

[doc. web no. 9861988]

Injunction order - December 1, 2022

Register of measures

no. 21 of 2023

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 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 containing "Provisions for the adaptation of national legislation to the provisions of Regulation (EU) 2016/679";

HAVING REGARD TO the assessment report drawn up by the Rome Police Headquarters on 20/04/2021 at the company called "Gioielleria Caradonna" located in XX, with which the presence of an active and functioning video surveillance system was ascertained, against which the information referred to in art. 13 of the Regulation;

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 investigation by the Rome Police Headquarters.

With a note received on 04/05/2021, the Rome Police Headquarters, Administrative and Social Police Division, sent this Authority a copy of the report relating to the administrative control, which it carried out on 20/04/2021, at the activity called "Gioielleria Caradonna" located in XX, Via XX.

During the investigation, the presence of a video surveillance system was detected, consisting of three cameras, positioned inside the room and two positioned outside, all functioning and suitable for the detection, recording and conservation of

images.

With regard to the processing of personal data carried out by means of the aforementioned system, the ownership of which was identified as the sole proprietorship Caradonna Consuelo Giuseppe, the absence of the information pursuant to art. 13 of EU Regulation 679/2016, in violation of the provisions on the processing of personal data.

The Office, on the basis of the checks carried out pursuant to the aforementioned report, proceeded to notify the aforementioned Company, with a note dated 09/10/2021 (prot. no. 45753), of the initiation of the procedure for the adoption of the measures pursuant to articles 58, par. 2, and 83 of the Regulation, in compliance with the provisions of art. 166, paragraph 5, of the Code, in relation to the violation of art. 13 and of the art. 5, par. 1, lit. a), of the Regulation.

The aforementioned Company, despite having been informed by the Office of the possibility of producing written defenses or documents in relation to the sanctioning procedure against it, did not send any documentation in this regard.

2. The legal framework of the treatment carried out.

Given that the use of video surveillance systems determines the processing of personal data pursuant to art. 4, par. 1, no. 2 of the Regulation, it is noted that this treatment must be carried out in compliance with the general principles contained in the art. 5 of the Regulation and, in particular, of the principle of transparency which presupposes that "the interested parties must always be informed that they are about to enter a video-monitored area".

For this purpose, therefore, with particular reference to treatments carried out using video surveillance systems, the data controller must prepare suitable information signs according to the indications contained in point 3.1. of the provision on video surveillance - 8 April 2010 [1712680] (in this sense also the FAQs on video surveillance, published on the Authority's website) so that interested parties are made "aware of the fact that a video surveillance system is in operation".

Similarly, the Guidelines no. 3/2019 of the European Data Protection Committee on the processing of personal data through video devices, in point 7), specifies that "the most important information must be indicated [by the owner] on the warning sign itself (first level) while the further mandatory details may be provided by other means (second level)". In the guidelines it is also foreseen that "Such information may be provided in combination with an icon to give, in a conspicuous, intelligible and clearly legible way, an overview of the intended treatment (article 12, paragraph 7, of the RGPD) . The format of the information will have to adapt to the various locations". The information should be positioned in a way that allows 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 way to avoid surveillance or adjust their behavior, if 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 "Gioielleria Caradonna", managed by the Caradonna Consuelo Giuseppe company, was up and running and that it lacked the information required by art. 13 of the Regulation.

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 interested party with all the information relating to the essential characteristics of the treatment, as well as in violation of the general principle of transparency of the treatment, pursuant to art. 5, par. 1, lit. a) of the same Regulation.

4. Injunction order.

The Guarantor, pursuant to art. 58, par. 2, lit. i) of the Regulation and of the 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 (art. 18. law 24 November 1981 n. 689), in relation to the processing of personal data carried out by the Company by means of the video surveillance system, in the absence of the information pursuant to art. 13 of the Regulation.

With reference to the elements listed by art. 83, par. 2 of the Regulation for the purposes of applying the administrative fine and the related quantification, taking into account that the fine must be "in each individual case effective, proportionate and dissuasive" (art. 83, paragraph 1 of the Regulation), it is represented that, in the present case, the following circumstances were taken into consideration:

with regard to the nature, gravity and duration of the violation, the conduct of the data controller was taken into consideration, as well as the liability associated with the failure to provide the information to the data subjects;

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

the circumstance that there was no participation and cooperation with the Authority during the proceeding with the consequent impossibility of verifying that the legal obligations have been fulfilled.

Based on the aforementioned elements, evaluated as a whole, it is decided to determine the amount of the pecuniary sanction in the amount of 2,000.00 (two thousand) euros for the violation of articles 5, par. 1, lit. a) and 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 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 should be noted that the conditions pursuant to art. 17 of regulation no. 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

ALL THAT BEING CONSIDERED, THE GUARANTOR

declares, pursuant to articles 57, par. 1, lit. f) and 83 of the Regulation, the illegality of the processing carried out by D.I.

Caradonna Consuelo Giuseppe, P.I. 07854311003, through the use of the video surveillance system installed at the

"Gioielleria Caradonna" located in XX, XX in the terms referred to in the justification, for the violation of articles 5, par. 1, lit. a)

and 13 of the Regulation;

ORDER

to the individual company Caradonna Consuelo Giuseppe, P.I. 07854311003, to pay the sum of 2,000.00 (two thousand) euros

as an administrative fine for the violation indicated in the justification;

ENJOYS

to the same company of:

comply, pursuant to art. 58, par. 2, lit. d) of the Regulation, the processing of data implemented in accordance with the

provisions of the Regulation, with reference to the affixing, where it has not already done so, of suitable information signs of

the presence of the cameras;

pay the sum of 2,000.00 (two thousand) euros, according to the methods indicated in the attachment, 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, without prejudice to the offender's 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 1 September 2011 envisaged

for the filing of the appeal as indicated below.

HAS

pursuant to art. 166, paragraph 7, of the Code and of the art. 16, paragraph 1, of the Guarantor's regulation n. 1/2019, the

publication of this provision on the Guarantor's website and believes that the conditions set forth in art. 17 of regulation no.

1/2019.

It is also established that the initiatives undertaken in order to implement the provisions of this provision are communicated and in any case to provide adequately documented feedback pursuant to art. 157 of the Code, within 30 days from the date of notification of this provision; any failure to reply may result in the application of the administrative sanction provided for by art. 83, par. 5, letter. e) of the Regulation.

Pursuant to art. 78 of the Regulation, of the articles 152 of the Code and 10 of Legislative Decree 1 September 2011, n. 150, against this provision it is possible to lodge an 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 appellant resides abroad.

In Rome, 1 December 2022

PRESIDENT

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THE SPEAKER

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THE SECRETARY GENERAL

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