

Injunction order against Rebirth s.r.l. - April 7, 2022

Record of measures

n. 121 of 7 April 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 drawn up by the Guardia di Finanza - Special Privacy Unit -, which revealed the presence of a video surveillance system at the "Caffè Antica Roma" venue, which does not comply with the provisions of art. 13 of the Regulations and 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. Pasquale Stanzione;

WHEREAS

1. Notification and initiation of the sanctioning procedure.

With a note dated 22.6.2020, the installation of a video surveillance system was reported at the "Caffè Antica Roma", managed by the company Rebirth s.r.l. based in Rome, Via Giacomo Caneva 21-27, not in compliance with the rules on the protection of personal data.

Since the aforementioned company did not provide feedback either to the first request for information from the Office, dated 16.10.2020 (prot. 39990), or to the subsequent request, sent on 26.1.2021 (prot. 5235), pursuant to art. 157 of the Code, the

Department notified the Company, on 16.4.21, pursuant to art. 166 paragraph 5 of the legislative decree n. 196/2003, the communication of the initiation of the sanctioning procedure in relation to the violation of art. 157 of the Code.

Considering that, even after the sanctioning procedure was initiated, the Company did not provide feedback to the inquiries, the Special Privacy Protection and Technological Fraud Unit of the Finance Police was tasked with acquiring the information on site.

Following the investigations carried out by the Nucleus on 26.1.22, at the bar and restaurant business with the "Caffè Antica Roma" brand, it was ascertained the presence of 14 functioning cameras, placed inside and outside the aforementioned establishment commercial, in the absence of information signs informing them of their presence; it was also found that the installation of the video surveillance system had taken place in the absence of the authorization of the Labor Inspectorate or the trade union agreement with the workers employed in the company.

Based on what emerged from the investigations carried out, the Office notified the aforementioned company a second act to initiate the sanctioning procedure, pursuant to art. 166, paragraph 5, of the Code (prot. No. 8984 of 9.2.22) in relation to the violation of articles 5, 13 of the regulation and 114 of the Code.

2. Content of the company's defense brief.

With a note dated 2.3.22, Mr. Ciro Menichini, legal representative of Rebirth s.r.l., sent this Authority a defensive brief in which he declared that, on 26.1.22, the Company forwarded the request for authorization of the plant to the Territorial Labor Directorate and that, despite the absence of the required information signs of the cameras, the Company has always notified the staff of their presence, asking for their consent in the employment contract.

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

Upon examination of the documentation produced, it emerged that the video surveillance system, installed at the "Caffè Antica Roma" is up and running, that no signs bearing the information pursuant to art. 13 of the Regulations and that the same, at the time of the check, was not authorized by the Labor Inspectorate or subject to a trade union agreement with the workers' union representatives.

With regard to the processing of personal data, by means of a video surveillance system, carried out in the absence of 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 - before the start of the treatment - with all the information relating to the essential

characteristics of the treatment. When, as in this case, the system also incorporates areas in which employees of the Company operate, it should be noted that, in the context of the employment relationship, the obligation to inform the employee is also an expression of the general principle of correctness of processing, contained in art. 5, par. 1, lett. a) of the Regulations.

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 the aforementioned 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 assets company "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 as 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, having failed to comply with the aforementioned provision, is therefore illegal, in the terms set out above, in relation to articles 5, par. 1, lett. a) (principle of lawfulness) and 88 (processing of data in the context of employment relationships) of the Regulation and art. 114 (guarantees regarding remote control) of the Code.

In addition to the aforementioned violations, it is ascertained that Rebirth s.r.l. failed to respond to the request for information of 26.1.2021, formulated by the Authority pursuant to art. 157 of the Code, after the sending - likewise left unanswered - of the previous invitation of 16.10.2020. According to the aforementioned article 157 of the Code "Within the scope of the powers referred to in article 58 of the Regulation, and for the performance of its duties, the Guarantor may request the holder, [...] to provide information and exhibit documents" .

Failure to reply to the Guarantor's request for information makes it applicable, pursuant to art. 166, paragraph 2, of the Code, the administrative sanction provided for by art. 83, par. 5 of the Regulation.

4. Conclusions: declaration of illegality of the treatment. Corrective measures pursuant to art. 58, par. 2, Regulations.

For the aforementioned reasons, the Authority believes that the declarations, documentation and reconstructions provided by the data controller during the investigation do not allow to overcome the findings notified by the Office with the act of initiation of the procedure and which are therefore unsuitable to allow the filing of this proceeding, since none of the cases provided for by art. 11 of the Guarantor Regulation 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, lett. a) (principle of lawfulness and correctness) of the Regulation and of the art. 114 (guarantees regarding remote control). The Authority's investigation activity was also aggravated by the failure to respond to the request for information sent pursuant to art. and 157 of the Code.

Given the corrective powers attributed by art. 58, par. 2 of the Regulation, the application of a pecuniary administrative sanction is therefore ordered 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 ancillary sanctions (Articles 58, paragraph 2, letter i), and 83 of the Regulations; art. 166, paragraph 7, of the Code).

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 Regulations, through the adoption of an injunction order (Article 18. Law no. 689 of 24 November 1981), in relation to the processing of personal data carried out by the party in violation of art. 157 of the Code and in violation of art. 5, par. 1, lett. a), 13 of the Regulation and 114 of the Code.

Considering it necessary to apply paragraph 3 of art. 83 of the Regulation where it provides that "If, in relation to the same

treatment or related treatments, a data controller [...] violates, with intent or negligence, various provisions of this regulation, the total amount of the pecuniary administrative sanction does not exceed the 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 general principles applicable to the processing of personal data, the total amount of the sanction is calculated in such a way as not to exceed the maximum permitted by law for the aforementioned violation. .

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

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 negligent conduct of Rebirth s.r.l. was taken into consideration. which resulted in a lengthening of the procedure definition times and imposed the renewal of investigative deeds as well as the responsibility related to the non-fulfillment of the obligation to provide information to the interested parties and to fulfill the warranty obligations provided for in art. 4 of the law n. 300/1970 (so-called Workers' Statute) referred to in art. 114 of the Code;

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

the circumstance that the party cooperated with the Authority during the proceedings by sending its own defensive writings and making corrective actions to the video surveillance system.

Due to the aforementioned elements, assessed as a whole, it is believed to determine the amount of the financial penalty in the amount of € 15,000.00 (fifteen thousand) for the violation of Articles 5, par. 1, lett. a), 13 of the Regulation, 114 and 157 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 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

declares, pursuant to art. 57, par. 1, lett. f) and 83 of the Regulation, the unlawfulness of the processing carried out by Rebirth s.r.l. (P.I. 12607591000), bearing the sign "Caffè Antica Roma", based in Rome, Via Caneva 21-27, in the terms set out in the grounds, for the violation of Articles 5, par. 1, lett. a), 13 of the Regulations, 114 and 157 of Legislative Decree 196/2003;

ORDER

to Rebirth s.r.l. to pay the sum of € 15,000.00 (fifteen thousand) as a pecuniary administrative sanction for the violation indicated in this provision;

INJUNCES

then to the same Company to pay the aforementioned sum of € 15,000.00 (fifteen 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 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, April 7, 2022

PRESIDENT

Stanzione

THE RAPPORTEUR

Stanzione

THE SECRETARY GENERAL

Mattei