

Order injunction against C.S. GROUP S.p.a. - January 18, 2018

Record of measures

n. 18 of 18 January 2018

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, components and of Dr. Giuseppe Busia, general secretary;

NOTING that the Special Privacy Unit of the Guardia di Finanza, in execution of the request for information from the Guarantor no. 125/102969 of 7 January 2016, formulated pursuant to art. 157 of the legislative decree 30 June 2003 n. 196, containing the Code regarding the protection of personal data (hereinafter "Code"), carried out the investigations, pursuant to art. 13 of law 689/1981, at "C.S. GROUP S.p.a." (hereinafter "the Company"), a company engaged in the economic activity of "rental of cars and light vehicles", with registered office in Livorno (LI), Via dei Pelaghi n. 162, C.F. and P.I. 01769950492, formalized in the report of operations carried out on January 20 and 21, 2016 and aimed at verifying the lawfulness of the processing of personal data carried out by the Company;

GIVEN the documents of the inspection assessment;

CONSIDERING that, on the basis of the declarations made during the inspections, as well as that represented by the Company with a note signed by the CEO on February 1, 2016 and the documentation sent with a note, signed by the latter, on February 3, 2016 - incoming protocol of the Special Privacy Unit n. 0015579/2016 of February 5, 2016 - upon dissolution of the reservations formulated during the inspection, it was found that:

- the Company offers the rental service of electric vehicles without a driver and has been operating on the market since 2015.

It is the parent company of C.S. GROUP, of which the C.S. Milano S.r.l., the C.S. Firenze S.r.l., the C.S. Rome. S.r.l. ;

- the Company collects the personal data of its customers through:

the company website www.sharengo.it through which it is possible to register / register the user, which is mandatory for the use of the service;

the company website www.equomobili.it which, through a service called "The more you need it, the less it costs" offers customized rates compared to the ordinary rate of € 0.28 per minute, based on additional and specific information that the

customer releases if intends to benefit from the discount percentage applicable to the basic rate;

- the ownership of the processing of personal data, pursuant to the combined provisions of articles 4, first paragraph, lett. f) and 28 of the Code, is to be identified with the Company;

- "all electric vehicles in the Group's fleet (...) purchased by the Chinese parent company (...) which is the majority shareholder of" C.S. Group S.p.a. "are equipped with special satellite locators as this set-up is standard from the moment of their production and placing on the market. The aforementioned Chinese company (..) has provided special software that (..) allows at any time to locate the entire fleet of the C.S. Group (..) Furthermore, the software in question allows you to view, in real time, who is using the vehicles or the last users of the same (...)" (Report of operations carried out on January 20, 2016 - p. 4, point 4);

- with reference to the processing of personal data that detect the geographical position of people or objects through an electronic communication network (geolocation), the Company does not appear to have fulfilled the obligation pursuant to the combined provisions of Articles 37, paragraph 1, letter a) and 38, paragraphs 1 and 2, of the Code, having failed to notify the Guarantor before the start of the treatment;

- "the information entered by the user through the website www.equomobili.it is processed by the company system of" C.S. Group S.p.a. "for the calculation of the tariff to be applied" (Minutes of transactions carried out on January 20, 2016 - page 6, point 4); in fact, "collected habits and characteristics of the drivers (...)" a discount percentage is calculated through a calculation algorithm (note of 1 February 2016 sent by the Company to the Special Privacy Unit of the Guardia di Finanza); (this) because the activity that is (...) carried out, for obvious reasons of profit, is to position the vehicles where their use is highest (Report of operations carried out on January 21, 2016 - page 1);

- in the information issued to customers, pursuant to art. 13 of the Code, at the time of registration / registration on the website www.sharengo.it (attachment 12 of the documentation produced by the Company to the Special Privacy Unit of the Guardia di Finanza) it is noted, among other things, that "specifically the processing of data may relate to (...) registration of the customer on the website and / or via the App and creation and subsequent use of the customer's account and profile (...);

- in the Service Regulations for customers using vehicles, present on the website www.sharengo.it, it is stated that "in order to take advantage of concessions or in any case of particular rates, the potential customer is also required to provide data considered optional by the operator (page . 2 of the Regulations) and that "the% discount on nominal rates - and therefore the

actual Personal Tariff Plan - is defined at the time of profiling-registration on www.equomobili.it" (page 11 of the Regulations);

- on the aforementioned website www.equomobili.it, at the beginning of the procedure for the collection of personal data aimed at calculating the personalized rate, by means of an algorithm, an information notice is issued, pursuant to art. 13 of the Code, (attachment no. 15) for which "(...) we inform you that the personal data acquired for profiling on this site are collected and processed .. (...)";

- with reference to the processing of personal data specified above and relating to profiling, the Company does not appear to have fulfilled the obligation pursuant to the combined provisions of Articles 37, paragraph 1, letter d) and 38, paragraphs 1 and 2, of the Code, having failed to make the required notification to the Guarantor;

GIVEN the Minutes of the Special Privacy Unit of the Guardia di Finanza n. 4 of 9 February 2016 with which they were challenged to "C.S. GROUP S.p.a." with registered office in Livorno (LI), Via dei Pelaghi n. 162, C.F. and P.I. 01769950492, in the person of the pro-tempore legal representative, the following administrative violations:

failure to fulfill the obligation referred to in the combined provisions of Articles 37, paragraph 1, letter a) and 38, paragraphs 1 and 2, of the Code for failure to notify the Guarantor (Article 163 of the Code) in relation to the processing of data indicating the geographical position of persons or objects through a communication network electronics;

failure to fulfill the obligation referred to in the combined provisions of Articles 37, paragraph 1, letter d) and 38, paragraphs 1 and 2, of the Code for failure to notify the Guarantor (Article 163 of the Code) in relation to the processing of personal data processed with the aid of electronic tools aimed at defining the profile of the interested party, with reference to the customization of the vehicle rental service rates;

NOTING that the report prepared by the I Section of the Special Privacy Unit of the Guardia di Finanza pursuant to art. 17 of the law of 24 November 1981 n. 689, no reduced payments have been made;

GIVEN the defensive writings dated 28 March 2016, sent pursuant to art. 18 of the law n. 689/1981, with which the legal party, recognizing the failure of the Company to fulfill the obligation to notify the Guarantor pursuant to the combined provisions of Articles 37, paragraph 1, letter a) and 38, paragraphs 1 and 2, of the Code in relation to the processing of data indicating the geographical position of persons or objects via an electronic communication network, instead considered the objection relating to the failure to notify the Guarantor for the Company's deemed performance of profiling activities.

The part represents, in fact, that no profiling activity is carried out through the website www.equomobile.it as no

"categorization" is reached, as indicated by the Guarantor with the provision of March 19, 2015 on online profiling. This is because "no data is collected by the procedure which simply passes the discount percentage offered by Share'ngo (...) to the registration site www.sharengo.it/signup" if the customer signs up. Furthermore, the Company highlights that the data used for the calculation are not permanently associated with the subject who then signs up and are not used to form clusters or groups to which promotional messages are then sent; the www.equomobili.it procedure does not use profiling cookies; the user's email address is kept by www.equomobili.it for only one month, to prevent the procedure for obtaining the discount from being artificially replicated. In consideration of this, the party's attorney also argues that "no information on the processing of data was deemed necessary on this site (www.equomobili.it), because none of that data will be used, with the exception of the discount offered, of the name and email, only if the user proceeds to register (...)" . "What happens on Equomobili.it - which (...) does not constitute" categorization "- is in no way instrumental: to the provision of personalized advertising; to the analysis and monitoring of the behavior of website visitors; to the commercial exploitation of profiles obtained; to the marketing of such profiles " .

READ the minutes of the hearing of 5 September 2016, held pursuant to art. 18 of the law n. 689/1981, with which the party, reaffirming what has already been declared in the defense briefs, with reference to the remark concerning the failure to notify the treatment by profiling pursuant to art. 37 paragraph 1 letter. d) and 38, paragraphs 1 and 2 of the Code, specified the concepts already expressed for which "the data used are not stored so that the discount percentage applied is no longer attributable to the data entered by the interested party who requested it. . Therefore, among other things, the subdivision of the interested parties is not reached and it is not intended to arrive at the unequivocal identification of the individual concerned (which, moreover, is not yet definable as a user), not even for any subsequent commercial and / or marketing";

VERIFIED that the party, on 28 January 2016, in the period between the verification operations and the notification of the complaint report by the Special Privacy Unit of the Guardia di Finanza, notified the Guarantor pursuant to art. 37, paragraph 1, letter a) of the Code in relation to the processing of data indicating the geographical position of people or objects through an electronic communication network (geolocation);

TAKING INTO ACCOUNT the requests of the party, in relation to the two disputed findings, of:

application of the minimum legal sanction further reduced pursuant to art. 164-bis, paragraph 1, of the Code, with reference to the observation referred to in art. 37, paragraph 1, letter a) of the Code relating to the disputed "geolocation", in consideration

of the fulfillment - albeit late - of the aforementioned notification to the Guarantor;

filing of the sanctioning procedure or, in the alternative, application of the minimum legal sanction, further reduced pursuant to art. 164-bis, paragraph 1, of the Code, with reference to the disputed finding referred to in art. 37, paragraph 1, letter d) of the Code relating to the "profiling" activity;

CONSIDERING that the arguments put forward, all aimed at proving the groundlessness of the allegations regarding the recurrence of a profiling activity by the Company, are not suitable for determining the filing of the sanctioning procedure.

In fact, in consideration of the provisions of art. 37 of the Code, for which "the owner notifies the Guarantor of the processing of personal data he intends to proceed with, only if the processing concerns: (...) d) data processed with the aid of electronic tools aimed at defining the profile or personality of the Interested party, or to analyze consumption habits or choices, or to monitor the use of electronic communication services with the exclusion of technically indispensable treatments to provide the same services to users (...)", it is noted that, in the activity carried out by the Company for the calculation of the discount percentage to customers who intend to benefit from it, all the elements suitable to integrate the case described by the standard are used. In fact, it is undeniable that in this case there is: a) a personal data processing activity; b) carried out with the aid of electronic tools; c) aimed at defining the profile or personality or analyzing consumption habits or choices of the interested party.

In fact, although the party's attorney asserted that "no data is collected by the procedure (present on the website www.equomobili.it) which simply passes the discount percentage offered by Share'ngo (...) "in reality, personal data of the interested parties are collected and processed, processed using an algorithm, as evidenced also by the information issued at the beginning of the procedure aimed at calculating the discount percentage for which, as mentioned above," (...) we inform you that the personal data acquired for profiling on this site are collected and processed .. (...) "(attachment no. 15 of the documentation produced by the party); this, moreover, also denies the claims of the legal party regarding the fact that "no information on the processing of data was deemed necessary on this site (www.equomobili.it), because none of those data will be used, with the exception of the discount offered, name and email, only if the user proceeds to register (...)".

As for the alleged non-existence of a customer "categorization" activity by the Company, mentioned in the aforementioned provision of the Guarantor "Guidelines on the processing of personal data for online profiling" of 19 March 2015 (web doc. no. 3881513), it should be noted that the processing, through an algorithm, of personal data other than those necessary to provide

the basic service, substantiates, in itself, a categorization aimed at satisfying specific needs of the user, obviously in view of an economic advantage for the supplier. In fact, according to what is described in the aforementioned Guidelines, "the aforementioned categorization is generally instrumental (...) to the provision of increasingly targeted services tailored to the specific needs of the user", as actually happens in this circumstance.

With reference, then, to what is proposed by the party regarding the fact that the personal data used for the calculation are not permanently associated with the subject, as well as the alleged absence of both the conservation of such personal data and the use of the same to create clusters or groups to whom to send promotional messages, in addition to being in contrast with what emerged during the investigations that led to the contestation of the violation of the failure to notify the Guarantor by the Guardia di Finanza (in particular the obvious, explicit references to an activity of profiling both in the two information notices and in the Service Regulations traceable on the two aforementioned company sites and in the documents of this proceeding), are not supported, with the exception of the illustrated defensive theses, by any concrete element in support.

HEREBY DETECTED that "C.S. GROUP S.p.a." , as data controller pursuant to art. 4, paragraph 1, lett. f), and 28 of the Code, on the basis of the above considerations it appears to have committed the violations referred to in Articles 37, paragraph 1, letters a) and d) and 38 of the Code, for having carried out, respectively, processing of personal data indicating the geographical position of persons or objects through an electronic communication network, as well as processing of personal data with the aid electronic tools aimed at defining the profile of the interested party with reference to the possibility of customizing the rates of the vehicle rental service without having submitted, before the start of the treatments in question, the required notification to the Guarantor;

GIVEN art. 163 of the Code which punishes the violation of the provisions of art. 37, paragraph 1, letter d) and 38, paragraphs 1 and 2, of the same Code, with the administrative sanction of the payment of a sum from twenty thousand to one hundred and twenty thousand 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;

CONSIDERING that, in the case in question:

a) with regard to the aspect of severity 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, also having regard to the concrete methods of use by the company of both geolocation and profiling system;

b) for the purposes of evaluating the work carried out by the agent, it must be noted that the Company, by querying the general register of processing, with reference to the violation of art. 37, paragraph 1, letter a) and 38, paragraphs 1 and 2, of the Code, appears to have submitted the notification to the Guarantor on 28 January 2016;

c) regarding the personality of the author of the violation, the circumstance that the company is not burdened by previous sanctioning procedures must be considered;

d) with regard to the economic conditions of the agent, the elements of the ordinary financial statements for the year 2016 were taken into consideration;

CONSIDERING, therefore, to have to determine, pursuant to art. 11 of the law n. 689/1981, the amount of the pecuniary sanction, on the basis of the aforementioned elements assessed as a whole, in the amount of 20,000.00 (twenty thousand) euros for the violation referred to in art. 163 in relation to arts. 37, paragraph 1, letter a) and 38, paragraphs 1 and 2 with reference to the geolocation of cars, and to the extent of € 40,000.00 (forty thousand) for the violation pursuant to art. 163 in relation to arts. 37, paragraph 1, letter d) and 38, paragraphs 1 and 2, with reference to customer profiling, for a total amount of € 60,000.00 (sixty thousand);

GIVEN the documentation in the deeds;

GIVEN the law n. 689/1981 and subsequent amendments and additions;

GIVEN the observations of the Office made by the Secretary General pursuant to art. 15 of the regulation of the Guarantor n. 1/2000, adopted by resolution of June 28, 2000;

SPEAKER Prof. Licia Califano;

ORDER

to "C.S. GROUP S.p.a." with registered office in Livorno (LI), Via dei Pelaghi n. 162, C.F. and P.I. 01769950492, to pay the sum of € 60,000.00 (sixty thousand) as a pecuniary administrative sanction for the violations indicated in the motivation;

INJUNCES

to the same company to pay the sum of € 60,000.00 (sixty thousand), according to the methods indicated in the annex, within 30 days from the 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 art. 152 of the Code and 10 of Legislative Decree n. 150/2011, against this provision, opposition may be proposed to the ordinary judicial authority, with an appeal filed with the ordinary court of the place where the data controller resides, within thirty days from the date of communication of the provision itself. , or sixty days if the applicant resides abroad.

Rome, January 18, 2018

PRESIDENT

Soro

THE RAPPORTEUR

Califano

THE SECRETARY GENERAL

Busia