

Injunction against Vestas s.r.l. - March 28, 2019

Register of measures

no. 102 of 28 March 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 Guardia di Finanza, Compagnia di Lecce, in execution of the request for information no. 25629/91026 of 3 September 2014, 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"), carried out the investigations referred to in the report of operations carried out on November 5, 2014 against Vestas s.r.l., with registered office in Lecce, Via Assisi n. 1, P.I. 00225650753, from which it emerged that the company processed personal data through a data collection form on its website www.risorgimentoresort.it, through which it was possible to make online reservations. During the investigations, it was verified that the online booking procedure was completed only after the interested party, having read the information pursuant to art. 13 of the Code, had expressed their consent to the processing of personal data, pursuant to art. 23 of the same Code;

CONSIDERING the report n. 1911/97337 of 22 January 2015 with which the aforementioned company, as data controller, was charged with the administrative violation envisaged by art. 162, paragraph 2-bis, of the Code, for having acquired a single and mandatory consent, in relation to the various processing purposes indicated in the information ("for the execution of the obligations deriving from the contracts concluded or from the law, ..., and for market research and direct marketing"), informing you of the right to make a reduced payment pursuant to art. 16 of the law of 24 November 1981, n. 689;

RECORDED from the report, prepared by the Office pursuant to art. 17 of the law of 24 November 1981 n. 689, that the reduced payment does not appear to have been made;

CONSIDERING the written defense dated February 19, 2015, sent pursuant to art. 18 of the law of 24 November 1981, n. 689, with which the party objected that the consent collected on the sidelines of the online booking procedure was not free and

optional, but mandatory, as "the interested party/customer may not proceed with the booking, opting for different solutions (...)" ; where the customer decides to use the online booking procedure, the personal data collected is not used "concretely" for marketing purposes, because, only upon arrival at the hotel and, therefore, in the event of an actual stay, the data personal data of the customer are collected, on paper, "also" for the purpose of sending promotional offers and in any case in a distinct manner based on the various purposes pursued. Furthermore, the party specified how the online booking service had been provided by a highly specialized provider in the sector, a circumstance useful for demonstrating their good faith and their commitment to offer the best customer service in fulfilling their obligations of law;

READ the minutes of the hearing, held on 8 June 2015, pursuant to art. 18 of the law n. 689/1981, during which the party, in addition to reiterating what has already been declared in the defense briefs, underlined their good faith for the purpose of excluding liability, given that both the website and the data collection form, aimed at booking online, had been prepared and created by a company specializing in the sector, on whose expertise he had fully relied. In this regard, during the hearing, the party produced the e-mail with which this third-party company signaled the need to verify and, if necessary, make changes to the contents of the website, in relation to data protection personal data, warning her of the start of assessment activities carried out by the Guardia di Finanza against various hotels. The content of this communication, according to the party, would confirm its non-involvement with the relevant facts and that only the third-party company was concerned with the preparation of the website;

HAVING ACKNOWLEDGED the reiteration of the defense briefs carried out on 13 February 2019, in compliance with the provisions of art. 18, paragraph 4, of Legislative Decree 101/2018, with which the party specified that they had modified the online booking procedure following the notification of the dispute of administrative violation, at the same time requesting the filing of the sanctioning procedure or, alternatively, the reduction of the amount of the fine;

WHEREAS the arguments put forward are not suitable for excluding the liability of the party in relation to the disputed matter. The examination of the documentation acquired during the verification operations allowed us to verify that at the bottom of the data collection form, present on the company's website, there was the information, provided pursuant to art. 13 of the Code, and that consent to the processing of personal data was obtained by placing a flag on the relevant box; this operation is necessary and mandatory for the purpose of completing the reservation. However, considering that the text of the disclosure lists, among the purposes of the processing, "market research and direct marketing" alongside that of the mere execution of

contractual obligations, it should be noted that for the aforementioned purposes the data controller had not prepared the two distinct and specific formulas for acquiring consent, which the interested party must be able to express freely, according to the provisions of art. 23 of the Code ("Consent is validly given only if it is expressed freely and specifically with reference to a clearly identified treatment (...)"). As the Guarantor has already had the opportunity to clarify on other occasions (most recently, provision no. 288 of 22 June 2017, in www.garanteprivacy.it, web doc. No. 6689610), where the purposes indicated in the information are numerous and different from each other (including market research and direct marketing), beyond the circumstance if they are actually carried out by the owner, it is in any case necessary that distinct and specific consents are acquired for each of these. Furthermore, it must be excluded that, in the case in question, the exemption of good faith pursuant to art. 3 of the law is recognizable n. 689/1981, as, contrary to what was believed, the fact that the website was created by a third-party company, expert in the sector, does not exempt the data controller from verifying the accuracy of the data entered, even more so when, as in the case in question, the owner had been warned of the need to verify the correctness and accuracy of the information provided on the website. In fact, the e-mail produced by the party in the context of its own defensive arguments demonstrates that the third-party company was concerned with the preparation of the website exclusively from a technical point of view and not also from a content point of view, the completeness of which was entrusted to the owner of the treatment;

NOTING, therefore, that the company has processed personal data (art. 4 paragraph 1, letter a) and b) of the Code) by failing to acquire specific consent in relation to each purpose pursued pursuant to art. 23 of the Code through the data collection form on the website www.risorgimentoresort.it;

CONSIDERING the art. 162, paragraph 2-bis, of the Code which punishes the violation of the provisions of art. 167, including the art. 23 of the Code, with the administrative sanction of payment of a sum from ten thousand euros to one hundred and twenty thousand euros;

CONSIDERING that, in the present case, the conditions for applying art. 164-bis, paragraph 1, of the Code which provides that if any of the violations referred to in art. 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 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 fine for the violation of art. 162, paragraph 2-bis, of the Code, in conjunction with art. 164-bis, paragraph 1, in the amount of Euro 4,000.00 (four thousand);

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;

SPEAKER Dr. Giovanna Bianchi Clerici;

ORDER

to Vestas s.r.l., with registered office in Lecce, Via Assisi n. 1, P.I. 00225650753, in the person of the pro-tempore legal representative, to pay the sum of 4,000.00 (four thousand) euros as a pecuniary administrative sanction for the violation envisaged by art. 162, paragraph 2-bis, of the Code, in the terms indicated in the justification;

ENJOYS

to the same subject to pay the sum of 4,000.00 (four thousand) euros according to the methods indicated in the attachment, 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 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, 28 March 2019

PRESIDENT

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THE REPORTER

Clerical Whites

THE SECRETARY GENERAL

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