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Injunction order of the Municipality of Francavilla Fontana - 15 January 2020

Register of measures

no. 3 of 15 January 2020

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

At today's meeting, in the presence of Dr. Antonello Soro, president, of dott.ssa Augusta Iannini, vice president, of prof.ssa Licia Califano and of dott.ssa Giovanna Bianchi Clerici, members and of dott. Giuseppe Busia, general secretary;

HAVING REGARD TO Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data, as well as on the free circulation of such data and repealing Directive 95/46 /CE, "General Data Protection Regulation" (hereinafter GDPR);

HAVING REGARD TO Legislative Decree 30 June 2003, n. 196 containing the "Code regarding the protection of personal data (hereinafter the "Code");

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

Given the documentation in the deeds;

Given the observations made by the Secretary General pursuant to art. 15 of the Regulation of the Guarantor n. 1/2000 on the organization and functioning of the office of the Guarantor for the protection of personal data, in www.gpdp.it, doc. web no. 1098801;

Speaker Dr. Giovanna Bianchi Clerici;

WHEREAS

1. Introduction

This Authority has received a complaint from Mr. XX, regarding the publication on the institutional website of the Municipality of Francavilla Fontana of his personal data and information.

From the preliminary verification carried out by the Office on 11/21/2018, it emerged that on the institutional website of the aforementioned Municipality, in the section dedicated to the Praetorian register (url <http://www....>), it was visible and freely downloadable Determination XX, concerning «XX» (url <http://...>).

With the aforementioned managerial determination, the liquidation of legal expenses was ordered for a judicial proceeding in which the Municipality of Francavilla Fontana had been a party and in the reasoning part the personal data and information of the complainant were also reported, with detailed references to the relative infirmities due to service causes , such as the indication that the same had «the right to fair compensation for XX».

Furthermore, in the same resolution, the IBAN coordinates of the lawyer appointed by the Body were also reported.

In this regard, the Municipality of Francavilla Fontana responded to the request for information from this Authority (prot. note no. 34076 of 11/21/2018) with the prot. note no. 42180 of 11/28/2018.

Specifically, the Director Dr. XX has, among other things, represented that:

- "due to a mere typo and mere clerical error, contrary to the operational instructions given to the same staff, document XX [subject of the complaint] was erroneously published";
- "The aforementioned document, at the current date, is no longer available for consultation on the Net or with normal search engines, let alone with those of the ENTITY's website as evidenced below (company responsible for managing the praetorian register and transparent administration PARSEC on external repository).
- "with reference to the topic of ONLINE publication by public subjects [...] the Municipal Administration of Francavilla Fontana is implementing a process of adapting its management and document system to the GDPR - an activity also stimulated by the Data Protection Manager who law by knowledge - also through specific training interventions aimed at personnel with responsibility tasks in terms of GDPR";
- «The two training interventions administered to operational staff and with managerial functions [...] despite having examined the issue of administrative transparency, however, were not able to prevent human error for which the internal control measures are being further strengthened»;
- «Proceeded [...] to disable the software option that allows the display of administrative documents for a period exceeding 15 days (in the case of the praetorian register) after which they are archived and can be consulted only by internal staff ».

2. Applicable law.

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

In this context, the processing of personal data must take place in compliance with the principles indicated in the art. 5 of the GDPR, including those of "data minimization", according to which personal data must be "adequate, pertinent and limited to what is necessary with respect to the purposes for which they are processed" (par. 1, letter c).

In any case, the dissemination of data relating to health is absolutely prohibited (Article 2-septies, paragraph 8, of the Code, see also Article 9, paragraphs 1, 2 and 4, of the GDPR), i.e. "data personal data relating to the physical or mental health of a natural person, including the provision of health care services, which reveal information relating to his state of health" (Article 4, paragraph 1, no. 15; recital no. 35, of the GDPR).

3. Preliminary evaluations of the Office on the processing of personal data carried out.

As a preliminary point, it should be noted that, unless the fact constitutes a more serious offence, whoever, in a proceeding before the Guarantor, falsely declares or certifies news or circumstances or produces false deeds or documents is liable pursuant to art. 168 of the Code «False statements to the Guarantor and interruption of the performance of the duties or exercise of the powers of the Guarantor».

In this context, from the checks carried out on the basis of the elements acquired, also through the documentation sent by the Municipality, and the facts that emerged following the preliminary investigation, as well as the subsequent evaluations, the Office has ascertained that the Municipality of Francavilla Fontana with the complete publication on the institutional website, in the section dedicated to the Praetorian register, of Determination XX, concerning «XX» (url <http://...>) has carried out processing that does not comply with the relevant regulations on the protection of personal data .

Therefore, the violations carried out were notified, pursuant to art. 166, paragraph 5, of the Code, to the Municipality of Francavilla Fontana, communicating the start of the procedure for the adoption of the measures referred to in article 58, paragraph 2, of the RGPD and inviting the aforementioned Municipality to send the Guarantor defensive writings or documents and, possibly, to request to be heard by this Authority, within 30 days (Article 166, paragraphs 6 and 7, of the Code; as well as

Article 18, paragraph 1, of Law No. 689 of 24/11 /1981).

4. Outcome of the investigation relating to the complaint presented

From the research carried out by the Protocol Office, no reply has been received from the Municipality of Francavilla Fontana, nor has the defense written or a request for a hearing been sent to the Guarantor, in relation to the aforementioned notification of the initiation of the procedure carried out pursuant to the 'art. 166, paragraph 5, of the Code.

Therefore, considering that, with reference to the present case, the arguments put forward by the Municipality in replying to the request for information from the Office, are not suitable for determining the closure of the proceeding, the preliminary assessments of the Office are confirmed and it is noted the illegality of the processing of personal data carried out by the Municipality of Francavilla Fontana, for having disseminated, through the publication on the online praetorian register of Determination XX (concerning «XXX»):

- data on the health of Mr. XX, with detailed references to the relative infirmities due to service causes, in violation of the basic principles of treatment contained in articles 5, par. 1, lit. c); 9, par. 1, 2 and 4 of the GDPR, as well as art. 2-septies, paragraph 8, of the Code;

- personal data not "limited to what is necessary with respect to the purposes" of the processing, with reference to the clear indication of the IBAN coordinates of the lawyer appointed by the Body, in violation of the basic principles of the processing contained in the articles 5, par. 1, lit. c of the GDPR.

5. Adoption of the injunction order for the application of the administrative fine (articles 58, paragraph 2, letter i; 83 GDPR)

The violation of the articles 5, par. 1, lit. c); 9, par. 1, 2, 4 of the GDPR, and of the art. 2-septies, paragraph 8, of the Code, caused by the conduct put in place by the Municipality of Francavilla Fontana noted above, is subject to the application of the administrative fine pursuant to art. 83, par. 5, letter. a) of the GDPR.

The Guarantor, pursuant to articles 58, par. 2, lit. the); 83 of the GDPR as well as art. 166 of the Code, has the corrective 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, depending on the circumstances of each individual case" and, in this framework, "the Board [of the Guarantor] adopts the injunction order, with which it also orders the application of the ancillary administrative sanction of its publication, in full 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).

The aforementioned pecuniary administrative sanction imposed, according to 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 GDPR.

In relation to the aforementioned elements, the reported conduct in violation of the regulations on the protection of personal data involved the dissemination of data relating to the complainant's health with specification of the pathology suffered and the XX, as well as data relating to the IBAN code of the professional appointed by the Municipality. The diffusion lasted for more than two months. The Municipality of Francavilla Fontana represented that the violation would have been caused by a material error by the personnel responsible for compiling the deliberative acts, with the consequent culpable nature of the violation. The Municipality took action to remove the personal data of the interested parties as soon as it received the request for information from the Guarantor and therefore collaborated with the Authority during the preliminary investigation of the present proceeding in order to remedy the violation and mitigate the possible negative effects. In the response to the Guarantor, various technical and organizational measures implemented pursuant to articles 25-32 of the GDPR. Furthermore, there are no previous violations of the relevant GDPR committed by the Municipality of Francavilla Fontana.

Based on the aforementioned elements, evaluated as a whole, it is deemed necessary to determine pursuant to art. 83, par. 2 and 3, of the RGPD, the amount of the pecuniary sanction, provided for by art. 83, par. 5, letter. a) of the GDPR, in the amount of 10,000.00 (ten thousand) euros for the violation of articles 5, par. 1, c); 9, par. 1, 2, 4 of the GDPR, and of the art. 2-septies, paragraph 8, of the Code, as a pecuniary administrative sanction deemed effective, proportionate and dissuasive pursuant to art. 83, par. 1, of the same GDPR.

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

Pursuant to art. 166, paragraph 7, of the Code, the publication of this provision is ordered on the website of the Guarantor.

ALL THIS CONSIDERING THE GUARANTOR

notes the illegality of the processing carried out by the Municipality of Francavilla Fontana and pursuant to articles 58, par. 2, lit. the); 83 of the GDPR, as well as 166 of the Code

ORDER

to the Municipality of Francavilla Fontana, in the person of its pro-tempore legal representative, with registered office in Via Municipio n. 4, zip code 72021, Francavilla Fontana (BR) – Fiscal Code 00176620748 to pay the sum of 10,000.00 (ten

thousand) euros as an administrative fine for the violations indicated in this paragraph;

ENJOYS

to the same Municipality to pay the sum of 10,000.00 (ten thousand) euros - without prejudice to the provisions of the aforementioned art. 166, paragraph 8, of the Code - according to the methods indicated in the attachment, within 30 days of notification of this provision, under penalty of the adoption of the consequent executive acts pursuant to art. 27 of the law no. 689/1981.

Please note that, pursuant to art. 166, paragraph 8, of the Code, «Within the term referred to in article 10, paragraph 3, of legislative decree no. 150 of 2011 envisaged for the filing of the appeal, the offender and the parties jointly liable may settle the dispute by adapting to the provisions of the Guarantor, where given, and by paying an amount equal to half of the fine imposed».

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

Pursuant to art. 166, paragraph 7, of the Code, the publication of this provision is ordered on the website of the Guarantor.

Pursuant to art. 78 of the GDPR, of the articles 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, 15 January 2020

PRESIDENT

Soro

THE SPEAKER

Cleric Whites

THE SECRETARY GENERAL

Busia