

[doc. web no. 9896450]

Provision of April 27, 2023

Register of measures

no. 166 of 27 April 2023

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 the cons. Fabio Mattei, general secretary;

HAVING REGARD TO Regulation (EU) 2016/679 of the European Parliament and of the Council of 27/4/2016, concerning the protection of natural persons with regard to the processing of personal data, as well as the free movement of such data and which repeals Directive 95 /46/EC, "General Data Protection Regulation" (hereinafter "GDPR");

CONSIDERING the d. lgs. 6/30/2003, no. 196 containing the "Code regarding the protection of personal data" (hereinafter "Code");

CONSIDERING 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 purposes of publicity and transparency on the web by public subjects and other obliged bodies», published in the Official Gazette no. 134 of 12/6/2014 and in www.gdpd.it, doc. web no. 3134436 (hereinafter "Guidelines on transparency");

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.gdpd.it, doc. web no. 9107633 (hereinafter "Regulation of the Guarantor n. 1/2019");

HAVING REGARD to the documentation in the deeds;

GIVEN the observations made by the Secretary General pursuant to art. 15 of the Regulation of the Guarantor n. 1/2000 on the organization and functioning of the office of the Guarantor for the protection of personal data, in www.gdpd.it, doc. web no. 1098801;

Supervisor Prof. Geneva Cerrina Feroni;

WHEREAS

1. Introduction

This Authority has received a complaint, presented by XX (hereinafter "complainant"), alleging a violation of the legislation on the protection of personal data.

Specifically, the dissemination of personal data and information contained in the «Demolition Ordinance (pursuant to article 34 of Presidential Decree 380/01)» no. XX of XX (prot. n. XX of XX) of the Territorial Planning Sector of this Municipality signed by the Head of the sector, published on the institutional website of the Municipality of Adelfia.

The aforementioned ordinance, relating to a demolition order from the Municipality for works carried out in non-compliance with the SCIA, clearly reported the name of the person who made the report to the Municipality; the personal data of the recipient of the administrative provision (including personal data, place and date of birth, and residence) and of the professionals in charge with indication, among other things, of the disciplinary report made to the Board of surveyors.

The person who reported the abuse to the Municipality therefore turned to the Guarantor, complaining that in ordinance no. XX was reported, among other things, his name, where it was indicated that «on data XX just prot. XX arrived exposed signed by XX.

From the documentation attached by the complainant it emerged that the same had already preliminarily turned to the Municipality to exercise rights regarding the protection of personal data with an application of the XX which was acknowledged with the e-mail of the DPO in which he confirmed that "the competent municipal offices of Adelfia have taken steps to cancel the data [...]".

However, from the preliminary check carried out by this Department, it turned out that at the url <http://...>, indicated in the complaint, the full text of the aforementioned ordinance was still viewable and freely downloadable with the personal data of the complainant.

Furthermore, the investigation carried out revealed a discrepancy between what was communicated to the Guarantor with note prot. no. XX of the XX and as published on the institutional website with reference to the data of the Data Protection Officer appointed by the Municipality (hereinafter "RPD"), pursuant to art. 37, par. 7 of the GDPR.

2. The legislation on the protection of personal data

Pursuant to the relevant legislation, "personal data" is "any information relating to an identified or identifiable natural person ("data subject")" and "an identifiable natural person is one who can be identified, directly or indirectly, with particular reference

to a identifier such as a 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" (Article 4, paragraph 1 , n. 1, of the GDPR).

In this regard, with particular reference to the case brought to the attention of this Authority, it is recalled that public subjects, such as the Municipality, can disclose "personal data" in the cases provided for by art. 2-ter, paragraphs 1 and 3, of the Code, in compliance - in any case - with the principles of data protection, including that of "minimization", according to 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).

The sectoral state legislation also provides that "All the resolutions of the municipality and the province are published by publication on the praetorian register, at the headquarters of the institution, for fifteen consecutive days, except for specific provisions of the law" (art. 124, paragraph 1, Legislative Decree No. 267 of 8/18/2000).

With regard to publication on the praetorian register and in the "Archive" sections of the institution, 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 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 purposes of publicity and transparency on the web by public subjects and other obliged bodies», published in O.J. no. 134 of 12/6/2014 and in www.gpdp.it, doc. web no. 3134436 (currently being updated, but still relevant in the substantial part).

In the Guidelines cited above, it is expressly established that once the time period envisaged for the publication of the deeds and documents in the praetorian register has elapsed:

- «local authorities cannot continue to disseminate the personal data contained therein. Otherwise, for the period exceeding the duration envisaged by the reference legislation, there would be an illicit dissemination of personal data because it is not supported by suitable regulatory conditions [...]. In this regard, for example, the permanence on the web of personal data contained in the resolutions of local authorities beyond the fifteen-day deadline, established by art. 124 of the aforementioned d. lgs. no. 267/2000, can integrate a violation of the aforementioned art. 19, paragraph 3, of the Code [editor's note now reproduced in the art. 2-ter, paragraphs 1 and 3, of the Code], where there is no different legislative or regulatory parameter that provides for its dissemination [...]. [In this hypothesis] if the local authorities want to continue to maintain the published

deeds and documents on their institutional website, for example in the sections dedicated to the archives of the deeds and/or the legislation of the entity, they must take the appropriate precautions for the protection of personal data. In such cases, therefore, it is necessary to obscure in the published documentation the data and information suitable for identifying, even indirectly, the interested parties» (part two, paragraph 3.a).

Lastly, with particular reference to the data of the entity's Data Protection Officer, it should be remembered that the RGPD specifically provides that "The data controller or data processor publishes the contact details of the data protection officer" and " communicates them to the supervisory authority" (Article 37, paragraph 7, of the GDPR).

3. Preliminary evaluations of the Office on the processing of personal data carried out.

From the checks carried out, on the basis of the elements acquired and the facts that emerged following the preliminary investigation, as well as the subsequent assessments, the Office with note prot. no. XX of the XX ascertained that the Municipality of Adelfia - by disseminating the personal data and information, contained in the demolition order, published online described above and by not communicating to the Guarantor the variation of the data of its Data Protection Officer - held a conduct that does not comply with the relevant regulations on the protection of personal data contained in the RGPD.

Therefore, with the same note the aforementioned Municipality was notified of the violations carried out (pursuant to article 166, paragraph 5, of the Code), communicating the initiation 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 the Guarantor defense writings or documents and, possibly, 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 Article 18, paragraph 1, of Law No. 689 of 11/24/1981).

4. Defensive memories.

The Municipality of Adelfia, with the note prot. no. XX of the XX, sent to the Guarantor their defense writings in relation to the notified violations.

In this regard, it should be remembered that, unless the fact constitutes a more serious offence, anyone who, in a proceeding before the Guarantor, falsely declares or certifies news or circumstances or produces false deeds or documents is liable pursuant to art. 168 of the Code, entitled "False statements to the Guarantor and interruption of the performance of the duties or exercise of the powers of the Guarantor".

Specifically, as regards the conduct held, the administration has highlighted, among other things, that:

- «this Body has taken steps to fulfill the obligations set out in art. 37, paragraph 7 of the RGPD, in relation to the variation of the data concerning the Data Protection Officer»;
- «As regards the request for a complaint (art. 15, paragraph 1 of the Regulation of the Guarantor n. 1/2019), it communicates its spontaneous adhesion to the requests of the complainant with a commitment to adopt initiatives aimed at eliminating the personal data of the same ».

With a subsequent e-mail from the XX, the Municipality confirmed the cancellation of the disputed document also from the url indicated in the aforementioned note from the Office prot. no. XX.

5. Evaluations of the Guarantor

The subject matter of the case brought to the attention of the Guarantor concerns the dissemination of the name of the person who had made a report to the Municipality of Adelfia for a building abuse (claimant in the proceeding in question), contained in the institution's ordinance no. XX relating to a demolition order. The aforementioned ordinance also clearly reported the personal data of the recipient of the administrative provision (including personal data, place and date of birth, residential address) and of the professionals in charge with indication, among other things, of the disciplinary report made to the College of surveyors. From the documents it appears that the Municipality, despite the request of the complainant, has not proceeded to remove the relative personal data from the url indicated (<http://...>).

Furthermore, during the investigation, it emerged that the Municipality - contrary to the provisions of the GDPR (art. 37, paragraph 7) - had not communicated to this Authority the change in the data of its Data Protection Officer. Specifically, there was a discrepancy between the identity of the person designated DPO (and the related contact details) published on the institutional website of the Municipality and those communicated to the Guarantor by the same body with a previous note prot. no. XX of the XX.

In its defense briefs, the Municipality of Adelfia highlighted first of all its willingness to spontaneously comply with the complainant's requests, undertaking to adopt initiatives aimed at eliminating the personal data of the same represented (according to art. 15, paragraph 1 of the Regulation of the Guarantor n. 1/2019), communicating the effective removal of the disputed document from the url indicated in the complaint by e-mail dated XX.

In the same defense briefs, the Municipality also represented that it had carried out the fulfilments envisaged by art. 37, paragraph 7 of the RGPD, in relation to the change in the data of the Data Protection Officer, which in fact appears to have

occurred with a new communication to this Authority of the XX (prot. n. XX).

6. Outcome of the investigation relating to the complaint presented

The Municipality of Adelfia confirmed in its defense briefs that it had maintained the conduct ascertained and challenged by the Office, describing the steps taken to put an end to the violations of the legislation on the protection of personal data, the subject of the dispute.

In this context, the elements highlighted in the written defence, examined as a whole, certainly worthy of consideration for the purposes of assessing the conduct, are however not sufficient to allow the dismissal of the present proceeding, since none of the hypotheses envisaged by art. 11 of the Regulation of the Guarantor n. 1/2019.

Therefore, the preliminary assessments of the Office carried out with the note prot. no. XX of the XX and the non-compliance with the RGPD of the conduct held by the Municipality of Adelfia is noted, since even after the request of the complainant of the XX, the Administration has not however taken steps to obscure the related personal data contained in the aforementioned order n. XX, persisting in the dissemination of personal data of the complainant and of the subjects involved in the administrative procedure.

The dissemination of the data and personal information of the complainant, who reported the abuse to the Municipality, described above, does not comply with the principle of "minimization" of the data, as they are unnecessary, disproportionate and not "limited to what is necessary with respect to the purposes for which they are processed", i.e. the transparency of an order for the demolition of an illegal building, in violation of art. 5, par. 1, lit. c) of the GDPR.

Similarly, for the same reasons, the dissemination of personal data (place and date of birth) and residence of the recipient of the demolition order, as well as the news of the notification of the professional appointed to the Board of surveyors, as completely irrelevant, and therefore disproportionate, with respect to the same purpose indicated above, also in violation of the aforementioned art. 5, par. 1, lit. c), of the RGPD. Furthermore, since it is an order of the XX, the diffusion of the personal data contained therein is in any case without suitable regulatory conditions for the period exceeding the fifteen days provided for by art. 124, paragraph 1, of Legislative Decree lgs. no. 267/2000 for publication in the praetorian register, which is therefore carried out in violation of art. 2-ter, paragraphs 1 and 3, of the Code, as well as the basic principles of treatment contained in articles 5, par. 1, lit. a) and c); 6, par. 1, lit. c) and e), par. 2 and par. 3, letter. b) of the GDPR.

The Municipality has also violated the art. 37, par. 7 of the GDPR as it did not promptly inform the Guarantor of the change in

the data of its Data Protection Officer, whose identity indicated on the institutional website at the time of the investigation, was different from the communication made to this Authority with a note prot. no. XX. In this regard, the change in the data of the DPO was correctly communicated to this Authority only on date XX (prot. n. XX), following the opening of the specific investigation and the dispute of the violation of the RGPD.

Considering, however, that the conduct has exhausted its effects, since the data controller declared that he had removed the personal data object of the Office's dispute from the institutional website and communicated to the Guarantor the change in the data of the Head of data protection, without prejudice to what will be said on the application of the pecuniary administrative sanction, the conditions for the adoption of corrective measures pursuant to art. 58, par. 2 of the GDPR.

7. Adoption of the injunction order for the application of the administrative fine (articles 58, paragraph 2, letter i; 83 of the GDPR)

The Municipality of Adelfia appears to have violated the articles 5, par. 1, lit. a) and c); 6, par. 1, lit. c) and e), par. 2 and par. 3, letter. b); 37, par. 7; of the GDPR; as well as the art. 2-ter, paragraphs 1 and 3, of the Code (see also art. 124, paragraph 1, of Legislative Decree no. 267/2000).

The violation of the aforementioned provisions - also considering the reference contained in the art. 166, paragraph 2, of the Code – is subject to the application of the pecuniary administrative sanction provided for by art. 83, para. 4 and 5 of the GDPR. In this regard, taking into account the provisions of art. 83, par. 3, of the GDPR, where it is established that «If, in relation to the same treatment or related treatments, a data controller or a data processor violates, with malice or negligence, various provisions of this regulation, the total amount of the administrative fine pecuniary does not exceed the amount specified for the most serious violation", in the case in question the administrative pecuniary sanction provided for by art. 83, par. 5 of the GDPR.

The Guarantor, pursuant to articles 58, par. 2, lit. i) and 83 of the GDPR, as well as art. 166 of the Code, has the corrective 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, depending on the circumstances of every single case". In this framework, «the Board [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, according to the circumstances of each individual case, must be determined in the amount, taking into due account the elements provided for by art. 83, par. 2 of the GDPR.

In this sense, the detected conduct held in violation of the regulations on the protection of personal data is of a negligent nature and concerns the online dissemination of personal data of the complainant and of 3 other interested parties for about four and a half years (at least until to XX), not belonging to particular categories or to criminal convictions or crimes (articles 9 and 10, of the RGPD); as well as the failure to notify this Authority of the variation of the data of the DPO.

The Municipality of Adelfia is a medium-sized institution (about 16,500 inhabitants). Furthermore, the administration, following the request of the Office, collaborated with the Authority during the preliminary investigation of the present proceeding in order to remedy the violation, mitigating the possible negative effects. In any case, there are no previous relevant GDPR violations committed by the Entity.

Based on the aforementioned elements, evaluated as a whole, it is deemed necessary to determine pursuant to art. 83, para. 2 and 3, of the RGPD, the amount of the pecuniary sanction, provided for by art. 83, par. 5, of the RGPD, in the amount of 8,000.00 (eight thousand) euros for the violation of articles 5, par. 1, lit. a) and c); 6, par. 1, lit. c) and e), par. 2 and par. 3, letter. b); 37, par. 7; of the GDPR; as well as of the 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 GDPR.

In relation to the specific circumstances of the present case, relating to the dissemination of personal data online in the absence of a suitable regulatory basis and the failure to notify the Guarantor of the data variation of the DPO (Article 2-ter, paragraphs 1 and 3, of the Code; 37, paragraph 7, of the GDPR), it is also believed that the accessory sanction of the publication of this provision on the website 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 forth in art. 17 of the Regulation of the Guarantor n. 1/2019.

ALL THIS CONSIDERING THE GUARANTOR

having detected the unlawfulness of the processing carried out by the Municipality of Adelfia in the terms indicated in the justification pursuant to articles 58, par. 2, lit. i), and 83 of the GDPR

ORDER

to the Municipality of Adelfia, in the person of its pro-tempore legal representative, with registered office in Corso Vittorio

Veneto, 122 - 70010 Adelfia (BA) – Tax Code 80017830722 to pay the sum of € 8,000.00 (eight thousand) as an administrative fine for the violations referred to in the justification;

ENJOYS

to the same Municipality to pay the sum of €8,000.00 (eight thousand), according to the methods indicated in the attachment, within 30 days of notification of this provision, under penalty of adopting the consequent executive acts pursuant to art. 27 of the law no. 689/1981.

It should be remembered that the offender retains the right to settle the dispute by paying - always according to the methods indicated in the attachment - an amount equal to half of the fine imposed, within the term set out in art. 10, paragraph 3, of Legislative Decree lgs. no. 150 of 09/01/2011 envisaged for the lodging of the appeal as indicated below (art. 166, paragraph 8, of the Code).

HAS

- the publication of this provision on the Guarantor's website pursuant to art. 166, paragraph 7, of the Code and by art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019;

- annotation in the internal register of the Authority of the violations and measures adopted pursuant to art. 58, par. 2 of the GDPR with this provision, as required by art. 17 of the Regulation of the Guarantor n. 1/2019.

Pursuant to art. 78 of the GDPR, 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, 27 April 2023

PRESIDENT

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THE SPEAKER

Cerrina Feroni

THE SECRETARY GENERAL

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