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Injunction order against the Campania Region - 2 July 2020

Register of measures

no. 120 of 2 July 2020

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by Dr. Antonello Soro, president, Prof. Licia Califano and Dr. Giovanna Bianchi Clerici, members and Dr. Giuseppe Busia, general secretary;

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

CONSIDERING the d. lgs. 30 June 2003, no. 196 containing the "Code regarding the protection of personal data (hereinafter the "Code");

CONSIDERING the general provision n. 243 of 15/5/2014 containing 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 bodies», published in the Official Gazette no. 134 of 12/6/2014 and in www.gpdp.it, doc. web no. 3134436 (hereinafter "Guidelines of the Guarantor on transparency");

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

HAVING REGARD to the documentation in the deeds;

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

Speaker Dr. Antonello Soro;

WHEREAS

1. Introduction

This Authority has received a report regarding the publication on the institutional website of the Campania Region of personal data and information of Messrs XX and XX.

Specifically, as verified on the basis of the preliminary investigation carried out by the Office, it turned out that at the url http://..., the document entitled «XX» of the XX, signed by the Manager of the XX, was viewable and freely downloadable , containing personal data of the whistleblowers (name and residence), relating to a debt accrued by the Region towards them in execution of an executive sentence with specification of the amount.

The Region communicated with note prot. no. XX of the XX that following the request for information from the Office (prot. n. XX of the XX) the "General Directorate for the Government of the Territory, public works and civil protection" proceeded to obscure the personal data object of the report.

2. Applicable legislation.

Pursuant to the GDPR, the processing of personal data carried out by public subjects (such as the Region) is lawful only if necessary "to fulfill a legal obligation to which the data controller is subject" or "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, letters c and e).

It is also foreseen that «Member States may maintain […] more specific provisions to adapt the application of the rules of this regulation with regard to treatment, in accordance with paragraph 1, letters c) and e), by determining more precisely specific requirements for processing and other measures aimed at guaranteeing lawful and correct processing [...]" (art. 6, paragraph 2, GDPR), with the consequence that the provision contained in art. 19, paragraph 3, of the Code (in force at the material time and whose content is now reproduced in the same terms in the new art. 2-ter, paragraphs 1 and 3, of the Code), where it provides that the operation of dissemination of personal data (such as publication on the Internet), by public entities, is permitted only when required by law or regulation.

In any case, the data controller is also required to respect the principles of data protection, including that of "lawfulness, correctness and transparency" as well as "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, letters a and c, of the GDPR).

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

From the checks carried out on the basis of the elements acquired and the facts that emerged following the preliminary investigation, as well as the subsequent assessments, the Office with note prot. no. XX of the XX ascertained that the Campania Region, by disseminating the personal data of the whistleblowers relating to a debt accrued by the Region towards them, in execution of an executive sentence, with specification of the relative amount - contained in the document entitled «XX n. XX of the XX - prat. lawyer n. XX. Area XX Sector XX Service XX» of the XX, signed by the Head of the XX Service– has processed personal data that did not comply with the relevant regulations on the protection of personal data contained in the RGPD. Therefore, with the same note the violations carried out were notified to the Region (pursuant to art. 166, paragraph 5, of the Code), communicating the initiation of the procedure for the adoption of the corrective measures pursuant to art. 58, par. 2, of the RGPD and inviting the Region to send the Guarantor defensive writings or documents and, possibly, to ask to be heard by this Authority, within the term of 30 days (art. 166, paragraphs 6 and 7, of the Code; as well as art. 18, paragraph 1, of Law No. 689 of 11/24/1981).

4. Defensive memories and hearing.

With the note prot. no. XX of the XX the Campania Region sent its defense writings to the Guarantor in relation to the notified violations, attaching various documentation relating to the obligations regarding the protection of personal data.

In this regard, it should be remembered that, unless the fact constitutes a more serious offence, anyone who, in a proceeding before the Guarantor, falsely declares or certifies news or circumstances or produces false deeds or documents is liable pursuant to art. 168 of the Code, entitled «False statements to the Guarantor and interruption of the performance of the duties or exercise of the powers of the Guarantor».

Specifically, in the note prot. no. XX of the XX (attached to the aforementioned acknowledgment note) it was highlighted, among other things, that:

- the personal data present in the "XX" has already been "obscured";
- "in the matter in question [...] no damages were caused to third parties nor, least of all, to the subjects whose names had been disclosed, without further indication";
- "the data contained in the url in dispute had been entered as a result of the obligation pursuant to art. 73 of Legislative Decree 118/2011, relating to the procedure for recognizing the legitimacy of off-balance sheet debts of the Regions, according to which "the Regional Council recognizes by law the legitimacy of off-balance sheet debts deriving from: a) executive

sentences [...]", requiring the bodies to publish all the documents in support of the related request";

- «Moreover, the personal data, subject to online diffusion, concerned the execution of a civil sentence, of which the interested parties had not requested the caution pursuant to art. 52, paragraph 1, of Legislative Decree 30 June 2003, n. 196, which allows the interested party to request, for legitimate reasons, with a request deposited in the clerk's office or secretariat of the office that proceeds before the relative degree of judgment is defined, to be affixed by the same clerk's office or secretariat, on the original of the sentence or provision, an annotation aimed at precluding, in the event of reproduction of the sentence or provision in any form, the indication of the general information and other identification data of the same interested party reported on the sentence or provision";

- "the dispute refers to a situation that occurred before the adoption of the relevant legislation. Although Regulation 2016/679 has been effective since the twentieth century, the implementing decree was adopted only in August 2018 ("Provisions for the adaptation of national legislation to the provisions of 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 circulation of such data and which repeals Directive 95/46/EC", Official Gazette no. 205 of 09.04.2018. Well, by reason of the "Principle of legality", referred to in Article 1 of Law 689/1981, "No one can be subjected to administrative sanctions except under a law that entered into force before the commission of the violation. The laws which provide for administrative sanctions are applied only in the cases and for the times considered in them ". Completely evident, therefore, as in the case analyzed by the Guarantor Authority, the facts originated well before the entry into force of the legislation in detail and, in any case, it is reiterated, were immediately and promptly resolved by the Body".

On the 20th date, the hearing requested by the Region pursuant to art. 166, paragraph 6, of the Code on the occasion of which it was represented, in addition to what has already been reported in the documentation sent, that the Region:

- «pursuant to Legislative Decree 267/2000 (Chapter II, Title III) as well as to art. 151, paragraph 4 of the same decree, to publish the personal data subject to reporting, also to allow the accounting judiciary to carry out checks on the decree relating to off-balance sheet debt";

- "in any case, it promptly took steps to obscure the complainant's personal data following knowledge of the complaint";

- «has launched a training course for all the offices of the Region and for managers. The Region has also proceeded to appoint a person responsible for the protection of personal data".

During the aforementioned hearing, the Region filed the explanatory note prot. no. XX of the XX, to which various documents are attached demonstrating the adoption of "special procedures aimed at obscuring data from the planning stage", highlighted, among other things, that:

- "in the case of off-balance sheet debt, the mention of the name of the persons to whom the expenditure commitment is to be allocated, "is fully lawful" since, as known, as provided for in Chapter II, Tit. III of Legislative Decree 267/2000, for the adoption of expenditure commitments, not only the indication of the amount to be paid and the creditor's personal details is required, but also the explanation of the reasons for the commitment itself (see ., in particular, Article 185, paragraph 2, [which] governs, as far as is particularly relevant here, the minimum indications that the payment order must contain and, among these, expressly appears in the letter, "e) indication of the creditor and, if it is a different person, the person required to issue the receipt, as well as the related tax code or VAT number", recalling how, on closer inspection, the territorial body, obliged to publish that data, publicized it only with name and surname, avoiding the insertion of the tax code which, certainly, would have made it easier to identify the allegedly injured parties";
- «And again, as further confirmation of the obligation, at that stage, to publish the names of the two subjects, it should be noted that, as provided for by art. 151, co. 4 of the same regulatory compendium, "the accounting system of local authorities guarantees the unitary recognition of management facts from a financial, economic and equity point of view, through the adoption: a) of financial accounting, which has an authorizing nature and allows management reporting financial; b) of the economic-patrimonial accounting for information purposes, for the recognition of the economic and patrimonial effects of management facts and to allow the economic and patrimonial reporting" being, therefore, the rationale underlying the entire legislation to which the Public Administration is addressed is evident when it has to proceed with the recognition, in the specific case, of off-balance-sheet debts";
- "any of the subjects allegedly harmed by the dissemination of data, has ever reported the problem to the Body [...] which, as soon as it became aware of it, promptly took action to remove a data entered, however, by virtue of an obligation regulatory framework (still binding today).

5. Outcome of the investigation relating to the report presented

In the specific case submitted to the examination of the Guarantor, the object of complaint by the whistleblowers appears to be the disclosure of their personal data contained in a document published online, i.e. the "XX" no. XX of the XX, attached to the

proposed resolution for XX, which contained the personal data (name and residence) of the whistleblowers as well as information relating to the debt accrued for compensation for damages, with specification of the relative amount, by the Region towards them in execution of an enforceable sentence.

Both in the defense briefs and in the hearing, the Campania Region confirmed the online dissemination of the personal data of the whistleblowers, presenting some observations which, although worthy of consideration, do not allow the findings notified by the Office to be overcome with the act of initiation of the proceedings.

In particular, we agree with the findings of the Region for which the provisions of an accounting nature contained in articles 73 of the legislative decree lgs. no. 118 of 26/6//2001; 151, paragraph 4, and 185, paragraph 2 of Legislative Decree no. 267 of 18/8/2000, indicate, among other things, also the elements that the payment mandate must contain and also serve to allow the carrying out of the necessary controls by the accounting judiciary on off-balance sheet debts. However, these articles, also for the purposes of control by the Court of Auditors, do not in any way provide for the online dissemination of the personal data of the reporting persons.

Similarly, even if - as stated by the Region - "the personal data, subject to online dissemination, concerned the execution of a civil sentence", it is not possible to refer to the provisions contained in art. 52 of the Code, which does not concern the publication of the Entity's documents, but a completely different case concerning the possibility of the interested party to request, for legitimate reasons, the obscuring of their personal data contained in the sentence in case of reproduction of the same .

Finally, it is not possible to accept the further exception formulated, according to which "the dispute refers to a situation that occurred before the adoption [of the RGPD]", and the "implementing decree", contained in Legislative Decree no. lgs. no. 101 of 10 August 2018 «was adopted only in August 2018» and entered into force on 19/9/2018.

In fact, it must be taken into account that, even if the document covered by the report, published online, dates back to the twentieth century, for the determination of the applicable rule, in terms of time, the principle of legality referred to in Article 'art. 1, paragraph 2, of the law no. 689/1981 which establishes as «The laws that provide for administrative sanctions are applied only in the cases and in the times considered in them». This determines the obligation to take into consideration the provisions in force at the time of the committed violation, which in the case in question - given the permanent nature of the disputed offense - must be identified at the time of cessation of the unlawful conduct, which occurred after the date of the 25/5/2018 in

which the RGPD became applicable. In fact, the preliminary investigation documents revealed that the illicit online diffusion ceased following the request for information from the Office of the XX (prot. n. XX) with the blackout of the whistleblowers' personal data from the institutional website by the competent General Management. In this regard, the circumstance that the aforementioned d. lgs. no. 101/2018 entered into force only in September 2018, given that the RGPD is a European regulation and, as such, is «mandatory in all its elements and directly applicable in each of the Member States» (art. 288 of the Treaty on functioning of the European Union) from the date of 25/5/2018 on which the became applicable (art. 99, paragraph 2, GDPR).
For these reasons, in relation to the conduct held, the arguments reported by the Campania Region are not sufficient to allow the filing of the present proceeding, as none of the cases provided for by art. 11 of the Regulation of the Guarantor n. 1/2019.
In this context, the preliminary assessments of the Office are confirmed and the illegality of the processing of personal data carried out by the Region is noted, since the publication on the institutional website of the personal data of the reporting entities described above took place and in a manner that does not comply with the principle of data minimization and in the absence of suitable regulatory conditions, in violation of the basic principles of treatment contained in articles 5, par. 1, lit. a) and c); 6, par. 1, lit. c) and e), par. 2 and par. 3, letter. b), of the RGPD, as well as of the art. 19 paragraph 3 of the Code (in force at the material time and whose contents are now reproduced in the same terms in the new article 2-ter, paragraphs 1 and 3, of the Code).
Considering, however, that the conduct has exhausted its effects, as the data controller has taken steps to obscure the personal data of the reporting parties described above from the institutional website, without prejudice to what will be said on the application of the pecuniary administrative sanction, there is no the conditions for the adoption of further corrective measures pursuant to art. 58, par. 2 of the GDPR.
6. Adoption of the injunction order for the application of the administrative fine (articles 58, paragraph 2, letter i; 83 GDPR)
The Campania Region appears to have violated the articles 5, par. 1, lit. a) and c); 6, par. 1, lit. c) and e), par. 2 and par. 3, letter. b) of the GDPR; as well as the art. 19, paragraph 3, of the Code, in force at the time of the unlawful conduct.
In this regard, the art. 83, par. 3, of the GDPR, provides that «If, in relation to the same treatment or related treatments, a data controller or a data processor violates, with malice or negligence, various provisions of this regulation, the total amount of the pecuniary administrative sanction will not exceeds the amount specified for the most serious violation".
In this case, the violation of the aforementioned provisions is subject to the application of the same pecuniary administrative

sanction provided for by art. 83, par. 5 of the GDPR, which therefore applies to the present case.

The Guarantor, pursuant to articles 58, par. 2, lit. i) and 83 of the GDPR as well as art. 166 of the Code, has the corrective power to «impose a pecuniary administrative sanction pursuant to article 83, in addition to the [other] [corrective] measures referred to in this paragraph, or instead of such measures, depending on the circumstances of every single case". 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).

The aforementioned pecuniary administrative sanction imposed, according to the circumstances of each individual case, must be determined in the amount, taking into due account the elements provided for by art. 83, par. 2 of the GDPR.

In relation to the aforementioned elements, the reported conduct in violation of the regulations on the protection of personal data concerned the dissemination of personal data not belonging to particular categories or to criminal convictions or crimes (articles 9 and 10 of the GDPR) of two interested parties. The diffusion lasted for several years, but the administration immediately took action to obscure the personal data covered by the report once the request for information from the Guarantor was received, collaborating with the Authority during the preliminary investigation of the present proceeding at order to remedy the violation - the nature of which, also given what the Region has stated, appears to be culpable - mitigating its possible negative effects. In the response to the Guarantor, various technical and organizational measures implemented pursuant to articles 25-32 of the GDPR. There are no previous relevant GDPR violations committed by the Campania Region.

Based on the aforementioned elements, evaluated as a whole, it is deemed necessary to determine pursuant to art. 83, para. 2 and 3, of the RGPD, the amount of the pecuniary sanction, provided for by art. 83, par. 5, of the RGPD, in the amount of 4,000.00 (four thousand) euros for the violation of articles 5, par. 1, lit. a) and c); 6, par. 1, lit. c) and e), par. 2 and par. 3, letter. b) of the GDPR; as well as of the art. 19, paragraph 3, of the Code, as a pecuniary administrative sanction deemed effective, proportionate and dissuasive pursuant to art. 83, par. 1, of the same GDPR.

In relation to the specific circumstances of the present case, relating to the violation of the principle of data minimization and the dissemination of personal data on the web in the absence of a suitable regulatory basis, it is also believed that the accessory sanction of publication of this provision on the website of the Guarantor, provided for by art. 166, paragraph 7, of the Code and by art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019.

Finally, it is believed that the conditions set forth in art. 17 of the Regulation of the Guarantor n. 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

ALL THIS CONSIDERING THE GUARANTOR

declares, pursuant to articles 57, par. 1, lit. f), of the Regulation and 144 of the Code, the illegality of the treatment carried out by the Campania Region in the terms indicated in the justification pursuant to articles 58, par. 2, lit. i) and 83 of the GDPR;

ORDER

to the Campania Region, in the person of its pro-tempore legal representative, with registered office in Via Santa Lucia 81 - 80132 Naples (NA) - Tax Code 80011990639, pursuant to articles 58, par. 2, lit. i) and 83 of the Regulation, and 166 of the Code, to pay the sum of 4,000.00 (four thousand) euros as an administrative fine for the violations referred to in the justification;

ENJOYS

to the same Region to pay the sum of 4,000.00 (four thousand) euros, according to the methods indicated in the attachment, within 30 days of notification of this provision, under penalty of the adoption of the consequent executive acts pursuant to art. 27 of the law no. 689/1981.

It should be remembered that the offender retains the right to settle the dispute by paying - always according to the methods indicated in the annex - an amount equal to half of the fine imposed, within the term set out in art. 10, paragraph 3, of Legislative Decree lgs. no. 150 of 09/01/2011 envisaged for the lodging of the appeal as indicated below (art. 166, paragraph 8, of the Code).

HAS

the publication of this provision on the Guarantor's website pursuant to art. 166, paragraph 7, of the Code and by art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019 and believes that the conditions pursuant to art. 17 of the Regulation of the Guarantor n. 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

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

Rome, July 2nd 2020

PRESIDENT

Soro

THE SPEAKER

Soro

THE SECRETARY GENERAL

Busia