[doc. web n. 9781242]

Injunction order against the Municipality of Villabate - 12 May 2022

Record of measures

n. 174 of 12 May 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, concerning the protection of individuals with regard to the processing of personal data, as well as the free circulation of such data and which repeals Directive 95/46 / CE, "General Data Protection Regulation" (hereinafter, "Regulation");

GIVEN the legislative decree 30 June 2003, n. 196 containing the "Code regarding the protection of personal data, containing provisions for the adaptation of the national system to Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016, relating to the protection of individuals with regard to to the processing of personal data, as well as to the free circulation of such data and which repeals Directive 95/46 / EC (hereinafter the "Code");

GIVEN the Regulation n. 1/2019 concerning internal procedures with external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor for the protection of personal data, approved by resolution no. 98 of 4 April 2019, published in the Official Gazette n. 106 of 8 May 2019 and in www.gpdp.it, doc. web n. 9107633 (hereinafter "Regulation of the Guarantor no. 1/2019");

Having seen the documentation in the deeds;

Given the observations made by the secretary general pursuant to art. 15 of the Guarantor Regulation n. 1/2000 on the organization and functioning of the office of the Guarantor for the protection of personal data, Doc. web n. 1098801;

Speaker prof. Pasquale Stanzione;

WHEREAS

1. Introduction.

With a complaint of the XX, submitted pursuant to art. 77 of the Regulation, the complainant, a former employee of the Municipality of Villabate (hereinafter, the "Municipality"), complained that the then head of the General Affairs sector of the

Municipality would have sent, by letter of the XXth, the note prot . XX, relating to events related to the foreclosure at the Municipality of the share of the complainant's salary, as well as to a banking institution and the complainant himself, also to the Entity with which the complainant had established a new employment relationship, making known to this 'lastly the "existence of alleged foreclosures", as well as the "existence of a residual debt [...] overdue and not transferable between the two administrations".

This note also mentioned the fact that the complainant had "obtained the extension of the leave and [had] presented formal resignation from [...] for having won a competition at [...] to which the [note was] sent for information ".

The complainant also complained that the Municipality would not have appointed a data protection officer (hereinafter, "DPO") or to make his contact details public, as required by art. 37, para. 1, lett. a), and 7 of the Regulations, having learned only “informally that the person identified [was] the same [manager of the General Affairs sector of the Municipality]”.

In response to a request for information from this Authority (prot. Note no. XX of the XX), the Municipality, with note prot. n. XX of the XX, stated, in particular:

to have “provided with the Union Resolution no. XX to the temporary appointment of the person responsible for the protection of personal data "and to have proceeded" on XX to the insertion of data through the computer procedure indicated on the Authority's website ";

that “[…] in any case, all the information contained in the personal file of the transferred employee must be sent to the new Body […]”.

Responding to a further request for information from this Authority (prot. No. XX of the XX), the Municipality, with note prot. n. XX of the XX, stated, in particular, that:

“The [head of the General Affairs sector of the Municipality], cat. D, with trade union determination no. XX was provisionally identified [as DPO] as [...] an employee holding an older organizational position and therefore, "taking into account the limited resources present in the staff [...] and pending entrusting the service to an external party" ', [she was considered] due to experience and professionalism suitable to cover the provisional position ";

"The provision is regularly published in the municipal online praetorian register starting from the 20th [...] and contextually inserted in the section" Transparent Administration "in the subsections" other contents - prevention of corruption "and" measures - measures governing bodies ";

"With determination of the Head of Sector I n. XX of XX the [RPD] service was entrusted to the company [...] [, a subject external to the Entity] ";

"The specific hypothesis that the employee was subjected to the monthly salary deduction following a third party attachment entailed, being the [Municipality]" custodian "of the foreclosed sums (pursuant to Article 546 of the Italian Civil Code), the obligation to communicate to the new employer the employee's debt to the assignee bank pursuant to art. 2112 of the civil code [...] and in application of art. 1406 of the Civil Code […] ";

"The reference legislation [can be found in] art. 543 and following of the civil code ";

"[...] not resulting in the official documents [the] extinction of the debt of the official [, the Municipality] on XX with [note] prot. n. XX communicated to the new employer […] the attachment in itinere ".

2. The preliminary activity.

With a note of the XX (prot. No. XX), the Office, on the basis of the elements acquired, the verifications carried out and the facts that emerged as a result of the investigation, notified the Municipality, pursuant to art. 166, paragraph 5, of the Code, the initiation of the procedure for the adoption of the measures referred to in art. 58, par. 2, of the Regulation, concerning the alleged violations of articles 5, par. 1, lett. a), 6, 37, par. 1, lett. a), and par. 7, as well as 38, par. 6, of the Regulations, inviting the aforementioned Municipality to produce defensive writings or documents to the Guarantor or to ask to be heard by the Authority (Article 166, paragraphs 6 and 7, of the Code, as well as Article 18, paragraph 1, of the l. November 24, 1981, n. 689).

With a note of the XX (prot. No. XX), the Municipality presented a defense brief, declaring, in particular, that:

"The Public Administration is required to create the employee's personal file, which takes the name of" matriculation status "pursuant to art. 55 Presidential Decree n. 3 of 10 January 1957. The same "employee's personal file" makes express reference to the Legislative Decree n. 165/2001 in art. 11, paragraph 7 for which it is believed that all employee information should be kept therein, including pending foreclosures from third parties ";

"This debt arises from the attachment deed dated 9/01/2012 with which the Bank obtained the assignment of the sum of € […] for a maximum of one fifth of the salary. The [complainant] […] had not yet paid off his debt. In fact, […] with the note taken by prot. n. XX of the XX this body became aware that [he] was still a debtor towards [the] [creditor,] [who] announced that he had started the procedures for the extrajudicial recovery of the sums ";

"Therefore, only at that moment the Head of the competent Sector, in good faith and according to principles of fairness, deemed it necessary to communicate to the Credit Institute that the [complainant] was no longer an employee of the municipality of Villabate from [...] and that he was transferred to [the new employer body] ";

"in this regard, the fact that the communication was made […] [also] to the same employee as proof of the perfect good faith of the [Municipality] […] does not appear to be irrelevant";

the provisional designation of the DPO in the person of the then head of the General Affairs sector of the Municipality was necessary "pending the identification of a suitable external figure, [...] as the lack of approval of the Budget and the lack of financial resources could be temporarily compensated with the identification of an internal figure. The reduced staffing of the municipality […], which compared to 150 units in the case of a failed institution had about 75 units in service and only n. 9 categories "D", made the Mayor identify the data protection officer [...] with one of the sector managers with a sufficient degree of autonomy within the organization ";

"[...] the disputed communication was signed by the same [manager of the General Affairs sector of the Municipality] since there was and is the perfect conviction of having fulfilled a legal obligation deriving from the [...] contract signed between the [complainant] and the credit company […], an obligation never contested before by the assigned debtor ";

"As regards, however, the communication of contact details [to the] Authority, it is undeniable that the communication of the appointment of the DPO [...] on XX date took place, for mere forgetfulness, belatedly. While the designation of the external DPO [...], whose assignment took place after the approval of the Budget 2019/2021, with City Council resolution no. 04 of 04/05/2020 was communicated [to the Authority] with the reply note prot. n. XX of the XX [...] [, during the investigation relating to the complaint,] thus considering the obligation to provide information fulfilled ";

"[...] contact details of the DPO are regularly published in the" privacy "section of the website of the municipality of Villabate, with an indication of the contacts, the INFORMATION NOTICES and the FORMS";

"With regard to the due registration in the platform of the site [of the] Authority, inherent in [the] takeover of the [new DPO], as established with the Trade Union resolution no.84 of 29/07/2020, this was completed on XX . The delay is due to the aforementioned difficulties exacerbated by the XX u.s. from the specious circumstance that the Municipal Body found itself without the professional figure of the General Accountant, for which the emergency financial situation was added to the particularly precarious and pernicious financial situation, due to the absence of this essential professional figure, essential for

the proper functioning of the Entity, which in recent months has accumulated endemic delays in the hesitation of compliance [...;] the takeover [of the new DPO] was reported [to the Authority] with the note prot.XX of the XX and to the citizens on the institutional site of the Municipality on an earlier date ".

On the occasion of the hearing, requested by the Municipality pursuant to art. 166, paragraph 6, of the Code and held on XX (see minutes prot. No. XX of XX), the Municipality also declared, in particular, that:

“The employee in question had more debts, having contracted more mortgages, and has changed several administrations over time. [...] [The] Municipality, in the face of the transfer of the employee to another [Entity], considered it necessary to inform the latter about the debt situation of the same, also because, contrary to what the complainant stated, on the basis of the documentation at the documents, the debt towards the creditor was still partially subsist ”;

"The delay in the designation of the DPO was due to the difficult financial condition of the Municipality, which approved the 2019 budget only in 2021".

3. Outcome of the preliminary investigation.

3.1 The lawfulness of the processing.

The personal data protection discipline provides that public subjects, in the context of the work context, may process the personal data of the interested parties, also relating to particular categories, if the processing is necessary, in general, for the management of the employment relationship. and to fulfill specific obligations or tasks provided for by the law or the law of the Union or of the Member States (art. 6, par. 1, lett. c), 9, par. 2, lett. b) and 4 and 88 of the Regulation). The processing is also lawful when it is "necessary for the performance of a task of public interest or connected to the exercise of public authority vested in the data controller" (Article 6, paragraph 1, letter e), 2 and 3, and art. 9, par. 2, lett. g), of the Regulations; art. 2-ter of the Code, in the text prior to the changes made by Legislative Decree 8 October 2021, n. 139).

The data controller is required, in any case, to comply with the principles of data protection, including that of "lawfulness, correctness and transparency" as well as "data minimization", on the basis of which personal data must be "processed in a lawful, correct and transparent manner towards the data subject" and must be "adequate, relevant and limited to what is necessary with respect to the purposes for which they are processed" (Article 5, paragraph 1, letter a) and c), of the Regulation).

In the present case, it appears that the Municipality, with the aforementioned note, has notified the creditor bank not only the

termination of the employment relationship with the complainant, but also a series of further information of a personal nature relating to this. (extension of the leave period; specific reason for the termination of the employment relationship due to voluntary resignation; details of the new employer), which are not necessary and justified in light of the regulatory framework that governs the institution of third-party attachment and the obligations of the employer, as a distrained third party (Article 543 and following of the Italian Code of Civil Procedure).

Furthermore, with the same note, the Municipality also communicated to the complainant's new employer the fact that the same had a debt towards the bank in question, including detailed information relating to the attachment of the salary share and to the residual amount to be paid, as well as information relating to the management of the previous employment relationship (having taken advantage of the period of an unpaid leave period; reasons for the termination of the previous employment relationship due to voluntary resignations), with the risk of exposing the employee to possible prejudicial effects, even indirect ones, in the new working context.

The Municipality in its defense has invoked the need to execute a contract to which the interested party was a party as a prerequisite for the lawfulness of the aforementioned personal data communications (Article 6, paragraph 1, letter b), of the Regulations).

In this regard, it is noted that the expression "necessary for the execution of a contract", referred to in art. 6, par. 1, lett. b) of the Regulation, refers to the case in which "the processing must be necessary to fulfill the contract with each interested party" (see "Opinion 6/2014 on the concept of legitimate interest of the data controller pursuant to Article 7 of the Directive 95/46 / EC ", adopted by the Article 29 Working Group on 9 April 2014, WP 217, pp. 19-20). As also recently reiterated by the Guarantor (provision no. 384 of 28 October 2021, web doc. No. 9722661), recalling the indications provided by the European Data Protection Committee, "there must be a direct and objective link between the processing of data and the purpose of executing the contract with the data subjects "(" Guidelines on consent pursuant to EU Regulation 2016/679 ", adopted on May 4, 2020).

In the present case, however, the contractual relationship involved only the interested party and the bank, the municipality being the employer only the third party where the attachment was carried out, as part of the executive procedure governed by Articles 543 ff. c.p.c ..

The same considerations also apply with regard to the complainant's new employer, who was completely unrelated to the existing contractual relations between the interested party and the creditor and the consequent enforcement procedure. In this

context, the activation of a new attachment procedure with the new employer constituted a mere eventuality, left, in any case, to the creditor's initiative and to the judicial authority's assessments in the context of a separate enforcement procedure. .

Therefore, the execution of the contract stipulated between the interested party and the credit institution, while being able to legitimize the credit claim against the interested party and the consequent actions by the creditor for the recovery of the sums due, within the limits of the remedies offered by the legal system (see Article 543 ss. of the Code of Civil Procedure on the subject of attachment from third parties), could not be invoked by the Municipality, the subject at which the attachment was claimed, in order to justify the communications of personal data of the former employee both to the creditor (who could only be informed of the termination of the employment relationship) and to the new employer (subject completely unrelated to the whole affair).

Moreover, in this context, the references contained in the defensive acts of the Municipality, both in art. 2112 of the Italian Civil Code, which provides, in particular, for the maintenance of workers' rights in the event of a "company transfer", both in art. 1406 of the Italian Civil Code, which governs the general notion of assignment of the contract, since both cases have no connection with the events in question.

As for the circumstance for which the Municipality should have communicated the personal data of the complainant to the new employer on the assumption that such information was, in any case, part of the employee's personal file, it is noted that the sector regulations governing the keeping of the personal file and the registration status of the civil servant (see the specific deeds and documents enumerated by articles 55 of the Presidential Decree of January 10, 1957, no. 3 and 29 of the Presidential Decree of May 3, 1957, no. 686) does not provide that documents relating to any of attachment from the employer with regard to debt positions of employees must appear within the same, since this is not information "which may affect the employee's career" (art. 55, cit.).

In light of the foregoing considerations, the communication of the complainant's personal data by the Municipality to the banking institution and to the complainant's new employer, by means of the note prot. prot. XX, occurred in a manner that did not comply with the "principle of lawfulness, correctness and transparency" and in the absence of an appropriate legal basis, in violation of Articles 5, par. 1, lett. a) and 6 of the Regulations.

3.2 The fulfillment of the obligations relating to the Data Protection Officer.

With regard to the figure of the DPO, the legislation on data protection provides that the designation of the same is always due

by public entities (Article 37, paragraph 1, letter a), of the Regulation).

The data controller is also required to publish the contact details of the DPO and to communicate them to the supervisory authority (Article 37, paragraph 7, of the Regulation; see the "Guidance document on designation, position and tasks of the Data Protection Officer (DPO) in the public sphere "attached to the provision of 29 April 2021, n. 186, web doc. n. 9589104, as well as the previous" Faq on the Data Protection Officer (DPO) in the public sphere ", Of 15 December 2017, web doc. No. 7322110; in the European context, see the" Guidelines on data protection officers ", adopted by the European Data Protection Committee on 13 December 2016, as amended and adopted on 5 April 2017).

As regards the position of the DPO, art. 38, par. 6, of the Regulation provides that the same "[may] perform other tasks and functions", it being understood that "the data controller [must ensure] that such tasks and functions do not give rise to a conflict of interest".

With regard to this profile, the "Guidelines on data protection officers", cited above, specify that "the absence of conflicts of interest is closely related to the obligations of independence. Although a DPO may perform other functions, the assignment of such additional tasks and functions is possible only on condition that they do not give rise to conflicts of interest. This means, in particular, that a DPO cannot play, within the organization of the data controller [...], a role that involves the definition of the purposes or methods of processing personal data. This is an element to be taken into consideration on a case-by-case basis by looking at the specific organizational structure of the individual data controller […] ”(par. 3.5, p. 21).

Consistently with this orientation, the Guarantor, in the aforementioned FAQs, clarified that "in the public sphere, in addition to top management roles, there may be situations of conflict of interest with respect to top management figures invested with decision-making skills regarding the purposes and the means of processing personal data put in place by the public body "(FAQ n. 7).

That said, it should be noted that, in the present case, in the period between 25 May 2018, the date on which the Regulation became effective, and the XX, date of adoption of the union resolution no. XX, the Municipality had not designated a DPO, in violation of art. 37, par. 1, lett. a), of the Regulation.

It is also noted that, at the date of the facts subject of the complaint, the DPO held the role of "Head of the General Affairs Area [as] employee holding an Organizational Position", thus holding a top position in the organization of the Municipality, which necessarily involved taking decisions that would also have an impact on the protection of personal data. On the other hand, the

communication of personal data subject to the complaint was made with a note signed by the same person who held the role of DPO, as a "responsible officer", who, also performing the function of DPO, was in a position of conflict of interest with respect to the top role played within the organization of the owner.

As, in fact, clarified by the Guarantor in the "Faq on the Data Protection Officer (DPO) in the public sphere", cit., "In addition to the top managerial roles, there may be situations of conflict of interest with respect to top management figures invested of decision-making abilities regarding the purposes and means of the processing of personal data put in place by the public body "(FAQ no. 7; see also par. 3.5 of the" Guidelines on data protection officers ", cit.) . These indications have recently been reiterated by the Guarantor, stating that there is "a conflict of interest in relation to roles [...] such as the human resources or accounting department, the IT manager or the person responsible for corruption prevention and transparency, since these are sectors in which the processing of personal data is certain and transversal with respect to the entire administration, as well as significant in terms of quantity and quality of the personal data processed, as well as risks on the fundamental rights and freedoms of the data subjects "(par. 10.1 of the" Document address on the designation, position and duties of the Data Protection Officer (RPD) in the public sphere) ", cit .; cf. prov. 16 September 2021, n. 318, doc. web n. 9718134).

Therefore, the designation of the DPO by the Municipality, in the person of the then head of the General Affairs sector, was carried out in violation of art. 38, par. 6, of the Regulation.

It is also noted that the communication with which the Municipality has informed this Authority of the contact details of the DPO was received only on XX, against a designation of the same made on XX (date of adoption of the Determination of the Mayor no. XX), and in any case only following the initiation by the Authority of the investigation relating to the complaint.

Also with regard to the new DPO, designated “with the determination of the Head of Sector I n. XX "[rectius, of the XX, as evidenced by the copy of the same file], the Municipality proceeded to communicate the contact details of the same to the Authority only on the XX date.

The variation of the contact details of the DPO must, on the other hand, be "carried out promptly, so that the Authority, for the exercise of its duties, is always in possession of updated information and, consequently, contacts the" contact point " exact. In fact, the maintenance of contact data that is no longer current could involve the involvement of a person who has ceased from his duties as DPO, with consequent communication to third parties of information that he no longer has any right to know [...] "(" Address document on designation, position and duties of the Data Protection Officer (DPO) in the public sphere ", cit., par.

7).

Failure to update the contact details of the DPO, "both on the website of the entity and in the related communication to the Authority" therefore constitutes "a conduct that is punishable like failure to publish / communicate" (ibidem).

It does not, however, point out that the Municipality had mentioned the details of the new DPO in its note of the 20th, sent in response to the Authority's request for information, given that this note merely stated that "with determination [...] no. 84 of [...] the R [PD] service was entrusted to the company [...] based in [...] ", without indicating the specific contact details (including, among others, the mailing address electronic, the telephone number and the name of the natural person referring to the person in charge, as a legal person). Moreover, the Municipality has not used the specific procedure made available by the Authority for the communication of the contact details of the DPO, which, as highlighted in the "Guidance document on the designation, position and duties of the Data Protection Officer (DPO) in the public sphere) ", cit.," represents the only contact channel that can be used for this specific purpose [...] "(par. 7; see already par. 2.6 of the" Guidelines on data protection officers " , cit., where it is pointed out that "the contact details of the DPO should include all the information that allows the interested parties and the supervisory authority to easily reach the DPO himself: postal address, dedicated telephone number and / or dedicated mail address electronics "; see provision no. 98 of 24 March 2022, web doc. 9763051). The Municipality therefore acted in violation of art. 37, par. 7, of the Regulation.

Finally, the Municipality has not proved that it has adequately published the contact details of the DPO, having limited itself to arguing, in its defense memory of the XX, that such contact details "are published in the" privacy "section of the website of the [Municipality], with the indication [...] of the contacts, information and forms ", without having, however, provided any evidence to prove that such contact details had been published on its institutional website even in the period prior to the date of that declaration.

In relation to the methods of publishing the contact details of the DPO, it is noted that the obligation provided for by art. 37, par. 7, of the Regulation aims to "ensure that [...] the interested parties (inside or outside the body / body that is the owner or responsible for the processing) [...] can contact the DPO in an easy and direct way" ("Guidelines on data protection officers ", cit.). Therefore, it is not relevant that, as declared by the Municipality, the same had, in any case, proceeded to publish the provision for the designation of the DPO on its institutional website. The mere publication of the act of designation of the DPO, especially if carried out without distinction together with all the other administrative acts and measures adopted by the

Municipality and published for the purpose of transparency of the administrative action or supplementary publicity of the effectiveness, cannot, in fact, consider themselves suitable to satisfy the advertising obligation provided for by the Regulations, since the interested parties are not able to easily and directly find the contact details of the DPO. Moreover, neither Resolution no. XX of the XX nor the Determination n. XX reported, in any case, an e-mail address of the DPO that can be used by the interested parties to contact him.

The Municipality, having its own institutional website, would have instead had to publish the contact details of the DPO on the same, within a section that is easily recognizable by the user and already accessible from the homepage (see the "Faq on the Data Protection Officer (DPO) in the public sphere ", cit., where it is stated that" with regard to the website, it may be appropriate to insert the DPO's references in the "transparent administration" section, as well as in the "privacy section "possibly already present").

In light of all the foregoing considerations, the Municipality therefore omitted, up to the XXth century, to designate a DPO, identifying him as a subject in a position of conflict of interest, as well as failing to communicate to the Authority and publish the contact details of the DPO, in violation of articles 37, para. 1, lett. a), and 7, as well as 38, par. 6, of the Regulation.

4. Conclusions.

In light of the aforementioned assessments, it is noted that the statements made by the Municipality of the processing during the investigation □ for the veracity of which one may be called to respond pursuant to art. 168 of the Code □, although worthy of consideration, do not allow to overcome the findings notified by the Office with the act of initiation of the procedure and are insufficient to allow the dismissal of this proceeding, since none of the cases provided for by the 'art. 11 of the Guarantor Regulation n. 1/2019.

Therefore, the preliminary assessments of the Office are confirmed and the unlawfulness of the processing of personal data carried out by the Municipality is noted, for having communicated the personal data of the complainant to third parties in the absence of an appropriate legal basis, for not having promptly fulfilled the obligation to designate a DPO, for having appointed a DPO in a position of conflict of interest, as well as for failing to communicate to the Authority and to publish the contact details of the DPO, in violation of Articles 5, par. 1, lett. a), 6, 37, par. 1, lett. a), and par. 7, as well as 38, par. 6, of the Regulation.

The violation of the aforementioned provisions makes the administrative sanction provided for by art. 83, par. 5, of the

Regulation, pursuant to art. 58, par. 2, lett. i), and 83, par. 3, of the same Regulation.

In this context, considering, in any case, that the conduct has exhausted its effects, the conditions for the adoption of further corrective measures pursuant to art. 58, par. 2, of the Regulation.

5. Adoption of the injunction order for the application of the pecuniary administrative sanction and ancillary sanctions (articles 58, par. 2, lett. I and 83 of the Regulation; art. 166, paragraph 7, of the Code).

The Guarantor, pursuant to art. 58, par. 2, lett. i) and 83 of the Regulations as well as art. 166 of the Code, has the power to "inflict an administrative pecuniary sanction pursuant to Article 83, in addition to the [other] [corrective] measures referred to in this paragraph, or instead of such measures, depending on the circumstances of each single case "and, in this context," the College [of the Guarantor] adopts the injunction order, with which it also disposes with regard to the application of the ancillary administrative sanction of its publication, in whole or in excerpt, on the website of the Guarantor pursuant to Article 166, paragraph 7, of the Code "(Article 16, paragraph 1, of the Guarantor Regulation no. 1/2019).

In this regard, taking into account art. 83, par. 3, of the Regulations, in this case the violation of the aforementioned provisions is subject to the application of the pecuniary administrative sanction provided for by art. 83, par. 5, of the Regulation.

The aforementioned administrative fine imposed, depending on the circumstances of each individual case, must be determined in the amount taking into account the elements provided for by art. 83, par. 2, of the Regulation.

In relation to the aforementioned elements, it was considered that the Municipality, in its capacity as former employer of the complainant, also communicated to the new employer information regarding a matter completely unrelated to the performance of the working activity (previous debt exposure of the complainant), with possible negative repercussions on the reputational level for the person concerned in the new working context. As regards, instead, the violation profiles relating to the DPO, it was assessed that, although during the investigation the Authority had already brought to the attention of the Municipality the obligations regarding the communication of the contact details of the DPO , the Municipality communicated the contact details of the new DPO to the Authority only on XX, despite the designation of the same took place in the XX (see Article 83, paragraph 3, letter f), of the Regulation) .

On the other hand, it was favorably taken into consideration that, with regard to the communication of the complainant's personal data to the bank and to the new employer, the Municipality acted, in the absence of willful misconduct, in the belief that the same was a due act . In relation to the alleged violation of art. 37, par. 1, lett. a) of the Regulations, having

acknowledged that the Municipality has designated its DPO on XX, the phase of first application of the sanctions was taken into account, pursuant to art. 22, paragraph 13, of the d. lgs. 10 August 2018, n. 101.

Again with regard to the figure of the DPO, it was appreciated that in the same Determination n.XX of the XX the "temporary appointment" of the same was taken into account and the willingness of the Municipality to "resort to an external figure" was highlighted, taking into account "the limited human resources present in staff and visa also for the next retirement ". The financial difficulties represented by the Municipality during the investigation were also considered. Finally, there are no previous relevant violations committed by the data controller or previous provisions pursuant to art. 58 of the Regulation.

Due to the aforementioned elements, assessed as a whole, it is believed to determine the amount of the pecuniary sanction in the amount of € 6,000 (six thousand) for the violation of Articles 5, par. 1, lett. a), 6, 37, par. 1, lett. a), and par. 7, as well as 38, par. 6, of the Regulations, as a pecuniary administrative sanction, pursuant to art. 83, par. 1, of the Regulation, effective, proportionate and dissuasive.

Taking into account both the risks to which the interested party has been exposed in the new working context and the multiple violations of the obligations of the owner with regard to the figure of the DPO and the consequent impossibility or difficulty for the interested parties to contact the same, it is also considered that that the ancillary sanction of the publication on the website of the Guarantor of this provision should be applied, provided for by art. 166, paragraph 7 of the Code and art. 16 of the Guarantor Regulation n. 1/2019.

Finally, it is noted that the conditions set out in art. 17 of Regulation no. 1/2019.

WHEREAS, THE GUARANTOR

declares, pursuant to art. 57, par. 1, lett. f), of the Regulations, the unlawfulness of the processing carried out by the Municipality for violation of Articles 5, par. 1, lett. a), 6, 37, par. 1, lett. a), and par. 7, as well as 38, par. 6, of the Regulation, within the terms set out in the motivation;

ORDER

pursuant to art. 58, par. 2, lett. i) and 83 of the Regulations, as well as art. 166 of the Code, to the Municipality of Villabate, in the person of the pro-tempore legal representative, with registered office in Viale Europa, 142 - 90039 Villabate (PA), C.F. 80018460826, to pay the sum of € 6,000 (six thousand) as a pecuniary administrative sanction for the violations indicated in the motivation. It is represented that the offender, pursuant to art. 166, paragraph 8, of the Code, has the right to settle the

dispute by paying, within 30 days, an amount equal to half of the sanction imposed;

INJUNCES

to the aforementioned Municipality, in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, to pay the sum of € 6,000 (six 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 l. n. 689/1981;

HAS

the publication of this provision on the website of the Guarantor pursuant to art. 166, paragraph 7, of the Code (see Article 16 of the Guarantor Regulation No. 1/2019);

the annotation of this provision in the internal register of the Authority, provided for by art. 57, par. 1, lett. u), of the Regulations, violations and measures adopted in compliance with art. 58, par. 2, of the Regulation (see art.17 of the Guarantor's Regulation no. 1/2019).

Pursuant to art. 78 of the Regulation, 152 of the Code and 10 of Legislative Decree no. 150/2011, 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 12, 2022

PRESIDENT

Stanzione

THE RAPPORTEUR

Stanzione

THE SECRETARY GENERAL

Mattei