[doc. web n. 9763051]

Injunction order against the Provincial Health Authority of Caltanissetta - 24 March 2022

Record of measures

n. 98 of 24 March 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 and the lawyer Guido Scorza, members and the cons. Fabio Mattei, general secretary;

GIVEN the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, concerning the protection of individuals with regard to the processing of personal data, as well as the free circulation of such data and which repeals Directive 95/46 / CE, "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 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 n. 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 on the organization and functioning of the office of the Guarantor for the protection of personal data, Doc. web n. 1098801;

Rapporteur Dr. Agostino Ghiglia;

WHEREAS

1. Complaints.

With a complaint of the XX, an employee of the Provincial Health Authority of Caltanissetta (hereinafter the "Company"),

represented that he had sent to the same, on XX, a note containing "formal warning to comply with the execution of an INPS determination "In relation to a proceeding concerning his / her social security position.

Although with the aforementioned note the interested party had expressly requested that "any communication relating to the administrative procedure in question [should] be addressed exclusively to the personal certified email address indicated therein", based on what is represented in the complaint, the Company would have instead sent a communication (note prot.n.XX of the XX), in response to the note of the XX, also to the certified e-mail address of the organizational unit of the Company (U.O.S. Training Office), where the interested party served as a manager. The interested party also represented that he had sent an application for access to his personal data, contained in a specific document held by the administration (note of the INPS prot. No. XX of the XX concerning 'Redemption measure for pension purposes [...]), and not having obtained suitable feedback.

2. The preliminary investigation.

With a note of the twentieth, prot. n. XX, the Company, in response to the request for information formulated by the Office, stated, in particular, that:

the note of the XX, “addressed to the Acting Director of the U.O.C. Human Resources Management, to the Manager in charge of the U.O.S. TEP, to the Head of the Procedure-Holder of P.O. of the U.O.S. TEP and, for information, to the General Manager, the Administrative Director and the Head of Corruption Prevention and Transparency of this Company [which was sent by the complainant] via PEC, to the General Protocol office of this Company, after registration in the protocol general entry, [was sent] by e-mail to each of the recipients contemplated therein and also to the Health Department ";

"Unlike what the complainant complained about, the note prot. XX of the XX [in response to the note of the XX] was never sent by certified e-mail to the U.O.S. Training Office of which the complainant himself is the responsible manager. This note, in fact, [...] was sent by certified e-mail to the company management and to the U.O. Prevention of Corruption and Transparency, or to the same company divisions [already recipients of the complainant's note], as well as, as requested by the same [interested party], to his personal PEC ";

"For the sake of completeness of response to the relevant request from this Authority, it means that, from information obtained from the competent company CED, the PEC of the Training Office can only be accessed by the" owner "[...], [Medical Director in charge of the U.O.S. Training] as no other associated users ";

as regards the visibility of the note, once registered, "not all employees (even those hinged in the same U.O.) have free access to the IT protocol, but only the personnel previously identified and formally authorized by each manager of the various UU.OO . corporate ";

in particular “the note prot. XX appears to have been viewed by: U.O.S. Training: [by the interested party], by Dr. —omissis- and by Dr. —Omissis - [Psychologist manager and CPS nurse], both employees hinged at the aforementioned U.O. [as well as from] the employees of the undersigned U.O: [...] in their capacity as users authorized to log the documents formed or received by the U.O. who […] physically carried out the registration on the XXth date ”.

With a note of the twentieth prot. n.XX a further request for information was sent to the Company in order to acquire elements deemed indispensable for the definition of the procedure, with particular regard to the visibility of the aforementioned note of the XX through the IT protocol, also to other employees in service at the Training Office (Psychologist Manager and CPS nurse), as well as to those in charge of registration, as shown by the documentation in the documents (see attachment 7 to the note of the Company of the XXth).

To this request for information, reiterated with a note of the XX, prot. XX, the Company has never provided any feedback to the Authority.

During the investigation it also emerged that the Company had not correctly communicated the name and contact details of the new Data Protection Officer (hereinafter "DPO") replaced by the provision of the General Manager of the XX, prot. XX (see Annex 8 to the Company's note of the XX).

With a note of the twentieth, the Office, on the basis of the elements acquired, the checks carried out and the facts that emerged as a result of the investigation, 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 art. 58, par. 2, of the Regulation, concerning the alleged violations of articles 5, 6, 12, 15 and 37, of the Regulation, of art.157 of the Code and of art. 2-ter of the Code (in the text prior to the amendments made by the legislative decree 8 October 2021, n.139, converted, with modifications, by the law 3 December 2021, n.205), inviting the aforementioned holder to produce defensive or documents or to ask to be heard by the Authority (art. 166, paragraphs 6 and 7, of the Code, as well as art. 18, paragraph 1, l. November 24, 1981, n. 689).

The Company has sent its defense briefs with a note of the twentieth, prot. n.XX, representing, among other things, that:

"The failure to respond to the [...] notes is due to an unfortunate internal misunderstanding of this Company and attributable to

the lack of dialogue between the General Entry Protocol Office and the corporate operational structures directly involved in the issue that is dealing with us, which unfortunately, it did not make it possible to formalize the due response to the inquiries in question ";

with regard to the consultation of the complainant's personal data by means of an IT protocol by unauthorized subjects "it seems appropriate to clarify that the note prot. XX [...] having to be necessarily registered with the IT protocol pursuant to DPCM 3 December 2013 and D.P.R. 445/2000, the registration information system in use by the Company has automatically transmitted to the U.O.S. Direct training [by the interested party] who, in this managerial capacity, is the person responsible for the registration of the documents received by the OU who directs, constituting the contact person (like the other managers of the Caltanissetta ASP structure ");

"The aforementioned staff of the U.O.S. Training, having been authorized by his manager to operate on the IT protocol [...] following a specific training course on the technical and confidentiality measures of the Company's correspondence [...], it follows that these employees can only be considered authorized subjects ";

"Note XX, prot. n. XX […], sent by the / U.O.C. Human Resources, did not directly pertain to the processing of personal data, much less of particular importance. In particular, from the reading of the aforementioned communication it emerges ictu oculi that it concerns the events relating to the procedural interposition between U.O.C. "Human Resources" and [the interested party], the information relating to the social security status of the same employee remaining relegated to the background ";

with regard to the failure to respond to the exercise of the complainant's rights, it is reported that "all [...] requests for access to personal data made [by the interested party] have been regularly found in accordance with the law and according to what he expressly requested with its PEC note of the twentieth, [...] in which [...], is expressly indicated [by the interested party to stay] waiting to be summoned, on a specified date and place and with the guarantee of adequate accessibility, to view the document , in original [...] Note sent by INPS-Gestione ex Inpdap taken on prot. XX of XX concerning "Redemption measure for pension purposes [...]";

"In light of the foregoing, it is difficult to understand the declaration of the complainant [...] with which he claims that this Company" denies access to the personal data indicated ", given that, as stated above, his request to be summoned for the exercise of access to personal documents has been accepted by this Company with a specific invitation to agree with the Office holding the requested document on the concrete methods of access and to view the document concerning it ";

with regard to the failure to communicate the name and contact details of the Data Protection Officer "it should be noted that, with company resolution XX, n.XX [...] Ms [...], Acting Director of U.O.C. "Human Resources Management", was appointed D.P.O. Having said that, where the Administration was deficient, in terms of fulfilments subsequent to the deed, it was certainly a pathological executive deficiency pursuant to law, but certainly not intended to cover organizational deficiencies, given the aforementioned appointment provision, to date however exceeded by the appointment of a new D.P.O, in compliance with current legislation ".

3. Outcome of the preliminary investigation.

3.1. The regulatory framework.

The personal data protection discipline provides that public subjects, even if they operate in the performance of their duties as employers, can process the personal data of workers, if the processing is necessary, in general, for the management of the employment relationship. and to fulfill specific obligations or tasks provided for by the national sector regulations, (art. 6, par. 1, lett. c), 9, par. 2, lett. b), and 4, and 88 of the Regulation) or "for the performance of a task of public interest or connected to the exercise of public authority vested in the data controller" (Article 6, paragraph 1, lett e), of the Regulation).

European legislation provides that "Member States may maintain or introduce more specific provisions to adapt the application of the rules of this Regulation with regard to processing, 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, par. 2, of the Regulation). In this regard, it should be noted that the "communication" of personal data by public entities is permitted only when required by a law or, in the cases provided for by law, by regulation (Article 2-ter, paragraphs 1, 3 and 4, letter a), of the Code in the text prior to the amendments referred to in Legislative Decree 8 October 2021, n. 139).

The data controller is then, in any case, required to comply with the principles of data protection and to process the data through authorized and duly trained personnel on access to data (articles 5 and 4, par. 10 , articles 29, 32, par. 4, of the Regulation).

The Regulation provides that the DPO must be mandatorily designated by the data controller "when the processing is carried out by a public authority or by a public body" and that the contact details of the same are communicated to the Supervisory Authority (art. 37 the violation of which is subject to administrative sanctions pursuant to art.83, par.4, lett.a) of the Regulation), through an online procedure (available at the page https://servizi.gpdp.it/comunicazionerpd/s/ , which also contains the

appropriate instructions) made available by the Guarantor for the communication, variation and revocation of the name of the DPO which represents the only channel that can be used for this specific purpose (see Guidelines on DPO data protection officers adopted by the Group Art. 29 on 13 December 2016 and amended on 5 April 2017 WP243) rev. 01 and FAQ relating to the telematic procedure for communicating the data of the DPO https://www.gpdp.it/regolazioneue/rpd/faq-relative-alla-procedura-telematica-per-la-comunicazione-dei-dati).

Failure to respond, within the deadline, to a request for information made pursuant to art. 157 of the Code by the Authority, in carrying out its duties and investigating powers, makes applicable the pecuniary administrative sanction provided for by art. 83, paragraph 5 of the Regulation (Article 166, paragraph 2 of the Code).

3.2. Failure to respond to the Guarantor's request for information.

With regard to the Company's failure to reply to the request for information from the Guarantor's Office (sent with note dated XX, prot. No. XX, and reiterated with note dated XX, prot. No. XX) the following is observed.

The Supervisory Authority, within the scope of the tasks and powers attributed by the Regulation, ensures, among other things, the application of the Regulation and handles complaints by carrying out the appropriate investigations, including on the correct application of the data protection regulations by of the owners (Article 57 paragraph 1 letter 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 it needs for the performance of its duties (Article 58 paragraph 1 letter a) of the Regulation).

Art. 157 of the Code also provides that, in relation to the powers referred to in art. 57 of the Regulations and for the performance of its duties, the Guarantor may require the holder to provide information and exhibit documents and that failure to respond to this request within the specified deadline makes the administrative fine provided for by art. 83, paragraph 5 of the Regulation (see article 166 paragraph 2 of the Code).

Also within the framework of the general principles of good performance, efficiency, effectiveness and cost-effectiveness of administrative action (Article 97 of the Constitution, see also Article 9 paragraph 1 and 10 paragraph 3 of the internal regulation no. 1/2019 of 4 April 2019, web doc. no. 9107633) the failure of the health authority to reply to the request of the Guarantor (although - according to what was declared - attributable to a "misunderstanding [...] attributable to the lack of dialogue between the general protocol office [...] and the corporate operating structures concerned ") affected the completeness and speed of the preliminary investigation, resulting in the violation of art. 157 of the Code.

3.3. Processing of the complainant's personal data through the computer protocol system.

From the examination of the documentation provided and taking into account the statements made by the owner during the investigation, pursuant to art. 168 of the Code, it emerged that the note prot. no. XX of the XX, containing data of the complainant, also relating to his social security position, was made visible, by means of an IT protocol, not only to those in charge of registering the documents but also to other employees of the Company and assigned to the U.O.S. Training, directed by the complainant.

As traditionally stated by the Guarantor, the personal data of employees, processed for the purpose of managing the employment relationship, cannot, as a rule, be made known to subjects other than the interested party and must, within the administration, be processed exclusively by specifically authorized subjects (see points 2, 4, 5.1 and 5.3 of the Guidelines on the processing of personal data of workers for the purpose of managing the employment relationship in the public sphere, of 14 June 2007, published in the Official Gazette 13 July 2007 2007, n.161, and in www.garanteprivacy.it, web doc. N.1417809). This implies that it cannot lawfully be made available the personal data of employees in favor of other personnel who, due to the duties performed or the organizational functions covered within the administration, are not entitled to process information relating to the relationship. of their colleagues, such as disciplinary proceedings, health data, reasons for absence, salary, insurance and social security events (cf. among many, provision 27 May 2021, no. 214, web doc. no. 9689234 and provision 322 of 16 September 2021, web doc. 9711517).

Even in the context of the processing of personal data carried out through document management systems, it is therefore necessary to adopt technical and organizational measures to ensure selective access to the documentation present in the IT protocol, in order to avoid the consultation of documents by non-personnel. authorized, resorting in particular to differentiated and / or confidential procedures with regard to the registration of documents containing personal data of employees and relating to the specific employment relationship (on point see, lastly, provision 11 February 2021, no. 50 doc. web n.9562866 and previous provisions referred to therein relating to the unlawful processing of personal data of employees by colleagues due to the incorrect configuration of the IT protocol).

With regard to the present case, however, there is no evidence of the technical and organizational measures adopted to ensure selective access to the documentation present in the IT protocol used by the Company, in order to avoid the consultation of documents by non-personnel. authorized. On the contrary, as is clear from the declarations in the documents,

“the note prot. XX [...] having to be necessarily registered with the IT protocol pursuant to DPCM 3 December 2013 and D.P.R. 445/2000 "was" automatically transmitted "by the registration information system in use" to the U.SO Training "(see note of the XX, in deeds) - that is to the organizational unit where the complainant performed service with managerial functions - with visibility also to the remaining staff working at it.

Although the Company has declared that "the [...] personnel of the U.S Training, [was] authorized by his manager to operate on the IT protocol [...] following a specific training course on the technical and confidentiality measures of the Company's correspondence [...] "it should be noted that this authorization profile may reasonably exist with regard to the processing connected to the performance of the tasks assigned to the specific organizational unit of reference, as it cannot be considered that the staff in charge of the training office could have the right to process personal data relating to a specific procedure that involved "the U.O.C. "Human Resources" and [the interested party] ". There are no elements in documents that allow to verify whether and to what extent the employees of the Training office, taking into account their functions and specific duties, were entitled to process personal data - contained in the aforementioned note - referring to their manager colleague and concerning events strictly connected to his employment relationship with the Company and his social security position at the National Institute of Social Security-INPS. Lastly, the claims made by the Company regarding the fact that the note prot. XX did not contain personal data of the interested party "of particular relevance [...] since the information relating to the social security status of the same employee remains relegated to the background" given the definition of "personal data" ("any information concerning an identified or identifiable natural person"; art. 4, par. 1, n. 1 of the Regulations).

In light of the foregoing considerations, the making available - by sharing the note in question through the registration system - of the personal data of the interested party, not only in favor of the personnel working in the organizational units competent to process personal data for purposes of managing the employment relationship or required to register the documents, but also in favor of some colleagues of the complainant belonging to the training office directed by him, gave rise to a communication of personal data to third parties not specifically authorized, in the absence of an appropriate legal basis, in violation of art. 5, par. 1, lett. a) and f), 6, par. 1, lett. e) of the Regulations, as well as art. 2-ter of the Code.

3.4. Failure to respond to the exercise of the rights of the interested party.

With regard to the exercise of the rights by the interested party, pursuant to Article 15 of the Regulation, the Company represented that it had followed up the complainant's request by calling "for the exercise of access to personal documents [...]

with a specific invitation to agree with the Office holding the deed requested the concrete methods of access and to read the document that concerns him ".

In this regard, in general, it is necessary to clarify that with regard to access to administrative documents, the sector legislation assigns the right to view and copy administrative documents to private subjects who have a direct, concrete and current interest, corresponding to a situation legally protected and connected to the document to which access is requested (articles 22 and following, law 7 August 1990, no. 241; articles 59 and 60 of the Code; articles 6, 9, 10 and 86 of the Regulation). Unlike the articles from 15 to 22 of the Regulations give the interested party the right to ask the data controller to access personal data and to correct or cancel them or limit the processing that concerns him or to oppose their treatment, as well as the right to data portability. Art. 12, par. 3, of the Regulations also establishes that the data controller must respond to the data subject's request without undue delay and, in any case, at the latest within one month of receipt of the same. This deadline can be extended by two months, if necessary, taking into account the complexity and number of requests, it being understood that the interested party must be informed of any such extension. If he does not comply with the request of the interested party, the data controller must, in any case, inform the interested party without delay, and at the latest within one month of receiving the request, of the reasons for the non-compliance and of the possibility of proposing a complaint to a supervisory authority and to propose judicial appeal (cons. 59 and art. 12, par. 4, of the Regulation).

In this regard, it should be noted that, pursuant to art. 15, para. 1 and 7, of the Regulation, "the interested party has the right to obtain from the data controller confirmation as to whether or not personal data concerning him is being processed and in this case, to obtain access to personal data […] ", Having to“ the data controller provide [re] a copy of the personal data being processed […] ".

The right of access is attributed to the interested party "to be aware of the processing and verify its lawfulness" (cons. No. 63 of the Regulation). In any case, based on the constant jurisprudence of legitimacy, the right of access to personal data, also in the context of the employment relationship, aims to "guarantee the protection of the dignity and confidentiality of the interested party, the ratione temporis verification of data entry, permanence or removal, regardless of whether such events had already been brought to the attention of the interested party by other means "(see Court of Cass. 14.12.2018, n. 32533 and provision of the Guarantor of the 25 March 2021 web doc n. 9583835).

For these reasons, in the light of the documentation in the file, the Company, having erroneously qualified the aforementioned

request as "access to the documents" (immediately indicating the procedures for "viewing the document"), did not, however, proceed to the request to exercise the right of access to personal data submitted by the interested party, in the times and according to methods designed to facilitate the exercise of this right, in violation of articles 12 and 15 of the Regulations.

3.5. Failure to communicate the name and contact details of the Data Protection Officer

During the investigation it emerged that the Company did not disclose the contact details of the DPO in the manner provided for this purpose.

As highlighted by the Guarantor on numerous occasions, including through general guidance documents (see provision no.186 of 29 April 2021, web doc. No.9589104 regarding the designation, position and tasks of the DPO in the public sphere) and also with specific notes addressed to the Company during the investigation, art. 37 of the Regulation provides for the obligation for any public authority or public body that processes personal data to designate a Data Protection Officer and to communicate his name and contact details to the Supervisory Authority.

In order to comply with this obligation, the Guarantor has made available a specific online procedure for the communication, variation and revocation of the name of the designated DPO, which is the only channel that can be used for this specific purpose (available at the page https: // services. gpdp.it/comunicazionerpd/s/, which also contains the specific instructions; v. Guidelines on data protection officers (DPO) adopted by the Group Art. 29 on 13 December 2016 and amended on 5 April 2017 WP243 rev. 01 and FAQ relating to the telematic procedure for communicating the data of the DPO https://www.gpdp.it/regolazioneue/rpd/faqrelative-alla-procedura-telematica-per-la-comunicazione-dei-dati). Also with regard to the variation of the contact details of the DPO (for example, as a result of the appointment of a different subject for that assignment), this communication must be made promptly, again through the procedure, so that the Authority, for the 'exercise of their duties, is always in possession of up-to-date information and, consequently, contact the exact "contact point". In fact, the maintenance of contact data that is no longer current could involve the involvement of a person who has ceased from his duties as DPO, with consequent communication to third parties of information that he no longer has any right to know (see paragraph 7 of the document of address on the designation, position and tasks of the DPO in the public sphere adopted with provision no.186 of 29 April 2021, cit.).

Failure to update the contact details of the DPO, both on the website of the entity and in the relative communication to the Authority, therefore constitutes a punishable conduct like the non-publication / communication (see Article 37 paragraph 7, the

violation of which is subject to administrative sanctions pursuant to art.83, par.4, letter a of the Regulation).

For the reasons set out above, the Company has committed the violation of art. 37 of the Regulation, not disclosing for this purpose the communication made by the Company with the note of XX, n.XX.

4. Conclusions.

In light of the aforementioned assessments, it is noted that the statements made by the data controller during the investigation the truthfulness of which one may be called to respond pursuant to art. 168 of the Code although worthy of consideration, they do not allow to overcome the findings notified by the Office with the act of initiation of the procedure and are insufficient to allow the filing of this procedure, however, none of the cases provided for by the art. 11 of the Guarantor Regulation 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 Provincial Health Authority of Caltanissetta, in violation of Articles 5, 6, 12, 15 and 37, of the Regulations, of art. 2-ter as well as Article 157 of the Code (in the text prior to the changes made by Legislative Decree 8 October 2021, no. 139, converted, with amendments, by Law 3 December 2021, no. 205).

The violation of the aforementioned provisions makes the administrative sanction provided for by art. 83, par. 5, of the Regulation, pursuant to art. 58, par. 2, lett. i), and 83, par. 3, of the same Regulation and art. 166, paragraph 2, of the Code.

In this context, considering, in any case, that the conduct has exhausted its effects, 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 ancillary sanctions (Articles 58, paragraph 2, letter i), and 83 of the Regulations; art. 166, paragraph 7, of the Code).

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 individual 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).

In this regard, taking into account art. 83, par. 3, of the Regulation, in the present 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 administrative fine provided for by art. 83, para. 4 and 5, of the Regulation.

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

In relation to the aforementioned elements, the damage to the person concerned deriving from the knowledge of his / her colleagues and collaborators of information relating to his / her employment relationship with the administration and his / her social security position was considered. This also taking into account the fact that, since 2007, the Guarantor has provided public and private employers with indications on the correct processing of data in the context of the management of the employment relationship (see in particular, paragraph 5 of the Guidelines 161 of 14 June 2007, web doc. 1417809).

On the other hand, it was considered that the consultation of the note containing the complainant's data, made visible through the IT protocol, was carried out by only two employees serving at the U.O.S. Training, directed by the complainant; that the failure to respond to the request to exercise the rights of the interested party occurred as a result of the mere error in the qualification of the request having the Company considered the same as an application for access to administrative documents; that the Company has also erroneously believed that it has correctly communicated the change in the name and contact details of the DPO, in office during the investigation, by means of a generic note, without using the specific procedure made available by the Guarantor .

There are no previous relevant violations committed by the data controller or previous provisions pursuant to art. 58 of the Regulation.

Due to the aforementioned elements, assessed as a whole, it is believed to determine the amount of the pecuniary sanction, in the amount of € 6,000 (six thousand) for the violation of Articles 5, 6, 12, 15 and 37, of the Regulations, of art. 2-ter as well as Article 157 of the Code (in the text prior to the changes made by Legislative Decree 8 October 2021, no. 139, converted, with amendments, by Law 3 December 2021, no. 205) as a withheld administrative fine, pursuant to art. 83, par. 1, of the Regulation, effective, proportionate and dissuasive.

Taking into account the working context of reference, 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 by art. 16 of the Guarantor Regulation n. 1/2019.

Finally, it is believed 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

pursuant to art. 57, par. 1, lett. f), of the Regulations, declares unlawful the conduct held by the Provincial Health Authority of Caltanissetta, described, in the terms set out in the motivation, consisting in the violation of Articles 5, 6, 12, 15 and 37, of the Regulations, of art. 2-ter as well as Article 157 of the Code (in the text prior to the changes made by Legislative Decree 8 October 2021, no. 139, converted, with amendments, by Law 3 December 2021, no. 205);

ORDER

to the Provincial Health Authority of Caltanissetta, in the person of the pro-tempore legal representative, with registered office in Caltanissetta Via Cusmano 1, C.F. 01825570854 pursuant to art. 58, par. 2, lett. i), and 83, par. 5, of the Regulations and art. 166, paragraph 2, of the Code, to pay the sum of € 6,000 (six thousand) as a pecuniary administrative sanction for the violations indicated in the motivation;

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to the Provincial Health Authority of Caltanissetta to pay the sum of € 6,000 (six thousand) according to the methods indicated in the annex, within 30 days of notification of this provision, under penalty of the adoption of the consequent executive acts pursuant to art. 27 of the l. n. 689/1981. 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

the publication of this provision on the website of the Guarantor 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, lett. u), of the Regulations, violations and measures adopted in compliance with art. 58, par. 2, of the Regulation.

Pursuant to art. 78 of the Regulation, 152 of the Code and 10 of Legislative Decree no. 150/2011, against this provision, it is possible to appeal before the ordinary judicial authority, under penalty of inadmissibility, within thirty days from the date of communication of the provision itself or within sixty days if the applicant resides abroad.

Rome, March 24, 2022

PRESIDENT

Stanzione

THE RAPPORTEUR

Ghiglia

THE SECRETARY GENERAL

Mattei