

Injunction against Municipality of Volla - 11 July 2018

Register of measures

no. 418 of 11 July 2018

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 Office, with deed no. 9593/114802 of 28 March 2018 (notified on the same date by certified e-mail), which must be understood as fully reported here, contested the Municipality of Volla, in the person of its pro-tempore legal representative, based in Volla (NA), via Aldo Moro n. 1, tax code 01223110634, the violation of the provisions of articles 33, 34 and 162, paragraph 2-bis, of the Code regarding the protection of personal data (legislative decree no. 196 of 30 June 2003, hereinafter referred to as the "Code");

NOTING that from the examination of the documents of the sanctioning procedure initiated with the contestation of administrative violation, the following emerged, in summary:

- on 1 February 2017, the Guarantor received a complaint presented by an employee of the Municipality of Volla, with which critical issues were highlighted in the functioning of the electronic protocol system in use at the Municipality;
- in particular, with the complaint, it was represented that all the employees of the Municipality had the possibility, by accessing the registration system, to view the documentation containing personal data, including those of a sensitive and judicial nature, referring to the complainant and to other employees of the Entity;
- during the investigation launched following the complaint, the Municipality of Volla confirmed that municipal employees with credentials for accessing the GOLEM protocol system "were actually able to view all incoming mail received under the General Protocol , this due to an incorrect setting of the computer system". The Municipality also represented that this anomaly had been eliminated as of 7 August 2017 and that, at present, the visibility of incoming documents was only allowed to the Mayor, the Secretary General, the head of the protocol office and the related employees;

- on 28 February 2018, the Public and Private Work Unit of the Guarantor's Office sent a note to the Municipality of Volla and to the complainant in which the results of the investigation were communicated, highlighting that "the circumstance on the basis of which, by express admission of the Municipality, the methods of use of the system would have been configured with functions such as to allow a large number of employees to become aware of personal data, relating to events concerning the complainant, [...] or other employees, determines that this treatment presents some profiles of violation of the personal data protection regulations. [...] In particular, the provisions of art. 34, paragraph 1, lett. c) and d), of the Code – relating, respectively, to the use of an authorization system, as well as to the periodic updating of the identification of the scope of the processing permitted to the individual persons in charge – as well as to rules 13, 14, and 15 of the Annex B to the Code"; NOTING that with the aforementioned deed of 28 March 2018 the Municipality of Volla was challenged, pursuant to art. 162, paragraph 2-bis, of the Code, the violation of art. 33, for having failed to adopt the minimum security measures referred to in the following articles 34, paragraph 1, lett. c) and d) of the Code and rules no. 13, 14 and 15 of the technical specification referred to in Annex B) of the same Code;

HAVING ACKNOWLEDGED that a reduced payment is excluded for the aforesaid violation;

HAVING ACKNOWLEDGED, also, that the Municipality of Volla has not submitted defense briefs and has not requested to be heard by the Authority;

CONSIDERING having to confirm the responsibility of the Municipality of Volla for the disputed violation, since it is fully proven in documents, also on the basis of the Entity's declarations, that, due to an improper configuration of the GOLEM protocol system, the Municipality has failed to assign to its employees, in possession of the credentials for accessing the system itself, suitable authorization profiles and has, as a result, allowed them to view documents containing personal data, including sensitive and judicial ones, relating to other municipal employees;

NOTING, therefore, that the Municipality of Volla, as data controller pursuant to articles 4, paragraph 1, lett. f), and 28 of the Code, on the basis of the considerations referred to above, he appears to have committed the violation envisaged by art. 162, paragraph 2-bis, of the Code, for having failed to adopt the minimum measures dictated by articles 33 and 34, paragraph 1, lett. c) and d), of the Code and by rules nos. 13, 14 and 15 of the technical specification referred to in the relative annex B);

CONSIDERING the art. 162, paragraph 2-bis, of the Code, where it is provided that "in case of processing of personal data carried out in violation of the measures indicated in article 33 [...] the administrative sanction of the payment of a sum from

10,000 euros to 120,000 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;

WHEREAS, in the present case:

a) in terms of 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 violation is not characterized by specific elements;

b) for the purposes of evaluating the work carried out by the agent, the fact that the Municipality of Volla, already in August 2017, has eliminated the anomalies found in the logging system must be considered in favorable terms;

c) about the personality of the author of the violation, the Municipality of Volla is not burdened by previous sanctioning proceedings defined briefly or with an order-injunction;

CONSIDERED, therefore, of having to determine, pursuant to art. 11 of Law no. 689/1981, the amount of the pecuniary sanction, based on the aforementioned elements evaluated as a whole, in the amount of 10,000 (ten thousand) euros;

HAVING REGARD to the documentation in the deeds;

CONSIDERING the law n. 689/1981, 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 Dr. Giovanna Bianchi Clerici;

ORDER

to the Municipality of Volla, in the person of the legal representative pro-tempore, based in Volla (NA), via Aldo Moro n. 1, tax code 01223110634, to pay the sum of 10,000 (ten thousand) euros as an administrative fine for the violation indicated in the justification;

ENJOYS

to the same institution to pay the sum of 10,000 (ten thousand) euros, according to the methods indicated in the attachment, within 30 days of notification of this provision, under penalty of adopting 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, 11 July 2018

PRESIDENT

Soro

THE SPEAKER

Cleric Whites

THE SECRETARY GENERAL

Busia