

[doc. web no. 9100784]

Injunction order - February 2, 2019

Register of measures

no. 39 of 2 February 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, based on the elements acquired as part of an administrative check carried out on 10 May 2018 at the commercial establishment called "XX", located in Verona, via XX, the Verona Police Headquarters ascertained that Mrs. XX, born in XX (XX) the XX, Tax Code XX, as owner of the sole proprietorship of the same name, processed personal data pursuant to art. 4, paragraph 1, lett. a), of the Code regarding the protection of personal data (legislative decree 30 June 2003, hereinafter the "Code") by means of a video surveillance system, installed in the aforementioned premises, consisting of four cameras, three of which are positioned inside the room and one outside. Given the processing of personal data thus carried out, it appeared that the images recorded by means of the aforementioned system dated back to 12 days earlier, or to a period of time longer than the maximum (7 days) envisaged by the Guarantor with the provision on video surveillance dated 8 April 2010 [in www.garanteprivacy.it, doc. web no. 1712680];

CONSIDERING the report n. 34/2018 of 27 June 2018, which is understood to be referred to in full here, with which XX, as owner of the sole proprietorship, was charged with the administrative violation envisaged by art. 162, paragraph 2-ter, of the Code, in relation to art. 154, paragraph 1, lett. c), and in point 3.4 of the aforementioned general provision on video surveillance, for having kept the images collected and recorded with the aforementioned video surveillance system for a time longer than that established by the Guarantor, informing it of the right to make a reduced payment pursuant to of the art. 16 of the law of 24 November 1981, n. 689;

NOTING that, for the purposes of art. 17 of the law n. 689/1981 with regard to the brief definition of the sanctioning procedures, from the findings made by the Office through checks on the printouts provided by the Ministry of Economy and

Finance relating to the payments of administrative pecuniary sanctions regarding the protection of personal data, it does not appear that the party has made use of the option of paying a reduced amount pursuant to art. 16 of the law n. 689/1981;

HAVING REGARD TO the written defense dated 1 August 2018, sent pursuant to art. 18 of the n. 689/1981, with which the party specified that it had taken over the commercial activity with a company lease contract dated 05/01/2014 and that, in relation to the video surveillance system installed by the previous manager, had requested and obtained the authorization from the Territorial Labor Directorate. As for the disputed violation, the party observed that the provision contained in the general provision on video surveillance, which is presumed to be violated, in reality does not contain any reference to a period of time within which to keep the recorded images and, therefore, that no administrative offense can be charged. The party also observed that the dispute report did not indicate "whether at the time of the verification films archived for more than twelve days were found, limiting itself, in fact, only to pointing out that there was "an archiving system of images" which in itself is not detrimental to personal data and therefore is not sufficient to violate the referenced rule";

READ the minutes of the hearing of 30 October 2018, in which the party reiterated what had already been declared in the defense writings, requesting the dismissal of the sanctioning procedure or, alternatively, the application of the sanction to the extent of the statutory minimum further reduced to two fifths , pursuant to art. 164-bis, paragraph 1, of the Code;

CONSIDERING that the arguments put forward do not allow for the exclusion of the party's liability in relation to the contested matter, since the ownership of the personal data processing falls solely on the party, which in fact uses and disposes of the system in full autonomy, even if this has been installed from the previous owner. Given this, it should be noted that, contrary to what was believed, the provision on video surveillance, adopted pursuant to art. 154, paragraph 1, lett. c), of the Code, in point 3.4, prescribes that, in compliance with the principle of proportionality, the conservation of recorded images must be limited to a few hours or, at the most, to the twenty-four hours following their detection, and that a longer period (in any case not exceeding 7 days), in consideration of particular needs. In the present case, it is noted that, contrary to what was claimed, the statement of dispute contains a clear reference to the fact that, during the investigation operations carried out at the premises of Ms XX on 10 May 2018, it had been possible consult images, recorded by means of video cameras, which dated back to 12 days earlier. This circumstance, supported by suitable probative elements, confirms the existence of the administrative offense attributable to the party;

NOTING, therefore, that Ms XX appears to have committed, in her capacity as data controller, pursuant to articles 4,

paragraph 1, lett. f), and 28 of the Code, the violation provided for by art. 162, paragraph 2-ter, of the Code, for having stored images recorded by its video surveillance system for a time longer than that prescribed by the Guarantor in point 3.4 of the General Provision on video surveillance;

CONSIDERING the art. 162, paragraph 2-ter of the Code, which punishes the violation of art. 154, paragraph 1, lett. c), of the same Code with the administrative sanction of the payment of a sum from thirty thousand euros to one hundred and eighty thousand euros;

CONSIDERING that, in the present case, the conditions for the application of 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 established in the same articles are applied in an amount equal to two fifths;

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;

TAKING ACCOUNT of the fact that the party erroneously believed that it could avail itself of the faculty of facilitated definition of violations regarding the protection of personal data pursuant to art. 18 of Legislative Decree 10 August 2018 n. 101, containing "Provisions for the adaptation of national legislation to the provisions of regulation (EU) 2016/679" (in the Official Journal General Series no. 205 of 04-09-2018). This article, in paragraph 1, provides that only the sanctioning procedures started, with the adoption of the notification of the dispute, on a date prior to 25 May 2018 can be subject to facilitated definition. In the present case, the violation was ascertained with dispute report raised on 27 June 2018, therefore after the application of EU Regulation 2016/679, which took place on 25 May 2018;

CONSIDERING, therefore, that the amount of the fine quantified as a minimum of 12,000.00 (twelve thousand) euros must be reduced by the amount of 60.00 (sixty) euros paid by the party and that therefore the amount of the pecuniary fine must be quantified in the minimum amount of Euro 11,940.00 (eleven thousand, nine hundred and forty);

CONSIDERED, therefore, of having to determine, pursuant to art. 11 of the law of 24 November 1981, n. 689, the amount of the pecuniary sanction, based on the aforementioned elements evaluated as a whole, in the amount of Euro 11,940.00 (eleven thousand, nine hundred and forty);

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 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. Antonello Soro;

ORDER

in XX, born in XX (XX) on XX, Tax Code XX, as owner of the sole proprietorship of the same name, to pay the sum of Euro 11,940.00 (eleven thousand, nine hundred and forty) for the violation indicated in the justification;

ENJOYS

to the same subject to pay the sum of Euro 11,940.00 (eleven thousand nine hundred and forty) 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, prescribing that, within 10 (ten) days from the payment, receipt of the payment must be sent to this Authority, in original or certified copy.

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 February 2019

PRESIDENT

Soro

THE SPEAKER

Soro

THE SECRETARY GENERAL

Busia