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Injunction order against Rome Capital - 17 December 2020

Register of measures

no. 280 of 17 December 2020

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

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

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

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

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 Station;

WHEREAS

1. Illegality of the processing of personal data carried out by Roma Capitale through the "Tu Passi" booking system.

With provision no. 81 of 7 March 2019, adopted following a complex preliminary investigation and assessments carried out pursuant to art. 58 of the Regulation and 157 and 158 of the Code, the illegality of the processing of personal data of users and employees carried out by Roma Capitale through the "TuPassi" system, provided by Miropass s.r.l. (hereinafter, the "Company"), used, since 2015, for the purpose of booking appointments and providing counter services.

With the aforementioned provision, the Guarantor declared the treatment carried out with this system unlawful due to violation of articles 5, 13, 14, 28 and 32 of the Regulation and articles 13 and 29 of the Code, in relation to the treatments carried out prior to the changes made to the same by Legislative Decree no. 101/2018.

In particular, it is ascertained that the treatment was carried out in contrast:

- with the principles of lawfulness, correctness and transparency (articles 5, paragraph 1, letter a) and with the obligation, placed on the data controller, to provide information to users and employees (articles 13 and 14 of the Regulation, formerly Article 13 of the Code, prior to the amendments pursuant to Legislative Decree No. 101/2018);

- with the obligation to regulate, with an act having the characteristics referred to in art. 28, paragraphs 2 and 3 of the Regulation (formerly art. 29 of the Code, prior to the amendments pursuant to Legislative Decree no. 101/2018), the processing of personal data entrusted, on behalf of the owner, to the Company within the assistance and maintenance services for the “TuPassi” system;

- with the obligation to adopt technical and organizational measures to guarantee a level of security appropriate to the risk, taking into account, in particular, the nature, object, context, purposes and risks inherent in the processing for the rights and freedom of natural persons (Article 32 of the Regulation).

The same provision prescribed "adequate corrective actions aimed at eliminating the technical and organizational criticalities (see par. from 3.1 to 4)", enjoining the Body to communicate the initiatives undertaken, within 90 days from the date of receipt of the provision , providing in this regard an adequately documented response (cf. cited provision).

With the note of the XX (prot. n. XX), the Office notified the provision to the Entity at the same time as the start of the procedure, pursuant to art. 166, paragraph 5, of the Code, for the adoption of the measures referred to in article 58, paragraph 2, of the Regulation, inviting the aforesaid owner to produce defense writings or documents to the Guarantor or to ask to be heard by the Authority (art. 166, paragraphs 6 and 7, of the Code; as well as article 18, paragraph 1, of law no. 689 of 11/24/1981).

With note of the XX, prot. XX, the Entity has sent its defense writings in relation to the violations notified, representing, in particular, that it has "planned the implementation of all the appropriate activities of competence necessary to guarantee punctual fulfillment of the regulatory provisions" and that it has proceeded "to the designation of the company [...] as data processor [...] with provision digitally signed on XX (XX)", also reserving the right to communicate, within the times and in the manner provided for by provision no. 81 of 2019, "the initiatives undertaken for the implementation of the provisions contained in the provision, with particular reference to the IT security profiles in the data traffic between the systems constituting the Tupassi architecture".

During the investigation, the Entity provided, at various times, also at the specific request of the Office (see, for example, notes of the XX, prot. XX and of the XX prot. n. XX), further elements and a copious documentation, not always pertinent, aimed at documenting the fulfillment of the provisions of provision n. 81 of 7 March 2019 (cf., minutes of the hearing convened ex officio at the offices of the Guarantor of the XX and notes of the XX, prot. n. XX, of the XX, prot. n. XX and of the XX, prot. n. XX ).

The complete fulfillment by the Entity of the prescriptions given with the provision of 7 March 2019, n. 81 was definitively taken over by the Office with the note of the XX, prot. XX.

2. Conclusions.

In the light of the statements made by the data controller in the defense writings □ the truthfulness of which may be called upon to answer pursuant to art. 168 of the Code □ and the documentation produced by the same, also taking into account that the controller has not disputed the merit profiles ascertained with the provision of 7 March 2019, n. 81 and notified by the Office with the act of initiation of the procedure, the Office's assessments regarding the illegality of the processing of personal data, users and employees, carried out by the Organization through the "Tu Passi" system for the reservation of services at the counter, for violation of articles 5, 13, 14, 28 and 32 of the Regulation.

Although the treatment was undertaken by the Entity in the period prior to the entry into force of the Regulation (the "Tu passi" system appears to have been adopted since 2015), for the purposes of identifying the applicable legislation, in terms of time, it is necessary keep in mind that, based on the principle of legality pursuant to art. 1, paragraph 2, of the law no. 689/1981, "The laws that provide for administrative sanctions are applied only in the cases and in the times considered in them". From this follows the need to take into consideration the provisions in force at the time of the committed violation; in the case in question, given the permanent nature of the disputed offence, this moment must be identified at the time of cessation of the unlawful

conduct, determined with the implementation of the provision of 7 March 2019, n. 81 and therefore in full force of the provisions of the Regulation and of the Code (as amended by Legislative Decree 101/2018).

The violation of the aforementioned provisions therefore makes the administrative sanction provided for by art. 83, par. 4 and 5 of the Regulation, pursuant to articles 58, par. 2, lit. i) and 83, par. 5, of the same Regulation as also referred to by art. 166, paragraph 2, of the Code.

In this framework, considering that the conduct has exhausted its effects, having been, over time, the necessary measures to fulfill the requirements set by the aforementioned provision, to make the processing compliant with the personal data protection regulations, as noted with note of the XX, prot. XX the conditions for the adoption of further corrective measures pursuant to art. 58, par. 2, of the Regulation.

3. Adoption of the injunction order for the application of the pecuniary administrative sanction and accessory sanctions (articles 58, paragraph 2, letter i and 83 of the Regulation; article 166, paragraph 7, of the Code).

The Guarantor, pursuant to articles 58, par. 2, lit. i) and 83 of the Regulation as well as art. 166 of the Code, has the power to "impose a pecuniary administrative sanction pursuant to article 83, in addition to the [other] [corrective] measures referred to in this paragraph, or instead of such measures, according to the circumstances of each single case" and, in this context, "the Board [of the Guarantor] adopts the injunction order, with which it also orders the application of the ancillary administrative sanction of its publication, in whole or in part, on the website of the Guarantor pursuant to article 166, paragraph 7, of the Code" (art. 16, paragraph 1, of the Guarantor's Regulation no. 1/2019).

In this regard, taking into account the art. 83, par. 3, of the Regulation, in this case - also considering the reference contained in art. 166, paragraph 2, of the Code – the violation of the aforementioned provisions is subject to the application of the same pecuniary administrative sanction provided for by art. 83, par. 5, of the Regulation.

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

In relation to the aforementioned elements, the large number of interested parties (users and employees) who have used the system over time for booking and managing appointments with the offices of the Organization and the duration of the overall processing, which began in 2015, were considered The methods with which, during the preliminary investigation, the Entity provided the elements of evaluation requested by the Office were also considered, through numerous submissions of

documentation, sometimes not pertinent, with inevitable effects on the timeliness of the definition of the procedure , also in the phase of verifying the correct fulfillment of provision n. 81/2019. This, also due to the operational difficulties encountered by the person in charge of data protection - moreover subject to rotations during the investigation -, in cooperating effectively and in acting adequately as a contact person for the administration as well as a "point of contact for the authority for matters related to processing" (Article 39, paragraph 1, letters d) and e) of the Regulation), due to the not always appropriate organizational choices of the Organization. For the purposes of the overall proportion of the fine, it was also considered that in relation to the obligation to inform users of the "Tupassi" system there is a specific precedent for penalties (see deed of contestation of administrative violation of 23 May 2018 n. 51, defined with enrollment in the role, pursuant to article 18, paragraph 2, of Legislative Decree 101/2018, "with reference to the processing of data carried out up to that date", see point 3.1. provision no. 81/2019 ). The same violation was again ascertained, together with the other profiles, during the checks carried out in October 2018 (see note of the XX, prot. n. XX of the start of the procedure, pursuant to article 166, paragraph 5, of the Code).

On the other hand, it was considered that, as already noted by the Guarantor, some of the disputed violations originated from the specific characteristics of the system used by the Organization for booking services, which in the "standard version", originally distributed by the supplier Company, did not allow "to configure the type of data processed and the maximum retention times "case by case", and therefore to comply with the principles applicable to data processing (Article 5, paragraph 1, spec. letters a), b), c ) and e) Regulations)" (cf. par. 5, Provision cited). Without prejudice to the attribution of the controller's liability for the disputed violations, this circumstance was in any case taken into consideration for the purpose of apportioning the fine. The commitment expressed by the Organization to conform the treatments to the regulations on the protection of personal data was also taken into account (regulation of the relationship with the supplier pursuant to article 28 of the Regulation, integration of the information, suspension of the functions reporting, identification of data retention times).

Based on the aforementioned elements, evaluated as a whole, it is decided to determine the amount of the pecuniary sanction also taking into account the phase of first application of the sanctioning provisions pursuant to art. 22, paragraph 13, of Legislative Decree lgs. 10/08/2018, no. 101, in the amount of 500,000 (five hundred thousand) euros for the violation of articles 5, 13, 14, 28 and 32 of the Regulation. In quantifying the fine, the Guarantor took into particular consideration the fact that the violations are connected to a treatment started before the definitive application of the Regulation.

Taking into account the particular delicacy and the number of data processed, it is also believed that the ancillary sanction of

publication on the website of the Guarantor of this provision should be applied, provided for by art. 166, paragraph 7 of the Code and art. 16 of the Regulation of the Guarantor n. 1/2019.

Finally, it should be noted that the conditions pursuant to art. 17 of Regulation no. 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

ALL THIS CONSIDERING THE GUARANTOR

having detected the illegality of the processing carried out by Roma Capitale for violation of the articles articles 5, 13, 14, 28 and 32 of the Regulation in the terms indicated in the justification;

ORDER

in Rome Capital in the person of the pro-tempore legal representative, with registered office in Rome, Piazza del Campidoglio, C.F. 02438750586, pursuant to articles 58, par. 2, lit. i), and 83, par. 5, of the Regulation and 166, paragraph 2, of the Code, to pay the sum of 500,000.00 (five hundred thousand) euros as an administrative fine for the violations indicated in the justification; it is represented that the offender, pursuant to art. 166, paragraph 8, of the Code (see also art. 10, paragraph 3, of Legislative Decree n. 150 of 09/01/2011), has the right to settle the dispute by payment, within 30 days, of an amount equal to half of the fine imposed, according to the methods indicated in the attachment;

ENJOYS

to Rome Capital to pay the sum of 500,000.00 (five hundred thousand) euros in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, according to the methods indicated in the attachment, within 30 days of notification of this provision, under penalty of the adoption of the consequent executive acts pursuant to art. 27 of the law no. 689/1981;

HAS

pursuant to art. 166, paragraph 7, of the Code, the publication of this provision on the website of the Guarantor, believing that the conditions set forth in art. 17 of the Regulation of the Guarantor n. 1/2019.

Pursuant to art. 78 of the Regulation, of the articles 152 of the Code and 10 of Legislative Decree 1 September 2011, n. 150, 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, 17 December 2020

PRESIDENT

station

THE SPEAKER

station

THE SECRETARY GENERAL

Matthew