

Injunction order - May 12, 2022

Record of measures

n. 177 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 minutes drawn up on 26 March 2019, with which the Guardia di Finanza, Compagnia Susa, ascertained that, at the premises of the commercial establishment called "Bazar di Hu Xiaoyan", based in Rosta (TO), Corso Moncenisio n. 75, there was a video surveillance system, consisting of 12 cameras, 4 of which active and functioning, which did not comply with the rules on the protection of personal data as it lacked the relevant information signs and the guarantees provided for in art. 4 of Law 300/1970 referred to by art. 114 of the Code;

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;

Rapporteur Prof. Ginevra Cerrina Feroni;

## WHEREAS

1. The assessment by the Guardia di Finanza, Compagnia Susa and the initiation of the procedure.

With a note sent on 6.5.2019, the Guardia di Finanza, Compagnia Susa transmitted to this Authority the report of an investigation carried out on 26.3.2019, at the premises of the commercial establishment called "Bazar di Hu Xiaoyan", based in Rosta (TO), Corso Moncenisio n. 75.

During the investigation, the aforementioned Command verified the presence of a video surveillance system, consisting of 12 cameras, 4 of which active and functioning, or suitable for identifying the interested parties. In the face of the processing of personal data carried out by means of the aforementioned cameras, the absence of the prescribed information signs was ascertained and the authorization pursuant to art. 4 of Law no. 300/1970.

The Office, therefore, on the basis of the investigations carried out, referred to in the aforementioned report, notified Mr. Hu Xiaoyan, owner of the business in question, the act of initiating the sanctioning procedure, pursuant to art. 166, paragraph 5, of the Code in relation to the violation of art. 13 of the Regulations and art. 114 of the Code (prot. N. 20603 of 13.6.2019).

Despite having been informed of the possibility of producing defensive writings or documents in relation to the sanctioning procedure against him, Mr. Hu Xiaoyan, the data controller, did not send any documentation in this regard.

## 2. The legal framework of the processing carried out

The use of video surveillance systems may result in the processing of personal data in relation to the positioning of the cameras and the quality of the images recorded. This treatment must be carried out in compliance with the general principles contained in art. 5 of the Regulation and, in particular, of the principle of transparency which presupposes that "interested parties must always be informed that they are about to enter a video surveillance area".

For this purpose, therefore, the data controller must affix suitable information signs according to the indications contained in point 3.1. of the provision on video surveillance - April 8, 2010 [1712680] (in this sense also the Faq 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 "With regard to video surveillance, the most important information must be indicated [by the owner] on the warning sign itself (first level), while the additional mandatory details can be provided by other means (second level). The guidelines also provide that "This information may be provided in combination with an icon to give, in a clearly visible, intelligible and clearly legible way, an overview of the envisaged processing (Article 12, paragraph 7, of the GDPR) .

The format of the information will have to adapt to the various locations ". The information should be positioned in such a way as to allow 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 so as to avoid surveillance or adapt one's behavior, where necessary ".

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.

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

On the basis of the investigation carried out by the Guardia di Finanza, Compagnia Susa, it emerged that the video surveillance system, installed in the premises of the commercial establishment called "Bazaar of Hu Xiaoyan", based in Rosta (TO), Corso Moncenisio n. 75, is up and running, that the signs bearing the information pursuant to art. 13 of the Regulation and that the guarantee measures provided for by art. 4 of Law no. 300/1970, referred to by art. 114 of the Code.

Therefore, in the present case, it is proven in documents that the party has carried out a processing of personal data, by means of a video surveillance system, in the absence of the required information. 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 data subject with all information relating to the essential characteristics of the processing. Furthermore, considering that the video surveillance system had not previously been authorized by the Labor Inspectorate, the processing was carried out in violation of art. 114 of the Code regarding the protection of personal data.

#### 4. Order of injunction.

The Guarantor, pursuant to art. 58, par. 2, lett. i) of the Regulations and 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 (Article 18. Law of 24 November 1981 n. 689), in relation to the processing of personal data carried out by the company through the video surveillance system, of which it has been ascertained unlawfulness, in the terms set out above, in relation to articles 5, par. 1, lett. a), 13 of the Regulations and art. 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 be "in each individual case effective, proportionate and dissuasive" (Article 83, par. 1 of the Regulations), 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 responsibility related to the non-fulfillment of the obligation to provide the information to the interested parties and to adopt the guarantees provided by law in relation the rights of workers employed by the company;

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

the fact that Mr. Hu Xiaoyan, the data controller, did not cooperate with the Authority during the proceedings nor did he demonstrate that he had fulfilled the legal obligation.

Due to the aforementioned elements, assessed as a whole, it is believed to determine the amount of the financial penalty in the amount of € 20,000.00 (twenty thousand) for the violation of Articles 5, 13 of the Regulation and 114 of the Code.

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 art. 16, paragraph 1, of the regulation of the Guarantor n. 1/2019, this provision should be published on the Guarantor's website.

Finally, it is noted 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.

#### WHEREAS, THE GUARANTOR

declares, pursuant to art. 57, par. 1, lett. f) and 83 of the Regulation, the unlawfulness of the processing carried out by Mr. Hu Xiaoyan through the use of the video surveillance system installed in the premises of the commercial establishment called "Bazaar of Hu Xiaoyan", of which he is the owner, in the terms set out in the motivation, for the violation of Articles 5, 13 of the Regulation and 114 of the Code;

#### ORDER

to Mr. Hu Xiaoyan, owner of the sole proprietorship of the same name, P.I. 10697200961, with registered office in Rosta (TO), Corso Moncenisio n. 75, to pay the sum of € 20,000.00 (twenty thousand) as a pecuniary administrative sanction for the violations indicated in this provision;

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then to the same sig. Hu Xiaoyan, owner of the sole proprietorship of the same name, to pay the sum of € 20,000.00 (twenty thousand), according to the methods indicated in the annex, within 30 days from the 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, 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 Regulation, of art. 152 of the Code and 10 of the legislative decree 1 September 2011, n. 150, against this provision, it is possible to 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 applicant resides abroad.

Rome, May 12, 2022

PRESIDENT

Stanzione

THE RAPPORTEUR

Cerrina Feronii

THE SECRETARY GENERAL

Mattei