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Order injunction against Anfiteatro Flavio s.r.l. - October 28, 2021

Record of measures

n. 386 of 28 October 2021

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

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

GIVEN the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (hereinafter the "Regulation");

GIVEN the legislative decree 30 June 2003, n. 196 (Code regarding the protection of personal data, hereinafter the "Code") as amended by Legislative Decree 10 August 2018, n. 101 on "Provisions for the adaptation of national legislation to the provisions of Regulation (EU) 2016/679";

GIVEN the assessment report drawn up by the Rome Police Headquarters on 2/10/2020 at the activities called "Hotel Clarin" and "Morpheus Room" located in Rome, Via Palermo n. 36, both managed by the company Anfiteatro Flavio s.r.l., with which the presence of an active and functioning video surveillance system was ascertained, for which the information pursuant to art. 13 of the Regulations;

EXAMINED the documentation in deeds;

HAVING REGARD to the observations made by the Secretary General pursuant to art. 15 of the regulation of the Guarantor n. 1/2000;

SPEAKER Attorney Guido Scorza;

WHEREAS

1. The assessment by the Rome Police Headquarters.

With a note received on 25 November 2019, the Rome Police Headquarters, Administrative and Social Police Division, sent this Authority a copy of the report concerning the administrative control, carried out by the same, on 12 November 2019, at the activities called "Hotel Calrin" and "Morpheus Room", located in Rome, via Palermo 36.

During the investigation, the presence of an active and functioning video surveillance system was ascertained, with respect to

which the information pursuant to art. 13 of the Regulation.

In order to acquire more elements of assessment in relation to any violations of the regulations on the protection of personal data, he invited the Rome Police Headquarters to proceed with an integration of what was communicated with the minutes of November 12, 2019.

With a note dated 2 October 2020, an assessment report was sent, drawn up on the same date, which showed that Anfiteatro Flavio s.r.l., as data controller, was processing personal data by means of a video surveillance system, installed at the "Hotel Clarin" accommodation facility, in front of which "there was no presence of suitable information signs on site".

With a note dated 9 December 2020 (prot. Prot. N. 47060), the Office, on the basis of the investigations carried out in the aforementioned minutes of 2 October 2020, notified Anfiteatro Flavio s.r.l., VAT no. 09814301009, the initiation of the procedure for the adoption of the measures referred to in Articles 58, par. 2, and 83 of the Regulations, in accordance with the provisions of art. 166, paragraph 5, of the Code, in relation to the violation of art. 13 of the Regulation.

The company, despite having been informed by the Office, with the aforementioned note of 9 December 2020, of the possibility of producing defensive writings or documents in relation to the sanctioning procedure against it, did not send any documentation in this regard.

## 2. The legal framework of the processing carried out

The use of video surveillance systems may result in the processing of personal data in relation to the positioning of the cameras and the quality of the images recorded. This treatment must be carried out in compliance with the general principles contained in art. 5 of the Regulation and, in particular, of the principle of transparency which presupposes that "interested parties must always be informed that they are about to enter a video surveillance area".

For this purpose, therefore, the data controller must affix suitable information signs according to the indications contained in point 3.1. of the provision on video surveillance - April 8, 2010 [1712680] (in this sense also the Faq on video surveillance, published on the Authority's website).

Similarly, the Guidelines no. 3/2019 of the European Data Protection Committee on the processing of personal data through video devices, point 7) specify that "With regard to video surveillance, the most important information must be indicated [by the owner] on the warning sign itself (first level), while the additional mandatory details can be provided by other means (second level). The guidelines also provide that "This information may be provided in combination with an icon to give, in a clearly

visible, intelligible and clearly legible way, an overview of the envisaged processing (Article 12, paragraph 7, of the GDPR) .

The format of the information will have to adapt to the various locations ". The information should be positioned in such a way as to allow the data subject to easily recognize the circumstances of the surveillance, before entering the monitored area (approximately at eye level) "to allow the data subject to estimate which area is covered by a camera in so as to avoid surveillance or adapt one's behavior, where necessary ".

### 3. The outcome of the investigation and the sanctioning procedure.

On the basis of the assessment report drawn up by the Rome Police Headquarters, Administrative and Social Division, it emerged that the video surveillance system, installed at the "Hotel Clarin" accommodation facility, located in Rome, via Palermo 36, managed by the company Anfiteatro Flavio s.r.l. , the data controller, was up and running, and that the company had not prepared, being required, suitable information, pursuant to art. 13 of the Regulation, to inform interested parties on the processing of their data, not taking into account the indications contained in the guidance documents listed above.

It is therefore proven in documents that the company has carried out a processing of personal data, by means of a video surveillance system, in the absence of the required information. This conduct is in contrast with the provisions of art. 13 of the Regulation, according to which the data controller is required to provide the data subject with all information relating to the essential characteristics of the processing.

### 4. Order of injunction.

The Guarantor, pursuant to art. 58, par. 2, lett. i) of the Regulations and art. 166 of the Code, has the power to impose a pecuniary administrative sanction provided for by art. 83, par. 5, of the Regulation, through the adoption of an injunction order (Article 18. Law of 24 November 1981 n. 689), in relation to the processing of personal data carried out by the company through the video surveillance system, in the absence of the information referred to in art. 13 of the Regulation.

With reference to the elements listed in art. 83, par. 2, of the Regulations for the purposes of applying the pecuniary administrative sanction and its quantification, taking into account that the sanction must be "in each individual case effective, proportionate and dissuasive" (Article 83, par. 1 of the Regulations), that, in the present case, the following circumstances were taken into consideration:

with regard to the nature, severity and duration of the violation, the conduct of the data controller was taken into consideration, as well as the responsibility related to the non-fulfillment of the obligation to disclose the information to the interested parties;

the absence of specific precedents against the company relating to violations of the regulations on the protection of personal data;

the circumstance that the company has not cooperated with the Authority during the procedure nor has it shown that it has fulfilled its legal obligation.

Due to the aforementioned elements, assessed as a whole, it is believed to determine the amount of the financial penalty in the amount of € 2,000.00 (two thousand) for the violation of art. 13 of the Regulation.

In this context, also in consideration of the type of violation ascertained, it is believed that, pursuant to art. 166, paragraph 7, of the Code and art. 16, paragraph 1, of the regulation of the Guarantor n. 1/2019, this provision should be published on the Guarantor's website.

Finally, it is noted that the conditions set out in art. 17 of regulation no. 1/2019 concerning internal procedures with external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

WHEREAS, THE GUARANTOR

declares, pursuant to art. 57, par. 1, lett. f) and 83 of the Regulations, the unlawfulness of the processing carried out by Anfiteatro Flavio s.r.l. through the use of the video surveillance system installed at the accommodation facility called "Hotel Clarin" located in Rome, Via Palermo 36, in the terms set out in the motivation, for the violation of art. 13 of the Regulations;

ORDER

at Anfiteatro Flavio s.r.l., P.I. 09814301009, to pay the sum of € 2,000.00 (two thousand) as a pecuniary administrative sanction for the violation indicated in the motivation;

INJUNCES

then to the same Company to pay the sum of 2,000.00 (two thousand) euros, according to the methods indicated in the annex, within 30 days of notification of this provision, under penalty of the adoption of the consequent executive acts pursuant to art. 27 of the law n. 689/1981. It is represented that pursuant to art. 166, paragraph 8 of the Code, the offender has the right to settle the dispute by paying - again in the manner indicated in the annex - of an amount equal to half of the sanction imposed within the term referred to in art. 10, paragraph 3, of d. lgs. n. 150 of 1 September 2011 envisaged for the submission of the appeal as indicated below.

HAS

pursuant to art. 166, paragraph 7, of the Code and art. 16, paragraph 1, of the regulation of the Guarantor n. 1/2019, the publication of this provision on the website of the Guarantor and believes that the conditions set out in art. 17 of regulation no. 1/2019.

Pursuant to art. 78 of the Regulation, of art. 152 of the Code and 10 of Legislative Decree 1 September 2011, n. 150, against this provision, it is possible to appeal before the ordinary judicial authority, under penalty of inadmissibility, within thirty days from the date of communication of the provision itself or within sixty days if the applicant resides abroad.

Rome, October 28, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Peel

THE SECRETARY GENERAL

Mattei