

[doc. web n. 9719797]

Injunction order against the Prefecture - Territorial Office of the Government of Genoa - 29 September 2021

Record of measures

n. 350 of 29 September 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, 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, doc. web n. 9107633 (hereinafter "Regulation of the Guarantor no. 1/2019");

GIVEN 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;

Speaker prof. Pasquale Stanzione;

WHEREAS

1. Introduction

This Authority has received a report, with which a violation of the legislation on the protection of personal data has been contested, deriving from the dissemination of personal data on the institutional website of the Prefecture - Territorial Office of the Government of Genoa.

Specifically, as emerged from the preliminary verification carried out by the Office on XX, at the url [http: // ...](http://...), there were two links called "XX" and "XX".

Through the aforementioned links it was possible to view and freely download a file in .xml format containing a table entitled "XX", which contained the list of attorneys of two companies (XX and XX) and their adult family members living together (about a hundred subjects in all).

The aforementioned file was also downloadable from the following url:

- [http: // ...](http://...);

- [http: // ...](http://...)

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).

In this regard, with particular reference to the case submitted to the attention of this Authority, it is recalled that public entities, such as the Prefecture, may disclose "personal data" only if this operation is provided for "by a law or, in the cases provided for by law, regulation "(Article 2-ter, paragraphs 1 and 3, of the Code), in compliance - in any case - with the principles of data protection, including that of " minimization ", based on which 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).

With regard to the obligations of publication on institutional websites, 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 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, doc. web n. 3134436 (currently 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 Prefecture-Territorial Office of the Government of Genoa - by disseminating the data and personal information contained in the file published online described above - 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 GDPR. Therefore, with the same note the violations carried out (pursuant to Article 166, paragraph 5, of the Code) were notified to the aforementioned Prefecture, communicating the start of the procedure for the adoption of the measures referred to in Article 58, par. 2, of the RGPD 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 Prefecture-Territorial Office of the Government of Genoa, with note prot. n. XX of the XX, sent to the Guarantor his defense writings 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".

In particular, with regard to the conduct, the Prefecture highlighted, among other things, that:

- "the disputed facts were [or] no accrued in the context of the activities related to the anti-mafia checks under the jurisdiction of the Prefecture";
- "[from the report of the competent executive] it is clear that the XX, for mere clerical error, a file for exclusive internal use summarizing the corporate offices [of the companies indicated in the documents] and prepared in relation to an anti-mafia certification request, [is] has been made accessible on the institutional website of the Prefecture, in the section reserved for

the publication of the white list, that is the list to which companies that intend to operate in sectors considered by the anti-mafia legislation particularly exposed to the danger of criminal infiltration must register ";

- "As reported in the aforementioned report [...], having acquired the subsequent XX of the erroneous publication, [we] proceeded on the same date - therefore only three days later - to have the aforementioned file removed from the Prefecture site";

- "Moreover, [we] had the opportunity to give direct confirmation of this removal to the company [...] which, having noticed pending improper publication, had reported it to this office on the 20th, that is when the removal had already been arranged of the file from the website and considered definitively overcome any criticality ";

- "Learned from the note of this Guarantor - received on 2 July this year. - that the file in question, although no longer accessible via links on the Prefecture's website, was in fact still accessible online, this Office took steps to interest its IT sector, as well as the webmaster of the website www.prefettura.it at the headquarters of the Ministry of the Interior to initiate any appropriate intervention, suitable for solving the problem ";

- "So much has made it possible to delete both the file download page and the individual resources from the server as well as to request the Google manager to de-index from the search engine of any reference potentially harmful to the privacy rights of the parties involved";

- "Following the notification of this Guarantor, for all purposes, the writer has proceeded to issue a directive to all managers of the Prefecture [...] regarding the precautionary measures to be followed where the processing of personal data may derive from the publication of information data on the institutional website, also recalling the correct procedures should it be necessary to remove content improperly published online ".

This is confirmed in the aforementioned report attached to the defense briefs (note prot. No. XX of the XX) in which, with regard to what happened, it was also represented that:

- The inconvenience deriving from the publication of the disputed file «occurred due to a mere clerical typing error. In fact, during the transmission phase, the operator erroneously sent the aforementioned file in XLSX format to the manager of the website of this Prefecture instead of the PDF file containing the list of companies registered in the white list ";

- "On XX, having received the report of this irregularity from a contracting authority interested in consulting the white lists, [we] immediately issued [and] instructions for the irrelevant file to be removed and the PDF file containing the white list, an

operation that was immediately carried out ";

- «Subsequently, with a note of the XX, addressed to this Prefecture, the company [indicated in the documents] raised the problem by requesting the removal of the data in question. This request [was] answered with a note [attached] '.

The Prefecture has also attached to its defense briefs both the report sent by the company to XX (prot. Nn. XX of the XX and n. XX of the XX), and the relative acknowledgment in which it apologized for the inconvenience "due to a mere technical problem "and represented to have intervened to" delete the file in question in which [...] no minors appeared as they were not subjected to anti-mafia checks as required by current legislation "(prot. note no. XX of XX).

5. Evaluations of the Guarantor

The issue that is the subject of the case submitted to the attention of the Guarantor concerns the dissemination of personal data and information contained in a file containing a table with the list of the attorneys of two companies identified in the documents and their adult family members living together (about a hundred subjects in all), published online by the Prefecture - Territorial Office of the Government of Genoa.

As part of the investigation opened in this regard by this Authority, the Prefecture confirmed, in its defense briefs, the online dissemination of the personal data described, highlighting that the file had been produced "for the exclusive internal use summarizing the corporate offices [of the companies indicated in the documents] and prepared in relation to an anti-mafia certification request ", and which, however, for a " mere clerical error "was" made accessible on the institutional website of the Prefecture, in the section reserved for the publication of the white list , that is the list to which companies that intend to operate in sectors considered by the anti-mafia legislation particularly exposed to the danger of criminal infiltration must be registered ».

The Prefecture also acknowledged that it had received the error report to XX from one of the companies involved and that it had intervened by removing the file from the website. In this way, the administration believed that it had solved the problem without, however, realizing - as stated in the documents attached by the Entity - that the file was "in fact still accessible online", since - as can be seen from the report of the IT service attached to the defensive briefs (cf. e-mail of the 20th century) - the download page of the files and individual information resources was "reachable either by direct connection knowing the exact url [...] or by Google search engine".

From the preliminary investigation documents attached by the Prefecture to the defense briefs, it also appears that the same

actually received the notification on XX (prot. Nos. XX of the XX and n. XX of the XX), regarding the publication of the file object of the dispute and to have found it with note prot. n. XX of the XX, adopting autonomous initiatives before the intervention of the Office which were, however, completely insufficient and probably attributable also to a lack of diligence in the checks carried out on the url object of the report.

In fact, it should be noted that in the aforementioned report the url from which the disputed file can be freely downloaded was expressly indicated ([http: // ...](http://...)). This url is the same as indicated in the report received from the Guarantor, from which - in the preliminary verification carried out by this Office on XX - it was still possible to find the file object of the report of the company sent to the Prefecture in XX, as indeed contested to the Prefecture with the aforementioned note from the Office prot. n. XX of the XX.

The above therefore confirms the inadequacy of the checks carried out by the Prefecture, which, as is clear from the documents attached to the defense briefs, when it received the report to XX, limited itself to deleting the link to the disputed file from the Prefecture's website, but not appears to have intervened on the url belonging to the domain of the Prefecture reported by the company, from which the file was in fact still reachable on the network at least until the preliminary verification carried out by this Authority at XX and which also allowed its availability through the search engines as Google. On the contrary, an ordinary check on the url reported to XX ([http: // ...](http://...)) would have allowed the Prefecture to independently find the insufficiency of the measures adopted by the administration for the removal of the file, and therefore of the personal data contained therein. , from the website on which they were published by mistake, intervening (as done only after the contestation of the Guarantor) resolutely on their computer system. In this way, it would also have been possible to avoid the opening of the specific investigation launched by the Guarantor that led to this proceeding.

6. Outcome of the investigation relating to the report submitted

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.

In this context, the preliminary assessments of the Office contained in the note prot. n. XX of the XX and it is noted that the processing of personal data carried out by the Prefecture - Territorial Office of the Government of Genoa does not comply with the relevant legislation on the protection of personal data, as the publication of the disputed file entitled "XX" on the site

institutional web of the aforementioned administration involved the dissemination of personal data and information:

a) does not comply with the principle of "minimization" of data as they are not "limited to what is necessary with respect to the purposes for which they are processed", in violation of art. 5, par. 1, lett. c), of the GDPR;

b) devoid of suitable regulatory conditions, 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. a) and c); 6, par. 1, lett. c) and e), par. 2 and par. 3, lett. b), of the GDPR.

Considering, however, that the conduct has exhausted its effects, as the data controller declared that he had removed the personal data object of the Office's dispute from the institutional website, without prejudice to what will be said on the application of the sanction administrative pecuniary, 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 Prefecture - Territorial Office of the Government of Genoa 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 '.

In the present case, 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 case in question.

The Guarantor, pursuant to art. 58, par. 2, lett. i) and 83 of the RGPD, 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 negligent nature, caused by a mere clerical error, and involved the online dissemination of personal data for seven months referring to about a hundred of interested parties, not belonging to particular categories or to criminal convictions or offenses (articles 9 and 10, of the RGD). For the purposes of assessing the conduct, however, it also notes that, as is clear from the documents, the person who made the report had already previously contacted the data controller to complain about the inconvenience and that the Entity has taken autonomous initiatives before the intervention. of the Office which, however, proved to be completely insufficient due, probably, also to a lack of diligence in the checks carried out on the URL subject to reporting. In any case, account is taken of the fact that the Prefecture, following the request of the Office, intervened promptly, collaborating with the Authority during the investigation of this proceeding in order to remedy the violation, mitigating any possible negative effects. Furthermore, in the reply to the Guarantor, various technical and organizational measures implemented pursuant to art. 25-32 of the RGD and, in any case, there are no relevant previous 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 € 11,000.00 (eleven 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 Prefecture - Territorial Office of the Government of Genoa in the terms indicated in the motivation pursuant to Articles 58, par. 2, lett. i), and 83 of the GDPR

ORDER

to the Prefecture - Territorial Office of the Government of Genoa, Largo Eros Lanfranco, 1, 16122 Genoa - Tax Code:

80043490103 to pay the sum of € 11,000.00 (eleven thousand) as an administrative fine for the violations mentioned in the motivation;

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to the same Prefecture to pay the sum of € 11,000.00 (eleven 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 in the manner indicated in the annex - of an amount equal to half of the sanction imposed, within the term referred to 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, 29 September 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Stanzione

THE SECRETARY GENERAL

Mattei