

Injunction order - 1 December 2022

Register of measures

no. 408 of 1 December 2022

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 carried out by the local police consortium Alto Vicentino of the Municipality of Schio (VI) which detected the presence of a video surveillance system installed in the sole proprietorship "Woolen" - located in Schio (VI) Piazza Alvise Conte 6 not compliant with the provisions of articles 13 of the Regulation and 114 of Legislative Decree 196/2003 (Personal Data Protection Code);

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. Geneva Cerrina Feroni;

WHEREAS

1. The assessment documents and the initiation of the proceeding.

With a note dated 02.05.22, the Consortium of Local Police Alto Vicentino of the Municipality of Schio transmitted to this Authority the report of the control, carried out on 04.13.22, by the aforementioned Police Corps, at the sole proprietorship "Woolen" - located in Schio, (VI), Piazza Alvise Conte 6, carrying out the business of administering food and beverages, of which Mr. Matteo Grandis is the owner and legal representative, with whom the presence of 2 cameras, placed inside the

premises, and a camera placed outside the same "which only records the audience of the public establishment" was ascertained.

The aforementioned report reported that "the information relating to the presence of the television cameras is not provided as envisaged by the installation of clearly visible signs"; in fact, the presence of only one information sign "located under a shelf adjacent to the serving counter, within the range of the camera, not immediately identifiable", was verified, lacking, however, the indications of the data controller; it also refers to the lack of authorization for the plant by the Labor Inspectorate or the union agreement with the workers' representatives.

The minutes also include the statements of Mr. Matteo Grandis who declared that the plant is functioning, that he is the data controller and that he has "appointed Dr. Graziani Daniela, labor consultant of Ascom of Schio, to request authorization from the Inspectorate of I'm working on the video surveillance system in question".

Therefore, on the basis of the checks carried out, the Office proceeded to notify Matteo Grandis' sole proprietorship "Woolen" of the initiation of the procedure, pursuant to art. 166, paragraph 5, of the Code, in relation to the violation of the principle of lawfulness of the treatment pursuant to art. 5, par. 1, lit. a) and 88 of the Regulation as the video surveillance system was installed in the absence of the guarantee procedures required by art. 4 of Law no. 300/1970 referred to by art. 114 of the Code (prot. n. 30929 of 10.6.22).

The Company has not sent any note in relation to the alleged facts.

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

Upon examination of the documentation produced, it emerged that, at the time of the check, the video surveillance system installed at the sole proprietorship "Wollen" was functioning and that only one information sign had been affixed inside the premises, "not clearly visible" as "positioned under a shelf adjacent to the serving counter, under the range of action of the video camera, not immediately identifiable" and no sign outside the room where the presence of a video camera was instead ascertained video surveillance, in violation of art. 5, par. 1, lit. A) and 13 of the Regulation and the indications provided by the Authority with the general provision on video surveillance of 8 April 2010. Furthermore, although company personnel worked in the premises, the procedures envisaged by art. 4 of Law 300/1970 containing the Workers' Statute.

In this regard, it should be noted that the processing of personal data carried out in the context of the employment relationship, if necessary for the purpose of managing the relationship itself (see articles 6, paragraph 1, letter c); 9, par. 2, lit. b) of the

Regulation), must take place in compliance with the general principles indicated by art. 5 of the Regulation, and in particular of the principle of lawfulness and transparency, on the basis of which the processing is lawful if it complies with the applicable sector regulations (Article 5, paragraph 1, letter a) of the Regulation) and transparent towards of the interested party. Consistent with this approach, the 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 workers' personal data.

The national legislator has approved, as a more specific provision, art. 114 of the Code which among the conditions of lawfulness of the treatment established the observance of the provisions of art. 4, law 20 May 1970, n. 300. The violation of the art. 88 of the Regulation is subject, if the requisites are met, to the application of a pecuniary administrative sanction pursuant to art. 83, par. 5, letter. d) of the Regulation.

Based on the aforementioned art. 4, the. no. 300 of 1970, video surveillance equipment, if from the same derives "also the possibility of remote control" of employee activity, "may be used exclusively for organizational and production needs, for workplace safety and for the protection of company assets " and the relative installation must, in any case, be carried out following the stipulation of a collective agreement with the unitary trade union representatives or with the company union representatives or, where it has not been possible to reach such an agreement or in the absence of the representatives, only in preceded by the issue of a specific authorization by the Labor Inspectorate.

The activation and conclusion of this guarantee procedure is therefore an indefectible 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 through the video surveillance system is therefore illegal, in the terms set out above, in relation to articles 5, par. 1, lit. a), 13 and 114 of the Code.

Therefore, in the present case, it has been ascertained that the Company has processed personal data, by means of a video surveillance system, in violation of the general principles regarding the protection of personal data pursuant to art. 5, par. 1, lit. a), of the art. 13 and without fulfilling the aforementioned guarantee procedures required by art. 4 of Law no. 300/1970 referred to by art. 114 of the Code.

3. Adoption of the injunction order for the application of the pecuniary administrative sanction and accessory sanctions (articles 58, paragraph 2, letter i), and 83 of the Regulation; art. 166, paragraph 7, of the Code).

Pursuant to art. 58, par. 2, lit. i) of the Regulation and of the art. 166, paragraphs 3 and 7 of the Code, the Guarantor orders the application of the pecuniary administrative sanction provided for by art. 83, par. 5, letter. a) of the Regulation, through the adoption of an injunction order (art. 18, l. 24.11.1981, n. 689), in relation to the processing of personal data carried out by the company, the illegality of which has been ascertained, within the terms on exposed, in relation to the articles 5, par. 1, lit. a) and 13 of the Regulation and in art. 114 of the Code.

With reference to the elements listed by art. 83, par. 2 of the Regulation for the purposes of applying the pecuniary administrative sanction and the relative quantification, taking into account that the sanction must "in any case [be] effective, proportionate and dissuasive" (art. 83, paragraph 1 of the Regulation), it is represented that In the present case, the following circumstances were considered:

in relation to the nature, gravity and duration of the violation, the nature of the violation was considered, which concerned the general principles of treatment; the violations also concerned the conditions of lawfulness of the processing (both the general ones and the more specific provisions regarding processing in the context of employment relationships and the obligation to provide information);

the circumstance that the data controller has not cooperated with the Authority during the procedure nor has he demonstrated that he has fulfilled his legal obligation;

the absence of specific precedents against the sole proprietorship, of small dimensions.

In the light of the elements indicated above and the evaluations carried out, it is believed, in the present case, to apply the administrative sanction of payment of a sum equal to 3,000 three thousand euros against the sole proprietorship "Woolen").

In this context, in consideration of the type of violations ascertained which concerned the conditions of lawfulness of the processing, it is also considered the obligation to provide suitable information to the interested parties, which pursuant to art. 166, paragraph 7, of the Code and of the art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019, this provision must be published on the Guarantor's website.

It is also believed 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.

It should be remembered that, if the conditions are met, the sanction referred to in art. 83, par. 5, letter. e) of the Regulation.

ALL THAT BEING CONSIDERED, THE GUARANTOR

notes the unlawfulness of the processing carried out by Mr. Matteo Grandis, owner and legal representative of the sole proprietorship "Woolen", in the terms set out in the justification, for the violation of articles 5, par. 1, lit. a) and 13 of the Regulation and of the art. 114 of Legislative Decree 196/2003;

ORDER

pursuant to art. 58, par. 2, lit. i) of the Regulation, to Mr. Matteo Grandis, owner of the sole proprietorship "Woolen", located in Schio, (VI) Piazza Alvisè Conte 6, (P.I. 04383450246), to pay the sum of 3,000 (three thousand) euros as an administrative fine for the violation indicated in the this provision;

ENJOYS

then to Mr. Matteo Grandis, owner of the sole proprietorship "Woolen",

1) to comply, where it has not already done so and within 60 days of receipt of this provision, pursuant to art. 58, par. 2, lit. d) of the Regulation, your treatment of the Regulation, with reference to:

- a) affixing of suitable information signs about the presence of video cameras;
- b) the fulfillment of the provisions of art. 4, paragraph 1, law 20.5.1970, no. 300;

2) to pay the aforementioned sum of 3,000 (three thousand) 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 requests Matteo Grandis to communicate which initiatives have been undertaken in order to implement the provisions of this provision 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, as well as articles 152 of the Code and 10 of Legislative Decree no. 150/2011, opposition to the ordinary judicial authority may be lodged against this provision, with an appeal lodged 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 appellant resides abroad

Rome, 1st December 2022

PRESIDENT

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THE SPEAKER

Cerrina Feroni

THE SECRETARY GENERAL

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