

[doc. web n. 9695441]

Injunction order against the Calabria Region - 22 July 2021

Record of measures

n. 280 of 22 July 2021

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by prof. Pasquale Stanzione, president, Professor Ginevra Cerrina Feroni, vice president, dr. Agostino Ghiglia and the lawyer Guido Scorza, members and the cons. Fabio Mattei, general secretary;

GIVEN the Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016, concerning the protection of individuals with regard to the processing of personal data, as well as the free circulation of such data and which repeals Directive 95/46 / EC, "General Data Protection Regulation" (hereinafter "RGPD");

GIVEN the d. lgs. June 30, 2003, n. 196 containing the "Code regarding the protection of personal data (hereinafter the " Code ");

GIVEN the general provision n. 243 of 15/5/2014 containing the "Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for the purpose of advertising and transparency on the web by public entities and other obliged entities", published in the Official Gazette. n. 134 of 12/6/2014 and in www.gpdp.it, doc. web n. 3134436 (hereinafter "Guidelines on transparency");

GIVEN the Regulation n. 1/2019 concerning internal procedures with external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor for the protection of personal data, approved by resolution no. 98 of 4/4/2019, published in the Official Gazette n. 106 of 8/5/2019 and in www.gpdp.it, doc. web n. 9107633 (hereinafter "Regulation of the Guarantor no. 1/2019");

GIVEN the documentation in the deeds;

GIVEN the observations made by the Secretary General pursuant to art. 15 of the Guarantor Regulation n. 1/2000 on the organization and operation of the office of the Guarantor for the protection of personal data, in www.gpdp.it, doc. web n. 1098801;

Speaker prof. Pasquale Stanzione;

WHEREAS

1. Introduction

This Authority has received a complaint from Mr. XX (hereinafter "complainant"), with which a violation of the legislation on the protection of personal data by the Calabria Region was contested.

Specifically, as emerged from the preliminary verification carried out by the Office, it was found that the url [http: // ...](http://...) opened a web page where it was possible to freely view and download the executive decree no. XX of the XX of the Department of work, training and social policies (LFPS) -sector 5-Work and development plans, territorial policies, emergence, of the Calabria Region (regional council) having as object "XX".

The aforementioned decree - which was also directly viewable from the url: [https: // ...](https://...) - contained data and information of the complainant in the text and in the subject, such as the name and address of residence, as part of the procedure of revocation of the loan granted to the sole proprietorship entitled to the complainant himself, due to the failure to repay the installments of the bank loan contract.

The documents show that the complainant had previously contacted the Calabria Region to request the obscuring of their personal data and that the entity had rejected the request.

2. The legislation on the protection of personal data

Pursuant to the relevant regulations, "personal data" is "any information concerning an identified or identifiable natural person ("interested")" and "the natural person who can be identified, directly or indirectly, with particular reference to a identifier such as the name, an identification number, location data, an online identifier or one or more characteristic elements of its physical, physiological, genetic, psychic, economic, cultural or social identity "(art. 4, par. 1, No. 1, of the GDPR).

In this regard, public entities (such as the Region) may disclose "personal data" only if this operation is provided for "by a law or, in the cases provided for by law, by regulation" (Article 2-ter, paragraphs 1 and 3, of the Code), in compliance - in any case - with the principles of data protection, including that of "minimization", according to which personal data must be "adequate, relevant and limited to what is necessary in compliance to the purposes for which they are processed "(art. 5, par. 1, lett. c, of the RGPD).

Since 2014, the Guarantor has provided specific indications to administrations on the precautions to be taken for the dissemination of personal data online with general provision no. 243 of 15/5/2014, containing the "Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for the purpose of advertising

and transparency on the web by public entities and other obliged entities", published in G.U. n. 134 of 12/6/2014 and in www.gdpd.it, doc. web n. 3134436 (currently being updated, but still current in the substantial part).

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

Following the checks carried out on the basis of the elements acquired and the facts that emerged as a result of the investigation, as well as subsequent evaluations, the Office with note prot. n. XX of the XX has ascertained that the Calabria Region - by disseminating the data and personal information of the complainant contained in the document published online described above - has carried out a processing of personal data that does not comply with the relevant regulations on the protection of personal data contained in the RGD. Therefore, with the same note the violations carried out (pursuant to art.166, paragraph 5, of the Code) were notified to the aforementioned Region, communicating the start of the procedure for the adoption of the measures referred to in Article 58, par. 2, of the RGD and inviting the aforementioned administration to send to the Guarantor defensive writings or documents and, if necessary, to ask to be heard by this Authority, within the term of 30 days (Article 166, paragraphs 6 and 7, of the Code; as well as art.18, paragraph 1, of law no. 689 of 11/24/1981).

4. Defensive memories.

The Calabria Region, with the note prot. n. XX of the XX, sent to the Guarantor his defense writings in relation to the violations notified.

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

Specifically, with regard to the conduct held, it was highlighted, among other things, that:

- "The individual company beneficiary of the [...] loan, with company name" XX ", has defaulted against the Financial Intermediary XX for not having repaid the amount enforced by the Credit Institution to the same financial intermediary for non-payment of the mortgage payments. Following this, the regional administration initiated, pursuant to Law 241/90, the revocation procedure aimed at recovering the sum paid [...] ";
- "The revocation and injunction decree drawn up by the undersigned department was published online in the days following its repertoriation on XX date";

- «It must be pointed out that the same has a small number of interested parties involving only one interested party, namely the company" XX ". The same decree actually presents the name and residential address of the complainant »;
- «the Department [concerned] proceeded with the publication of Decree no. XX of the XX "... to protect the general public interest". Probably, an extensive interpretation of Art. 2-sexies, paragraph 2, of the Code "Without prejudice to the provisions of paragraph 1, the public interest relating to processing carried out by persons carrying out tasks of public interest or connected to the exercise of public authority in the following matters is considered relevant: ... lett q) sanctioning and protection activities in administrative or judicial proceedings ", in consideration of the injunctive nature of the Executive Decree no. XX of the XX and, therefore, intended as a sanctioning and protection measure in the administrative and judicial offices of the Regional Administration. This decision is to be understood, in fact, as an excess of zeal in compliance with the legislation on the transparency of administrative acts, thus constituting a culpable nature in the aforementioned violation, and not even malicious. The mistake, in the publication of the decree, was to consider the regional portal as a space in which to publicize measures and notices of public interest »;
- "In this regard, it is mandatory to specify that the Regional Administration when it found the complaint of Mr. XX on XX with note prot. XX n. XX substantially found the correctness of the administrative procedure, absolutely not intending to underestimate the situation complained of by the instant regarding the violation of personal data. In fact, according to that note, it was intended that the decree would be eliminated by the competent sector, as the departmental contact person for data protection. Unfortunately, however, the decree remained published on the site culpably and only because of an organizational problem of the Department which saw the alternation of officials and managers responsible at that time due to the administrative reorganization in progress which ended with the adoption of Decrees nos. XX of the XX; XX of the XX and XX of the XX »;
- "As proof of the veracity of the above assertion, it should be noted that the Entity promptly proceeded with the immediate removal of the deed as soon as the provision of the GPDP was received. And in fact, following the receipt of the procedure of the GPDP transmitted with the Pec of the DPO of the Calabria Region on the XXth date to the Department concerned, the same proceeded on the same date to the immediate removal of the decree in question from the regional portal, communicating at the same time and promptly to the 'interested, sign. XX, the removal. In addition, the removal of any similar measures relating to the years 2018/2019/2020/2021 was promptly ordered »;

- «In addition, and in order to further sensitize staff to the principles underlying the directives on data protection, the Department for " Work, Training and Social Policies "with note prot. n. XX of the XX highlighted the need to proceed with a verification of the documents produced by the internal sectors of the same Department, consistently with the provisions of the Circulars prot. nos. XX of the XX; XX of the XX and XX of the XX signed by the DPO, also inviting them to put in place what is necessary to guarantee the protection of the confidentiality of all the recipients of the administrative procedures. Furthermore, in the current year, in order to inform the Departments of the Regional Council on the correct application of the rules on the protection of personal data and, above all, with a view to balancing the principles of transparency and protection of personal data, the RPCT and the RPD, with note prot. n. XX of the XX with joint signature, have provided a series of indications regarding the procedures for publishing administrative acts such as decrees and resolutions of the regional administration. The same note also refers to the previous provisions on the processing of personal data produced by the DPO, which can be found on the regional portal in the section dedicated to the Data Protection Officer (<https://portale.regione.calabria.it/website/responsabileprotezionedati/>). Within the same section there are guidelines, information and operating instructions regarding the principles of data protection necessary for the publication of administrative measures ";

- "At the outcome of the procedure transmitted by the GPDP, the undersigned Department promptly proceeded to implement all the procedures necessary to mitigate the possible negative effects of the incorrect publication of the data, cooperating both with the DPO of the Calabria Region and with the same Authority , finding quickly the notification reporting the violation pursuant to art. 166, co. 5, of Legislative Decree 196/2003 ".

5. Evaluations of the Guarantor

The issue that is the subject of the case submitted to the attention of the Guarantor concerns the online dissemination of the complainant's personal data and information (such as name and residential address), contained in the text and in the subject matter of Executive Decree no. XX of the XX of the Department of Labor, Training and Social Policies (LFPS) - Sector 5 - Work and development plans, territorial policies, emergence, of the Calabria Region (regional council), published on the institutional website, as part of the procedure for revocation of the loan granted to the sole proprietorship entitled to the complainant due to the failure to repay the installments of the bank loan contract.

The complainant, before contacting the Guarantor, already in XX, had asked the Region to obscure his personal data, but

received a refusal.

As part of the investigation opened in this regard by this Authority, the Calabria Region confirmed, in its defense briefs, the online dissemination of the personal data described. From this point of view, the entity represented that both the dissemination of the complainant's online data and the relative failure to remove it following the request of the same were the result of a mere error, believing that it was necessary to "proceed [ere] the publication of Decree no. . XX of the XX "... to protect the general public interest", interpreting "probably, [extensively] art. 2-sexies, paragraph 2, of the Code ".

In this regard, while admitting a possible error in the lack of blackout at the time of publication, it must in any case be taken into account that the entity could have avoided the opening of a specific investigation by the Guarantor and this proceeding, if in 2020 it had correctly assessed the request for the obscuration of personal data submitted by the complainant to whom, however, the legitimacy of the disclosure was reaffirmed - contrary to what was claimed in the defensive memoirs of the Region, rejecting the request and representing to the applicant, between the other and in a way that does not comply with the legislation on the protection of personal data, that the "admission to the benefits of a Public Notice involves the publication of the ranking and / or list of admitted subjects, to protect the general public interest, as per current legislation on the transparency of the work of the public administration "and that the" possible revocation of conc they involve public evidence, similar to the publication of the list of admitted subjects, in compliance with the procedures for the transparency of administrative acts "(note prot. n. XX of the XX of the Department n. 7-Work, training and social policies of the Calabria Region).

6. Outcome of the investigation relating to the complaint presented

For all of the above, the circumstances highlighted in the defense writings examined as a whole, certainly worthy of consideration for the purpose of evaluating the conduct, are not sufficient to allow the filing of this proceeding, since none of the hypotheses provided for by art. 11 of the Guarantor Regulation n. 1/2019. This also considering that since 2014 the Authority, in the Guidelines on transparency and online publication mentioned above, has provided all pp.aa. specific indications on how to reconcile the transparency and publicity obligations of the administrative action with the right to the protection of the personal data of the interested parties.

In this context, the preliminary assessments of the Office are confirmed with the note prot. n. XX of the XX and the unlawfulness of the processing of personal data carried out by the Calabria Region is noted, as the dissemination of the data

and personal information of the complainant contained Executive Decree no. XX del XX better identified above published online on the institutional website of the aforementioned Region is:

- devoid of suitable regulatory conditions, in violation of art. 2-ter, paragraphs 1 and 3, of the Code; as well as the basic principles of processing contained in articles 5, par. 1, lett. to); 6, par. 1, lett. c) and e), par. 2 and par. 3, lett. b), of the GDPR;
- does not comply with the minimization principle in relation to the disclosure of the complainant's name and residence, considering that these are data not "limited to what is necessary with respect to the purposes for which they are processed", in violation of art. 5, par. 1, lett. c), of the GDPR.

Considering, however, that the conduct has exhausted its effects, as the data controller declared that he had "removed the decree in question from the regional portal", without prejudice to what will be said about the application of the pecuniary administrative sanction, the conditions are met for the adoption of further corrective measures pursuant to art. 58, par. 2, of the GDPR.

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

The Calabria Region appears to have violated Articles 5, par. 1, lett. a) and c); 6, par. 1, lett. c) and e), par. 2 and par. 3, lett. b), of the GDPR; as well as art. 2-ter, paragraphs 1 and 3, of the Code.

In this regard, art. 83, par. 3, of the RGPD, provides that «If, in relation to the same treatment or related treatments, a data controller or a data processor violates various provisions of this regulation, with willful misconduct or negligence, the total amount of the pecuniary administrative sanction does not exceeds the amount specified for the most serious violation '.

In the present case, the violation of the aforementioned provisions - also considering the reference contained in art. 166, paragraph 2, of the Code - is subject to the application of the same administrative fine provided for by art. 83, par. 5, of the GDPR, which therefore applies to the case in question.

The Guarantor, pursuant to art. 58, par. 2, lett. i) and 83 of the RGPD, as well as art. 166 of the Code, has the corrective power to "inflict a pecuniary administrative sanction pursuant to Article 83, in addition to the [other] [corrective] measures referred to in this paragraph, or instead of such measures, depending on the circumstances of every single case ". In this context, "the College [of the Guarantor] adopts the injunction order, with which it also disposes with regard to the application of the ancillary administrative sanction of its publication, in whole or in excerpt, on the website of the Guarantor pursuant to Article 166,

paragraph 7, of the Code "(Article 16, paragraph 1, of the Guarantor Regulation no. 1/2019).

The aforementioned administrative fine imposed, depending on the circumstances of each individual case, must be determined in the amount, taking into account the elements provided for by art. 83, par. 2, of the GDPR.

In this sense, the detected conduct in violation of the regulations on the protection of personal data is of a culpable nature and has had as its object the online dissemination of personal data, for more than two years, not belonging to particular categories or to criminal convictions. o crimes (articles 9 and 10, of the RGPD), referring to a single interested party. The Calabria Region is a territorial body with almost 2,000,000 inhabitants. Following the request of the Office, the administration intervened promptly, collaborating with the Authority during the investigation of this proceeding in order to remedy the violation, mitigating its possible negative effects. In the reply to the Guarantor, various technical and organizational measures implemented pursuant to art. 25-32 of the RGPD and, in any case, there are no relevant previous violations of the RGPD committed by the entity.

Due to the aforementioned elements, assessed as a whole, it is deemed necessary to determine pursuant to art. 83, para. 2 and 3, of the RGPD, the amount of the pecuniary sanction, provided for by art. 83, par. 5, of the RGPD, to the extent of € 10,000.00 (ten thousand) for the violation of Articles 5, par. 1, lett. a) and c); 6, par. 1, lett. c) and e), par. 2 and par. 3, lett. b), of the RGPD, as well as of art. 2-ter, paragraphs 1 and 3, of the Code; as a pecuniary administrative sanction deemed effective, proportionate and dissuasive pursuant to art. 83, par. 1, of the same RGPD.

In relation to the specific circumstances of this case, relating to the dissemination of personal data online in the absence of a suitable legal basis and in violation of the principle of data minimization (Article 5, paragraph 1, letter c, GDPR), it is considered also that the ancillary sanction of the publication of this provision on the Internet site of the Guarantor, provided for by art. 166, paragraph 7, of the Code and by art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019.

Finally, it is believed that the conditions set out in art. 17 of the Guarantor Regulation n. 1/2019.

WHEREAS, THE GUARANTOR

detected the unlawfulness of the processing carried out by the Calabria Region in the terms indicated in the motivation pursuant to Articles 58, par. 2, lett. i), and 83 of the GDPR

ORDER

to the Calabria Region, in the person of the pro-tempore legal representative, with registered office in the Cittadella Regionale

Catanzaro - 88100 Catanzaro (CZ) - C.F. 02205340793, to pay the sum of € 10,000.00 (ten thousand) as a pecuniary administrative sanction for the violations mentioned in the motivation;

INJUNCES

to the same Region to pay the sum of € 10,000.00 (ten thousand), according to the methods indicated in the annex, within 30 days of notification of this provision, under penalty of the adoption of the consequent executive acts pursuant to art. 27 of the l. n. 689/1981.

Please note that the offender has the right to settle the dispute by paying - again according to the methods indicated in the annex - of an amount equal to half of the sanction imposed, within the term set out in art. 10, paragraph 3, of d. lgs. n. 150 of 1/9/2011 provided for the submission of the appeal as indicated below (Article 166, paragraph 8, of the Code).

HAS

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

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

Pursuant to art. 78 of the RGPD, of the arts. 152 of the Code and 10 of Legislative Decree no. 150/2011, against this provision, it is possible to appeal before the ordinary judicial authority, under penalty of inadmissibility, within thirty days from the date of communication of the provision itself or within sixty days if the applicant resides abroad.

Rome, July 22, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Stanzione

THE SECRETARY GENERAL

Mattei