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Injunction order against Local Health Authority n. 2 Lanciano-Vasto-Chieti - 11 February 2021

Register of measures

no. 52 of 11 February 2021

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 on the protection of natural persons with regard to the processing of personal data, as well as on the free circulation of such data and repealing Directive 95/46 /CE, "General Data Protection Regulation" (hereinafter "Regulation");

HAVING REGARD TO Legislative Decree 30 June 2003, n. 196 containing the "Code regarding the protection of personal data, containing provisions for the adaptation of the national legal system to Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016, relating to the protection of natural persons with regard to the processing of personal data, as well as to the free movement of such data and which repeals Directive 95/46/EC (hereinafter the "Code");

CONSIDERING the Regulation n. 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor for the protection of personal data, approved with resolution no. 98 of 4 April 2019, published in the Official Gazette no. 106 of 8/5/2019 and in www.gpdp.it, doc. web no. 9107633 (hereinafter "Regulation of the Guarantor n. 1/2019");

HAVING REGARD to the documentation in the deeds;

HAVING REGARD TO the observations made by the general secretary pursuant to art. 15 of the Regulation of the Guarantor n. 1/2000;

Speaker the lawyer Guido Scorza;

WHEREAS

1. The personal data breach.

The Local Health Authority n. 2 Lanciano-Vasto-Chieti has notified a violation of personal data, pursuant to art. 33 of the Regulation, in relation to the dispatch, in paper format, of documentation, containing reports relating to blood tests of a child, to

a person other than the one entitled to receive it.

On the same occasion, the Company highlighted that the event occurred was caused by human error in the wrapping of the documentation; therefore, a circular was issued to the employees of the Complex Operating Unit involved, in order to remind them to pay greater attention to the processing of the personal data of the patients, with particular regard to the phase of forwarding the data (communication of the 1st August 2019).

2. The preliminary investigation.

In relation to what was communicated by the Company, the Office, with deed dated 4 October 2019, prot. no. 0033855, notified the same Company, pursuant to art. 166, paragraph 5, of the Code, the initiation of the procedure for the adoption of the provisions pursuant to art. 58, par. 2, of the Regulation, inviting you to produce written defenses 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, law n. 689 of 24 November 1981)

In particular, the Office, in the aforementioned deed, preliminarily represented that:

- in the health sector, information on the state of health can only be communicated to the interested party and can be communicated to third parties only on the basis of a suitable legal prerequisite or on the indication of the interested party, subject to written authorization by the latter (art. 9 Regulation and art. 84 of the Code in conjunction with art. 22, paragraph 11, Legislative Decree No. 101 of 10 August 2018; see also general provision of 9 November 2005, which can be consulted at www.gpdt.it, web doc. n. 1191411, deemed compatible with the aforementioned Regulation and with the provisions of decree n. 101/2018; see art. 22, paragraph 4, of the aforementioned legislative decree n. 101/2018);
- personal data must be "processed in such a way as to ensure adequate security (...), including protection, by means of appropriate technical and organizational measures, against unauthorized or unlawful processing and against accidental loss, destruction or damage ("integrity and confidentiality»)" (Article 5, paragraph 1, letter f) of the Regulation).

Having said that, on the basis of the elements in the file, with the aforementioned deed dated 4 October 2019, the Office deemed that the Company had made a communication of data relating to the health of a pediatric patient, in the absence of a suitable legal prerequisite and, therefore, in violation of the basic principles of treatment pursuant to articles 5 and 9 of the Regulation.

With a note dated 31 October 2019, the Company sent its defense briefs, including the "Table of elements to be provided to

the Authority for the assessments referred to in art. 83, par. 2 of the Regulation", in which, in particular, it was represented that:

a) the event that occurred clearly consisted of "a mere human error in the wrapping of the documentation (report and blood tests)" and "there was no cross-exchange of data that could have involved two or more subjects; in fact, the erroneously transmitted data had only one recipient";

b) "when the incident was acknowledged, steps were taken immediately to print the report and send it to the person entitled" as well as to ask "the erroneous recipient to destroy the wrong communication"; the interested party has not "received any inconvenience such as not to make requests for compensation, not to express grievances or complaints for the incident";

c) it was the "first event in 10 years out of a total of approximately 30,000 patients treated";

d) a "more stringent procedure for issuing reports" was adopted.

3. Outcome of the preliminary investigation

Given 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 execution of the duties or the exercise of the powers of the Guarantor"), following the examination of the acquired documentation as well as the declarations made to the Authority during the proceeding, which in fact recognize what was contested, it emerges that the Company has communicated data relating to health in the absence of a suitable legal prerequisite, in violation of the basic principles of treatment pursuant to articles 5 and 9 of the Regulation.

4. Conclusions.

In the light of the assessments referred to above, taking into account the statements made by the data controller during the preliminary investigation, the elements provided by the data controller in the defense briefs do not allow for overcoming the findings notified by the Office with the act of initiating the procedure, not resorting Moreover, any of the cases provided for by art. 11 of the Regulation of the Guarantor n. 1/2019.

For these reasons, the illegality of the processing of personal data carried out by the Local Health Authority n. 2 Lanciano-Vasto-Chieti, in the terms referred to in the justification, in violation of articles 5 and 9 of the Regulation.

In this context, considering, in any case, that the conduct has exhausted its effects - having regard to the communication from the Company according to which the person who had received the documentation erroneously had subsequently proceeded to

destroy it - the conditions for the adoption do not exist 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 accessory sanctions (articles 58, paragraph 2, letter i and 83 of the Regulation; article 166, paragraph 7, of the Code).

The violation of the articles 5, par. 1, lit. f) and 9 of the Regulation, caused by the conduct implemented by the Local Health Authority n. 2 Lanciano-Vasto-Chieti, is subject to the application of the administrative fine pursuant to art. 83, paragraph 5, of the Regulation.

Consider that the Guarantor, pursuant to articles 58, par. 2, lit. i) and 83 of the Regulation, as well as art. 166 of the Code, has the power to "impose a pecuniary administrative sanction pursuant to article 83, in addition to the [other] [corrective] measures referred to in this paragraph, or instead of such measures, according to the circumstances of each single case" and, in this context, "the Board [of the Guarantor] adopts the injunction order, with which it also orders the application of the ancillary administrative sanction of its publication, in whole or in part, on the website of the Guarantor pursuant to article 166, paragraph 7, of the Code" (art. 16, paragraph 1, of the Guarantor's Regulation no. 1/2019).

The aforementioned pecuniary administrative sanction 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 the light of the elements provided for in art. 83, par. 2, of the Regulation in relation to which it is observed that:

- the Authority became aware of the event following the personal data breach notification made by the same controller, who informed the interested party of the incident, and no complaints or reports were received to the Guarantor on the incident (art. 83, paragraph 2, letters a) and h) of the Regulation);
- the episode, despite having involved data from a minor, was unique and isolated and, being determined by a human error in the matching and enveloping of the reports, is characterized by the absence of voluntary elements on the part of the Company in the cause of the event (Article 83, paragraph 2, letter b) of the Regulation);
- the Company immediately demonstrated a high degree of cooperation (Article 83, paragraph 2, letters c), d) and f) of the Regulation).
- the data processing carried out by the Company concerns data suitable for detecting information on the health of a single interested party (Article 4, paragraph 1, no. 15 of the Regulation and Article 83, paragraph 2, letters a) and g) of the

Regulation).

Based on the aforementioned elements, evaluated as a whole, it is decided to determine the amount of the pecuniary sanction provided for by art. 83, par. 5, letter. a) of the Regulation, in the amount of 6,500 (six thousand five hundred) euros for the violation of articles 5, par. 1, lit. f) and 9 of the Regulation as a pecuniary administrative sanction deemed, pursuant to art. 83, par. 1, of the Regulation, effective, proportionate and dissuasive.

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

Finally, it should be noted 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.

ALL THIS CONSIDERING THE GUARANTOR

declares the illegality of the processing of personal data carried out by the Local Health Authority n. 2 Lanciano-Vasto-Chieti, for the violation of the art. 5, par. 1, lit. f) and 9 of the Regulation in the terms referred to in the justification.

ORDER

pursuant to articles 58, par. 2, lit. i) and 83 of the Regulation, as well as art. 166 of the Code, to the Local Health Authority n. 2 Lanciano-Vasto-Chieti with registered office in with registered office in Chieti, via dei Vestini s.n.c. – VAT number 02307130696, in the person of the pro-tempore legal representative, to pay the sum of 6,500 (six thousand five hundred) euros as an administrative fine for the violations indicated in this provision, according to the methods indicated in the annex, within 30 days of notification in justification; 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 fine imposed.

ENJOYS

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 Euro 6,500 (six thousand five hundred) 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

pursuant to art. 166, paragraph 7, of the Code, the entire publication of this provision on the website of the Guarantor and believes that the conditions set forth in 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.

Pursuant to art. 78 of the Regulation, of the articles 152 of the Code and 10 of Legislative Decree no. 150/2011, against this provision it is possible to lodge an 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 appellant resides abroad.

Rome, 11 February 2021

PRESIDENT

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THE SPEAKER

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THE SECRETARY GENERAL

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