

Order injunction against Auto Hi-Fi System S.n.c - 28 July 2022

Record of measures

n. 273 of 28 July 2022

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by prof. Pasquale Stanzione, 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 complaint of Mr. XX;

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 Attorney Guido Scorza;

WHEREAS

1. The preliminary activity.

With the note of January 27, 2021, Mr. XX presented a complaint with which he complained about the installation, by the Auto Hi-Fi System S.n.c. by Banderali Alfio & C. (hereinafter "Auto Hi-Fi System") of a rotating video camera which, due to its characteristics and its location on the corner of the building, was suitable for framing not only the public street, but also the entrances (pedestrian and driveway) to one's home and, therefore, able to take back the complainant at each of his daily movements, both in and out of his home.

The complainant also stated that the video camera in question was not marked with appropriate information signs.

With the request for information of 23 November 2021, formulated pursuant to art. 157 of Legislative Decree no. 196 of 2003

containing the Code regarding the protection of personal data, notified through the special unit for the protection of privacy and technological fraud of the Financial Police, the preliminary investigation was initiated.

With the note of 22 December 2021, the Nucleus sent the report of the operations carried out to the Office drawn up as part of the delegated intervention.

During the inspection, the agents ascertained the existence of a single motorized camera located at the corner of the intersection between two streets (via XX Settembre and via Gerolamo Criminale) which, in addition to filming the sidewalk facing the commercial exercise of the Company, in its cyclical movement, also took up large areas of pavements and the carriageway of public streets, as well as windows and access doors of the private buildings that overlook the aforementioned streets, also located on the opposite side with respect to the one where find the commercial exercise (see in this regard the photographs and videos in documents acquired during the control by the Unit).

The viewing angle of the camera used therefore entailed a treatment that was certainly excessive compared to the legitimate interest of the Company underlying the treatment carried out, also taking into account the episodes of vandalism to which the exercise would have been subject in the past represented in the control (and not documented).

In the face of the processing of personal data carried out by means of the aforementioned camera, the ownership of which was identified by the company Auto Hi-Fi System snc of Banderali Alfio & C., the absence of the information referred to in the art. 13 of EU Regulation 679/2016.

The Office, on the basis of the findings of the aforementioned investigations, with the note of 29 March 2022, communicated the initiation of the procedure, pursuant to art. 166, paragraph 5, of the Code in relation to the violation of the general principles on the protection of personal data pursuant to art. 5, par. 1, lett. a) and c) and art. 13 of the Regulation.

The Company has not sent any defense briefs or writings (Article 18 of Law no. 689/1981).

2. The outcome of the investigation and the sanctioning procedure

Upon completion of the verification activities carried out and the subsequent assessments of the Office, it is ascertained that Auto Hi-Fi System has carried out a processing of personal data, by means of a video surveillance system in violation of the general principles on data protection. personal pursuant to art. 5, par. 1, lett. a) and c) and in the absence of suitable information, not observing the provisions of art. 13 of the Regulation.

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" (point 3.1. Of the provision on video surveillance - 8 April 2010) and the principle of minimization which presupposes that "the data are adequate, relevant and limited to what is necessary with respect to the purposes for which they are processed".

For this purpose, therefore, the data controller must pay particular attention to the correct identification of the areas recorded by the cameras, adopting, if necessary, suitable tools aimed at limiting the filming to the pertinent areas only, as well as affixing suitable information signs showing the indication of the owner and the purposes of the processing according to the indications contained in point 3.1. of the provision of 8 April 2010 (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:

"In some individual cases it may be necessary to extend video surveillance to the immediate vicinity of the property area. In this context, the data controller should consider the use of physical and technical means, for example by blocking or obscuring irrelevant areas ";

"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 processing must therefore be carried out in such a way as to limit the viewing angle to the area actually to be protected, avoiding, as far as possible, the resumption of surrounding places and details not relevant for the protection of the legitimate interest of the owner of the treatment (see in this regard also point 6.2. of the provision of 8 April 2010).

Information signs should be positioned in such a way as to allow the data subject to easily recognize the circumstances of the surveillance, before entering the supervised area (approximately at eye level) "to allow the data subject to estimate which area

is covered by a camera in order to avoid surveillance or adapt one's behavior, where necessary ".

3. Order of injunction.

The processing of personal data carried out by Auto Hi-Fi System is therefore illegal as it is carried out in a manner that does not comply with the principles of "lawfulness, correctness and transparency", as well as "minimization" of data, in violation of art. 5, par. 1, lett. a) and c) and art. 13 of the Regulation.

For the above, it is therefore deemed necessary to order Auto Hi-Fi System, pursuant to art. 58, par. 2, lett. d), of the Regulations, the adoption of the necessary measures to limit the recovery only to areas of strict relevance, which may include the immediate vicinity of the business and to ensure information to interested parties.

The Guarantor, pursuant to art. 58, par. 2, lett. i) of the Regulations and art. 166 of the Code, it also 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 party through the video surveillance system, in violation of art. . 5, par. 1, lett. a) and c) and art. 13 of the Regulation.

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, severity and duration of the violation, the negligent conduct of the data controller was taken into consideration as well as the responsibility related to the non-fulfillment of the obligation to disclose the information to the interested parties;
- with reference to the adoption of suitable measures to reconcile the legitimate interest of the owner with the rights and freedoms of the interested parties and to limit the data collected to what is necessary with respect to the purposes, the fact that the system of installed video surveillance expressly provides for the possibility of setting "privacy zones" by selecting the setting set up for the purpose and illustrated on p. 74 of the user manual acquired during the control, in attachment 7 to the report of operations carried out;
- the absence of specific precedents against the party relating to violations of the regulations on the protection of personal data, as well as the volume of the company's financial statements;

- the circumstance that the party did not cooperate with the Authority in the course of the proceedings, by not sending their own defensive writings.

Due to the aforementioned elements, assessed as a whole, it is believed to determine the amount of the financial penalty in the amount of € 2,000.00 (two thousand) for the violation of art. 5, par. 1, lett. a) and c) and 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 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 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.

WHEREAS, THE GUARANTOR

pursuant to art. 57, par. 1, lett. a) and 83 of the Regulations, declares the unlawfulness of the processing carried out Auto Hi-Fi System S.n.c. di Banderali Alfio & C. (VAT number 01429510181), with registered office in via XX Settembre, 38 Belgioioso (PV), in the terms set out in the motivation, for the violation of articles 5, par. 1, lett. a) and c) and 13 of the Regulations;

ORDER

pursuant to art. 58, par. 2, lett. i) of the Regulation to Auto Hi-Fi System S.n.c., to pay the sum of € 2,000.00 (two thousand) as a fine for the violation of Articles 5, par. 1, lett. a) and c) and 13 of the Regulations;

INJUNCES

To Auto Hi-Fi System S.n.c., pursuant to art. 58, par. 2, lett. d) of the Regulation:

a) to conform the treatments carried out through the video surveillance system by providing:

provide information to interested parties, by affixing suitable signs that warn them of the presence of the video surveillance system;

limit the recording of cameras only to areas of strict relevance as indicated in point 2 of this decision;

b) to pay the sum of € 2,000.00 (two thousand), according to the methods indicated in the annex, within 30 days of notification of this provision, under penalty of the adoption of the consequent executive acts pursuant to art. 27 of the l. n. 689/1981.

It is represented that the offender, pursuant to art. 166, paragraph 8, of the Code, has the right to settle the dispute, demonstrating that he has complied with the requirements referred to in point a) above and by paying, according to the

methods indicated in the annex, an amount equal to half of the sanction applied. referred to in point b) above, within the term referred to in art. 10, paragraph 3, of the legislative decree n. 150 of 2011.

HAS

the publication of this provision on the website of the Guarantor pursuant to art. 166, paragraph 7, of the Code and by art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019, as well as the annotation of violations in the internal register of the Authority pursuant to art. 17 of the Guarantor Regulation n. 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, July 28, 2022

PRESIDENT

Stanzione

THE RAPPORTEUR

Peel

THE SECRETARY GENERAL

Mattei