

[doc. web n. 9670709]

Injunction order against the Municipalities of the Reno, Lavino and Samoggia Valleys - March 25, 2021

Record of measures

n. 108 of 25 March 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](http://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](http://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](http://www.gpdp.it), doc. web n. 1098801;

Speaker Dr. Agostino Ghiglia;

WHEREAS

## 1. Introduction

This Authority has received a complaint from Messrs. XX, XX, XX, XX, XX and XX with which a violation of the legislation on the protection of personal data has been contested.

Specifically, it was represented - as verified by the preliminary assessment carried out by the Office - that on the institutional website of the Union of Municipalities of the Reno, Lavino and Samoggia Valleys (hereinafter "Union of municipalities"), in the "Register Archive" section Pretorio ", it was possible to freely view and download the following documents, containing data and personal information of the complainants, at the indicated URLs:

- 1) Council Resolution no. XX del XX concerning "XX" with the relative attachments, including the file called "XX" containing the "XX" (url: <https://...>);
- 2) Executive Resolution no. XX of the XX having as object "XX" (url: <https://...>);
- 3) Executive Resolution no. XX of the XX concerning "XX" (url: <https://...>) and the relative attached file called "XX", containing the document relating to the "XX";
- 4) Executive Resolution no. XX of the XX having as object "XX" (url: <https://...>) and relative attached file called "XX" containing "XXe" (url: <https://...>).

The aforementioned documents published online contained personal data and information of the complainants, municipal police officers, such as name and surname, rank, indication of the place of work and type of duties / skills performed.

The complainants attached to the complaint the note sent to the Union of Municipalities, the data controller, with which the rights regarding the protection of personal data were exercised against the aforementioned body, requesting the removal of personal data from the web, as well as the acknowledgment received with which the administration did not accept 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 Union of municipalities) 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 with respect to the purposes for which they are processed" (Article 5, paragraph 1, letter c, of the RGPD).

The state legislation for the sector also provides that "All the resolutions of the municipality and the province are published by publication on the praetorian notice, at the headquarters of the body, for fifteen consecutive days, except for specific provisions of the law" and that "All resolutions of other local bodies are published by publication on the praetorian notice board of the municipality where the body is based, for fifteen consecutive days, unless otherwise specified" (art. 124, paragraphs 1 and 2, legislative decree no. 267 of 18 / 8/2000).

With regard to the publication on the praetorian register, 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 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](http://www.gdpd.it), doc. web n. 3134436 (currently being updated, but still current in the substantial part).

In the aforementioned Guidelines of the Guarantor it is expressly stated that once the time period for the publication of the deeds and documents in the praetorian register has elapsed:

- "Local authorities cannot continue to disclose the personal data they contain. Otherwise, for the period exceeding the duration envisaged by the reference legislation, an illegal dissemination of personal data would be determined 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 term of fifteen days, provided for by art. 124 of the aforementioned d. lgs. n. 267/2000, can integrate a violation of the aforementioned art. 19, paragraph 3, of the Code [n.d.r. today reproduced in art. 2-ter, paragraphs 1 and 3, of the Code], where there is no different legislative or regulatory parameter that provides for its disclosure [...]. [In this case] if the local authorities want to continue to keep the deeds and documents published on their institutional website, for example in the sections dedicated to the archives of the deeds and / or legislation of the body, they must make the appropriate measures for the protection of personal data [,] [ndo] obscures in the published documentation the data and information suitable for identifying, even indirectly, the interested parties" (second part, par. 3.a).

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

With the note prot. n. XX of the XX the Union of Municipalities of the Reno, Lavino and Samoggia Valleys provided a response to the Office's request for information (note prot. No. XX of the XX).

Following the checks carried out on the basis of the elements acquired and the facts that emerged during the investigation, as well as subsequent evaluations, the Office with note prot. n. XX of the XX has ascertained that the Union of the Municipalities of the Reno, Lavino and Samoggia Valleys - by disseminating the personal data and information of the complainants contained in the documents published online described above - has carried out a processing of personal data that does not comply with the relevant regulations on the subject. of protection of personal data contained in the RGD. Therefore, with the same note the violations carried out (pursuant to Article 166, paragraph 5, of the Code) were notified to the aforementioned Union of Municipalities, 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 memoirs and hearing.

The Union of Municipalities of the Reno, Lavino and Samoggia Valleys, 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, the entity represented, among other things, that it immediately activated for the removal of data from the web and that, in any case, the legal basis of the processing had been identified in the provisions contained in art. 124, paragraph 2, of the d. lgs. n. 267 of 2000; in articles 8, paragraph 3 and 13 of the d. lgs n. 33/2013; in articles 57 and 58 of the Statute of the Union.

In addition, the Union of Municipalities said it had "revisited the entire organization of its website in terms of transparency, praetorian register and praetorian register archive. With a view to balancing transparency, public function and privacy "and

that" proceeded to change the software for the management of publications, the functions of publication on the praetorian register and transparent administration [asking] the software house to inhibit the publication of documents at the end of the period of publication in the Praetorian Register ».

Among other things, it was highlighted that:

- "The Union had recognized the public interest in the publication of the Local Police organization as it was useful in informing citizens about the reorganization of the offices. In addition, the Union's reasoning on the publication of this type of determinations also rested on the existence of a legal basis and on the nature of the personal data that would have been published ";
- "Surely names and surnames are in the opinion of the Data Body minimized and necessary to structure an organization chart or in any case a document relating to the organization of the offices, in fact, no further personal data suitable for detecting personal and not strictly institutional information have been added on public officials ";
- "the motivation of the publications is also to be recognized in the fact that the role of local policeman is a role of particular importance, also for the purposes of public safety, and that therefore there was a public interest in the publication of these types of documents, also over fifteen canonical days ";
- "The minimization of data cannot be questioned if with the interpretation of art. 13, co. I, lett. b of the Legislative Decree 33/13, the Union had recognized that the organization chart of the "new" Local Police should be published. In the opinion of the writer, name and surname are minimized data and not even suitable to cause damage, both patrimonial and otherwise, to the directly concerned as they are totally generic, such as to not be able to identify the individual subjects in a timely manner where, for example, there are cases of homonymy ";
- «The number of interested parties, that is public officials of whom only their name and surname have been published, are 59, that is to say the number of officers of the Local Police Corps. The minimum harm is reiterated since no dangers can even be raised for the fundamental rights and freedoms of the subjects involved, since these are two personal data of a generic nature that are not able to identify a specific natural person in a certain and unequivocal manner ";
- "Through a research on the injunctions orders issued by your Authority it emerged that the sanctions have been applied, with reference to incorrect transparency publications, in the presence of multiple types of personal data and / or in the absence of adhesion of the bodies involved"

The hearing requested by the Union of Municipalities pursuant to art. 166, paragraph 6, of the Code on the occasion of which, in addition to confirming and resuming the content of what has already been reported in the defense briefs, it was represented, in addition to what has already been reported in the documentation sent, that:

- "The names published were related to municipal police personnel, for whom - given the movements from one municipality to another in the Union - it was useful for citizens to know their name";
- "[the Body] is attentive to data protection issues and the staff in charge acted in good faith trying to correctly reconcile the transparency needs of municipal police members with the protection of personal data";
- "In the present case it is shown that there were various trade union disputes with possible exploitation of the matter";
- "With regard to the previous exercise of the rights of the complainants to the Union, the entity found the request without postponing the request, carrying out an assessment of the administration's behavior which at the time seemed correct also considering that the personal data were referred to the names of municipal police officers, which were considered to be minimal data, necessary and relevant to achieve the purpose deemed legitimate by the Administration, namely that of informing citizens about the new composition of the local police force. It should be noted that the request to exercise the rights was made close to the application of Regulation (EU) 2016/679 and that it was the first time that the administration found itself in such a situation, in a context characterized by strong conflictuality ";
- "The legal basis of the processing of the publication of the determination subject to the complaint falls under art. 13 of the d. lgs. n. 33/2013 on the transparency of the organization of the body, also considering the need to make the population aware of the name of the municipal police staff, given the recent reorganization of the service that concerned all the municipalities of the Union ".
- "The Union has in any case implemented a reorganization of the entire" Transparent Administration "and" Albo Praetorian "section, with specific vademecum addressed to the staff and new software applications to improve the management of the publication of online documents containing personal data, avoiding dissemination automatically ".

## 5. Evaluations of the Guarantor

The issue that is the subject of the case submitted to the Guarantor concerns the dissemination of personal data and information of the complaining municipal police officers (including name and surname, indication of the place of work and type of duties / skills performed) contained in the following documents and related annexes, better identified above in par. 1,

published on the institutional website: Council Resolution n. XX of the XX; Executive Resolution no. XX of the XX; Executive Resolution no. XX of the XX and Executive Determination n. XX of the XX.

As part of the investigation opened in this regard by this Authority, the Union of the Municipalities of the Reno, Lavino and Samoggia Valleys confirmed, in its defense briefs, the online dissemination of the personal data described, believing that there is an appropriate legal basis. of the processing and online dissemination of the data of the complainants in the articles 8, paragraph 3, and 13 of the d. lgs n. 33/2013; in articles 57 and 58 of the Statute of the Union as well as in art. 124, paragraph 2, of the d. lgs. n. 267 of 2000.

Nevertheless, with particular reference to the case in question, it is believed that the provisions referred to by the Union of Municipalities contained in particular in art. 13 of the d. lgs. n. 33/2013, which refers in general to the "organization of public administrations" and not to the publication of personal data of employees or municipal police officers; nor in art. 8, paragraph 3, of the same decree which refers only to the acts and documents published pursuant to the legislation on transparency in the Transparent Administration section of the institutional website.

Similarly, Articles 57 and 58 of the Statute of the Union, of the Municipalities of the Reno, Lavino and Samoggia Valleys which - without going into the merits of the suitability of the Statute as a suitable legal basis pursuant to the aforementioned art. 2-ter, paragraphs 1 and 3, of the Code - in any case concern data and information other than those subject to publication.

On the other hand, the state legislation of the sector, also referred to by the Union of Municipalities, is applied, where it is provided that "All the resolutions of the other local bodies are published by publication on the praetorian notice board of the municipality where the body is based, for fifteen consecutive days, except for specific provisions "(art. 124, paragraph 2, of legislative protection of personal data [,] [ndo] obscures in the published documentation the data and information suitable for identifying, even indirectly, the interested parties "after the expiry of the 15 days foreseen for publication in the praetorian register.

With respect to this legislative provision, the body's objection cannot be accepted according to which the expected stay beyond fifteen days would be supported by the importance of the "role of local policeman [...], also for the purposes of public security, [which would justify] a public interest in the publication of these types of documents, even beyond fifteen canonical days ", as well as by the utility" that citizens should know the relative name ", also considering that" the need to inform the population about the name of the staff of the municipal police, given the recent reorganization of the service which concerned all the

municipalities of the Union ».

This is because the state legislation in the sector on transparency is also clear on this point and provides for the possibility on the part of the pp.aa. to publish "data, information and documents that are not obliged to publish pursuant to this decree or on the basis of a specific provision of law or regulation, in compliance with the limits indicated in article 5-bis", but always "proceeding to anonymous indication of any personal data present "(Article 7-bis, paragraph 3, of Legislative Decree no. 33/2013).

On the other hand, what is also reported by the claiming municipal police officers in the complaint presented to the Guarantor, who instead contested the dissemination of their personal information, which could "jeopardize their security, without this was necessary and / or functional to the publication of the Resolutions in question or even less to the management of their employment relationship ". This also considering that «among their competences there are those of Judicial Police, as well as auxiliary functions of Public Security, which involve working frequently in particular and delicate situations that also interfere with the private sphere of each agent». Therefore, the "indication was completely superfluous and the data could be indicated in a grouped and anonymous manner, indicating the number of operators, possibly divided by degrees, and assigning the new matriculation numbers by linking them to those previously owned in the territory of origin". According to what the complainants represent, moreover, "there is no public interest in knowing the precise identity of the agents in charge of certain services for the community, nor bad exercise of public power in not communicating it. The only public interest that can be found is to know if there is a particular service, the office responsible for carrying it out, its location and existence and the number of employees in this position and how much the institution invests in these services. Likewise, an adequate exercise of the public power vested in the data controller can be well achieved by providing such information, without indicating the identity of the Local Police officers ". Furthermore, according to what has been declared, "Union Reno Lavino Samoggia itself is aware of the delicacy of the work of its Local Police agents, all having competences and functions of Judicial Police, as well as auxiliary functions of Public Security, so much so that, unlike other employees of the body without these roles, are not provided with an identification tag to be affixed to the uniform, but only with a plaque with the serial number ".

However, it is acknowledged - without this affecting the judgment regarding the lawfulness of the processing but as an element for the evaluation of the conduct - of the good faith of the entity and of the circumstance that, even in the response to the exercise of rights by the of the complainants against the Union of Municipalities, "the body found the request without



postponing the request, carrying out an assessment of the administration's behavior which at the time seemed correct also considering that the personal data referred to the names of officers of the municipal police, which were considered to be minimal data, necessary and relevant to achieve the purpose deemed legitimate by the Administration, namely that of informing citizens about the new composition of the local police force ", as well as of the fact that" the request for exercise of the rights had been carried out in the vicinity of the application of Regulation (EU) 2016/679 and that was the first time that I admitted it nistrazione found itself in such a situation, in a context characterized by strong conflict [given the trade union disputes in progress] ».

#### 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, also with reference to the online praetorian register.

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 Union of Municipalities of the Reno, Lavino and Samoggia Valleys is noted, as the dissemination of data and personal information of the claiming municipal police officers contained in the documents and related attachments, better identified above in par. 1, published on the institutional website (Council Resolution no. XX of the XX; Executive Determination no. XX of the XX; Executive Determination no. XX of the XX and Executive Determination no. XX of the XX), is:

- devoid of suitable regulatory conditions, for the period exceeding the fifteen days provided for by art. 124, paragraph 1, of the d. lgs. n. 267/2000 for publication in the praetorian register, in violation of art. 2-ter, paragraphs 1 and 3 of the Code, as well as the basic principles of the processing contained in art. 5, par. 1, lett. a) and c); 6, par. 1, lett. c) and e), par. 2 and par. 3, lett. b), of the GDPR;
- does not comply with the principle of "data minimization" - with reference to the clear indication of the place of work and type of duties / competences performed - considering that they have not been "limited to what is necessary with respect to the

purposes for which are treated ", 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 has declared that he has removed the personal data object of the complaint from the web, without prejudice to what will be said on the application of the pecuniary administrative sanction, the conditions are not 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 Union of Municipalities of the Reno, Lavino and Samoggia Valleys 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 RGD, 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 present case.

The Guarantor, pursuant to art. 58, par. 2, lett. i) and 83 of the RGD, 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 RGD), referring to complainants and other interested parties for a

total number of 59 subjects. The Union of the Municipalities of the Reno, Lavino and Samoggia Valleys is in any case a medium-sized body (just over 110,000 inhabitants), which, following the request of the Office, 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 € 13,000.00 (thirteen 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 Union of Municipalities of the Reno, Lavino and Samoggia Valleys in the terms indicated in the motivation pursuant to Articles 58, par. 2, lett. i), and 83 of the GDPR

#### ORDER

to the Union of Municipalities of the Reno, Lavino and Samoggia Valleys, in the person of the pro-tempore legal representative, with registered office in Via dei Mille 9 c / o Municipality of Casalecchio di Reno - 40033 Casalecchio di Reno (BO) - Tax Code 91311930373 to pay the sum of € 13,000.00 (thirteen thousand) as a pecuniary administrative sanction for the violations mentioned in the motivation;

#### INJUNCES

to the same Union of Municipalities to pay the sum of € 13,000.00 (thirteen 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, March 25, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Ghiglia

THE SECRETARY GENERAL

Mattei