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Injunction against Alegar s.n.c. - October 6, 2022

Register of measures

no. 321 of 6 October 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 by a worker pursuant to art. 144 of the Code on 11 June 2019 against Alegar s.n.c. by Fabrizio Trabucco and Mattia Tosi local attributable to the "049" brand;

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 preliminary investigation.

Following the submission of a report to the Authority on 11 June 2019 in which it was complained that, at the premises of Alegar s.n.c. di Fabrizio Trabucco and Mattia Tosi (formerly Alegar s.a.s. di Fabrizio Trabucco e C., hereinafter, "the Company"), a video surveillance system was allegedly used in ways that did not comply with the regulations on the protection of personal data, in particular by checking the work activities of the employees and without providing suitable information, as well as customer data would have been processed in ways that do not comply with data protection regulations, an inspection was carried out on 13 and 14 July 2021 by the special privacy and technological fraud unit of the Guardia di Finanza at the

company headquarters.

During the aforementioned assessment, the Company, in the person of the managing shareholder, declared that:

- "the bar activity is carried out at the commercial establishment";
- "we currently have 29 employees";
- "the owner of the processing of personal data carried out through the [...] video surveillance system at this office is Alegar s.n.c. by Fabrizio Trabucchi and Mattia Tosi. [...]";
- "the installation of the video surveillance system has the purpose of protecting the company assets in the event of theft or any crime, both as a prevention tool and as a support and support tool for the authorities in the activities under their responsibility, in compliance with the guarantee rules provided for by the law on the [processing] of personal data";
- "the registrations made up to now have been used only when requested by the competent Authorities";
- "the images from the cameras are viewed exclusively via my smartphone, protected by an access password, of which only I [as legal representative] am aware.

The application installed on my smartphone is called «SoCatch». The latter is a DVR H.264 version remote viewer and the main features are: - live view – time search and play. event search and play – PTZ control – zoom – relay control – backup files onto advice – connection to IP camera";

- "to access the application, you must enter your username and password";
- "no audio is recorded";
- "all the cameras do not have the zoom function, the images can only be enlarged through the application via touch";
- "the images can only be seen by me, they are kept for a maximum of 24 hours, after this period they are automatically overwritten";
- "The video surveillance at the premises I represent complies with current regulations [...] regarding the remote control of workers. In particular, the video surveillance is carried out in compliance with the so-called principle of data minimization regarding the choice of shooting and location methods and the management of the various phases of the treatment".

During the aforementioned investigation it was ascertained that:

- the video surveillance system is made up of 11 video cameras, specifically "3 video cameras are located outside and film the entrance areas to the bar [...] 4 video cameras are located inside and film the area for administering drinks and the entrance to

the bar [...] 2 video cameras are located inside (basement floor) and film the stairs leading to the bar warehouse area [...] 2 video cameras located inside film the food and beverage warehouse";

- "all the shots concern the places where the bar activity reserved for customers takes place and the places where the employees transit to carry out their normal work activity; to the extent strictly indispensable for the pursuit of the purposes of security and protection of company assets";

- "there are no monitors connected to the DVR".

The Company has also declared that:

- "there are no hidden cameras";

- "the installed video surveillance system does not have a sign containing the brief information for the interested parties, pursuant to art. 13 of the GDPR (both through the "minimum" disclosure model and through the provision of the complete disclosure model). I unfortunately admit the lack, I will arrange, as soon as possible, to display the preventive information at the bar ";

- "in January 2021, during the Covid-19 closure period, we carried out extraordinary cleaning by commissioning [a] cleaning company, during the execution of the works, the workers involuntarily removed the information signs present at the time, without reaffixing them. [...] I will put them back as soon as possible";

- "in relation to the provisions of the regulation on remote controls [...] the company [...], on 10 July 2019, signed a trade union agreement with Filcams CGIL of Novara.

The latter was notified to the company's employees and includes a plan indicating the location of the cameras with the pertinent areas".

2. The initiation of the procedure for the adoption of corrective measures and the deductions of the Company.

With reference to the treatments carried out through the video surveillance system, on 2 March 2022 the Office carried out, pursuant to art. 166, paragraph 5, of the Code, the notification to the Company of the alleged violations of the Regulation found, with reference to articles 5, par. 1, lit. a) (principle of transparency and principle of correctness) and 13 of the Regulation.

With written defenses sent on March 22, 2022, the Company declared that:

- "today's representative, already during the inspection, also with a view to loyal collaboration with the Authority [...] admitted

the actual lack of information pursuant to art. 13 of the Regulation, undertaking to provide for the regularization as soon as possible [...]. In fact [...] steps were taken immediately in this sense as per the report drawn up by Confartigianato of Novara, responsible for remedying the critical issues that emerged during the inspection in order to fully comply with the current regulatory framework" (see note 22.3.2022 , p. 2);

- "on 10.7.2019, the representative signed a trade union agreement with Filcams CGIL of Novara which was then notified to all employees, including the plan which indicated the exact location of the cameras and the related area of relevance " (see cited note, p. 2);

- "the information pursuant to art. 13 of the Regulation, originally present in the premises, was accidentally removed in January 2021 by the staff of a cleaning company in charge of carrying out - during the closure caused by the epidemiological emergency - the extraordinary cleaning of the premises and, just as accidentally, it was not repositioned before reopening" (see note cit., p. 2, 3);

- "as for [the trade union agreement with Filcams CGIL of Novara], if it is abstractly true that the agreement does not constitute tout court a substitute for the information, it is equally not revocable in doubt as said agreement - at least as regards the employees , has in fact fulfilled the purposes of the information, even more in consideration of the fact that it was immediately shown to all employees together with the plan of the room containing the exact identification of the cameras and the relative range of action" (see note cit ., p. 3);

- "the treatment is to be considered in any case lawful in the light of the regulations on remote controls of employees, given that the use of the equipment in question [...] is exclusively preordained to the achievement of objectives of safety and protection of company assets" (see cited note, p. 3);

- "in any case, having entered into a trade union agreement and having immediately formally notified the personnel of the characteristics of the video surveillance system denotes at least the absolute good faith of today's representative, who is willing to concede that he is only liable for slight negligence " (see cited note, p. 3);

- "previously [...] the information was present and its failure to re-apply after the new opening of the premises is - valid as a disqualifying or, at least, mitigating circumstance - contextualized in the convulsive and highly uncertain framework that followed the reopening after the umpteenth 'acute' phase of the epidemiological emergency, which has so strongly affected [...] the activities of administering food and drink" (see cited note, p. 4);

- "the fact that before January 2021 the disclosure was present demonstrates how the alleged violation had a limited temporal duration, having - following the inspection - taken steps to regularize the situation" (see cited note, p. 4) ;
 - "there is discussion of only one conduct in alleged conflict with the regulatory framework in force, however limited in time, put in place due to mere oversight following an extraordinary intervention on the premises, moreover in a historical period that has distorted the methods of organizing activity of supplying food and beverages (cf., art. 83, paragraph 2, letter a), of the Regulation) [from this] we derive [...] the merely negligent nature (and, more precisely, subsumable in the concept of slight negligence) of the conduct: having reached an agreement with the trade union representatives and having notified it to the individual employees, also showing them the plan of the room with the positioning of the television cameras and the indication of the radius constitutes a circumstance that irrefragably denotes the absolute good faith of today's petitioner (cf., art. 83, par. 2, lett. b) and d) of the Regulation)" (see cited note, p. 4);
 - "following the inspection, the representative [...] appointed the Confartigianato of Novara to receive qualified assistance in solving the problems encountered [...] moreover, the information was displayed [...] (cf., art. 83, paragraph 2, letter c) of the Regulation)" (see note cited, p. 4);
 - "during the inspection, today's request has given maximum availability with a view to loyal and effective collaboration with the Authority, which was also followed by the adoption of concrete measures aimed at definitively overcoming any critical issues encountered [...] (see, art. 83, par. 2, letter f) of the Regulation)" (see note cited, p. 4);
 - "the alleged violation, in any case, did not affect [...] data relating to criminal convictions and offenses (see, art. 83, paragraph 2, letter g) of the Regulation" (see cited note, p 5);
 - "the alleged violation has not been brought to the attention of the Authority by the data controller pursuant to art. 33 of the Regulation, but [...] originates from a report dated 11.6.2019" (see note cited, p. 5);
 - it is requested to take "in particular account of the absolute good faith of today's request, the absence of specific precedents, the temporally limited nature of the alleged violation and the collaboration put in place both during the inspection and subsequently, through the granting of the assignment to Confartigianato [...] and the corrective actions put in place" (see cited note, p. 5).
3. The outcome of the investigation and of the procedure for the adoption of corrective and sanctioning measures.
- 3.1. Established facts and observations on the legislation on the protection of personal data.

Upon examination of the statements made to the Authority during the proceedings as well as the documentation acquired, it appears that the Company, as owner, has carried out some processing operations through the video surveillance system installed at its headquarters which are not compliant with the regulations on the protection of personal data. In this regard, it should be noted that, unless the fact constitutes a more serious offence, anyone who, in a proceeding before the Guarantor, falsely declares or attests news or circumstances or produces false deeds or documents, is liable pursuant to art. 168 of the Code "False statements to the Guarantor and interruption of the performance of the duties or exercise of the powers of the Guarantor".

The art. 13 of the Regulation, in implementation of the principle of transparency (Article 5, paragraph 1, letter a) of the Regulation), provides for the obligation of the data controller to provide the interested party in advance with all the information relating to the essential characteristics of the treatment.

In particular, as regards the installation of a video surveillance system, the Guarantor has indicated the conditions of lawfulness of the processing of personal data carried out through video surveillance systems with the provision of a general nature of 8 April 2010 (published in the Official Gazette no. 99 of 29 April 2010, available at www.garanteprivacy.it, web doc. n. 1712680).

In the context of the employment relationship, the obligation to inform the employee is also an expression of the general principle of fairness (see Article 5, paragraph 1, letter a) of the Regulation).

3.2. Confirmed violations.

From the elements acquired during the preliminary investigation it emerged, in particular, that the Company used a video surveillance system, functioning since July 2019, in the absence of suitable information pursuant to art. 13 of the Regulation. In particular, the Company, despite having in accordance with the guarantee procedure pursuant to art. 4 of law 300 of 1970, stipulated an agreement with the company representatives regarding the video surveillance system through which the work activity of the company's workers is also resumed, did not provide the information pursuant to art. 13 of the Regulations, not even through billboards, neither to the employees nor to the customers of the premises, subjects interested in the treatment by video surveillance. This was also confirmed by the Company which declared that "the installed video surveillance system does not have a sign containing the brief information to the interested parties, pursuant to art. 13 of the GDPR (both through the "minimum" disclosure model and through the provision of the complete disclosure model)".

In this regard, the Company declared that during the performance of a cleaning job commissioned from another company during the period of closure of the business due to the Covid-19 pandemic, in January 2021 "the workers [of the cleaning company] involuntarily removed the information signs present at the time, without re-affixing them". Following the inspection, in September 2021 the Company proceeded to present the so-called disclosure simplified before the range of action of the video surveillance system cameras in which it is specified "for further information on the processing of personal data, consult our website «www.zeroquarantanove»". The information on data processing is currently available on the aforementioned site. The Company also specified that before January 2021 there was the poster containing the so-called disclosure simplified and to prove this he produced a photo found on a social network in which we see an information sign - which, however, does not contain the minimum necessary information - and whose location, in any case, is not clear. The photo, therefore, does not prove the fulfillment of the obligation to provide suitable and complete information, also with reference to the period prior to January 2021.

Considering that the obligation to provide the information pursuant to art. 13 of the Regulation to the interested parties is among those attributed to the data controller, it is the Company that should have dealt, in any case, even at the end of the "extraordinary cleaning" activities, with restoring the signs and implementing the provisions of the aforementioned art. 13 of the Regulation, a conduct that was implemented only following the inspection carried out by the special privacy and technological fraud unit of the Guardia di Finanza.

It should also be noted that the acknowledgment by the workers of the agreement stipulated pursuant to art. 4 of law 300 of 1970 is not suitable to replace the information pursuant to art. 13 of the Regulation, considering the diversity of the nature, content and purpose of the information, on the one hand, and of the agreement, on the other; the impossibility of making the agreement a disclosure for the interested parties is also confirmed by the fact that the customers of the venue (also interested pursuant to data protection regulations) cannot in any case be aware of the content of the agreement pursuant to art. 4 of Law no. 300 of 1970 as well as by the fact that the agreement does not contain some information which, considering the provisions of art. 13 of the Regulation, should be contained within the information (e.g. possibility of exercising the rights provided for by the Regulation; the right to be able to lodge a complaint with the Guarantor; the periods of time in which the video surveillance system is functioning). In the same agreement, among other things, it is specified that "all personnel will be informed of the installation of the video surveillance system through specific written information provided pursuant to art. 13 of

Legislative Decree 196/03 and subsequent amendments”.

The conduct held by the company, therefore, violates the art. 13 of the Regulation which constitutes a direct expression of the principle of transparency pursuant to art. 5, par. 1, lit. a), as well as of the art. 5, par. 1, lit. a) (principle of correctness) since in the context of the employment relationship the obligation to inform the employee is also an expression of the general principle of correctness.

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

For the aforementioned reasons, the Authority believes that the declarations, documentation 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 act of initiating 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 provide adequate information on the video surveillance system to the interested parties (workers and customers) constitutes unlawful conduct, in the terms set out above, in relation to articles 5, par. 1, lit. a) and 13 of the Regulation.

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, 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).

5. 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 Alegar s.n.c. by Fabrizio Trabucco and Mattia Tosi has violated the articles 5, par. 1, lit. a) and 13 of the Regulation. For the violation of the aforementioned provisions, the application of the pecuniary administrative sanction envisaged by art. 83, par. 5, letter. a) and b) of the Regulation, through the adoption of an injunction order (art. 18, law 11.24.1981, n. 689).

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", the total amount of the fine is calculated so as not to exceed the maximum prescribed by the same art. 83, par. 5. 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) in relation to the nature, gravity and duration of the violation, the nature of the violation was considered relevant, which concerned the general principles of data protection and the right of the interested party to receive appropriate information pursuant to art. 13 of the Regulation;
- b) 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 did not comply with the data protection regulations in relation to a plurality of provisions;
- c) cooperation with the Supervisory Authority was taken into account in favor of the Company.

Furthermore, it is 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) first of all the economic conditions of the infringer which is a general partnership. 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 against Alegar s.n.c. of Fabrizio Trabucco and Mattia Tosi the administrative sanction of the payment of a sum equal to 1,000 (one thousand) euros.

In this context, it is also considered, in consideration of the type of violations ascertained that concerned the right of the interested party to receive suitable information, which 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.

ALL THAT BEING CONSIDERED, THE GUARANTOR

detects the illegality of the treatment carried out by Alegar s.n.c. di Fabrizio Trabucco and Mattia Tosi, in the person of the

legal representative, with registered office in Piazza dei Martiri 3/B Novara (NO), Tax Code 02277980039, pursuant to art. 143 of the Code, for the violation of the articles 5, par. 1, lit. a) and 13 of the Regulation;

ORDER

pursuant to art. 58, par. 2, lit. i) of the Regulation to Alegar s.n.c. of Fabrizio Trabucco and Mattia Tosi, 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 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.

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, 6 October 2022

PRESIDENT

station

THE SPEAKER

Cerrina Feroni

THE SECRETARY GENERAL

