[doc. web n. 9811732]

Injunction order against the Municipality of Ginosa - 21 July 2022

Record of measures

n. 270 of 21 July 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 / CE, "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 the national system 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 to the processing of personal data, as well as to 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");

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 functioning of the office of the Guarantor for the protection of personal data, Doc. web n. 1098801;

SPEAKER Attorney Guido Scorza;

WHEREAS

1. Introduction.

As part of a cycle of inspection activities, concerning the main functions of some of the applications for the acquisition and

management of reports of offenses most widely used by public and private employers within the framework of the regulations on reporting unlawful conduct (so-called whistleblowing), which provides for specific guarantees to protect the identity of the whistleblower, were carried out - also in light of the provisions, with regard to the initiative inspection activity carried out by the Guarantor's Office, with resolutions of 12 September 2019, doc. web n. 9147297, of 6 February 2020, doc. web n. 9269607, and of 1 October 2020, doc. web n. 9468750 - specific investigations against Clio S.r.l. (hereinafter "Clio" or "Supplier"), which provides and manages on behalf of various subjects, public and private, the application used for the acquisition and management of reports of illegal conduct (see reports of the operations carried out by the XX).

During the inspection it was ascertained that the aforementioned application is also used by the Municipality of Ginosa (hereinafter "Municipality").

2. The preliminary activity.

During the inspection at the Supplier, the following emerged:

Clio provided a list of customers, including the Municipality, to whom "it offers the service for the acquisition and management of reports of illegal conduct" and stated that "[...] does not make use of sub-managers for the execution of processing activities "(see minutes of the XXth, p. 3, and annex 3);

Clio has been designated as data processor only by some customers, while others, including the Municipality, "have not identified the Company as the data processor pursuant to art. 28 of the Regulations "(see minutes of the XX, p. 3 and annex 4, 5 and 6);

"The whistleblowing application, reachable from the public network at a web address such as" https://nomeente.whistleblowing.name ", is made available to customers in Software as a Service (SaaS) mode. This method of providing the service, in the opinion of the Company, represents a specific guarantee to protect the identity of the reporting parties as it allows the management of data by a person other than the employer administration. The application in question, developed by Clio, is installed on a server at the Company's data center and is configured in multitenant mode. The application only allows the acquisition of reports by employees and does not allow the acquisition of anonymous reports or by subjects external to the administrations. Since some customers have represented the need to also acquire anonymous reports or reports from external parties, the Company is developing a new version of the application that will also allow the acquisition of these types of reports and which will be put into production during the year 2020. The Company provides assistance and

maintenance services "(see minutes of XX, p. 4);

"When activating the service for a new entity, [Clio] creates [...] the key used to encrypt the data relating to the reports stored in the application database in the production environment" (see minutes of the XX, p. 5).

Subsequently, with a note of the XXth, the Supplier, in addition to the documentation and information provided during the inspection activity, communicated that he "sent to [...] Customers who have not yet done so, a reminder via pec for the conferment of the appointment of Clio as Outsourced Data Processing Manager, communicating that, in the absence of a reply within seven working days, we would have suspended the service until regularization "(p. 1).

Finally, in response to a specific request for information by the Office, the Supplier, on XX, further specified that the relationship with the Municipality - for which, at the time of the inspection activities, had been acquired through the application in question, at least one real report of unlawful conduct not attributable, therefore, to mere testing or verification of the operation of the application - was governed pursuant to art. 28 of the Regulations "following the reminder pec" sent by the Supplier.

With a note of the twentieth, the Office, on the basis of the elements acquired, notified the Municipality, pursuant to art. 166, paragraph 5, of the Code, the initiation of the procedure for the adoption of the measures referred to in art. 58, par. 2, of the Regulation, inviting the aforementioned 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 Article 18, paragraph 1, of the Law No. 689 of November 24, 1981).

With the aforementioned note, the Office found that the Municipality has put in place the processing of personal data of employees and other interested parties, through the use of the application for the acquisition and management of illegal reports, not having regulated the relationship with the Supplier, in violation of art. 28 of the Regulation; making available to the same Supplier data relating to reports of offenses in the absence of an appropriate legal basis, in violation of Articles 5, par. 1, lett. a), and 6 of the Regulations and art. 2-ter of the Code.

With a note from the twentieth century, the Municipality sent its briefs specifying, among other things, that:

"From the documentary analysis to support the mapping of treatments within the individual services / sectors of the local authority, the service contract signed with the company CLIO, took place with Determination no. 28 / EC of 23 February 2015 [...] and therefore, dating back to a time period prior to the entry into force of the European Regulation ";

"The contract provided for specific confidentiality clauses according to which the roles played by the mutually obliged subjects (the Municipality as Data Controller and the CLIO company entrusted with the service as responsible) were inferable, including the division in relation to mutual responsibilities in terms of privacy and Data Protection, in relation to the management of reports (Whistleblowing) ";

"Subsequently, the Municipality of Ginosa provided for the renewal of the assignment service for the management of reports to the Clio Company, in compliance with the provisions of art. 6 paragraph 1 letter c of the EU Reg. And taking into account the requirements also provided for by Article 32 of the EU REG. 4 December 2019, doc. web n. 9215763, with which it gave its opinion to ANAC on the outline of "Guidelines on the subject [...]";

"Having said this, the preparation of the contractual addendum provided for by Art. 28 of the GDPR took place in November 2019, following the mapping of the treatments in place at the institution. The aforementioned contractual addendum was then forwarded and signed on XX […]. Pending the signing of the aforementioned appointment, the undersigned Municipality is not aware of any reports received on the portal ";

"With regard to the alleged report that took place in the absence of the regular formalization of the Appointment as External Manager of the treatment, the following is specified: It appears in the documents of the undersigned Body that the aforementioned report relates to the month of March 2018 [...] and, therefore, it relates to a period prior to the cogency of the Regulations and the mandatory nature of the addendum as prescribed by art. 28 GDPR. Among other things, it is emphasized that, the report made, also forwarded to the ANAC, having not had any follow-up or imposition of any sanction, resulted in an archiving by the Entity ";

"It does not appear in the records of the undersigned Body that there have been other reports by means of the application in the period between March 2018 and August 2021, therefore no treatment can be recognized in the application and therefore in the company";

"Although the contractual addendum pursuant to art. 28 was not prepared in the imminence of the full application of the EU Reg., But was prepared (delayed) only in November 2019 [...] in fact, in the meantime, there has been no processing of data on the application acquired for the management of reports that may have compromised the lawfulness of the same ".

The hearing requested by the Municipality was also held on the 20th, pursuant to art. 166, paragraph 6, of the Code, on the occasion of which the same confirmed what had already been declared in the defense briefs, specifying, among other things,

that:

"The appointment as manager of the company providing the service for the acquisition and management of reports of illegal conduct was made by the Municipality in November 2019, following a progressive adaptation to the data protection legislation that required of the required steps, also due to the difficulties that small local authorities have encountered in adapting to the provisions of the sector regulations, which impose specific obligations on them. This, not only with regard to data protection regulations, but also with regard to other sector regulations such as that on administrative transparency ";

"The contract with the company, in place since 2015 and automatically renewed over time, already contained some elements that the Municipality considered sufficient to regulate the relationship with the supplier also from the point of view of data protection";

"The report in the whistleblowing application at the time of the Authority's inspection was received by the Municipality at a time prior to the date on which Regulation (EU) 2016/679 became fully applicable";

"The report was handled in compliance with the sector regulations to protect the confidentiality of the identity of the employee who reports offenses, sent to ANAC for the relevant profiles and subsequently archived".

3. Outcome of the preliminary investigation. Applicable legislation: the rules on the protection of employees who report offenses and the rules on the protection of personal data.

The adoption of whistleblowing systems, due to its implications for the protection of personal data, has been under the attention of the supervisory authorities for some time. .it, web doc. no. 1693019; see, also, Working Group Art. 29, "Opinion 1/2006 on the application of EU data protection legislation to internal procedures for reporting irregularities concerning the keeping of accounting, internal accounting controls, auditing, the fight against corruption, banking and financial crime ", adopted on 1 February 2006, web doc. no. 1607645).

In recent years, there have been numerous interventions by the Guarantor, including of a general nature, on the matter (see, most recently, provisions of 7 April 2022, nos. 134 and 135, web doc. Nos. 9768363 and 9768387 , and precedents referred to therein; see also provision no. 215 of 4 December 2019, web doc. no. 9215763, opinion of the Guarantor on the outline of "Guidelines for the protection of the authors of reports of crimes or irregularities referred to they have become aware of an employment relationship, pursuant to Article 54-bis of Legislative Decree 165/2001 (so-called whistleblowing) "of ANAC).

During a hearing in Parliament, the Guarantor recalled that in exercising the delegation for the transposition of Directive (EU)

2019/1937 (concerning the protection of persons who report violations of Union law) it is necessary to "carry out a congruous balancing between the need for confidentiality of the report - functional to the protection of the whistleblower -, the need to ascertain the offenses and the right of defense and to cross-examination of the reported person. The protection of personal data is, of course, a determining factor for the balance between these instances and for this reason it is appropriate to involve the Guarantor in the exercise of the delegation "(see, Hearing of the Guarantor for the protection of personal data on the d.d.l. 2021 European Delegation, Senate of the Republic-14th Parliamentary Commission of the European Union, 8 March 2022, web doc. no. 9751458).

At the national level, the matter was initially regulated within the framework of the general rules on the organization of work employed by public administrations (see Article 54-bis of Legislative Decree no. 165 of March 30, 2001 , introduced by Article 1, paragraph 51, of Law No. 190/2012, containing provisions for the prevention and repression of corruption and illegality in the public administration). Subsequently, the regulatory framework was defined with l. 30 November 2017, n. 179 (in the Official Gazette of 14 December 2017, no. 291) containing "Provisions for the protection of the authors of reports of crimes or irregularities of which they have become aware in the context of a public or private employment relationship" which amended the relative regulations to the "protection of public employees who report offenses" (see new version of art. 54-bis of legislative decree no. 165/2001 and art. 1, paragraph 2, of law no. 179/2017) and introduced a new discipline on whistleblowing referred to private subjects, integrating the legislation on "administrative liability of legal persons, companies and associations, including those without legal personality" (see Article 2 of Law No. 179/2017 which added the paragraph 2-bis of Article 6 of Legislative Decree no. 231 of 8 June 2001).

In this framework, the subjects obliged to comply with the aforementioned provisions must process the data necessary for the acquisition and management of the reports in compliance with the personal data protection regulations (spec. Art. 6, par. 1, letter c), 9, par. 2, lett. b), 10 and 88, par. 1, of the Regulations; on this point, see, most recently, provisions of 7 April 2022, nos. 134 and 135, doc. web nos. 9768363 and 9768387, 10 June 2021, nos. 235 and 236, doc. web nos. 9685922 and 9685947).

For these reasons, the aforementioned sector regulations, which involve the processing of employee data reporting offenses, must be considered as one of the "most specific rules to ensure the protection of rights and freedoms with regard to the processing of personal data of employees. in the context of employment relationships ”provided for by art. 88, par. 1, of the

Regulation (see, most recently, provisions 10 June 2021, nos. 235 and 236, web doc. N. 9685922 and 9685947; see newsletter n. 480 of 2 August 2021, web doc. 9687860 ; but see already provision. 4 December 2019, n. 215, web doc. n. 9215763, opinion of the Guarantor on the outline of "Guidelines for the protection of the authors of reports of crimes or irregularities of which they have become aware in reason for an employment relationship, pursuant to Article 54-bis of Legislative Decree 165/2001 (so-called whistleblowing) "of ANAC).

In general, although the data controller, who determines the purposes and methods of data processing, has a "general responsibility" for the treatments put in place (see Article 5, paragraph 2, so-called "accountability", and 24 of the Regulation), even when these are carried out by other subjects "on its behalf" (cons. 81, art. 4, point 8), and 28 of the Regulation), the Regulation has governed the obligations and other forms of cooperation to which the person in charge of the processing and the scope of the related responsibilities is held (see articles 30, 32, 33, par. 2, 82 and 83 of the Regulation; see, among others, provision of 10 February 2022, n. 43 , web doc. no. 9751498 and the previous provisions referred to therein).

The data processor is entitled to process the data of the interested parties "only on the documented instruction of the owner" (Article 28, par. 3, letter a), of the Regulation) and the relationship between the owner and manager is governed by a contract or by another legal act, stipulated in writing which, in addition to mutually binding the two figures, allows the owner to give instructions to the manager also from the point of view of data security and provides, in detail, what the subject matter is governed, the duration, the nature and purposes of the processing, the type of personal data and the categories of data subjects, the obligations and rights of the owner and manager. Furthermore, the data controller must assist the owner in ensuring compliance with the obligations deriving from the data protection regulations, "taking into account the nature of the processing" and the specific regime applicable to the same (Article 28, paragraph 3, letter f), of the Regulation).

More generally, the data controller is in any case required to comply with the principles of data protection (Article 5 of the Regulation) and the data must also be "processed in such a way as to guarantee adequate security" of the same, "including the protection, by means of adequate technical and organizational measures, from unauthorized or unlawful processing and from accidental loss, destruction or damage "(art. 5, par. 1, lett. f), of the Regulation).

The owner, in the context of the necessary identification of the technical and organizational measures suitable to guarantee a level of security adequate to the specific risks deriving from the treatments in question (articles 24, 25 and 32 of the Regulation), must define his own model for managing the reports in accordance with the principles of "data protection by

design" and "protection by default", also taking into account the observations submitted in this regard by the data protection officer (DPO).

3.1 Failure to regulate the relationship with the Supplier.

The owner, in the context of the preparation of the technical and organizational measures that meet the requirements established by the Regulation, also from the point of view of security (articles 24 and 32 of the Regulation), may use a person in charge for the performance of some processing activities. , to which it issues specific instructions (see recital 81 of the Regulation). In this case, the data controller "only resorts to data processors who present sufficient guarantees to put in place [the aforementioned measures] adequate in such a way that the treatment meets the requirements of the Regulation and guarantees the protection of the rights of the data subjects" (art. 28 , paragraph 1, of the Regulation. On this point it is noted that the data controller is required to "implement adequate and effective measures [and to ...] demonstrate the compliance of the processing activities with the [...] Regulation, including the effectiveness of the measures ”adopted (cons. 74 of the Regulation).

Pursuant to art. 28 of the Regulation, the owner can therefore also entrust processing to external subjects, regulating the relationship with a contract or another legal act and giving instructions on the main aspects of the processing, in particular, for the profiles of interest in this procedure. : “The duration of the processing”, “the obligations and rights of the data controller”, as well as the operations to be carried out “after the provision of the services relating to the processing has ended” (Article 28, par. 3, of the Regulation).

The data controller is therefore entitled to process the data of the interested parties "only on the documented instruction of the owner" (Article 28, paragraph 3, letter a), of the Regulation; in this regard, see Cass., Section I Civ., Ordinance no. 21234 of 23 July 2021).

In this case, the Municipality, the data controller, required to comply with the obligations deriving from the sector regulations, instead of independently creating an application for the acquisition and management of reports of offenses, has taken the decision to make use of the services offered by an external company, supplier of the application. Therefore, the Supplier of the whistleblowing application has processed the personal data of the whistleblowers and other interested parties indicated in the reports (reported subjects, witnesses, etc.), as part of an instrumental service, aimed at the acquisition and management of reports of illegal, on behalf and in the interest of the Municipality, in the fulfillment of legal obligations imposed on the latter.

The functions performed by the Supplier therefore entailed the processing of the personal data of the reporting persons and other interested parties indicated in the reports (reported subjects, witnesses, etc.) of which the Municipality is in any case the owner, treating them on the basis of a specific legal obligation and determining the means and methods of processing, as well as the main terms of the execution of the service on the basis of specific contracts.

In such cases, the data protection regulations require that the relationship between the owner and the supplier be governed by a contract or other legal act pursuant to art. 28 of the Regulation (see also recital 81 and art. 4, point 8, of the Regulation), also in order to avoid processing (communication to third parties) in the absence of a suitable prerequisite of lawfulness (given the notion of "third party" referred to in 'Article 4, point 10, of the Regulation; see Article 2-ter, paragraphs 1 and 4, letter a), of the Code, with regard to the definition of "communication"). Nonetheless, with regard to the present case, the relationship between the Municipality and the Supplier has not been appropriately regulated from the point of view of data protection, as shown by the documents in the file.

Although in the defense the owner stated that the contract signed in 2015 with the Supplier "provided for specific confidentiality clauses according to which the roles played by the mutually obliged subjects (the Municipality as Data Controller and the CLIO company entrusted with the service as responsible), including the breakdown in relation to mutual responsibilities in terms of privacy and Data Protection, in relation to the management of reports (Whistleblowing) ", it should be noted that the service supply contract (see Annex 1 and 2 to the note del XX) did not have the specific characteristics of the legal act that defines the role of the manager, as it does not contain the elements provided for by art. 28 of the Regulation (see spec. Par. 3).

The Municipality also stated that the only "report [received] in the absence of the regular formalization of the Appointment as an external manager of the treatment [was] relative to the month of March 2018 [...] and, therefore, pertains to an earlier period with respect to the mandatory nature of the Regulation and the mandatory nature of the addendum as prescribed by art. 28 GDPR ".

In this regard, it should be noted that, although the processing was initiated by the Municipality in the period prior to the entry into force of the Regulation (since the system was adopted since 2015 and the report acquired through the system in March 2018), for the purposes of identifying the applicable legislation, from a temporal point of view, it must be borne in mind that, based on the principle of legality referred to in art. 1, paragraph 2, of the l. n. 689/1981, "The laws that provide for administrative sanctions are applied only in the cases and times considered in them". From this it follows the need to take into

consideration the provisions in force at the time of the committed violation; in the case in question, given the permanent nature of the alleged offense, this moment must be identified at the time of the termination of the unlawful conduct, which took place in November 2019 with the regulation of the relationship with the Supplier pursuant to art. 28 of the Regulations and, therefore, in full force of the provisions of the Regulations and the Code (as amended by Legislative Decree 101/2018). For the same reasons, the circumstance for which the only report acquired through the aforementioned application dates back to March 2018 cannot be considered relevant, taking into account that it was still present on the system at the time of the investigations by the Guarantor.

On the other hand, the obligation to regulate the relationship with subjects acting on behalf and in the interest of the owner was already provided for by the previous framework, (see articles 4, letter g) and 29 of the Code, prior to the amendments to pursuant to Legislative Decree no. 101/2018, which provided for "The owners stipulate with the aforementioned responsible legal acts in writing, which specify the purpose pursued, the type of data, the duration of the treatment, the obligations and rights of the person in charge of the treatment and the methods of treatment (paragraph 4-bis) .... The manager carries out the treatment according to the conditions established pursuant to paragraph 4 bis and the instructions given by the owner, who, also through periodic checks, supervises the timely observance of the provisions referred to in paragraph 2, of their instructions and of what is established in the acts referred to in paragraph 4 bis. (paragraph 5) "; in this regard, Cass., Section I Civ., Ordinance no. 21234 of 23 July 2021).

The violation of the aforementioned provisions, even if it did not involve the application of an administrative sanction (unlike what is now provided for by articles 28 and 83, par. configure an unlawful communication of personal data in favor of a subject who, having not been designated as responsible, was a third party with respect to the processing (on this point, see also subsequent paragraph 4.2).

It is therefore ascertained that - without prejudice to the assessments regarding the lawfulness of the processing carried out by the Supplier, subject to an independent procedure - the Municipality, until November 2019, operated in violation of art. 28 of the Regulation having not regulated the relationship with the Supplier from the point of view of data protection.

3.2 Unlawful processing of data relating to whistleblowing reports.

In light of the foregoing considerations and the documentation in the deeds, in the period from March 2018 to November 2019, given the absence of a regulation of the relationship with the Supplier pursuant to art. 28 of the Regulations, the Municipality,

making use of the services offered by them, in order to provide its structure with an effective and efficient system for the acquisition and management of reports of illegal conduct, as required by law, has made personal data available to the Supplier relating to reports of unlawful conduct, allowing them to collect and store them through the whistleblowing application, in the absence of a suitable regulatory requirement.

Nor does the fact that, following its acquisition, the reporting of illegal conduct, present in the whistleblowing application at the time of the Authority's inspection activities, has been archived, given that even the collection and storage of personal data alone constitutes a treatment subject to data protection regulations (see Article 4, point 2) of the Regulation).

Considering the failure to regulate the relationship with the Supplier in terms of data protection, it is believed that, as previously clarified by the Guarantor with regard to similar cases (see provision of 7 March 2019, n.81, web doc. n. 9121890; provision 17 September 2020, n. 160, web doc. n. 9461168; provision 17 December 2020, n. 280, web doc. 9524175; see also the "07/2020 guidelines on concepts of data controller and data processor in the GDPR ", adopted on 7 July 2021 by the European Committee for the protection of personal data, spec. note 42), the Municipality has made available to the Supplier the personal data relating to reports of offenses acquired through the 'whistleblowing application, in the absence of an appropriate legal basis, resulting in the unlawful processing of personal data, in violation of articles 5, par. 1, lett. a), and 6 of the Regulations and art. 2-ter of the Code.

4. Conclusions.

In light of the aforementioned assessments, it is noted that the statements made by the data controller in the defensive writings - the truthfulness of which one may be called to answer pursuant to art. 168 of the Code - although worthy of consideration and indicative of the full cooperation of the data controller in order to mitigate the risks of the processing, compared to the situation present at the time of the investigation, they do not however allow to overcome the findings notified by the Office with the act of initiation of the procedure and are therefore insufficient to allow the filing of this proceeding, since none of the cases provided for by art. 11 of the Guarantor Regulation n. 1/2019.

The preliminary assessments of the Office are therefore confirmed and the unlawfulness of the processing of personal data carried out as it occurred in violation of Articles 5, par. 1, lett. a), 6 and 28 of the Regulations and art. 2-ter of the Code.

The violation of the aforementioned provisions makes the administrative sanction applicable pursuant to art. 58, par. 2, lett. i), and 83, para. 4 and 5, of the Regulations and art. 166, paragraph 2, of the Code.

In this context, considering that the conduct has exhausted its effects, the conditions for the adoption of corrective measures, pursuant to art. 58, par. 2, of the Regulation.

5. Adoption of the injunction order for the application of the pecuniary administrative sanction and ancillary sanctions (Articles 58, paragraph 2, letter i), and 83 of the Regulations; art. 166, paragraph 7, of the Code).

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).

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

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 Regulation.

For the purposes of applying the sanction, the nature, object and purpose of the processing were considered, the sector discipline of which provides, to protect the interested party, a high degree of confidentiality with specific regard to the identity of the same.

On the other hand, it was considered that the Municipality is a small entity, with limited financial resources, and that at the time of the inspection there was only one report of illegal conduct within the application in question. Furthermore, the Municipality collaborated during the investigation by adopting, already following the inspection activity conducted by the Office, technical and organizational measures aimed at conforming the treatments in progress to the regulations on the protection of personal data, in compliance of the principle of accountability, governing the relationship with the Supplier pursuant to art. 28 of the Regulation. Furthermore, there are no previous violations committed by the data controller or previous provisions pursuant to art. 58 of the Regulation.

Due to the aforementioned elements, assessed as a whole, it is believed to determine the amount of the financial penalty, in

the amount of 5,000.00 (five thousand) euros for the violation of Articles 5, par. 1, lett. a), 6 and 28 of the Regulations and art. 2-ter of the Code.

Taking into account the particular nature of the personal data being processed and the related risks for the reporting party and other interested parties in the workplace, it is also believed that the additional sanction of publication on the website of the Guarantor of this provision, provided for by art. 166, paragraph 7, of the Code and by art. 16 of the Guarantor Regulation n. 1/2019.

Finally, it is believed 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

notes the unlawfulness of the processing carried out by the Municipality of Ginosa. for the violation of articles 5, par. 1, lett. a), 6 and 28 of the Regulations and art. 2-ter of the Code, in the terms set out in the motivation;

ORDER

to the Municipality of Ginosa, in the person of the pro-tempore legal representative, with registered office in Piazza Marconi, 74013 Ginosa (TA), C.F. 80007530738, pursuant to art. 58, par. 2, lett. i), and 83, par. 5, of the Regulations, to pay the sum of € 5,000.00 (five thousand) as a pecuniary administrative sanction for the violations indicated in the motivation; 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 thirty days, an amount equal to half of the sanction imposed;

INJUNCES

to the Municipality of Ginosa to pay the sum of € 5,000.00 (five thousand) in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, according to the methods indicated in the annex, within thirty 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;

HAS

the publication of this provision on the website of the Guarantor pursuant to art. 166, paragraph 7, of the Code;

the annotation of this provision in the internal register of the Authority, provided for by art. 57, par. 1, lett. u), of the Regulations, violations and measures adopted in compliance with art. 58, par. 2, of the Regulation.

Pursuant to art. 78 of the Regulation, of art. 152 of the Code and 10 of the legislative decree 1 September 2011, n. 150,

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, 21 July 2022

PRESIDENT

Stanzione

THE RAPPORTEUR

Peel

THE SECRETARY GENERAL

Mattei