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Provision of 11 January 2023

Register of measures

no. 4 of 11 May 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, the lawyer Guido Scorza, member, 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](http://www.gpdp.it), doc. web n.9107633 (hereinafter "Regulation of the Guarantor n. 1/2019");

HAVING REGARD to the documentation in the deeds;

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

SPEAKER Prof. Pasquale Stanzione;

WHEREAS

1. The complaint.

With a complaint presented on the XX, subsequently integrated with notes on the XX and XX, Mr. XX complained of the

publication "on XX [...] on the personal Facebook page [of] the councilor for social policies of the Municipality of Calvi Risorta, of a report [previously submitted by the complainant and] addressed to the Prefecture of Caserta and the Campania Region [...] with which he expounded [a] the repeated violation [...] of the Ordinance of the Campania Region No. XX" by the aforementioned councilor and other administrators of the municipality".

In particular, according to what was represented by the complainant, the report published on the aforementioned Facebook profile of the Councilor "reports [...] the entry protocol of the Prefecture of Caserta as well as my name, surname, residence" and the same had been "addressed and sent exclusively to the Prefecture of Caserta and the Campania Region and never to the Municipality of Calvi Risorta or to the councilor [...]".

The complainant also represented that the aforesaid post of the Councilor's XX "was shared on the Facebook page of the Mayor of the Municipality of Calvi Risorta [...] who, in this way incurred the same violations", and that the same post would have been "viewed, commented and shared, for about 15 days, by hundreds of people".

With a subsequent supplementary note to the complaint, the complainant represented that "the Prefecture of Caserta erroneously sent the report [of the complainant] to the municipality of Calvi Risorta, rather than to the Carabinieri Command of Caserta, to which the same should have been addressed. A few hours later, the Prefecture notified the municipality of the mistake made, but the Mayor, even before registering the note erroneously received from the municipality, proceeded to send a copy to the councilor [...] who published the same on his profile Facebook, public and open".

## 2. The preliminary investigation.

In relation to the aforementioned complaint, the Office, with note dated XX, prot. XX invited the Municipality of Calvi Risorta and the Prefecture-Territorial Office of the Government of Caserta to provide any useful information in relation to the above story.

The Municipality, in response to the aforementioned request, with a note of the XX, prot. XX, stated that:

- the Mayor "received on the XX date a copy of the complainant's report with the XX date from the municipal protocol office.

Following the reading of the report, which reported the name of the Councilor [the Mayor] proceeded to address the mail to the latter. The Councilor [...], after receiving a copy of the report, published a post on Facebook, obscuring the sensitive data of the complainant [...]"

- "Until the publication of the post on Facebook, neither the [Mayor] nor the Councilor [...] were aware of the second PEC of the

Prefecture, which arrived only at a later time and only after the [Mayor] had finished sorting the mail, which indicated the error in sending the report to the PEC of the Municipality of Calvi Risorta instead of that of the Carabinieri Command, to which it was addressed. From the moment the error became known, the Councilor [...] proceeded to eliminate the post on Facebook, without leaving any trace";

- "Following the episode that is the subject of the complaint, internal checks were made, which showed that the report was sorted by mere error, without noting that the Municipality of Calvi Risorta was not among the recipients of the PEC by the Prefecture" ;

The Prefecture of Caserta, in response to the aforementioned request, with note prot. XX of the XX, represented that "the document [...], sent for mere clerical error to the certified e-mail address of the municipality of Calvi Risorta on the XX at XX hours clearly indicated the Provincial Command of the Carabinieri of Caserta as the only recipient; immediately after, at 17:57 with prot. no. [...] the clerical error was communicated to the municipality of Calvi Risorta".

The aforementioned Prefecture, with subsequent note of the XX, prot. XX, specified that he had requested clarifications on what happened to the Municipality, which would also have represented that "[following the episode subject of the complaint, internal investigations were made, which showed that the report had been sorted by mere error, without noting that among the recipients of the PEC by the Prefecture, there did not appear to be the Municipality of Calvi Risorta ".

In order to define the investigation, with notes of the XX, prot. XX and XX, the Office requested further elements directly from the Mayor and Councilor for social policies of the Municipality, in particular, regarding the legal basis and purposes of the processing carried out through the publication of the document (elements not supplied with the note of the Municipality of the XX, prot. XX), the timing of the receipt of communications from the Prefecture by the aforementioned administrators, the duration of the publication and the effective date of the effective removal of the posts from the social network, taking into account the short period of time elapsed between the two prefectural communications and what was represented by the complainant regarding the circumstance that the post would have been "viewed, commented on and shared, for about 15 days, by hundreds of people".

In the absence of a reply, these requests were reiterated with a note of the XX, prot. no. XX.

In response to the Guarantor's request for elements, the Councilor for social policies with a note dated XX, prot. XX, and the Mayor, with a note dated XX prot. XX (with which he referred in full to what was represented by the Councilor with the note of

the aforementioned XX) declared that:

- "what the [complainant] disputes is the diffusion on the [...] personal facebook page of his report - received from the Prefecture of Caserta and for information to the Municipality - addressed to the local Carabinieri station - already previously and widely disseminated by the same exponent on the IT channels managed by it: Facebook channel through which the exponent broadcast a live broadcast on the disputed conduct and blog XX [...];
- the circumstance of having "relaunched" a datum already made public by the person who produced it should not constitute a detriment to the complainant since the publication of the content of the report [...] took place - by the complainant himself - before to that [...] on their Facebook page [...]. This circumstance should, reasonably, have made the personal nature of the information disappear [...].
- This is all the more so for the publication methods described below:
- The publication took place [...] obscuring all the personal data of the complainant excluding name and surname, data evidently already known to the public opinion in consideration of the fact that, the same complainant, in Facebook live broadcasts and in the articles on his blog - including the one for the disputed facts - presents himself with his name and surname and not with a pseudonym;
- As far as it is possible to remember [...] the publication took place on a facebook page which at the time [the Councilor] recalls was "closed" and which was made "open" only after the events;
- the publication took place for a very few days and was definitively removed, so much so that it is no longer possible to trace it [...].
- With reference to the circumstances, times and methods with which [a] copy of the report was acquired, [...] it was sent by the Prefecture to the Municipality of Calvi Risorta and the protocol officer - once registered under no. XX of the XX - assigned it to the Mayor who - referring the report [to the Councilor] - forwarded it [to this] unaware - in the first instance - of the error of the Prefecture".
- "the matter was the subject of a complaint in criminal proceedings by the same [complainant] which ended with the provision of dismissal by the GIP n.XX.". (which was also attached).

Finally, in the context of the same investigation, the Municipality, with a note of the XX, prot. no. XX, represented that "The role of the municipal offices in the affair [was limited] to the registration in the computer protocol of the prefectural letter and its

transmission to the political-administrative top of the institution. In particular, the note from the Prefecture of Caserta reporting the report of the [complainant] was sent by the Prefecture to the Municipality of Calvi Risorta and the protocol officer - once registered [...] - assigned it to the Mayor who, referring the report to the assessor [...], forwarded it to him unaware that the aforesaid note should not reach the Municipality".

With specific reference to the conduct of the Mayor of Calvi Risorta, Dr. Giovanni Rosario Lombardi, following 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 deed of the XX, prot. no. XX, ascertained the violation of Article 157 of the Code in relation to the failure to respond within the established terms to the request for information formulated by the Office with note dated XX, prot. XX, and with act of the XX, prot. XX, ascertained that, by disseminating on the Facebook page of the Mayor of Calvi Risorta, the report of the complainant, reporting his personal data - which took place by sharing the post published by the Councilor on his Facebook page - he processed personal data not compliant with the relevant regulations on the protection of personal data contained in the Regulation, as carried out in the absence of a legal basis.

Therefore, with the same notes the violations carried out were notified to the Mayor of the Municipality (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 Regulation and inviting the aforementioned 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 Law No. 689 of 24 November 1981).

With regard to the contestation of the XX, the Mayor did not send his own defense briefs, while with regard to the contestation of the XX, with note of the XX, prot. XX, the same presented a defense brief, on headed paper of the Municipality, declaring, in particular, that:

The publication on the personal profile (and not on a page open to all) of the complaint was carried out in the context of a political opposition which, already present at the material time (i.e. in the short period of publication of the complaint), is manifested in all its evidence, with the electoral campaign preparatory to the elections of the XX. [The complainant] was nominated for Mayor of an alternative list [...] to the one which saw the Mayor of the Municipality of Calvi Risorta reconfirmed [...]. [The] current council composition sees the presence of [...] 4 opposition municipal councilors, including the [claimant].

Precisely within this context the [complainant] already on the twentieth date (four days before the post of the [Councillor], then,

shared [or] by the [Mayor]) had communicated to the citizens of Calvi Risorta the presentation of the complaint, denouncing the violation of the emergency requirements, as well as the use of the municipal car.

Against this, always in the context of a political confrontation, the dissemination of the news [...] was aimed at adequately informing all citizens of the campaign, even defamatory, which was being implemented against the representatives of local institutions. Not surprisingly, the post in question, in addition to the dissemination of the complaint (already disseminated by the [complainant], as emerged and definitively ascertained in the criminal court), contained a clear indication of the reasons (political and in the public interest) underlying the publication of the data, reading that "in such a delicate moment in Calvi Risorta there are people who are trying with all their strength to oppose the work of administrators who daily do their best for the good of the country [...]". In short, in the face of a (political) campaign, unjustly denigrating the work of public administrators, it was deemed necessary to adequately explain to the City what had happened and what was the intention of the Administration, i.e. to do their best "for the good of the country.... do all we can for the good of our citizenship". rather than tell the content of the complaint presented by a person who in a few months would be a candidate for Mayor of the local community, it was felt that the full dissemination of the complaint, with the identification of its signatory, was the most suitable tool to guarantee a fair knowledge to citizens of the disputed facts and of the facts as they really happened. And, moreover, if whoever signs this document (and, in general, a Mayor or Councilor of any Municipality, more or less large) does not have the power to tell its citizens the truth, in the face of mystifications of reality, used by political opponents, really means abandoning the representatives of the institutions to the continuous smear campaigns of keyboard lions who contest to assume the role of political interlocutor.

That is, in the face of a complaint that the [complainant] did not limit himself to presenting in the competent offices, but which he felt he had to publish on Facebook to denigrate the work of a Mayor or Councilor, it would be truly illogical to think that the only tool to protect public administrators is the criminal complaint. [...]

In short, all the elements listed above, if not at least confirming the absence of a violation of the law, should be carefully evaluated, also together with the fact that the information was removed a few days later, with the consequence that the effects of the dissemination of the data (already disseminated by the [complainant]) are extremely limited, also due to the limited territorial dimension of the Municipality.

3. Outcome of the preliminary investigation.

### 3.1. The regulatory framework.

The processing of personal data must take place in compliance with the applicable legislation on the protection of personal data and, in particular, with the provisions of the Regulation and of the Code.

"Personal data" means "any information relating to an identified or identifiable natural person ("data subject")". Furthermore, "an identifiable natural person is one who can be identified, directly or indirectly, with particular reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more characteristic elements of his physical, physiological, genetic, psychic, economic, cultural or social identity" (Article 4, paragraph 1, no. 1, of the Regulation).

The processing of personal data carried out by public subjects is, as a rule, lawful only if necessary "to fulfill a legal obligation to which the data controller is subject" or "for the execution of a task of public interest or connected to the exercise of public powers vested in the data controller" (Article 6, paragraph 1, letters c) and e), of the Regulation). It is also provided that "Member States may maintain [...] 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), by determining more precisely specific requirements for processing and other measures aimed at guaranteeing lawful and correct processing [...]" (Article 6, paragraph 2, of the Regulation), with the consequence that in the present case, in the Italian legal system, Article 2-ter of the Code, in the text in force at the material time (prior to the amendments made by Legislative Decree No. 139 of 8 October 2021).

In this context, public subjects can disclose personal data if this operation is provided for "by a law or, in the cases provided for by law, a regulation" (Article 2-ter, paragraphs 1 and 3, of the Code, in the text in force at the material time; see also provision no. 243 of 15 May 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 bodies», in the Official Journal no. 134 of 12 June 2014 and in [www.gpdp.it](http://www.gpdp.it), web doc. no. 3134436). The data controller, even in the presence of a condition of lawfulness, is then, in any case, required to respect the principles regarding the protection of personal data, including the principles of "lawfulness, correctness and transparency" (art. 5, paragraph 1, letter a), of the Regulation), according to which the data must be "processed in a lawful, correct and transparent manner in relation to the data subject".

The Supervisory Authority, within the scope of the tasks and powers assigned by the Regulation, ensures, among other things, the application of the Regulation and deals with complaints by carrying out the appropriate investigations, including on the

correct application of the data protection regulations by of the owners (art. 57 par.1, lett. a), f) and h) and 58 of the Regulation). For this purpose, the Authority has the power to order the data controller to provide any information required for the performance of its duties (Article 58, paragraph 1, letter a), of the Regulation).

The art. 157 of the Code also provides that, in relation to the powers pursuant to art. 57 of the Regulation and for the performance of its duties, the Guarantor may request the owner, the manager, the representative of the owner or manager, the interested party or even third parties, to provide information and to exhibit documents and that the failure to reply to this request, within the indicated term, it renders applicable the pecuniary administrative sanction envisaged by art. 83, par. 5 of the Regulation (see art. 166, paragraph 2, of the Code).

### 3.2. Failure to respond to the Guarantor's request for information, pursuant to art. 157 of the Code.

The elements adduced in the defense writings by the Mayor of the Municipality of Calvi Risorta, owner of the treatment, although worthy of consideration, do not allow to overcome the findings notified by the Office with the proceedings initiation documents of the XX, prot. no. XX, and of the XX, prot. XX.

In particular, with regard to the dispute relating to the failure to respond within the terms of the request for information from the Office of the XX (prot. n.XX), reiterated with a note of the XX (prot. n. XX), the Mayor did not submit defense briefs in relation to the objection formulated with deed of the XX, prot. no. XX.

In this regard, it should be noted that, also in the light of the general principles of good performance, efficiency, effectiveness and cost-effectiveness of the administrative action (Article 97 of the Constitution, as well as Article 9, paragraph 1 and 10, paragraph 3, of the Internal Regulation of the Guarantor n. 1/2019 of 4 April 2019, web doc. n. 9107633), the response to the request for information from the Office of the XX, reiterated with a note from the XX, was received after the deadlines set by the request from the Guarantor, in particular, only after the start of the procedure for the adoption of the corrective and sanctioning measures of the XX, prot. no. XX. – affected the completeness and speed of the preliminary investigation, resulting, therefore, ascertained the violation of art. 157 of the Code. This delay has therefore affected the completeness and speed of the preliminary investigation, resulting, therefore, ascertained the violation of art. 157 of the Code.

### 3.3. The processing of the complainant's data by the Mayor.

With regard to the objection formulated with deed of the XX, prot. XX, it is ascertained that the personal data of the complainant reported in his report of the XX to the Prefecture, were published on the Facebook profile of the Councilor for



social policies of the Municipality with the post of XX, which was then shared by the Mayor on the same social network , thus putting in place the same treatment.

In this regard, it is preliminarily noted that in the published document only the data of the complainant relating to the date and place of birth, the address of residence and the email address have been (partially) obscured, while the identification data of the claimant and his handwritten signature.

It should also be noted that the processing of personal data which is the subject of the complaint made by the Mayor with the sharing of the Councilor's post, is to be traced back to the institutional and non-private sphere (family or domestic). In this regard, both the occasion and the methods of acquiring the document - as described in the notes of the XX, XX and XX cited - and the nature of the story, which concerns activities carried out in the management of the epidemiological emergency .

In fact, it has been ascertained that the published document was acquired by the protocol officers of the Municipality and transmitted to the Mayor, who, having noted that the content of the deed was referred to the Assessor, proceeded to assign it to the latter, regarding the of institutional activities. Both the notification of the complainant to the Prefecture and the content of the post of the Councilor of the XX, shared by the Mayor ("In such a delicate moment in Calvi Risorta, there are people who try with all their strength to oppose the work of administrators who do their best every day for the good of the country. For our part, we continue to do our utmost for the good of our citizenship..."). The traceability of the treatment to the institutional sphere is confirmed by the Mayor himself in the defense brief, who states that the publication of the document was carried out in order to "guarantee a loyal knowledge to the citizens of the disputed facts", "in the face of a campaign ( politics), unjustly denigrating the work of public administrators".

With reference to the reconstruction of the story, with the notes of the XX and XX, it was specified that the note would have been sent by the Prefecture to the Municipality "for information" and not "by mistake", and that "therefore the municipal offices could never have imagine that it was a matter of confidential information received by the Municipality by mistake and that, therefore, the same should be trashed" (note XX). This clarification is, in part, contradictory with what is reported in the same note ("the protocol officer [...] unaware that the aforesaid should not reach the Municipality") and in the previous note from the Municipality of the XX ("Following the episode subject of the complaint, internal investigations were made, which showed that the report had been sorted by mere error, without noting that the Municipality of Calvi Risorta did not appear to be among the recipients of the PEC by the Prefecture). On this point, the Prefecture of Caserta, with the XX note, prot. XX, specified that "the

document prot. no. XX [bearing the notification of the complainant], sent for mere clerical error to the certified e-mail address of the municipality of Calvi Risorta on XX at XX hours clearly indicated as the only recipient the Provincial Command of the Carabinieri of Caserta; immediately after, at XX o'clock with prot. no. XX the clerical error was communicated to the municipality of Calvi Risorta".

As highlighted above, public entities may process personal data only if necessary "for the execution of a task of public interest or connected to the exercise of public powers vested in the data controller" (Article 6, paragraph 1 , letter e, of the Regulation). In this context, public subjects can disclose personal data if this operation is provided for "by a law or, in the cases provided for by the regulatory law" (Article 2-ter, paragraphs 1 and 3, of the Code, as in force at the time of the facts; see also provision no. 243 of 15 May 2014, "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 by other obliged entities", cit.), and in compliance with the principles of "lawfulness, correctness and transparency" (articles 5, paragraph 1, letter a) of the Regulation).

That said, also taking into account the fact that "until the publication of the post on Facebook, neither the [Mayor] nor the Councilor [...] were aware of the second PEC of the Prefecture", the publication of the document containing the complainant's personal data on Facebook - regardless of whether it was transmitted "for knowledge" or "by mistake" - according to the legal framework referred to above, it should have been supported by a suitable legal basis (rule of law or regulation) .

On this point, the Mayor with the defense statement declared that "the dissemination of the news [...] was aimed at adequately informing all citizens of the campaign, including defamatory ones, which was being implemented against the representatives of local institutions. Not surprisingly, the post in question [...] contained a clear indication of the reasons (political and in the public interest) underlying the publication of the data [...]" and that "in the face of a (political) campaign, unjustly denigrating the work of public administrators, it was deemed necessary to adequately explain to the City what had happened and what was the intent of the Administration, i.e. to do our best "for the good of the country .... to do our utmost for the good of our citizens".

In the same memorandum, the Mayor also highlighted that "in the face of a complaint that the [complainant] did not limit himself to submitting to the competent offices, but which he deemed it necessary to publish on Facebook to denigrate the work of a Mayor or a Councilor, it would be really illogical to think that the only tool to protect public administrators is the criminal complaint".

Although these circumstances and observations may be subject to assessment in the context of the proceeding, the Mayor has not indicated an adequate legal basis for the treatment object of the complaint, or "a rule of law or, in the cases provided for by the regulation law" which provides for it (art. 2-ter, paragraphs 1 and 3, of the Code, as in force at the material time).

Therefore, the generic reference to the duties of information and transparency towards citizens made in the memory does not appear sufficient, instead it is necessary to identify the specific provision that provides for the treatment. The obligations of publicity and transparency, the relative methods and times, the system of knowability and accessibility of the documents, as well as the institutional information and communication activities are promptly regulated by the legislator; among these, the disclosure of the document that is the subject of the complaint is not envisaged by public administrations"; provision of the Guarantor of 15 May 2014 n. 243, "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", web doc. n. 3134436, cit.; Law 150 of 7 June 2000, "Regulation of information and communication activities of public administrations").

Consequently, the publication of the document with the established methods was carried out by the Mayor, in the absence of the necessary legal basis, in violation of art. 6, par. 1, lit. e), of the Regulation and of the principle of "lawfulness, correctness and transparency" pursuant to art. 5, par. 1, lit. a) of the Regulation, as well as of the art. 2-ter, paragraphs 1 and 3, of the Code (in the text in force at the material time).

With the aforementioned defense brief, the Mayor also highlighted that the complainant "already on the XX date (four days before the post of the [councillor], then, shared [or] by the [Mayor]) had communicated to the citizens of Calvi Risorta the presentation of the complaint, denouncing the violation of the emergency provisions, as well as the use of the municipal car".

In this perspective, with the note of the XX, it had already been highlighted that the publication of information "already previously and widely disseminated by the same exponent on the IT channels managed by himself" (Facebook profile and blog XX"), and in particular, the fact "of having "re-launched" a datum already made public by the person who produced it should not cause harm to the complainant" and "should, reasonably, have made the personal nature of the information disappear".

In this regard, the object of the complaint is the publication of a document containing personal data of the complainant which the Mayor has had access to due to the tasks or functions performed within the Municipality - and not the publication of mere information relating to the object of the complaint, news already made public by the interested party himself - for which the

legal framework referred to above applies in the public sphere, according to which the data can be processed only if necessary for the execution of a task of interest public or connected to the exercise of public powers with which the data controller is vested (article 6, paragraph 1, letter e, of the Regulation) and dissemination is permitted only "when required by law or, in cases provided for by the regulatory law" (Article 2-ter, paragraphs 1 and 3, of the Code, as in force at the material time), and in compliance with the principles of "lawfulness, correctness and transparency" (Articles 5, par. 1, letter a) Regulation).

#### 4. Conclusions.

In the light of the assessments reported above, it should be noted that 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 □ do not allow to overcome the findings notified with deeds of the XX, prot. XX, while there are no briefs in relation to the findings notified by the Office with the act of XX, prot. no. XX.

In relation to these findings, the present proceeding cannot be dismissed, since none 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 violation by the Mayor of the Municipality of Calvi Risorta is noted:

of article 157 of the Code, in relation to the failure to respond, within the established deadlines, to the request for elements formulated by the Guarantor with a note of the XX, reiterated with a note of the XX;

of the articles 5, par. 1, lit. a) and 6, par. 1, lit. e), of the Regulation, as well as of the art. 2-ter, paragraphs 1 and 3, of the Code (as in force at the material time), in relation to the dissemination of the document containing personal data, the subject of the complaint, on the Mayor's Facebook page, which took place by sharing the post published by the Assessor, in the absence of a suitable regulatory prerequisite.

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, as referred to by art. 166, paragraph 2, of the Code.

In this context, considering, in any case, that the conduct has exhausted its effects, as the posts object of the complaint are no longer accessible because they were removed a few days after publication, and the conditions for the adoption of further 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; art. 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, according to the circumstances of each single case" and, in this context, "the College [of the Guarantor] adopts the injunction order, with which it also orders the application of the ancillary administrative sanction of its publication, in whole or in part, on the website of the Guarantor pursuant to article 166, paragraph 7, of the Code" (art. 16, paragraph 1, of the Guarantor's Regulation no. 1/2019).

In this regard, taking into account the art. 83, par. 3, of the Regulation, in the present case, 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 which the following is observed.

In relation to the aforementioned elements, it was considered that the failure to respond within the time limits to the request of the Guarantor of the XX, affected the speed of the preliminary investigation, resulting in the violation of art. 157 of the Code. It should also be noted that the Mayor, with regard to the same request for information, reiterated on the XX date - i.e. on the same date as the dispute of the administrative violation - provided a reply, albeit beyond the deadlines assigned by the Office for the reply.

On the other hand, there are no previous pertinent violations committed or previous provisions pursuant to art. 58 of the Regulation.

With regard to the nature, seriousness, duration of the violation, and the number of interested parties and the level of damage suffered by them, all the circumstances highlighted in the brief must be favorably considered, and in particular, the context in which the violation was committed (first phase of the management of the epidemiological emergency), the circumstance that the information relating to the facts covered by the complaint had already been disseminated by the interested party on various information channels, the blacking out of the published document of some personal data of the complainant (in particular, of

the data relating to the date and place of birth, the address of residence and the email address), the removal after a few days of the published post.

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 1000 (one thousand) euros for the violation of Article 157 of the Code as a pecuniary administrative sanction withheld, pursuant to the art. 83, par. 1, of the Regulation, effective, proportionate and dissuasive.

Taking into account that the preliminary investigation concerned the unlawful processing of personal data contained in a document of which the Mayor became aware in the performance of his institutional activity, it is also believed that the ancillary sanction of publication on the website of the Guarantor of this provision, provided for by art. 166, paragraph 7, of the Code and by art. 16 of the Regulation of the Guarantor n. 1/2019.

Finally, it is believed that the conditions set forth in art. 17 of Regulation no. 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

#### ALL THIS CONSIDERING THE GUARANTOR

pursuant to art. 57, par. 1, lit. f), of the Regulation, declares the conduct held by the Mayor of Calvi Risorta to be unlawful, described, in the terms set out in the justification, consisting in the violation of articles 5, par. 1, lit. a) and 6, par. 1, lit. e), of the Regulation and of the articles 2-ter, paragraphs 1 and 3, and 157 of the Code (in the text prior to the amendments made by Legislative Decree No. 139 of 8 October 2021, converted, with amendments, by Law No. 205 of 3 December 2021);

#### ORDER

to dr. Giovanni Rosario Lombardi, Mayor of Calvi Risorta, Fiscal Code XX, pursuant to articles 58, par. 2, lit. i), and 83, par. 5, of the Regulation and of the art. 166, paragraph 2, of the Code, to pay the sum of 1,000.00 (one thousand) euros as an administrative fine for the violations indicated in the justification;

#### ENJOYS

to dr. Giovanni Rosario Lombardi to pay the sum of 1,000.00 (one thousand) euros 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 deeds pursuant to art. 27 of the law no. 689/1981. In this regard, it is recalled that the offender retains the right to settle the dispute by paying - always according to the methods indicated in the annex - an amount equal to half of the fine imposed, within 30 days from the date of notification of this provision, pursuant to art. 166, paragraph 8, of the Code (see also art. 10, paragraph 3, of

Legislative Decree no. 150 of 09/01/2011);

HAS

the publication of this provision on the Guarantor's website pursuant to art. 166, paragraph 7, of the Code;

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.

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, 11 January 2023

PRESIDENT

station

THE SPEAKER

station

THE SECRETARY GENERAL

Matthew