

Injunction order against Immobiliare Ricostruzione Meloria s.r.l. - September 15, 2022

Register of measures

no. 300 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 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 note sent by the Municipal Police of the Municipality of Milan;

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. Reporting and preliminary investigation.

With the note dated 21 May 2020, the Municipal Police of the Municipality of Milan, following the inspection carried out following a complaint, communicated to this Authority that a video surveillance system consisting of four cameras was functioning at the building in via Meloria 2, the installation of which, according to what was declared by the property manager, would have been arranged by the sole administrator of the company that owns the property, Immobiliare Ricostruzione Meloria srl (henceforth the Company), at the request of some tenants.

On June 4, 2020, the report from Mr. XX who complained about the installation of the aforementioned video surveillance system.

In order to acquire elements of evaluation in relation to what has been reported, with the request for information of 8 October 2021, formulated pursuant to art. 157 of Legislative Decree no. 196 of 2003, containing the Code regarding the protection of personal data, the Special Nucleus for the protection of privacy and technological frauds of the Guardia di Finanza was delegated to carry out the appropriate checks.

With the note dated 22 December 2021, the Nucleus transmitted to the Office the report of the operations carried out drawn up as part of the delegated intervention from which it was noted that, at the building located in Milan, via Meloria 2, a video surveillance system was in operation consisting of 4 cameras of which: one located near the door, which filmed the space in front of the access to the building; a mail in the dress of the entrance hall of the building which takes up the space in front of the lift; two located on the wall in front of the courtyard at the back of the building, which reflect the courtyard and the access ramps to the cellars and to an apartment located in the building.

The images captured by the cameras were displayed on a monitor and stored on a recording device, both located in the reception area.

During the inspection, it was also verified that, on the left side of the entrance door to the building, there was a sign bearing the figure of a stylized video camera, however lacking information relating to the owner and the purposes of the processing.

On the basis of the inspection carried out and the declarations acquired in the documents, the presence of further signs did not emerge, nor the availability of a complete information text, at the reception premises.

## 2. The outcome of the preliminary investigation and the sanctioning procedure.

Based on the findings of the investigations carried out, the Office with the note dated 25 March 2022 notified the Company of the initiation of the sanctioning procedure, pursuant to art. 166, paragraph 5, of the Code in relation to the violation of the general principles regarding the protection of personal data pursuant to art. 5, par. 1, lit. a) and of the art. 13 of the Regulation.

As a result of the verification activities carried out and the subsequent assessments carried out by the Office, it has been ascertained that the Company has carried out processing of personal data, by means of a video surveillance system in the absence of suitable information, in violation of the general principles regarding protection of personal data pursuant to art. 5, par. 1, lit. a) and in disregard of the provisions of art. 13 of the Regulation.

The use of video surveillance systems can determine, in relation to the positioning of the cameras and the quality of the images captured, the processing of personal data.

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, the data controller must affix suitable information signs indicating the data controller and the purposes of the processing, 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).

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 "As regards video surveillance, the most important information must be indicated [by the owner] on the warning sign itself (first level), while the further mandatory details can be provided by other means (second level)".

The Guidelines also provide 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 envisaged processing (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".

In the present case, the mere affixing of a sign at the entrance to the building bearing the image of a stylized video camera, devoid of any reference to the data controller and its purposes, does not allow the interested parties to know the essential elements of the treatment and know who to contact to exercise their rights.

Although the deed of initiation of the proceeding is duly notified via pec to the Company's address, no defense briefs or writings have been received (Article 18 of Law No. 689 of 1981).

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

The processing of personal data carried out by the Company is therefore unlawful, in the terms set out above, in relation to articles 5, par. 1, lit. a) (principle of transparency) and 13 (information) 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, the degree of responsibility and the manner in which the supervisory authority became

aware of the violation ( see recital 148 of the Regulation).

In consideration of the fact that the Company, after the investigations and in any case following the notification of the violation, has not sent elements from which it can be seen that it has provided for the placement of appropriate information in relation to the treatment object of the present proceeding, given the corrective powers attributed by art. 58, par. 2 of the Regulation, it is deemed necessary:

order the controller to conform the treatments carried out through the video surveillance system by installing suitable information signs according to the indications given in point 2 of this decision, (art. 58, paragraph 2, letter d) of the Regulation);  
apply 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).

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 party by means of the video surveillance system, in violation of art. . 5, par. 1, lit. a) and of the 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 negligent conduct of the data controller was taken into consideration;

the absence of specific precedents against the party relating to violations of the regulations on the protection of personal data;  
the circumstance that the party did not cooperate with the Authority during the proceedings, by not sending their own written defence.

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), the economic conditions of the offender, determined with reference to the financial statements for the year 2020.

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 art. 5, par. 1, lit. a) and of the 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 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 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

pursuant to articles 57, par. 1, lit. a) and 83 of the Regulation, declares the unlawfulness of the processing carried out by Immobiliare Riscostruzione Meloria srl, with registered office in via Via Gonzaga, 2 (MI), in the terms referred to in the justification, for the violation of articles 5, par. 1, lit. a) and 13 of the Regulation;

ORDER

pursuant to art. 58, par. 2, lit. i) of the Regulation to Immobiliare Riscostruzione Meloria s.r.l., to pay the sum of 2,000.00 (two thousand) euros as an administrative fine for the violation of articles 5, par. 1, lit. a) and 13 of the Regulation;

ENJOYS

to Immobiliare Riscostruzione Meloria s.r.l., pursuant to art. 58, par. 2, lit. d) and i) of the Regulation of:

a) 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 no. 689/1981. It is represented that the offender, pursuant to art. 166, paragraph 8, of the Code, has the right to settle the dispute through the payment, again according to the methods indicated in the attachment, of an amount equal to half of the fine imposed within the term referred to in art. 10, paragraph 3, of Legislative Decree no. 150 of 2011;

b) conform the treatments carried out through the video surveillance system, taking care to install suitable information signs according to the indications given in point 2 of this decision. In relation to this point, the Company is invited, pursuant to art. 157 of the Code, to send, within thirty days of notification of the provision, a documented response of the initiatives taken to

comply with the prescription.

HAS

the publication of this provision on the Guarantor's website pursuant to art. 166, paragraph 7, of the Code and by art. 16, paragraph 1, of the Guarantor's Regulation n. 1/2019, as well as the annotation of the violations in the Authority's internal register pursuant to art. 17 of the Regulation of the Guarantor n. 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

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THE SPEAKER

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THE SECRETARY GENERAL

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