

Injunction against Sophisticated Luxury Flats s.r.l. - September 15, 2022

Register of measures

no. 301 of 15 September 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");

HAVING REGARD to the report filed on 17 December 2019 against Sophisticated Luxury Flats 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 Prof. Geneva Cerrina Feroni;

## WHEREAS

1. Reporting to the Company and the inspections at the company's registered office.

With a report dated 17 December 2019, an employee of the Royal Palace hotel in Rome, managed by Sophisticated Luxury Flats s.r.l. (hereinafter, the Company), complained about alleged violations of current legislation with reference, as far as the Authority is concerned, to the use of a biometric device for the purpose of detecting presence in service.

The Authority launched an investigation into the case on 10 August 2020 (prot. 30317/145487), with an invitation to the Company to provide feedback on the fact being reported. Since no response was received, despite the request being duly delivered to the company's certified email address, on 5 January 2021 the Office renewed the invitation, pursuant to art. 157 of the Code, to provide the information already requested (prot. 504.05/01/2021).

Since no response was received from the Company also to this further request (which turned out to be duly delivered), after a further reminder sent on 29 April 2021 (prot. 23845/145487), the Authority has delegated the Special Nucleus for the protection of privacy and technological frauds by the Guardia di Finanza carrying out an inspection in order to acquire the information already requested and notify the Company of the initiation of the sanctioning procedure, pursuant to art. 166, paragraph 5, of the Code for failure to reply to the Authority's request for information (initiation of the sanctioning procedure no. 49240 of 10/1/2021).

The inspection took place on 27 October 2021 at the registered office of the Company whose legal representative stated that: to. "In your presence, I checked the company's certified e-mail address and found the notes from the Guarantor Authority sent over time. I honestly did not understand the meaning of the notes received and therefore I was unaware of the fact that I had to answer to the Guarantor" (inspection report 20/10/2021, p. 2);

b. the device being reported "has not been active since January or February 2020. If I remember correctly, between July and September 2018, for practical reasons [...] I purchased a device online, called an "employee presence detector", through which it was possible to acquire the start and end times of employees by releasing their digital fingerprint" (report cit., p. 2-3);

c. "Through that device, which now I can't even say what happened to it, I think it was thrown away because it is no longer functional, I had the possibility of detecting attendance and entry and exit times of employees, which were reported to my accountant at the end of the month for the calculations due" (report cit., p. 3);

d. "I have no documentary evidence that can lead us back to the model of appliance used" (report cit., p. 4);

And. "I tried to look for the appliance in question or the related documentation, but I couldn't find anything" (report cit., p. 5).

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

With reference to the facts reported, no objective elements emerged from the investigation that would allow the Authority to be able to express itself.

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 2 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, on the basis

of what was declared by the Company, also viewed (nevertheless the data controller would not have understood that these communications - concerning, respectively, a " Invitation to provide feedback", the "Request for information pursuant to Article 157 of Legislative Decree 196/2003" and the "Request for information pursuant to Article 157 of Legislative Decree 196/2003" - required the reply).

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 failure of the Company to respond 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 Sophisticated Luxury Flats s.r.l. 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 controller, the conduct of the Company and the degree of responsibility of the same were taken into consideration which, despite having received three requests to provide information relating to a report received from the 'Authority, duly received on their certified e-mail account, and despite having learned the content, 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 Authority's duties, making it necessary to delegate the carrying out 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 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 earned by the company with reference to the ordinary financial statements for the year 2015 (latest available). Lastly, the extent of the sanctions imposed in similar cases is taken into account. As a further mitigating factor in favor of the Company, account was taken of the particular conditions in which the companies in the sector in which the company operates (accommodation businesses) found themselves operating due to the health emergency in the reference period.

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 2,000 (two thousand) euros against Sophisticated Luxury Flats s.r.l..

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 Sophisticated Luxury Flats s.r.l., in the person of its legal representative, with registered office in Via delle Carrozze, 34/36, Rome (RM), P.I. 09500051009, pursuant to art. 143 of the Code, for the violation of the art. 157 of the Code;

ORDER

pursuant to art. 58, par. 2, lit. i) of the Regulations to Sophisticated Luxury Flats s.r.l., to pay the sum of 2,000 (two thousand) euros as an administrative fine for the violation indicated in this provision;

ENJOYS

then to the same Company to pay the aforementioned sum of 2,000 (two 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 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 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, 15 September 2022

PRESIDENT

station

THE SPEAKER

Cerrina Feroini

THE SECRETARY GENERAL

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