

[doc. web n. 9788986]

Injunction order against the Municipality of Naples Municipal Police Corps - May 26, 2022

Record of measures

n. 195 of 26 May 2022

## THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by prof. Pasquale Stanzione, president, Professor Ginevra Cerrina Feroni, vice president, dr. Agostino Ghiglia and the lawyer Guido Scorza, members, and dr. Claudio Filippi, Deputy Secretary General;

GIVEN the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, concerning the protection of individuals with regard to the processing of personal data, as well as the free circulation of such data and which repeals Directive 95/46 / CE, "General Data Protection Regulation" (hereinafter the "Regulation");

GIVEN the legislative decree 30 June 2003, n. 196 containing the "Code regarding the protection of personal data, containing provisions for the adaptation of the national system to Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016, relating to the protection of individuals with regard to the processing of personal data, as well as to the free circulation of such data and which repeals Directive 95/46 / EC (hereinafter the "Code");

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

GIVEN the documentation in the deeds;

HAVING REGARD to the observations made by the Secretary General pursuant to art. 15 of the Guarantor Regulation n. 1/2000 on the organization and functioning of the office of the Guarantor for the protection of personal data, Doc. web n. 1098801;

Rapporteur Dr. Agostino Ghiglia;

## WHEREAS

### 1. Introduction.

A trade union organization reported that, on the twentieth date, a communication would be sent from the institutional e-mail

address of the personnel office of the local Police Corps of the Municipality of Naples, of a communication, addressed to structures and articulations internal administrative bodies, to which the list of names, addresses, tax code and contact details of employees participating in an "anti Covid screening" program was attached, indicating the day and time in which each should have go to the competent health authority to carry out the Covid-19 swab.

## 2. The preliminary activity.

In response to the specific requests of the Office, the Municipality stated that (see note of the XXth)

"In consideration of the frontline activities that see officers and agents of the Corps used daily for checks due to the health emergency from Covid 19, and therefore subjects potentially exposed to contagion, in order to protect all operators, as well as the execution of a a task of public interest [...] proceeded, also upon pressing requests from the workers' representatives, to request the Management of the competent ASL Napoli Centro for a specific health screening for the aforementioned employees ";

in this context, "a ruling sent to all branches with a request for identification and submission information would have been ordered if one wanted to explicitly adhere, on a voluntary basis, to such screening such as: name, surname, residence, address and mobile phone, by employees concerned ";

"As established in point 10 of the faq of the Guarantor for the Protection of Personal Data and relating to the processing of data in the health context with particular reference to the health emergency";

"The operating units collected the updated data requested by filling in, on a voluntary basis, the relative form for each individual belonging to their operating unit, transmitting everything to the Personnel Department of this Service. The aforementioned requests for membership with the relative list, containing exclusively the above data and therefore not health information [...], were forwarded, as agreed, to the competent Office of the ASL NA 1 which needed it to organize the activity of screening [...] at an extremely complex moment due to the ongoing evolution of the pandemic and then for the direct feedback to the interested parties, through an IT procedure ";

"Received confirmation from the Health Service, this Security Department proceeded to inform the employees of the Local Police Operating Units to which the participating operators belonged, of the implementation of the screening with date and time in which they had to undergo the anti-covid test , everything is specified once again on a voluntary basis and after the completion of the specific adhesion form signed by them and sent [...] to the General Command ";

"The ASL communicated in a completely confidential manner, via messaging, to the user indicated by the employee concerned the outcome of the test [...] the telephone number had been acquired at the time of the manifestation of the voluntary participation and the operators were aware that it would have been used by the ASL for the aforementioned purposes, thus guaranteeing the utmost discretion regarding the outcome of the screening ";

"It was only the transmission of the identification data of the employees in question exclusively to the competent ASL, for the planning of screening activities as well as service communication to the employee departments belonging to the operators who voluntarily decided to join, and only for the logistical / organizational activities that have allowed hundreds of agents and officers to benefit from such a free opportunity that has made it possible to know more about the situation of the contagion and to limit its spread in the Corps, in an extremely delicate moment ".

With a XXth note, the Office, on the basis of the elements acquired, the verifications carried out and the facts that emerged as a result of the investigation, notified the Municipality, pursuant to art. 166, paragraph 5, of the Code, the initiation of the procedure for the adoption of the measures referred to in art. 58, par. 2, of the Regulation, concerning the alleged violations of articles 5, par. 1, lett. a), 6, par. 1, lett. c) and e), 9, par. 2, lett. b), 88 of the Regulation, as well as, with specific regard to the processing of data relating to the adhesion or not of each employee to the screening campaign, of art. 113 of the Code, inviting the aforementioned holder to produce defensive writings or documents to the Guarantor or to ask to be heard by the Authority (Article 166, paragraphs 6 and 7, of the Code, as well as Article 18, paragraph 1, of Law 24 November 1981, no. 689).

With a note from the 20th century, the Municipality presented its defense statement, declaring, in particular, that:

"In the general emergency situation never faced previously by our country [... and] in the midst of the second wave of the pandemic - which in Campania was more dramatic than the first - the price that the operators of the Naples Local Police were paying was very tall";

"The Command has operated with a sense of responsibility and attention with two specific aims of safeguarding public health: 1) to protect the employees of the Corps and their families from contagion; 2) to protect many citizens who came into contact every day with the operators of the Local Police for checks [...] ";

"The need emerged - at a time when the health authorities were organizing themselves but were not yet ready - to work in synergy with the management of the ASL NA 1 to have the operators who voluntarily intended to do so subject to checks on the contagion";

"At the time of the disputed facts [...] there was still no platform managed by the ASL that would allow direct and autonomous access for employees. [...] In this circumstance, therefore, it was not a question of verifying "suspicious cases", but of allowing a voluntary screening among the interested parties, for which it was essential - according to the ASL Management - the collection of information to be provided to the ASL Structure [...] of members of the police forces [...]

the administration would therefore have represented the "interface for promoting the initiative with two purposes: 1) identifying those who, belonging to the Naples Local Police, were interested in the initiative on a voluntary basis; 2) have a certain and confidential address of the same and freely indicated by them, where they can communicate the results, for those who independently would then undergo the screening";

"For this reason, in the public interest and in order to safeguard both employees and users, it was agreed to act as an interface between the employees freely participating in the initiative and the ASL";

"The data provided were necessary for the ASL NA 1 for the exact identification of the employee who had declared himself interested, as a subject belonging to the Local Police Corps of Naples [...]"

the interested parties "with the manifestation of voluntariness and the transcription of the data that they have freely communicated to the Command Office that manages the sensitive data, [...], were perfectly aware that such personal references would then be confidentially transmitted and used by the ASL";

"The Command considered that the transmission of data between the internal offices of the Corps and then to the ASL had been implicitly authorized";

"The Command, however, was not [...] aware of any health data or of those who, after expressing interest, actually underwent the examination [...] Nor could they have been aware of the results of the swabs";

"Only 866 [employees] expressed interest by filling in the form authorizing the transmission of data for the over 1500 units in service at the time in the Naples Local Police Corps. And only the data of those who filled out the forms were processed";

"All data from collection to transmission to the ASL have been processed only by the appropriate internal offices of the Local Police and by personnel suitably trained in the matter";

"The only news that reached the Command was communicated directly by the employee who, if it was positive, was placed in" illness "by the health authority. This communication, required by law, allowed the Command to report to INAIL and sanitize the premises and vehicles [...]

"It is not possible to imagine with the information and tools available at the time from this Command a different and safer modality than the one that was [adopted]. Moreover, no indication, circular and / or clarification arrived in the sense at that time at the Command, about the most appropriate way of managing that information both from internal and external Structures to the Body [...] On the other hand, the same faq of the Guarantor which is was published and to which mention is made, in the health context in the context of the emergency, it did not dictate capillary and binding prescriptions [...] limiting itself to and recommending that the participation of the audience interested in the tests adhered only on a voluntary basis ";

"At the time of the disputed facts, it is worth highlighting that no screening activity for the police and the tensions and pressures of the workers had not yet been activated by the health authorities and / or by the body, of their union representatives and their Workers' Safety Representatives (RLS), for the concern of contagion for themselves and their families, connected to street employment in contact with citizens, which could lead to protest actions " ;

"Moreover, no damage caused by the procedure followed [...] on the other hand, there were many appreciations for the initiative, received from some of the most important workers' trade unions and from the operators themselves";

"There was no longer any need to implement a similar procedure, due to the circumstances described above. Indeed, by virtue of the communication of the Guarantor, in similar future circumstances, even in the presence of the dramatic situations experienced, the Command will slavishly abide by what has come to its knowledge ".

The required hearing was also held on the 20th, pursuant to art. 166, paragraph 6, of the Code, on the occasion of which the Municipality confirmed - integrating its declarations on XX, what had already been declared in the defense briefs, representing, among other things, that:

"The Municipality of Naples, whose Command constitutes a specific articulation [... being] the municipal police staff [...] hired by the Municipality, is in a [...] condition of predisposto [...] and] would be heavily affected in the event of a sanction administrative;

following the facts covered by the investigation "new procedures were followed that correspond to the indications of the Guarantor [...]. In the procedure currently followed, the data is not processed by the Command which has only undertaken to communicate the initiative and the agents who have joined the screening campaign have interviewed and communicated their data directly with the staff of the health authority. This was necessary - considering the growth of infections - in compliance with the indications of the Guarantor as proof of the good faith of the Command which immediately acknowledged and

implemented the indications it received which it will always follow for the future ";

"In the period to which the facts object of the investigation refer, the Local Police Corps was at the center of a series of activities related to its role on precise indications from the Prefect and the Ministry of the Interior and the initiatives taken by the Commander were aimed at ensuring the safety of agents and workplaces as well as the protection of the public health of citizens who systematically came into contact with the operators ";

"In the team of agents assigned to the command to date, eight have died and hundreds of employees who have tested positive at Covid. All the initiatives were inspired on the basis of the duties of the Constitution incumbent on the entity and the employer (eg art. 54 C) "and in any case" what occurred and the subject of the investigation occurred in only one circumstance ";

"The employees who have joined the initiative have personally filled out a form giving their contact details in order to facilitate the programming activities and the obligations of the ASL";

"Unlike what normally happens with regard to preventive screening, in the period in question, in relation to the epidemiological context of the time, the administration acted on the basis of the indications of the ASL given that the dedicated platform was only subsequently activated ".

### 3. Outcome of the preliminary investigation.

The personal data protection discipline provides that public subjects, in the context of the work context, may process the personal data of the interested parties, also relating to particular categories, if the processing is necessary, in general, for the management of the employment relationship. and to fulfill specific obligations or tasks provided for by the law or the law of the Union or of the Member States (art. 6, par. 1, lett. c), 9, par. 2, lett. b) and 4 and 88 of the Regulation). The processing is also lawful when it is "necessary for the performance of a task of public interest or connected to the exercise of public authority vested in the data controller" (Article 6, paragraph 1, letter e ), 2 and 3, and art. 9, par. 2, lett. g), of the Regulations; art. 2-ter of the Code, in the text prior to the changes made by Legislative Decree 8 October 2021, n. 139).

With regard to the particular categories of personal data, and among these data relating to health (ie those "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 ", Art. 4, par. 1, n. 15, of the Regulation) the processing - as a rule prohibited - is allowed to the employer to fulfill specific obligations" in the field of labor law [...] to the extent that it is authorized by law [...] in the presence of appropriate guarantees "(Article 9, paragraph 2, letter b), of the Regulation).

The processing of personal data in the workplace must also take place in compliance with the pre-existing rules that guarantee the dignity and freedom of the data subjects in the workplace to avoid possible discriminatory effects for the data subjects (Article 88 of the Regulation and Articles 113 and 114 of the Code). Since 1970, the employer, public and private, has been prohibited from acquiring (and in any case "processing") information that "is not [] relevant for the purposes of assessing the worker's professional aptitude" (see art. 8 of the l. May 20, 1970, n. 300 and art. 10 of the legislative decree 10 September 2003, n. 276). Art. 113 of the Code refers to these sector provisions and, therefore, also taking into account art. 88, par. 2, of the Regulations, the observance of articles 8 of the l. May 20, 1970, n. 300 and art. 10 of Legislative Decree no. 297/2003, constitutes a condition of lawfulness of the processing (articles 5, paragraph 1, letter a), 6 and 88 of the Regulation), the violation of which - similarly to the specific processing situations of Chapter IX of the Regulation - entails the " application of administrative pecuniary sanctions pursuant to art. 83, par. 5, lett. d), of the Regulation.

The employer, the data controller, is, in any case, required to comply with the general principles regarding the protection of personal data (Article 5 of the Regulation) and must process the data through authorized and trained personnel. access and processing of data (articles 4, point 10, 29, and 32, paragraph 4, of the Regulation).

### 3.1. The processing of personal data of employees relating to joining the anti Covid19 screening campaign

From the documentation in the deeds and as confirmed by the data controller, it appears that, through the Department Commanders, an inquiry was made aimed at acquiring the contact details of individual employees (such as name, surname, residence, address, number mobile phone as well as employee registration number and tax code, see doc. attached to the report, in documents), as well as information about the will of each person to join the screening initiative at the competent health company (see note of the XX and its annex 1). Subsequently, on the basis of the accessions received, the personal data of the local police operators would be further processed by sending the list of names, tax code, contact details and other contact details of the employees participating in the prevention campaign, with the indication of the day and time in which each employee should have undergone the swab at the reference health company.

Contrary to what was argued in the defensive briefs regarding the absence of specific indications on the correct methods for the processing of personal data in the first phase of the epidemiological emergency from SARS-CoV-2, it should be noted that instead the Guarantor - considering the timing very close, due to the worsening of the scenario in the national context, of regulatory interventions and consequent policy acts issued by the competent institutions - intervened on numerous occasions

in order to provide indications and clarifications, including to employers, to prevent treatment of personal data that do not comply with the personal data protection regulations, leveraging the tasks of raising awareness and promoting the culture of data protection attributed by the Regulation (promoting "the awareness and understanding of the public, data controllers and data processors , obligations, risks, guarantees and rights ", v. 57, par. 1, lett. b) and d), of the Regulations, and of art. 154-bis, paragraph 1, lett. a) of the Code).

This taking into account, in particular, the greater risks for the data subjects in the work context (with regard to the "vulnerability" of the data subjects in the work context, see articles 35 and 88, par. 2, of the Regulation and "Guidelines concerning the impact on data protection as well as the criteria for establishing whether a treatment "may present a high risk" pursuant to Regulation 2016/679 ", WP 248 of 4 April 2017).

In fact, since the first weeks of the emergency, the Guarantor has invited employers to strictly comply with the rules issued in the context of the epidemiological emergency, as well as the more specific national provisions and greater guarantees provided for in the workplace (Article 88 of the Regulation and 113 Code, see Court of Justice of the European Union Grand Section, judgment of 11 September 2018, case C-68/17) and therefore not to undertake "autonomous initiatives that provide [were] the collection of data also on the health of users and workers who are not legally provided for or ordered by the competent bodies "(see," Coronavirus: Privacy Guarantor, no "do-it-yourself" initiatives in data collection ", press release dated 2 March 2020, web doc. no. 9282117).

Even in the exceptional emergency situation, taking into account the problems arising from the pressing needs to protect the safety of the workplace and the related processing of personal data, the Guarantor drew the attention of the data controllers, employers, to operate in the " scope and within the limits established by the applicable regulations, which constitutes the legal basis of the related processing (articles 5, 6, 9, paragraph 2 letter b) and 88 of the Regulation), avoiding to implement initiatives not provided for by law which, in certain circumstances, may also conflict with the aforementioned national provisions which prohibit the employer from processing information not relevant to the work activity, with possible harmful effects for the interested parties in the working and professional context.

In this context, in the absence of express regulatory provisions, the employer is therefore not allowed to collect, directly from the interested parties and with their consent, information relating to the private sphere or personal beliefs of workers, including the intention or not to join a screening campaign. This is also due to the impossibility of considering the consent of employees



a valid condition of lawfulness for the processing of personal data in the workplace, taking into account the imbalance in the relationship with the owner, especially when the employer is a public authority (cons . 43 of the Regulation) and by reason of the aforementioned national provisions that prohibit the processing of data that is not relevant to work (article 88 of the Regulation and article 113 of the Code; see also article 5, l. 20 May 1970 , no. 300).

For these reasons, the Guarantor has deemed it necessary to publish on its institutional website, starting from May 4, 2020, and subsequently updating them, the answers to some frequently asked questions (Faq) on the subject of "Data processing in the public and private working context in the field of health emergency "(web doc no. 9337010), with principles that have been confirmed, also in the face of the evolution of the regulatory framework linked to the emergency, in numerous measures and general guidance documents (see in particular the document of address "Data protection - The role of the competent doctor in matters of safety in the workplace, also with reference to the emergency context", web doc. no. 9585367; with regard to the issue of vaccination of workers, provision no. 198 of 13 May 2021 - Guidance document "Vaccination in the workplace: general indications for the processing of personal data", web doc. no. 9585300, and FAQ on treatment nto of data relating to vaccination against Covid-19 in the workplace, doc. web n. 9543615).

In this context, the Guarantor has provided indications regarding the correct processing of personal data to employers and health facilities within the scope of their respective competences with specific reference to screening campaigns (see FAQ Data processing in the public work context and private and in the context of the health emergency, spec. n.7 and FAQ Data processing in the health context in the context of the health emergency, spec. adhere to these initiatives launched by the competent health authorities at the regional level (in particular, the prevention departments of health companies, articles 7 et seq., Legislative Decree no. 502/92) and, often aimed at the categories of subjects who present a greater risk of contagion and spread of the virus, such as, as in this case, the local police forces.

Following the precedents of the Guarantor on the subject, it should be noted that adherence to screening campaigns is optional. The prevention department can reach the categories of interested parties in different ways, including through employers who are involved by the local prevention department to convey the invitation to join the campaign among their employees. The ownership of the treatment carried out in the context of screening always remains with the healthcare facility that promotes it, in carrying out its institutional duties, and which therefore is the only one entitled to collect adhesions and to communicate the results to the interested parties (cf. , art. 9, par. lett. h) and lett. i) of the Regulation) with regard to the

purposes of diagnosis and treatment of the interested party and to arrange, if necessary, the epidemiological containment measures provided for by the emergency legislation in force (e.g. home isolation, as well as for public health purposes from part of the regional prevention department; see art.3, paragraph 6, d.P.C.M. 8 March 2020, Circular no.5443 of the Ministry of Health of 22 February 2020; see, annual report of the Guarantor for the year 2005, p. 33 and, most recently, provision no.400 of 11 November 2021, web doc no.9726426).

In this context, the employer must therefore limit himself to carrying out a role of promotion, support, and intermediation between the health facility and the employee, without proceeding with the collection of personal data, such as, for example, the names of employees who intend to join. to screening (see FAQ no. 7, Data processing in the public and private work context and in the context of the health emergency cited), given, as mentioned, the specific prohibition for the employer to process data that is not relevant to work (see Article 113 of the Code).

Unlike in the present case, as is clear from the documentation in the documents, numerous personal data processing related to the aforementioned screening campaign was carried out by the administration, the employer, from the collection of subscriptions, to the sending to the health company. of the identification and contact data of the interested parties, to the transmission to the operating units, to which the adherent workers belonged, of the aforementioned data as well as the date and time in which each employee should have undergone the anti-Covid test at the competent health company.

Although the owner declared that the treatments carried out were dictated by the need to protect the health of municipal police operators, who, due to the tasks and duties performed, were more exposed to the risk of contagion ("ensuring the safety of agents and of workplaces ", see what was most recently reiterated at the hearing), however, these treatments are not provided for by the sector provisions on the protection of health and safety in the workplace pursuant to Legislative Decree 9 April 2008 n. 81 nor by the regulatory framework linked to the containment of the spread of the contagion in force at the time (see. Shared protocol regulating measures to combat and contain the spread of the Covid-19 virus in the workplace "referred to in annex 6 of D.P.C.M. April 26, 2020 and similar protocols for non-deferrable public activities and essential public services; see also art. 2 and Annex 12 of the D.P.C.M. of 13 October 2020; see, also the subsequent shared protocol for updating measures for the the containment of the spread of the SARS-CoV-2 / COVID-19 virus in the workplace of 6 April 2021), as these are, as clarified, activities attributable to the tasks of the prevention departments of health companies.

Even the consent of employees, also referred to in the memoirs, cannot be invoked as a prerequisite of lawfulness, given that,

as is known, the consent of the interested party cannot, as a rule, constitute a valid prerequisite of lawfulness for the processing of personal data when it exists " a clear imbalance between the data subject and the owner "(see recital 43 of the Regulation), a circumstance that occurs in particular in the workplace (see, Data Protection Committee, Guidelines on consent pursuant to EU Regulation 2016 / 679- WP 259- of 4 May 2020, paragraph 3.1.1 .; see also Opinion 2/2017 on the processing of data in the workplace, adopted by the Working Group art.29 adopted on 8 June 2017, WP 249 ).

Nor can the fact that the processing operations have been carried out, within the organization of the owner, by personnel authorized to process personal data of employees, be considered sufficient to fill the legal basis defect of the original collection.

Finally, it should be considered that the data collection carried out by the Municipality concerned the "identification and contact data of the employees" who had joined the prevention initiative for transmission to the competent health company and that the subsequent "communication [ ...] to the dependent departments to which the operators belong "included the date and time for carrying out the test, but that only" the ASL communicated in a completely confidential way [...] to the user indicated by the employee concerned the outcome of the test ". Furthermore, according to what has been declared, any processing of data relating to health was carried out by the administration only in the presence of a positive result of the worker in fulfillment of the tasks and obligations that the law attributes, in such cases, to the employer and within the framework of the specific measures of prevention and containment of the contagion provided for by the regulatory framework linked to the epidemiological emergency ("the only news that reached the Command was communicated directly by the employee who, if [was] tested positive, was placed in" sickness "by the Health Authority [... also for the purpose of] reporting to INAIL and sanitizing the premises and vehicles"; see art. 55 et seq. Legislative Decree no. 165/2001; art. 20 d .lgs. 81/2008; see also, the aforementioned, Shared Protocol, in the text in force at the time). For these reasons it must therefore be concluded that the processing subject of this proceeding did not have as its object data relating to the health of employees (which is why it is believed to proceed with the filing of the related dispute profile).

Given the above, what is represented during the investigation cannot be considered sufficient to exclude the responsibility of the Municipality in the present case and therefore it is believed that, although the same has also acted on the basis of the indications provided by the health authority, the collection and subsequent processing of the personal data of employees who had joined the prevention initiative, both in the absence of a legal basis and in violation of Articles 5, par. 1, lett. a), 6, 88 of the

Regulation, as well as art. 2-ter and 113 of the Code.

#### 4. Conclusions.

In light of the aforementioned assessments, it is noted that the statements made by the data controller in the defense writings □ whose truthfulness may be called upon to answer pursuant to art. 168 of the Code □ although worthy of consideration and indicative of the full cooperation of the data controller in order to mitigate the risks of the processing, compared to the situation present at the time of the investigation, they do not, however, allow to overcome the findings notified by the Office with the act of initiation of the procedure and are therefore insufficient to allow the filing of this proceeding, since none of the cases provided for by art. 11 of the Guarantor Regulation n. 1/2019.

The preliminary assessments of the Office are therefore confirmed and the unlawfulness of the processing of personal data carried out as it occurred in violation of Articles 5, par. 1, lett. a), 6, 88 of the Regulations, as well as art. 113 of the Code.

The violation of the aforementioned provisions also makes the administrative sanction applicable pursuant to art. 58, par. 2, lett. i), and 83, par. 5, of the Regulation.

In this context, considering that the conduct has exhausted its effects, the conditions for the adoption of corrective measures, pursuant to art. 58, par. 2, of the Regulation.

5. Adoption of the injunction order for the application of the pecuniary administrative sanction and ancillary sanctions (Articles 58, paragraph 2, letter i), and 83 of the Regulations; art. 166, paragraph 7, of the Code).

The Guarantor, pursuant to art. 58, par. 2, lett. i), and 83 of the Regulations as well as art. 166 of the Code, has the power to "inflict an administrative pecuniary sanction pursuant to Article 83, in addition to the [other] [corrective] measures referred to in this paragraph, or instead of such measures, depending on the circumstances of each single case "and, in this context," the College [of the Guarantor] adopts the injunction order, with which it also disposes with regard to the application of the ancillary administrative sanction of its publication, in whole or in excerpt, on the website of the Guarantor pursuant to Article 166, paragraph 7, of the Code "(Article 16, paragraph 1, of the Guarantor Regulation no. 1/2019).

In this regard, taking into account art. 83, par. 3, of the Regulations, in this case the violation of the aforementioned provisions is subject to the application of the same administrative fine provided for by art. 83, par. 5, of the Regulation.

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

For the purposes of applying the sanction, the nature, object and purpose of the processing, the size of the Municipality, as well as the number of interested parties involved and the sensitivity of the personal data collected by the employer were considered, as they relate to a however, a considerable number of local police operators adhering to the prevention initiative ("866 [employees] expressed interest by filling in the form").

On the other hand, it was considered that the treatment, according to what was declared during the investigation, was carried out on this single occasion and in a particularly critical moment of the epidemiological emergency with the aim of facilitating adherence to the screening campaign. by employees who, due to their duties, were particularly exposed to contagion; that the processing took place in any case in the erroneous belief that it can legitimately "operate in the public interest and in order to safeguard both employees and users". For the purposes of the overall measurement of the sanction, it was considered that the owner collaborated during the investigation by adopting new procedures and organizational measures to be followed on the occasion of any screening campaigns aimed at its employees, in compliance with the applicable regulatory framework and in consistency with the indications of the Guarantor. It was also considered what was declared in relation to the financial difficulties of the Entity and that other violations attributable to it, as previously ascertained, cannot be considered as specific precedents "relating to the same object" (art. 83, par. 2, lett. . i) of the Regulations) with respect to the conduct in question, which refers to treatments for heterogeneous purposes.

Due to the aforementioned elements, assessed as a whole, it is considered to determine the amount of the financial penalty, in the amount of € 12,000.00 (twelve thousand) for the violation of Articles 5, par. 1, lett. a), 6, 88 of the Regulations, as well as art. 113 of the Code.

Taking into account the particular sensitivity of the personal data being processed, with particular reference to the information relating to the adhesion of individual employees to the screening, and taking into account the potential risks, including indirect ones, for data subjects in the workplace, it is also considered that it should apply the ancillary sanction of the publication on the website of the Guarantor of this provision, provided for by art. 166, paragraph 7, of the Code and by art. 16 of the Guarantor Regulation n. 1/2019.

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

WHEREAS, THE GUARANTOR

notes the unlawfulness of the processing carried out by the Municipality of Naples - Municipal Police Corps for the violation of Articles 5, par. 1, lett. a), 6, 88 of the Regulations, as well as art. 113 of the Code in the terms set out in the motivation;

#### ORDER

to the Municipality of Naples Municipal Police Corps, in the person of the pro-tempore legal representative, with registered office in Piazza Municipio, Palazzo San Giacomo, Naples, CF 80014890638, pursuant to arts. 58, par. 2, lett. i), and 83, par. 5, of the Regulations, to pay the sum of € 12,000.00 (twelve thousand) as a pecuniary administrative sanction for the violations indicated in the motivation; 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 thirty days, an amount equal to half of the sanction imposed;

#### INJUNCES

to the Municipality of Naples Municipal Police Corps to pay the sum of € 12,000.00 (twelve thousand) in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, according to the methods indicated in the annex, within thirty days of notification of this provision, under penalty of the adoption of the consequent executive acts pursuant to art. 27 of the l. n. 689/1981;

#### HAS

the publication of this provision on the website of the Guarantor pursuant to art. 166, paragraph 7, of the Code;  
the annotation of this provision in the internal register of the Authority, provided for by art. 57, par. 1, lett. u), of the Regulations, violations and measures adopted in compliance with art. 58, par. 2, of the Regulation.

Pursuant to art. 78 of the Regulation, of art. 152 of the Code and 10 of the legislative decree 1 September 2011, n. 150, against this provision, it is possible to appeal before the ordinary judicial authority, under penalty of inadmissibility, within thirty days from the date of communication of the provision itself or within sixty days if the applicant resides abroad.

Rome, May 26, 2022

#### PRESIDENT

Stanzione

#### THE RAPPORTEUR

Ghiglia

#### THE DEPUTY SECRETARY GENERAL

