[doc. web no. 9888096]

Provision of 23 March 2023

Register of measures

no. 83 of 23 March 2023

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 Dr. Agostino Ghiglia;

WHEREAS

1. Introduction.

With a complaint presented pursuant to art. 77 of the Regulation, Mr. XX represented that, having participated in an insolvency procedure called by the National Council of the Order of Social Workers (hereinafter, the "Council"), the latter published the

final ranking on its institutional website of said procedure (in which the complainant appeared as a non-winner) and subsequently adopted and published a resolution aimed at adopting a measure of exclusion of the complainant due to the existence of previous criminal convictions (with obscuring of the name and surname of the same and the reasons underlying the exclusion); lastly, it published on the same website a corrected version of the aforementioned ranking, without references to the complainant.

The complainant therefore complained that the publication of these documents, if considered jointly, would have led to the illegitimate dissemination of personal data relating to him - with particular reference to the circumstance of having been the recipient of an exclusion provision -, including personal data relating to criminal convictions and offences.

2. The preliminary investigation.

In response to a request for information from the Guarantor (note prot. n. XX of XX), the Council, with note prot. no. XX of the XX, declared, in particular, that:

"the [claimant] participated in the competition announced by the [Council] [...] in the XX [...] aimed at filling a post [...]";

"following the evaluation of the candidates' qualifications and tests, the claimant gained a score such as to place him in second position in the final ranking";

following certain investigations initiated by the Order regarding the declarations made by the participant when applying to participate in the competition procedure in question, the Council resolved to "exclude the complainant from the aforementioned competition, with Resolution of the President of the [Council] of XX";

"[…] any type of reference to […] judicial data was made in the documents […] published by the Body. No 'reader', therefore, could in any way go back to such judicial data [...] by consulting the provisions published by the [Council]";

"the reasons for which an institution can exclude a candidate from a public competition can be very varied, from a re-evaluation of the qualifications or tests taken such as to attribute a score lower than the minimum eligibility threshold, to the candidate's withdrawal or to the different assessment regarding the existence of all the access requirements necessary for participation in the competition. Therefore, no one could have known from the mere publication of the aforesaid documents the specific reason for the exclusion of the claimant, nor his [...] judicial data held by the Entity";

"all the provisions published, in accordance with the principle of data minimisation, have been duly omitted, both in the recitals, in the reasoning part, as well as in the operative part";

"[...] the [Council], as a non-economic public body, is subject to the application of all the rules of a public nature concerning the selection procedures for the personnel of the Public Administration.";

“[…] the participants mentioned in positions 2 to 5 are found to be “eligible non-winners”. An "suitable non-winner" subject, in a public competition, boasts a position of expectation upon hiring, given that the Administration retains wide discretion and has the right to proceed with the subsequent scrolling of the ranking. Therefore, the fulfillment of the publication obligations established by the P.A. it is also necessary to ensure that the ranking has its effects even beyond the conclusion of the competition at the end of which it is formed, in the face of any further initiatives concerning the scrolling of the aforementioned ranking, both by the P.A. where she perfected, both of other P.A. interested in using it”;

"the publication of the merit ranking, therefore, finds its legal foundation in the rules contained in the Presidential Decree no. 3/57, Presidential Decree no. 487/94, Legislative Decree no. 165/01 and in Legislative Decree no. 33 of 2013”;

"with reference to the latter provision, it is recalled that the [Council], as a professional body having the nature of a non-economic public body, is subject to compliance with all the obligations deriving from the legislation on the prevention of corruption and transparency. In particular, [applies to] the art. 19 co.1 of Legislative Decree n. 33 of 2013 [pursuant to which] [...] the public administrations publish [...] the final rankings, updated with the possible scrolling of the suitable non-winners";

“Alongside the aforementioned publication charges, there are, then, the obligations to update the ranking. In fact, the second paragraph of the art. 19 referred to above, establishes that "public administrations publish and keep constantly updated the data referred to in paragraph 1". From this assumption, therefore, it can be deduced that the Administration could in no way avoid publishing the merit ranking and subsequent updates";

"with reference to the times of publication and validity of the rankings, it should also be noted that, pursuant to art. 8, co. 3, of Legislative Decree no. 33 of 2013 "the data, information and documents subject to mandatory publication pursuant to current legislation are published for a period of 5 years, starting from 1 January of the year following that from which the obligation to publish starts". This principle of a general nature must harmonize with the further one, which can be inferred from the TU on public employment, regarding the period of validity of the competitive rankings; pursuant to art. 35, co. 5ter, Legislative Decree no. 165/01, “The rankings of the competitions for the recruitment of personnel in public administrations remain in force for a period of two years from the date of approval. The shorter periods of validity envisaged by regional laws are reserved". Therefore, the effects of a bankruptcy ranking, by express regulatory provision, do not cease as a result of the conclusion of

the bankruptcy operations following which it is formed, but must remain available even subsequently both for the same Administration that announced the competition, and for the others, by virtue of any scrolling arranged thereon";

"the ranking of the XX has been published in the transparent administration section https://cnoas.org/amm-trasparente/concorsi/bandi-di-concorso/ dal XX [...]";

"the ranking of the XX has been published in the transparent administration section https://cnoas.org/amm-trasparente/concorsi/bandi-di-concorso/ dal XX [...]";

"resolution no. XX of the XX contains the period of publication: "it is hereby certified that a copy of resolution no. XX executive pursuant to art. 21 quater of Law 241/1990, is published on the online bulletin board of the National Council of the Order of Social Assistants on the institutional website at the address https://cnoas.org/bacheca/, pursuant to art. 32 of the law n. 69/2009 and will remain there, in view, for 15 consecutive days starting from day XX and up to day XX". Therefore, it was initially published under the section called "notice board" (https://cnoas.org/albo-on-line/) and, subsequently, 'transferred' to the "transparent administration" section [...] (https:/ /cnoas.org/amm-trasparente/albo-degli-atti/)";

"the [Council] [...] also has the obligation to publish its resolutions pursuant to art. 32 paragraph 1 of law 69/2009, according to which "the obligations to publish administrative deeds and provisions having the effect of legal publicity are understood to be fulfilled with the publication on their own IT sites by the administrations and public bodies obliged"";

"[...] the [Council] has taken steps not to include in the published resolution neither the identification nor the part relating to the reasons for the exclusion of the [complainant]".

With a note of the XX (prot. n. XX), the Office, on the basis of the elements acquired, the checks carried out and the facts that emerged following the preliminary investigation, notified the Council, 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 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 force on the date of the facts subject to the complaint), inviting the aforementioned owner to produce written documents to the Guarantor defenses 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, of the law of 24 November 1981, n. 689).

With note prot. no. XX of the XX, the Council presented its defense brief, declaring, in particular, that:

"[the processing was] carried out in the context of a public bankruptcy procedure, as known, subject to particularly stringent publication obligations [...] in the exercise of the administrative functions that the law attributes to the [Council] [...] exclusively in the specific section 'Transparent administration' - 'Competition notices', provided for by Legislative Decree no. 33/13 precisely to ensure maximum transparency of administrative action, even more so in a sector - such as that of personnel selection procedures [...] characterized by the greatest risk of corruption";

"therefore, the name of the [claimant] (and the score obtained by it) did appear, but for the sole purpose of informing the same participant about the outcome of the competition tests taken; the name and surname of the participant in the procedure, therefore, were mentioned exclusively in the aforementioned ranking and in no other deed or provision adopted by the Organization and subject to publication";

“[…] it was not possible in any way to find the reasons why this subject was then excluded from the procedure; the exclusion resolution subsequently published and which sanctioned the exclusion from the insolvency procedure of the [claimant] published in accordance with art. 32 co.1 of the law n. 69/2009, was inclusive of obscuring debt through "omissis", in order both to the name of the person object of the resolution itself, and in order to the justifications of the adoption of the deed";

"on the other hand, the reasons that could lead to the candidate's exclusion could be the most disparate [...]";

"probably [...] the artificial work of synopsis between the versions of the rankings published by the [Council] exclusively concerned a very limited number of users, i.e. the only five participants in the competition test who had passed the pre-selection test [...] [; this] number is so small as to eliminate at root any prejudicial effect against the interested party or, in any case, any profile of gravity in the treatment carried out by the Entity";

"the complainant complained about the processing of his personal data with respect to the combined publication (i) of the first ranking, duly deleted from the institutional website of the Body (ii) of the corrected one and (iii) of resolution no. XX of the XX, with which the President was delegated to proceed with the exclusion of the complainant. Well, the latter - however omitted - was only published for 15 days in the 'Online Register' section. Therefore, even the duration of the processing of personal data carried out by the Organization is such as to avoid any profile of seriousness of the treatment carried out. Especially since the presidential resolution of exclusion of the XX, with which the President exercised the delegation of exclusion granted to him by the Council with resolution no. 163 mentioned above has never even been published”;

"[...] the difficult regulatory framework that orients - and very often confuses - the Administrations, especially those of more

modest dimensions, must be represented";

“the fact that [art. art. 19 co. 1, Legislative Decree no. 33/13] specifies, in the last period, that the criteria should be published "updated with the possible scrolling of suitable non-winners" has led the Administration to adopt a conduct devoted to the most meticulous and complete administrative transparency [...] ";

"in order, therefore, to evaluate the absolute good faith of the Administration's action, the magmatic complexity in which it is forced to act must be considered, in addition to the deterrent power detached from the sanctions envisaged in the event that the publicity obligations are disregarded cited”;

"[...] this exegetical and applicative difficulty must [...] be evaluated against a professional Order, in possession of a very limited staff [...]";

"[...] the Administration immediately took care to remove [the] name [of the complainant] from the first version of the published ranking";

"[...] alongside the elimination of the documents published in the "Transparent Administration" section, any indexing present on search engines has been eliminated, so as to radically interrupt any 'digital link' between the [complainant] and the [Council]" ;

"[...] the occurred treatment not compliant with the [Regulation] of particular data or in any case pertaining to judicial convictions pursuant to articles 9 and 10 of the [Regulation]".

During the hearing, requested by the Board pursuant to art. 166, paragraph 6, of the Code and held on the XX date, the Board also declared, in particular, that:

"considering the specific legal nature of the Entity, there is [...] a further difficulty in understanding the legal framework actually applicable to the Order [, also taking into account the fact that, in the opinion of the National Anti-Corruption Authority,] the professional Orders do not fall within the public administrations referred to in art. 1, paragraph 2, of Legislative Decree 165/2001".

3. Outcome of the preliminary investigation.

The regulation of personal data protection provides that public subjects, in the context of the work context, can process the personal data of the interested parties, if the treatment is necessary, in general, for the management of the employment relationship and to fulfill specific obligations o 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).

The national legislation has also introduced more specific provisions to adapt the application of the provisions of the Regulation, determining, with greater precision, specific requirements for the treatment and other measures aimed at guaranteeing lawful and correct treatment (Article 6, par. 2, of the Regulation), and, in this context, has established that processing operations, and among these the "dissemination" of personal data, are permitted only when provided for by a law or, in the cases provided for by law, regulation (art. 2-ter, paragraphs 1 and 3, of the Code in the text prior to the amendments made by Legislative Decree 8 October 2021, in force at the time of the events subject to the complaint).

In any case, the data controller is required to respect the principles of data protection, including that of "lawfulness, correctness and transparency" and "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).

In the present case, the Council published:

starting from the XX, the definitive ranking relating to the aforementioned competitive procedure, dated XX, in the "Transparent Administration" section of its institutional website, with indication of the name of the winning candidate and that of four suitable but non-winning candidates, among which the complainant (with indication of the score achieved by each of them);

Board resolution no. XX of the XX, which gave "mandate to the President for the consequent adoption of the measure of exclusion from the ranking of the [name and surname of the complainant]", first on a page of its institutional website ("Online notice board"), from the twentieth and for the following 15 days, and then in the "Transparent Administration" section of the same, with obscuring by "omissis" the details of the complainant and the reasoning for the resolution, and with the following unencrypted text in the operative part: "resolution to give a mandate to the President for the consequent adoption of the provision for exclusion from the ranking (OMISSIS)";

the corrected version of the aforementioned ranking of the XX, starting from the same date, on the "Transparent Administration" section of its institutional website, with the indication of the winning candidate and three suitable but non-winning candidates - among whom he no longer appears in complainant – and with the following text at the bottom:

“ranking adjusted pursuant to National Council Resolution no. 163 of 11/14/20 and of the President's Resolution of 11/26/20".

That being said, it should first of all be noted that, following the outcome of the competitive tender procedure in question, the Council published on its institutional website, starting from the XX, a ranking in which appeared the name of the winning candidate and that of four suitable candidates but non-winners, including the complainant, with an indication of the score achieved by each of them.

With regard to the publication of the rankings relating to insolvency proceedings, the Guarantor has provided specific indications to the public administrations regarding the precautions to be taken for the dissemination of personal data on the Internet for purposes of transparency and publicity of the administrative action already with the "Guidelines regarding the processing of personal data, also contained in administrative deeds and documents, carried out for the purpose of publicity and transparency on the web by public subjects and other obliged bodies" (provision no. 243 of 15 May 2014, web doc. no. 3134436, spec. II, paragraph 3.b; see also the "Guidelines on the processing of personal data of workers for the purpose of managing the employment relationship in the public sector", provision of 14 June 2007, no. 161, web document n.1417809).

The regulatory provisions which establish, in general, the disclosure of final measures and rankings as well as other acts concerning competitions, selective tests and career progression and other procedures which end with the formation of rankings, as well as other specific forms of knowledge of these deeds envisaged by the law, find their own discipline in provisions stratified over time (cf. art. 7, Presidential Decree January 10, 1957, n. 3; Article 15, Presidential Decree May 9, 1994, n. 487, in in particular, paragraphs 5, 6 and 6-bis; more generally, on the publicity of public administration personnel recruitment procedures, see Article 35, paragraph 3, Legislative Decree No. 165 of 30 March 2001).

These provisions perform the function of allowing interested parties, participants in competitive or selective procedures, to activate forms of protection of their rights and control of the legitimacy of the administrative action, as regards the publication of the ranking in the official bulletins of the respective bodies (and on their institutional websites) is notified by means of a notice in the Official Gazette of the Republic. From the date of publication of said notice, the term for any appeals begins (see art. 15, paragraph 6 of Presidential Decree 9 May 1994, n. 487).

Furthermore, these rules stipulate that only the final rankings of the competition winners are published and not also the results of the intermediate tests or the personal data of the non-winning or ineligible competitors (see art. 15, paragraph 6-bis, of Presidential Decree 9 May 1994, No. 487, "Regulation containing rules on access to employment in public administrations and

the procedures for conducting competitions, single competitions and other forms of recruitment in public employment").

In fact, based on the provisions of Legislative Decree 14 March 2013, n. 33, "without prejudice to the other legal publicity obligations, the public administrations publish the notices of competition for the recruitment, in any capacity, of personnel from the administration, as well as the evaluation criteria of the Commission, the traces of the tests and the rankings finals, updated with the eventual scrolling of eligible non-winners. The public administrations publish and keep constantly updated the data referred to in paragraph 1" (art. 19, paragraphs 1 and 2; see Memoir of the President of the Authority for the protection of personal data on the 2020 budget bill commission 5 °, Budget, of the Senate of the Republic, of 12 November 2019, web doc. 9184376; see, most recently, provision 28 April 2022, no. 151, web doc. no. 9778996, and the previous provisions referred to therein, among to which, in particular, provision No. 407 of 25 November 2021, web doc. 9732406).

Instead, the Board has published a ranking list on its institutional website, which has not been scrolled, and therefore also contains the details of the suitable but non-winning candidates and the scores they achieved.

In this regard, the statements made by the Board regarding the fact that the professional Orders are not included among the public administrations referred to in art. 1, paragraph 2, of Legislative Decree 165/2001, given that, pursuant to art. 2-bis, paragraph 2, lett. a), of Legislative Decree 14 March 2013, n. 33, which defines the subjective scope of application of the legislation on transparency, the same discipline envisaged for the public administrations referred to in paragraph 1, including all the administrations referred to in art. 1, paragraph 2, of legislative decree March 30, 2001, no. 165, "also applies, insofar as it is compatible, to economic public bodies and professional associations".

It should also be noted that the publication on the institutional website of the Council of the ranking XX, of the council resolution no. XX of the XX and of the corrected version of the ranking of the XX, led to the dissemination of further information relating to the complainant, with specific regard to the fact that the same had been excluded from the ranking relating to the bankruptcy procedure in question.

Although, in fact, the aforesaid documentation, in the version published online, did not contain direct references to the name and surname of the claimant, the latter could have been identified by a possible comparison between the initial ranking of the XX and the corrected one of the XX, as your name no longer appears in the latter. Furthermore, by relating the text that appears at the bottom of the adjusted ranking ("adjusted ranking pursuant to National Council Resolution No. 163 of 11/14/20 and the President's Resolution of 11/26/20") with the part disposition of the board resolution n. XX of the XX ("deliberation to

give mandate to the President for the consequent adoption of the measure of exclusion from the ranking (OMISSIS)") it is possible to note that the references to the complainant no longer appear in the definitive ranking, as the same was the recipient of a exclusion provision, even if the specific motivation underlying the exclusion cannot be inferred from the reference context (cf. Working Group Art. 29, Opinion 05/2014 on anonymisation techniques, WP216, where it is clarified that "by identification one does not means only the possibility of retrieving a person's name and/or address, but also the potential identifiability by identification, linkability and inference).

The dissemination of the personal data of the complainant and of the other suitable but unsuccessful candidates on the institutional website of the Council therefore took place in a manner that did not comply with the principle of "lawfulness, correctness and transparency" and in the absence of a legal basis, in violation of the articles 5, par. 1, lit. a), 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, in force on the date of the facts subject to the complaint).

Lastly, it should be noted that, contrary to what was believed by the complainant, the disclosure in question did not concern personal data relating to criminal convictions and offenses (Article 10 of the Regulation), given that the specific motivation underlying the exclusion provision that involved the complainant, having therefore to order the filing of the complaint, limited to this profile.

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 overcoming the findings notified by the Office with the act of initiation of the procedure and are insufficient to allow the closure of the present procedure, since none of the cases provided for 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 Council is noted, for having disclosed personal data of the complainant and of three other interested parties, in violation of articles 5, par. 1, lit. a), 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, in force at the time of the events subject to the complaint).

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 disclosure of the complainant's personal data has ceased, 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 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 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 aforementioned elements, it was considered that the disclosure of the personal data in question took place despite the Guarantor having long since provided specific indications to the public administrations regarding the precautions to be taken for the disclosure of personal data on the Internet for transparency and publicity purposes of the administrative action (see the "Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for the purpose of publicity and transparency on the web by public subjects and other obliged entities", cit., spec. . II, paragraph 3.b; see the "Guidelines on the processing of personal data of workers for the purpose of managing the employment relationship in the public sector", cit.).

Conversely, it was considered that:

the disclosure of the personal data in question involved a limited number of data subjects (i.e. the complainant and three other

eligible but unsuccessful participants);

the conduct is negligent in nature, the violation having been caused by an erroneous interpretation of the legal framework regarding the obligations to publish the rankings relating to insolvency proceedings, having, therefore, the Board acted in good faith, in the belief that the treatment in question it was necessary to fulfill legal obligations and ensure the transparency of the administrative action;

it is reasonable to hypothesize that only a limited number of people have actually consulted the documents to be published and put them in relation to each other, thus becoming aware of the fact that the complainant had been the recipient of an exclusion measure; this also in consideration of the fact that, as declared by the Board, resolution no. XX of the XX, with which the President was delegated to proceed with the exclusion of the complainant, was published only for fifteen days in the 'Online register' section of the institutional website of the Council;

the data controller is a small entity, which has a limited number of staff;

the data controller cooperated fully with the Authority during the investigation;

the data controller has taken initiatives to strengthen its internal organization, in order to ensure even more stringent compliance with the legislation on the protection of personal data.

Finally, 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 3,000 (three thousand) euros for the violation of articles 5, par. 1, lit. a), 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), as a pecuniary administrative sanction withheld, pursuant to art. 83, paragraph 1, of the Regulation, effective, proportionate and dissuasive.

Taking into account that the disclosure of the personal data in question took place in the prodromal phase of the possible establishment of the employment relationship and also concerned the delicate information relating to the exclusion of the complainant from the procedure, it is also believed that the sanction should be applied ancillary to the publication on the Guarantor's website 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 treatment carried out by the National Council of the Order of Social Workers for violation of articles 5, par. 1, lit. a), 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), in the terms referred to in the justification;

ORDER

to the National Council of the Order of Social Assistants, in the person of its pro-tempore legal representative, with registered office in Via Del Viminale, 43 - 00184 Rome (RM), Tax Code 97131960581, to pay the sum of 3,000 (three thousand) euros as an administrative fine for the violations indicated in the justification. It is represented that the offender, pursuant to art. 166, paragraph 8, of the Code, has the right to settle the dispute by paying, within 30 days, an amount equal to half of the fine imposed;

ENJOYS

to the National Council of the Order of Social Workers, in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, to pay the sum of 3,000 (three thousand) euros according to the methods indicated in the attachment, 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

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

Pursuant to 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, 23 March 2023

PRESIDENT

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THE SPEAKER

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THE SECRETARY GENERAL

Matthew