

Order injunction against the individual company "Zito Auto di Gianfranco Zito" - May 12, 2022

Record of measures

n. 178 of 12 May 2022

#### THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by prof. Pasquale Stanzione, president, Professor 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 deed carried out by the Local Police Command of the Municipality of Galliate (NO) with which the presence of a video surveillance system installed in Galliate, via Ticino 68/70 near the individual company "Zito Auto di Gianfranco Zito ";

GIVEN the inspection deed drawn up by the Guardia di Finanza - Special unit for the protection of privacy and technological fraud with which the presence of a video surveillance system was detected at the individual company "Zito Auto di Gianfranco Zito" that does not comply with the provisions of to articles 13 of the Regulations and 114 of Legislative Decree 196/2003 (Code regarding the protection of personal data);

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 prof. Pasquale Stanzione;

WHEREAS

1. The assessment documents and the initiation of the procedure.

1.1. With a note dated 21.6.21, the Local Police Command of the Municipality of Galliate (NO) informed the Authority of the

presence of a video surveillance system, installed in Galliate, via Ticino 68/70, near the company "Zito Auto di Gianfranco Zito", suitable for taking the public road again.

With a note dated 22.12.2021, the special unit for the protection of privacy and technological fraud of the Guardia di Finanza, delegated for the investigations, sent the report of the operations carried out, drawn up on 15.12.21, at the headquarters of the company "Zito Auto di Gianfranco Zito", which ascertained the presence of 14 functioning cameras placed inside and outside the aforementioned company headquarters.

From the examination of the aforementioned report and of the images taken by the video surveillance system, it emerged that the cameras were also able to carry out a remote control of the workers' activity and that they were installed without respecting the framework of guarantees provided for by the 'art. 4 of Law 300/1970 containing the Workers' Statute.

From this point of view, the circumstance that the workers of the Company had been individually informed of the presence of the plant and had signed this information is not suitable for eliminating the obligation to comply with the aforementioned regulations.

In fact, on this point, the jurisprudence of legitimacy has repeatedly held that art. 4, l. n. 300 of 1970 cit., "Protection of collective and super-individual interests", therefore even the consent, possibly given by individual workers to the installation of systems, is not equivalent to the necessary activation of the procedure with the employee representatives or, failing that, under the control of the public authority (see, among others, Cass., section III criminal, 8 May 2017, no. 22148 and 17.12.2019, no. 50919 cit.).

In this regard, it is also noted that the Guarantor has repeatedly reiterated that in the workplace, consent does not constitute a suitable legal basis for the processing of personal data of employees (see, among others, provision 13.12.2018, no. 500, web doc. no. 9068983, point 3.1.; with specific reference to video surveillance, see provisions of 4 July 2013, no. 336, web document no. 2578071 and 18 July 2013, no. 361, web doc. no. 2605290) ".

1.2. The Office, therefore, on the basis of the investigations carried out, notified "Zito Auto di Gianfranco Zito", the initiation of the procedure, pursuant to art. 166, paragraph 5, of the Code, in relation to the violation of the principle of lawfulness of processing pursuant to art. 5, par. 1, lett. a) and 88 of the Regulations as the video surveillance system was installed in the absence of the warranty procedures required by art. 4 of Law no. 300/1970 referred to by art. 114 of the Code (prot. N. 2583 of 13.1.22).

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

2.1. Upon examination of the documentation produced, it emerged that, at the time of the check, the video surveillance system, installed at the individual company "Zito Auto di Gianfranco Zito", was functioning and that they were able to allow remote control of workers' activity without the procedures envisaged by art. 4 of Law 300/1970 containing the Workers' Statute.

In this regard, it should be noted that the processing of personal data carried out as part of the employment relationship, if necessary for the purpose of managing the relationship itself (see Articles 6, paragraph 1, letter c); 9, par. 2, lett. b) of the Regulations), must be carried out in compliance with the general principles indicated in art. 5 of the Regulation, and in particular of the principle of lawfulness, according to which the processing is lawful if it complies with the applicable sector regulations (Article 5, paragraph 1, letter a) of the Regulation). Consistent with this approach, art. 88 of the Regulation is without prejudice to the national rules of greater protection ("more specific rules") aimed at ensuring the protection of rights and freedoms with regard to the processing of personal data of workers. The national legislator has approved, as a more specific provision, art. 114 of the Code which, among the conditions of lawfulness of the processing, established compliance with the provisions of art. 4, law 20 May 1970, n. 300. The violation of art. 88 of the Regulation is subject, if the requirements are met, to the application of a pecuniary administrative sanction pursuant to art. 83, par. 5, lett. d) of the Regulations.

Based on the aforementioned art. 4, l. n. 300 of 1970, if the video surveillance equipment derives from them "also the possibility of remote control" of the employee activity, "they can be used exclusively for organizational and production needs, for work safety and for the protection of company assets "And the relative installation must, in any case, be carried out after the stipulation of a collective agreement with the unitary union representation or with the company union representatives or, if it has not been possible to reach this agreement or in the absence of the representatives, only in what preceded by the release of a specific authorization by the Labor Inspectorate. The activation and conclusion of this warranty procedure is therefore an indispensable condition for the installation of video surveillance systems. Violation of this provision is punishable by law (see Article 171 of the Code). The processing of personal data carried out by the company through the video surveillance system is therefore illegal, in the terms set out above, in relation to articles 5, par. 1, lett. a), 13 and 114 of the Code.

2.2. Therefore, in this case, it is ascertained that the individual company "Zito Auto di Gianfranco Zito" has carried out the processing of personal data, by means of a video surveillance system in violation of the general principles regarding the protection of personal data referred to to art. 5, par. 1, lett. a) and without fulfilling the aforementioned warranty procedures

required by art. 4 of Law no. 300/1970 referred to by art. 114 of the Code.

2.3. With a note received on 14.2.22, Mr. Gianfranco Zito, owner of the sole proprietorship, announced that the video surveillance system has been completely removed and the saved images have been permanently deleted.

3. Adoption of the injunction order for the application of the pecuniary administrative sanction and ancillary sanctions (Articles 58, paragraph 2, letter i), and 83 of the Regulations; art. 166, paragraph 7, of the Code).

Pursuant to art. 58, par. 2, lett. i) of the Regulations and art. 166, paragraphs 3 and 7 of the Code, the Guarantor provides for the application of the pecuniary administrative sanction provided for by art. 83, par. 5, lett. a) of the Regulations, through the adoption of an injunction order (Article 18, Law 11/24/1981, n. 689), in relation to the processing of personal data carried out by the company, whose unlawfulness was found, within above, in relation to articles 5, par. 1, lett. a) and 114 of the Code.

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 "in any case [be] effective, proportionate and dissuasive" (Article 83, par. 1 of the Regulations), it is stated that , in the present case, the following circumstances were considered:

in relation to the nature, gravity and duration of the violation, the nature of the violation was considered which concerned the general principles of the treatment and the conditions of lawfulness of the treatment (both the general ones and the more specific provisions regarding the treatments in the context of work);

with reference to the willful or negligent nature of the violation and the degree of responsibility of the owner, it is noted that the violation is negligent;

the company cooperated with the Authority during the procedure and took steps to permanently remove the video surveillance system and delete the images recorded by it;

the absence of specific precedents for the company.

5.4. In light of the elements indicated above and the assessments made, it is considered, in the present case, to apply to the individual company "Zito Auto di Gianfranco Zito", the administrative sanction of payment of a sum equal to € 3,000 (three thousand) .

In this context, it is also considered, in consideration of the type of violations ascertained that concerned the conditions of lawfulness of the processing, the obligation to provide appropriate information to the interested parties, which pursuant to art.

166, paragraph 7, of the Code and art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019, this provision should be published on the Guarantor's website.

It is also believed 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.

Please note that, if the conditions are met, the penalty referred to in art. 83, par. 5, lett. e) of the Regulations.

WHEREAS, THE GUARANTOR

detects the unlawfulness of the processing carried out by Mr. Gianfranco Zito, owner of the sole proprietorship "Zito Auto di Gianfranco Zito", within the terms set out in the motivation, for the violation of Articles 5, par. 1, lett. a) and c), and 114 of Legislative Decree 196/2003;

ORDER

pursuant to art. 58, par. 2, lett. i) of the Regulations, to Mr. Gianfranco Zito, owner of the sole proprietorship "Zito Auto di Gianfranco Zito", with legal and operational headquarters located in Galliate (NO), via Ticino 68 (P.I. 01279030033), to pay the sum of 3,000 (three thousand) euros as a fine administrative pecuniary for the violation indicated in this provision;

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then to Mr. Gianfranco Zito, owner of the sole proprietorship "Zito Auto di Gianfranco Zito", to pay the aforementioned sum of € 3,000 (three thousand), according to the methods indicated in the annex, within 30 days of notification of this provision, under penalty of 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 filing 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 Regulations, as well as articles 152 of the Code and 10 of Legislative Decree no. 150/2011, an opposition to the ordinary judicial authority may be proposed against this provision, with an appeal filed with the ordinary court

of the place identified in the same art. 10, within thirty days from the date of communication of the provision itself, or sixty days if the applicant resides abroad

Rome, May 12, 2022

PRESIDENT

Stanzione

THE RAPPORTEUR

Stanzione

THE SECRETARY GENERAL

Mattei