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Injunction against the local health authority of Bari - 2 March 2023

Register of measures

no. 74 of 2 March 2023

## THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by prof. Pasquale Stazione, president, prof.ssa Ginevra Cerrina Feroni, vice president, dr. Agostino Ghiglia and Dr. 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 regarding the processing of personal data, as well as the free movement of such data and repealing 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 of the Guarantor n. 98 of 4/4/2019, published in the Official Gazette no. 106 of 8/5/2019 and in [www.gdpd.it](http://www.gdpd.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 on the organization and functioning of the office of the Guarantor for the protection of personal data, in [www.gdpd.it](http://www.gdpd.it), doc. web no. 1098801;

SPEAKER Prof. Geneva Cerrina Feroni;

WHEREAS

1. The preliminary investigation.

In the month of XX, the Guarantor received a report in which the publication, on the page called "They speak well of us" of the website of the local health authority (Asl) of Bari, was complained of the praise received from the patients (<https://www.sanita.puglia.it/web/asl-bari/parlano-bene-di-noi>).

Following what was reported, the Office found that, through the aforementioned page, it was possible to access hundreds of documents containing the praise of numerous patients who had been presented to the Company from 2016 to 2022. The documents that could be consulted consisted of scanned copies eulogy documents (special form, e-mail, letters), in which - in almost all cases - it was possible to identify the authors of the same, as the personal data had been erased in an approximate way with the stroke of a black marker which, however, did not prevent the obscured parts from being read.

In addition to the personal data and contact details of the patients, the aforementioned documents also contained numerous information relating to the state of health of the subjects who presented the eulogy (e.g. clinical details of the interventions or services received, diagnosis, medical history).

The Office therefore requested information from the ASL of Bari (note prot. XX of XX), which, with note of XX (prot. n XX), represented, in particular, that:

"The strategic management of this Company intended to create a section of the institutional website specifically dedicated to the collection of praise (per quarter) where thanks are published from users or associations and the related thanks from the general management and the manager of the institutional information and communication";

"intended to adopt the following technical and organizational corrective measures:

the immediate removal of the documents containing the praises published on the company website was ordered;

all personnel in charge of publishing documents on the corporate website were prohibited from obscuring personal data by manually deleting it with a felt-tip pen, as this measure is unsuitable for making the personal information contained in documents published on the corporate website anonymous;

an internal procedure has been defined for the publication of praise which provides for the extraction, from the received praise document, of only relevant and not excessive information (principle of minimization) omitting the following:

name and surname of the patient and/or of his family member or third party;

hospitalization period;

any other "additional" data, in order to exclude any possibility of re-identification of the interested party, in compliance with the

principles applicable to the treatment pursuant to art. 5 of EU Reg. 2016/679";

"therefore the scans of the forms received will no longer be published, but only the essential contents of the praise, extracted by the personnel in charge, in accordance with the principles of lawfulness, correctness and transparency".

In the aforesaid acknowledgment note, the ASL of Bari also represented that it had planned a training activity for all those responsible for the procedure for publishing the documents and that it had strengthened the internal control procedure on the publication of documents on the institutional website of the same.

In relation to what emerged from the documentation acquired in the deeds, the Office notified the aforementioned Local Health Authority, 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 the aforesaid owner 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 no. 689 of 11/24/1981) (note of the XX, prot. n. XX).

In this deed, the Office found that the Asl of Bari has disseminated information on the state of health of hundreds of interested parties who have turned to it to receive health services through the publication, on the page called "They speak well of us" (<https://www.sanita.puglia.it/web/asl-bari/parlano-bene-di-noi>), of documents containing the praise of numerous patients who were presented by them from 2016 to 2022.

With a note of the XX (prot. n. XX), the aforementioned Asl sent its memos, specifying that "488 praise from Users, from the company's strategic management, and from Associations" "received from 16 March 2016 to 19 May 2022". In the aforesaid note it was also specified that in 394 eulogies the data of the assisted had been ""obscured" with felt-tip pen or white-out and largely "difficult and/or not attributable" to the person concerned or in the presence of a reasonable improbability of identification of the interested party also through identification, correlation and deduction".

The aforementioned Company, in providing a summary table of the praises published by year, by "obscuration" procedure and by type of data present, also specified that in 88 praises "there are no personal data pursuant to art. 9 of the GDPR" and which has not received from the interested parties "any request to exercise the rights referred to in articles 15-22 of EU Regulation 2016/679 nor any report and/or complaint regarding the publications of the praise in question".

The aforementioned ASL also specified that, after the removal of the documents containing the praise, it proceeded to publish them in "numerical aggregate" form and ordered the "prohibition of obscuring personal data through manual cancellation with a

felt-tip pen", as well as a specific training plan to be completed by 2022.

The eulogies published on the website of the aforementioned Company have been acquired in the records.

## 2. Outcome of the preliminary investigation.

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

pursuant to the Regulation, "data relating to health" are considered personal data relating to the physical or mental health of a natural person, including the provision of health care services, which reveal information relating to his or her state of health (art. 4, par. 1, no. 15, of the Regulation). Recital no. 35 of the Regulation then specifies that data relating to health "include information on the natural person collected during his registration in order to receive health care services";

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 in relation to the interested party ( «integrity and confidentiality»)" and must be "adequate, pertinent and limited to what is necessary with respect to the purposes for which they are processed ("data minimization")" (art. 5, paragraph 1, letters a) and c) of the Regulation);

the data must also be processed "in such a way as to guarantee adequate security (...), including protection, through appropriate technical and organizational measures, against unauthorized or unlawful processing and against accidental loss, destruction or damage (principle of " integrity and confidentiality)" (Article 5, paragraph 1, letter f), of the Regulation);

the data controller is required to implement "from the planning stage", i.e. both when determining the means of processing and at the time of the processing itself, "adequate technical and organizational measures, [...] aimed at effectively implementing the principles of data protection, such as minimisation, and to integrate the necessary guarantees in the processing in order to meet the requirements of this regulation and protect the rights of data subjects" (privacy by design), ensuring "that they are processed, by default" (privacy by default) «only the personal data necessary for each specific purpose of the processing» (art. 25, par. 1 and 2, of the Regulation);

the regulation on the protection of personal data provides that information on the state of health cannot be disseminated and can be communicated to a person other than the interested party only on the basis of a suitable legal prerequisite or on the indication of the interested party subject to written authorization of the latter (Articles 2 septies, paragraph 8 and Article 166, paragraph 2, of the Code and Article 9 of the Regulation);

the Authority has represented since 2014 that "the publication of any information from which the state of illness or the existence of pathologies of the interested parties can be inferred is prohibited, including any reference to the conditions of invalidity, disability or physical handicap and/or or psychics. To this end, from the stage of drafting the deeds and documents to be published, in compliance with the principle of adequate motivation, "excess", "irrelevant", "non-essential" (and, even less, "forbidden"). Otherwise, it is necessary to provide for the relative obscuration" (see Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for purposes of advertising and transparency on the web by public subjects and other bodies obliged, part II, paragraph 1, of 15.5.2014, web doc. n. 3488002);

the publication of documents containing personal information on a page of the Asl di Bari website accessible to anyone configuring the disclosure of personal data;

the eulogies published on the website of the aforementioned Company contain information suitable for revealing the state of health of numerous clients of the same. By consulting the aforementioned documents it was in fact possible, in almost all cases, to identify the authors of the same, as the personal data were erased in an approximate way, often with the stroke of a black marker which however does not prevent the obscured parts from being read and therefore to associate the personal data and contact information of the subjects who presented the eulogy with numerous information relating to their state of health (e.g. clinical details of the interventions or services received, diagnosis, medical history);

the manual deletion procedure with felt-tip pen or white-out cannot in fact be defined as suitable for making anonymous the personal information of the interested parties who have presented a eulogy; this, as this procedure is by its nature imprecise and not definitive and in fact allowed the visibility of the names, surnames and contact details of the patients;

indeed, the use of the black felt-tip pen or white-out cannot even be defined as a "pseudonymisation" procedure - the definition set forth in art. 4, par. 1, no. 4 of the Regulation - since, even when performed effectively, it is rather a simple manual procedure for obscuring the personal details of the interested parties (see in this regard provisions of 17.9.2020 web doc. n. 9479364 and n. 9479382);

beyond the ascertained ineffectiveness of the chosen solution (e.g. felt tip pen), the data published on the Bari ASL website do not comply with the aforementioned principle of minimization, since, in publishing the eulogy presented directly on the Company website by the interested party, data on health (eg clinical details) have been disseminated that are not pertinent to the purpose of the publication attributable, according to what is declared in the documents, to the activity "of communication

and information for the improvement of relations with users";

from the documentation in the documents, it is therefore ascertained that the ASL of Bari has disseminated information on the state of health of hundreds of interested parties who have turned to it to receive health services, through the publication, on the page called "They speak well of us" ( <https://www.sanita.puglia.it/web/asl-bari/parlano-bene-di-noi>), of 488 documents containing the praises of numerous patients who were presented by them in the period from 2016 to 2022.

### 3. Conclusions.

In the light of the assessments referred to above, taking into account the statements made by the owner during the preliminary investigation □ and considering 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 deeds or documents and 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" □ the elements provided by the data controller in the defense briefs do not allow to overcome the findings notified by the Office with the deed of initiation of the proceeding, since none of the cases envisaged by art. 11 of the Regulation of the Guarantor n. 1/2019.

For these reasons, the unlawfulness of the processing of personal data carried out by the ASL of Bari is noted, in the terms set out in the justification, in violation of articles 5, par.1, lett. a), c) and f), 9 and 25, paras. 1 and 2, of the Regulation, of the art. 2 septies of the Code.

In this context, it being understood that the ASL of Bari has declared that it has removed the aforementioned documents from its website, the conditions for the adoption of the corrective measures pursuant to art. 58, par. 2, of the Regulation.

4. 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 violation of the articles 5, par.1, lett. a), c) and f), 9 and 25, paras. 1 and 2, of the Regulation, of the art. 2 septies of the Code, caused by the conduct implemented by the ASL of Bari, is subject to the application of the administrative fine pursuant to art. 83, par. 4 and 5, of the Regulation and of the art. 166, paragraph 2 of the Code.

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 College [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. 85, par. 2, of the Regulation in relation to which it is observed that:

the Authority became aware of the event following a report (Article 83, paragraph 2, letter h), of the Regulation);

the processing concerns the dissemination of data suitable for detecting information on the health of a particularly significant number of interested parties (488 praise received by the ASL of Bari between 2016 and 2022) (Article 83, paragraph 2, letter a) and g) , of the Regulation);

the Authority has already intervened on the issue with numerous provisions also mentioned in this provision (Article 83, paragraph 2, letter a) of the Regulation);

the ASL of Bari promptly cooperated in order to remedy the violation (Article 83, paragraph 2, letter f) of the Regulation);

although the Asl of Bari has been sanctioned for previous violations of the regulation on the processing of personal data, these do not concern the dissemination of health data (Article 83, paragraph 2, letter e) 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, to the extent of 50,000 (fifty thousand) euros for the violation of articles 5, par.1, lett. a), c) and f), 9 and 25, paras. 1 and 2, of the Regulation, of the art. 2 septies of the Code, as a pecuniary administrative sanction withheld, 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 by 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 of Bari for the violation of the articles 5, par.1, lett. a), c) and f), 9 and 25, paras. 1 and 2, of the Regulation, of the art. 2 septies of the Code 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 of Bari, C.F. and P.I. 06534340721, in the person of the pro-tempore legal representative, to pay the sum of 50,000 (fifty 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 Company, in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, to pay the sum of 50,000 (fifty thousand) euros 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 in full on the website of the Guarantor and the annotation of this provision in the internal register of the Authority, provided for by art. 57, par. 1, lit. u), of the Regulation, of the violations and of the measures adopted in accordance with art. 58, par. 2, of the Regulation.

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, March 2, 2023

#### PRESIDENT

Station

#### THE SPEAKER

Cerrina Feroni

#### THE SECRETARY GENERAL



