

Injunction against the Customs and Monopolies Agency - 7 March 2019

Register of measures

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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;

NOTING that this Authority received, on 26 June 2014, a complaint alleging the unlawful processing of personal data by the Customs and Monopolies Agency of Naples (hereinafter the "Agency"). The complainant, who performed the function of customs officer, in fact complained that the Agency had communicated, to 14 importing companies, a report reviewing the customs declarations, which included information about his position as a suspect in a proceeding based on the public prosecutor's office of the Court of Naples and other information about ongoing investigations (such as search and seizure deeds);

HAVING REGARD to note no. 12193/94231 of 24 April 2015, with which the Office concluded the preliminary investigation, ascertaining the illegality of the processing of personal data put in place by the Agency, because it did not comply with the regulations on the protection of personal data;

CONSIDERING the report n. 16415/94231 of 3 June 2015 with which it was challenged to the Customs and Monopolies Agency, in the person of its pro tempore legal representative, based in Rome, Via Mario Carucci n. 71, tax code 97210890584, the administrative violation provided for by art. 162, paragraph 2-bis, of the Code (legislative decree no. 196 of 30 June 2003, hereinafter the "Code"), in relation to articles 21 and 22 of the same Code, for having carried out an illegal processing of judicial data, communicating information about a penal proceeding still in progress, in the absence of a law or regulation that expressly provides for it, also informing it of the right to make the payment to a lesser extent pursuant to art. 16 of the law n. 689/1981;

HAVING EXAMINED the report prepared by the Office of the Guarantor 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;

HAVING REGARD TO the written defense dated 30 June 2015, sent pursuant to art. 18 of the law n. 689/1981, with which the Agency observed that "the censured behavior must be considered permitted pursuant to art. 2, paragraph 2, of the Implementing Regulation of articles 20 and 21 of the legislative decree n. 196 of 06/30/2003, containing the Code regarding the protection of personal data, adopted by this Agency on 1 April 2009 (...). This article, on the basis of the favorable opinion of this Body dated 8/02/2007, provides that "the sensitive and judicial data identified in this regulation are processed after verifying their pertinence, completeness and indispensability with respect to the purposes pursued in individual cases". In the case in question, therefore, the data used in the assessment review reports would have been indispensable with respect to the purpose of timely recovery from the customs officer (as jointly and severally obliged by the importing company) and, in any case, had been used in a as limited and concise as possible. As regards the aspect relating to the communication of such data to third parties, the party highlighted how the importers involved were already aware of the acts and facts covered by the crime report and that, in any case, the mention of the criminal proceedings in the review processes was aimed at ensuring them the full and complete exercise of the right to be heard, as well as the right to take action against the shipper. Finally, according to the party, the circumstance that the authorization by the Public Prosecutor the use of judicial data for administrative purposes is the prerequisite for ensuring full compliance of the use of the same not only with the legislation on the secrecy of investigations but also with that on privacy;

HAVING ACKNOWLEDGED the reiteration of the defense briefs carried out on 11 February 2019, in compliance with the provisions of art. 18, paragraph 4, of Legislative Decree 101/2018;

CONSIDERING that the arguments put forward are not suitable for excluding the liability of the party in relation to the contested administrative violation. The examination of the reference legislation has made it possible to ascertain that the processing of the forwarder's judicial data, with particular reference to their communication to third parties, is not supported by any law or regulation, contrary to what was believed. In fact, both the community legislation (EEC Reg. 2913/1992) and the Italian legislation on the subject (Law 25 July 2000 n. 213), limit themselves to providing for the joint and several liability of the shipper in the case of irregular customs declarations, of which should have been aware, but in no case is it possible to bring the forwarder's judicial data to the attention of third parties. Among other things, in the case in question, it should be noted that, at the time the customs review processes were compiled and sent to the importers, the criminal proceedings (in which the

shipper was a suspect) were still in progress. As for the "Regulation implementing Articles 20 and 21 of the Code", adopted by the Agency on 1 April 2009, it is noted that this, contrary to what was held, identifies, as recipients of the communication of judicial data, only the Italian and foreign customs administrations and authorities for the purposes of mutual administrative assistance, while the communication of judicial data to third parties is not one of the operations that can be performed. Therefore, in the light of these considerations, the illegality of the conduct implemented by the Agency must be confirmed. Finally, it is noted that the authorization by the P.M. the use for administrative purposes of data deriving from criminal proceedings does not constitute a valid prerequisite for communication to third parties;

NOTING, therefore, that the Customs and Monopolies Agency, as data controller pursuant to art. 4, paragraph 1, lett. f), of the Code, has processed judicial data in the absence of a law or regulation that expressly provides for it, in violation of articles 21 and 22 of the Code;

CONSIDERING the art. 162, paragraph 2-bis, of the Code which punishes the violation of the provisions indicated in art. 167 of the Code, including that referred to in Articles 21 and 22 of the same Code, with the administrative sanction of the payment of a sum from ten thousand euros to one hundred and twenty thousand euros;

HAVING REGARD to the law of 24 November 1981 n. 689, and subsequent modifications and additions;

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;

CONSIDERED having to determine, pursuant to art. 11 of the law n. 689/1981, the amount of the pecuniary sanction in the minimum amount of 10,000.00 (ten thousand) euros for the violation pursuant to art. 162, paragraph 2-bis, of the Code;

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 the Customs and Monopolies Agency, in the person of its legal representative pro tempore, with headquarters in Rome, Via

Mario Carucci n. 71, tax code 97210890584, to pay the total sum of 10,000.00 (ten thousand) euros as a pecuniary administrative sanction for the violation provided for by art. 162, paragraph 2-bis, of the Code, as indicated in the justification;
ENJOYS

to the same subject to pay the sum of 10,000.00 (ten 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, 7 March 2019

PRESIDENT

Soro

THE SPEAKER

Califano

THE SECRETARY GENERAL

Busia