

Order injunction against Ekss s.r.l. - April 28, 2022

Record of measures

n. 168 of 28 April 2022

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by 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";

HAVING REGARD to the assessment document drawn up by the Rome IV District Police Headquarters of P.S. "San Basilio" with which the presence of a video surveillance system was detected at the "Swuami" public administration business owned by the company Ekss s.r.l. (hereinafter, the Company), which does not comply with the provisions of 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;

Rapporteur Dr. Agostino Ghiglia;

WHEREAS

1. The assessment and initiation of the procedure.

With a note dated 23.11.2021, the Rome IV District Police Headquarters of P.S. "San Basilio" sent the report of the inspection carried out, on 02.19.2021 at the "Swuami" public administration office, located in Rome via Fiuminata 6b, 6c, 8, belonging to the company Ekss s.r.l. The report reports the presence of 2 functioning cameras placed within the aforementioned business and the lack of information signs indicating the presence of the cameras

On the basis of the investigations carried out, referred to in the aforementioned minutes, the Office notified EKSS s.r.l., owner

of the aforementioned business, the act of initiating the sanctioning procedure, pursuant to art. 166, paragraph 5, of the Code in relation to the violation of art. 5, par. 1, lett. a) and 13 of the Regulation (prot. n. 59672 of 29.11.2021).

With a note dated 24.12.21, the Company sent defensive writings to the Guarantor in relation to the sanctioning procedure against it, declaring that, after the check, it had placed the information signs on the presence of the cameras, providing adequate documentary evidence in this regard.

Finally, with a note dated 30.3.2022, the Company represented the definitive closure of the activity carried out by the public exercise called "Swuami", having the Municipality of Rome definitively revoked, following a proceeding initiated at the instigation of the Prefecture of Rome, the concession for the administration of food and drink on 12.3.2021.

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. 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, of which it has been ascertained unlawfulness, in the terms set out above, in relation to articles 5, par. 1, lett. a) and 13 of the Regulations.

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 cooperated with the Authority to mitigate the effects of the violation that occurred, providing for adequate information signs.

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 Articles 5, 13 of the Regulation and 114 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 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

a) declares, pursuant to art. 57, par. 1, lett. f) and 83 of the Regulation, the unlawfulness of the processing carried out by Ekss s.r.l., with registered office in Rome, Via Fiuminata 6 / B, 6 / C, 8 (C.F. 14346711006) through the use of the video surveillance system installed at the business of administration to the public "Swuami", in the terms set out in the motivation, for the violation

of art. 5, par. 1, lett. a) and 13 of the Regulations;

ORDER

to Ekss s.r.l, based in Rome, Via Fiuminata 6 / B, 6 / C, 8 (Tax Code 14346711006) to pay the sum of € 2,000.00 (two thousand) as a pecuniary administrative sanction for the violations indicated in this provision ;

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therefore to Ekss s.r.l itself, 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 Regulation (EU) 2016/679, as well as art. 152 of the Code and 10 of Legislative Decree 1 September 2011, n. 150, 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 28, 2022

THE VICE-PRESIDENT

Cerrina Feroni

THE RAPPORTEUR

Ghiglia

THE SECRETARY GENERAL

Mattei