

[doc. web no. 9892869]

Provision of April 13, 2023

Register of measures

no. 136 of 13 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 dr. Fabio Mattei, general secretary;

HAVING REGARD TO Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (hereinafter, the "Regulation");

HAVING REGARD TO the Personal Data Protection Code (Legislative Decree No. 196 of 30 June 2003);

HAVING REGARD to the Deontological Rules relating to the processing of personal data in the exercise of journalistic activity" (Official Gazette of 4 January 2019, n. 3), hereinafter "Deontological Rules";

DETECTED that an article entitled: "XX" was published by the online magazine "Dayitalianews" which can be found at the link <https://...> in which detailed news was given of the pathology from which XX is affected (also indicated with the well-known alias used by him of XX) and disseminated, accompanying the same, a complete copy of the report of an extremely detailed laboratory test;

HAVING REGARD TO the provision of 18 January 2023 with which the Authority adopted Suditaly Imprese Meridionali Soc. coop. the extent of the temporary limitation of the treatment, pursuant to art. 58, par. 2, lit. f), referring to any further dissemination of the health data indicated in the article in question, including those contained in the aforementioned laboratory report, as well as any other similar information reported in any other articles published on the same site;

CONSIDERING that the aforesaid provision was adopted taking into account that:

- the art. 137 of the Code provides in paragraph 1, that the data referred to in art. 9 of the Regulation ("particular categories of personal data" which include "data relating to health") can be processed even without the consent of the interested party provided that in compliance with the ethical rules referred to in art. 139 of the Code, as well as, in paragraph 3, that in the event of dissemination of data for journalistic purposes, the limit of the "essential nature of the information regarding facts of public interest" remains unchanged;

- the art. 10 of the aforementioned Deontological Rules prescribes that:

"1. The journalist, in referring to the state of health of a specific person, identified or identifiable, respects his dignity, the right to privacy and personal decorum, especially in cases of serious or terminal illness, and refrains from publishing analytical data of strictly clinical interest.

2. Publication is permitted in the context of pursuing the essentiality of information and always with respect for the dignity of the person if this holds a position of particular social or public importance";

- the health data disseminated, already at a first analysis, appeared to be in contrast, as well as with confidentiality, with the dignity of the interested party, despite being the news of significant public interest;

HAVING REGARD to the note dated 18 January 2023 with which the aforementioned provision for the provisional limitation of processing was sent to the data controller and requested to communicate, within 3 days following the notification, the initiatives undertaken in order to implement as prescribed by the Authority;

HAVING REGARD to the note dated 19 January 2023 with which the data controller provided the requested reply, acknowledging the "removal of the article in question which reported a piece of news taken entirely by the Adnkronos press agency, including the image of opening";

GIVEN the note dated 8 February 2023 with which the Authority, on the basis of the evidence that emerged, communicated to Suditaly Imprese Meridionali Soc. coop. the initiation of the procedure pursuant to art. 166, paragraph 5, of the Code for the eventual adoption of the provisions pursuant to art. 58, par. 2, of the Regulation, notifying the alleged violations of the law identified, in this case, in the violation of articles 5, par. 1 lit. a) and c), e, 9 of the Regulation and of the articles 137, paragraphs 1 and 3 and 2-quater, paragraph 4, of the Code, as well as articles 5, paragraph 1, 6, paragraph 1, and 10, of the Deontological Rules;

GIVEN the note of 7 March 2023 with which Suditaly Imprese Meridionali Soc. coop. represented that:

- the publication falls within the legitimate exercise of the right to report, "given that the journalist limited himself to reporting in full (including the image), quoting the agency itself, a story disseminated by Adnkronos and also published by other important national newspapers";

- due to the disclosure by this agency, as well as by other important press organs, the data contained in the news could no longer be considered confidential, as it is now in the public domain;

- the relative omission would have "wrong the duty to inform Sicilian readers..." being the journalistic action of the masthead "expressly oriented towards the anti-mafia";
- the information disseminated could have been of help to both the investigators and the investigations;
- also on 6 March an article was published by the Ansa agency in which information was given about the specific pathology of XX, which in any case "is still published today by many national newspapers";
- the company proceeded to immediately remove the article following the intervention of the Authority, despite deeming its publication legitimate;
- Suditaly Imprese Meridionali represents "a very small journalistic reality", being a young company with limited economic capacity, as can be seen from the attached financial statements;

CONSIDERING that, unless the fact constitutes a more serious offence, whoever, in a proceeding before the Guarantor, falsely declares or certifies news or circumstances or produces false deeds or documents is liable pursuant to art. 168 of the Code "False statements to the Guarantor and interruption of the performance of the duties or exercise of the powers of the Guarantor";

CONSIDERING that the limitation imposed on the data controller consists of a provision of a temporary nature which, in order to consolidate the relative effects, must be followed by a further provision which, on the basis of an examination carried out on the merits, establishes in a stable manner the lawfulness and correctness of the treatment carried out;

NOTING that, during the proceedings, no new elements emerged such as to modify the preliminary assessments already expressed by this Authority in the aforementioned provision of 18 January 2023, taking into account that art. 137 of the Code envisages, in general terms, the aforementioned principle of the "essential nature of information" as a criterion for determining the publication of personal data in the journalistic field and that the Deontological Rules, in recalling and specifying this principle, intended to guarantee a greater rigor with reference to the collection and dissemination of data suitable for revealing the state of health of identified or identifiable persons (Articles 5, paragraph 1, 6, paragraph 1, and 10 of the aforementioned Rules of Conduct);

CONSIDERING that compliance with the aforementioned Rules of Conduct is an essential condition for the lawfulness and correctness of the processing of personal data (Article 2-quater of the Code);

CONSIDERING that the art. 5 par.1, lett. a) of the Regulation requires the processing of data in a lawful and correct manner,

and at lett. c) establishes the principle of data minimisation;

NOTING, therefore, that in the present case, the dissemination of the health data indicated in the article in question, including those contained in the aforementioned laboratory report accompanying the same, is to be deemed to have occurred in contrast with articles 5, par. 1, lit. a) and c) and 9 of the Regulation, as well as with art. 137, paragraphs 1 and 3 and 2-quater, paragraph 4, of the Code, as well as with articles 5, paragraph 1, 6, paragraph 1, and 10 of the Deontological Rules, and that the related treatment is to be considered unlawful;

NOTING, in particular, that the publication of the report has considerably expanded the media coverage of the news on the health conditions of the person concerned, presented, through this publication, in their integrity and medical officialdom;

CONSIDERED meaningless the references to the already occurred circulation of news on the state of health of the interested party, which seem to highlight a lack of understanding on the part of the holder of the specific harmful scope of the publication of the aforementioned document, indirectly confirming that absence of legal and ethical sensitivity which, on the other hand, one would expect from information operators;

HAVING ACKNOWLEDGED the measures put in place during the investigation by Suditaly Imprese Meridionali Soc. coop.;

CONSIDERED, however, due to the violations found, to:

- impose on Suditaly Imprese Meridionali Soc. coop., pursuant to art. 58, par. 2, lit. f) of the Regulation, the prohibition of the processing of health data indicated in the article in question, including those contained in the aforementioned laboratory report, as well as any other similar information reported in any other articles published on the same site;

- adopt an order-injunction, pursuant to articles 166, paragraph 7, of the Code and 18 of the law n. 689/1981, for the application, against Suditaly Imprese Meridionali Soc. coop., of the pecuniary administrative sanction provided for by the combined provisions of articles 2-quater, 166, paragraph 2, of the Code, and 83, par. 3 and 5, of the Regulation;

NOTING that for the determination of the amount of the pecuniary sanction, it is necessary to take into account the elements indicated in art. 83, par. 2 of the Regulation and which, in this case, it is necessary to take into consideration, as aggravating circumstances:

- a) the detriment to the dignity and privacy of the interested party of the conduct which led to the dissemination of data relating to his/her state of health (Article 83, paragraph 2, letter a) of the Regulation);

- b) the particular nature of the data processed (see Article 83, paragraph 2, letter g) of the Regulation);

and what extenuating circumstances:

c) the purposes pursued by the owner, attributable to the exercise of the right to report and freedom of information, as well as the interest of the community in the knowledge of the news;

d) the measures adopted by the data controller, the Company having promptly taken steps to remove the article (art. 83, paragraph 2, letter c) of the Regulation);

e) the economic, organizational and professional conditions of the offender (Article 83, paragraph 2, letter k) of the Regulation);

CONSIDERING the above parameters and the principles of effectiveness, proportionality and dissuasiveness indicated in art. 83, par. 1, of the Regulation;

CONSIDERING that, on the basis of all the elements indicated above, the pecuniary administrative sanction should be applied in the amount of 2,500.00 euros (two thousand and five hundred euros/00);

CONSIDERING also that, pursuant to articles 166, paragraph 7, of the Code, and 16, paragraph 1, of the Guarantor's Regulation n. 1/2019, it is necessary to proceed with the publication of this provision on the website of the Guarantor, by way of ancillary sanction;

HAVING DEEMED that the conditions exist for proceeding with the annotation in the internal register of the Authority pursuant to art. 57, par. 1, lit. u), of the Regulation, in relation to the measures adopted in the specific case in compliance with art. 58, par. 2, of the same Regulation

HAVING REGARD to the documentation in the deeds;

HAVING REGARD TO the observations made by the general secretary pursuant to art. 15 of the Guarantor's regulation n. 1/2000;

SPEAKER Prof. Geneva Cerrina Feroni;

ALL THIS CONSIDERED

HAS

pursuant to art. 58 par. 2, lit. f) of the Regulations against Suditaly Imprese Meridionali Soc. coop. the prohibition of the processing of health data indicated in the article in question, including those contained in the aforementioned laboratory report accompanying the same, as well as any other similar information reported in any other articles published on the same site, in the terms described above, as in contrast with the articles 137, paragraphs 1 and 3, and 2-quater, paragraph 4 of the Code as

well as with articles 5, paragraph 1, 6, paragraph 1 and 10 of the Deontological Rules, and with the general principles referred to in art. 5, par. 1 lit. a) and c) and with the art. 9 of the Regulation, except for mere conservation for the purpose of their possible use in court;

#### ORDER

pursuant to articles 58, paragraph 2 lett. i) and 83 of the Regulation a of Suditaly Imprese Meridionali Soc. coop., with registered office in Gravina di Catania, Via Gesualdo Bufalino, 7, P.IVA/C.F. 05333360872, to pay the sum of 2,500.00 euros (two thousand and five hundred euros) as an administrative fine for the violations indicated in the justification, representing that the offender, pursuant to art. 166, paragraph 8, of the Code, has the right to settle the dispute, by paying, within the term of thirty days, an amount equal to half of the fine imposed;

#### ENJOYS

to Suditaly Imprese Meridionali Soc. coop., in the event of failure to settle the dispute pursuant to the aforementioned art. 166, paragraph 8, of the Code, to pay the sum of Euro 2,500.00 (two thousand and five hundred) according to the methods indicated in the annex, 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 n. 689/1981.

#### HAS

- a) pursuant to art. 166, paragraph 7, of the Code, the full publication of this provision on the Guarantor's website;
- b) pursuant to art. 17 of Regulation no. 1/2019 of the Guarantor the annotation in the internal register of the Authority pursuant to art. 57, par. 1, lit. u), of the Regulation, in relation to the measures adopted in the specific case in accordance with art. 58, par. 2, of the same Regulation.

Pursuant to art. 78 of the Regulation, as well as the articles 152 of the Code and 10 of Legislative Decree lg. 1 September 2011, no. 150, opposition to this provision may be lodged with the ordinary judicial authority, with an appeal filed, alternatively, with the court of the place where the data controller resides or has its registered office or with the court of the place of residence of the interested party within the term of thirty days from the date of communication of the provision itself or sixty days if the appellant resides abroad.

Rome, 13 April 2023

PRESIDENT

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THE SPEAKER

Cerrina Feroni

THE SECRETARY GENERAL

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