

Order injunction against OTTO s.r.l. - October 28, 2021

Record of measures

n. 387 of 28 October 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 service report relating to the administrative control carried out, on 11 February 2020, by the Administrative and Social Police of the Palermo Police Headquarters, at the public exercise called "Finger", located in Palermo, via Archimede 189, managed by the company OTTO s.r.l., with which the presence of a video surveillance system was ascertained, consisting of 3 active and functioning cameras, without the information pursuant to art. 13 of the Regulations;

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. Pasquale Stanzione;

WHEREAS

1. The assessment by the Administrative and Social Police of the Palermo Police Headquarters.

With a note received on 2 March 2020, the Police Headquarters of Palermo, Administrative and Social Police Division, sent this Authority a copy of the service report relating to the administrative control, carried out by the same on 11 February 2020, at the public premises called "Finger" site in Palermo, Via Archimede 189.

During the investigation, the presence of a video surveillance system was detected, consisting of 3 active and functioning

cameras - two placed inside the room and one outside - 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.

With a note dated 12 August 2020 (prot. Prot. No. 30530), the Office, on the basis of the investigations carried out pursuant to the aforementioned service report, notified OTTO s.r.l. (P.I. 05757880827), data controller, the initiation of the procedure for the adoption of the measures referred to in Articles 58, par. 2, and 83 of the Regulations, in accordance with the provisions of art. 166, paragraph 5, of the Code, in relation to the violation of art. 13 of the Regulation.

The company, despite having been informed of the possibility of producing defensive writings or documents in relation to the sanctioning procedure against it, has not sent 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 ".

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

On the basis of the assessment carried out by the staff of the Palermo Police Headquarters, Administrative and Social Division, it emerged that the company OTTO s.r.l., while processing personal data through a video surveillance system at the public exercise called "Finger", located in Palermo , via Archimede 189, plant that was active and functioning at the time of the assessment, had not prepared, as it was required, suitable information, pursuant to art. 13 of the Regulation, to inform interested parties on the processing of their data, not taking into account the indications contained in the guidance documents listed above.

It is therefore proven in documents 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.

### 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, in the absence of the information referred to in 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 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 has not cooperated with the Authority during the procedure nor has it shown that it has fulfilled its 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 € 2,000.00 (two thousand) for the violation of 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 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 OTTO s.r.l. through the use of the video surveillance system installed in the public establishment managed by the same called "Finger" located in Palermo, via Archimede 189, in the terms set out in the motivation, for the violation of art. 13 of the Regulations;

ORDER

to OTTO s.r.l. (P.I. 05757880827) to pay the sum of € 2,000.00 (two thousand) as a fine 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 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, October 28, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Stanzione

THE SECRETARY GENERAL

Mattei