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Injunction order against the Unione Comunale del Chianti Fiorentino - 2 July 2020

Register of measures

no. 119 of 2 July 2020

GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by Dr. Antonello Soro, president, Dr. Giovanna Bianchi Clerici and Prof. Licia Califano, members, and Dr. Giuseppe Busia, general secretary;

HAVING REGARD TO Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, concerning the protection of natural persons with regard to the processing of personal data, as well as the free movement 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 4/4/2019, 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");

Given the documentation in the deeds;

Given the observations made by the Secretary General pursuant to art. 15 of the Regulation of the Guarantor n. 1/2000 on the organization and functioning of the Guarantor's office for the protection of personal data, doc. web no. 1098801;

Speaker Dr. Giovanna Bianchi Clerici;

WHEREAS

1. The complaint.

With a complaint dated 22 April 2019, presented pursuant to art. 77 of the Regulation, as subsequently integrated, Ms XX, a

former employee of the Municipality of Greve in Chianti, assigned in command to the Unione Comunale del Chianti Fiorentino (hereinafter, the "Unione"), complained about the publication, in section "Transparent Administration" of the institutional website of the Union, of the following administrative acts

- determination of the head of the administrative area service no. XX of the XX (General Reg. No. XX), with the subject ""
- determination of the head of the administrative area service no. XX of XX (General Reg. No. XX), with subject "XX"
- resolution of the Union Council n. XX of XX, with subject "XX";
- determination of the head of the administrative area service no. XX of the XX (General Reg. XX), with subject "[...] XX", the publication of which was ascertained by the Office on the date XX, with which the rectification of determination n. XX, mentioned above, again quoting data relating to criminal convictions and offenses associated with the complainant's registration number.

For the purposes of reconstructing the matter subject to the complaint, it is useful to specify that the complainant had been hired by the Municipality of Greve in Chianti following an external mobility procedure to fill a single position in the same Municipality and that she had been assigned in command at the Municipal Union of Chianti Fiorentino, of which the Municipality is a part. After a few years of hiring, the Municipality, following an investigation initiated by its Disciplinary Proceedings Office, from which it emerged, in the Municipality's opinion, that the person concerned had received a non-definitive criminal conviction and had pending criminal proceedings course in the period in which he had participated in the selection, had ordered the sanction of dismissal without notice for the interested party, on the assumption that the latter did not have the requisites to participate in the external mobility procedure, the notice of which provided as an indispensable requirement, self-certified by the interested party during the stipulation of the employment contract, the absence of criminal convictions and criminal proceedings in progress. In this context, the Union has adopted the aforementioned decisions and resolutions, which are the subject of the complaint presented to the Guarantor.

2. The preliminary investigation.

On the basis of the elements acquired, also through the documentation sent and the facts that emerged during the preliminary investigation, the Office notified the Union (note prot. n. XX of the XX), in its capacity as data controller, pursuant to of the 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, concerning the alleged violations of articles 5, par. 1, lit. a) and c), 6, paragraph 1, lett. c) and e), 2 and 3, lett.

b), and 10 of the Regulation, as well as articles 2-ter, paragraphs 1 and 3 and 2-octies of the Code, inviting the Union to produce defense 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 law n. 689 of 24 November 1981).

On the 20th date, the Union sent its defense briefs with a note from its lawyer, representing, in particular, that:

- "the processing of information, attributable [to the complainant], must be considered lawful, since it is necessary for the fulfillment of a legal obligation and for the execution of a task of public interest or connected to the exercise of public powers with which the data controller - art. 6 lett. c) and e)", generically recalling the obligations established by Legislative Decree 33/2013 regarding the transparency of administrative action, as well as, equally generically, "the other online advertising obligations of data, information and documents of the public administration – such as, among other things, those aimed at making known the administrative action in relation to compliance with the principles of legitimacy and correctness, or those aimed at guaranteeing the legal publicity of administrative documents";
- "the Union has never mentioned in the published documents the name and surname of the complainant, pseudonymizing the personal data and thus adopting the appropriate technical measures, functional to avoid any possible risk for the rights and freedoms of the interested party", having published "in the body of the determinations/resolution, respectively, the registration number and the initials of the complainant" and having made "the information unintelligible and, therefore, the interested party unidentifiable";
- "the registration number is a numerical code which, even if attributed to a subject, cannot concretely qualify as personal data, because it is unsuitable for identifying the interested party" and "in the present case, [it] allows [it] to identify the interested party only to those [who were] authorized to access it for practical needs connected to the employment relationship", having therefore been only "employees of the Entity, who operate in the field of human resource management" able to "associate the serial number, indicated in the determinations published on the website, to the [complainant]";
- "the additional information has not been published (and is kept separately from the serial number), the use of which, together with the serial number, [would have allowed], possibly, to make the interested party identifiable", not having been done, in the published administrative documents, "no reference to the sector to which the employee belongs, to the role performed, to the age, to the origin, or to any other element which, also through consultation of the website - accessible to anyone - would allow identification of the complainant";

- on the basis of the provisions of recital no. 26 of the Regulation, "in the present case [...] the set of means and objective factors, including the costs and time necessary for identification, which a third party could use do not absolutely allow the identification of the interested party based on the mere publication of the serial number.";

- “similar conclusions must also be reached with regard to the publication in resolution no. XX of the initials of the complainant's name and surname, since it is "anonymous information" which, given the absence of further elements, cannot in any way be attributable to the interested party";

- "the absolute ban on the publication and display of personal data applies only to the so-called sensitive data";

- the criminal judicial authority had ordered "the ancillary penalty of the publication [...] of the operative part of the sentence" in two newspapers and, therefore, "the fact object of the treatment was made public, with the consequence that the publicity and diffusion of the itself cannot causally be related to the work of the Administration”;

- several "press articles" concerned "the fact relating to the treatment for which it is the cause" and, therefore, "the manifestly public nature of the information, attributable exclusively to the press activity, must exclude the unlawfulness of the treatment through the publication on the institutional website", noting that, since "the manifestly public nature of the data, pursuant to art. 9, par. 2, lit. e) of EU Regulation 679/2016 is one, among many, of the exceptions that make the processing of particular categories of personal data lawful", this exception must "apply", a fortiori, "with reference to the information referred to in the specific case exam".

On the occasion of the hearing requested by the Union, held at the Guarantor on the 20th date, the Union, in addition to the above, declared, among other things, that "in the perspective of accountability, the owner considered that the reference to the serial number alone, which was known only by four people within the Personnel Office and which was distinct from the one used in attendance management, was sufficient to protect the person concerned and to prevent even indirect identification".

3. Outcome of the preliminary investigation.

The personal data protection regulations provide that public entities, even if they operate in the performance of their duties as employers, can process the personal data (art. 4, n. 1, of the Regulation) of employees, if the treatment is necessary "to fulfill a legal obligation to which the data controller is subject" (think of specific obligations or tasks established by law for the purpose of managing the employment relationship; see art. 88 of the Regulation) or "for the execution of a task in the public interest or connected to the exercise of public powers vested in the data controller" (Article 6, paragraph 1, letters c) and e) of the

Regulation).

European legislation provides that "Member States may maintain or introduce more specific provisions to adapt the application of the rules of this regulation with regard to treatment, in accordance with paragraph 1, letters c) and e), determining more precisely specific requirements for processing and other measures aimed at guaranteeing lawful and correct processing [...]" (Article 6, paragraph 2, of the Regulation). In this regard, it should be noted that the operation of dissemination of personal data (such as publication on the Internet), by public entities, is permitted only when provided for by a law or, in the cases provided for by law, by regulation (art. 2-ter, paragraphs 1 and 3, of the Code).

In any case, the processing of data relating to criminal convictions and offenses or related security measures can only take place under the control of public authorities or if the processing is authorized by Union or Member State law which provides appropriate guarantees for the rights and freedoms of the interested parties (art. 10 of the Regulation), or only if the processing is authorized by a law or, in the cases provided for by law, a regulation (art. 2-octies of the Code).

Furthermore, the data controller is required to respect the principles regarding data protection, including that of "lawfulness, correctness and transparency" as well as "minimization", according to which personal data must be "processed in lawful, correct and transparent manner in relation to the data subject" and must be "adequate, pertinent and limited to what is necessary with respect to the purposes for which they are processed" (Article 5, paragraph 1, letters a) and c), of the regulation).

In particular, in compliance with the principle of "data minimization" (Article 5, paragraph 1, letter c), of the Regulation), even in the presence of an obligation to publish, the subjects called to implement it cannot in any case disseminate excessive or irrelevant personal data (see provision n. 243 of 15 May 2014, Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for the purpose of advertising and transparency on the web by public entities and other obliged bodies, web doc. n. 3134436, second part, paragraphs 1 and 3.a.).

In this context, it is noted, as a preliminary point, that what was declared by the Entity with reference to the fact that the complainant was not identifiable does not matter. In fact, first of all it is necessary to consider that "identification does not mean only the possibility of recovering the name and/or address of a person, but also the potential identifiability through identification, correlation and deduction" (Working Group Art. 29, Opinion 05/2014 on anonymisation techniques, WP216). In the present case, the administrative acts object of the complaint referred to the complainant by means of the matriculation

number (in the case of the determinations) and the initials of the name and surname (in the case of the resolution), that is to say through identification elements capable of tracing to the interested party, at least by other employees of the Union (and those of the Municipality, of which the claimant was employed) and by their own family members or acquaintances. On the other hand, since 2014, the Authority, in the "Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for purposes of publicity and transparency on the web by public subjects and other obliged bodies " (web doc. n. 3134436) clarified that “the practice followed by some administrations of replacing the data subject´s name and surname with initials alone is in itself insufficient to anonymize the personal data contained in the deeds and documents published online” and that "the risk of identifying the interested party is all the more probable when, among other things, further contextual information remains alongside the initials of the name and surname which in any case make the interested party identifiable", being necessary, in order to effectively make anonymous the data published online, "completely obscure the name and other information relating to the interested party which may allow identification even a posteriori".

In any case, as a result of the internal references between the various determinations subject to the complaint and other related or presupposed administrative deeds, the combined reading of these deeds allowed anyone to obtain and relate the matriculation number, the initials and the role played by the interested party within the administration, certainly making it possible to identify her.

With regard to what was claimed by the owner regarding the fact that the legal proceedings involving the complainant were already in the public domain, given that the judicial authority had ordered the ancillary penalty of publication of the operative part of the sentence in two newspapers and that numerous articles the press had taken account of it, and that therefore the Union could legitimately publish the personal data in question as manifestly public, the following is observed. The methods of reproduction of the judgments or provisions of the judicial authority are governed by articles 51 and 52 of the Code. This reproduction is permitted exclusively for "legal IT" purposes (title, I, chapter III of the Code), in compliance with certain measures to protect the dignity of the interested parties; moreover, in the present case, the publication of the operative part of the sentence, according to what was declared by the Union, had taken place for a different purpose, having been ordered by the judicial authority as an ancillary sanction against the interested party, as required by law and in the performance of their duties. Having said that, public subjects may disclose personal data only in the cases provided for by a law or, in the cases provided for by law, a regulation (Article 2-ter, paragraphs 1 and 3, of the Code) or in the case of data relating to criminal

convictions and offenses be expressly provided for by law (art. 10 of the Regulation and art. 2-octies of the Code), notwithstanding that the same data have already been disclosed in the context of the publication of judgments or provisions for IT purposes legal or by way of ancillary sanction, either by the interested party himself or by third parties for other purposes (on this point, see provision n. 35 of 13 February 2020, web doc. n. 9285411).

In any case, no regulatory provision of Legislative Decree no. 33/2013 - moreover generically invoked by the owner during the preliminary investigation - provides for the obligation to publish these documents for transparency purposes.

It should also be noted that, in compliance with the principle of data minimization (Article 5, paragraph 1, letter c), of the Regulation) and as clarified by the Guarantor in the Guidelines mentioned above, even in the presence of a regulatory obligation which imposes publication of the deed or document "it is necessary to select the personal data to be included in these deeds and documents, verifying, case by case, whether the conditions exist for the obscuring of certain information", "when the purposes pursued in individual cases can be carried out using anonymous data or other methods that allow the data subject to be identified only if necessary". Therefore, even in the presence of the obligations to publish deeds or documents for transparency purposes, public subjects cannot in any case "make [...] intelligible personal data that is not pertinent or, if sensitive or judicial, not indispensable with respect to the specific transparency purposes publication" (art. 7-bis, paragraph 4, of Legislative Decree no. 33/2013), it being understood that, in the light of the current regulatory framework on data protection, the publication of data relating to convictions penalties and crimes must be expressly provided for by law (article 10 of the Regulation and article 2-octies of the Code).

The same considerations also apply with regard to the "other online publicity obligations of data, information and documents of the public administration", also generically invoked by the Union, given that all the limits set forth above with regard to the compliance with the principle of data minimization and with the precautions in the event that the documents to be published contain data belonging to particular or judicial categories (see par. 3 (a) of the second part of the above-mentioned Guidelines).

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 truthfulness of which may be called upon to answer pursuant to art. 168 of the Code □ it should b noted that the elements provided by the data controller in the defense briefs, although worthy of consideration, do not allow the

findings notified by the Office to be overcome with the act of initiating the procedure and are insufficient to allow the filing of the present proceeding, since none of the cases envisaged by art. 11 of the Regulation of the Guarantor n. 1/2019.

Therefore, the preliminary assessments of the Office are confirmed and the illegality of the processing of personal data carried out by the Union is noted, for having disseminated personal data relating to the complainant contained in the decisions of the head of the administrative area service n. XX of XX (General Reg. No. XX), n. XX of the XX (General Reg. No. XX) and n. XX of the XX (General Reg. No. XX), as well as in the resolution of the Union Council n. XX of the XX, in the absence of suitable regulatory conditions, in violation of articles 6, paragraph 1, lett. c) and e), 2 and 3, lett. b), and 2-ter, paragraphs 1 and 3, of the Code, as well as the basic principles of treatment contained in art. 5, par. 1, lit. a) and c) of the Regulation; since in the aforementioned determination nos. XX and XX also contained data relating to criminal convictions and crimes, the publication also took place in violation of art. 10 of the Regulation, as well as art. 2-octies of the Code.

The violation of the aforementioned provisions makes the administrative sanction envisaged by art. 83, par. 5, of the Regulation, pursuant to articles 58, par. 2, lit. i), and 83, par. 3, of the same Regulation and art. 166, paragraph 2, of the Code.

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. This in consideration of the fact that, as shown by the documents relating to the hearing of the Union, the references to the serial number of the complainant in the determinations n. XX and no. XX have been replaced with the formula "omissis", as well as having acknowledged that, as ascertained by the Office on date XX, determination no. XX can no longer be consulted on the Union's website and that the references to the initials of the claimant and to the administrative acts referred to in resolution no. XX have been replaced with the formula “omissis”.

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; art. 166, paragraph 7, of the Code).

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).

In this regard, taking into account the art. 83, par. 3, 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 pecuniary administrative sanction provided for by art. 83, par. 5, of the Regulation.

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

In relation to the aforementioned elements, the particular delicacy of the personal data of the claimant unlawfully disclosed by the Union was considered, i.e. data relating to criminal convictions and crimes (Article 10 of the Regulation), also in the light of the indications that, since 2014 , the Guarantor, has provided all public entities with the Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for purposes of publicity and transparency on the web by public entities and other obliged entities, mentioned above .

On the other hand, it was favorably noted that, albeit belatedly, the data controller took steps to remedy the violation, as well as the fact that there are no previous relevant violations committed by the data controller or previous measures pursuant to art. 58 of the Regulation.

Based on the aforementioned elements, evaluated as a whole, it is deemed necessary to determine the amount of the pecuniary sanction, in the amount of 6,000.00 (six thousand) euros for the violation of articles 5, par. 1, lit. a) and c), 6, paragraph 1, lett. c) and e), 2 and 3, lett. b), and 10 of the Regulation, as well as articles 2-ter, paragraphs 1 and 3 and 2-octies of the Code, as a pecuniary administrative sanction withheld, pursuant to art. 83, par. 1, of the Regulation, effective, proportionate and dissuasive.

Taking into account the particular delicacy of the data disseminated, as well as the extended period of time during which the aforementioned data were made available on the net, it is also believed that the accessory sanction of 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 Regulation of the Guarantor n. 1/2019.

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

pursuant to art. 57, par. 1, lit. f), of the Regulation, declares the conduct of the Unione Comunale del Chianti Fiorentino to be unlawful, described in the terms referred to in the justification, consisting in the violation of articles 5, par. 1, lit. a) and c), 6, paragraph 1, lett. c) and e), 2 and 3, lett. b), and 10 of the Regulation, as well as articles 2-ter, paragraphs 1 and 3 and 2-octies of the Code, in the terms indicated in the justification

ORDER

to the Unione Comunale del Chianti Fiorentino, in the person of its pro-tempore legal representative, with registered office in Via Cassia n. 49 50028 Barberino Val d'Elsa (FI), Tax Code 94188150489, pursuant to articles 58, par. 2, lit. i), and 83, par. 5, of the Regulation and 166, paragraph 2, of the Code, to pay the sum of 6,000.00 (six thousand) euros as an administrative fine for the violations indicated in this provision. 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 Union, in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, to pay the sum of Euro 6,000.00 (six 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

pursuant to art. 166, paragraph 7, of the Code, the publication of this provision on the website of the Guarantor, also acknowledging the occurrence of the conditions referred to 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 articles 78 of the Regulation, 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, July 2nd 2020

PRESIDENT

Soro

THE SPEAKER

Cleric Whites

THE SECRETARY GENERAL

Busia