[doc. web no. 9897931]

Provision of April 27, 2023

Register of measures

no. 167 of 27 April 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 the lawyer. Guido Scorza;

WHEREAS

1. Introduction.

With a complaint presented pursuant to art. 77 of the Regulations, Mr. XX, who worked as a contract university professor at the University of Cassino and Southern Lazio (hereinafter, the "University" or the "University"), complained about the following

alleged violations of the regulations on the protection of personal data:

1) the oral communication by a University professor to a student of the complainant's personal data relating to crimes, or the initiation of a criminal proceeding against him;

2) the communication to third parties of personal data relating to crimes, through a note of the XX (prot. n. XX), signed by the Director General of the University and the Head of the Legal Activities Sector, sent to the Territorial Labor Inspectorate of Frosinone ;

3) the communication to third parties of personal data relating to crimes, by means of a note of the XX (prot. n. XX), signed by the General Director of the University and the Head of the Legal Activities Sector, sent to the Inspectorate for Public Function at the Presidency of the Council of Ministers;

4) the communication to third parties of personal data, also relating to crimes, by means of a note of the XX (prot. n. XX), signed by the University Rector and the Head of the Legal Activities Sector, sent to the Rectors of the Italian Universities;

5) failure to respond to a request to exercise the rights of the interested party, presented, pursuant to articles 15-22 of the Regulation, in XX.

Subsequently, the complainant also complained, in a note dated XX, in relation to the aforementioned reason for complaint under point 5), the unsuitability of the response that the University, during the investigation, claimed to have provided to him.

Consequently, the Office of the Guarantor, pursuant to art. 10, paragraph 4, of Internal Regulation no. 1/2019, has ordered, limited to this profile, the joining of the proceedings and the treatment of the ground for complaint under point 5) in a separate proceeding, currently being defined.

2. The preliminary investigation.

In response to a request for information from this Authority (note prot. n. XX of XX), the University, with note dated XX (prot. n. XX), first of all confirmed that the complainant carried out teaching at the same.

With regard to the reason for the complaint referred to in point no. 1), the University declared in particular that the employee who, in the opinion of the complainant, would have communicated personal data relating to crimes to a female student, has drawn up a declaration, dated XX, with which "the same fully disavows the content of the e-mail that the complainant claims to have been received by the student [in question]", specifying "that he has never spoken with said student in relation to alleged ongoing investigations against the [complainant]".

With regard to the reason for the complaint referred to in point no. 2), the University has declared, in particular, that:

the "note XX, Prot. XX [...] confirmed the note of the Territorial Labor Inspectorate of Frosinone which set the convocation of the parties for an attempt at conciliation in relation to the non-payment of emoluments in favor of the complainant";

"in the aforementioned note [...] [the] University communicated (only to the requesting administration) the reasons for the provisional non-payment, also specifying that the Public Prosecutor of [...], "in relation to the pending criminal proceedings against the contractor in question", with the decree of exhibition dated [...] he had delegated the local Judicial Police to acquire documentation concerning the contractual assignments of the same";

the "University believes that this communication does not include the processing of personal data relating to criminal convictions and offences", since "the term contained in the communication sent [...] to the Inspectorate [...] did not provide any indication of a specific conviction of the same, nor did it attribute or specify the commission of a specific crime";

"they no longer fall within [...] [art. 10 of the Regulation] the information relating to the quality of defendant or suspect [...] [and] this in itself would make the "normal" legal bases referred to in art. 6 of the Regulation";

"the request for a summons by the Labor Inspectorate, in fact, constitutes a pre-procedural phase of a contentious judgment, in the context of which there was a need to defend a right [...] [of the] University. In this context, the Supreme Court of Cassation has repeatedly ruled (sentence n. 3034/2011, n. 35296/2011) the prevalence of the right of defense in court with respect to that of personal data protection, a balance now implemented by art. 2 octies, 3rd paragraph, lett. e) of the [Code]";

"the communication of the information contained in the note sent to the Labor Inspectorate appeared necessary in order to give an understanding of the difficult situation in which the University found itself with respect to the contractual relationship with the complainant";

"on this point the legal basis of the processing of judicial data of public employees can be found, as required by art. 6, par. 1 of the Regulation [...], in the national rules that require verification of the status of the employee and, in particular, art. 2, paragraph 3, of Presidential Decree 487/1994, according to which "those who are excluded from the active political electorate and those who have been dismissed or exempt from employment in a public administration cannot access employment", applicable, pursuant to the art. 36 of Legislative Decree 165/2001, also to the recruitment of personnel similar to forms of flexible work";

"in the specific case, the clarification to the Inspectorate had become necessary to clarify, during the dispute, that the

contractual assignments put in place with the complainant had been acquired by the Judicial Police during a criminal investigation which could have led to the declaration incidental to the illegitimacy of the same and, therefore, of the illegality of the payment of the wages deriving from them".

With regard to the complaint profile referred to in point no. 3), the University has declared, in particular, that:

"val[e] [...] what has already been explained for the previous point [2]. The tenor and content of the communication sent [by] the University to the Presidency of the Council of Ministers - Public Function Department [...], is identical to that communicated to the Labor Inspectorate, containing only the phrase "in relation to the pending criminal proceedings against of the contractor in question"";

"the clarifications set out above must therefore be considered referred to, both on the absence of data relating to criminal convictions or offenses within the communication, and on the need to follow up on the specific supervisory and inspection activities implemented by the Public Administration Department (which could have led [...] also to a possible disciplinary judgment against the University managers). For these reasons, again for defensive needs pursuant to art. 2, octies, 3rd paragraph, lett. e) of the [Code], the University found itself having to highlight in transparency and completeness the circumstances that had led to the delay in the payment of salaries".

With regard to the complaint profile under point no. 4), the University has declared, in particular, that:

the "note of the XX, Prot. XX, signed by the University Rector and the Head of the Legal Activities Sector, sent to the Rectors of the Italian Universities [...] was the result of an internal reflection of the University which, in consideration of the numerous reports received on behalf of the complainant, it found itself forced to distance itself, within the university research sector, from this subject, otherwise finding itself involved in a situation of serious embarrassment and damage to its reputation";

"even in this case [...] [the University] believes that it did not communicate any data relating to criminal convictions or crimes within the report to the Rectors of the XX, the report having been limited to the fact that "also requests for acquisition of information and documents by various public prosecutors for hypothetical crimes for which the same is under investigation";

"the letter did not contain any indications of possible criminal convictions nor did it charge the complainant with specific crimes, but limited itself to reporting factual circumstances and not specific indications that could be subsumed in the context of the data referred to in art. 10 of the Regulation [...]";

"the same, therefore, had become necessary to protect the University from inferences and responsibilities related to the

interested party, who alleged that he was still in service with the writer even in prestigious international offices";

“[…] also the treatment carried out with this communication finds [a] its foundation in the context of the legal basis pursuant to art. 2 octies, 3rd paragraph, lett. e) [of the Code] being related to actions preparatory to the exercise of a right in court related to the protection of the reputation and image of the University, towards conduct of the complainant that could certainly have damaged them";

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 University, 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), 6 and 10 of the Regulation, as well as 2-ter and 2-octies of the Code (in the text prior to the amendments made by Legislative Decree No. 139 of 8 October 2021), inviting the aforementioned owner to produce to the Guarantor defense writings 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 Law no. 689 of 24 November 1981).

With a note of the XX (prot. n. XX), the University presented a defense brief, reiterating the defense arguments already presented and declaring, in particular, that:

"the aforementioned communications do not integrate [...] a processing of personal data of the interested party relating to criminal convictions and crimes";

"even if it is considered that the communications made by the University concern the complainant's personal data relating to crimes, the provisions of art. 2-octies, paragraph 3, lett. e), of the [Code]";

"with regard to the note of the XX (prot. n. XX) sent [by the] University in response to the communication of the Territorial Labor Inspectorate of Frosinone of the XX [...] [, the University believes that] the [...] attempt of conciliation [to which the Inspectorate's note referred] has a prodromal nature to a possible judgment, and that therefore the same is placed in a pre-litigation perspective as an instrument to deflate disputes. This appears to be confirmed by the regulatory provision, which in art. 11, paragraph 3-bis, Legislative Decree no. 124/2004, provides that the conciliation report signed by the parties "is declared enforceable by decree of the competent judge, at the request of the interested party" [...] [; therefore this note must be considered] perfectly legitimate as it was made in a pre-litigation phase, as well as in order to defend the rights and interests [of] the University. Indeed, the latter - considering that the [complainant] complained of the non-payment of the fee due to him

for having carried out teaching activities - was forced to point out to the inspectorate, also in order to avoid a possible inspection intervention, that the delay in payment was due: (i) on the one hand, to a lack of cash availability due to the economic suffering of the University, however represented by the complainant; (ii) on the other hand, by the fact that the Public Prosecutor's Office of [...], in relation to pending criminal proceedings against the [claimant], with a decree of exhibition dated [...] had delegated the local Judicial Police to acquire documentation relating to the contractual assignments held by the same. This last piece of information, in particular, far from being unrelated "to the complained non-payment of fees", had become necessary to clarify, in the pre-litigation stage, that the contractual assignments put in place with the claimant had been acquired by the Judicial Police in venue of a criminal investigation which could have resulted in the incidental declaration of the illegitimacy of the same and, therefore, of the illegality of the payment of the wages deriving from them. To this should be added, in any case, that the communication was sent to the Inspectorate ensuring the secrecy of the data contained therein since, beyond the specific treatment, a limitation was placed on the full disclosure of the same with the related "omissis ””;

"the same considerations apply with regard to the note of the XX (prot. XX), sent [by] the University to the Inspectorate for Public Function [...], with which the University, in compliance with the principles of lawfulness, correctness and transparency , simply highlighted the circumstances which had led to the delay in the payment of wages. The reference to the criminal proceedings against the complainant, in this case, had become necessary for the primary purpose of following up on the specific supervisory and inspection activities put in place by the Public Administration Department, which could also have led to a possible disciplinary judgment against of the heads of the University [...] ”;

"moreover, the presentation by the University of the aforementioned data to the Territorial Labor Inspectorate [...] and to the Public Function Inspectorate [...] was made necessary following the initiatives promoted [by] the complainant, who complained the late payment of contractual fees. In this context, the University was forced to justify this late payment by citing both cash liquidity difficulties and by representing the expediency reasons that gave rise to the delay in payments, deriving from the existence of investigations by the Public Prosecutor's Office against the complainant ”;

"with specific regard to the note of the XX, Prot. XX, transmitted [by] the University to the Rectors of the Italian Universities, the same became necessary in consideration of the numerous reports received on behalf of the complainant, for which the University found herself forced to distance herself from this subject, otherwise finding herself involved in a situation of serious embarrassment and damage to her reputation. In particular, various reports of inappropriate conduct by the complainant

reached the University, such as the one dated XX of the [...] University Press which reported various e-mails with abusive and foul language sent to the address of other professors who collaborate with the magazine from part of the complainant, or the communication of the XX from [name and surname] [of the] [...] University of [...], which informed the University of the plagiarism that the complainant had carried out with the drafting of an article published by him. The constant and continuous embarrassment caused by the subject, the foul language with which he addressed representatives of the scientific community, evidently caused considerable damage to the reputation and image of [the] University. These types of communications, sent by the University's official account, caused serious damage to the image of the same and by many other university institutions and reports of behavior that was nothing short of contrary to the duties of good conduct that befit a member of the institution. The letter, therefore, had become necessary to protect the University from inferences and responsibilities related to the interested party, who alleged that he was still in service at [the University] even in prestigious international locations. Also in this case, therefore, the treatment carried out with this communication finds its foundation in the context of the legal basis pursuant to art. 2-octies, paragraph 3, lett. e) [of the Code], being related to actions preparatory to the exercise of a right in court related to the protection of the reputation and image of the University, towards conduct of the complainant that could certainly have harmed them".

Subsequently, the complainant, after having accessed the preliminary investigation documents, presented, with note of the XX, his own observations regarding the defense proposed by the University.

During the hearing, requested pursuant to art. 166, paragraph 6, of the Code and held on the XX date (minutes prot. n. XX of the XX), the University declared, in particular, that:

"pursuant to art. 60, paragraph 6, of Legislative Decree 165/2001, where irregularities are found, a complaint to the Court of Auditors is envisaged. Also in this area, therefore, the University had the need to protect its rights and defend its position, explaining the facts deemed relevant to the Department of Public Administration with full clarity and collaboration";

the Guarantor has also "underlined on several occasions that the processing of personal data must always be considered lawful when the same is necessary and proportionate for the purposes of defense not only in court but also out-of-court";

“where a conviction had been made against the interested party, with the consequent ascertainment of the falsity of the declarations made by the same, there would have been a nullity of the assignment and the consequent impossibility of paying the sums due; otherwise, the Administration could have caused tax damage, with consequent liability";

"in any case, no substantial damage to the legal sphere of the interested party has occurred, also in consideration of the fact that all communications have been addressed, on a confidential basis, exclusively to public subjects and without the indication of specific types of crime" ;

"the interested party had seriously damaged the reputation of the University in front of prestigious legal journals, including international ones, and, therefore, the University felt obliged to warn the other universities of the potential risks they could incur in the event of relationships with the same interested party, thereby also protecting one's integrity";

"moreover, the University had received a visit from the Carabinieri in relation to the position of the interested party, having therefore increased the level of alarm regarding the conduct of the same";

"the complaint must [...] be part of a broader scenario of conflicting and problematic relationships between the complainant and the University".

3. Outcome of the preliminary investigation.

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

With specific regard to the processing of data relating to criminal convictions and crimes or related security measures, it should be noted that this can only take place under the control of the public authority or if the processing is authorized by the law of the Union or of the Member States which provides appropriate guarantees for the rights and freedoms of the interested parties (Article 10 of the Regulation), or only if the processing is authorized by a law or, in the cases provided for by law, a regulation (Article 2-octies, paragraph 1 and 5, of the Code).

In any case, the data controller is required to respect the principles of data protection, including that of "lawfulness, correctness and transparency" as well as "data minimization", according to which personal data must be "processed in a lawful, correct and transparent manner in relation to the interested party" and must be "adequate, pertinent and limited to what is necessary with

respect to the purposes for which they are processed" (Article 5, paragraph 1, letter a) and c), of the Regulation).

Once the reference legal framework has been reconstructed, it is first necessary to clarify that, contrary to what was claimed by the University during the preliminary investigation, the information relating to the fact that the interested party was under investigation and subjected to criminal proceedings constitutes, for the purposes of the 'art. 10 of the Regulation, a personal data relating to crimes.

Indeed, as stated by the Court of Justice of the European Union, "information relating to a judicial proceeding against a natural person, such as that relating to the opening of an investigation or to the trial, and possibly to the conviction that is result, constitute data relating to 'offences' and 'criminal convictions' within the meaning of the first subparagraph of Article 8(5) of Directive 95/46 and Article 10 of Regulation 2016/679, and this regardless of whether , in the course of this judicial proceeding, the commission of the offense for which the person was being prosecuted has actually been demonstrated or not" (judgment C 136/17, "GC and Others v Commission nationale de l'informatique et des libertés (CNIL)", Grand Section, 24 September 2019). On the other hand, with regard to the working context, numerous provisions of the Guarantor have clarified that the information obtained from the criminal record certificate of the criminal record or from statements made by workers regarding the absence of criminal convictions still constitute data relating to criminal convictions and crimes for the purposes of data protection legislation (on this point, with regard to the absence of criminal convictions with respect to specific crimes, as a requirement for carrying out certain work activities in the public sector, see 2018 Annual Report of the Guarantor, doc. web no. 9109211, pp. 131 et seq., as well as provision. January 19, 2017, no. 10, web doc. no. 5953097; see "Hearing of the President of the Guarantor for the protection of personal data, Prof. Pasquale Stanzione in scope of the examination of the draft laws C. 1779 [...] and C. 1782 [...], containing provisions on controls on personnel assigned to transport services", of 16 December 2021, web doc. n. 9736014; privately, see provision 11 February 2021, no. 47, doc. web no. 9562814; provision 22 May 2018, no. 314, doc. web no. 9005845).

As also recently reaffirmed by the Guarantor (see provision n. 97 of 24 March 2022, web doc. n. 9760883), information relating to events connected with the commission of crimes or criminal proceedings, which concern a natural person, therefore constitutes , "personal data relating to criminal convictions and crimes or related security measures" pursuant to and for the purposes of art. 10 of the Regulation, without the circumstance that such information does not contain express references to the specific crimes committed or to the judicial proceedings in progress.

3.1 The alleged communication of personal data of the complainant by an employee of the University to a student

The complainant complained that an employee of the University would have communicated orally to a student some personal data relating to a criminal proceeding that would have been initiated against her. In this regard, an email was filed that this student would have sent to the complainant on the XX date, 07:48 am. The complainant believes that the email sent by the student in question "appears well-founded and plausible, where it is not clear what different interest she could have in communicating to the [...] teacher such information that does not correspond to the truth" and that the same " therefore it seems to prove how this processing of sensitive judicial data concerning a suspect status of the complainant has been the object of communication within the University". From this, in his opinion, "therefore we deduce not only a circulation of the judicial data within the University offices [...] but even a circulation outside the University where the student reports to the [claimant] that he has been recipient of peacefully sensitive information of a judicial nature and intended to remain confidential".

Having said that, having taken note of the declarations of the University, for which one may be called to respond pursuant to art. 168 of the Code, with particular regard to the circumstance that the employee in question denied having made such communication of personal data, and considering that the complainant has not provided any probative evidence suitable to objectively prove the conduct accused of the University , reconstructed only deductively and probabilistically, the filing of this ground for complaint is ordered.

3.2 The communication of personal data of the complainant to the Territorial Labor Inspectorate of Frosinone

The complainant complained that "with a note of the XX, Prot. XX, [...] sent to the Territorial Labor Inspectorate of Frosinone, in the context of an attempt at conciliation, pursuant to art. 11, ch. 1, Legislative Decree 124/2004, following the inspection of XX, Prot. XX, for non-payment of fees by the University to the claimant for the a.y. 20[...]/20[...], the office was informed that: "As far as it is useful, it should also be noted that the Public Prosecutor of [...], in relation to pending criminal proceedings against the contractor in question, by decree of exhibition on [...] has delegated the local Judicial Police to acquire documentation relating to the contractual assignments held by the same"".

In this regard, it should be noted that the University has not indicated any legal provision or, in the cases provided for by law, any regulation, which would provide for and authorize the communication to the Territorial Labor Inspectorate of Frosinone of the complainant's personal data relating to crimes (see articles 5, paragraph 1, letter a), 6, paragraph 1, lit. c) and e), of the

Regulation, as well as 2-ter and 2-octies of the Code).

Nor can art. 2-octies, paragraph 3, lett. e), of the Code, pursuant to which "without prejudice to the provisions of paragraphs 1 and 2, the processing of personal data relating to criminal convictions and crimes or related security measures is permitted if authorized by law or, in the cases provided by law, regulation, concerning, in particular: [...] the assessment, exercise or defense of a right in court". Although, in fact, according to the consolidated approach of the Guarantor, the processing of personal data carried out for the purpose of protecting rights must refer to ongoing disputes or pre-litigation situations and not to abstract and indeterminate hypotheses of possible defense or protection of rights (see, most recently, provision no. 384 of 28 October 2021, web doc. no. 9722661, paragraph 3.4, which also refers to the "Provision containing the prescriptions relating to the processing of particular categories of data, pursuant to art. 21 , paragraph 1 of Legislative Decree no. 101 of 10 August 2018", Annex 1, paragraph 1.3, letter d), doc. web no. 9124510), in the present case the note of the XX (prot. n. XX) was sent by the University in reply to the communication of the Territorial Labor Inspectorate of Frosinone of the XX (prot. n. XX), with which the himself had limited himself to summoning the University "for the attempt at Monocratic Conciliation" with reference to certain claims of the complainant ("non-payment of the emoluments due as an employee").

Therefore, at that moment, there was not yet an effective defensive need for the University, which had merely been summoned to appear before an official of the Inspectorate, on a date and at an established time, to carry out the aforementioned attempt at conciliation , which could very well have concluded with an agreement between the parties, without the need for the University to exercise any defense materializing, giving account, in this context, of the condition of suspect of the interested party.

On the other hand, the University, in acknowledging the Inspectorate's invitation to appear on the date set for the conciliation attempt, specified that it wanted to provide the aforementioned information relating to the complainant's status as a suspect "as far as useful" , therefore without there being a proven relevance to the invitation in question (in this regard, see provision no. 67 of 25 February 2021, web doc. no. 9565218, where the Authority clarified that, even in the correspondence between public administrations, only personal data that are strictly necessary may be disclosed, taking into account the reference context).

Moreover, the University has not proven that, based on the sector legislation, the condition of suspect constituted in itself an impediment to the payment of the emoluments due, having, in fact, mainly relied on reasons relating to a bad debt to justify the delay in payments, and instead invoked mere "reasons of opportunity that gave rise to the delay in payments, deriving from the

existence of investigations by the Public Prosecutor's Office against the complainant".

3.3 The communication of personal data of the complainant to the Inspectorate for the Public Function at the Presidency of the Council of Ministers

The same considerations referred to in the previous par. 3.2 are also valid with regard to the note dated XX (prot. XX), sent by the University to the Inspectorate for Public Function at the Presidency of the Council of Ministers, in reply to a communication from the latter (prot. n. XX of XX), with which the Inspectorate limited itself to inviting the University "to carry out an internal check on the regularity of the administrative action, communicating the results".

In the note in question, the University, after having clarified that "the non-payment by that date of the contractual services was determined by a lack of cash availability due to the economic suffering of the University", adds that "as far as it is ultimately useful pointed out that the Public Prosecutor's Office of [...], in relation to pending criminal proceedings against the contractor in question, with a performance decree dated [...]/[...]/20[...] has delegated the local Judicial Police to acquisition of documentation concerning the contractual assignments held by the same" and that "this last circumstance has contributed to slowing down payments, pending a possible precautionary seizure measure of the sums, which has not yet been received".

Given that the University has not indicated any rule of law or, in the cases envisaged by law, regulation, which provides for and authorizes the communication to the Inspectorate for the Public Function of the complainant's personal data relating to crimes (see Article 5 , paragraph 1, letter a), 6, paragraph 1, lit. c) and e), of the Regulation, as well as 2-ter and 2-octies of the Code), it must, in this regard, be noted that the information regarding the complainant's status as a suspect, provided by the University to the Inspectorate for Public Function, appears irrelevant to the issue covered by the aforesaid correspondence, as there is not yet, in this context, any need for the University to ascertain, exercise or defend a right in court (see the considerations referred to in the previous paragraph 3.2, regarding the conditions upon occurrence of which the provisions of article 2-octies, paragraph 3, letter e), of the Code can be invoked).

On the other hand, the University, in acknowledging the request of the Public Administration Inspectorate, specified, also in this case, that it wanted to provide the aforesaid information relating to the complainant's status as a suspect "as far as useful", therefore without there being a proven relevance to the request in question (in this regard, see provision no. 67 of 25 February 2021, web doc. no. 9565218, cit., relating to a similar case).

Nor has the University proven that, on the basis of sector legislation, the condition of suspect constituted in itself an

impediment to the payment of the emoluments due, having, in fact, mainly invoked reasons relating to a bad debt to justify the delay in payments, representing, on the other hand, only as "possible" the possibility that a "precautionary seizure of the sums" was ordered by the judicial authority, confirming that this seizure order was "not received to date".

3.4 The communication of personal data of the complainant to the rectors of Italian universities

With a note of the XX (prot. n. XX), with the subject "Reporting of damage to the image of the University of Cassino and Southern Lazio", sent by the University to the Rectors of the Italian universities, the University informed the themselves that "several reports have been received from professors of both national and foreign universities and research institutions regarding regrettable episodes that would have been put in place by the [complainant]" and that the interested party "using the e-mail account "unicas", has had correspondence with outrageous and offensive tones towards university professors, moreover it is customary to use the name of this University for at least questionable initiatives". The same note also gave an account of the circumstance that "[...] requests for the acquisition of information and documents by various Public Prosecutors for hypothetical crimes for which the same is under investigation". The University also highlighted that "it is considered necessary to point out the complete non-involvement of the University of Cassino in relation to everything that may possibly arrive from the [claimant] by dissociating himself, as of now, from any form of communication, publication or other deriving from the same, in which reference is made to this University", specifying that "this communication is of a confidential and is sent to protect the University's image".

Also with regard to the communication of personal data in question, the University has not indicated any provision of law or, in the cases envisaged by law, regulation, which could justify the initiative taken (see articles 5, paragraph 1, letter a), 6, para. 1, lit. c) and e), of the Regulation, as well as 2-ter and 2-octies of the Code).

Nor can the intention of protecting the University's reputation in a general and preventive manner as a result of "inferences and responsibilities related to the interested party" be usefully invoked, in order to exclude the University's liability. This is also in consideration of the fact that any criminal liability, if ascertained by the proceeding judicial authority, would, in any case, have concerned only the person concerned and not the University as well (see Article 27 of the Constitution).

Lastly, it should be noted that the note in question was, moreover, sent indiscriminately to all Italian universities, regardless of any assessment regarding the latter's previous knowledge of the facts allegedly damaging to the University's reputation.

3.5 Provisions violated

In consideration of the reasons illustrated in the previous pars. 3.2, 3.3, 3.4, it is believed that the University has implemented processing operations, consisting in the communication to third parties of the complainant's personal data, also relating to crimes, in a manner that does not comply with the principle of "lawfulness, correctness and transparency". and in the absence of a legal basis, in violation of articles 5, par. 1, lit. a), 6 and 10 of the Regulation, as well as 2-ter and 2-octies of the Code (in the text prior to the amendments made by Legislative Decree No. 139 of 8 October 2021).

4. Conclusions.

In the light of the assessments referred to above, it should be noted that the statements made by the data controller during the preliminary investigation □ the truthfulness of which may be called upon to answer pursuant to art. 168 of the Code □, although worthy of consideration, do not allow 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 University is noted, for having processed the personal data of the complainant in violation of articles 5, par. 1, lit. a), 6 and 10 of the Regulation, as well as 2-ter and 2-octies of the Code (in the text prior to the amendments made by Legislative Decree No. 139 of 8 October 2021).

The violation of the aforementioned provisions makes the administrative sanction envisaged by art. 83, par. 5, of the Regulation, pursuant to articles 58, par. 2, lit. i), and 83, par. 3, of the same Regulation, as also referred to by art. 166, paragraph 2, of the Code.

In this context, considering, in any case, that the conduct has exhausted its effects, 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, depending on 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, in particular, that the communications put in place by the University concerned personal data also relating to crimes, with respect to which, taking into account their delicacy, the legislation on data protection prepares specific guarantees to protect the interested parties.

On the other hand, the fact that the University acted, with the declared aim of protecting its rights and reputation, in a context of conflicting relationships with the interested party for reasons not related to the protection of personal data, was taken into consideration, in the erroneous belief that information relating to the pending criminal proceedings against the complainant did not constitute personal data relating to crimes for the purposes of art. 10 of the Regulation. Finally, in detecting the tenuous nature of the fact, there are no previous relevant violations committed by the data controller or previous provisions pursuant to art. 58 of the Regulation.

Based on the aforementioned elements, evaluated as a whole, it is decided to determine the amount of the pecuniary sanction in the amount of 4,000 (four thousand) euros for the violation of articles 5, par. 1, lit. a), 6 and 10 of the Regulation, as well as 2-ter and 2-octies 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 violations alleged against the University took place in the delicate working context and that the personal data of the complainant, also relating to crimes, were communicated indiscriminately to all Italian universities, it is also believed that the accessory sanction should be applied 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 unlawfulness of the processing carried out by the University of Cassino and Southern Lazio for violation of articles 5, par. 1, lit. a), 6 and 10 of the Regulation, as well as 2-ter and 2-octies of the Code (in the text prior to the amendments made by Legislative Decree No. 139 of 8 October 2021), in the terms set out in the justification;

ORDER

to the University of Cassino and Southern Lazio, in the person of its pro-tempore legal representative, with registered office in Viale dell'Università - Rectorate - University Campus Località Folcara - 03043 Cassino (FR), Tax Code 81006500607, to pay the sum of 4,000 (four 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 aforementioned University, in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, to pay the sum of 4,000 (four thousand) euros according to the methods indicated in the annex, within 30 days of notification of this provision, under penalty of adopting the consequent executive acts pursuant to art. 27 of the law no. 689/1981;

HAS

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 out 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, 27 April 2023

PRESIDENT

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THE SPEAKER

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THE SECRETARY GENERAL

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