[doc. web no. 9832507]

Injunction against Promofarma Sviluppo s.r.l. - October 20, 2022

Register of measures

no. 342 of 20 October 2022

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by prof. Pasquale Stanzione, president, prof.ssa Ginevra Cerrina Feroni, vice president, dr. Agostino Ghiglia and the lawyer Guido Scorza, components and Dr. Claudio Filippi, deputy secretary general;

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 individuals with regard 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");

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 no. 98 of 4/4/2019, published in the Official Gazette no. 106 of 8/5/2019 and in www.gpdp.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;

SPEAKER Prof. Geneva Cerrina Feroni;

WHEREAS

1. The story reported

The report received concerns an alleged violation of the regulations on the protection of personal data with reference to the "COVID swab booking" system in the pharmacy through the portal available on the page https://fvg.gopencare.it/gcalendar/ in

use at some pharmacies of the Autonomous Region of Friuli Venezia Giulia (note of the XX, prot. n. XX).

According to what was reported, the aforementioned portal was freely accessible without any "authentication mechanism" and for the reservation the tax code, surname, name, telephone number and, optionally, the user's e-mail address were requested. In this regard, the Authority was informed that: "if the tax code is already present in the archive, the system automatically completes the remaining information. Since there is no authentication mechanism, it is possible to enter any tax code: if the person is present in the archive, the data previously entered by him will be displayed. In particular, the telephone number, which is mandatory data". Furthermore, the use of the "cancel reservation" function would have allowed to view "all the reservations entered, including those in the past".

Based on the characteristics described above, it was also highlighted that the portal therefore allowed access to information, also relating to the particular categories of data pursuant to art. 9, par. 1 of the Regulation relating to any person whose tax code is known or where it is possible to obtain.

Finally, it was reported that "The portal does not provide any information on data processing".

2. Preliminary and procedural activity

With reference to the event reported, the Office of the Guarantor has launched a preliminary investigation in order to know every useful element of evaluation in this regard and, in particular, to verify the aspects related to the implementation of the principle of transparency and the expected information costs towards the interested parties as well as the security of the data processed (articles 5, paragraph 1, letter f) and 32 of the Regulation; articles 12 and 13 of the Regulation and art. art. 17-bis, paragraph 5, legislative decree 17 March 2020, no. 18, converted with amendments into law 24 April 2020, n. 27).

In the first place, the Office referred the Friuli Venezia Giulia Region to the matter (note of the XX, prot. n. XX), which however declared that "the mentioned system is not designed, developed or managed by the undersigned Administration and not even by the company Insiel S.p.A. which manages the IT systems of the same" (note of the XX, prot. n. XX).

The Office then turned to the company Profarma Sviluppo s.r.l. (hereinafter also referred to as "Promofarma" or "Company"), indicated in the margin of the link referred to above as the creator of the platform (note of the XX, prot. n. XX).

With a note of the XX the Company represented, in particular, that "The platform https://fvg.gopencare.it/gcalendar/ is a platform created by Promofarma Sviluppo s.r.l." [...] which "allows citizens to be able to view the pharmacies (public and private) that have enabled the online management of the booking of the rapid antigen test for the detection of Covid-19. In fact,

pharmacies that wish to do so can activate their agenda on the aforementioned platform and can allow the user to book this service, selecting their day and time preferences, and entering their personal data (tax code, name , surname, telephone, date of birth, town of birth, gender and e-mail). The application only allows appointments to be booked and does not allow the results to be recorded".

Originally, the operating mode of the platform provided that "after the insertion of the tax code by already registered users, i.e. who had already used the platform, the same automatically allowed the display of all the personal data necessary for the reservation (i.e. name, surname, date and place of birth, town of birth, gender, e-mail and telephone)". Following the note from the Guarantor's Office, the Company has carried out an update of the system such that "in the event that an already registered person makes a new booking request on the platform https://fvg.gopencare.it/gcalendar/ , the same allows the display of the tax code only: this with the aim of avoiding the re-entry of personal data at each booking subsequent to the first". Currently, therefore "in the event that the tax code of a person who has previously used the platform itself is entered into the platform, it is no longer possible to view personal data already entered for previous bookings".

The technical measures implemented to ensure the security of the data processed were then described. In this regard, it was stated in particular that "In summary, the tampon booking data is stored on storage systems configured for high reliability within the ReeVo datacenters" and that "the data is protected from unwanted access through the use of firewalls configured with VLAN"; and the back-up measures foreseen to ensure the availability of the data for the necessary time were also described.

Finally, it was represented that: "The platform https://fvg.gopencare.it/gcalendar/ is created through the use of web-based applications developed using the Java programming language" and that "Web applications are based on the Secure Socket Layer (SSL) communication model".

With reference to information costs, it was declared that in the light of the "combined provisions of paragraphs 1 and 5 of article 17bis, Legislative Decree 17/03/2020 n.18" the aforementioned legislation was also considered applicable to the booking service in question, "also taking into account that the execution of a swab necessarily requires a physical meeting between the pharmacist and the interested party, with the consequent possibility of providing any information and clarification orally".

In relation to the event reported and taking into account what emerged in the preliminary phase of the investigation launched, the Office, with deed prot. no. XX, of the XX, notified Promofarma, 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, paragraph 2 of the Regulation, contesting the

violation of the principle of transparency and of the obligation to provide information in advance to the interested parties (Articles 5, paragraph 1, letter a) and 13 of the Regulation) and the principle of integrity and confidentiality and the obligation to adopt adequate measures to guarantee the security of the data processed on a permanent basis (Article 5, paragraph 1, letter f) and 32 of the Regulation) and invited the aforesaid Company 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, by Law No. 689 of 24/11/1981).

Therefore, the hearing of Promofarma took place on the 20th and on the 20th, as anticipated during the hearing, it sent further briefs and supplementary documentation.

During the aforementioned hearing, the Company represented that "In view of the high number of cross-border workers and the request for periodic swabs to carry out their work, the Platform has been widely used by pharmacists to plan the execution of the tests. With the growing demand for tampons, the Region and the pharmacies have asked to simplify the booking procedure by allowing the same to be made directly by users and not just by pharmacists ". With specific reference to the facts in question, the Company highlighted that it had received the same report sent to the Guarantor and that "The corrective actions were taken on 31 December 2021, before the arrival of the request for information from the Authority, not introducing a system of two-factor authentication, but confirming a one-factor authentication system, however introducing corrective measures aimed at preventing the user from being able to view further personal data of the interested party already registered by simply entering his tax code. Currently, the authentication system for booking tests is still one-factor (tax code), although a review of this system is underway".

With a subsequent note of the XX, the Company, on a preliminary basis, specified that the initiative was aimed at allowing the participating pharmacies "an efficient planning of the execution of the swabs during the period of the health emergency and, in particular, during the its most acute phases.

Given the increase in the pandemic curve and the adoption of government measures which have introduced the obligation of green passes for "the access of interested parties to certain categories of premises open to the public and for the use of services", the "public pharmacies and contracted private companies had offered [the FGV Region, ed.] their willingness to carry out diagnostic tests as part of the screening activities aimed at tackling” the pandemic. The Friuli Venezia Giulia Region has therefore prepared a specific "protocol for the execution of rapid antigen tests in pharmacies for Copvid-19 surveillance"

concerning "technical and organizational aspects of the service offered by pharmacies" included in the annex "a scheme information on the processing of data pursuant to art. 13 of the GDPR which should have been completed by each participating pharmacy".

Having said that, the Company reiterated that, after an initial phase, in which each pharmacy independently managed its reservations, due to the "sudden increase in requests, the need arose to have an IT tool to support this service . For this reason, as part of the institutional activities of Federfarma Friuli Venezia Giulia, the same commissioned PFS [Promofarma Sviluppo, ed] to create a platform - to be offered to associated pharmacies - capable of managing the booking agenda, both from by pharmacies and by users, with dedicated access" (...) "The platform thus created, called GCalendar (...) was made available to pharmacies following the expression of interest that they had to submit and above all following the compilation, signing and sending to the association of the letters of designation of PFS and Federfarma Friuli Venezia Giulia as data controllers, pursuant to art. 28, par. 3 of the GDPR, just the role of owner that each of them would have covered by virtue of the offer of the tampon service to the generality of the clients ". The Company has sent in deeds a copy of the outline of the deed of designation as responsible for the treatment of the Company by the pharmacies prepared by the Region and Federfarma as well as a copy of the "economic sw GCalendar offer for Agenda management in the pharmacy" submitted to Ferderfarma FVG.

The Company has declared in deeds that 151 Pharmacies have joined the initiative and also represented that it has "prepared and made available to the pharmacies participating in the initiative a webinar course with instructions for accessing the Platform and the instructions for managing reservations and recording data", with particular reference to "the functions offered by GCalendar of:

book the execution of the swab, by the pharmacy and by the citizen, with diversified accesses;

Configure the dynamics, duration and number of appointments by the pharmacy;

Book appointments by time slot;

Manage and modify the appointment respectively inserted by the patients or by the pharmacies, each for their own competence;

Book with a maximum advance of 3 weeks following the date of making the reservation and limit the number of reservations that can be made per tax code to a maximum of 20 in this period of time;

Print a reminder of the appointment for the client;

Print the summary of appointments for the pharmacy;

Cancel the appointment, by the patient, but only if he/she is in possession of the booking code issued by the system when issuing the appointment".

The Company has clarified that "in no case will the data referred to in Article 9 of the GDPR, relating to the results of the swabs, pass through GCalendar", this being the form prepared online which is functional only for booking the swabs and not for delivering the reports. On this point, it was specified that "Due to the fact that GCalendar represents only an appointment booking form, connected to the GOpenCare platform, without prejudice to the setting of privacy roles between the subjects involved, it was also considered applicable to this extension of the software the letter of appointment pursuant to art. 28 GDPR already signed. However, (...) in the GCalendar publication phase, the automatic filling function was not inhibited which was initially designed and created to facilitate the data entry process by the participating pharmacies, in the period in which the reservation was only made through the telephone channel.

With specific reference to the obligation to provide the information to the interested parties, the Company has highlighted how this fulfillment is due, on the basis of art. 13 of the Regulation, to the data controller, specifying that "On closer inspection, the Company would not be able - nor is it required to do so -, pursuant to the aforementioned article, to describe the entire complex of processes for the processing of personal data of the assisted carried out by pharmacies, into which that portion of the activity that has been entrusted to them is grafted, consisting in making GCalendar available, and which is carried out in accordance with the designation received pursuant to art. 28 of the Regulation", and highlighting how in the context of these treatments the Company has not pursued any "its own" purpose.

On the other hand, with regard to the security measures, even without "concealing the imprudence consisting in having issued the Form without inhibiting the data entry automation function when the system recognized the tax code of the assisted person", the The company reiterated that it operated in a period of strong emergency pressure.

The Company also highlighted that on 28 April 2022 it updated the "form which provides for the double authentication mechanism, on a par with what happens for the regional systems responsible for booking anti-Covid-19 vaccines and therefore it will also be required to enter of the health card number, as additional data with respect to the tax code".

The Company specified that "even earlier, on 31 December 2021, in a phase prior to the sending of the Request for

information by the Guarantor, the Company, accepting the report of a client, had improved the original conformation of the Form by inhibiting the display of the other personal data necessary for the booking, such as name, surname, date and place of birth, gender, e-mail and telephone number".

The Company represented that it already had measures in place to limit massive and fraudulent bookings, providing that the booking could be made up to 3 weeks in advance and that in the identified period of time no more than 20 bookings could be made, specifying, in fact, that he did not detect any anomalies in the number of reservations registered.

Finally, the Company represented that "in all of 2021 (i) pharmacies collected by telephone and independently managed a total of n. 1,149,637 reservations; (ii) the pharmacies have also carried out through GCalendar (available from October 2021), n. 240,888 bookings; and (iii) the assisted have carried out, through GCalendar (available from October 2021), n. 131,274 reservations. Of course, the assisted usually plan and book more tampons with the GCalendar platform, up to covering the limit allowed in the period. In 2022, until April 20, 2022 (i) the pharmacies collected by telephone and independently entered a total of n. 483,778 bookings; (ii) the pharmacies again made 306,663 reservations through GCalendar; and (iii) the clients have made, through GCalendar, n. 155,163 bookings".

3. Outcome of the preliminary investigation

Having acknowledged what is represented by the Company in the documentation in the deeds and in the defense briefs, it is noted, first of all, that 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 Regulation and of the Code, as well as the national regulations of the sector in the various fields, among which the one issued in the context of the ongoing health emergency is relevant.

It should therefore be noted that, according to the Regulation, personal data must be processed "in a lawful, correct and transparent manner in relation to the interested party" (principle of "lawfulness, correctness and transparency")" (Article 5, paragraph 1 , letter a) of the Regulation), in particular each treatment must be preceded by suitable information, pursuant to articles 12 and 13 of the Regulation.

The data must also be processed in such a way as to guarantee adequate security based on the principle of integrity and confidentiality (Article 5, paragraph 1, letter f) of the Regulation). In particular, the data controller is required to adopt technical and organizational measures suitable for guaranteeing a level of security appropriate to the risk, which include, among others, the ability to ensure the confidentiality of the data processed on a permanent basis (art. 32 of the regulation).

The Regulation then provides that "If a treatment must be carried out on behalf of the data controller, the latter only resorts to data processors who present sufficient guarantees to implement adequate technical and organizational measures so that the treatment satisfies the requirements of this regulation and guarantees the protection of the rights of the interested party" (with 81 and art. 28; see also European Data Promotion Committee, Guidelines 07/2020 on the concepts of controller and processor in the GDPR, 07 July 2021).

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"; “a number, symbol or specific element attributed to a natural person to uniquely identify him or her for health purposes”;

It should also be noted that since the declaration of the state of emergency approved by the Council of Ministers on 31 January 2020, many emergency regulatory acts have been adopted, which also contain provisions relating to the processing of personal data carried out as part of the interventions relating to the aforementioned health emergency.

The emergency provisions adopted over the last few months provide for emergency interventions which involve the processing of data and which are the result of a delicate balance between public health needs and those relating to the protection of personal data, in accordance with the provisions of the Regulation for the pursuit of reasons of public interest in the sectors of public health (cf. art. 9, paragraph 1, letter i)). Of course, it remains understood that the processing of personal data connected to the management of the aforementioned health emergency must take place in compliance with the regulations in force on the protection of personal data and, in particular, with the principles applicable to the treatment, pursuant to articles 5 and 25, par. 2, of the Regulation, partially referred to above;

In this context, the Authority expressed its opinion on the procedures for authenticating data subjects to the regional portals dedicated to booking the anti Covid-19 vaccine, highlighting how the use of the tax code, as the only element of access to the booking systems of the vaccine, makes the system more vulnerable to cyber attacks aimed at making massive fraudulent reservations and requiring the health card number as a further or alternative element of authentication. In this regard, the Authority considered that the burden on the interested party to enter additional data in the booking phase with respect to the tax code appears largely balanced with respect to the risks of incorrect identification of the same and of booking a dose

vaccine that will not be used afterwards. This, also in consideration of the fact that this information, already in the person's possession precisely because it is affixed to the document (health card) certifying the tax code, must in any case be in the person's possession when the vaccine is administered (see also the opinion of the Guarantor of 13 May 2021, web doc. 9674151).

With specific reference to the information to be provided to interested parties pursuant to art. 13 of the Regulation, the legislator, in the current emergency context, has established that the subjects operating in this context, including the public and private structures of the national health service, may "omit to provide the information" referred to in the aforementioned article 13 "or provide simplified information, subject to oral communication to those concerned by the limitation" (art. 17-bis, paragraph 5, Legislative Decree 17 March 2020, n. 18 converted with amendments into law 24 April 2020, n. 27).

Having said that, it should be noted that in the act of designation as data processor - prepared for pharmacies which, as data controllers, adhering to the initiative, were also called to qualify the role of the Company in these terms with reference to the processing of personal data carried out through the GCalendar- platform, it is first of all highlighted that Promofarma is entrusted with "the task of personal data processing manager connected to the execution of the contract relating to the job order agreement signed on 08/02 /2021 with Federfarma FVG which provides for the development of a specific information platform dedicated to the management and transmission of data relating to the carrying out of rapid antigen tests in pharmacies associated with Ferderfarma itself, as well as any related and connected activity carried out on behalf of the holder of the treatment" (art. 1).

In identifying the obligations of data processors, the appointment deed provides that "the Data Processor is required to process personal data solely and exclusively for the purpose of executing the contracts and/or services referred to in articles 1) and 2) , in compliance with the provisions of the applicable legislation on the protection of personal data". Articles 1 and 2 of the act in question concern respectively the object of the agreement and the purposes of the processing already referred to above (Article 3).

The deed of appointment then expressly provides that "the person in charge (...) has the sufficient skills to implement technical and organizational measures adequate to guarantee a level of security appropriate to the risk pursuant to art. 32 first paragraph of the GDPR" (art. 5, letter b).

The deed also provides that "the Processor undertakes to collaborate with the Data Controller through the application of

adequate technical and organizational measures, to the extent that this is possible in order to satisfy the obligation of the data controller to follow up on requests for the exercise of the rights of the interested party referred to in chapter II, articles 12-23 of the GDPR" (art. 5, letter f)".

With reference to the security of the data processed, the appointment deed explicitly indicates that "the data controller identifies and implements the security measures necessary to mitigate the risks incurring on the processing activity, taking into account, among other things, the type of treatment, the purposes pursued, the context and the specific circumstances in which the treatment takes place, as well as the applicable technology and implementation costs. Given the type of treatment, these measures mainly consist in correctly instructing the personnel authorized and appointed by the Manager to carry out the activity regarding the confidentiality obligations, the prohibition to make copies of data and/or keep them in any way, in compliance with the instructions given by the Data Controller" (art. 7).

The scenario in which the aforementioned processing of personal data took place, in violation of the aforementioned principles and obligations, is that of the health emergency caused by the Covid-19 pandemic and, more specifically, of an initiative promoted by the Region Friuli Venezia Giulia and Federfarma FVG, as a trade association, in support of the pharmacies massively involved in the management of the aforementioned emergency.

In this context, Promofarma proposed to Federfarma FVG, so that it in turn could offer it to local pharmacies, the GCalendar platform for managing the booking diaries of pharmacy services.

Given these premises, the trust of the 151 pharmacies adhering to the initiative on the fact that Promofarma, as data controller, would have managed in compliance with the Regulation all aspects related to user reservations at the pharmacy, including those relating to the processing of personal data (1337 of the civil code).

From a first point of view, it should be noted that the fact that the initiative was promoted by the trade association Federfarma FVG can only have led the individual data controllers (the member pharmacies) to believe that the choice of manager fell on a company capable of providing adequate guarantees on the correct implementation, from the planning stage and by default, of the principles and obligations of the Regulation (articles 25, 28 and Part II, point 1.1 of the Guidelines 07/2020 on the concepts of controller and processor in the GDPR, cit.)

On the other hand, it is in these terms that, on the basis of the principles of reasonableness and good faith, the appointment deed that the Company and Federfarma FVG themselves have prepared must be interpreted so that the participating

pharmacies, as data controllers, designate the Company responsible for the treatment pursuant to art. 28 of the Regulation (articles 1366 and 1374 of the civil code).

In fact, the violations alleged against the Company concern only the processing of personal data carried out through the platform for managing reservations on behalf of pharmacies, both in terms of transparency and security.

With reference to the principle of transparency and the obligation to provide information to the interested parties, the aforementioned deed is, moreover, sufficiently explicit, where it provides that the Company would have dealt with the "management and transmission of data relating to the execution of tests rapid antigenic agents in pharmacies associated with Federfarma itself, as well as any connected and connected activity carried out on behalf of the data controller" as well as the management of the rights of the interested parties, mentioning articles from 12 to 23 of the Regulation; thus also including the art. 13 relating to the obligation to provide information to data subjects.

It is, therefore, a previous and different treatment compared to that carried out in the provision of the health service (performing the nose pharyngeal swab) and in the reporting for which the Pharmacies could benefit from the simplifications introduced by the emergency legislation (art. 17-bis , paragraph 5, Legislative Decree No. 18 of 17 March 2020 converted with amendments into Law No. 27 of 24 April 2020).

The responsibility of the data controller is also ascertained with reference to the failure to adopt suitable technical measures to ensure adequate confidentiality of the data of platform users on a permanent basis and to prevent unauthorized access. This, since the appointment deed explicitly confers on the data controller the task of implementing the obligations pursuant to art. 32 of the Regulation (art. 7).

On the merits, the measures indicated by the Authority are reiterated - missing in the present case until 28 April 2022 - regarding the procedures for authenticating interested parties to the regional portals dedicated to booking the anti-covid-19 vaccine, and relevant by analogy also in the sector in question, aimed at associating the tax code of the interested parties with a further or alternative authentication element such as the health card number (see also the opinion of the Guarantor of 13 May 2021, web doc. 9674151, provision 27 January 2022, web doc. No. 9746448, 13 January 2022 web doc. 9744496 and May 2021, web doc. 9685332).

The failure to adopt these additional measures has therefore unjustifiably exposed the interested parties to the risk that unlawful third parties could know their personal data and previous bookings.

4. Conclusions.

In the light of the assessments referred to above, taking into account the statements made by the Company during the preliminary investigation and considering that, unless the fact constitutes a more serious offence, whoever, 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 illegality of the processing of personal data carried out by the Company in violation of articles 5, par. 1, lit. a), and f), 13 and 32 of the Regulation). The violation of the aforementioned provisions also renders the administrative sanction envisaged by art. 83, par. 4 and 5 of the Regulation, pursuant to articles 58, par. 2, lit. i), and 83, par. 3, of the same Regulation.

5. Corrective Measures

The art. 58, par. 2 of the Regulation provides for the Guarantor to have a series of corrective powers, of a prescriptive and sanctioning nature, to be exercised in the event that unlawful processing of personal data is ascertained.

Among these powers, the art. 58, par. 2, lit. d) of the Regulation, provides for that of "enjoining the data controller or the data processor to bring the processing into line with the provisions of this regulation, if necessary, in a certain way and within a certain period".

In light of the assessments referred to above, it is deemed necessary to enjoin the Company, pursuant to the aforementioned art. 58, par. 2, lit. d) Regulation, to prepare, on behalf of the participating pharmacies, information on the processing of users' personal data, pursuant to art. 13 of the Regulation, in relation to the operations necessary for booking the service to be implemented within thirty days of notification of this provision.

6. 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; article 166, paragraph 7, of the Code).

The violation of the articles 5 par. 1, lit. a) and f), 13 and 32 of the Regulation, caused by the omissive conduct of Promofarma Sviluppo s.r.l. is subject to the application of the pecuniary administrative sanction, pursuant to art. 83, par. 4, lit. a) and 5, lett.

a) and b) of the Regulation.

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. 83, par. 2 of the Regulation. In relation to the violation of personal data notified by the data controller, pursuant to art. 33 of the Regulation, it is noted that:

1. the processing carried out concerned personal data relating to the state of health of a large number of users of 151 pharmacies in the Friuli Venezia Region which took place, in particular, during the most acute phase of the health emergency from Covid 19 (art. 89, par. 2, letter a) of the Regulation);

2. the conduct attributable to the Company as manager of the treatment, for having made an interpretation of the deed of assignment of the person in charge contrary to the principles of correctness and good faith (articles 1337, 1366 and 1374 of the civil code);

3. the incorrect configuration of the data entry form was due to a failure to update the risk assessment associated with its use not only by pharmacies but also directly by users; there are no previous relevant violations committed by the Company, nor have measures pursuant to art. 58 of the Regulation (art. 83, paragraph 2, letter e) of the Regulation);

4. the Company cooperated fully with the Authority during the investigation and in the present proceeding (Article 83, paragraph 2, letter f) of the Regulation);

5. the Company has promptly adopted technical measures aimed at improving the original conformation of the data entry form on the Platform by inhibiting the display of the personal data necessary for the reservation, such as name, surname, date and place of birth, gender, e-mail and telephone and subsequently, on 28 April 2022, it introduced a double authentication mechanism for booking healthcare services, also requiring the insertion of the health card number as additional data with

respect to the tax code.

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 Regulations, in the amount of € 10,000.00 (ten thousand) for the violation of articles 5, par. 1 lit. a), f) and 13 and 32 of the Regulation, as a pecuniary administrative sanction withheld, pursuant to art. 83, par. 1 and 3, 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 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 GUARANTEE

declares the illegality of the processing of personal data carried out by Promofarma Sviluppo s.r.l., for the violation of the art. 5, par. 1, lit. a) and f), 13 and 32 of the Regulation 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 company Promofarma Sviluppo Srl, with registered office in Via Assisana, 33/C - loc. Piscille, 06135 Perugia, VAT number 03634610541, to pay the sum of € 10,000.00 (ten thousand) 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 Promofarma Sviluppo Srl.:

to pay the sum of €10,000.00 (ten 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 attachment, 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;

pursuant to art. 58, par. 2, lit. d) of the Regulation, to conform the treatments to the provisions of the Regulation, by adopting the corrective measures indicated in paragraph 5 of this provision, within and no later than 30 days from the notification of this

provision. Failure to comply with an order formulated pursuant to art. 58, par. 2 of the Regulation, is punished with the administrative sanction pursuant to art. 83, par. 6 of the Regulation;

pursuant to art. 58, par. 1, lit. a) of the Regulation and of the art. 157 of the Code, to communicate which initiatives have been undertaken in order to implement the provisions of the aforementioned par. 5, and to provide adequately documented feedback in any case, within and no later than 20 days from the expiry of the term indicated above. Failure to respond to a request made pursuant to art. 157 of the Code is punished with an administrative sanction, pursuant to the combined provisions of articles 83, par. 5 of the Regulation and 166 of the Code.

HAS

pursuant to art. 166, paragraph 7 of the Code, the entire publication of this provision on the website of the Guarantor and believes that the conditions set forth in 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.

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, 20 October 2022

PRESIDENT

station

THE SPEAKER

Cerrina Feroni

THE DEPUTY SECRETARY GENERAL

Philippi