

Provision of April 27, 2023

Register of measures

no. 173 of 27 April 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 Guardia di Finanza, Tenenza XX, on 05/11/2020 in the area located in XX, hamlet XX, owned by Mr. XX, with which the presence of an active and functioning video surveillance system was ascertained, suitable for resuming the public road;

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. Pasquale Stanzione;

WHEREAS

1. The investigation by the Guardia di Finanza.

With a note received on 20/11/2020, the Unit for the protection of privacy and technological fraud of the Guardia di Finanza transmitted to this Authority the report drawn up by the Guardia di Finanza, Tenenza XX, relating to an inspection carried out by the latter on environmental matters, dated 05 /11/2020, in the area located in the XX fraction of XX, owned by Mr. XX.

During the investigation, the Guardia di Finanza verified the presence of a video surveillance system, consisting of eleven cameras positioned on the perimeter wall of Mr. XX, all functional and suitable for the detection, recording and conservation of

images.

In particular, from the investigation carried out, it appeared that six cameras filmed the public road.

In view of the processing of personal data carried out by means of the aforementioned system, the Office sent a communication to Mr. XX, aimed at knowing the measures adopted to comply with the principles regarding the protection of personal data, with reference to the location of the cameras oriented on the public road (note of 02/10/2021, prot. n. 8343).

In view of the failure to respond to the aforesaid request, he delegated the Privacy and Technological Fraud Protection Unit of the Guardia di Finanza to gather further elements of evaluation (note of 02/17/2022, prot. no. 11079).

The aforementioned Unit proceeded to notify the request for information by drawing up a report of the operations carried out, dated 03/17/2022, which showed that:

- the video surveillance system had been installed for purposes of security and protection of private property;
- initially the system consisted of 11 cameras, positioned on the walls of the building, while, following some renovation works as well as due to the failure of some cameras due to stormy phenomena, at the time of the inspection they were only active and functioning 4 of the 5 cameras present;
- the angle of view of two cameras included "also the municipal passageway adjacent to the building and the neighboring neighboring properties".

The Office, on the basis of the checks carried out pursuant to the aforementioned report, to notify, with a note dated 05/27/2022 (prot. n. 29035), to Mr. XX the initiation of the procedure for the adoption of the provisions 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 articles 5, par. 1, lit. a) and 6 of the Regulation.

The party, despite having been informed by the Office of the possibility of producing written defenses or documents in relation to the proceeding against him, has not sent any documentation in this regard, nor has he provided, as requested, indications regarding the measures taken to make the processing complies with the Regulations, with particular reference to the modification of the viewing angle of the cameras in order to avoid the filming of areas that are not pertinent or the adoption of suitable measures, such as e.g. eg. digital darkening of excess areas.

2. The legal framework of the treatment carried out.

In general, it is noted that, on the basis of art. 2, par. 2 of the Regulation, when the processing is carried out by a "natural

person for the exercise of activities of an exclusively personal or domestic nature", the provisions of the Regulation do not apply. In this regard, recital no. 18 of the Regulation specifies that "activities of an exclusively personal or domestic nature" are considered those carried out without a connection with a commercial or professional activity.

The use of video surveillance systems by individuals in areas of direct interest (such as those relating to their own home and its appurtenances) are therefore to be considered, in principle, excluded from the material scope of the provisions on the subject of data protection, because they fall within the processing carried out for the exercise of activities of an exclusively personal and domestic nature. This provided that the scope of data communication does not exceed the owner's family sphere and the images are not communicated to third parties or disseminated and the processing does not extend beyond the areas of strict relevance of the owner, taking images in common areas (also of the condominium type such as stairs, entrance halls, car parks), places open to the public (streets or squares), or areas belonging to third parties (gardens, terraces, doors or windows belonging to third parties).

In these circumstances, therefore, the processing carried out must be considered unlawful as it lacks an appropriate legal basis.

Only in the presence of situations of actual risk, the data controller can, on the basis of a legitimate interest, extend the shooting of the video cameras also to areas that go beyond its exclusive pertinence, provided that this is adequately motivated and supported by suitable documentation (eg. complaints, threats, thefts). In such cases, the data controller is required to comply with the provisions on personal data protection, which can be found in the Guidelines n. 3/2019, on the processing of personal data through video devices, adopted by the European Data Protection Committee and in the General provision on video surveillance of 8 April 2010 (available on the Authority's website www.gdpd.it, doc. web 1712680).

In the present case, the investigation carried out has shown that the recovery of the areas beyond those of relevance took place in the absence of suitable conditions of legitimacy, considering that the data controller has not demonstrated the existence of a legitimate interest referred to a situation of actual risk which would have justified such treatment.

4. Conclusions: illegality of the treatment carried out.

In the light of the foregoing assessments, having considered all the elements acquired during the investigation, it is believed that the conduct implemented by Mr. XX contrary to the principle of lawfulness pursuant to art. 5, par. 1, lit. a, of the Regulation, as well as lacking in suitable conditions of legitimacy pursuant to art. 6 of the same Regulation.

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 means of the video surveillance system.

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 which, in the absence of communications, is still ongoing involving an indefinite number of data subjects;

the circumstance that there was no participation and cooperation with the Authority during the proceeding with the consequent impossibility of verifying that suitable measures have been taken to mitigate the damage suffered by the interested parties.

Based on the aforementioned elements, evaluated as a whole, it is decided to determine the amount of the pecuniary sanction in the amount of 400.00 (four hundred) euros for the violation of articles 5, par. 1, lit. a) and 6 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 treatment carried out by Mr. XX, born in XX on X residing in XX (XX), Voc. XX no. XX, Fraction XX, Tax Code XX through the use of the video surveillance system, in the terms of which in the motivation, for the violation of the articles 5, par. 1, lit. a) and 6 of the Regulation;

ORDER

to mr. XX to pay the sum of 400.00 (four hundred) euros as an administrative fine for the violation indicated in the justification;

ENJOYS

to the same to conform, 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 location of the cameras in such a way as to limit the shooting to the areas of its pertinence;

to pay the sum of 400.00 (four hundred) 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 sanction 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 90 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.

Rome, 27 April 2023

PRESIDENT

Station

THE SPEAKER

station

THE SECRETARY GENERAL

