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Provision of April 13, 2023

Register of measures

no. 134 of 13 April 2023

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 dr. 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 the Personal Data Protection Code (Legislative Decree No. 196 of 30 June 2003);

HAVING REGARD to the Deontological Rules relating to the processing of personal data in the exercise of journalistic activity" (Official Gazette of 4 January 2019, n. 3), hereinafter "Deontological Rules";

NOTING that on 16 January 2023 an article entitled: "XX" was published on the Adnkronos.com website, available at the link <https://...> in which detailed news was given of the pathology from which he is affected XX (also indicated by the well-known alias of XX used by them) and distributed, accompanying the same, a complete copy of the report of an extremely detailed laboratory examination;

HAVING REGARD TO the provision of 18 January 2023 with which the Authority adopted GMC s.a.p.a. the extent of the temporary limitation of the treatment, pursuant to art. 58, par. 2, lit. f), referring to any further dissemination of the health data indicated in the article in question, including those contained in the aforementioned laboratory report, as well as any other similar information reported in any other articles published on the same site;

CONSIDERING that the aforesaid provision was adopted taking into account that:

- the art. 137 of the Code provides, in paragraph 1, that the data referred to in art. 9 of the Regulation ("particular categories of personal data" which include "data relating to health") can be processed even without the consent of the interested party provided that in compliance with the ethical rules referred to in art. 139 of the Code, as well as, in paragraph 3, that in the event of dissemination of data for journalistic purposes, the limit of the "essential nature of the information regarding facts of public interest" remains unchanged;

- the art. 10 of the aforementioned Deontological Rules prescribes that:

“1. The journalist, in referring to the state of health of a specific person, identified or identifiable, respects his dignity, the right to privacy and personal decorum, especially in cases of serious or terminal illness, and refrains from publishing analytical data of strictly clinical interest.

2. Publication is permitted in the context of pursuing the essentiality of information and always with respect for the dignity of the person if this holds a position of particular social or public importance”;

- the health data disseminated, already at a first analysis, appeared to be in contrast, as well as with confidentiality, with the dignity of the interested party, despite being the news of significant public interest;

HAVING REGARD to the note dated 18 January 2023 with which the aforementioned provision for the provisional limitation of processing was sent to the data controller and requested to communicate, within 3 days following the notification, the initiatives undertaken in order to implement as prescribed by the Authority;

HAVING DETECTED the removal, on 19 January 2023, of the aforementioned article and of the medical report, despite no response from the Company to the address;

HAVING REGARD to the note of 8 February 2023 with which the Authority, on the basis of the evidence that emerged and in the absence of feedback from the data controller to the note of 18 January 2023, communicated to GMC s.a.p.a. the initiation of the procedure pursuant to art. 166, paragraph 5, of the Code for the eventual adoption of the provisions pursuant to art. 58, par. 2, of the Regulation, notifying the alleged violations of the law identified, in this case, in the violation of articles 5, par. 1 lit. a) and c), e, 9 of the Regulation and of the articles 137, paragraphs 1 and 3 and 2-quater, paragraph 4, of the Code, as well as articles 5, paragraph 1, 6, paragraph 1, and 10, of the Deontological Rules also contesting the violation of art. 58, par.1 of the Regulation with respect to the obligation to provide the Authority with the information required for the execution of its duties;

GIVEN the note dated February 9, 2023 with which GMC s.a.p.a., in response to the disputed by the Authority, requested to be heard, representing:

- to have forwarded, due to a mere material error, the reply to the requests of the Authority of 19 January 2023 to an incorrect account and provided evidence of what was alleged;

- to have provided, following the communication of 8 February, already on 19 January 2023 at 10.28 a.m. to eliminate any clinical document from the news, "together with the revision of the text which now makes a mere generic and essential

reference to the pathology for which the subject of interest was being treated at the well-known hospital";

HAVING REGARD TO the minutes of the hearing held on 2 March 2023 in which the party also noted that "no complaints were received from the interested party or from other private individuals regarding the dissemination of information relating to the state of health of Mr. XX", underlining, moreover, that detailed news about the latter's state of health had already been disseminated by other agencies and press releases issued by the police and still present online; finally highlighting how "the absolute relevance of the news of the arrest of a multiple offender belonging to mafia gangs led Adnkronos to provide sensitive elements on the basis of a social interest in the news prevailing with respect to the protection of XX's privacy";

CONSIDERING that, unless the fact constitutes a more serious offence, whoever, in a proceeding before the Guarantor, falsely declares or certifies news or circumstances or produces false deeds or documents is liable pursuant to art. 168 of the Code "False statements to the Guarantor and interruption of the performance of the duties or exercise of the powers of the Guarantor";

CONSIDERING that the limitation imposed on the data controller consists of a provision of a temporary nature which, in order to consolidate the relative effects, must be followed by a further provision which, on the basis of an examination carried out on the merits, establishes in a stable manner the lawfulness and correctness of the treatment carried out;

NOTING that, during the proceedings, no new elements emerged such as to modify the preliminary assessments already expressed by this Authority in the aforementioned provision of 18 January 2023, taking into account that art. 137 of the Code envisages, in general terms, the aforementioned principle of the "essential nature of information" as a criterion for determining the publication of personal data in the journalistic field and that the Deontological Rules, in recalling and specifying this principle, intended to guarantee a greater rigor with reference to the collection and dissemination of data suitable for revealing the state of health of identified or identifiable persons (Articles 5, paragraph 1, 6, paragraph 1, and 10 of the aforementioned Rules of Conduct);

CONSIDERING that compliance with the aforementioned Rules of Conduct is an essential condition for the lawfulness and correctness of the processing of personal data (Article 2 quater of the Code);

CONSIDERING that the art. 5 par.1, lett. a) of the Regulation requires the processing of data in a lawful and correct manner, and at lett. c) establishes the principle of data minimisation;

NOTING, therefore, that in the present case, the dissemination of the health data indicated in the article in question, including

those contained in the aforementioned laboratory report accompanying the same, is to be deemed to have occurred in contrast with articles 5, par. 1, lit. a) and c) and 9 of the Regulation, as well as with art. 137, paragraphs 1 and 3 and 2-quater, paragraph 4, of the Code, as well as with articles 5, paragraph 1, 6, paragraph 1, and 10 of the Deontological Rules, and that the relative treatment is therefore to be considered unlawful;

NOTING, in particular, that the publication of the report - acquired in an unspecified manner - has considerably expanded the media coverage of the news on the health conditions of the person concerned, presented, through this publication, in their integrity and medical officialdom;

CONSIDERING the considerations regarding the absence of complaints on the part of the interested party to be of no value, especially in the particular case in which - in contrast with the basic rules established by the law to protect the dignity of the person - the diffusion of health data, also through the unauthorized publication of the aforementioned health documentation;

CONSIDERED equally meaningless the references to the already occurred circulation of news on the state of health of the interested party, which seem to highlight a lack of understanding on the part of the holder of the specific harmful scope of the publication of the aforementioned document, indirectly confirming that absence of legal sensitivity and deontological which, on the other hand, one would mostly expect from those subjects who play a primary role in feeding the information circuit;

HAVING ACKNOWLEDGED the measures put in place during the investigation by GMC s.a.p.a.;

CONSIDERED, however, due to the violations found, to:

- impose on GMC S.p.A., pursuant to art. 58, par. 2, lit. f) of the Regulation, the prohibition of the processing of health data indicated in the article in question, including those contained in the aforementioned laboratory report, as well as any other similar information reported in any other articles published on the same site;

- adopt an order-injunction, pursuant to articles 166, paragraph 7, of the Code and 18 of the law n. 689/1981, for the application against GMC s.a.p.a. of the pecuniary administrative sanction provided for by the combined provisions of Articles 2-quater, 166, paragraph 2, of the Code, and 83, par. 3 and 5, of the Regulation;

NOTING that for the determination of the amount of the pecuniary sanction, it is necessary to take into account the elements indicated in art. 83, par. 2 of the Regulation and which, in this case, it is necessary to take into consideration, as aggravating circumstances:

- a) the detriment to the dignity and privacy of the interested party of the conduct which led to the dissemination of data relating

to his state of health, also in the particular form of disclosure of the health document referred to above (Article 83, paragraph 2, letter a) of the Regulation);

b) the economic, organizational and professional conditions of the offender (Article 83, paragraph 2, letter k) of the Regulation);

c) the particular nature of the data processed (see Article 83, paragraph 2, letter g) of the Regulation);

and, as extenuating circumstances:

d) the high public attention with respect to the knowledge of the news and the figure of the interested party originating from the arrest, which took place at the end of a very long absence, and from the particular brutality of the alleged crimes;

e) the measures adopted by the data controller, the Company having promptly taken steps to remove the report and reformulate the article without detailed data (Article 83, paragraph 2, letter c) of the Regulation);

CONSIDERING the above parameters and the principles of effectiveness, proportionality and dissuasiveness indicated in art. 83, par. 1, of the Regulation;

CONSIDERING that, on the basis of all the elements indicated above, the pecuniary administrative sanction should be applied in the amount of Euro 15,000.00 (fifteen thousand Euro/00);

CONSIDERING also that, pursuant to articles 166, paragraph 7, of the Code, and 16, paragraph 1, of the Guarantor's Regulation n. 1/2019, it is necessary to proceed with the publication of this provision on the website of the Guarantor, by way of ancillary sanction;

HAVING DEEMED that the conditions exist for proceeding with the annotation in the internal register of the Authority pursuant to art. 57, par. 1, lit. u), of the Regulation, in relation to the measures adopted in the specific case in compliance with art. 58, par. 2, of the same Regulation

HAVING REGARD to 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;

ALL THIS CONSIDERED

HAS

pursuant to art. 58 par. 2, lit. f) of the Regulation against GMC s.a.p.a. the prohibition of the processing of health data indicated

in the article in question, including those contained in the aforementioned laboratory report accompanying the same, as well as any other similar information reported in any other articles published on the same site, in the terms described above, as in contrast with the articles 137, paragraphs 1 and 3, and 2-quater, paragraph 4 of the Code as well as with articles 5, paragraph 1, 6, paragraph 1 and 10 of the Deontological Rules, and with the general principles referred to in art. 5, par. 1 lit. a) and c) and with the art. 9 of the Regulation, except for mere conservation for the purpose of their possible use in court;

ORDER

pursuant to articles 58, paragraph 2 lett. i) and 83 of the Regulation to GMC S.a.p.a., with registered office in Piazza Mastai 9, 00153 Rome, Tax Code/VAT No. 02981990589 to pay the sum of 15,000.00 (fifteen thousand) euros as an administrative fine for the violations indicated in the justification , representing that the offender, pursuant to art. 166, paragraph 8, of the Code, has the right to settle the dispute, by paying, within the term of thirty days, an amount equal to half of the fine imposed;

ENJOYS

to GMC s.a.p.a., in the event of failure to settle the dispute pursuant to the aforementioned art. 166, paragraph 8, of the Code, to pay the sum of Euro 15,000.00 (fifteen thousand) according to the methods indicated in the annex, within 30 days of notification of this provision, under penalty of adopting the consequent executive acts pursuant to art. 27 of the law n. 689/1981.

HAS

- a) pursuant to art. 166, paragraph 7, of the Code, the full publication of this provision on the Guarantor's website;
- b) pursuant to art. 17 of Regulation no. 1/2019 of the Guarantor the annotation in the internal register of the Authority pursuant to art. 57, par. 1, lit. u), of the Regulation, in relation to the measures adopted in the specific case in accordance with art. 58, par. 2, of the same Regulation.

Pursuant to art. 78 of the Regulation, as well as the articles 152 of the Code and 10 of Legislative Decree lg. 1 September 2011, no. 150, opposition to this provision may be lodged with the ordinary judicial authority, with an appeal filed, alternatively, with the court of the place where the data controller resides or has its registered office or with the court of the place of residence of the interested party within the term of thirty days from the date of communication of the provision itself or sixty days if the appellant resides abroad.

Rome, 13 April 2023

PRESIDENT

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THE SPEAKER

Cerrina Feroni

THE SECRETARY GENERAL

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