

[doc. web n. 9763968]

Order injunction against ASST of Lodi - 10 March 2022

Record of measures

n. 84 of 10 March 2022

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 national law 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 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");

Having seen the documentation in the deeds;

Given 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, doc. web n. 1098801;

Professor Ginevra Cerrina Feroni will be the speaker;

WHEREAS

1. Notification of infringement

With note prot. n. XX of the XX, the ASST of Lodi, with registered office in Lodi, Piazza Ospitale 10, c.a.p. 26900 - Tax Code

09322180960 (hereinafter the "Health Company") has notified this Authority - pursuant to art. 33 of the Regulation - a breach of personal data which occurred on 23 March 2021.

In particular, the Healthcare Company declared that the violation, which occurred during the course of the institutional activities relating to the company URP, concerned a communication of data relating to health "by an operator of the Public Relations Office to a person other than those indicated by the interested party ". This, because "the URP operator, fearing that the two names that the interested party had asked to contact for the execution of an urgent diagnostic examination by another hospital were not reachable, knowing in person another person close to the person concerned (family member) has communicated the health data of the person concerned to this person ".

In the act of notification it was also stated that the violation relates to data relating to health and that the data controller became aware of the violation on March 31, 2021 through the DPO. This communication to the owner beyond the 72 hours provided for by the Regulations depended on having organized a meeting with the two subjects delegated by the interested party.

The Healthcare Company considered the violation of medium gravity as "the person who became aware of the data is a family member (daughter-in-law) and therefore it is believed that he did not use it harmful to the person concerned".

To remedy the harmful effects for the person concerned, the Healthcare Company "organized a meeting with the family members delegated by the person concerned, to make them understand the reasons - all relating to the urgent health protection of the same - that animated the action that gave rise to the violation ". In addition, the Company itself has ensured that "in addition to implementing the necessary disciplinary measures for the employee, the training and information action on company employees and collaborators will be accentuated; at the level of the Structure in which the event occurred, changes will be made to the procedure and improvement actions in relation to the methods of communication with the public, already partially immediately identified ".

In the document "Report on an event that led to a notification of violation", dated March 31, 2021, signed by the Data Protection Officer of the Healthcare Company, sent to the Authority together with the aforementioned notification of violation, that Company has also illustrated, in detail, the circumstances that induced the URP operator to assume the conduct determining the violation in question, asserting, among other things, that "the Company acknowledges that Mrs. E. should not have received news on the state of health of Mrs. P. in the absence of an explicit consent from the same (...) (;) it should however be noted that the only objective of the operator was to respond to the urgent request for assistance of a fragile person

as elderly, with problems of health and in difficulty, even objective, for the execution of the investigation. The slightly more "personal" empathy that was created following the discovery of the common kinship has probably lowered the level of attention, which is normally very high in the corporate structure dedicated to Relations with the Public".

2. The preliminary activity

On the basis of what is represented by the data controller in the act of notification of violation and in the aforementioned accompanying report of March 31, 2021, the Office, with act of the XX (prot. No. XX), notified the ASST of Lodi, 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, par. 2, of the Regulation.

In particular, in the aforementioned deed it was represented by the Office that the Healthcare Company carried out a processing of personal data in the absence of the conditions required by law, consisting in the communication of data relating to the health of a patient to a third party, not authorized by the interested party; this, in violation of the prohibition enshrined in art. 9, par. 1, of the Regulations and in the non-compliance with the safety obligations referred to in art. 32 of the Regulation and the basic principles of processing referred to in art. 5, par. 1, lett. f) of the same Regulation.

In relation to this, the Office has also invited the data controller to produce defensive writings or documents to the Guarantor or to ask to be heard by the Authority (Article 166, paragraphs 6 and 7, of the Code; as well as art. 18, paragraph 1, by law no. 689 of 11/24/1981).

With a note from the twentieth century, the health authority presented a defense brief, in which, reiterating what had already been communicated with the act of notification of violation, it highlighted, among other things, that:

- the fact is "absolutely culpable, as the operator spontaneously communicated, in absolute honesty but still without authorization, data relating to the health of the person concerned";
- "the event took place in the interest of the lady / user concerned, as the operator, worried that the absolutely necessary and urgent examination could not be performed due to the possibility of a loss of incoming call by the 'Melegnano Hospital, decided to be more timely and thus warn his cousin, as well as daughter-in-law of the person concerned, inevitably communicating the state of health of the mother-in-law";
- a "Training plan was set up for the entire company population and an action to improve employee awareness. To remedy the violation, a meeting was organized with the family members delegated by the interested party, to make them understand the

reasons - all related to the urgent health protection of the same - that animated the action that gave rise to the violation ".

3. Outcome of the preliminary investigation

Having acknowledged what was represented and documented during the preliminary proceedings by the ASST of Lodi, first with the act of notification of violation and the report attached thereto and, subsequently, with the defense brief produced following the act notified by the Authority same pursuant to art. 166, it is noted that:

1. the processing of personal data must take place in compliance with the applicable legislation on the protection of personal data and, in particular, with the provisions of the Regulation and the Code. With particular reference to the question raised, it should be noted that the "data relating to health", as outlined by art. 4, par. 15 of the Regulation, deserve greater protection since the context of their processing could create significant risks for the rights and fundamental freedoms of the data subjects (Recital 51 of the Regulation);

2. in the health field, 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 basis or subject to written authorization from the interested party (Article 9 of the Regulation and Article 84 of the Code in conjunction with art.22, paragraph 11, legislative decree 10 August 2018, n.101);

3. the rules on the protection of personal data then establish that personal data must be "processed in a manner that guarantees adequate security (...), including protection, by means of adequate technical and organizational measures, from unauthorized processing or offenses and accidental loss, destruction or damage (principle of "integrity and confidentiality") "(Article 5, paragraph 1, letter f) of the Regulations). The adequacy of these measures must be assessed by the data controller in order to "guarantee a level of security appropriate to the risk", taking into account, among other things, "the nature, object, context and purpose of the processing, as well as the risk of varying probability and gravity for the rights and freedoms of natural persons "(Article 32 of the Regulation).

The health authority, in the defense briefs, confirmed the communication of the data relating to the health of a patient to a third party not authorized to receive them; in relation to this, in addition to organizing a meeting with the family members delegated by the interested party and implementing disciplinary measures for the employee, it has scheduled training events on the protection of personal data for all employees of the Company.

4. Conclusions

In light of the aforementioned assessments, taking into account the statements made by the data controller during the investigation □ the truthfulness of which one may be called to answer pursuant to art. 168 of the Code "False statements to the Guarantor and interruption of the execution of the tasks or the exercise of the powers of the Guarantor" the act of initiating the procedure, since none of the cases provided for by art. 11 of the Guarantor Regulation n. 1/2019.

For these reasons, the preliminary assessments of the Office are confirmed and the unlawfulness of the processing of personal data carried out by the Lodi ASST is noted for having communicated data relating to the health of a patient to a third party not authorized by the interested party to receive them. The communication of the aforementioned health data therefore took place in the absence of the legal conditions provided for by the legislation for the protection of personal data and, therefore, in violation of the prohibition established by art. 9, par. 1, of the Regulations and in the non-compliance with the safety obligations referred to in art. 32 of the Regulation and the basic principles of processing referred to in art. 5, par. 1, lett. f) of the same Regulation.

The violation of the aforementioned provisions makes it applicable, pursuant to art. 58, par. 2, lett. i), the administrative sanction provided for by art. 83, par. 4, lett. a) and par. 5, lett. a) of the Regulations, as also referred to by art. 166, paragraphs 1 and 2, of the Code.

In this context, considering, in any case, that measures have been adopted by the data controller, who, in this regard, in addition to implementing disciplinary measures for the employee, has scheduled training events on the protection of personal data for employees of the Healthcare Company, in order to avoid the repetition of the contested conduct, the conditions for the adoption of prescriptive or inhibitory measures pursuant to art. 58, par. 2 of the Regulations.

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. 1, lett. f), 9 and 32 of the Regulations caused by the conduct put in place by the ASST of Lodi, is subject to the application of the pecuniary administrative sanction pursuant to art. 83, par. 4, lett. a) and par. 5, lett. a) of the Regulation and 166, paragraphs 1 and 2, of the Code.

Consider 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 according to 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. 83, par. 2, of the same Regulation, in relation to which it is noted that:

- the communication of the data concerned an affected patient who has not submitted complaints or grievances to the Authority (Article 83, paragraph 2, letter a) of the Regulation);
- the communication made by the Healthcare Company involved only one recipient and concerned data on the health of the aforementioned patient (Article 83, paragraph 2, letters a) and g) of the Regulation);
- it was an isolated case that did not concern other interested parties and with respect to the affair the Data Controller has repeatedly represented the absence of willful misconduct in the event as "the fact took place in the interest of the lady / user concerned , as the operator, worried that the absolutely necessary and urgent examination could not be performed due to the possibility of a lost incoming call from the Melegnano Hospital, decided to be more timely and thus warn the own cousin, as well as daughter-in-law of the person concerned, inevitably informing her of the state of health of the mother-in-law "(cf. defense brief of the XXth (art. 83, par. 2, lett. b) of the Regulations);
- no measures concerning relevant violations have previously been adopted against the Healthcare Company itself (Article 83, paragraph 2, letter e) of the Regulation);
- the Company has behaved collaboratively with the Authority (Article 83, paragraph 2, letter f) of the Regulation);
- the Company has taken steps to adopt measures to prevent the occurrence from happening again (Article 83, paragraph 2, letter f) of the Regulation);
- the Healthcare Company notified this violation to the Authority pursuant to art. 33 of the Regulations (Article 83, par. 2, letter h) of the Regulations);

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. 4 lett. a) and par. 5, lett. a) of the Regulations, to the extent of € 1,000.00 (one thousand) for the

violation of Articles 5, par. 1, lett. f), 9 and 32 of the Regulations 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.

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 the ASST of Lodi, with registered office in Lodi, Piazza Ospitale 10, c.a.p. 26900 - Tax Code 09322180960 for the violation of art. 5, par. 1, lett. f), 9 and 32 of the Regulations 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 the ASST of Lodi, to pay the sum of Euro 1,000.00 (one thousand) as a pecuniary administrative sanction 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 sanction imposed;

INJUNCES

to the aforementioned Healthcare Company, in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, to pay the sum of € 1,000.00 (one 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, March 10, 2022

PRESIDENT

Stanzione

THE RAPPORTEUR

Cerrina Feroni

THE SECRETARY GENERAL

Mattei