

[doc. web no. 9842715]

Injunction order - November 24, 2022

Register of measures

no. 392 of 24 November 2022

## 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, n. 101, hereinafter "Code");

GIVEN the report presented on 1 July 2020 by the Turin Territorial Labor Inspectorate against Dello Russo Giulio sole proprietorship;

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 the lawyer Guido Scorza;

## WHEREAS

1. The report against the Company and the outcome of the inspections.

With a report dated 1 July 2020, the Turin Territorial Labor Inspectorate represented to the Authority that, during an inspection carried out on 22 January 2020 at the premises where the activity of the sole proprietorship Dello Russo Giulio ( hereinafter, the Company), a "seal system with biometric fingerprinting [...] used to record staff attendance" was found.

The Authority, with a note dated 10 August 2020, sent by certified e-mail, invited the data controller to provide feedback on the facts reported and, on 5 January 2021, sent the note again, pursuant to art. 157 of the Code, given the absence of a response from the Company.

On 29 April 2021, as no reply was received, the Authority again invited the data controller to provide feedback within 30 days following receipt of the same.

Since no response was received in this case as well, the Authority delegated the special privacy and technological fraud unit of the Guardia di Finanza to notify the act of initiation of the sanctioning procedure, pursuant to art. 166, paragraph 5, of the Code, in relation to the alleged violation of the same art. 166, paragraph 2 (where it establishes that the violation of article 157 of the Code is subject to the application of the administrative sanction pursuant to article 83, paragraph 5, of the Regulation). The Unit was also delegated to acquire the information already requested in relation to the facts being reported.

On 23 and 24 November 2021, the inspections were carried out at the Company's legal and operational headquarters, during which, in addition to the notification of the deed of initiation of the sanctioning procedure for the violation of art. 166, paragraph 2 of the Code, the following statements were recorded in the minutes:

a. the Pec referring to the sole proprietorship is managed by the owner and his son; "in relation to the communications sent by the Guarantor [it should be noted that] the one dated 08.10.2020 has not been opened and therefore not read, while the other two dated 01.05.2021 and 04.29.2021 have probably been read by my son who told me [...] then I didn't give results due to forgetfulness and health problems that kept me away from the workplace" (see report 23/11/2021, p. 3);

b. by accessing the certified e-mail, a copy of the "screenshots showing the three certified e-mails sent [...] by the Guarantor for the protection of personal data and [...] to date there are no other communications sent [...] by the aforementioned Authority" ( see report cited, p. 3).

With a note sent on 24 December 2021, containing the defense brief, the Company also declared that the failure to respond to the Authority's requests for information "was not [o] dictated [o] by the lack of will to cooperate with the Authority itself (as attested by the minutes of the Guardia di Finanza and this defensive note), but by an involuntary oversight caused by the state of health of the owner and by his scarce presence in the company, which did not allow him to exercise his duties to the fullest power of direction and control".

## 2. The outcome of the investigation.

With reference to the facts reported, no elements proving the alleged violation were found during the investigation.

However, it has been ascertained that the Company has failed to respond to the requests for information addressed by the Authority, in particular to the invitation of 10 August 2020, to the request formulated pursuant to art. 157 of the Code sent on 5

January 2021 (containing the express notice that "in the event of non-compliance with this request, the pecuniary administrative sanction provided for by art. 166, paragraph 2 of the Code must be applied") and the subsequent reminder dated 29 April 2021, despite all three communications from the Guarantor's offices having been duly notified and, based on what was declared by the Company itself, two of these were also viewed (even if the data controller did not provide feedback " due to forgetfulness and health problems).

Based on the aforementioned article 157 of the Code "Within the scope of the powers referred to in article 58 of the Regulation, and for the performance of its duties, the Guarantor may request the holder, [...] to provide information and produce documents" . The art. 166, paragraph 2, of the Code establishes that the violation of art. 157 of the Code is subject to the administrative sanction pursuant to art.83, par. 5, of the Regulation.

The omitted response by the Company to the Guarantor's request for information therefore occurred in violation of art. 157 of the Code in relation to the provisions of art. 166, paragraph 2, of the Code, with consequent application of the administrative sanction pursuant to art.83, par. 5, of the Regulation.

3. Corrective measures pursuant to art. 58, par. 2, Regulation.

The Authority believes that the declarations and reconstructions provided by the data controller during the preliminary investigation do not allow the findings notified by the Office to be overcome with the deed of initiation of the procedure and that they are therefore unsuitable to allow the filing of this proceeding, since none of the cases envisaged by art. 11 of the Regulation of the Guarantor n. 1/2019.

Failure to respond to the request for information, addressed several times to the Company, in fact constitutes an illegal conduct due to violation of art. 157 (request for information and presentation of documents) in relation to art. 166, paragraph 2, of the Code. The violation ascertained in the terms set out in the reasoning cannot be considered "minor", taking into account the nature, gravity and duration of the violation itself, the degree of responsibility and the manner in which the supervisory authority became aware of the violation (cons. 148 of the Regulation).

Therefore, given the corrective powers attributed by art. 58, par. 2 of the Regulation, the application of a pecuniary administrative sanction 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. Adoption of the injunction order for the application of the pecuniary administrative sanction and accessory sanctions (articles

58, paragraph 2, letter i), and 83 of the Regulation; art. 166, paragraph 7, of the Code).

At the end of the proceeding it appears that the sole proprietorship Dello Russo Giulio has violated the art. 157 in relation to the art. 166, paragraph 2, of the Code.

For the violation of the aforementioned provision, the application of the pecuniary administrative sanction provided for by art. 83, par. 5, of the Regulation, through the adoption of an injunction order (art. 18, law 24.11.1981, n. 689).

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" (Article 83, paragraph 1 of the Regulation), it is represented that In the present case, the following circumstances were considered:

- a) with reference to the intentional or negligent nature of the violation and the degree of responsibility of the owner, the conduct of the Company and the degree of responsibility of the same was taken into consideration which, despite having received three requests to provide information relating to a report received by the Authority, duly received on their certified e-mail account, and despite having learned the content in relation to two of them, clearly indicated right from the subject of the communications sent, did not deem it necessary to provide any reply to the Authority;
- b) with reference to the degree of cooperation with the Supervisory Authority, the failure to respond to three separate requests for information was considered, to the detriment of the Company, a conduct that aggravated the procedure and hindered the performance of the duties of the Authority, making it necessary to delegate the performance of an on-site inspection to the special unit for the protection of privacy and technological fraud of the Guardia di Finanza;
- c) the absence of specific precedents was taken into account in favor of the Company.

It is also believed that the circumstance that the data controller is an individual company. Lastly, the extent of the sanctions imposed in similar cases is taken into account.

In the light of the elements indicated above and the assessments made, it is believed, in the present case, to apply the administrative sanction of payment of a sum equal to 1,000 (one thousand) euros against the sole proprietorship Dello Russo Giulio. In this context, it is also considered, in consideration of the type of violations ascertained that concerned the obligation to check requests for information and to exhibit documents by the Guarantor, which pursuant to art. 166, paragraph 7, of the Code and of the art. 16, paragraph 1, of the Guarantor's Regulation n. 1/2019, this provision must be published on the

Guarantor's website. Finally, it is believed that the conditions set forth in art. 17 of Regulation no. 1/2019.

ALL THAT BEING CONSIDERED, THE GUARANTOR

notes the unlawfulness of the processing carried out by the sole proprietorship Dello Russo Giulio, in the person of the owner of the company, with registered office in Via dei Prati, 25, Pianezza (TO), Tax Code XX, pursuant to art. 143 of the Code, for the violation of the articles the art. 157 of the Code;

ORDER

pursuant to art. 58, par. 2, lit. i) of the Regulations to Dello Russo Giulio to pay the sum of 1,000 (one thousand) euros as an administrative fine for the violations indicated in this provision;

ENJOYS

then to the same Company to pay the aforementioned sum of 1,000 (one thousand) euros, 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 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 referred to in art. 10, paragraph 3, of Legislative Decree lgs. no. 150 of 09.01.2011 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's Regulation n. 1/20129, and believes that the conditions pursuant to art. 17 of Regulation no. 1/2019.

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, 24 November 2022

PRESIDENT

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THE SPEAKER

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THE SECRETARY GENERAL

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