

Order injunction against Car2Go Italia s.r.l. - February 1, 2018

Record of measures

n. 55 of 1 February 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 Guardia di Finanza, Special Privacy Unit, with minutes no. 19/2016 of 2 March 2016 (notified on 29 March 2016), which must be understood as fully reported here, challenged the company Car2Go Italia s.r.l. (hereinafter "Car2Go"), in the person of the pro-tempore legal representative, with registered office in Milan, via Manfredo Camperio n. 14, C.F.

07941590965, the violation provided for by art. 33 and 162, paragraph 2-bis, of the Personal Data Protection Code (Legislative Decree no. 196 of 30 June 2003, hereinafter referred to as the "Code");

DATE, in summary, of what is reported in the acts of the sanctioning procedure initiated with the aforementioned dispute:

- the Guardia di Finanza, Special Privacy Unit, carried out an inspection of Car2Go, on 26 and 27 January 2016, at the company's operating offices in Milan, in order to ascertain the regular observance of the provisions on protection of personal data, with particular reference to the treatments carried out using geolocation systems;
- during the investigation it emerged that the company processes personal data of customers, as part of the provision of the car sharing service, with the aid of electronic tools and also in paper form;
- the company has not designated the employees who process personal data as data processors pursuant to art. 30 of the Code;
- the results of the investigation were notified to the Public Prosecutor's Office at the Court of Milan, with an annotation by the Judicial Police drawn up pursuant to art. 357 of the Italian Criminal Code, in relation to the offense referred to in art. 169 of the Code, filed on March 31, 2016;
- with a note dated 22 June 2016, the P.M. of Milan, dr. Cristian Barilli, requested the Guarantor to initiate the special prescription procedure provided for by art. 169, paragraph 2, of the Code;
- the procedure started on 5 September 2016 with the adoption by the Guarantor of a provision against the legal representative

of the company, with which the same was required to designate the Car2Go operators as persons in charge of the processing pursuant to Art. 30 of the Code and the timely implementation of the measures envisaged by rules nos. 1-10 (computer authentication), 12-14 (adoption of an authorization system), 15 (drafting of the list of appointees) and 27-29 (common, sensitive and judicial data contained in paper media) of the technical specification referred to in Annex B) of the Code;

- the procedure ended on May 5, 2017, with the note that the Guarantor's Office addressed to the Public Prosecutor's Office at the Court of Milan, in which it was acknowledged the timely fulfillment by the company of the prescriptions given;

NOTING that with the aforementioned deed of 2 March 2016, Car2Go was challenged, pursuant to art. 162, paragraph 2-bis, of the Code, the violation of art. 33, for failing to adopt the minimum security measures referred to in the following articles. 34 and 35;

NOTING that a reduced payment is excluded for the aforementioned violation;

NOTING also that the company has not presented defensive writings or requested to be heard by the Authority, as required by art. 18 of the law n. 689/1981;

CONSIDERING that the documentation present in the documents can only confirm the responsibility of the company in relation to the alleged violation since it is ascertained that the company has not designated in writing the persons in charge of the processing pursuant to art. 30 of the Code, thereby determining the failure to apply that part of the minimum security measures that the Code leads back to the activity of the persons in charge of the processing itself. In this regard, it should be emphasized that the failure to designate the persons in charge of the processing does not constitute a mere formal breach, but is configured as an indispensable prerequisite for the application of the most significant part of the security measures to be adopted for the processing of personal data and is strictly correlated to the activity of the persons in charge of the processing (or of those who ordinarily operate on personal data), aiming to provide them with the instructions to follow for the correct processing of the data; for these reasons, the failure to designate the persons in charge in writing, pursuant to art. 30, determines the failure to apply all those minimum security measures, as per art. 33 and following, which the technical specification (attachment B) of the Code) leads back to the activity of the persons in charge of the processing itself (rules nr. 1-10; 12-14; 15 and 27-29 of attachment B) and therefore involves , the application of the sanction pursuant to art. 162, paragraph 2-bis, of the Code;

NOTING, therefore, that Car2Go, on the basis of the above considerations, appears to have committed the violation envisaged

by art. 162, paragraph 2-bis, of the Code, for failing to adopt the minimum security measures referred to in Articles 33 et seq .;

GIVEN art. 162, paragraph 2-bis, of the Code, where it is established that "in the event of the processing of personal data carried out in violation of the measures indicated in Article 33 [...], the administrative sanction of the payment of a sum from € 10,000 to € 120,000 ";

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 gravity 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;

b) for the purposes of evaluating the work carried out by the agent, it must be considered in favorable terms that the company has promptly fulfilled the statute of limitations of 5 September 2016, appointing the persons in charge of processing and implementing the related minimum security measures;

c) with regard to the personality of the perpetrator of the violation, the circumstance that another dispute of administrative violation arises against the company, ascertained during the same inspection activity of 26 and 27 January 2016, defined with reduced payment;

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

CONSIDERING, therefore, to have to determine, pursuant to art. 11 of Law no. 689/1981, the amount of the pecuniary sanction, based on the aforementioned elements assessed as a whole, in the amount of 20,000.00 (twenty thousand) euros;

HAVING REGARD to the documentation on file;

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 Car2Go Italia s.r.l., in the person of the pro-tempore legal representative, with registered office in Milan, via Manfredo

Camperio n. 14, C.F. 07941590965, to pay the sum of € 20,000.00 (twenty thousand) as a pecuniary administrative sanction for the violation indicated in the motivation;

INJUNCES

to the same company to pay the sum of € 20,000.00 (twenty 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, 1st February 2018

PRESIDENT

Soro

THE RAPPORTEUR

Califano

THE SECRETARY GENERAL

Busia