data (Legislative Decree 30 June 2003, no. 196, hereinafter referred to as the "Code");

NOTING that the examination of the acts of the sanctioning procedure initiated with the notification of administrative violation revealed, in summary, the following:

- the Privacy Unit of the Guardia di Finanza carried out an inspection of Fit-Star on October 27, 2015;
- from this assessment it emerged that the company, in its gym located in Prato, via delle Pleiadi n. 61, installed a video surveillance system consisting of n. 5 cameras and a video recording system. As stated by the director of the gym, the images recorded by the system are kept "for a period of 28 days";
- "The Anytime & Anywhere application installed on the PC used by the management allows, among other things, the viewing of the recorded images, which were found to date back to 30 September 2015";

NOTING that with the aforementioned deed of November 4, 2015 Fit-Star was challenged, pursuant to art. 162, paragraph 2-ter, of the Code, the violation of the provisions of point 3.4, paragraphs 2 and 4, of the Provision on video surveillance adopted by the Guarantor on 8 April 2010 and published in the Official Gazette no. 99 of 29 April 2010 (in www.gpdp.it, web doc. N. 1712680), for having kept images taken with the aforementioned video surveillance system for a time longer than that established by the Guarantor;

GIVEN the report relating to the aforementioned contestation deed, prepared by the Finance Police pursuant to art. 17 of the

law of 24 November 1981, n. 689, from which the reduced payment was not made;

READ the defensive writings of 8 March 2012, which are understood to be fully referred to here, in which we represent:

- "on May 20, officials of P.G. acquired, at the Prato gymnasium, documentary material necessary for carrying out investigations. Fit Star thus became aware of the existence of an ongoing criminal proceeding and the consequent investigation needs of the authority of P.G. Fit Star took action, in compliance with the obligations established on the matter by the procedural legislation, to provide all the elements requested by the investigating authority which, after some time (3 July), presented itself again to acquire further evidence, always related to the same criminal proceedings. Acquisition that would have been impossible, thus jeopardizing the development of the investigations, if the data retention times had not been extended. Fit Star considered, in absolute good faith, that the exercise of criminal action and the resulting obligations in terms of obtaining evidence, constituted a binding source for one's conduct and that, therefore, allowed a legitimate extension of the data retention terms. The same conduct of the organs of P.G. contributed to maturing this conviction having received, from them, indications on the need for further acquisitions without, however, the specific time frame to which the additional evidence to be acquired referred, nor the date on which they would have been acquired and , above all, without any reference to compliance with the privacy legislation ";

- "Fit Star considered it legitimate and fully justified to extend the retention times of the recordings within a system of privacy safeguards and guarantees that was, in any case, present and operational. Please the Guarantor, in fact, consider that: it is present, in the premises of the gym, the information required by law clearly visible and placed, before the range of action of the cameras (as found by the investigators); the cameras are all clearly visible and placed in places of passage or access, with exclusion of changing rooms, bathrooms, showers to further guarantee the privacy of both employees and customers; the cameras are low-resolution, non-orientable, without zoom and microphones, the processing of personal data through the video surveillance system takes place exclusively for needs for the protection and protection of people and things; in terms of data security, the access procedure allows viewing of the records only and exclusively to the only authorized person (in this specific case the director of the gym, Crescenzo Letizia, as is also apparent from the acquisition reports in which his name always and only appears) with the observance of an authentication system based on the typing of "user name" and "password"; Fit Star has never been the subject of complaints to any authority by collaborators, customers or, more generally, third parties who have complained about illicit or simply improper use of sensitive data in its possession ".

CONSIDERING that the arguments put forward are not suitable for determining the dismissal of the sanctioning procedure initiated with the above dispute:

- it is indisputable, and Fit-Star does not deny it, that at the gym located in Prato the images taken by the video surveillance system installed inside it were kept for a period much longer than that indicated in the general provision of April 8, 2010, point 3.4, paragraph 2 ("The conservation must be limited to a few hours or, at the latest, to the twenty-four hours following the survey, subject to special needs for further conservation in relation to holidays or the closure of offices or businesses, as well as in the event that a specific investigative request from the judicial authority or judicial police must be adhered to. Only in some cases, for specific technical needs (means of transport) or for the particular riskiness of the activity carried out by the data controller (for example, for some places such as banks, the need to identify the perpetrators of an inspection in the days preceding a robbery may be justified), a longer time for data retention can be considered admitted which, also on the basis of the legislative maximum time set for other treatments, is considered not to exceed one week ");

- in accordance with the following paragraph 4, "in all cases in which it is desired to proceed with an extension of the storage times for a period longer than a week, a request to this effect must be subjected to a preliminary check by the Guarantor (see point 3.2.1), and in any case be hypothesized by the owner as exceptional in compliance with the principle of proportionality. The appropriateness of a longer storage period must be adequately motivated with reference to a specific security need pursued, in relation to concrete situations of risk regarding truly impending events and for the period of time in which such exceptional necessity is confirmed. The relative congruity may also depend on the need to comply with a specific request to keep or deliver a copy specifically requested by the judicial authority or by the judicial police in relation to an ongoing investigative activity ";

- the general provision of 2010, in the aforementioned parts, clearly establishes both the terms that must be observed for the conservation of images captured by a video surveillance system, and the methods by which the Guarantor may be requested to extend the aforementioned terms , also in relation to the needs of the judicial authorities or the judicial police;

- Fit-Star, which has kept the images taken by its video surveillance system for twenty-eight days, has shown that it has not taken into account the provisions of the general provision, which are specifically adapted to its situation, and is therefore responsible for the conduct represented in the report of dispute;

NOTING, therefore, that Fit-Star, on the basis of the above considerations, appears to have committed, as data controller,

pursuant to art. 4, paragraph 1, lett. f), and 28 of the Code, the violation envisaged by art. 162, paragraph 2-ter, of the Code, for having kept images recorded by its video surveillance system for a period longer than that provided for by point 3.4, paragraph 2, of the provision on video surveillance adopted by the Guarantor on 8 April 2010 and published in the Official Gazette no. 99 of April 29, 2010, and in the absence of the conditions set out in paragraph 4 below;

GIVEN art. 162, paragraph 2-ter, of the Code which punishes the violation of the statute of limitations adopted by the Guarantor with the administrative sanction of the payment of a sum from thirty thousand euros to one hundred and eighty 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, the diminuent referred to in art. 164-bis, paragraph 1, of the Code, which provides for the application of the minimum and maximum legal limits of the sanction to the extent of two fifths, in less serious cases;

CONSIDERING that, in the case in question:

a) with regard to the aspect of gravity with reference to the elements of the extent of the injury or danger and the intensity of the psychological element, the violations are not characterized by specific elements;

b) for the purposes of evaluating the work carried out by the agent, it must be highlighted that the company has promptly fulfilled all the other provisions regarding the protection of personal data, subject to specific assessment by the Guardai di Finanza;

c) with regard to the personality of the perpetrator of the violation, the circumstance that the company is not burdened by previous sanctioning procedures defined briefly or following an injunction must be considered;

d) with regard to the agent's economic conditions, the abbreviated financial statements for the year 2016 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. 162, paragraph 2-ter, of the Code, deemed the diminishing one referred to in art. 164-bis,

paragraph 1, of the same Code;

HAVING REGARD to the documentation on file;

GIVEN the law n. 689/1981, and subsequent amendments and additions;

GIVEN the observations of the Office made by the Secretary General pursuant to art. 15 of the regulation of the Guarantor n. 1/2000, adopted by resolution of June 28, 2000;

SPEAKER Prof. Licia Califano;

ORDER

to Fit-Star Prato 1 s.r.l., in the person of the pro-tempore legal representative, with registered office in Bolzano, via Antonio Pacinotti n. 4, C.F. 02684460211, to pay, considering the application of art. 164-bis, paragraph 1, of the Code, the sum of € 12,000.00 (twelve thousand) as a pecuniary administrative sanction for the violations indicated in the motivation;

INJUNCES

the aforementioned company to pay the sum of € 12,000.00 (twelve thousand), 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 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, 11 January 2018

PRESIDENT

Soro

THE RAPPORTEUR

Califano

THE SECRETARY GENERAL

Busia