[doc. web no. 9865528]

Injunction order against the Municipality of Misterbianco - 26 January 2023

Register of measures

no. 28 of 26 January 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 4/4/2019, 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");

Given the documentation in the deeds;

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

Speaker Dr. Agostino Ghiglia;

WHEREAS

1. The complaint.

With a complaint presented to the Guarantor, Ms XX, an employee of the Municipality of Misterbianco (hereinafter "Municipality"), complained about the publication in the Praetorian Register of the Municipality of determination no. XX

concerning the "Horizontal economic progression year XX - Redetermination of the category C ranking, in execution of sentence n. XX and consequent measures". The determination contains personal data of the complainant and of another employee and, in particular, the respective registration number, as well as, with reference to the complainant, also further information relating to a dispute before the labor judge and the circumstance that, as a result of the relative sentence , the same were to return sums unduly received with monthly deductions from the paycheck within the limit of one fifth of the salary.

In fact, the determination shows that on the basis of the redefinition of the scores, it was established that the complainant "comes down from position no. 12 at position no. 13 […and] loses PEO position; […] must return an unspecified amount for the period XX; [...] must repay the amount of € 6,060.08 starting from the XX by means of a forced withdrawal with monthly deductions from the paycheck up to the limit of one fifth of the salary".

Two documents are also attached to the same determination and, in particular, the "final ranking [...]" and the "corrected [...]" following the aforementioned sentence.

As complained by the complainant, although in the body of the determination the complainant was identified with the number XX, the interested party was easily identifiable from the combined reading of the provision and the attachments, correlating the two rankings, given that "in attachments A (old ranking ) and B (new ranking) integral and substantial parts of the provision are expressly indicated: Name and Surname, date of birth, date of employment and assigned score".

2. The preliminary investigation.

With a note of the XX, responding to the request for information formulated by this Authority, the Municipality represented, in particular, that:

- "the publication obligations of this body also include those referred to in art. 19 of Legislative Decree no. 33/2013, [...] which pertains to the obligations of transparency in the context of the insolvency procedures of the administrations";
- “it is specified that the determination of the Head of Sector no. XX, the object of the complaint, concerns a redetermination of the ranking relating to the Horizontal Economic Progression of the year XX in execution of the sentence n. XX”;
- "in itself, therefore, since it is a ranking, [the Municipality] strictly complied with what was indicated by the Guarantor in point 3.b. of the "second part" of the Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for purposes of publicity and transparency on the web by public subjects and other obliged bodies (Register of measures n. 243 of 15 May 2014), arranging to publish said determination on the Institution´s electronic Praetorian

Register, together with its two annexes, within the narrow limits of the 15 days established by law, or from XX to XX "also in order to allow interested parties to activate of the forms of protection of one's rights and control of the legitimacy of bankruptcy or selective procedures" with the dissemination of only pertinent and not excessive data referring to the interested parties";

- "however, care was taken to adopt the precaution of obscuring the name and surname of the complainant while maintaining the matriculation number, as known only by those directly concerned and by the competent personnel in charge of data processing";

- "in parallel with the publication defined above, in the Region of Sicily, pursuant to and by effect of Article 6 paragraph 1 of Law 26 June 2015, n. 11 and without prejudice to the provisions for the protection of privacy, all municipal administrations are obliged to also provide for the publication on the same online Praetorian Register for extract within seven days of their enactment, all the deliberative acts adopted by the junta and by the council and the trade union and managerial decisions as well as ordinances, for the purpose of publicizing the news";

- "it is added that the duration of this publication for extract is 5 years (art. 8 paragraph 3 of Legislative Decree 14 March 2013, n. 33 as amended by art. 1, paragraph 1, Legislative Decree n. 97 of 2016), specifying, however, that the publication by extract does not allow access to the full text of the determination and the annexes, but only the wording of the generic object of the determination appears in it";

- "it is believed [...] that the determination, subject of the complaint, does not contain any prejudicial content against the complaining employee other than that directly deriving from jurisdictional and regulatory obligations, given that [the Municipality] has operated, in application of an enforceable sentence from a judge and in compliance with the legislation on transparency, without, in any of them, either the professional sphere or the personal sphere of the employee being affected, taking into account that, in particular, the due reference to the recovery of sums "with monthly deductions from the paycheck within the limit of one fifth of the salary" contained in the same provision, was set up as a generic and not the only procedure, which absolutely did not go to compromise the protection of the subjective sphere of the employee, nor, much less , to report his income situation, as well as, however, complained in the complaint".

Based on the elements acquired, the Office notified the Municipality, as data controller, 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, as the publication on the Municipality's website of the aforementioned determination caused the "dissemination" of the personal data

of the complainant and of other interested parties, in violation of articles 5, 6 of the Regulation and 2-ter of the Code, in the text prior to the amendments made by Legislative Decree 8 October 2021, no. 139. Therefore he invited the aforesaid owner to produce defensive writings or documents to the Guarantor 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 n. 689 of 11/24/1981).

The Municipality sent its defense briefs representing, in particular, that:

- "with reference to the disputed non-compliance with the principles of "lawfulness, correctness and transparency" and "data minimization", it does not appear that, in relation to the publication activity carried out, the situation has been adequately considered that the main act of determining has been perfected and published in compliance with the due precautions envisaged in terms of data protection, or, specifically, through the use of the "omissis" formula instead of the personal data contained in the text, this carefully in line with the purposes of obscuring and minimization of data deemed excessive and irrelevant, this in the loyal and sincere belief, entirely in good faith, that the survival in the text of only the employee's serial number could be, in any case, a valid barrier to public recognition of the employee ";

- "with reference then, to the other reason for debit concerning the disputed absence of a legal basis, it is represented that this Body, in proceeding with the aforementioned activity of publishing a final ranking concerning a Horizontal Economic Progression (PEO), acted in compliance with the same indications contained in paragraph 3.b. of the Guidelines [doc. web no. 3134436], according to which it is necessary to publicize the final rankings [...] of competitions and public selections and of other procedures which envisage the formation of rankings, for which the publication of the de quo determination, together with its two annexes, took place in compliance with the provisions of the specific legislation on the publication of administrative documents in the institution's electronic "Praetorial Register" section (pursuant to article 32, paragraph 1, Law 69/2009 and subsequent amendments), for the strictly necessary time required by the legislation and in compliance with the publicity and transparency obligations established by the same law";

- "on the other hand, with regard to the assertion according to which the publication of the "final rankings" only refers exclusively to the "recruitment notices" and not also to the procedures aimed at economic progressions, the reading of web doc no. . 958442, mentioned by you yourself, would instead lead to enhancing a sector regulation, according to which it is necessary to publicize, in addition to the results of the competition tests and final rankings, more generally, the final measures and rankings, as well as other deeds concerning competitions, selective tests and career progression and other procedures

which end with the formation of rankings, the latter being in line with what was done by the Body";

- “it must also be said that the obligation, which this body has complied with, has been further taken up by Legislative Decree 14 March 2013, no. 33 and subsequent amendments (issued in execution of article 1, paragraph 35, of law 190/2012), concerning the "Reorganization of the regulations concerning the obligations of publicity, transparency and dissemination of information by public administrations", which, in particular, to art. 12 regulated the specific publication obligations concerning deeds of a general regulatory and administrative nature";

- "it is appropriate to add that the publication in the praetorian register of the Municipality is prescribed by art. 124 TU n. 267/2000 for all the resolutions of the municipality and the province and it concerns not only the resolutions of the governing bodies (municipal council and council) but also the executive decisions, expressing the word "deliberation" ab antiquo both resolutions adopted by collegiate bodies and by monocratic bodies and since the intention is to make public all the deeds of the local bodies exercising the deliberative power, regardless of the collegial nature or not of the issuing body (Council of State, section V, 15/03/2006, n 1370)”;

- "it is important to clarify, reiterating what has already been represented in our previous reply [...], to which reference is made in its entirety, how this Body, in the context of the superior activities of publication of the documents, has tried to adopt all the necessary precautions to fulfill the protection of the "Data Protection", disabling , on a regular basis, the mechanisms that allow search engines to index the content, in compliance with point 6) of the AgiD Guidelines "on the legal publicity of documents and on the preservation of PA websites" concerning the "Right to be forgotten and temporariness of the publication", given that each publication is limited to the period envisaged by the law in order to respect the principle of temporariness and the so-called "right to be forgotten".

3. Applicable legislation.

3.1 The regulatory framework.

The regulation of personal data protection provides that public bodies, even if they operate in the performance of their duties as employers, can process the personal data of workers, if the processing is necessary, in general, for the management of the employment relationship and to fulfill specific obligations or tasks envisaged by national sector regulations (articles 6, paragraph 1, letter c), 9, par. 2, lit. b), and 4, and 88 of the Regulation) 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, letter e), of the Regulation).

European legislation provides that "Member States may maintain or introduce 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), determining more precisely specific requirements for processing and other measures aimed at guaranteeing lawful and correct processing [...]" (Article 6, paragraph 2, of the Regulation). In this regard, it should be noted that processing operations which consist in the "dissemination" of personal data are permitted only when provided for by a law or regulation (Article 2-ter, in the text of the Code prior to the amendments made by Legislative Decree 8 October 2021, no. 139).

With regard to the particular categories of personal data, the processing is, as a rule, permitted, as well as to fulfill specific obligations "in the field of labor law [...] to the extent that it is authorized by law [...] in the presence of guarantees appropriate" (Article 9, paragraph 2, letter b), of the Regulation), even where "necessary for reasons of significant public interest on the basis of Union or Member State law, which must be proportionate to the aim pursued, respect the essence of the right to data protection and provide appropriate and specific measures to protect the fundamental rights and interests of the data subject" (Article 9, paragraph 2, letter g), of the Regulation).

The employer, data controller, is required, in any case, to respect the principles of data protection, including that of "lawfulness, correctness and transparency" as well as "data minimization", based on the 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 Regulation).

3.2. The dissemination of personal data relating to the employment relationship and horizontal economic progressions.

As can be seen from the deeds and declarations made by the data controller, as well as from the assessment carried out on the basis of the elements acquired following the preliminary investigation and the subsequent evaluations of this Department, the Municipality has published, from XX to XX, on the website institutional, Praetorian Register section, Resolution no. XX - and the related annexes, integral and substantial parts of the provision itself - concerning the redetermination of the ranking relating to the Horizontal Economic Progression of the year XX, disclosing unencrypted personal data relating to the complainant and other workers. In particular, with specific reference to the complainant (XX) and another worker (XX), personal information was disclosed, contained in the determination, relating to a sentence of the labor judge, to the consequent debit/credit position of the same workers, as well as the attachment of one fifth of the claimant's salary. Other

personal data contained in the aforementioned attachments have also been disclosed, and, in particular, name, surname, date of birth, date of employment, length of service, category, score, referring to the interested party and to the other participants in the procedure aimed at progression horizontal economy.

During the preliminary investigation, the Municipality justified the dissemination of the personal data contained in the determination in question and in the related annexes by invoking, as legal bases for the related processing, regulatory bodies and provisions also at the regional level which, however, for various reasons, do not appear pertinent to the specific case, or in any case not sufficient to justify, for the data protection profiles, the conduct of the entity.

As a preliminary point, also due to the different applicable legal regime, the provisions that regulate the publicity obligations of the administrative action for transparency purposes must be distinguished from those that regulate forms of publicity for different purposes, such as legal publicity.

In particular, the obligations for online publication of data for "transparency" purposes are those indicated in Legislative Decree 14 March 2013, n. 33 concerning "information concerning the organization and activity of public administrations, for the purpose of promoting widespread forms of control over the pursuit of institutional functions and the use of public resources" (see "Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for the purpose of publicity and transparency on the web by public subjects and other obliged entities" of the Guarantor, provision 15 May 2014, n. 243, web doc. n. 3134436, part THE).

Alongside these publication obligations, there are other online publicity obligations for data, information and documents of the Public Administration. - contained in specific sector provisions other than those approved on transparency - such as, among other things, those aimed at making known the administrative action in relation to compliance with the principles of legitimacy and correctness, or those aimed at guaranteeing publicity legal of administrative acts (e.g.: supplementary advertising of efficacy, declarative, news; see Guidelines, cited part II).

Given the above, with reference to the case in question, the reference by the Municipality to fulfill the obligations pursuant to art. 19 of Legislative Decree 14 March 2013, n. 33, given that the first paragraph of this provision, in prescribing the publication of only the "final rankings", refers exclusively to the "recruitment competition notices" (see provisions of 25 March 2021, n. 106, doc. web n. 9584421 and 11 March 2021, n. 89, web doc. n. 9581028) and not also to internal procedures aimed at the economic progression of personnel already in service.

In this regard, it is also appropriate to recall what is expressly established by the National Anti-Corruption Authority-ANAC precisely with regard to the scope of application of the aforementioned art. 19, in the part in which it specified that the internal selective procedures that determine a level-up within the same area or category, the so-called horizontal progressions, as in the present case, "are excluded from the objective scope of application of art. 19 "Competition notices" of Legislative Decree 33/2013, as merit-based procedures connected to the assessment of the individual contribution of the worker and not subject to the principle of public competition", unlike the progressions aimed at the passage of qualification, consisting in the classification in a higher area (so-called vertical progressions) which occur through comparative procedures, resulting in this case in an objective novation of the employment relationship similar to hiring (see ANAC Resolution No. 775 of 10 November 2021; paragraph 1-bis of Article 52 of Legislative Decree 165/2001 as well as the copious jurisprudence on the point, in particular, Court of Cassation, Labor Section Order No. 27932 of 7 December 2020; Cassation, United Section, Sentence 6 June 2017, No. 13981; State Council, Section III, April 29, 2019, No. 2774; State Council, Section V, July 6, 2010, No. 4313). As proof of this, it should be noted that the determination in question was not published in the "Transparent Administration" section of the Municipality's institutional website, as would have been necessary in the event of application of Legislative Decree no. 33, confirming that the Municipality did not proceed with the publication in question for the invoked purposes of transparency of the administrative action.

During the investigation, the Municipality also referred to point 3.b. of the aforementioned Guidelines of the Guarantor, which contemplates, not the publication for transparency purposes, but forms of "publicity of the results of the competition tests and of the final rankings - as well as, in the cases (and with the modalities) envisaged, of the test results intermediate - of competitions and public selections and of other procedures that provide for the formation of rankings", specifying that they remain "without prejudice to the sector regulations which regulate times and forms of publicity".

The sector regulations to which the mentioned passage of the Guidelines refers consist of the provisions which establish, in general, the publicity of the final measures and of the rankings concerning the competitions and selective tests aimed at recruiting and hiring which, for the reasons above, are not applicable to the present case (cf. note 62, Guidelines cited; art. 7, Presidential Decree No. 3 of 10 January 1957; as well as Article 15, Presidential Decree No. 487 of 9 May 1994, in particular, paragraphs 5, 6 and 6 bis and, more generally, on the publicity of recruitment procedures for public administration personnel, Article 35, paragraph 3, Legislative Decree No. 165 of 30 March 2001). The aforesaid passage also refers "to other procedures

which end with the formation of rankings" where they are envisaged by specific sector provisions which also regulate the publicity regime (in this regard, see, for example, the advancement procedures for seniority for non-commissioned officers and graduates referred to in articles 1056 and 1059 of Legislative Decree no. 66/2010, which provides that the results of the same are published on the institutional portals of the Armed Forces; unlike the procedures for the advancement of officers of referred to in Article 1067, paragraph 5, for which it is instead provided only that the subjects evaluated are notified of the outcome of the advancement).

In the case in question, however, the Municipality has not identified any specific sector regulation that expressly authorizes the publication of the results of a procedure relating to the determination of the horizontal economic progressions of the workers, in any case without prejudice to the other forms of knowledge of the administrative acts envisaged by the regulation (articles 22 et seq. of Law August 7, 1990, n. 241; Presidential Decree April 12, 2006, n. 184; articles 6, 9, 10 and 86 of the Regulation).

Among the various defensive arguments presented by the Municipality, aimed at justifying the publication of the determination in question and the related annexes, there is the alleged need to fulfill the provisions of art. 124 of Legislative Decree no. 267 of 18 August 2000 (Consolidated text of the laws on the organization of local authorities) which regulates the publication for 15 days on the Praetorian Register of the Authority's resolutions (see also art. 32, paragraph 1, of Law no. 69 of 18 June 2009, which merely provides that the publication obligations of "administrative deeds and provisions having the effect of legal publicity are understood to be fulfilled with the publication on their own IT sites by the administrations and public bodies obliged").

The aforementioned provisions do not provide for the publication of a determination such as that which is the subject of this preliminary investigation (i.e. a determination concerning the redetermination of a ranking relating to the Horizontal Economic Progression, and the related annexes containing, as in the present case, further information concerning delicate events related to the employee's employment relationship, such as the attachment of one fifth of salary). Nor can the reference to the invoked regional law (Law 26 June 2015, n. 11) be considered adequate which in Article 6 paragraph 1, referred to by the Municipality, only provides for the obligation to publish "as an extract on the respective websites, within seven days of their enactment, all the deliberative acts adopted by the junta and the council and the trade union and managerial decisions as well as the ordinances, for the purpose of publicizing the news".

In this regard, the Guarantor has clarified on numerous occasions that even the presence of a specific advertising regime

cannot lead to any automatism with respect to the online dissemination of personal data and information, nor a derogation from the principles regarding the protection of personal data (see . provision of 15 September 2022, no. 299, web doc. no. 9815665 and provision of 25 February 2021, no. 68, web doc. 9567429).

In numerous decisions regarding the obligations deriving from art. 124 of Legislative Decree 267/2000, in fact, the Guarantor reiterated that all the limits established by the principles of personal data protection apply also to the publications on the online Praetorian Register of deeds or resolutions, having regard above all to the existence of suitable assumptions for the lawfulness of the online dissemination of the personal data contained therein, even before any minimization of the same. This is also confirmed by the personal data protection system contained in the Regulation, in the light of which it is envisaged that the data controller must "implement adequate technical and organizational measures to ensure that, by default, only personal data are processed necessary for each specific purpose of the processing" and must be "able to demonstrate" - in the light of the principle of "accountability" - that he has done so (articles 5, paragraph 2; 24 and 25, paragraph 2, Regulation).

Therefore, where the online publication of documents involves the processing of personal data and therefore their dissemination, the publicity needs pursued with fundamental rights and freedoms must be suitably reconciled, as well as the dignity of the interested party, with particular reference to confidentiality, personal identity and the right to the protection of personal data, identifying as a priority the existence of a suitable legal basis for the dissemination of data (see, most recently, provv.ti n. 366 of 10 November 2022, web doc. n. 9834986 and no. 299, of 15 September 2022, web doc. no. 9815665).

Moreover, despite the precautions taken by the Municipality with the intention of minimizing the personal data present in the decision, it emerges that the complainant (indicated with "XX") and the other worker (indicated with "XX"), are in any case identifiable, given the definition of personal data contained in the Regulation ("any information relating to an identified or identifiable natural person", having to consider "identifiable the natural person who can be identified, directly or indirectly, with particular reference to an identifier such as the name, a identification, [...]" (art. 4, par. 1, n. 1). In fact, it is observed that the determination in question, in recalling the provisions of the judicial authority following the outcome of the judgment involving the two female workers, mentioned the respective matriculation numbers, explaining the consequent economic effects for each one and specifying that the ranking would have been consequently modified ("the employee XX [accesses] the PEO XX, placing herself in first position in the ranking in question and, therefore, she passes from the position economic position C1 to economic position C2 starting from XX" and that "employee XX [lose] the PEO XX, going down one position in the ranking

under discussion, placing herself in thirteenth position, and, therefore, returns to economic position C2 at date from XX"). In this way, from a simple comparison with the data contained in Annex B, in which the female workers respectively in first and thirteenth position are indicated with name, surname and date of birth, the interested parties are easily identifiable.

In the light of the aforementioned considerations, contrary to what was stated by the Municipality - which, using the "formula "omissis" instead of personal data" in the body of the main deed, deemed it had complied with the principle of data minimization - the aforementioned interested parties are identifiable, per relationem, with what is reported in the attachments to the determination itself. Therefore, with regard to these interested parties, the Municipality has also disclosed personal data relating to specific events connected both to the employment relationship and to the outcome of a dispute with the administration and the consequent debit/credit position, as well as to the attachment of one fifth of the claimant's salary.

In any case, as regards the indication of the serial number instead of the name of the worker, as in the present case, it should be noted that this measure may not be considered sufficient in practice to avoid the identifiability of the interested parties, especially when they are associated with other contextual information or additional identifying elements, a circumstance which occurs, for example, as in the case in question, when such information and data are also contained in the same deed or in related deeds (see, among others, lastly, provision n.420 of 15 December 2022, to be published).

For all of the above, it must be concluded that the Municipality has set up a dissemination of personal data in the absence of a suitable legal basis, in violation of articles 5 and 6 of the Regulation and of the art. 2-ter 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, taking into account 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 □ it should b noted that the elements provided by the data controller in the defense briefs do not allow for overcoming the findings notified by the Office with the act of initiation of the procedure and are insufficient to allow the filing of the present proceeding, not resorting Moreover, any of the cases provided for by art. 11 of the Regulation of the Guarantor n. 1/2019.

Therefore, the preliminary assessments of the Office are confirmed and the illegality of the processing of personal data carried out by the Municipality is noted, for having disseminated, by means of online publication on its institutional website, from XX to XX, the determination n. XX and related attachments, in violation of articles 5 and 6 of the Regulation and of the art. 2-ter 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 and of the 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 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; art. 166, paragraph 7, of the Code).

The Guarantor, pursuant to articles 58, par. 2, lit. i) and 83 of the Regulation as well as art. 166 of the Code, has the power to "impose a pecuniary administrative sanction pursuant to article 83, in addition to the [other] [corrective] measures referred to in this paragraph, or instead of such measures, according to the circumstances of each single case" and, in this context, "the College [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 present case - also considering the reference contained in art. 166, paragraph 2, of the Code – 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 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 aforesaid elements, the particular delicacy of the personal data being disseminated online concerning events relating to the employment relationship was considered - with particular reference to the results of the evaluation procedure and the consequent salary effects for the employees of the Municipality, as well as references to the specific situation of the complainant and of another interested party as a result of a specific judicial ruling and the consequences on an economic level for the same complainant (attachment of one fifth of salary). Furthermore, failure to comply with the indications that the Guarantor has provided for some time to all public entities since 2014 with the Guidelines referred to above and in numerous provisions on individual concrete cases adopted over the years by the Guarantor was also considered. Furthermore, there is a

previous provision referred to in Article 58, paragraph 2, against the Municipality, in relation to a pertinent violation.

On the other hand, it was favorably taken into consideration that the violation did not concern particular categories of personal data. The publication in the praetorian register of the determination in question took place for a short period of time and without any indexing on generalist sites.

Based on the aforementioned elements, evaluated as a whole, it is deemed necessary to determine the amount of the pecuniary sanction, in the amount of 5,000.00 (five thousand) euros for the violation of articles 5 and 6 of the Regulation and 2-ter of the Code, as a pecuniary administrative sanction withheld, pursuant to art. 83, par. 1, of the Regulation, effective, proportionate and dissuasive.

Taking into account that the determination being disseminated online contained references to a delicate personal matter of the interested party, it is also believed that the ancillary sanction of publication on the website of the Guarantor of this provision should be applied, 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 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

pursuant to art. 57, par. 1, lit. f), declares the illegality of the processing of personal data carried out by in the terms described in the motivation, consisting in the violation of the articles 5 and 6 of the Regulation and 2-ter of the Code;

ORDER

pursuant to articles 58, par. 2, lit. i) and 83 of the Regulation, as well as art. 166 of the Code, to the Municipality of Misterbianco in the person of its pro-tempore legal representative, with registered office in via S. Antonio Abate, 3 - 95045 Misterbianco (CT) C.F. 80006270872 to pay the sum of 5,000.00 (five thousand) euros as an administrative fine for the violations indicated in this provision. 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 Municipality - without prejudice to the provisions of art. 166, paragraph 8 of the Code, to pay the sum of 5,000.00 (five thousand) euros according to the methods indicated in the attachment, within 30 days of notification of this provision, under penalty of adopting the consequent executive acts pursuant to art. 27 of the law n. 689/1981;

HAS

the publication of this provision on the Guarantor's website pursuant to art. 166, paragraph 7, of the Code (see art. 16 of the Guarantor's Regulation no. 1/2019);

the annotation of this provision in the internal register of the Authority, provided for by art. 57, par. 1, lit. u), of the Regulation, of the violations and of the measures adopted in accordance with art. 58, par. 2, of the Regulation (see art. 17 of Regulation no. 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, 26 January 2023

PRESIDENT

Station

THE SPEAKER

guille

THE SECRETARY GENERAL

Matthew