

Injunction order against the Frosinone Local Health Authority - 13 January 2022

Record of measures

n. 8 of 13 January 2022

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, 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 the "Regulation");

GIVEN the legislative decree 30 June 2003, n. 196 containing the "Code regarding the protection of personal data, containing provisions for the adaptation of the national 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 circulation of such data and which repeals Directive 95/46 / EC (hereinafter the "Code");

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

GIVEN the documentation in the deeds;

HAVING REGARD to the observations made by the Secretary General pursuant to art. 15 of the Guarantor Regulation n. 1/2000;

Rapporteur the lawyer Guido Scorza;

WHEREAS

1. Reporting

An alleged violation of the rules on the protection of personal data by the ASL of Frosinone (hereinafter the Company) was reported to the Authority. In particular, in the information prepared by the Company - available on the institutional website

<https://www.asl.fr.it/Ufficio-privacy> - consent was indicated as the legal basis for the processing of personal data carried out for the purposes of interested.

2. The preliminary activity

In relation to what has been reported, the Office launched a preliminary investigation and found that on the aforementioned page of the Company's institutional website no. 5 information notices: (i) Simplified information on the processing of personal data of patients in the context of the epidemiological emergency COVID-19; ii) Information pursuant to art. 13 of EU Regulation 679/2016 (General Data Protection Regulation) for data collected in the context of the epidemiological emergency COVID-19 (Coronavirus); iii) Information on the processing of personal data; iv) Information - authorization and consent to the processing of personal data; v) Information on the processing of personal data.

With respect to each of them, specific profiles of criticality were identified in relation to the regulations on the protection of personal data, even further than that which is the subject of the report, relating in particular to compliance with the principles of correctness and transparency pursuant to art. 12 and 13 of the Regulation.

Specifically, it was found that in these information multiple processing purposes were indicated, such as those of care, administrative and scientific research, but the relative legal bases were not always indicated and that, where referred to, these legal bases were in any case erroneous or contradictory. The information, in fact, indicated in the consent of the interested parties the condition of lawfulness of the treatments carried out for treatment purposes. This, even where as in the document called "information on the processing of personal data" in which, while correctly citing art. 9, par. 2, lett. h) of the Regulations, as a condition of lawfulness for the processing of data for the purposes of care, the indispensability of the consent of the interested parties was then erroneously reiterated in order to access the treatments or in relation to the processing of data for the administrative purposes related to them.

Furthermore, the same information did not always indicate the retention period of personal data (see documents in deeds called "Information on the processing of personal data"; "Information - authorization and consent to the processing of personal data and the data controller"; "information on the processing of personal data ", which indicated only the retention times of medical records).

With a note dated 22 July 2021 (prot.n.00044127), the Company responded to the request for information from the Office (note of 23 June 2021, prot. , transmitting the report of the data protection officer, who stated that:

"The Covid emergency has inevitably slowed down all the ordinary activities of this company and this has unfortunately also led to a delay in updating some company information";

"The undersigned received the application promptly updated the documents mentioned and published them on the corporate website <https://www.asl.fr.it/Ufficio-privacy>, so as to ensure a more effective protection of the rights of the interested parties";

"Specifically, the changes concerned the data retention period (...);

"With regard to the consent to the processing of personal and sensitive data NOT (...) required to access treatment in the health sector as specified in art. 9, par. 2, lett. h and par. 3 of the GDPR 2016/679, [the Company has fully modified] the content of the previous device according to which the *condicio sine qua non* was found in the consent (...) [to] access the care requested by the patient in the hospital structure ".

The Company has also transmitted, with the note in reference, two documents called "Information on the processing of personal data (complete)" and "Information on the processing of personal data (simplified)", which contain the updated texts of the information to be provided to interested parties, also available on the website <https://www.asl.fr.it/Ufficio-privacy>.

2.1 The further criticalities found in the information sent and published on the site

With regard to the information models sent to the Office, together with the response to the aforementioned request for information and those published on the site at the time, on the page <https://www.asl.fr.it/Ufficio-privacy>, the Office has detected the persistence of specific profiles of non-compliance with the regulatory framework for the protection of personal data.

Preliminarily, from a formal point of view, the Office highlighted that the information to be provided to the interested parties pursuant to art. 13 and 14 of the Regulation, do not need to be signed by the Data Protection Officer.

The obligation (and consequent responsibilities) to disclose information to the data subjects is in fact imposed on the data controllers who may, for this purpose, avail themselves of the advice of the data protection officer (Article 39, paragraph 1 letter a) of the Regulation). In providing information to interested parties, the owner must also indicate "the contact details of the data protection officer, where applicable" (see articles 13, par. 1, lett) b) and 14, par. 1 letter b) of the Regulation).

The Office also highlighted that the model called "Information pursuant to art. 13 of EU Regulation 679/2016 (General Data Protection Regulation) for data collected in the context of the epidemiological emergency COVID-19 (Coronavirus) "still bore the following sentence:" The data collected following your consent will be kept until the end of the epidemiological infection in progress ", thereby providing erroneous indications regarding the legal basis of the treatment necessary for treatment

purposes.

It was also reiterated that the "Information on the processing of personal data (simplified)" model indicated three different purposes (care, administrative and scientific research) pursued by the data controller while reporting the legal basis relating only to one of them (the health care purposes).

With regard to the processing carried out for scientific research purposes, it limited itself to specifying that "the data will be deprived of identifying data that can be directly linked to the interested party".

Lastly, an inconsistency was found in relation to the storage times and it was pointed out to the Company that in the document called "Information on the processing of personal data (complete)", "the legitimate interest of the owner" was indicated as the legal basis of some treatments, this is in contrast with art. 6, par. 1 of the Regulation which establishes that lett. f) of the first paragraph of the same article - which provides as a condition of lawfulness of the processing, the legitimate interest of the owner or third party under the conditions indicated therein - does not apply to the processing of data carried out by public authorities in the performance of their duties. Furthermore, art. 9 of the Regulation does not provide for the legitimate interest of the data controller as an exception to the prohibition of processing particular categories of data.

Having said all this, the Office with act no. 46578 of 17 September 2021, with reference to the specific situations of illegality referred to therein, notified the Company, pursuant to art. 166, paragraph 5 of the Code, the initiation of the procedure for the adoption of the measures referred to in Article 58, paragraph 2, of the Authority (art. 166, paragraphs 6 and 7, of the Code; as well as art. 18, paragraph 1, of the law n. 689 of 24/11/1981).

In particular, the Office, in the aforementioned deed, considered that from the assessment carried out, on the basis of the elements acquired and the circumstances ascertained as a result of the investigation, as well as subsequent evaluations, elements suitable to constitute the violation of the principle emerged. of transparency (art. 5 par. 1 letter a) of the Regulation) and of the right of the interested parties to receive, at the time of data collection, all the information referred to in art. 13 of the Regulations in a concise, clear and intelligible form, pursuant to art. 12 of the Regulation.

With a note dated 19 September 2021 (prot. No. 14982), the Company sent its defense briefs, also asking to be audited.

In this context, the Company, in addition to what has already been represented previously, stated in particular that:

"The publication of the information with the signature at the bottom of the DPO has been eliminated as well as the typo referring to the consent reported in the data retention period and the reference to the portability of the data (...);

"The reference to the legitimate interest of the owner as a legal basis has been eliminated, given that the processing is based on the Company's own activity in execution of institutional obligations, legal obligations without it being waived on the basis of the interest of the owner ";

the new version of the information "revised in the light of the observations of the Guarantor" reports the reference to the processing pursuant to art. 9, par. 2, lett. h) of the Regulations for treatment purposes and for reasons of significant public interest pursuant to art. 9, par. 2, lett. g) of the Regulations, identified by art. 2-sexies of the Code (...) therefore without the need for consent ".

On November 4, 2021, the hearing requested by the Company was held in which it was further stated that:

"The Local Health Authority is characterized by a very peculiar context. She was previously a commissioner, she was subjected to various checks by the competent authorities, and this in everyday life has also had a great impact on the management of processes. The Company is in fact involved in numerous legal disputes and complaints that arise mainly from a trade union. All this obviously complicates the management of the Company ";

"The company was involved in a very important way by the pandemic. It is a large local health authority for the number of assistants which in fact includes 500,000 assistants, three prisons, 2 REMS and 4 hospitals ";

"The workforce is far below the national average and therefore the administrative bureaucracy to support management is absolutely insufficient. This was followed by an important reorganization attempt by the new management which made new hires "

"At the Local Health Authority a process of profound review of the processes is underway to adapt to the regulations on the protection of personal data, also from a cultural point of view, for a substantial and non-formal approach. At the time of the facts, therefore, the ASL was not inert but engaged in a global review process ";

"The Company (...) intervened on the website (which also contained old content) making it secure, appointing an external IT consultant to rework the external and internal part of the site for an easy content search. The new site will be released in about 20 days "

"Most of the complaints raised by the Guarantor are actually typos, eg. signing by the DPO of the information ":

"The Company has eliminated the reference to the right to data portability, reserving the right to re-enter it if required by future legislation. In relation to the retention time, there was a typo following which, through an information table that identifies each

individual document that contains personal data on the health of the patients, the relative retention time is indicated. The purpose of the processing and the related legal bases were then revised in the light of art. 9 of the Regulations and art. 2-sexies of the Code. The reference to legitimate interest as the legal basis of the processing has also been eliminated ";

"The information has also been renewed from a graphic point of view";

"A training course has been activated to update the regulations on the protection of personal data";

The Company, based on everything set out during the proceedings, therefore requested its archiving or in the alternative,

"without recognizing the validity of the disputes, the application of a penalty in the least amount possible"

3. Outcome of the preliminary investigation.

Having taken note of what is represented by the Company in the documentation in deeds and in the defense briefs, it is noted that:

personal data must be processed in compliance with the principle of transparency (Article 5, paragraph 1 letter a) of the Regulations) providing the data subjects in advance with the information referred to in art. 13 of the Regulation, in the case of data collected directly from them, or pursuant to art. 14, in the case of data collected from third parties. This principle requires that information and communications relating to the processing of personal data be made in a concise, transparent, intelligible and easily accessible form, with simple and clear language (cons. 39, 58 and art. 12 of the Regulation);

among the information to be provided to the interested parties, in particular, the legal basis of the processing (articles 13, par. 1, lett. c) and 14, par. 1 letter c) of the Regulations);

for the processing operations of the particular categories of data (and in particular of health data) necessary for the health care of the interested parties, the consent of the interested parties is not required (Article 9, paragraph 2 letter h) and par. 3 of the Regulations; prov. of the Guarantor of 9 March 2019, doc. web 9091942, containing clarifications on the application of the regulations for the processing of data relating to health in the health sector).

In this regard, it should be noted that the models containing the information to be provided to the interested parties, published on the Company's website on a date prior to the changes it made following the start of the investigation by the Office, were found to be non-compliant with recalled regulatory framework on the protection of personal data, as:

multiple processing purposes were indicated, such as treatment, administrative and scientific research purposes, but the relative legal bases were not always clearly indicated, which where referred to were in any case erroneous or contradictory;

indicated in the consent of the interested parties the condition of lawfulness of the treatments necessary for treatment purposes, reporting the following indication: "Consequences of the lack of consent to the treatment - The consent to the treatment of personal and sensitive data is essential to access the required treatments, without it the patient cannot be treated in our facility. The interested party has the right at any time to modify or revoke the consent given for each of the treatments, by contacting the URP ".

in the document called "information on the processing of personal data", while correctly citing art. 9, par. 2, lett. h) of the Regulations, as a condition of lawfulness for the processing of data necessary for treatment purposes, the indispensability of the consent of the interested parties was erroneously reiterated in order to access treatment;

the retention period of personal data was not always indicated (see documents called "Information on the processing of personal data"; "Information - authorization and consent to the processing of personal data and the data controller";

"information on the processing of personal data", in the which were indicated only the retention times of medical records).

With regard to the information models sent to the Office together with the response to the aforementioned request for information, specific critical issues persisted, such as:

the indication of the right to data portability (Article 20 of the Regulation);

in the "Information on the processing of personal data (simplified)" three different purposes pursued by the data controller were indicated (care, administrative and scientific research) and the legal basis relating only to one of them (the purpose of care of the health), and it was not clear to which of the three purposes pursued the storage time indicated therein referred;

in the "Information on the processing of personal data (complete)" the legitimate interest was reported as the legal basis of the processing.

4. Conclusions

In light of the aforementioned assessments, taking into account the statements made by the owner during the investigation ☐ and considering that, unless the fact constitutes a more serious crime, anyone, in a proceeding before the Guarantor, falsely declares or certifies news or circumstances or produces false deeds or documents and is liable pursuant to art. 168 of the Code ☐ "False statements to the Guarantor and interruption of the execution of the tasks or exercise of the powers of the Guarantor" ☐ the elements provided by the data controller in the defense briefs do not allow to overcome the findings notified by the Office with initiation of the procedure, however, as none of the cases provided for by art. 11 of the Guarantor Regulation n. 1/2019.

For these reasons, the preliminary assessments of the Office are confirmed and the unlawfulness of the processing of personal data carried out by the ASL of Frosinone in violation of the principle of transparency (Article 5 paragraph 1 letter a) of the Regulation) and of the law is noted. of the interested parties to receive, at the time of data collection, all the information referred to in art. 13 of the Regulations in a concise, clear and intelligible form, pursuant to art. 12 of the Regulation.

In this context, considering, in any case, that the conduct has exhausted its effects, given that the Company has published the new texts on its website at the page [https://www.asl.fr.it/ ufficio-privacy](https://www.asl.fr.it/ufficio-privacy) of the information - complete and concise version -, called "Information on the processing of personal data" and "Information on the processing of personal data, Art. 13 EU Regulation 679/2016-summary" which incorporate the findings made by the Office, the conditions are not met for the adoption of the corrective measures pursuant to art. 58, par. 2, of the Regulation.

Similarly, the timeliness with which the Company proceeded to modify the aforementioned documents, highlights the diligent cooperation shown by the same in relations with the Authority, in order to conform the processing to the regulations on the protection of personal data.

5. Adoption of the injunction order for the application of the pecuniary administrative sanction and ancillary sanctions (articles 58, par. 2, lett. l and 83 of the Regulation; art. 166, paragraph 7, of the Code).

The violation of articles 5, par. 1, lett. a), 12 and 13 of the Regulations, caused by the conduct put in place by the Frosinone Local Health Authority, is subject to the application of a pecuniary administrative sanction pursuant to art. 83, paragraph 5, lett. a) and b) of the Regulations.

It should be considered that the Guarantor, pursuant to art. 58, par. 2, lett. i) and 83 of the Regulations, as well as art. 166 of the Code, has the power to "inflict an administrative pecuniary 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 each single case "and, 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 principles of effectiveness, proportionality and dissuasiveness, indicated in art. 83, par. 1, of the Regulation, in light of the elements provided for in art. 85, par. 2, of the Regulation in relation to which it is noted that:

- the Authority has received only one report on the facts of this proceeding (Article 83, paragraph 2, letter a) and h) of the Regulation);
- the Company cooperated fully with the Authority during the investigation and this proceeding (Article 83, paragraph 2, letter f) of the Regulations);
- the data controller promptly took action to remedy the incident by modifying the information to be provided to the interested parties in light of the Office's findings, implementing a substantial review of business processes. In particular, the Company intervened on the website in order to facilitate the search for content and reinforce its security profiles "(Article 83, paragraph 2, letters c) and d) of the Regulation);

Due to the aforementioned elements, assessed as a whole, it is believed to determine the amount of the pecuniary sanction provided for by art. 83, par. 5, lett. a) and b) of the Regulations, to the extent of € 7,500 (seven thousand five hundred) for the violation of Articles 5, par. 1, lett. a), 12 and 13 of the Regulations as a pecuniary administrative sanction, pursuant to art. 83, par. 1, of the Regulation, effective, proportionate and dissuasive.

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 Guarantor Regulation n. 1/2019, also in consideration of the potential number of interested parties and the type of personal data subject to unlawful processing.

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

WHEREAS, THE GUARANTOR

declares the unlawfulness of the processing of personal data carried out by the Frosinone Local Health Authority, for the violation of Articles 5, par. 1, lett. a), 12 and 13 of the Regulations in the terms set out in the motivation.

ORDER

to the Frosinone Local Healthcare Company, with registered office in Via Armando Fabi, snc, VAT number: 01886690609, pursuant to Articles 58, par. 2, lett. i) and 83 of the Regulations, as well as art. 166 of the Code, to pay the sum of Euro 7,500 (seven thousand five hundred) as a pecuniary administrative sanction for the violations indicated in the motivation;

INJUNCES

The Frosinone Local Healthcare Company, with registered office in Via Armando Fabi, snc, VAT number: 01886690609, to pay

the sum of EUR 7,500 (seven thousand five hundred) according to the methods indicated in the attachment, within 30 days of notification of this provision, under penalty of adoption of the consequent executive acts pursuant to art. 27 of the l. n. 689/1981. In this regard, it is recalled 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 30 days from the date of notification of this provision, pursuant to art. 166, paragraph 8, of the Code (see also Article 10, paragraph 3, of Legislative Decree no. 150 of 1/9/2011);

HAS

pursuant to art. 166, paragraph 7, of the Code, the full publication of this provision on the website of the Guarantor and believes that the conditions set out in art. 17 of Regulation no. 1/2019 concerning internal procedures with external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

Pursuant to art. 78 of the Regulation, of art. 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, January 13, 2022

PRESIDENT

Stanzione

THE RAPPORTEUR

Peel

THE SECRETARY GENERAL

Mattei