

[doc. web n. 9678535]

Injunction order against Synlab Med srl - May 13, 2021

Record of measures

n. 202 of May 13, 2021

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 / EC, "General Data Protection Regulation" (hereinafter the "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 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 4/4/2019, published in the Official Gazette n. 106 of 8/5/2019 and in www.gpdp.it, doc. web n. 9107633 (hereinafter "Regulation of the Guarantor no. 1/2019");

GIVEN the documentation in the deeds;

HAVING REGARD to 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 Dr. Agostino Ghiglia;

WHEREAS

1. Reporting and preliminary investigation.

The local health authority of XX has reported to the Guarantor that the Company Synlab Med srl (hereinafter Company), on 19

May 2020, sent it an e-mail attaching, in addition to the positive results of the serological test for Covid-19 of the patient belonging to the same Company, also the positive reports of patients treated at the health authorities of XX (8 patients), XX (5 patients), XX (6 patients), XX (10 patients) and XX (2 patients), for a total of 31 interested parties not assisted by the aforementioned ASL of XX (e-mail of May 19, 2020 10:57:39, sender XX "XX, recipients" XX "<XX>," XX "XX, e-mail in documents). The attached documents contain the personal data of the 31 interested parties, their tax code and, for most of them, also the mobile telephone number and e-mail address.

Following the aforementioned report, the Office requested information from the Company (note prot. 32643 of 7 September 2020), which replied with a note of 25 September 2020, representing that:

- "on the basis of the Determination (...) (Resolution no. 7459 of 04 May 2020) and with reference to the Resolution of the Region (Emilia Romagna) no. 350 of 11 May 2020, all laboratories, including Synlab, through the Laboratory Director, must promptly communicate the data relating to the results of the tests to the competent divisions of the Public Health Departments on a daily basis ";
- "Dr. XX on May 19, 2020 sent positive reports of n. 32 interested parties, of which 31 do not belong to the same ASL XX, for a mere clerical error, as, among other things, referred to the undersigned Company by Dr. XX himself (for this purpose see report by Dr. XX) ";
- "The proof that it was a mere material error, however isolated, is that on that day the anomaly occurred only in the ASL XX, which received both the documentation of its competence and that relating to the other ASLs";
- "at the e-mail addresses communicated by the Region belonging to the other territorial ASLs, only the positive reports of the interested parties correctly relating to each individual territorial ASL were sent, without therefore sharing with the ASLs any type of health documentation not within their competence" ;
- "to date, an analogous or similar fact to the case reported to this Authority has never occurred";
- "Dr. XX was verbally reminded by Synlab to pay the utmost attention in observing the privacy procedures of Synlab as well as those communicated by the ASL with reference to the execution of the tests and the transmission of the related reports";
- "this Company has provided and will again carry out the appropriate training for its employees and collaborators in the field of privacy".

In relation to the results of the aforementioned investigation, the Office, with deed no. 36153 of 29.9.2020, notified the

Company, pursuant to art. 166, paragraph 5, of the Code, the initiation of the procedure for the adoption of the measures referred to in Article 58, paragraph 2, of the Regulations, inviting the aforementioned holder to produce defensive writings or documents to the Guarantor or to ask to be heard by the Authority (art. 166, paragraphs 6 and 7, of the Code; as well as art. 18, paragraph 1, of the law n. 689 of 24/11/1981).

In particular, the Office, in the aforementioned deed, represented that, on the basis of the elements acquired and the facts that emerged as a result of the investigation, the Company made a communication of information on the state of health (positive outcome for Covid-19) of 31 interested parties who had contacted the same to carry out serological tests, to the local health authority of XX, even if they were not assisted by this ASL and, therefore, in deviation from what was established by the specific sector regulations dictated in report on the emergency state in progress, according to which the Company should have sent the positive reports for Covid-19 of the interested parties who had performed the serological test at the same only to the territorially competent health companies (Article 17-bis of Legislative Decree 17/03/2020 , n.18, Resolution of the Emilia Romagna Region n.350 of 11 May 2020 and Resolution n.7459 of 04 May 2020).

With a note dated 27 October 2020, the Company sent its defense briefs, in which additional elements were represented and, in particular, that:

"Synlab became aware of the fact only after receiving the request for information from this Authority";

"Will provide for the execution of targeted training in relation to the processing of health data to its laboratory staff by 31 December 2020";

"Has already scheduled the execution of a targeted audit at the laboratory of the Faenza office, the place where the material error occurred, by 31 December 2020";

"The transmission was made to a health institution subject to the same confidentiality obligations".

2. Outcome of the preliminary investigation.

Having taken note of what is represented by the Company in the documentation in deeds and in the defense briefs, it is noted that:

1. pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (hereinafter, the "Regulation"), personal data must be "processed in a lawful, correct and transparent manner towards the interested party ("integrity and confidentiality") "and must be" adequate, relevant and limited to what is necessary with respect to the purposes

for which they are processed ("data minimization") "(Article 5, paragraph 1, letter a) and c) of the Regulation);

2. the legislation on the protection of personal data provides - in the health sector - that information on the state of health can be communicated only to the interested party and can be communicated to third parties only on the basis of a suitable legal basis or on the indication of the interested party, subject to written authorization from the latter (Article 9 of the Regulations and Article 83 of Legislative Decree No. 196 of 30 June 2003 - Code regarding the protection of personal data - hereinafter the "Code" - in conjunction with art.22, paragraph 11, legislative decree 10 August 2018, n.101; see also general provision of 9 November 2005, available at www.gpdt.it, web doc. n.1191411, considered compatible with the aforementioned Regulation and with the provisions of decree no.101 / 2018; see Article 22, paragraph 4, of the aforementioned Legislative Decree no. 101/2018);

3. with particular reference to the Covid-19 epidemic, until the end of the state of emergency approved by the Council of Ministers on January 31, 2020, for reasons of public interest in the public health sector and, in particular, to ensure protection from the cross-border health emergency caused by the spread of COVID-19 through adequate prophylaxis measures, as well as to ensure the diagnosis and health care of the infected or the emergency management of the National Health Service, the subjects operating in the National Civil Protection Service and the implementing subjects, as well as other subjects, including the subjects appointed to monitor and guarantee the execution of the measures ordered pursuant to art. 2 of the d.l. n. 19/2020, also for the purpose of ensuring the most effective management of flows and the interchange of personal data, may carry out treatments, including communication between them, of personal data, including health-related data, which are necessary for the fulfillment of functions attributed to them in the context of the emergency determined by the spread of COVID-19 (Article 17-bis of Legislative Decree 17/03/2020, n. 18). Such processing of personal data must in any case be carried out by adopting appropriate measures to protect the rights and freedoms of the data subjects and in compliance with the principles referred to in Article 5 of the aforementioned Regulation (EU) 2016/679);

4. as indicated in the act of initiation of the investigation procedure, the Company communicated information on the state of health (positive outcome for Covid-19) of 31 interested parties who had contacted it for the serological test, to the Health Authority local XX, although not the same assisted by this ASL and, therefore, in deviation from the provisions of the specific sector regulations dictated in relation to the emergency state in progress, according to which the Company should have sent the positive reports for Covid-19 of the interested parties who had performed the serological test at the same only at the

territorially competent health authorities (art.17-bis D.L. 17/03/2020, n.18, Resolution of the Emilia Romagna Region n.350 of 11 May 2020 and Determination n. 7459 of 04 May 2020).

3. Conclusions.

In light of the aforementioned assessments, taking into account the statements made by the data controller during the investigation ☐ and considering that, unless the fact constitutes a more serious crime, anyone, in a proceeding before the Guarantor, falsely declares or certifies information o circumstances o produces false deeds or documents is liable pursuant to art. 168 of the Code "False statements to the Guarantor and interruption of the execution of the tasks or exercise of the powers of the Guarantor" ☐ the elements provided by the data controller in the defense briefs do not allow to overcome the findings notified by the Office with initiation of the procedure, however, as none of the cases provided for by art. 11 of the Guarantor Regulation n. 1/2019.

For these reasons, the unlawfulness of the processing of personal data carried out by the company Synlab Med Srl under the terms set out in the motivation, for violation of Articles 5, par. 2, lett. a) and c) and 9 of the Regulations, as well as art. 2 sexies of the Code.

In this context, considering, in any case, that the conduct has exhausted its effects and that the Company has declared that it has planned the execution of specific audits as well as training events aimed at personnel carrying out processing operations such as the one in question, the conditions are met for the adoption of the 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. l and 83 of the Regulation; art. 166, paragraph 7, of the Code).

The violation of articles 5, par. 2, lett. a) and c), and 9 of the Regulations and 2 sexies of the Code, caused by the conduct put in place by the company Synlab Med Srl, is subject to the application of a pecuniary administrative sanction pursuant to art. 83, paragraph 5, of the Regulation also pursuant to art. 166, paragraph 2 of the Code (see letter a) with reference to the violation of articles 5 and 9 of the Regulation).

In the present case - also considering the reference contained in art. 166, paragraph 2, of the Code - the violation of the aforementioned provisions is subject to the application of the same administrative fine provided for by art. 83, par. 5, of the Regulation, which therefore applies to the present case.

It should be considered that 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).

The aforementioned administrative fine imposed, depending on the circumstances of each individual case, must be determined in the amount taking into account the principles of effectiveness, proportionality and dissuasiveness, indicated in art. 83, par. 1, of the Regulation, in light of the elements provided for in art. 85, par. 2, of the Regulation in relation to which it is noted that:

- the Authority became aware of the event following the notification of the Local Health Authority of XX; no complaints or further reports have been received to the Guarantor on the incident (Article 83, paragraph 2, letter h) of the Regulations);
- the data processing carried out by the Company concerns data suitable for detecting information on the health of 31 interested parties assisted by various health companies located throughout the Region (Article 83, paragraph 2, letters a) and g) of the Regulation);
- the absence of elements of voluntariness on the part of the Company in the causation of the event (Article 83, paragraph 2, letter b) of the Regulations);
- the event was immediately taken over by the Company which was followed by the identification of interventions aimed at avoiding the repetition of what happened (Article 83, paragraph 2, letters c) and d) of the Regulations);
- the Company immediately demonstrated a high degree of cooperation (Article 83, paragraph 2, letter f) of the Regulations);
- the communication of data, even if carried out to a subject not competent to process them, has in any case occurred towards a health company, a subject institutionally appointed to receive such communications for the subjects assisted by the same (Article 83, par. 2, lett. a) of the Regulation);
- the communication of the data took place while the state of emergency declared by the President of the Council of Ministers on January 31, 2020 (Article 83, paragraph 2, letter k) of the Regulation

Due to the aforementioned elements, assessed as a whole, it is believed to determine the amount of the pecuniary sanction provided for by art. 83, par. 5, lett. a) of the Regulations, to the extent of € 20,000 (twenty thousand) for the violation of Articles

5, par. 1, lett. a) and c) and 9 of the Regulations and Article 2 sexies of the Code as a pecuniary administrative sanction, pursuant to art. 83, par. 1, of the Regulation, effective, proportionate and dissuasive.

It is also believed that the ancillary sanction of the publication on the website of the Guarantor of this provision, provided for by art. 166, paragraph 7 of the Code and art. 16 of the Guarantor Regulation n. 1/2019, also in consideration of the type of personal data subject to unlawful processing.

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 the unlawfulness of the processing of personal data carried out by Synlab Med srl for the violation of art. 5, par. 1, lett. a) and c) and 9 of the Regulations and art. 72 sexies⁵ of the Code in 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 Synlab Med srl, Via Case Nuove, 44 - 48018 Faenza (RA) VAT number 00463660399, in the person of the pro-tempore legal representative, to pay the sum of € 20,000 (twenty thousand) as a fine for the violations indicated in this provision, according to the methods indicated in the annex, within 30 days from the notification of 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 Company, in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, to pay the sum of € 20,000 (twenty 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.

HAS

pursuant to art. 166, paragraph 7, of the Code, the full 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 concerning internal procedures with external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

Pursuant to art. 78 of the Regulation, of art. 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 13, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Ghiglia

THE SECRETARY GENERAL

Mattei