

[doc. web n. 9697781]

Injunction order against the University of Milan-Bicocca - 22 July 2021

Record of measures

n. 298 of 22 July 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 "RGPD");

GIVEN the d. lgs. June 30, 2003, n. 196 containing the "Code regarding the protection of personal data (hereinafter the " Code ");

GIVEN the general provision n. 243 of 15/5/2014 containing the "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 entities", published in the Official Gazette. n. 134 of 12/6/2014 and in [www.gpdp.it](http://www.gpdp.it), doc. web n. 3134436 (hereinafter "Guidelines on transparency");

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](http://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 operation of the office of the Guarantor for the protection of personal data, in [www.gpdp.it](http://www.gpdp.it), doc. web n. 1098801;

Professor Ginevra Cerrina Feroni will be the speaker;

WHEREAS

## 1. Introduction

This Authority has received a complaint from Mr. XX (hereinafter "complainant"), with which a violation of the legislation on the protection of personal data by the University of Milan - Bicocca was complained of.

Specifically, as emerged from the preliminary verification carried out by the Office, at the url <https://www.unimib.it/> ..., referring to the domain of the aforementioned University, it was possible to freely view and download the document entitled "XX", of the XX signed by the prosecutor of XX, of n. 2 pages, with the document entitled "XX" attached at the bottom, as well as the front-back copy of the identity card of Mr. XX.

The aforementioned documents contained identification data of the complainant, including the date and place of birth together with the tax code, with a complete copy of the relative identification document attached.

The complainant has attached to the complaint the note already sent to the University on XX, with which he had requested the removal of his identification document from the website. The documents show that the administration has not provided any feedback.

## 2. The legislation on the protection of personal data

Pursuant to the relevant regulations, "personal data" is "any information concerning an identified or identifiable natural person ("interested")" and "the natural person who can be identified, directly or indirectly, with particular reference to a identifier such as the name, an identification number, location data, an online identifier or one or more characteristic elements of its physical, physiological, genetic, psychic, economic, cultural or social identity "(art. 4, par. 1, No. 1, of the GDPR).

With particular reference to the case submitted to the attention of this Authority, please note that public entities, such as the University, may disclose "personal data" only if this operation is required "by a law or, in the cases provided for by law, of regulation "(art. 2-ter, paragraphs 1 and 3, of the Code), in compliance - in any case - with the principles of data protection, including that of "minimization", on the basis of which data personal data 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 c, of the GDPR).

It should be remembered that, since 2014, the Guarantor has provided specific indications to the administrations on the precautions to be taken for the dissemination of personal data online with the general provision no. 243 of 15/5/2014, containing the "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 entities", published in G.U.

n. 134 of 12/6/2014 and in [www.gdpd.it](http://www.gdpd.it), doc. web n. 3134436 (being updated, but still current in the substantial part).

### 3. Preliminary assessments of the Office on the processing of personal data carried out.

Following the checks carried out on the basis of the elements acquired and the facts that emerged as a result of the investigation, as well as subsequent evaluations, the Office with note prot. n. XX of the XX has ascertained that the University of Milan - Bicocca - disseminating the data and personal information of the complainant contained in the documents published online described above, including the identification document - has carried out a processing of personal data that does not comply with the relevant regulations on the protection of personal data contained in the RGD. Therefore, with the same note the violations carried out (pursuant to Article 166, paragraph 5, of the Code) were notified to the aforementioned University, communicating the start of the procedure for the adoption of the measures referred to in Article 58, par. 2, of the RGD and inviting the aforementioned administration to send to the Guarantor defensive writings or documents and, if necessary, to ask to be heard by this Authority, within the term of 30 days (Article 166, paragraphs 6 and 7, of the Code; as well as art.18, paragraph 1, of law no. 689 of 11/24/1981).

### 4. Defensive memories.

The University of Milan - Bicocca, with the note prot. n. XX of the XX, sent its defense writings to the Guarantor in relation to the violations notified.

In this regard, please note that, unless the fact constitutes a more serious crime, anyone who, in a proceeding before the Guarantor, falsely declares or certifies news or circumstances or produces false documents or documents, is liable pursuant to art. 168 of the Code, entitled "False statements to the Guarantor and interruption of the performance of the tasks or the exercise of the powers of the Guarantor".

Specifically, with regard to the conduct held, it was highlighted, among other things, that:

- the "administration made timely efforts to delete the document from the University website, as soon as they became aware of the PEC and therefore of the complainant's request [...] The request to delete the document from the portal was forwarded without delay , once the necessary checks have been carried out, and the de-indexing and elimination of the cached copy of the document from all search engines was also requested. [...] As of the date of this deed, therefore, the document is no longer available on the internet at the link [disputed] »;
- «As proof of the good faith of the Data Controller, an internal verification has also been initiated with respect to the

publications carried out in compliance with the obligations imposed by the legislation on transparency, pursuant to Legislative Decree 33/2013»;

- "The purposes for which the assignment deeds were published, including the complainant's identity document by mistake, are to be identified in the burden of publishing documents for transparency purposes, and therefore for obligations imposed by a law (Article 2-ter, paragraphs 1 and 3, of the Privacy Code). In relation to the publication obligations concerning public contracts for works, services and supplies, indeed, article 37 paragraph 1 of Legislative Decree 33/2013 states that "public administrations and contracting authorities publish: a) the data provided for by article 1, paragraph 32, of law no. 190; b) the documents and information subject to publication pursuant to legislative decree no. 50. " These data remain published for a period of 5 years pursuant to Article 8, paragraph 3 of Legislative Decree 33/2013. In addition, it is noted that among the data subject to mandatory publication pursuant to the aforementioned legislation there is the resolution to contract considering that whenever the administration proceeds in the absence of a public tender for the award of works, services and supplies, it is required to publish the itself as a substitute act for the call for tenders (FAQ ANAC Transparency point n. 21);

- "With respect to the publication of the identity document, it is acknowledged that this document was published, as part of the compliance with the aforementioned obligations, for mere material error";

- «As already indicated above, once the non-conformity of the publication was recognized, the copy of the identity document was promptly deleted from the site, without delay.

- "Even with respect to this point, although the discomfort felt by the interested party with respect to the publication of his data is recognized, we ask you to take into account that this non-compliant treatment and publication, subject of this procedure, concerns the personal data of an interested party ";

- "The request for cancellation forwarded by the complainant was sent to the general PEC address of the University and due to an" organizational problem "was not taken in charge and for this aspect the undersigned Administration expresses heartfelt regret";

- "This criticality was determined by the fact that the request was not received through the dedicated preferential channels, created for the management of the requests and all the obligations related to the processing and protection of personal data (PEC address XX and XX); in addition to this, it should be noted that the health emergency and the shifts for returning from the summer vacation period have led to this misunderstanding that has not allowed the interested party to take charge of the

request";

- "In addition, it should be noted that a large number of communications is delivered to the institutional PEC account XX, through which the request was conveyed (in the reference period, between XX and XX, 3,156 PEC were received) ; this aspect also contributed to the "organizational misunderstanding" »;

- "With regard to these aspects, which cannot be considered exempt from the non-response, it is requested, however, that they can be evaluated by the Authority as an expression of good faith and as symptoms of the subjective element of the fault";

- "There was indeed no malice in the non-response, as there was no desire to deny the satisfaction of the right to the interested party, also taking into account the fact that, as soon as the notice of the start of the procedure was received, the Data Controller of the treatment promptly proceeded to delete the data and therefore to accept the requests of the complainant".

## 5. Evaluations of the Guarantor

The subject matter of the case submitted to the Guarantor concerns the disclosure of the complainant's personal data and information (date and place of birth, tax code) contained in documents published online on the institutional website of the University of Milan - Bicocca, together with the front-back copy of the relevant identity card.

As part of the investigation opened in this regard by this Authority, the aforementioned University confirmed, in its defense briefs, the online dissemination of the personal data described. From this point of view, the entity has shown that the contested documents have been published for the purpose of transparency in the context of the publication obligations concerning public contracts for works, services and supplies (Article 37, of Legislative Decree no. . 33/2013) and that in any case the publication of the identification document took place "by mere clerical error".

In this regard, this Authority has recalled on several occasions that the presence of a specific advertising regime cannot, however, entail any automatism with respect to the online dissemination of personal data and information, nor an exception to the principles regarding the protection of personal data of origin. European Union, provided for by the RGPD, such as - among others - that of "minimization", according to which personal data - also contained in deeds or documents whose online dissemination is provided for by a specific legal basis - must not only be "adequate "And" pertinent ", but also" limited to what is necessary with respect to the purposes for which they are processed "(art. 5, par. 1, lett. C).

This is also confirmed by the personal data protection system contained in the RGPD, in light of which it is also envisaged that

the data controller must put in place "adequate technical and organizational measures to ensure that they are processed, by default, only the personal data necessary for each specific purpose of the processing "(" data protection by default ") and must be" able to demonstrate "- in light of the principle of" accountability "- to have done so (art. 5, par. 2; 24 and 25, par. 2, GDPR). The picture described is moreover consistent with what was stated by the Guarantor since 2014 with the Guidelines referred to above (paragraph 2), where it has been indicated on pp. that - even in the event that there is an obligation for the administration to publish a deed or document on its institutional website - it is in any case necessary to "select the personal data to be included in such deeds and documents, verifying, case by case , if the conditions are met for the obscuring of certain information ", as they are not necessary with respect to the purposes for which they are processed (see now the principle of" minimization "of the data referred to in art. 5, par. 1, lett. c, of the GDPR).

Having clarified this, please note the rules described also apply to unnecessary personal data contained in the document entitled "XX", of the XX published online with the relative attachments, as data of a personal nature that must in any case be protected.

From this point of view, the disclosure of the complainant's data and information relating to the date and place of birth as well as to the tax code does not comply with the principle of "minimization" (Article 5, paragraph 1, letter c, of the RGPD) , as the aforementioned data are not "limited to what is necessary with respect to the purposes" of transparency declared by the University.

On the other hand, from what was declared in the defense briefs, it also appears that the university administration's failure to respond to the request for the obscuring of personal data - sent by the complainant to the University before contacting the Guarantor - was caused by an "organizational misunderstanding" , due to the sending of the application to the p.e.c. general of the entity - and not to the dedicated e-mail -, which in the period considered was the recipient of "a high number of communications" (approximately 3,156 p.e.c.). These circumstances, together with the "health emergency and [the] shifts for returning from the summer vacation period", have "entailed [a] misunderstanding that did not allow to take charge of the request of the interested party".

However, the University stated that it had "taken steps promptly to delete the document from the University website, as soon as it became aware of the PEC and therefore of the complainant's request".

6. Outcome of the investigation relating to the complaint presented

For all of the above, the circumstances highlighted in the defense writings examined as a whole, certainly worthy of consideration for the purpose of evaluating the conduct, are not sufficient to allow the filing of this proceeding, since none of the hypotheses provided for by art. 11 of the Guarantor Regulation n. 1/2019. This also considering that since 2014 the Authority, in the Guidelines on transparency and online publication mentioned above, has provided all pp.aa. specific indications on how to reconcile the transparency and publicity obligations of the administrative action with the right to the protection of the personal data of the interested parties.

In this context, the preliminary assessments of the Office are confirmed with the note prot. n. XX of the XX and the unlawfulness of the processing of personal data carried out by the University of Milan - Bicocca is noted, as the dissemination of the complainant's personal data and information, contained in the document entitled "XX" of the XX, and related attachments, including the front-back copy of the identity card, published online on the institutional website are:

a) devoid of suitable regulatory conditions with particular reference to the publication of the complainant's identification document, in violation of art. 2-ter, paragraphs 1 and 3, of the Code; as well as the basic principles of processing contained in articles 5, par. 1, lett. to); 6, par. 1, lett. c) and e), par. 2 and par. 3, lett. b), of the GDPR;

b) does not comply with the principle of data minimization, in relation to the date and place of birth as well as the tax code, which are not "limited to what is necessary with respect to the purposes" of transparency declared by the University, in violation of art. 5, par. 1, lett. c), of the GDPR.

Considering, however, that the conduct has exhausted its effects, as the data controller declared that he had removed personal data from the institutional website, without prejudice to what will be said on the application of the pecuniary administrative sanction, the conditions for the adoption of further corrective measures pursuant to art. 58, par. 2, of the GDPR.

7. Adoption of the injunction order for the application of the pecuniary administrative sanction (Articles 58, paragraph 2, letter i; 83 of the GDPR)

The University of Milan - Bicocca appears to have violated Articles 5, par. 1, lett. a) and c); 6, par. 1, lett. c) and e), par. 2 and par. 3, lett. b), of the GDPR; as well as art. 2-ter, paragraphs 1 and 3, of the Code.

In this regard, art. 83, par. 3, of the RGPD, provides that «If, in relation to the same treatment or related treatments, a data controller or a data processor violates various provisions of this regulation, with willful misconduct or negligence, the total amount of the pecuniary administrative sanction does not exceeds the amount specified for the most serious violation '.

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

The Guarantor, pursuant to art. 58, par. 2, lett. i) and 83 of the RGD, as well as art. 166 of the Code, has the corrective power to "inflict 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, depending on the circumstances of every single case ". 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 elements provided for by art. 83, par. 2, of the GDPR.

In this sense, the detected conduct in violation of the regulations on the protection of personal data is of a culpable nature and has had as its object the online dissemination of personal data, for more than four and a half years, not belonging to particular categories or to criminal convictions or offenses (articles 9 and 10, of the RGD), referring to a single interested party.

Following the request of the Office, the administration intervened promptly, collaborating with the Authority during the investigation of this proceeding in order to remedy the violation, mitigating its possible negative effects. The economic conditions of the data controller were also taken into account. In any case, there are no previous relevant violations of the RGD committed by the entity.

Due to the aforementioned elements, assessed as a whole, it is deemed necessary to determine pursuant to art. 83, para. 2 and 3, of the RGD, the amount of the pecuniary sanction, provided for by art. 83, par. 5, of the RGD, to the extent of € 10,000.00 (ten thousand) for the violation of Articles 5, par. 1, lett. a) and c); 6, par. 1, lett. c) and e), par. 2 and par. 3, lett. b), of the RGD, as well as of art. 2-ter, paragraphs 1 and 3, of the Code; as a pecuniary administrative sanction deemed effective, proportionate and dissuasive pursuant to art. 83, par. 1, of the same RGD.

In relation to the specific circumstances of this case, relating to the dissemination of personal data online in the absence of a suitable legal basis and in violation of the principle of data minimization (Article 5, paragraph 1, letter c, GDPR), it is considered also that the ancillary sanction of the publication of this provision on the Internet site of the Guarantor, provided for by art. 166,



paragraph 7, of the Code and by art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019.

Finally, it is believed that the conditions set out in art. 17 of the Guarantor Regulation n. 1/2019.

WHEREAS, THE GUARANTOR

detected the unlawfulness of the processing carried out by the University of Milan - Bicocca in the terms indicated in the motivation pursuant to Articles 58, par. 2, lett. i), and 83 of the GDPR

ORDER

at the University of Milan - Bicocca, in the person of the pro-tempore legal representative, with registered office in Piazza Dell'Ateneo Nuovo, 1 - 20126 Milan (MI) - Tax Code 12621570154 to pay the sum of € 10,000.00 (ten thousand) as a pecuniary administrative sanction for the violations mentioned in the motivation;

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to the same University to pay the sum of € 10,000.00 (ten 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.

Please note that the offender has the right to settle the dispute by paying - again according to the methods indicated in the annex - of an amount equal to half of the sanction imposed, within the term set out in art. 10, paragraph 3, of d. lgs. n. 150 of 1/9/2011 provided for the submission of the appeal as indicated below (Article 166, paragraph 8, of the Code).

HAS

- the publication of this provision on the website of the Guarantor pursuant to art. 166, paragraph 7, of the Code and by art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019;

- the annotation in the internal register of the Authority of violations and measures adopted pursuant to art. 58, par. 2, of the RGPD with this provision, as required by art. 17 of the Guarantor Regulation n. 1/2019.

Pursuant to art. 78 of the RGPD, of the arts. 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, July 22, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Cerrina Feroni

THE SECRETARY GENERAL

Mattei