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Injunction against Concentrix Cvg Italy s.r.l. - November 26, 2020

Register of measures

no. 235 of 26 November 2020

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by prof. Pasquale Stanzione, president, prof.ssa Ginevra Cerrina Feroni, vice president, dr. Agostino Ghiglia and the lawyer Guido Scorza, components and the cons. Fabio Mattei, general secretary;

HAVING REGARD TO Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (hereinafter, the "Regulation");

HAVING REGARD TO the Code regarding the protection of personal data, containing provisions for the adaptation of the national legal system to Regulation (EU) 2016/679 (legislative decree 30 June 2003, n. 196, as amended by legislative decree 10 August 2018, no. 101, hereinafter the "Code");

GIVEN the report submitted to the Guarantor concerning the processing of personal data carried out by Concentrix Cvg Italy s.r.l.;

HAVING EXAMINED the documentation in the deeds;

HAVING REGARD TO the observations made by the general secretary pursuant to art. 15 of the Guarantor's regulation n. 1/2000;

SPEAKER Dr. Agostino Ghiglia;

WHEREAS

1. Reporting against the company and the preliminary investigation.

1.1. With a report dated 2 August 2019, UILCOM Sardegna complained about alleged violations of the Regulation by Concentrix Cvg Italy s.r.l. (hereinafter, the company), with particular reference to the adoption of a Company Regulation (in force since 17 June 2019 on the basis of what is indicated in point 5 of the same regulation) with which, in order to guarantee the secrecy of the data processed on behalf of customers, the ban on company employees from keeping certain objects and/or clothing as well as "the obligation to keep boxes of medicines and sanitary pads in sight on the desk" would have been

ordered. The Authority has opened an investigation pursuant to art. 144 of the Code.

1.2. The company, in response to the request for elements (note dated 17 September 2019) formulated by the Office, with a note dated 28.10.2019 stated that:

to. the internal regulation was adopted as part of the implementation of an "information security management system" which includes a "clean desk policy" [...] "to ensure that objects such as handbags, large bags, mobile phones or other electronic devices cannot be used to capture personal information for illicit purposes" (see note 10.28.2019, p. 2);

b. "Guidelines have been provided that allow exceptions in cases where drugs or health-related items must be immediately available to the employee during the work shift, in this case they can be kept on the desk […]. However, a process exception has not been implemented that allows the employee to keep such items in a small desk pouch to ensure the privacy of personal and health information" (see cited note, p. 2);

c. following the adoption of the reported policy, a "supervisory committee and guarantor of each policy" was set up with the task of verifying, before the application of the acts containing internal regulations, any conflict "with other policies, with the of law or contract, or [the violation of] the rights and freedoms of others" (see cited note, p. 3);

d. therefore "when the policy in question was introduced in Italy, since the Committee had not yet been created, an exception to the process was not introduced which envisaged the possibility of bringing into the production area [...] a small bag in the which to store medicines or objects relating to the employee's health" (see cited note, p. 3);

And. "starting from 1 November 2019 [...] the worker will be guaranteed, subject to prior notification to Human Resources, of [...] keeping the necessary medicines or sanitary items at his desk, contained in a small bag or case. In this way, the disclosure of any health condition will be prevented and the employee will be guaranteed the protection of his or her privacy" (see cited note, p. 3);

f. "the bag must be large enough to contain the necessary items, but not large enough to contain a mobile phone, or other device that could be used for illicit purposes" (see note cit., p. 3);

g. the new procedure involves carrying out the following steps: "the employee informs Human Resources of a health problem that requires medicines or sanitary items to be placed at their desk [...]"; "HR may request that the company doctor be provided with a medical document indicating why medications must be on hand for the employee"; "once confirmation from the company doctor is received, human resources will document the exception to the policy and send a note to the production department,

in which it will be communicated that the use of a small bag is approved" (see cited note, p 3);

h. with reference to the specification of the date on which the company regulation to be reported became effective, the company declared that "a communication to all employees was sent by e-mail on 20 June 2019. [...] Every single employee duly took note of the policy and has accepted it in writing. [...] The company policy entered into force with individual acceptance" (see cited note, p. 3).

1.3. With a note dated 5 December 2019, the reporting organization sent its counter-arguments with which, among other things, it maintained that: "no worker has received any communication", therefore it is not clear "whether the process that the company says to have implemented November 1 is already operational or not"; "the fact that the workers have signed up to the policy (not all of them have) [...] does not free the company from the responsibilities that it entails to maintain an adequate level of privacy"; the whistleblower also reiterated the unlawful nature of what was established in the company policy, also following the changes announced by the company in the response to the Authority.

1.5. On 20 January 2020, the Office carried out, pursuant to art. 166, paragraph 5, of the Code, the notification to the company of the alleged violations found, with reference to articles 5, par. 1, lit. a) and c), 6, par. 1, lit. b) and c), 9, par. 2, lit. b) of the Regulation. With a note dated February 19, 2020, the company, represented and defended by the lawyer Francesca Rubina Gaudino, declared that:

to. "the internal regulation on the use of lockers adopted in June 2019 [...] does not involve any processing of data relating to health" (see note 2.19.2020, p. 1);

b. based on the policy adopted in June 2019, "nothing prevents the employee from storing medicines in a dark, unlabeled container" (see cited note, p. 1);

c. "in order to avoid any misunderstanding [the company] has changed the policy and clarified that an employee can store medicines on his desk in small opaque plastic containers or in pillboxes without any labels" (see cited note, p 1);

d. workers "are authorized to leave their workstations to take and make use of medicines, medical devices, sanitary towels, wipes and liquids stored in the lockers assigned to them" (see note cit., p. 2);

And. the company "as of February 18, 2020 […] has revised the policy and has […] determined that an operator who uses a medical device larger than a smartphone at their workstation can use a larger bag […] subject to written communication and approval by the local Human Resources Office" (see cited note, p. 2);

f. "the [...] policy, approved in December 2019, indicated the possibility for human resources to ask a doctor for confirmation of the need for operators to keep a drug close at hand"; however the company “never enforced the amended policy [and] has no plans to do so in the future”; the version revised on February 18, 2020 "does not contain any provision that requires the presentation of a medical certificate" (see note cit., p. 3);

g. the latest version of the policy (dated February 18, 2020) is, at present, "in the implementation phase" also in order to take into consideration the observations and decisions of the Authority in the present proceeding; moreover, the company intends to share the latest revisions of the policy with the workers' representatives (see note cited, p. 3);

h. this version of the policy provides that the operator must inform the human resources office in writing if "they intend to use an opaque bag no bigger than a smartphone to store medicines, medical devices and/or sanitary pads, wipes and liquids on the desk of their workstation"; if the worker intends to use a bag larger than a smartphone, he must inform the human resources office of the "approximate size of the bag [...] necessary to store the medical device" and request "authorization for use"; the human resources department “creates and maintains a record of each communication or request to use a bag for the storage of medications, medical and/or sanitary devices, wipes and liquids and, if a larger bag, the approximate size of the latter” (see cited note, p. 4);

the. the company will carry out random inspections on the contents of the bags placed on the desks (see note cited, p. 4);

j. the legal basis of the treatments carried out on the basis of what is established with the internal policy lies in the art. 6, par. 1, lit. f) of the Regulation (legitimate interest) in relation to the purpose of fraud prevention; if the treatments carried out on the basis of the internal policy were qualified by the Authority as treatment of data relating to health, the company "considers this treatment legitimate on the basis of art. 9 (2) (B) GDPR in conjunction with Art. 32 GDPR” (see note cited, p. 5-8).

1.6. On 4.8.2020, during the hearing requested by the party, the company declared that:

- the "locker policy" object of the complaint, "adopted to conform the internal discipline to the directives of the group", was effectively operative from 20 June to 24 July 2019, the date on which it was suspended by the company;

- the new versions of the policy sent to the Authority during the procedure "have not been implemented";

- the permitted work breaks are as follows: a 15-minute break every two hours and a lunch break, as well as the possibility of going to the toilets outside the permitted breaks.

2. The outcome of the investigation and of the procedure for the adoption of corrective and sanctioning measures.

2.1. As a result of the examination of the declarations made to the Authority during the proceeding as well as of the documentation acquired, it appears that the company, as owner, has carried out some operations of processing of personal data referring to employees who are not compliant with the regulations in regarding the protection of personal data, in the terms described below.

Given that, unless the fact constitutes a more serious offence, whoever, in a proceeding before the Guarantor, falsely declares or certifies news or circumstances or produces false deeds or documents is liable pursuant to art. 168 of the Code "False declarations to the Guarantor and interruption of the execution of the duties or the exercise of the powers of the Guarantor", it emerged that the company has adopted an internal regulation (Company regulation - Assignment and use of lockers), applied starting from from 20 June 2019 and whose effectiveness was suspended on 24 July 2019, which, in making "express and full reference to the provisions of Appendix 1.0 ("Employee information Security Responsibilities Policies") and Procedure 1.0 ("Clean desk and Screen saver ")", established that "it is possible to introduce the following objects into the work areas, only if stored according to the following layout", and in particular "at the Desk", the following objects for personal use: "medicines or doctors in use; wet wipes […], absorbent" (see point 4, cited regulation). In this regard, the aforementioned "Appendix 1.0" provides that "Agents are prohibited from bringing personal items (such as bags, backpacks, purses, etc.) in the operational areas of call centers on sites where there are lockers, provided to protect personal items" (see Attachment sent on 30.10.2019).

Therefore, on the basis of the aforementioned internal provisions, the call center operators employed by the company were required to display purely personal objects on the work table, such as medicines, medical aids, sanitary towels, wet wipes, which the worker uses during the work performance even outside the cases in which it is possible to go in advance to the locker assigned to pick up such objects for personal use (in particular outside the permitted breaks of 15 minutes every two hours and during the lunch break). This without the possibility of placing these objects inside cases or in any case small containers in order to remove them from the visibility of others (of colleagues and hierarchical superiors) with the consequent possibility for them to learn, indirectly, personal states or situations or related information state of health unrelated to the content of the work performance and detrimental to the dignity and confidentiality of the employee.

In this regard, it is noted that during the proceeding the company did not provide concrete elements on the basis of which it could ascertain that "in practice" operators were allowed to place the aforementioned objects for personal use inside

containers (as supported in the defense briefs of 2.19.2020 and in the hearing of 8.4.2020). In fact, the same company has repeatedly stated that only after the application of the policy has the possibility been provided (by way of "exception") of keeping the aforementioned objects for personal use in a small bag or case (see previous point 1.2., letters b., c. and d.) and that the draft internal regulations elaborated subsequently (respectively approved in December 2019 and on February 18, 2020 and never applied: see previous point 1.5., letter f. and g.) envisaged a particular authorization procedure relating precisely to the possibility of keeping a small or "larger-sized" container or bag at one's workstation.

Considering that according to the legislation in force, the employer can process the information necessary and pertinent with respect to the management of the employment relationship in accordance with the provisions of the laws, regulations and provisions of the applicable collective agreements and/or of the individual employment contract (see articles 5, paragraph 1, letters a) and c) and 6, paragraph 1, lit. b) and c), Regulation), while the c.d. details may only be processed if “the processing is necessary to fulfill the obligations and exercise the specific rights of the data controller or the data subject in the field of labor law and social security and social protection, to the extent authorized by the law of the Union or of the Member States or by a collective agreement pursuant to the law of the Member States, in the presence of appropriate guarantees for the fundamental rights and interests of the data subject" (see Article 9, paragraph 2, letter b), Regulation), it emerged that the processing being reported was carried out in the absence of any of the aforementioned legitimation criteria. Nor, in this regard, can the internal company regulation be taken into consideration, which does not fall within the category of sources indicated by the law (see articles 6, paragraph 1, letter c) and 88, as well as recital 45 of the Regulation on meaning of "legal obligation"). Nor could the written "acceptance" of the internal regulation, should this expression of will be concretely ascertained, constitute a suitable legal basis for legitimizing the processing of personal data (limited to those other than "particular" data pursuant to art. 9, Regulation (EU) 2016/679), this in the light of the asymmetry between the respective parts of the employment relationship and the consequent, possible, need to ascertain from time to time and in practice the effective freedom of the expressed consent (see provision 12.13.2018, n. 500, in www.garanteprivacy.it, web doc. n. 9068983). As for the company's legitimate interest (see previous point 1.5., letter j.) in relation to the purpose of preventing fraud, it should be noted that this legitimation criterion, which is moreover admissible only for "common" data, can be used after carrying out a comparative test on the non-prevalence in the concrete case of interests or fundamental rights and freedoms of the data subject (see Article 6, paragraph 1, letter f) of the Regulation). It does not appear that this assessment was carried out by the company, given that the internal regulation was

adopted in June 2019 before the body responsible for verifying any conflicts of corporate disciplines with "other policies, with the provisions of law or contracts , or [the violation of] the rights and freedoms of others" (see previous point 1.2., letter c.). Furthermore, in any case, the treatments carried out from 20 June to 24 July 2019 do not comply with the principles of lawfulness and data minimization (see article 5, paragraph 1, letters a) and c), Regulations): the legitimate purpose of preventing possible illicit access to data processed on behalf of clients in the context of the provision of the call center service, in fact, can and must be pursued by refraining from processing personal data of workers, even of a "particular" nature (with reference to drugs and to the medical devices that the interested party needs to have available also during the working performance: see art. 9, paragraph 1, of the Regulation), the submission of which to the knowledge of others involves the elimination of any space of confidentiality and privacy in the workplace, allowing third parties to learn both the state of health and the existence of conditions normally kept confidential by the data subjects in relationship life, with consequent violation ion of the dignity of the person, understood as a "constitutional value that permeates positive law" (see Constitutional Court, 17.7.2000, n.293; see also Constitutional Court, 12.19.1991, n.467; art. 1, Charter of Fundamental Rights of the European Union; art. 1 of the Code; v. also art. 88, par. 2 of the Regulation).

2.2. With reference to the communication and/or authorization procedure relating to the possibility for workers to bring with them to their workstation a case or bag containing objects for strictly personal use - including medicines, medical devices and sanitary towels - having acknowledged that, based on what was declared by the company during the proceedings, this procedure, where it provided for the issue of a certificate by the competent doctor, has never been applied nor does the scheme currently being developed provide for the involvement of the doctor, it is prescribed the company to bring the processing of personal data connected to this procedure (including the proposed record keeping: see point 1.5., letter h. above) into line with the general principles of lawfulness and minimization, so as to prevent the processing (therein including registration) of specific information relating to the objects to be placed in the containers (save the possibility of carrying out and subsequent controls, as declared to the company, within the limits established by the applicable sector regulations).

3. Conclusions: illegality of the treatment. Corrective measures pursuant to art. 58, par. 2, Regulation.

For the aforementioned reasons, the processing of personal data referring to operators working at the call center, carried out by the company on the basis of the provisions of the company regulation applied in the period between 20 June and 24 July 2019, is unlawful, in the terms on exposed, in relation to the articles 5, par. 1, lit. a) and c), 6, par. 1, lit. b) and c) and 9, par. 1,

lit. b) of the Regulation.

Therefore, given the corrective powers attributed by art. 58, par. 2 of the Regulation, in the light of the circumstances of the specific case:

- the company is ordered to bring the processing carried out with the company regulation relating to the "locker policy", currently under development, into compliance with the principles of lawfulness and minimization provided for by the Regulation, preventing the processing of specific information relating to objects for strictly personal use that the operators ask to be able to place them in cases or bags at their workstations;

- in addition to the corrective measure, a pecuniary administrative sanction is ordered pursuant to art. 83 of the Regulation, commensurate with the circumstances of the specific case (Article 58, paragraph 2, letter i) of the Regulation).

4. Injunction order.

Pursuant to art. 58, par. 2, lit. i) of the Regulation and of the art. 166, paragraphs 3 and 7 of the Code, the Guarantor orders the application of the pecuniary administrative sanction provided for by art. 83, par. 5, letter. a) of the Regulation, through the adoption of an injunction order (art. 18, l. 11.24.1981, n. 689), in relation to the processing of personal data of the operators in service at the call center carried out by the company on the basis of what envisaged by the company regulation applied in the period between 20 June and 24 July 2019, the illegality of which was ascertained, in the terms set out above, in relation to articles 5, par. 1, lit. a) and c), 6, par. 1, lit. b) and c) and 9, par. 1, lit. b) of the Regulation, following the outcome of the procedure pursuant to art. 166, paragraph 5 carried out jointly with the data controller (see previous points 1.5. and 1.6.).

Considering it necessary to apply paragraph 3 of the art. 83 of the Regulation where it provides that "If, in relation to the same treatment or related treatments, a data controller [...] violates, with willful misconduct or negligence, various provisions of this regulation, the total amount of the pecuniary administrative sanction does not exceed amount specified for the most serious violation", considering that the ascertained violations of art. 5 of the Regulation are to be considered more serious, as they relate to the non-compliance with a plurality of principles of a general nature applicable to the processing of personal data, the total amount of the fine is calculated so as not to exceed the maximum prescribed for the aforementioned violation .

Consequently, the sanction provided for by art. 83, par. 5, letter. a), of the Regulation, which sets the statutory maximum in the sum of 20 million euros or, for companies, in 4% of the annual worldwide turnover of the previous year, if higher.

With reference to the elements listed by art. 83, par. 2 of the Regulation for the purposes of applying the pecuniary

administrative sanction and the relative quantification, taking into account that the sanction must "in any case [be] effective, proportionate and dissuasive" (art. 83, paragraph 1 of the Regulation), it is represented that In the present case, the following circumstances were considered:

a) in relation to the nature, gravity and duration of the violation, the nature of the violation was considered significant, which concerned the general principles of processing in relation to a significant number of data subjects (based on the company's surveys, the company has 253 employees at the date of the 30.9.2019); the violations also concerned the conditions of lawfulness of the processing (more specific provisions regarding processing in the context of employment relationships);

b) with reference to the intentional or negligent nature of the violation and the degree of responsibility of the owner, the negligent conduct of the company and the degree of responsibility of the same was taken into consideration which did not comply with the data protection regulations in relation to a plurality of provisions;

c) the company has fully and actively cooperated with the Authority during the proceeding;

f) the absence of specific precedents (relating to the same type of treatment) against the company.

It is also believed that they assume relevance in the present case, taking into account the aforementioned principles of effectiveness, proportionality and dissuasiveness with which the Authority must comply in determining the amount of the fine (Article 83, paragraph 1, of the Regulation), in firstly the economic conditions of the offender, determined on the basis of the revenues achieved by the company with reference to the financial statements for the year 2019.

In the light of the elements indicated above and the assessments made, it is believed, in the present case, to apply against Concentrix Cvg Italy s.r.l. the administrative sanction of the payment of a sum equal to 20,000.00 (twenty thousand) euros.

In this context, it is also considered, in consideration of the type of violations ascertained that concerned the conditions of lawfulness of the processing, that pursuant to art. 166, paragraph 7, of the Code and of the art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019, this provision must be published on the Guarantor's website.

It is also believed that the conditions pursuant to art. 17 of Regulation no. 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

Please note that in the event of non-compliance with an order of the Authority, the sanction referred to in art. 83, par. 5, letter. e) of the Regulation.

ALL THAT BEING CONSIDERED, THE GUARANTOR

detects the illegality of the processing carried out by Concentrix Cvg Italy s.r.l. in the person of the legal representative, with registered office in Cagliari, Strada Statale 195 – Km 2300 snc, Tax Code 11414850153, pursuant to art. 144 of the Code, for the violation of the articles 5, par. 1, lit. a) and c), 6, par. 1, lit. b) and c) and 9, par. 1, lit. b) of the Regulation;

ENJOYS

pursuant to art. 58, par. 2, lit. d) Regulation to Concentrix Cvg Italy s.r.l. to bring the treatments carried out into compliance with the company regulation being drafted in relation to the definition of the "locker policy" with the Regulation, within 60 days of receipt of this provision;

ORDER

pursuant to art. 58, par. 2, lit. i) of the Regulations to Concentrix Cvg Italy s.r.l. to pay the sum of 20,000.00 (twenty thousand) euros as an administrative fine for the violations indicated in this provision;

ENJOYS

also to the same Company to pay the aforementioned sum of Euro 20,000.00 (twenty thousand), according to the methods indicated in the attachment, within 30 days of notification of this provision, under penalty of adopting the consequent executive deeds pursuant to art. 27 of the law n. 689/1981. It should be remembered that the offender retains the right to settle the dispute by paying - always according to the methods indicated in the attachment - an amount equal to half of the fine imposed, within the term set out in art. 10, paragraph 3, of Legislative Decree lgs. no. 150 of 1.9.2011 envisaged for the lodging of the appeal as indicated below (art. 166, paragraph 8, of the Code);

HAS

the publication of this provision on the Guarantor's website pursuant to art. 166, paragraph 7, of the Code and of the art. 16, paragraph 1, of the Guarantor Regulation n. 1/20129, and believes that the conditions pursuant to art. 17 of Regulation no. 1/2019.

Request to Concentrix Cvg Italy s.r.l. to communicate which initiatives have been undertaken in order to implement the provisions of this provision and in any case to provide adequately documented feedback pursuant to art. 157 of the Code, within 90 days from the date of notification of this provision; any failure to reply may result in the application of the administrative sanction provided for by art. 83, par. 5, letter. e) of the Regulation.

Pursuant to art. 78 of the Regulation, as well as articles 152 of the Code and 10 of Legislative Decree no. 150/2011, opposition

to the ordinary judicial authority may be lodged against this provision, with an appeal lodged with the ordinary court of the place identified in the same art. 10, within the term of thirty days from the date of communication of the measure itself, or sixty days if the appellant resides abroad.

Rome, November 26, 2020

PRESIDENT

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THE SPEAKER

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THE SECRETARY GENERAL

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