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THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, in which Dr. Antonello Soro, president, Dr. Giovanna Bianchi Clerici and Prof. Licia Califano, 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, concerning the protection of natural persons with regard to the processing of personal data, as well as the free movement of such data and repealing 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 natural persons 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.gdpd.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 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. The complaint.

With complaint of the XX, presented pursuant to art. 77 of the Regulations, Ms XX, an employee of the Municipality of

Manduria, complained about the communication of her personal data, by sending a "press note" by the Extraordinary Commission of the Municipality, to "two local newspapers and two of regional importance", in which the complainant was mentioned "with reference to the activation of an out-of-court procedure [...] for the recognition of superior duties". In particular, in this note it is stated that the complainant "through its lawyers, has requested [the] Extraordinary Administration to pay [...] the sum of approximately [...] euros for having performed "management functions", on the basis of the decrees signed by the former Mayor [...]".

2. The preliminary investigation.

With a note of the XX (prot. n. XX), the Municipality, responding to the request for information from the Guarantor (prot. n. XX of the XX), declared that:

- on the 20th date, the newspaper "La voce di Manduria" had published an article, signed by a former municipal councilor, in which the management of personnel by the extraordinary administration was contested, which would have induced some employees, including the complainant, to request the transfer to other institutions;
- the Extraordinary Commission of the Municipality, in order to protect its image "and at the same time to implement the principles of transparency", had decided to respond to these statements, sending, in the month of XX, a note "to the Director of "La Voce di Manduria", to the Correspondent of the "Quotidiano di Taranto" and the "Gazzetta del Mezzogiorno", and to the Director of RTM and Ciacksocial";
- the note "was transmitted [...] exercising a legitimate right of criticism, to protect the image of the Municipality of Manduria and the activity carried out by the Extraordinary Commission [...] and "better outline what was happening in the Municipality";
- the processing of personal data relating to the complainant, reported in the note, "has been deemed consistent with the limits of pertinence and minimization of the data being processed (art. 5, paragraph 1, letter c) of the Regulation)", since " the personal data, contained in the surname, is associated with an economic data which represents the emolument requested by the official for deemed managerial activity carried out before the appointment of the [...] Commission";
- "this data would in any case be included among the information which, according to the provisions of art. 14 paragraph 1-ter of Legislative Decree 33/2013, should be made the subject of publication".

On the basis of the elements acquired, also through the documentation sent and in the light of the facts that emerged during the preliminary investigation, the Office notified the Municipality (note prot. n. XX of XX), in its capacity as data controller, to the

pursuant to art. 166, paragraph 5, of the Code, the initiation of the procedure for the adoption of the provisions pursuant to art. 58, par. 2, of the Regulation, concerning the alleged violations of 2-ter, paragraphs 1, 2 and 3, of the Code and of art. 6, par. 1, lit. c) and e), par. 2 and par. 3, letter. b), of the Regulations, inviting the Municipality to produce written defenses 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 24 November 1981).

The Municipality sent its defense briefs with note prot. no. XX of the XX, representing, in particular, that:

- on the twentieth date, the masthead "La Voce di Manduria" had published an article, "in which a former director of the Entity made explicit reference to the fact that the complainant (indicated there by name and surname) had formulated a request for transfer to another Body, due to unspecified and documented internal administrative problems";
- following the publication of this article, "the press release was issued, from which the complaint originates [...] with the declared and exclusive intention of protecting the image of the Municipality through the representation of the facts as actually documented in the records of the Body ";
- "in this context, the reference to personal data" of the claimant, "already present in the article signed by the former administrator, was made by the [...] Commission, in accordance with art. 6 par. 1, lit. c) and e) of the Regulation, "for the execution of a task connected to the exercise of public powers", i.e. [...] to protect the image of the Entity, [...] questioned by press articles on several occasions published in the printed and online leaflet "La Voce di Manduria"";
- "the need to avoid the dissemination of distorted information in the press to the detriment of the Entity has led [the] Commission, in the dutiful and difficult balancing operation between the need to protect the sphere of confidentiality of the employee and those of transparency, to believe that the latter could legitimately prevail, and this in the consideration that the publication concerned data, pertaining to the sphere of public relevance closely connected to the activity carried out by the complainant, which in any case fall within those subject to the obligation of publication on the basis to art. 15 of Legislative Decree no. 33/2013";
- "[The] Commission decided on this interpretation also on the basis of the concrete application of the hermeneutical data provided by the Guarantor Authority [...] with Resolution no. 243 of 15 May 2014, containing "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 entities", in particular from the combined reading of the point 9.c, [...] and the

Second Part", on the assumption that, in the opinion of the Commission, "the economic data, XX, falls within the category of data that can be known by third parties due to the obligation to publish transparently the fees received by the holders of public managerial positions established by art. 15 of Legislative Decree no. 33/2013";

- "the conduct of the Extraordinary Commission was [therefore] based on absolute good faith";

- "with note [...] prot. no. XX dell'XX", the Commission has "requested the newspapers concerned ("La Voce di Manduria" online and "RTMweb") to remove the press article object of the complaint from the web, in order to avoid potential negative effects on the legal sphere of the interested party, whether or not they can be qualified in terms of violation of the rules on the protection of personal data";

- this removal "happened on the same day of the XX";

- "the disputed violation does not concern "particular" data, i.e. sensitive and/or judicial data, but personal data pertaining to the sphere of public relevance connected to the activity carried out by the complainant in the Municipality of Manduria and to the economic implications, consequent to the qualification legal status of the functions attributed to it in a given period of time".

3. Outcome of the preliminary investigation.

The personal data protection regulations provide that public entities, even if they operate in the performance of their duties as employers, can process the personal data (art. 4, n. 1, of the Regulation) of employees, if the treatment is necessary "to fulfill a legal obligation to which the data controller is subject" (think of specific obligations or tasks established by law for the purpose of managing the employment relationship; see art. 88 of the Regulation) or "for the execution of a task in the public interest or connected to the exercise of public powers vested in the data controller" (Article 6, paragraph 1, letters c) and e) of the Regulation).

More generally, 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 with greater accuracy, 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 the operation of communication of personal data, by public entities, is permitted only when provided for by a law or, in the cases provided for by law, a regulation (Article 2-ter, paragraph 1 and 3, of the Code).

Furthermore, the data controller is required to respect the principles regarding data protection, including that of "lawfulness,

correctness and transparency" as well as "minimization", according to which personal data must be "processed in lawful, correct and transparent manner in relation to the data subject" 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).

In this context, the Entity's claims with reference to the fact that the communication of the complainant's personal data to the newspapers would have been necessary for "for the execution of a task connected to the exercise of public powers" cannot be accepted, nor this communication is required by "Union law" or "Member State law" (Article 6, paragraph 3, of the Regulation). Furthermore, the assertion that the complainant's personal data fell "in any case among those subject to the obligation of publication pursuant to art. 15 of Legislative Decree no. 33/2013", as well as the consequent reference to the "Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for the purpose of advertising and transparency on the web by public subjects and other obliged bodies" (provision . n. 243 of 15 May 2014, web doc. n. 3134436). This, in the first place, as the Municipality has implemented a communication of personal data to third parties, i.e. newspapers, and not a dissemination of data through the publication of a decision on the online praetorian register, as required by the regulations on the transparency of the administrative activity of public bodies. Nor was the communication of personal data in question carried out for the purpose of transparency of the administrative action, but, as declared by the Body, to "protect the image of the Municipality". In any case, it should be noted that the art. 15 of Legislative Decree 14 March 2013, n. 33 regulates the publication obligations concerning the holders of collaboration or consultancy assignments, not finding, however, application with reference to employees. Likewise, the art could not have been applied. 14 of the same decree, also invoked by the Municipality, given that, at the time in which the facts object of the complaint occurred, the complainant was not formally classified in the managerial role.

For these reasons, it is believed that the communication of the employee's personal data made by the municipal administration to the press took place in the absence of a suitable prerequisite of lawfulness (Article 6, paragraph 1, letters c) and e), par. 2 and par. 3, letter. b), of the Regulation).

As highlighted by the Authority, already with regard to the previous regulatory framework, in the "Guidelines on the processing of personal data of workers for the purpose of managing the employment relationship in the public sector" of 14 June 2007 (web doc. no. 1417809), "specific legislative or regulatory provisions identify the cases in which the public administration is

entitled to communicate information concerning workers to third parties, public or private subjects", while "when such a specific provision is missing, they cannot be [...] communicated personal data of the employee [...] to third parties [...]" (par. 5).

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 be noted that the elements provided by the data controller in the defense briefs, although worthy of consideration, do not allow the findings notified by the Office to be overcome with the act of initiating the procedure and are insufficient to allow the filing of the present proceeding, since none of the cases envisaged by art. 11 of the Regulation of the Guarantor n. 1/2019.

It is also represented that the violation of the personal data object of the investigation, by the Municipality, took place in full force of the provisions of the Regulation and of the Code, in the text prior to the amendments made by Legislative Decree no. 101/2018, and that, therefore, for the purpose of determining the regulatory framework applicable in terms of time (art. 1, paragraph 2, of the law of 24 November 1981, n. 689), these constitute the provisions in force at the time of the order violation, which in the present case occurred in July 2018, in which the Regulation was fully effective.

Therefore, the preliminary assessments of the Office are confirmed and the illegality of the processing of personal data carried out by the Municipality of Manduria is noted, for having communicated personal data relating to the complainant to third parties, in the absence of suitable regulatory conditions, in violation of art. 6, par. 1, lit. c) and e), par. 2 and par. 3, letter. b), of the Regulation and of the art. 19, paragraph 3, of the Code (now transfused into article 2-ter of the Code, with Legislative Decree no. 101/2018).

The violation of the aforementioned provisions makes it applicable, pursuant to art. 58, par. 2, lit. i), of the Regulation, the administrative sanction provided for by art. 83, par. 5, of the same Regulation, as also referred to by art. 166, paragraph 2, of the Code. In this context, considering that the conduct has ceased to produce its effects, the conditions for the adoption of further corrective measures pursuant to art. 58, par. 2 of the Regulation

5. Adoption of the injunction order for the application of the pecuniary administrative sanction and accessory sanctions (articles 58, paragraph 2, letter i and 83 of the Regulation; article 166, paragraph 7, of the Code).

The Guarantor, pursuant to articles 58, par. 2, lit. i) and 83 of the Regulation as well as art. 166 of the Code, has the power to "impose a pecuniary administrative sanction pursuant to article 83, in addition to the [other] [corrective] measures referred to in

this paragraph, or instead of such measures, according to the circumstances of each single case" and, in this context, "the Board [of the Guarantor] adopts the injunction order, with which it also orders the application of the ancillary administrative sanction of its publication, in whole or in part, on the website of the Guarantor pursuant to article 166, paragraph 7, of the Code" (art. 16, paragraph 1, of the Guarantor's Regulation no. 1/2019).

In this regard, taking into account the art. 83, par. 3, of the Regulation, in the 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. To this end, it was considered that the personal data communicated do not fall within the particular categories of personal data and in any case pertain to a single interested party, that the data controller has taken steps to ask the newspapers, to which the note containing the complainant's personal data, the removal of the press articles that reported such data and that the Municipality has produced a declaration, signed by the complainant on 6 June 2019, with which she acknowledges the initiatives undertaken by the administration to mitigate the damage suffered. Furthermore, there are no previous relevant violations committed by the data controller or previous provisions pursuant to art. 58 of the Regulation.

Based on the aforementioned elements, evaluated as a whole, it is decided to determine the amount of the pecuniary sanction also taking into account the phase of first application of the sanctioning provisions in the amount of 2,000.00 (two thousand) euros for the violation of art. 6, par. 1, lit. c) and e), par. 2 and par. 3, letter. b), of the Regulation.

Taking into account the circumstance in which the personal data of the interested parties have been further disseminated by newspapers, 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), of the Regulation, detects the illegality of the processing carried out by the Municipality of Manduria, for violation of the art. 6, par. 1, lit. c) and e), par. 2 and par. 3, letter. b), of the Regulation, in the terms referred to in

the justification;

ORDER

to the Municipality of Manduria, in the person of its pro-tempore legal representative, with registered office in Piazza Garibaldi, 21, 74024 Manduria (TA), Tax Code 80009070733, pursuant to articles 58, par. 2, lit. i), and 83, par. 5, of the Regulation and 166, paragraph 2, of the Code, to pay the sum of 2,000.00 (two thousand) euros as an administrative fine for the violations indicated in the justification; it is represented that the offender, pursuant to art. 166, paragraph 8, of the Code, has the right to settle the dispute by paying, within 30 days, an amount equal to half of the fine imposed;

ENJOYS

to the same Municipality to pay the sum of 2,000.00 (two thousand) euros, 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 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;

HAS

pursuant to art. 166, paragraph 7, of the Code, the publication of this provision on the website of the Guarantor, believing that the conditions set 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.

Pursuant to art. 78 of the Regulation, of the articles 152 of the Code and 10 of Legislative Decree 1 September 2011, n. 150, 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