

[doc. web n. 9789564]

Injunction order against the Tuscany Region - 26 May 2022

Record of measures

n. 197 of 26 May 2022

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

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

GIVEN the Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4/2016, concerning the protection of individuals with regard to the processing of personal data, as well as the free circulation of such data and which repeals

Directive 95 / 46 / EC, "General Data Protection Regulation" (hereinafter "RGPD");

GIVEN the d. lgs. 30/6/2003, n. 196 containing the "Code regarding the protection of personal data" (hereinafter the "Code");

GIVEN 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 advertising and transparency on the web by public entities and other obliged entities", published in the Official Gazette. n. 134 of 12/6/2014 and in [www.gpdp.it](http://www.gpdp.it), doc. web n. 3134436 (hereinafter "Guidelines on transparency");

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

GIVEN the documentation in the deeds;

GIVEN the observations made by the Secretary General pursuant to art. 15 of the Guarantor Regulation n. 1/2000 on the organization and operation of the office of the Guarantor for the protection of personal data, in [www.gpdp.it](http://www.gpdp.it), doc. web n. 1098801;

Speaker prof. Pasquale Stanzione

WHEREAS

1. Introduction

This Authority has received a report with which a violation of the legislation on the protection of personal data by the Region of Tuscany caused by the dissemination of personal data online has been contested.

Specifically, as emerged from the preliminary verification carried out by the Office, at the url [https:// ...](https://...), under the heading "Attachments", it was possible to freely download and view the documents contained therein - relating to the "Bando Filiera Turismo", and specifically the «POR FESR 2014-2020 - action 3.1.1 sub a3). "Aid aimed at containing and combating the epidemiological emergency COVID-19". "Fondo Investimenti Toscana - non-repayable contributions in favor of the Tourism Sector" »- containing personal data and information.

In this regard, it was verified:

1. the link called XX, which allowed you to view and download the relative folder containing in turn a series of files in .pdf format called: XX; XX;
2. the link called XX, which allowed you to view and download the relative folder containing in turn a series of files in .pdf format called: XX;
3. the link called «XX, which allowed you to view and download the relative folder containing in turn two subfolders called XX and XX Both contained a series of files in .pdf format called: XX;
4. the link called XX, which allowed you to view and download a series of files in .pdf format called: XX;
5. the link called XX, which allowed you to view and download a series of files in .pdf format called: XX;
6. The link called XX, which allowed you to view and download the relative folder containing in turn a series of files in .pdf format called: XX.

The aforementioned files reported the list of applications - not only admitted and financed or rectified, but also not admitted - referring, not only to legal persons, but also to natural persons (e.g. professionals or sole proprietorships), with indication, among the other, the amount received and the residence / domicile, with particular reference to the activities of travel agencies and tour operators; tour guides and tour leaders; mountain guides, taxi transport and car rental with driver; of other land passenger transport.

## 2. The legislation on the protection of personal data

Pursuant to the relevant regulations, "personal data" is "any information concerning an identified or identifiable natural person (" interested ") and "the natural person who can be identified, directly or indirectly, with particular reference to a identifier such

as the name, an identification number, location data, an online identifier or one or more characteristic elements of its physical, physiological, genetic, psychic, economic, cultural or social identity "(art. 4, par. 1, No. 1, of the GDPR).

In this regard, with particular reference to the issue brought to the attention of this Authority, please note that public entities, such as this Region, may disclose "personal data" only in the cases provided for by art. 2-ter, paragraphs 1 and 3, of the Code, in compliance with the principles of data protection, including that of "minimization", according to which personal data must be "adequate, relevant and limited to what is necessary with respect to the purposes for which they are processed" (Article 5, paragraph 1, letter c, of the RGPD).

The state legislation of the sector on transparency provides, with reference to the "obligations of publication of the deeds of granting grants, contributions, subsidies and attribution of economic advantages to individuals and public and private entities", that "Public administrations publish the deeds of granting of grants, contributions, subsidies and financial aids [...], and in any case of economic advantages of any kind to persons [...] of an amount exceeding one thousand euros »during the calendar year. In any case, "The publication of the identification data of the natural persons recipients of the measures referred to in this article is excluded, if from such data it is possible to obtain information relating [...] to the economic and social hardship of the interested parties" (art. 26, paragraphs 2-4, of Legislative Decree no. 33 of 14/3/2013).

With regard to the online dissemination of personal data of beneficiaries of financial contributions, since 2014, the Guarantor has provided specific indications to public administrations on the precautions to be taken, with general provision no. 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 advertising and transparency on the web by public entities and other obliged entities", published in G.U. n. 134 of 12/6/2014 and in [www.gdpd.it](http://www.gdpd.it), doc. web n. 3134436 (currently being updated, but still current in the substantial part).

In the Guidelines of the Guarantor cited above, it is expressly established, with reference to the obligation to publish the deeds of granting economic benefits (part one, paragraph 9.e), that "the same d. lgs. n. 33/2013 identifies a series of limits to the obligation to publish deeds of granting economic benefits, however named. In fact, the identification data of the natural persons recipients of the granting of grants, contributions, subsidies and allocation of economic advantages, as well as the lists of the relative recipients, cannot be published:

a) for a total amount of less than one thousand euros during the calendar year in favor of the same beneficiary;

[...]

c) of an amount exceeding one thousand euros during the calendar year in favor of the same beneficiary "if from such data it is possible to obtain information relating [...] to the economic and social hardship of the interested parties" (Article 26, paragraph 4, Legislative Decree no. 33/2013) ".

3. Preliminary assessments 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 as a result of the investigation, as well as subsequent evaluations, the Office with note prot. n. XX of the XX has ascertained that the Tuscany Region - by disseminating the data and personal information contained in the documents published online described above - has carried out a processing of personal data that does 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 (pursuant to art.166, paragraph 5, of the Code) were notified to the aforementioned Region, communicating the start of the procedure for the adoption of the measures referred to in Article 58, par. 2, of the RGPD and inviting the aforementioned administration to send to the Guarantor defensive writings or documents and, possibly, to ask to be heard by this Authority, within the term of 30 days (Article 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.

The Tuscany Region, with the note prot. n. XX, sent to the Guarantor its defense writings in relation to the notified violations. In this regard, please note that, unless the fact constitutes a more serious crime, anyone who, in a proceeding before the Guarantor, falsely declares or certifies news or circumstances or produces false documents or documents, is liable pursuant to art. 168 of the Code, entitled "False statements to the Guarantor and interruption of the performance of the tasks or the exercise of the powers of the Guarantor".

Specifically, with regard to the conduct, the administration highlighted, among other things, that:

- "The documents subject to publication were annexes to concession deeds, approved by the undersigned [Region] as part of the administrative procedure governed by the "Tourism Supply Chain Notice", approved with D.D. n. 15380 of 29/9/2020 and issued in implementation of Resolution G.R. n. 1155 of 3/08/2020, which approves the directives for the selection of interventions for the activation of the call for "Tuscany investment fund - non-repayable contributions in favor of the Tourism Sector" »;

- "The DGRT n. 1155 of 3/08/2020 mentions among the premises the DGRT n. 467 of 02/05/2018, with which the new guidelines for the drafting of a standard call for subsidies to businesses were approved ";

- "In the evaluation procedures with ranking, the preliminary activity (admissibility and evaluation of projects) ends with the preparation of the ranking of the questions on the basis of the assigned scores";

- "Pursuant to the l.r. n. 71/2017 [...], the ranking is published within 90/120 days from the date of expiry of the deadline for submitting applications ";

- «The final ranking distinguishes between admitted and non admitted questions.

A) The admitted questions are divided into:

- admitted and financed;

- admitted and not financed due to lack of funds.

B) The non-admitted questions are divided into:

1. applications not admitted due to the negative outcome of the admissibility and evaluation procedures

2. applications not admitted following renunciation "

- "In tenders that provide for the formation of a ranking, the provision of approval of the ranking and scrolling of the same, adopted by the Administration (or by the managing body if authorized) constitutes for all purposes";

- "The above, in application of the provisions of the national legislature, also in compliance with EU rules and regulations, regarding the obligations of publication of the deeds of granting grants, contributions, subsidies and assignment of economic advantages to individuals and entities public and private, pursuant to Legislative Decree no. 33/2013, which in paragraph 3 of art. 26 states "Publication pursuant to this article constitutes a legal condition for the effectiveness of the provisions that dispose of concessions and attributions for a total amount exceeding one thousand euros during the calendar year to the same beneficiary. Failure, incomplete or delayed publication detected ex officio by the supervisory bodies is also detectable by the recipient of the envisaged concession or assignment and by anyone else who has an interest, also for the purposes of compensation for damage due to delay by the administration, pursuant to 'article 30 of the legislative decree 2 July 2010, n. 104 "";

- "Pursuant to art. 27, paragraph 1, of Legislative Decree no. 33/2013, the publication referred to in article 26, paragraph 2, necessarily includes, for the purposes of paragraph 3, of the same article: a) the name of the company or body and the

respective tax data or the name of another subject beneficiary; b) the amount of the economic advantage paid; c) the rule or title underlying the attribution; d) the office and the officer or manager responsible for the related administrative procedure; e) the method followed for identifying the beneficiary; f) the link to the selected project and to the curriculum vitae of the person in charge ».

- "This content is to be combined with the provisions of paragraph 4 of art. 26, which expressly excludes "the publication of the identification data of the natural persons recipients of the measures referred to in this article, if from such data it is possible to obtain information relating to the state of health or to the situation of economic and social hardship of the interested parties" ";

- «As specified by Anac in Resolution no. 468 of June 16, 2021 "it is therefore up to the administrations to assess whether or not the type of disbursements to be published is characterized by being a financial aid to support those categories of subjects who are in the conditions for which paragraph 4 of art. 26 imposes particular safeguards of confidentiality. In these cases, the administration is required to anonymize the identification data of the beneficiaries if they reveal a condition of economic and social hardship "";

- "The emergency situation facing our country, as well as many others worldwide, has certainly entailed the occurrence of considerable losses at an economic level, seeing entire sectors of the market affected as well as a substantial part of workers and, in general , of the population".

- "The measures adopted at national level and of community derivation (with the allocation of ad hoc emergency funds) have in some cases had a prevalent assistance character and in others, as in the case of the calls for restorations, the purpose of supporting companies operating in commodity areas, such as tourism, which have suffered significant losses for reasons totally unrelated to ordinary market dynamics, but attributable solely to the closures imposed by the government and in general by the limitations dictated by the emergency period still in progress; the same, as such, cannot therefore be considered as a specific condition of economic hardship ".

- "The interventions referred to in the Calls de quo are, in fact, implementation of the emergency measures provided for:

- from Commission Communication C (2020) 1863 of 19.03.2020 "Temporary framework for state aid measures to support the economy in the current emergency of COVID-19", as amended by Communications C (2020) 2215 of 3 April 2020, C (2020) 3156 of May 8, 2020 and C (2020) 4509 of June 29, 2020;

- by D.L. 19 May 2020, n. 34 "Urgent measures in the field of health, support for work and the economy, as well as' social

policies related to the epidemiological emergency from COVID-19” ”.

- "As specified in these documents, taking into account that the COVID-19 epidemic carries the risk of a severe recession affecting the entire EU economy, properly targeted public support is needed to combat the damage done to healthy businesses and to preserve the continuity of economic activity during and after the COVID-19 epidemic, in particular businesses in sectors particularly affected by the epidemic (for example, the transport, tourism, culture, hospitality and retail trade), such as those to which the subjects in question belong ”.

- "The Tourism Supply Chain Announcement in paragraph 1.1" Aims and objectives "provides that, in order to encourage the resumption of tourist flows and to ensure the stability of the tourism system, the Tuscany Region grants support to certain categories of particularly damaged subjects to following the Covid-19 epidemic and the consequent disappearance of tourism and business linked to congresses, conferences and fairs. Therefore, the Tuscany Region has intended to support a particular segment of the tourism sector companies, namely travel agencies, guides and the connection system (taxi, NCC, bus rental, etc.), which will be able to cover a fundamental role in guaranteeing the stability of the system and in favoring the relaunch of the offer in the tourism sector in Tuscany ”;

- "Therefore, it was not considered the case of" economic and social hardship "of the interested parties, as the request did not involve any certificate on the applicant's income and the requirement of the reduction in turnover recorded in the reference period verified in phase of admission to the contribution and calculated in relative (percentage) and not absolute terms, it was the preliminary and necessary condition for access to the refreshment points, implicitly recognized by the relevant legislation for members of the professional categories exercising economic activities most affected by the negative effects of pandemic".

- "Following the notification of violation, the opportunity to remove some objectively unnecessary information in the publication of the list of companies, especially individual companies, both admitted and not admitted, was more carefully considered. All unnecessary references were then promptly removed, leaving only the following information:

- Tuscany Development Project Identification Code, issued automatically at the time of online submission of the grant application
- CUP-CIPE (Unique Code of the Project at national level)
- COR (National Aid Register grant code)
- amount of the grant for admitted companies and only the Tuscany Development Project Identification Code, for not admitted

companies ».

- "With regard to the cessation of effects, it is important to point out that in the face of the notification of the dispute (initiation of procedure 156) received through the DPO at 13:06 on day XX, already at 14:30 the writer had already remove from the WEB pages of the calls for tenders in question all the files reported by starting at the same time an activity of verification - and where necessary of revision - of the contents of the institutional site that could potentially configure cases similar to those subject to dispute and extending the search to others similar treatments that could report similar data and providing for the removal of the same. This operation involved the physical removal of the files from public storage locations so that they were no longer accessible even via direct links ";

- "An analysis of the procedures adopted was also undertaken, together with the competent regional sectors, in order to evaluate the adoption of different methods of communicating the outcome of the investigation processes to the beneficiaries, guaranteeing total privacy in relation to the data of the procedure (for example a reserved area with 3 SPID level 2 access in which the beneficiary can see the outcome of the file presented) for which there is no legal obligation of publicity ".

- "the subjects considered as" natural persons "(professionals and sole proprietorships) participate in the calls for funding as they are equivalent to" companies "and the general information of the same, in terms of addresses of the registered office / tax code / VAT number are published in the Business Register or in the specific Rolls to which they belong (public lists regulated by specific laws, eg Regional Rolls of Tourist Guides and collective transport operators) and, therefore, data in any case public, easily accessible and consultable without limitations ";

- "the undersigned administration has started a process aimed at implementing technical and organizational measures that allow certified access to platforms for the granting of contributions and grants through SPID, CIE, CNS profiling, which will allow exclusive viewing of the person's ID profiled and not of others, making it impossible for third-party users to trace personal information and / or content present in the system ".

## 5. Evaluations of the Guarantor

The subject matter of the case submitted to the attention of the Guarantor concerns the dissemination of personal data and information contained in the files identified above in par. 1. nos. 1-6, referring to professionals or individual firms (with indication, among other things, of the amount received and of the residence / domicile) as tour operators; tour guides and tour leaders; transport by taxi and rental of cars with driver; other land passenger transport published online by the Tuscany



Region.

As part of the investigation opened in this regard by this Authority, the Tuscany Region confirmed in the defense briefs, the online dissemination of the personal data described above, deeming its publication compliant with the regional regulatory framework, including the regional law. n. 71/2017, and the state regulatory framework on transparency, including articles 26 and 27 of the d. lgs. n. 33/2013. The Region also represented that it did not violate the regulations on the protection of personal data, as the personal details, addresses, tax code of individuals published online, referring to professionals and individual firms - which "participate in calls for funding as they are equivalent to "companies" "- they would be" public data ", "easily accessible and consultable without limitations ", as" published in the Business Register or in the specific registers to which they belong (public lists governed by specific laws, eg. Regional registers of Tourist Guides and collective transport operators) ».

However, it is believed not to be able to fully accept the justifications put forward by the Region for the reasons indicated below.

With the D.D. n. 15380/2020, also cited by the Tuscany Region, concerning «POR FESR TUSCANY 2014 - 2020, ACTION 3.1.1. sub-action 3.1.1a3) "Aid aimed at containing and combating the epidemiological emergency COVID-19" "the" Call for "Tuscany investment fund - non-repayable contributions to the tourism sector" was approved ". This "Tourism Sector Call", which provided for the disbursement of the economic contributions covered by this provision in a rather complex regulatory framework. Specifically, as regards the dissemination of the data of the beneficiaries of the aid, the provisions contained, at regional level, in the law of the Tuscany Region no. 71 of 12/12/2017, containing «Discipline of the regional system of business support interventions» and, at the state level, in Articles 26 and 27 of the d. lgs. n. 33/2013.

The regional discipline - also cited in the defense briefs of the Tuscany Region - provides that "The procedures for the granting of subsidies in favor of companies are concluded with the publication of the rankings within ninety days from the closing date for the submission of applications provided for by the relative notice "(Article 16, paragraph 1, Regional Law no. 71/2017). As indicated in the defense briefs and in the Guidelines cited therein cited "In the evaluation procedures with ranking, the preliminary activity (admissibility and evaluation of projects) ends with the preparation of the ranking of applications based on the scores assigned [...]" (point 5.6 . of the "Guidelines for the preparation of a standard call for subsidies to businesses", approved with Regional Council Resolution no. 467 of 02-05-2018). On the basis of these provisions, the Region has prepared

and published the final ranking of the subsidies with specific indication not only of the admitted and financed applications, but also of those admitted but not financed due to lack of funds and those not admitted (due to lack of or why you renounced), clearly reporting - with regard to natural persons - also names, tax codes and domicile / residence.

This regional regulation is not entirely consistent with the state regulation on transparency which - for economic concessions - instead provides for the publication of concession deeds only in favor of beneficiaries of economic contributions exceeding one thousand euros (with the exclusion therefore of subjects who have not obtained the benefit). Furthermore, in any case, the "identification data of the natural persons subject to the measures referred to in this article cannot be published, if from such data it is possible to obtain information relating [...] to the economic and social hardship of the interested parties" (Article 26, paragraph 4, Legislative Decree no. 33/2013).

In this regard, the Region declared that it did not consider the "case of" economic and social hardship "of the interested parties", provided for by the aforementioned article, "as the request did not involve any certificate on the applicant's income and the requirement of the reduction of turnover recorded in the reference period verified in the phase of admission to the contribution and calculated in relative (percentage) and not absolute terms, it was the preliminary and necessary condition for access to refreshment points, implicitly recognized by the reference legislation to members of the professional categories exercising economic activities most affected by the negative effects of the pandemic ».

This argument, however, is not acceptable, as the relevant state legislation applies to all situations of possible economic and social hardship, so - in this perspective and for the purposes of applying the exception to the disclosure of the identification data provided from art. 26, paragraph 4, of the d. lgs. n. 33/2013 - it is not possible to accept what is claimed by the Region according to which the situation of those who have simply certified, without specifying the income that they have received - for the purpose of recognizing the economic benefit - a "reduction in turnover in the reference period "calculated" in relative (percentage) rather than absolute terms ". This is because - as shown in Annex 1 of the Tourism Supply Chain Announcement referred to in Decree no. 15380 of 29/9/2020 - the beneficiaries of the refreshments had to be "particularly damaged persons following the Covid-19 epidemic", identified in those who were in a condition for which "the amount of turnover and fees from 1 May 2020 to 31 August 2020, [had it been] less than two thirds of the amount of the turnover and fees from 1 May 2019 to 31 August 2019 "(see point 3.1 of the aforementioned annex).

It should be remembered that the prohibition provided for by art. 26, paragraph 4, of the d. lgs. n. 33/2013 to disclose, for

transparency purposes, identification data of recipients of economic contributions from which information relating to "the economic and social hardship of the interested parties" - as also highlighted by the Guarantor in the Guidelines on transparency - is "A ban functional to the protection of the dignity, rights and fundamental freedoms of the interested party (Article 2 of the Code), in order to avoid that subjects who find themselves in disadvantaged conditions - economic or social - suffer the embarrassment of the diffusion of such information, or may be subjected to undesirable consequences, due to the knowledge of third parties of the particular personal situation "(see part one, par. 9.e).

The interpretation offered by the Tuscany Region reported in the defense briefs does not comply with the rationale of the provision contained in art. 26, paragraph 4, of the d. lgs. n. 33/2013 and also appears disproportionate and in contrast with the principle of "correctness" and "limitation of the purpose" of the processing pursuant to art. 5, par. 1, lett. a) and c) of the GDPR. In this regard it was specified in the Guarantor's Guidelines that - in light of the principle of necessity, relevance and non-excess (today all converged into the more general principle of "minimization" of the data referred to in art. 5, part. 1, letter c, of the RGPD) - it is not justified "to disseminate, among other things, data such as, for example, [...] the indication [...] of conditions of need [...]" (ibid).

Moreover, the same Region of Tuscany, confirming the above - stated in its defense briefs that it had carried out a new assessment, at the outcome of which it was "opportune [o] to remove some objectively unnecessary information in the publication of the list above all individual enterprises both admitted and not admitted ». For which he proceeded to "promptly remove all unnecessary references, leaving only the following information: • Tuscany Development Project Identification Code, issued automatically at the time of the online submission of the grant application • CUP-CIPE (Unique Code of the Project to national level) • COR (National Aid Registry grant code) • amount of the grant for admitted companies and only the Tuscany Development Project Identification Code, for not admitted companies ».

As for the circumstance highlighted in the defense briefs according to which "the subjects considered as" natural persons "(professionals and sole proprietorships) participate in the calls for funding as they are equivalent to" companies "and the general information of the same, in terms of addresses of the registered office / tax code / VAT number are published in the Business Register or in the specific Registers to which they belong (public lists governed by specific laws, e.g. Regional registers of Tourist Guides and collective transport operators) and, therefore, [would be] public data anyway, easily accessible and consulted without limitations ", it is not clear how this element can be useful for assessing whether the relative online

dissemination by the Region - together with all other information relating to interested parties published online by the Entity (such as the financial contribution received and the circumstance of having been «particularly damaged parties following the epidemic from Covid-19 "for having had a reduction in turnover) - it was actually necessary for the exercise of the institutional functions of the body and if the personal data were actually" limited to what is necessary with respect to the purposes for which they [were] treated "(art. 5, par. 1, letter, c; 6, par. 1, lett. e, GDPR). In this sense, the disclosure of the tax code and residence address (which fall within the definition of personal data pursuant to art.4, par.1, n.1, of the RGPD), together with the name of the interested party and on the other hand, the other detailed information described above relating to the economic activity carried out is disproportionate to the purpose of transparency connected to the publication of the ranking.

It should be remembered that this Authority, on several occasions, has indicated that even the presence of a specific advertising regime cannot entail any automatism with respect to the online dissemination of personal data and information, nor an exception to the principles regarding the protection of personal data of European origin, provided for by the RGPD, such as - among others - that of "minimization", according to which personal data - also contained in deeds or documents whose online dissemination is provided for by a specific legal basis - must not only be "Adequate" and "relevant", but also "limited to what is necessary with respect to the purposes for which they are processed" (Article 5, paragraph 1, letter c).

This is also confirmed by the personal data protection system contained in the RGPD, in light of which it is envisaged that the data controller must "implement adequate technical and organizational measures to ensure that, by default, only the personal data necessary for each specific purpose of the processing "(" data protection by default ") and must be" able to demonstrate "- in light of the principle of" accountability "- to have done so (art. 5 , para. 2; 24 and 25, para. 2, GDPR).

In any case, it should be borne in mind that the entity has finally represented that, for the future, "an analysis of the procedures adopted has been undertaken, together with the competent regional sectors, in order to evaluate the adoption of different methods of communication to the beneficiaries of the outcome of the investigation processes guaranteeing total privacy with regard to the data of the procedure (for example a reserved area with 3 SPID level 2 access in which the beneficiary can see the outcome of the file presented) for which it is not a legal obligation of publicity is envisaged ".

## 6. Outcome of the investigation relating to the report submitted

For all of the above, the circumstances highlighted in the defense writings examined as a whole, certainly worthy of consideration for the purpose of evaluating the conduct, are not sufficient to allow the filing of this proceeding, since none of

the hypotheses provided for by art. 11 of the Guarantor Regulation n. 1/2019. This also considering that since 2014 the Authority, in the Guidelines on transparency and online publication mentioned above, has provided all pp.aa. specific indications on how to reconcile the transparency and publicity obligations of the administrative action with the right to the protection of the personal data of the interested parties.

In this context - while understanding the difficult balance between the need for transparency and protection of personal data subject to evaluation, case by case, by the data controller, especially in relation to the identification of cases in which measures for the provision of economic benefits reveal the 'existence of a situation of economic or social hardship in which the interested party finds himself who does not allow its disclosure - the preliminary assessments of the Office contained in the note prot. n. XX and the unlawfulness of the processing of personal data carried out by the Tuscany Region was noted, as data of subjects beneficiaries of economic contributions reserved for "subjects particularly damaged following the Covid-19 epidemic", who had a reduction of the "amount of turnover and fees from May 1, 2020 to August 31, 2020, [...] less than two thirds of the amount of sales and fees from May 1, 2019 to August 31, 2019", therefore suitable for disclosing a situation of economic and social hardship (even temporary) of the interested parties, as well as personal data of subjects who have not been admitted to any economic benefit in violation:

- a) of art. 5, par. 1, lett. c), of the GDPR and the principle of "minimization";
- b) of art. 26, paragraph 4, of the d. lgs. 33/2013 and, consequently, of art. 2-ter, paragraphs 1 and 3, of the Code and 6, par. 1, lett. c) and e), par. 2 and par. 3, lett. b), of the GDPR.

Considering, however, that the conduct has exhausted its effects, as the data controller has declared that he has removed unnecessary information from the web, without prejudice to what will be said about the application of the pecuniary administrative sanction, the conditions are not met. for the adoption of further corrective measures pursuant to art. 58, par. 2, of the GDPR.

7. Adoption of the injunction order for the application of the pecuniary administrative sanction (Articles 58, paragraph 2, letter i; 83 of the GDPR)

The Tuscany Region appears to have violated Articles 5, par. 1, lett. c); 6, par. 1, lett. c) and e), par. 2 and par. 3, lett. b), of the GDPR; as well as art. 2-ter, paragraphs 1 and 3, of the Code (see also Article 26, paragraph 4, of Legislative Decree 33/2013).

In this regard, art. 83, par. 3, of the RGPD, provides that «If, in relation to the same treatment or related treatments, a data

controller or a data processor violates various provisions of this regulation, with willful misconduct or negligence, the total amount of the pecuniary administrative sanction does not exceeds the amount specified for the most serious violation '.

In the present case, the violation of the aforementioned provisions - also considering the reference contained in art. 166, paragraph 2, of the Code - is subject to the application of the same administrative fine provided for by art. 83, par. 5, of the GDPR, which therefore applies to the present case.

The Guarantor, pursuant to art. 58, par. 2, lett. i) and 83 of the RGPD, as well as art. 166 of the Code, has the corrective power to "inflict 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 context, "the College [of the Guarantor] adopts the injunction order, with which it also disposes with regard to the application of the ancillary administrative sanction of its publication, in whole or in excerpt, on the website of the Guarantor pursuant to Article 166, paragraph 7, of the Code "(Article 16, paragraph 1, of the Guarantor Regulation no. 1/2019).

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

In this sense, the detected conduct in violation of the regulations on the protection of personal data is of a culpable nature and involved the online dissemination of personal data, for about 8 months, not belonging to particular categories or to criminal convictions or offenses (articles 9 and 10 of the GDPR). The Tuscany Region is in any case a large territorial body (with more than three million inhabitants). It is deemed necessary to take into consideration, as extenuating circumstances, the difficult balance between the need for transparency and protection of personal data subject to evaluation, case by case, by the data controller, especially in relation to the identification of cases in which disbursement of economic benefits reveal the existence of a situation of economic or social hardship in which the interested party finds himself who does not allow its disclosure.

Furthermore, in the case in question, the existence of a very complex regulatory framework underlying the disbursement of economic contributions distributed by the entity and the existence of a specific provision contained in the regional discipline for the publication of the ranking (art.16 , paragraph 1, Regional Law no. 71/2017), the broad interpretation of which does not appear in any case to be entirely consistent with the state regulations on transparency which - for economic concessions - only provides for the publication of concession deeds in favor of the beneficiaries of economic contributions of more than one thousand euros (therefore excluding those who have not obtained the subsidy). It is then necessary to consider the context

and the emergency period in which the Region found itself operating which, however - following the request of the Office - intervened promptly, collaborating with the Authority during the investigation of this proceeding in order to remedy the violation, mitigating the possible negative effects, as well as the understandable willingness of the administration to facilitate particular categories of damaged economic subjects by ensuring the transparency of the procedure. In the reply to the Guarantor, various technical and organizational measures implemented pursuant to art. 25-32 of the RGPD, but there are, however, other violations of the RGPD sanctioned by the Guarantor committed by the body, even if for conduct other than those subject to dispute in this proceeding.

Due to the aforementioned elements, assessed 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, to the extent of € 16,000.00 (sixteen thousand) for the violation of Articles 5, par. 1, lett. c); 6, par. 1, lett. c) and e), par. 2 and par. 3, lett. b), of the GDPR; as well as art. 2-ter, paragraphs 1 and 3, of the Code (see also Article 26, paragraph 4, of Legislative Decree 33/2013); as a pecuniary administrative sanction deemed effective, proportionate and dissuasive pursuant to art. 83, par. 1, of the same RGPD.

In relation to the specific circumstances of this case, relating to the dissemination of personal data online in violation of the prohibition of dissemination of personal data of beneficiaries of economic contributions from which information relating to "the economic and social hardship of the data subjects" (art. 26, paragraph 4, of Legislative Decree no. 33/2013), as well as the principle of data minimization (Article 5, paragraph 1, letter c, GDPR), it is also believed that the ancillary sanction should be applied of the publication of this provision on the Internet site 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 out in art. 17 of the Guarantor Regulation n. 1/2019.

WHEREAS, THE GUARANTOR

detected the unlawfulness of the processing carried out by the Tuscany Region in the terms indicated in the motivation pursuant to Articles 58, par. 2, lett. i), and 83 of the GDPR

ORDER

to the Tuscany Region, in the person of the pro-tempore legal representative, with registered office in Piazza Duomo 10 - 50122 Florence (FI) - C.F. 01386030488 to pay the sum of € 16,000.00 (sixteen thousand) as a pecuniary administrative

sanction for the violations mentioned in the motivation;

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to the same Region to pay the sum of € 16,000.00 (sixteen thousand), 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 l. n. 689/1981.

Please note that the offender has the right to settle the dispute by paying - again in the manner indicated in the annex - of an amount equal to half of the sanction imposed, within the term referred to in art. 10, paragraph 3, of d. lgs. n. 150 of 1/9/2011 provided for the submission of the appeal as indicated below (Article 166, paragraph 8, of the Code).

## HAS

- the publication of this provision on the website of the Guarantor pursuant to art. 166, paragraph 7, of the Code and by art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019;
- the annotation in the internal register of the Authority of the violations and measures adopted pursuant to art. 58, par. 2, of the RGPD with this provision, as required by art. 17 of the Guarantor Regulation n. 1/2019.

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

Rome, May 26, 2022

## PRESIDENT

Stanzione

## THE RAPPORTEUR

Stanzione

## THE DEPUTY SECRETARY GENERAL

Philippi