

Injunction against the Municipality of Ferrara - 23 May 2019

Register of measures

no. 116 of 23 May 2019

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 Guarantor's Office has launched an investigation against the Municipality of Ferrara, aimed at verifying the lawfulness of the processing of personal data put in place by the Municipality, with reference to the methods of providing the so-called service. Online registry, suitable for allowing citizens to obtain their own registry and civil status certificates also from municipal pharmacies;

HAVING ACKNOWLEDGED the documentation provided by the Municipality in response to specific requests formulated by the Office of the Guarantor, as well as the documents of the inspection, carried out by the Privacy Unit of the Guardia di Finanza on 9 November 2016, in execution of the request for information prot. no. 29741/97751 of 6 October 2016, formulated pursuant to art. 157 of Legislative Decree June 30, 2003 n. 196, containing the Code regarding the protection of personal data (hereinafter the "Code"), from which it resulted that:

- the Municipality of Ferrara, as data controller, has entrusted the company A.F.M. s.r.l., manager of municipal pharmacies, the online Registry service, designating it, for this purpose, responsible for the processing of personal data, pursuant to art. 29 of the Code;
- the pharmacy operator, as person in charge of the treatment pursuant to art. 30 of the Code, accesses the information system of the online Registry and issues the required certificates to the user, subject to identification by showing an identity document and health card;
- this operation constitutes a processing of personal data, pursuant to art. 4, paragraph 1, lett. a), of the Code, with respect to which it has been ascertained that the person in charge of processing does not provide the information pursuant to art. 13 of

the same Code;

CONSIDERING the report n. 125/2016 of 6 December 2016 with which the Municipality of Ferrara, with headquarters in Ferrara, Piazza Municipio n. 2, tax code 00297110389, in the person of the pro tempore legal representative, the administrative violation envisaged by art. 161 of the Code, in relation to art. 13 of the same Code, informing you of the right to make a reduced payment pursuant to art. 16 of the law n. 689/1981;

HAVING EXAMINED the report prepared by the aforementioned Unit pursuant to art. 17 of the law of 24 November 1981 n. 689, from which the reduced payment does not appear to have been made;

CONSIDERING the written defense dated 9 January 2017, sent pursuant to art. 18 of the law of 24 November 1981, n. 689, and with which the Municipality observed how, in preparing the online Registry service, it had correctly fulfilled the obligation pursuant to art. 13 of the Code, providing interested parties who access the institutional website of the Municipality (and who register for the online service) with suitable information, accessible both via a link on the footer of the institutional website and at the bottom of the registration form. The party then observed that it had fulfilled this obligation despite, in the present case, the provision of art. 13, paragraph 5, of the Code, according to which the information should not be provided when "the data are processed on the basis of an obligation established by law, by a regulation or by community legislation"; in the case in question, the registry legislation that has followed over time "requires the Municipality to process personal data, and by virtue of this obligation, the Municipality is exempt from the obligation pursuant to art. 13 of Legislative Decree 196/2003". Therefore, although the Municipality is not obliged to provide the information to the interested parties, it has nonetheless fulfilled this obligation "by trying to provide an additional service to its citizens, making use of personnel who already process super-sensitive data (...) identifying in another institutional entity the responsibility for such processing (...)";

HAVING ACKNOWLEDGED the reiteration of the defense briefs carried out on 7 February 2019, in compliance with the provisions of art. 18, paragraph 4, of Legislative Decree 101/2018, with which the party, "with the possibility of requesting the payment of the fine imposed by installments", highlighted that the online Registry service, activated at the municipal pharmacies, is ceased due to low user participation;

WHEREAS the arguments put forward are not suitable for excluding the liability of the party in relation to the disputed matter. It should be noted that failure to comply with the obligation to provide the information pursuant to art. 13 of the Code was ascertained limited to the provision of the service, offered in the name and on behalf of the Municipality, by the municipal

pharmacies; in fact, already during the inspection visit carried out on 6 November 2016, the publication on the institutional website of the Municipality of the information on the processing of personal data had been verified, following the online registration made by the user. This circumstance, contrary to what was believed by the party, must not be considered superfluous, but represents the correct fulfillment of the obligation pursuant to art. 13 of the Code, which all public entities are required to comply with, based on the provisions of art. 18 of the Code. In the case in question, among other things, the possibility for the citizen to obtain the issue of personal certificates at the municipal pharmacies represents an additional service provided by the Municipality. Therefore, with reference to the provision of the online registry service carried out by the municipal pharmacies, it should be noted that the Municipality of Ferrara, as data controller, when it also entrusted the management of the service to the A.F.M. s.r.l., has correctly proceeded to appoint him as data controller, pursuant to art. 29 of the Code. However, in the instructions provided to the data controller, there is no reference to the obligation, falling on the subjects responsible for providing this service to citizens, relating to the information to be provided to the interested parties. This fulfillment is more necessary when, as in the present case, the treatment is not carried out directly by the data controller, but by means of a manager who acts on his behalf in the offer of the additional service in question. It should also be specified that the provision pursuant to art. 13, paragraph 5, of the Code is absolutely not relevant to the case in question as it refers to the information pursuant to art. 13, paragraph 4, which regulates the methods with which to provide the information when the personal data are not collected from the interested party, a circumstance not recognizable in the case in question;

NOTING, therefore, that the Municipality of Ferrara has processed personal data (art. 4 paragraph 1, letter a) and b) of the Code) by failing to provide the information pursuant to art. 13 of the Code;

CONSIDERING the art. 161 of the Code which punishes the violation of art. 13 of the Code with the administrative sanction of the payment of a sum from six thousand euros to thirty-six thousand euros;

CONSIDERING that 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", taking into account, in particular, the social nature of the activity carried out;

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 and of the offender's personality;

CONSIDERED having to determine, pursuant to art. 11 of the law n. 689/1981, the amount of the fine for the violation of art. 161 of the Code in the amount of Euro 2,400.00 (two thousand four hundred), applied in conjunction with art. 164-bis, paragraph 1, of the Code;

HAVING DEEMED to accept the Municipality's request for payment in installments of the amount of the fine determined above in no. 10 (ten) monthly installments corresponding to the amount of Euro 2,400.00 (two hundred and forty) each;

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 made by the general secretary pursuant to art. 15 of the Guarantor's regulation n. 1/2000;

SPEAKER Dr. Augusta Iannini;

ORDER

to the Municipality of Ferrara, with headquarters in Ferrara, Piazza Municipio n. 2, tax code 00297110389, in the person of the pro-tempore legal representative, to pay the sum of 2,400.00 (two thousand four hundred) euros as a pecuniary administrative sanction for the violation envisaged by art. 161 of the Code indicated in the justification, applied in conjunction with art. 164-bis, paragraph 1, dividing it, in acceptance of the installment request, into no. 10 (ten) monthly installments corresponding to the amount of Euro 2,400.00 (two hundred and forty) each;

ENJOYS

to the same subject to pay the sum of 2,400.00 (two thousand four hundred) euros according to the methods indicated in the attachment, the fractional payments of which will begin by the last day of the month following the one in which the notification of this order will take place, under penalty of 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, 23 May 2019

PRESIDENT

Soro

THE SPEAKER

Iannini

THE SECRETARY GENERAL

Busia