

Injunction order against Brico Rida s.r.l. - May 13, 2021

Record of measures

n. 191 of May 13, 2021

#### THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by Prof. Pasquale Stanzione, president, Prof. 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 inspection report drawn up by the Carabinieri Command for Labor Protection - Carabinieri Labor Inspectorate Unit of Ferrara - which ascertained the presence of a video surveillance system, without the information referred to in art. 13 of the Regulations, at the legal and operational headquarters of the company Brico Rida s.r.l., located in Cento (FE), via Matteo Loves n. 25/27;

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 Prof. Ginevra Cerrina Feroni;

WHEREAS

1. The assessment of the Carabinieri Command for the protection of work and the initiation of the procedure.

1.1. With a note sent on 30 July 2019, the Carabinieri Command for Labor Protection - Nucleo carabinieri Labor Inspectorate of Ferrara - sent this Authority the report of an investigation carried out on 25 July 2019, at the registered and operational headquarters of the company Brico Rida s.r.l., located in Cento (FE), via Matteo Loves n. 25/27. During the investigation, the aforementioned Carabinieri Unit verified the presence of a video surveillance system, consisting of 6 cameras positioned in

various areas of the sales area, active and functioning, i.e. suitable for identifying the interested parties. Faced with the processing of personal data, carried out by means of the aforementioned system, the absence of suitable information was ascertained, pursuant to art. 13 of the Regulation.

1.2. The Office, therefore, on the basis of the investigations carried out, referred to in the aforementioned report no. 44-45 of 25 July 2019, notified Brico Rida s.r.l., in the person of the pro-tempore legal representative, 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 Regulation (prot. N. 35432 of 17.10.2019).

1.3. The company, on November 5, 2019, sent its defense writings, pursuant to art. 18 of the law n. 689/1981, with which it declared that:

- in March 2019, with a business branch rental deed, he had taken over the shop in via Matteo Loves, where the video surveillance system, installed by the previous managers of the venue, was already present;
- the plant in question had almost never been put into operation as it was scarcely useful for the purpose of monitoring the sales area;
- as for the lack of information "since this is a system already installed and functioning, it was mistakenly considered that it complied with all the legal requirements, neglecting to note the lack of warning signs to protect personal data".

2. The outcome of the investigation and the sanctioning procedure.

2.1. Upon the outcome of the declarations made by the company during the procedure, provided that, unless the fact constitutes a more serious crime, whoever, in a procedure before the Guarantor, falsely declares or certifies news or circumstances or produces false documents or documents, is liable for it. pursuant to art. 168 of the Code, it emerged that the video surveillance system, installed at the premises of the company Brico Rida s.r.l., was up and running, and that it lacked the information required by art. 13 of the Regulation.

2.2. Therefore, the fact that the system in question had been installed by the previous managers of the venue is of no relevance, given that the ownership of the processing of personal data lies with the company Brico Rida s.r.l. which, therefore, should have fulfilled all the obligations and fulfilments required by the sector legislation. In this respect, the exemption of good faith does not appear to be configurable, as the error is neither inevitable nor innocent. Finally, it is noted that, contrary to what the company found, the photographic surveys carried out during the inspection made it possible to verify that the images taken

were wide-ranging and therefore, suitable for shooting and identifying the interested parties.

2.3. Therefore, in the present case, it is clear that the company 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.

### 3. Order of injunction.

3.1. 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, in the absence of the information referred to in art. 13 of the Regulation.

3.2. 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;
- the absence of specific precedents against the company relating to violations of the regulations on the protection of personal data;
- the circumstance that the company cooperated with the Authority during the procedure, sending its own defensive writings;
- the fact that the company declared that it promptly complied with compliance with the provisions on the processing of personal data.

3.3. 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. 13 of the Regulation.

3.4. 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 Regulations, the unlawfulness of the processing carried out, in the terms set out in the motivation, for the violation of art. 13 of the Regulations;

ORDER

to Brico Rida s.r.l., in the person of the pro-tempore legal representative, with registered office in Cento (FE), Via M. Loves n. 25-27, (P.I. 02036390389), to pay the sum of € 2,000.00 (two thousand) as a pecuniary administrative sanction for the violation indicated in the motivation;

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then to the same Company 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 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 submission 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 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 13, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Cerrina Feroni

THE SECRETARY GENERAL

Mattei