

Injunction against Tecnomed Trento s.r.l. - April 7, 2022

Register of measures

no. 132 of 7 April 2022

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by Prof. Pasquale Stanzone, 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 Guardia di Finanza - Privacy and Technological Fraud Protection Unit - which found the presence of a video surveillance system at the headquarters of Tecnomed Trento s.r.l., which does not comply with the provisions of art. 13 of the Regulation and of the art. 114 of the Code;

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 of a video surveillance system and initiation of the sanctioning procedure.

A note dated 19.6.2020 reported the installation of a video surveillance system at Tecnomed Trento s.r.l. based in Trento, via Paolo Borsellino 3, located within the condominium complex "Residenza le Corti Fiorite".

The Department, with a note dated 10.27.2021, delegated the special unit for the protection of privacy and technological fraud of the Guardia di Finanza to acquire information relating to the aforementioned video surveillance system.

With a note dated 12.15.2021, the special unit for the protection of privacy and technological fraud transmitted the report of the

inspection carried out on 11.23.21 at the operational headquarters of Tecnomed Trento s.r.l., with which it verified the presence of 15 functioning cameras, placed inside and outside the aforementioned operational headquarters, the absence of information signs was ascertained of the presence of the video cameras placed at the entrance to the Company, in the garage area and in the employee access area, the circumstance that the The installation of the cameras had been carried out without the authorization of the Territorial Directorate of Labor or of the trade union agreement and in the absence of adequate security measures and without the persons responsible for viewing the images being suitably instructed in this regard.

Based on what emerged from the investigations carried out, the Office proceeded to notify the aforementioned Company of the deed of initiation of the sanctioning procedure, pursuant to art. 166, paragraph 5, of the Code (prot. n. 939 of 7.1.22), in relation to the violation of articles 5, par. 1, lit. a) (principle of lawfulness of the processing), 13 (information), 29 (processing under the authority of the data controller or the data processor) and 32 (security of the processing) of the Regulation as well as of the art. 114 of the Code regarding the protection of personal data (guarantees regarding remote control).

2. Content of the company's defense brief.

With a note dated 7.2.22, the Company sent a defense brief in which it represented that:

at the time of the check, only two cameras installed by the company in the condominium "Residenza le Corti Fiorite" did not have the information signs;

only one camera did not have authorization from the Employment Service of the Autonomous Province of Trento as it was installed after the authorization request issued on 05/03/2018;

all employees were informed of the presence of the cameras, having accepted and signed the Company Regulations which indicate the presence of the cameras installed inside the premises;

on 12.1.22, the Company forwarded the required documentation to the Autonomous Province of Trento Labor Service (PAT) in order to obtain authorization for the plant;

the blackout function was activated for the video cameras suitable for filming a common driveway and for the video camera suitable for filming workers inside the area where the safe is located;

information signs were placed on the presence of video cameras in each video-monitored area;

the privacy notices have been completed by entering the information relating to video surveillance;

the appointments to the subjects authorized to view the images were duly made.

3. The outcome of the investigation and the sanctioning procedure. Confirmed violations.

Upon examination of the documentation produced, it emerged that the video surveillance system, installed at the headquarters of Tecnomed Trento s.r.l., despite being active and functioning, was not adequately signaled in all the spaces where the cameras were installed, by means of the signs bearing the information pursuant to art. 13 of the Regulation and had been installed in a way that did not comply with the location indicated in the request for authorization from the Autonomous Province of Trento, Labor Section (two more cameras were installed than those authorized), moreover the authorization was requested only in the year 2018, against the fact that the installation had instead taken place in 2013.

It is also ascertained that the three people authorized to access the images recorded by the video surveillance system used shared credentials to access the viewing of the images. This circumstance, in the absence of other technical and organizational measures, is unsuitable to guarantee the confidentiality of the information processed through the video surveillance system used by the company, in particular it does not allow to verify who has carried out certain processing operations such as viewing, copying or the deletion of data. This, in particular also taking into account the fact, as was ascertained during the inspection, that only one of the persons authorized to access had been instructed in this regard.

The above circumstances are in contrast with the obligations of the data controller established by the Regulation by art. 29 which provides that "the data controller, or anyone acting under his authority or under that of the data controller, who has access to personal data cannot process such data unless instructed to do so by the data controller" and by the 'art. 32 which provides that "taking into account the state of the art and implementation costs, as well as the nature, object, context and purposes of the processing, as well as the risk of varying probability and severity for the rights and freedoms of natural persons, the data controller and the data processor implement adequate technical and organizational measures to guarantee a level of security appropriate to the risks" and that "The data controller and the data processor ensure that anyone acting under their authority and has access to personal data shall not process such data unless instructed to do so by the data controller".

In the present case, it is clear that the party has therefore processed personal data, by means of a video surveillance system, in the absence (with reference to the spaces referred to above) of information and in violation of the obligations set forth in art. 29 and 32 of the Regulation. This conduct is in contrast with the provisions of art. 13 of the Regulation, according to which the data controller - before the start of the treatment - is required to provide the interested party with all the information relating to the essential characteristics of the treatment. In the context of the employment relationship, the obligation to inform the

employee is also an expression of the general principle of correctness of the treatments, contained in the art. art. 5, par. 1, lit. a) of the Regulation.

Furthermore, since the company proceeded with the installation of the system in 2013 and requested authorization from the Autonomous Province of Trento, Labor Section, only on 3 May 2018 and having subsequently also installed two additional cameras, not envisaged in the authorization issued, the treatment was carried out in violation of the art. 114 of the Code regarding the protection of personal data.

In this regard, it should be noted that the processing of personal data carried out in the context of the employment relationship, if necessary for the purpose of managing the relationship itself (see articles 6, paragraph 1, letter c); 9, par. 2, lit. b) of the Regulation), must take place in compliance with the general principles indicated by art. 5 of the Regulation, and in particular of the principle of lawfulness, on the basis of 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, the 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 workers' personal data. The national legislator has approved, as a more specific provision, art. 114 of the Code which among the conditions of lawfulness of the treatment established the observance of the provisions of art. 4, law 20 May 1970, n. 300. The violation of the art. 88 of the Regulation is subject, if the requisites are met, to the application of a pecuniary administrative sanction pursuant to art. 83, par. 5, letter. d) of the Regulation.

Based on the aforementioned art. 4, the. no. 300 of 1970, video surveillance equipment, if from the same derives "also the possibility of remote control" of employee activity, "may be used exclusively for organizational and production needs, for workplace safety and for the protection of company assets " and the relative installation must, in any case, be carried out following the stipulation of a collective agreement with the unitary trade union representatives or with the company union representatives or, where it has not been possible to reach such an agreement or in the absence of the representatives, only in preceded by the issue of a specific authorization by the Labor Inspectorate. The activation and conclusion of this guarantee procedure is therefore an indefectible 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, lit. a), 13 and 114 of the Code.

Nor is the circumstance, represented by the company, that the workers had given their consent to the processing of personal data through the video surveillance system suitable for eliminating the obligation to comply with the aforementioned regulation. In fact, on this point, the jurisprudence of legitimacy has repeatedly held that the art. 4, the. no. 300 of 1970 cited above, "protection of collective and super-individual interests", therefore even the consent, possibly given by individual workers for 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, Court of Cassation, section III pen., 8 May 2017, n. 22148 and 17.12.2019, n. 50919 cit.). In this regard, moreover, it should be noted that the Guarantor has repeatedly reiterated that in the workplace, consent does not constitute an appropriate legal basis for the processing of employees' personal data (see, among others, provision 12.13.2018, n. 500 , web doc. n. 9068983, point 3.1.; with specific reference to video surveillance see provisions of 4 July 2013, n. 336, web doc. n. 2578071 and 18 July 2013, n. 361, web doc. n. 2605290)

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 deed of initiation of the procedure and which 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.

The processing of personal data carried out by the company is in fact illegal, in the terms set out above, in relation to articles 5, par. 1, lit. a) (principle of lawfulness) 29 (processing under the authority of the data controller or data processor) and 32 (processing security) of the Regulation as well as art. 114 of the Code (guarantees regarding remote control).

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).

Pursuant to art. 58, par. 2, lit. i) of the Regulation and of the art. 166, paragraphs 3 and 7 of the Code, the Guarantor orders the application of the pecuniary administrative sanction provided for by art. 83, par. 5, letter. a) of the Regulation, through the adoption of an injunction order (art. 18, l. 24.11.1981, n. 689), in relation to the processing of personal data carried out by the

company, the illegality of which has been ascertained, within the terms on exposed, in relation to the articles 5, par. 1, lit. a), 13, 29, 32 of the Regulation and in art. 114 of the Code.

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", considering that the ascertained violations of art. 5 of the Regulation are to be considered more serious, as they relate to the non-compliance with a plurality of principles of a general nature applicable to the processing of personal data, the total amount of the fine is calculated so as not to exceed the maximum prescribed for the aforementioned violation .

Consequently, the sanction provided for by art. 83, par. 5, letter. a), of the Regulation, which sets the statutory maximum in the sum of 20 million euros or, for companies, in 4% of the annual worldwide turnover of the previous year, if higher.

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" (art. 83, paragraph 1 of the Regulation), it is represented that , in the present case, the following circumstances that emerged during the investigation were considered to complete what was reported:

in relation to the nature, gravity and duration of the violation, the nature of the violation was considered, which concerned the general principles of treatment; the violations also concerned the conditions of lawfulness of the processing (both the general ones and the more specific provisions regarding processing in the context of employment relationships), the provisions on information.

with reference to the intentional or negligent nature of the violation and the degree of responsibility of the owner, the fact that the owner had placed some information, even if not in all the areas filmed, and had requested, albeit belatedly but before the investigations , the authorization from the Autonomous Province of Trento, Labor Section, with the exception of two television cameras, not contemplated in the authorization and installed subsequently;

the company cooperated with the Authority during the proceeding by carrying out some corrective actions on the video surveillance system, complying with the rules on the protection of personal data;

the absence of specific precedents against the company.

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), in firstly the economic conditions of the offender, determined on the basis of the revenues achieved by the company with reference to the financial statements for the year 2020.

5.4. In the light of the elements indicated above and the assessments made, it is believed, in the present case, to apply against Tecnomed Trento s.r.l. the administrative sanction of the payment of a sum equal to 10,000 (ten thousand).

In this context, in consideration of the type of violations ascertained which concerned the conditions of lawfulness of the processing, it is also considered the obligation to provide suitable information to the interested parties, 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 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

It should be remembered that, if the conditions are met, the sanction referred to in art. 83, par. 5, letter. e) of the Regulation.

ALL THAT BEING CONSIDERED, THE GUARANTOR

notes the unlawfulness of the processing carried out by Tecnomed Trento s.r.l., in the person of its legal representative, with registered and operational headquarters in Trento, via Paolo Borsellino 3, in the terms referred to in the justification, for the violation of articles 5, par. 1, lit. a) and c), 13, 29, 32 of the Regulation and 114 of Legislative Decree 196/2003;

ORDER

pursuant to art. 58, par. 2, lit. i) of the Regulations, to Tecnomed Trento s.r.l., to pay the sum of 10,000.00 (ten thousand) euros as an administrative fine for the violation indicated in this provision;

ENJOYS

therefore to Tecnomed Trento s.r.l., to pay the aforementioned sum of 10,000.00 (ten 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 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.

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, 7 April 2022

PRESIDENT

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THE SPEAKER

Cerrina Feroni

THE SECRETARY GENERAL

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