[doc. web no. 9890273]

Provision of April 13, 2023

Register of measures

no. 124 of 13 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 April 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/ 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 movement 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");

Given the documentation in the deeds;

Given the observations made by the general secretary pursuant to art. 15 of the Regulation of the Guarantor n. 1/2000 on the organization and functioning of the Guarantor's office for the protection of personal data, doc. web no. 1098801;

Speaker the lawyer Guido Scorza;

WHEREAS

1. The complaint.

With complaint, Mr. XX, employee of the Municipality of Cogollo del Cengio (VI) (hereinafter "Municipality"), through his lawyer, represented that the Municipality, following an appeal presented to ascertain the nullity of his dismissal for exceeding the

period of , on the 20th date, expressly recognizing the error committed, adopted resolution no. XX with which he proposed to the Giunta "to authorize the Mayor to confirm and ratify the proposal formulated by the defender [...] to define the pending judicial procedure, arranging the reinstatement of Mr. XX in the workplace with effect from the XX, with payment of the salaries accrued since the XX (compatibly with the state of illness affecting the employee)". In this resolution, a mandate is given [...to the Lawyer] "to immediately notify Mr. XX, through his lawyer, of the willing reinstatement". The proposed resolution to the Giunta is preceded by a premise in which the Municipality sets out the procedural matter with an indication of the type of appeal, the name of the lawyer, the object of the case, the reason for the dismissal, the reconstruction of the procedural events and the terms of the proposal, both work and economic, to the appellant.

2. The preliminary investigation.

With note of the XX, prot. n.XX, responding to the request for information formulated by this Authority, the Municipality represented, in particular, that:

- pursuant to art. 124 of the TU 267/2000, all the resolutions of the Municipality must be published on the praetorian register for fifteen consecutive days. This is a specific rule that fits into a broader principle of "transparency" of the PAs, enshrined in Legislative Decree No. 33/2013";
- “it should be noted that in the resolution in question the complainant was in any case identified by obscuring the name (only the initials were indicated). In any case, if the balance of interests between the duty of publication and minimization of treatment has not been correctly weighed, the Organization notes that it has immediately blacked out the part of the resolution referring to the employee [...] as soon as the possible contrary to the rules on the processing of personal data”;
- “the resolution was published on the XX and was amended on the XX [...]. In other words, the resolution in its integral version was published in its complete version for 16 days in the praetorian register. A very short time. Furthermore, having carried out technical checks, the Body is able to demonstrate that the number of accesses to the institution's website in the "resolutions" section is really limited: we are talking about a statistic of 531 views for the entire month of XX [...]. It should be noted that this statistic includes the display of both the resolutions of the Giunta and those of the City Council”;
- "the personnel employed by the Organization is represented on average by about fifteen employees [...]. The organization chart updated at the time of the publication of the resolution - XX in which 15 employees including the complainant are hired is attached.

Based on the elements acquired, the Office notified the Municipality, as data controller, pursuant to art. 166, paragraph 5, of the Code, the initiation of the procedure for the adoption of the provisions pursuant to art. 58, par. 2, of the Regulation, as the publication on the website of the Municipality of the aforementioned resolution caused the "dissemination" of the complainant's personal data, also relating to health, in violation of articles 5, 6 and 9 of the Regulation and 2-ter of the Code, in the text prior to the amendments made by Legislative Decree 8 October 2021, no. 139, as well as article 2-septies, paragraph 8, of the Code). Therefore he invited the aforesaid owner to produce written defenses 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, of law n. 689 of the 11/24/1981).

The Municipality sent its defense briefs representing, in particular, that:

- "the resolution was published on the XX and was amended on the XX [...], i.e. the same day on which [the complainant] contested the unlawfulness of the publication with certified e-mail (produced by the complainant). In other words, the resolution in its integral version was published in its complete version for 16 days in the praetorian register. A very short time. Furthermore, having carried out technical checks, the Body is able to demonstrate that the number of accesses to the institution's website in the "resolutions" section is really low";
- "no damage has been demonstrated (nor requested) by the only subject only abstractly damaged by the publication of the resolution. The very limited diffusion of the resolution, the limited duration in time (16 days in the praetorian register) and a single subject potentially injured by a non-existent and unproven damage are elements which this Ill.ma Authority will have to take into due consideration. Not to mention that although potentially "insufficient", the Organization had taken the precaution of publishing anonymously [the name of the complainant] by noting the initials of the name";
- "given how the facts unfolded, it is clear that the violation was purely culpable (this is proved again by the fact that the Body took steps to initially obscure in part and then eliminate it the entire resolution immediately as soon as [the complainant] raised the issue). This is demonstrated by the immediate obscuration and subsequent removal of the resolution";
- the Organization had planned a specific training course relating to online publications. This course was held on XX [...]. Employees had already been trained in the 20th […] and given written instructions […];
- it should be noted that the entity [...] has a "clean record" having never before now violated the current legislation on the protection of personal data except in relation to the same case referred to [the same complainant] (known to the Guarantor) –

Provision no. XX of XX1 promptly complied with by the Body";

- these are common and non-sensitive/particular data. In fact, the Giunta's resolution that was the subject of the complaint did not contain references to elements such as to identify racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, nor genetic data, biometric data intended to identify uniquely a natural person, data relating to the health or sex life or sexual orientation of the person; nor was it referring to criminal convictions or crimes";

- "what happened is the only result of carelessness and mere human error: no economic advantage has been received by the Organization for the violations it has incurred, in particular for the publication of the resolution de quo concerning the complainant. Bear in mind that the writing municipality boasts a population of about 3300 inhabitants. It is a small public body".

3. Applicable legislation.

3.1 The regulatory framework.

The regulation of personal data protection provides that public bodies, even if they operate in the performance of their duties as employers, can process the personal data of workers, if the processing is necessary, in general, for the management of the employment relationship and to fulfill specific obligations or tasks envisaged by national sector regulations or "for the execution of a task in the public interest or connected to the exercise of public powers vested in the data controller" (articles 6, paragraphs 1, letters c) and e), 2 and 3, art. 9, par. 2, lit. b) and g), and 4, and 88 of the Regulation; art. 2-ter of the Code, in the text prior to the changes made by Legislative Decree 8 October 2021, no. 139).

European legislation provides that "Member States may maintain or introduce more specific provisions to adapt the application of the rules of this regulation with regard to treatment, in accordance with paragraph 1, letters c) and e), determining more precisely specific requirements for processing and other measures aimed at guaranteeing lawful and correct processing [...]" (Article 6, paragraph 2, of the Regulation). In this regard, it should be noted that processing operations which consist in the "dissemination" of personal data are permitted only when provided for by a law or regulation (Article 2-ter, in the text of the Code prior to the amendments made by Legislative Decree 8 October 2021, no. 139).

More precisely, with regard to the particular categories of personal data, the processing is, as a rule, permitted, as well as to fulfill specific obligations "in the field of labor law [...] to the extent that it is authorized by law [...] in presence of appropriate guarantees" (Article 9, paragraph 2, letter b), of the Regulation), even where "necessary for reasons of significant public interest on the basis of Union or Member State law, which must be proportionate to the purpose pursued, respect the essence

of the right to data protection and provide for appropriate and specific measures to protect the fundamental rights and interests of the data subject" (Article 9, paragraph 2, letter g), of the Regulation).

In any case, data relating to health, i.e. those "related to the physical or mental health of a natural person, including the provision of health care services, which reveal information relating to his state of health" (Article 4, par. 1, no. 15, of the Regulation; see also recital 35 of the same), due to their particular delicacy, "they cannot be disclosed" (art. 2-septies, paragraph 8, and art. 166, paragraph 2, of the Code and article 9, paragraphs 1, 2, 4, of the Regulation).

The employer, data controller, is, in any case, required to comply with the general principles regarding the protection of personal data (Article 5 of the Regulation).

3.2. The dissemination of personal data.

As can be seen from the deeds and declarations made by the data controller, as well as from the assessment carried out on the basis of the elements acquired following the preliminary investigation, the Municipality published, on the institutional website, the praetorian register section, on the XX date and until XX, resolution no. XX of the XX, concerning "Reintegration into the workplace of a municipal employee", containing information regarding the employment relationship of the complainant, identified with the initials of his name and surname, and information relating to the state of health of the same.

Given the definition of personal data ("any information relating to an identified or identifiable natural person", having to consider "identifiable the natural person who can be identified, directly or indirectly [...]") and data relating to health (Article 4, paragraphs 1 and 15 of the Regulation), it is believed that the publication on the institutional website of the Municipality of resolution no. XX of the XX, containing references to information relating to the employment relationship between the Municipality and the complainant as well as indications on the state of health of the same, led to the dissemination of personal data, also relating to health, in the absence of a suitable regulatory prerequisite and in violation of the general ban on the dissemination of data relating to health (articles 5, 6 and 9 of the Regulation and 2-ter and 2-septies, paragraph 8, of the Code).

Therefore, the use of the initials of the surname and first name of the interested parties may not be sufficient to avoid the identifiability of the same, especially when other contextual information or other identifying elements are associated with them.

With reference to the present case, in fact, although the determination in question did not expressly mention the name and surname of the complainant, the latter was in any case identifiable through reference to his initials and the specific

reconstruction of the procedural events concerning the employment relationship work with the Municipality, with indication of the type of appeal presented by the same, the object of the case, the reason for the dismissal and the terms of the proposal to the applicant, both work and economic, of reintegration into the job, as well as the name of the lawyer . For these reasons, the complainant, an employee of the Municipality, moreover of limited dimensions, appeared to be easily identifiable, both inside and outside the Body, therefore having to consider the information contained in the aforementioned resolution, relating to the complainant, as " personal data" pursuant to art. 4, par. 1, no. 1 of the Regulation (see, on this point, provision no. 420 of 15 December 2022, web doc. 9853429 and the provisions referred to therein).

On this point it is noted that, since 2014, the Guarantor, in the "Guidelines on the processing of personal data of workers for the purpose of managing the employment relationship in the public sector" of the Guarantor, provision no. 23 of 14 June 2007, doc. web no. 1417809, clarified that "the practice followed by some administrations of replacing the data subject´s name and surname with initials alone is in itself insufficient to anonymize the personal data contained in the deeds and documents published online" and that "the risk of identifying the interested party is all the more probable when, among other things, further contextual information remains next to the initials of the name and surname which in any case make the interested party identifiable", as in the present case, being necessary, in order to effectively make anonymous the data published online, "completely obscure the name and other information relating to the interested party which may allow identification even a posteriori".

During the preliminary investigation, the Municipality also justified the disclosure of the complainant's personal data, recalling the transparency obligations pursuant to Legislative Decree 14 March 2013, n. 33.

It is noted on the point that the publication of the Decision in question took place in the "Praetorian Register" section of the institutional website of the Municipality and not, instead, in the "Transparent Administration" section, being, therefore, this regulatory reference irrelevant with respect to the facts object of complaint. Moreover, none of the provisions of Legislative Decree March 14, 2013, n. 33 requires the publication of the information and personal data in question.

In this regard, it should be remembered, in any case, that the Guarantor, on several occasions, has clarified that even the possible presence of a specific advertising regime cannot lead to any automatism with respect to the online dissemination of personal data and information, nor a derogation from principles on the protection of personal data. On the other hand, this is also confirmed by the personal data protection system contained in the Regulation, in the light of which it is envisaged that the

data controller must "implement adequate technical and organizational measures to ensure that they are processed, by default, only the personal data necessary for each specific purpose of the processing" and must be "able to demonstrate" - in the light of the principle of "accountability" - that he has done so (articles 5, paragraph 2; 24 and 25, paragraph 2, regulation).

Moreover, even the reference to art. 124 of Legislative Decree 18 August 2000, n. 267, in relation to the publication in the praetorian register of the Municipality, does not justify the publication of the aforesaid detailed information since, as clarified on numerous occasions by the Authority, even in the presence of a law that provides for the publication of deeds and documents of the public administration, the principles of data protection must in any case be respected, including the principle of "data minimization" (Article 5, paragraph 1, letter c), of the Regulation), as reaffirmed by the Guarantor in numerous decisions (most recently, see provision no. 299 of 15 September 2022, web doc. no. 9815665 and the provisions referred to therein and see part II, paragraph 3.a. of the "Guidelines on the processing of personal data, content also in administrative deeds and documents, carried out for the purpose of publicity and transparency on the web by public subjects and other obliged bodies" of the Guarantor of 15 May 2014 web doc. n. 3134436).

4. Conclusions.

In the light of the assessments referred to above, taking into account the statements made by the data controller during the preliminary investigation □ the truthfulness of which may be called upon to answer pursuant to art. 168 of the Code □ it should b noted that the elements provided by the data controller in the defense briefs do not allow for overcoming the findings notified by the Office with the act of initiation of the procedure and are insufficient to allow the filing of the present proceeding, not resorting, however, any of the cases provided for by art. 11 of the Regulation of the Guarantor n. 1/2019.

Therefore, the preliminary assessments of the Office are confirmed, and the illegality of the processing of personal data carried out by the Municipality is noted, in violation of articles 5, 6, 9 of the Regulation and of the articles 2-ter as well as 2-septies, paragraph 8, of the Code.

The violation of the aforementioned provisions makes the administrative sanction envisaged by art. 83, par. 5, of the Regulation, pursuant to articles 58, par. 2, lit. i), and 83, par. 3, of the same Regulation and of the art. 166, paragraph 2, of the Code.

In this context, considering, in any case, that the conduct has exhausted its effects having found that the document has been removed, 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 accessory sanctions (articles 58, paragraph 2, letter i and 83 of the Regulation; article 166, paragraph 7, of the Code).

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, depending on the circumstances of each single case" and, 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).

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

The aforementioned pecuniary administrative sanction imposed, depending on 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 Regulation.

In relation to the aforementioned elements, the particular delicacy of the unlawfully processed personal data concerning events relating to the complainant's employment relationship was considered, as well as information concerning the state of health of the same, in contrast with specific provisions of the law, with the indications that, from time, the Guarantor has provided public and private employers with the Guidelines referred to above and with numerous decisions on similar individual cases.

On the other hand, it was considered that the processed data subject to unlawful processing concern a single individual and were published for a short period of time. The Municipality has also demonstrated extensive collaboration with the Authority during the investigation of this proceeding.

Furthermore, there is a previous provision referred to in Article 58, paragraph 2, against the Municipality, in relation to a pertinent violation.

Based on the aforementioned elements, evaluated as a whole, it is deemed necessary to determine the amount of the pecuniary sanction, in the amount of 3,000.00 (three thousand) euros for the violation of articles 5, 6, 9 of the Regulation and 2-ter, as well as 2-septies, paragraph 8, of the Code, as a pecuniary administrative sanction withheld, pursuant to art. 83, par. 1, of the Regulation, effective, proportionate and dissuasive.

Taking into account the nature of the data being processed, it is also believed that the ancillary sanction of publication on the website of the Guarantor 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.

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 GUARANTOR

pursuant to art. 57, par. 1, lit. f), declares the illegality of the processing of personal data carried out by the Municipality of Cogollo del Cengio (VI) in the terms described in the justification, consisting in the violation of articles 5, 6, 9 of the Regulation and 2-ter, as well as 2-septies, paragraph 8 of the Code;

ORDER

pursuant to articles 58, par. 2, lit. i) and 83 of the Regulation, as well as art. 166 of the Code, to the Municipality of Cogollo del Cengio (VI), in the person of its pro-tempore legal representative, with registered office in Piazza della Libertà, 1 – 36010, Tax Code 84009900246, to pay the sum of 3,000.00 (three thousand) euros 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 the Municipality of Cogollo, without prejudice to the provisions of the aforementioned art. 166, paragraph 8 of the Code, to pay the sum of 3,000.00 (three thousand) euros 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 n. 689/1981;

HAS

the publication of this provision on the Guarantor's website pursuant to art. 166, paragraph 7, of the Code (see art. 16 of the Guarantor's Regulation no. 1/2019);

the annotation of this provision in the internal register of the Authority, provided for by art. 57, par. 1, lit. u), of the Regulation, of the violations and of the measures adopted in accordance with art. 58, par. 2, of the Regulation (see art. 17 of Regulation no. 1/2019).

Pursuant to articles 78 of the Regulation, 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, 13 April 2023

PRESIDENT

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THE SPEAKER

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THE SECRETARY GENERAL

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