[doc. web no. 9834986]

Injunction against the Municipality of Villafranca di Verona - 10 November 2022

Register of measures

no. 366 of 10 November 2022

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

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

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

HAVING REGARD TO Legislative Decree 30 June 2003, n. 196 containing the "Code regarding the protection of personal data, containing provisions for the adaptation of the national legal system to Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016, relating to the protection of individuals with regard to the processing of personal data, as well as to the free movement of such data and which repeals Directive 95/46/EC (hereinafter the "Code");

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

Given the documentation in the deeds;

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

Speaker the lawyer. Guido Scorza;

WHEREAS

1. Introduction.

The complaint complained about the publication, in the online Praetorian Register and subsequently also in the historic Praetorian Register of the Municipality of Villafranca di Verona (hereinafter "the Municipality"), of managerial provision no. XX

of XX, containing personal data of the complainant.

In particular, the complaint revealed that, "following the transfer of the place of work [to the Municipality] through the institution of mobility [the complainant communicated to the Personnel Office] to proceed with the withholding of the pay slip for the loan transfer of the fifth". Following the aforesaid communication, the Personnel Office would have published "in the Praetorian Register the managerial provision n.XX of the XX and, subsequently also in the historic Praetorian Register," containing the name and surname of the claimant, the indication of the reduced by the salary, the duration of the salary assignment, the data of the concessionaire bank accompanied by the iban code.

2. The preliminary investigation.

With a note of the XX (prot. n. XX) the Municipality, in response to a request for information formulated by the Office, declared, in particular, that:

- "The publication of the determinations in the praetorian register takes its origin from the art. 47 of law 142/1990, later merged into art. 124 of Legislative Decree 267/2000, which provides for the obligation to publish all resolutions on the praetorian register, for 15 consecutive days. [...Furthermore] the Municipality of Villafranca has included, in its regulation of offices and services, the obligation to publish all managerial decisions on the praetorian register. In fact, the art. 32, paragraph 4, of the regulation on the organization of the offices and services of the Municipality of Villafranca di Verona provides that "the decisions are published for fifteen consecutive days in the online praetorian register of the Municipality for cognitive purposes";
- "as regards the inclusion in the provisions of data relating to the name, surname, place and date of birth of civil servants" all municipal and provincial deeds and measures (even if containing data relating to the name, surname, place and date of birth of employees) are public, in compliance with art. 10 "Right of access and information" of Legislative Decree 267/2000";
- "in the case in question of the transfer of a monthly salary for the repayment of a loan taken out by a municipal employee, the provision acknowledging the transfer must mandatorily indicate the name, surname, place and date of birth of the employee otherwise the concessionary bank will not would have the elements to identify the worker requesting the loan and, therefore, would not disburse the loan requested by the same. In other words, without these data, the provision would not achieve the intended purpose";
- "these are data that anyone can know at will pursuant to art. 33, paragraph 1, of the Presidential Decree 223/89, which reads "The registrar issues certificates concerning residence and family status to anyone who requests them, without prejudice to the

limitations of the law". Therefore, these data (name, surname, place and date of birth) are already public by their nature, by virtue of the law provision just mentioned";

- "for the same reason, the provision in question must also indicate the monthly fee transferred, the effective date of the withholding, the duration of the transfer, the data of the concessionary bank and the IBAN of the same bank (the data of the bank and its IBAN are in any case already public as reported in the online information referring to the bank), [for this reason] all the data indicated are essential to allow the definition of the financing procedure requested by the employee and to allow the personnel and accounting departments to proceed the related payments to the credit institution";

- “the publication of the provision thus formulated is made in compliance with the aforementioned art. 32, paragraph 4, of the municipal regulation on the organization of offices and services and of art. 10, paragraph 1, of Legislative Decree 267/2000 and is made possible because the publication and dissemination of the data just mentioned is not (expressly) included among those prohibited”;

- "it is confirmed that, as claimed by the claimant, the provision in question was published for 15 days in the online praetorian register and subsequently in the online historical register until the twentieth century, and that, in the opinion of this Administration, both publications are not prohibited for the reasons written above. To this it should be added that the determination has an anonymised object (namely: "Transfer of monthly salary quota for repayment of a loan taken out by a municipal employee") and with this object it was published, from the outset, in the Praetorian Register online of the Municipality of Villafranca di Verona; moreover, this provision, although published on the institutional site of the Municipality, was not indexed on search engines and, therefore, the scope of knowledge of the provision itself was in any case limited”;

- "the content of the provision in question does not allow, even indirectly, to infer information of a health or judicial nature of the employee, but simply completely neutral data, necessary for the execution of a loan agreement that the same employee has signed on the basis of an opportunity granted to the same by current legislation (law n. 180/1950) as a public employee, expressly consenting, among other things, when requesting the aforementioned loan, to the processing of all data necessary for the requested purpose; these data were then processed by the offices of the Municipality in compliance with the institutional purposes and legal obligations. The complete anonymization of the entire content of the provision would not have allowed to achieve the purpose for which the provision was produced".

With a note of the XX (prot. n.XX), the Office, based on the elements acquired, the checks carried out and the facts that

emerged following the preliminary investigation, notified the Data Controller, pursuant to art. 166, paragraph 5, of the Code, the initiation of the procedure for the adoption of the provisions pursuant to art. 58, par. 2, of the Regulation, concerning the alleged violations of articles 5, par. 1, lit. a) and c) and 6, of the Regulation as well as of the art. 2-ter of the Code (in the text prior to the amendments made by Legislative Decree No. 139 of 8 October 2021), inviting the aforementioned owner to produce defense writings or documents to the Guarantor or to request to be heard by the Authority (art. 166, paragraphs 6 and 7, of the Code, as well as art. 18, paragraph 1, of Law No. 689 of 24 November 1981).

With a note of the XX (prot. n.XX), the Municipality presented a defense brief, declaring, in particular, that:

- “determination no. XX of the XX was published in the praetorian register for 15 days (from XX to XX) and subsequently in the historical archive from XX to XX (therefore for less than three months). The personal data contained therein are limited to the name and surname of the employee. The IBAN code indicated in the determination is not that of the employee but of the concessionary bank, which can be found in the online documentation released by the same bank. It was included in the determination as indispensable data [...]. The name and surname of the employee and often also the place and date of birth and, moreover, sometimes the Municipality of residence and salary items, is widely visible online, just click on the surname "Amato" on the websites of the Municipalities where it is coming into contact and also on Google and other search engines”;

- "moreover, the data disclosed (name and surname) are accessible to all, pursuant to art. 33, paragraph 1, of the Presidential Decree 223/89, without the need to demonstrate any interest, to such an extent that the registrar has the obligation to issue certificates of residence and family status to anyone”;

- "in addition to the name and surname of the employee, the determination in question indicates the monthly installment of the loan, the effective date and duration of the assignment (since, as mentioned below, these data are essential for the determination to achieve the purpose for which it was adopted). These are data that do not fall within those expressly provided for as "particular" or judicial";

- according to what was represented by the Municipality, "the regulatory references that legitimize the publication in the Praetorian register of the Body, of the determination in question are: "art. 10, paragraph 1, of Legislative Decree 267/2000 which establishes the general principle according to which "All the deeds of the municipal and provincial administration are public with the exception of those reserved by express indication of the law...";

- "art. 32, paragraph 4, of the regulation of the offices and services of the Municipality of Villafranca di Verona which

provides(s) "the determinations are published for fifteen consecutive days in the online praetorian register of the Municipality for cognitive purposes". The same publication obligation is provided for by the following art. 33, paragraph 1, of the same regulation for the remaining deeds adopted by managers (concessions, authorisations, management ordinances, etc.)";

- "Article 7-bis of Legislative Decree 33/2013, entitled, "Reuse of published data", which, in paragraph 4, provides "In cases where laws or regulations provide for the publication of deeds or documents , the public administrations shall make non-pertinent personal data unintelligible or, if sensitive or judicial, not indispensable with respect to the specific transparency purposes of the publication". On the basis of this provision, the Institutions can publish, pursuant to the aforementioned rules (Article 10 of Legislative Decree 267/2000 and Article 32 of the aforementioned municipal regulation), the provisions containing personal data, making them intelligible, if pertinent";

- "according to the computer program, the decisions that are published in the praetorian register, after 15 days, "pass" automatically into the historical archive, without the manual intervention of an operator. Based on this program, it is possible to avoid the publication of the determination in the historical archive only if a specific request is made to the Municipal Information Service (SIC), which can "force" the program from time to time, and prevent the publication of the determination in the historical archive";

- "it is clear today, also in the light of the findings of the Guarantor, that this computer system has a "flaw" since, at the time of choosing whether to publish it on the praetorian register and in which link, there had to be [...] a another item that asks the operator if he determines whether or not it should then pass through the historical archive, so that any publication in the historical archive becomes a conscious and reasoned choice of the operator";

- "in order to remedy this IT problem, on which the guarantor's note has prompted dutiful reflection and the awareness that the system described, from an operational point of view, "does not work", the Body [...], has adopted a modification to the regulation on the organization of offices and services which establishes: the limitation of the publication in the praetorian register (and no longer also in the historical archive) of only the objects of the determinations [...] except for publications made expressly mandatory by the law on transparency; the subtraction from the rule of publication in the praetorian register of the objects of all determinations [...]; with this modification also the determinations similar to the one in question will no longer be published, either as object or as text, in the praetorian register (and obviously in the historical archive) online".

3. Outcome of the preliminary investigation.

3.1 The regulatory framework.

The regulation of personal data protection provides that public bodies, in the context of the work context, can process the personal data of the interested parties, also relating to particular categories, if the treatment is necessary, in general, for the management of the employment relationship and to fulfill specific obligations or tasks established by law or by the law of the Union or of the Member States (Articles 6, paragraph 1, letter c), 9, par. 2, lit. b) and 4 and 88 of the Regulation). Furthermore, the treatment is lawful when it is "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 ), 2 and 3, and art. 9, par. 2, lit. g), of the Regulation; art. 2-ter of the Code, in the text prior to the changes made by Legislative Decree 8 October 2021, no. 139).

European legislation provides that "Member States may maintain or introduce more specific provisions to adapt the application of the rules of the [...] regulation with regard to treatment, in accordance with paragraph 1, letters c) and e), determining with greater precision specific requirements for processing and other measures aimed at guaranteeing lawful and correct processing [...]" (Article 6, paragraph 2, of the Regulation). In this regard, it should be noted that the operation of dissemination of personal data (such as publication on the Internet), by public entities, is permitted only when provided for by a law or, in the cases provided for by law, a regulation (cf. . art. 2-ter, paragraphs 1 and 3, of the Code, in the text prior to the amendments made by Legislative Decree No. 139 of 8 October 2021).

In any case, the data controller is required to respect the principles of data protection, including that of "lawfulness, correctness and transparency" as well as "data minimization", according to which personal data must be "processed in a lawful, correct and transparent manner in relation to the interested party" and must be "adequate, pertinent and limited to what is necessary with respect to the purposes for which they are processed" (Article 5, paragraph 1, letter a) and c), of the Regulation).

3.2 The dissemination of personal data.

As can be seen from the deeds and declarations made by the data controller, as well as from the assessment carried out on the basis of the elements acquired following the preliminary investigation and the subsequent evaluations of this Department, the Municipality has published, on the institutional website, in the Register section , and subsequently also to the historic praetorian register, the managerial provision n.XX of the XX, containing the personal data of the claimant.

Preliminarily, it is stated that "personal data" means "any information relating to an identified or identifiable natural person", having to consider "identifiable the natural person who can be identified, directly or indirectly, with particular reference to an

identifier such as the name [... ]" (art. 4, par. 1, n. 1) of the Regulation) for which the local administration that intends to publish an act containing personal data on the online praetorian register is required to verify, also for common data, the existence of a law or regulation which prescribes the posting of that deed on the praetorian register. Although this Municipality has declared that the publication of the determination in question would have taken place pursuant to art. 124, as well as article 10, paragraph 1, of the TUEL - and art. 32, paragraph 4, of its regulation on the organization of offices and services - has not indicated any specific and suitable legal basis that legitimizes the publication of a decision containing information relating to the procedure for the transfer of a monthly portion of the salary for the reimbursement of a loan taken out by the employee, as in the present case, reporting information regarding events connected with the employee's private life.

The Guarantor has specified on several occasions that even the presence of a specific advertising regime cannot lead to any automatism with respect to the online dissemination of personal data and information, nor a derogation from the principles regarding the protection of personal data (see provision of 25 February 2021, n. 68, web doc 9567429). On the other hand, this is also confirmed by the personal data protection system contained in the Regulation, in the light of which it is envisaged that the data controller must "implement adequate technical and organizational measures to ensure that they are processed, by default, only the personal data necessary for each specific purpose of the processing" and must be "able to demonstrate" - in the light of the principle of "accountability" - that he has done so (articles 5, paragraph 2; 24 and 25, paragraph 2, regulation).

In numerous decisions, in particular with regard to the obligations deriving from art. 124 of Legislative Decree 267/2000, invoked by the Municipality, the Guarantor reiterated that all the limits established by the principles of data protection with regard to the lawfulness and minimization of data also apply to publications in the online praetorian register (cf. part II, paragraph 3.a. of the aforementioned guidelines).

Moreover, the publication of the determination in its full version continued even beyond the 15-day deadline set by the sector legislation relating to advertising on the praetorian bulletin board, having remained visible even subsequently in the historical archive of the Municipality's website until the 20th century. As represented by the Municipality, in fact, "on the basis of the computer program, the decisions that are published in the praetorian register, after 15 days, automatically "pass" into the historical archive".

Furthermore, it should be noted that the fact that the data published were "widely visible online" does not allow the processing carried out by the Municipality to be considered lawful, as the personal information made publicly available online cannot be

freely reused by anyone and for any purpose. , having to evaluate from time to time "whether, for what purposes and according to what limits and conditions, any further use of personal data made public can be considered lawful in the light of the "principle of purpose" and the other principles of European matrix regarding the protection of personal data" (see, precisely in the workplace, the provision of the Guarantor n.56 of 12 March 2020, web doc. n. 9429218 and n.106 of 25 March 2021, web doc. 9584421).

Nor can the rule be invoked which provides that "the registry office issues to anyone who requests it [...] the certificates concerning the residence, the family status of those registered in the national registry of the resident population, as well as any other information contained therein "(art.33, paragraph 1, of the Presidential Decree 223/89) since the personal data published in public registers, lists, deeds or documents that can be known by anyone can be treated with the limits and methods that the applicable sector laws establish for the knowledge and publicity of the data, in compliance with the principle of "purpose limitation", according to which personal data must be "collected for specific, explicit and legitimate purposes, and subsequently processed in a way that is not incompatible with these purposes" (Article 5, paragraph 1, letter b) of the Regulation).

Article 7-bis of Legislative Decree 14 March 2013, n. 33, furthermore, referred to by the Municipality during the preliminary investigation, states, in paragraph 3, that "public administrations may order the publication on their institutional website of data, information and documents that they 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, proceeding with the indication in anonymous form of any personal data present".

Considering that Legislative Decree 33 of 2013, as represented above, does not contain any provision that provides for the mandatory publication of the type of deeds object of the complaint - and furthermore, since the Municipality has not proven the existence of a specific regulation law which obliges the entity to publish executive provision no. XX - in the aforementioned deed which was published, no personal data of the complainant should have been reported. The Municipality should have resorted, if necessary, to the "omissis" technique or to other data anonymisation measures (see, on this point, provisions of 27 January 2021, n. 34, web doc. n. 9549165, 2 July 2020, no. 118, web doc. no. 9440025 and 2 July 2020, no. 119, web doc. no. 9440042).

It should also be remembered that this Authority, already in the "Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for purposes of publicity and transparency on the web by public subjects

and other obliged entities" (provision . no. 243 of 15 May 2014, web doc. no. 3134436) clarified that "the general principle of the free reuse of documents containing public data, established by national and European legislation, essentially concerns documents that do not contain personal data or concerns data suitably aggregated and made anonymous" (see par. 6 of the guidelines).

The dissemination of the complainant's personal data, contained in the managerial provision n.XX of the XX, therefore took place in a manner that did not comply with the principles of data protection and in the absence of an appropriate legal basis, in violation of the articles 5, par. 1, lit. a) and c), and 6 of the Regulation, as well as 2-ter of the Code (in the text prior to the amendments made by Legislative Decree No. 139 of 8 October 2021).

4. Conclusions.

In the light of the assessments referred to 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 □ although worthy of consideration, do not allow the findings notified by the Office to be overcome with the act of initiation of the proceeding and are insufficient to allow the dismissal of the present proceeding, since none of the cases envisaged by the art. 11 of the Regulation of the Guarantor n. 1/2019.

Therefore, the preliminary assessments of the Office are confirmed and the unlawfulness of the processing of personal data carried out by the Municipality is noted, for having disseminated, by online publication, the executive provision n.XX of the XX, containing the personal data of the complainant regarding the procedure for the transfer of a monthly salary quota for the repayment of a loan contracted by the same, in the absence of a legal basis, in violation of articles 5, 6 of the Regulation as well as article 2-ter of the Code (in the text prior to the amendments made by Legislative Decree No. 139 of 8 October 2021).

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

In this context, considering, in any case, that the conduct has exhausted its effects - given that the dissemination of data ceased on the XX date - 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; 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 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 specific case the violation of the aforementioned provisions is subject to the application of the administrative fine 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 aforesaid elements, it was considered that the detected conduct concerned the dissemination of personal data concerning delicate personal events of the complainant, with possible negative repercussions on the reputational level for the interested party, as well as the failure to comply with the indications which, for some time , the Guarantor, has provided all public entities since 2014 with the guidelines referred to above (see also "Guidelines on the processing of personal data of workers for the purpose of managing the employment relationship in the public sector" dated 14 June 2007, web doc. n. 1417809).

On the other hand, it was favorably taken into consideration that the violation did not concern particular categories of personal data and that it involved only one interested party. The publication in the Praetorian Register of the determination in question took place without any indexing on generalist sites. Furthermore, there are no previous relevant violations committed by the data controller or previous provisions pursuant to art. 58 of the Regulation.

Based on the aforementioned elements, evaluated as a whole, it is decided to determine the amount of the pecuniary sanction in the amount of 4,000 (four thousand) euros for the violation of articles 5, par. 1, lit. a) and c), 6, as well as 2-ter of the Code (in the text prior to the amendments made by Legislative Decree No. 139 of 8 October 2021), as a pecuniary administrative sanction withheld, pursuant to art. 83, par. 1, of the Regulation, effective, proportionate and dissuasive.

Taking into account that the deed being circulated online contained references to a delicate personal story of the interested

party, concerning the procedure for the assignment of a monthly portion of salary for the repayment of a loan, it is also believed that the ancillary sanction of the publication on the website of the Guarantor of this provision, 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.

ALL THIS CONSIDERING THE GUARANTOR

declares, pursuant to art. 57, par. 1, lit. f), of the Regulation, the illegality of the processing carried out by the Data Controller for violation of the articles 5, par. 1, lit. a) and c), 6 of the Regulation, as well as 2-ter of the Code (in the text prior to the amendments made by Legislative Decree No. 139 of 8 October 2021), in the terms referred to in the justification;

ORDER

pursuant to articles 58, par. 2, lit. i) and 83 of the Regulation, as well as art. 166 of the Code, to the Municipality of Villafranca di Verona, in the person of its pro-tempore legal representative, with registered office in Corso Giuseppe Garibaldi 24 – 37069, Villafranca di Verona (VR), Tax Code 00232070235, to pay the sum of 4,000 euros (four thousand ) as a pecuniary administrative sanction for the violations indicated in the justification. It is represented that the offender, pursuant to art. 166, paragraph 8, of the Code, has the right to settle the dispute by paying, within 30 days, an amount equal to half of the fine imposed;

ENJOYS

to the aforementioned Municipality, in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, to pay the sum of 4,000 (four thousand) euros according to the methods indicated in the annex, within 30 days of notification of this provision, under penalty of adopting the consequent executive acts pursuant to art. 27 of the law no. 689/1981;

HAS

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

the annotation of this provision in the internal register of the Authority, provided for by art. 57, par. 1, lit. u), of the Regulation, of the violations and of the measures adopted in accordance with art. 58, par. 2, of the Regulation (see art. 17 of the Guarantor Regulation n. 1/2019).

Pursuant to articles 78 of the Regulation, 152 of the Code and 10 of Legislative Decree no. 150/2011, against this provision it

is possible to lodge an appeal before the ordinary judicial authority, under penalty of inadmissibility, within thirty days from the date of communication of the provision itself or within sixty days if the appellant resides abroad.

Rome, 10 November 2022

PRESIDENT

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THE SPEAKER

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THE SECRETARY GENERAL

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