

[doc. web no. 9857610]

Injunction against the Regional School Office for Lombardy, Office IV - Territorial Area of Brescia - 11 January 2023

Register of measures

no. 3 of 11 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 filed by Mr. XX the publication, on the institutional website of the Regional School Office for Lombardy, Office IV - Brescia Territorial Area (hereinafter "School Office"), of a provision "concerning the transfer" of the complainant, containing

information personal data referring to the same, as well as the indication of the "precedence" reason attributed to the interested party in territorial mobility operations, identified in the assistance to the XX" pursuant to l. 5 February 1992, no. 104.

2. The preliminary investigation.

With a note of the XX, (prot. n. XX) responding to the request for information formulated by this Authority, the School Office stated, in particular, that:

- "as part of the mobility procedure relating to the academic year XX [the complainant...] presented a transfer request asking to take advantage of the precedence for assistance to the XX pursuant to art. 13, paragraph 1, point IV of [...] CCNI";
- "having not been recognized by the office as such precedence [the interested party] lodged an appeal pursuant to art. 700 c.p.c. before the Brescia Labor Judge who [...], ordered the administration "to validate the application presented [...] in relation to the mobility of teaching staff for the academic year XX" recognizing "the right to participate in the same operations with priority for assistance to the XX, on the Municipality of Brescia pursuant to art. 33, c.5 and c. 7, the. 104/1992 as well as pursuant to art. 13, ch. 1, point IV CCNI Mobility XX";
- "subsequently [... the School Office], in order to comply with the provisions of the Brescia Labor Judge [...], with decree no. XX of the XX recognized [the complainant] precedence over the Municipality of Brescia for assistance to the XX";
- "on the twentieth date, this decree was published on the institutional website of the Ust of Brescia as there was a need to guarantee maximum transparency in the mobility operations and to give evidence to third parties that the transfer of the teacher [...] was arranged in compliance with the provision adopted by the Judicial Authority";
- "with a letter of the XX [the interested party] complained about the publication of sensitive data in the aforementioned decree and requested this office to remove/conceal the same data by the deadline of the XX. This office, while deeming its actions correct, in order to avoid new disputes with the same teacher, on the XX date, proceeded to obscure the information relating to the priority on the Municipality of Brescia for assistance to the XX [...] and communicated it [to the interested party]";
- "on the twentieth date [the interested party] promoted an attempt at conciliation before the conciliation secretariat of the Ust of Brescia, to obtain compensation for the damages he claimed suffered for the publication on the website of confidential data in the period from the twentieth to the twentieth . In accordance with the indications received from the Ust Lombardia Ufficio I [...] this office rejected the request for compensation [...], since no damage can be identified for the successful publication of the decree on the institutional website;

- "the publication of the results of the mobility procedure took place in compliance with the provisions of the CCNI on mobility XX and more specifically, of the ministerial order XX";

- "in order to guarantee transparency in mobility operations and satisfy the information needs of users and, in particular, of candidates for mobility, on the 20th date [...the] office also proceeded to publish the correction measures for the relative movements to the a.s. XX and among them also the decree concerning [the complainant], in which, although the precedence for assistance to the XX recognized by the Judicial Authority is mentioned, the generality of the person XX, nor the type of XX, were not indicated in any part of the text to protect their privacy".

Based on the elements acquired, the Office notified the School Office, 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, given that the publication on its institutional website of provision no. XX of the XX, containing personal data, also relating to health, would have given rise to a "dissemination" of personal data in violation of articles 5, 6 and 9 of the Regulation and 2-ter and 2-septies, paragraph 8, of the Code. Therefore he invited the aforesaid owner 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 the 11/24/1981).

The Scholastic Office sent its defense briefs with a note of the XX (prot. n. XX) representing, in particular, that:

- "the publication of the decree rectifying the movement [of the interested party] took place in compliance with the provisions of the CCNI on mobility XX, as well as the ministerial order XX which governed the mobility operations of school staff for the a.y. s. XX";

- "the dissemination of data relating to precedence for assistance to the XX, due to its omission in decree no. XX of the XX, is at most attributable to slight negligence and no profile of fraud is discernible. The publication of the decree [...] was carried out by the office for the sole purpose of guaranteeing transparency in mobility operations and satisfying the information needs of users and, in particular, of candidates for mobility";

- "this office has not indicated the personal details of person XX, who, therefore, is not identified either directly or indirectly. The indication of the teacher's name and surname [...] is not, however, sufficient to identify the XX in a broader context such as that of a large city like Brescia";

- "in order to trace the personal details of the person XX, it would be necessary to search for personal data involving a waste of

activity, energy and expense completely disproportionate to the actual interest in identifying the person in question by third parties, who would in any case have to contact the Registry Office to obtain this data”;

- "in this regard we specify that the content of the article in question has not been indexed by search engines and that the decree with the name of the teacher [...] was zipped together with other decrees and the overall zipped file did not contain any reference to the surname of the teacher [...], which made the possibility of finding it on the website of the school office even more rare”;

- "during the period from April to October XX, he found himself in a situation of objective difficulty in operating due to the intense workload relating to the school staff mobility operations and the numerous other work duties from which he was concerned, which were performed by the staff in a difficult and unprecedented context, such as the serious epidemiological situation [...];

- "the latter has forced the office to alternate between remote and face-to-face work [...] and has made it more difficult for the office staff to communicate, giving rise to critical issues in the execution of some tasks, which also include those relating to online publications, all of this combined with the urgency to provide in compliance with the jurisdictional provision which saw the complainant as the beneficiary”;

- “on the XX date the decree n. XX was published on the institutional website and on XX the office, at the request of the [complainant], proceeded to obscure the information relating to the priority on the Municipality of Brescia for assistance to the XX available in the "XX" section of the website ”;

- “the same decree remained viewable only in the historical archive of section XX even after that date, as this office was unable to remove it independently. On the 20th date, following the notification of the dispute by the Privacy Guarantor, the decree in question was removed from that section. Therefore, the data relating to precedence for assistance to the XX can no longer be viewed either in section XX of the register, where the decree has been definitively removed, or in another part/section of the website of this office”.

Furthermore, the School Office, during the hearing, carried out pursuant to art. 166, paragraph 6, of the Code, represented that (cf. minutes prot. n. XX of XX):

- "the Education Office had to implement the decisions of the judicial authority mentioned in the defense brief and, by publishing the decision in question, took care not to mention the personal details of the worker's family member affected by the

disease";

- "the Education Office acted in total good faith, in the belief that it was fulfilling legal obligations and giving effect to the decisions adopted, adequately motivating them, without causing any damage to the worker, who put a lot of pressure on the Administration to their rights in the working context were quickly recognized";
- "Moreover, the School Office acted in a context characterized by a high workload, in a period in which numerous provisions were published, moreover in the context of the pandemic emergency, in which the staff operated remotely, with inevitable coordination difficulties between officials and managers";
- "the applicant immediately became aware of the publication, requesting the execution of the provision, without making any objection regarding the content of the published deed. Only after about a month and a half did the complainant request the cessation of publication, and the School Office promptly took action to accept this request";
- "the publication was also necessary for the sake of transparency towards the other workers involved in the mobility procedures";
- "the School Office, with the support of the Data Protection Manager, intends to adopt all the appropriate measures to ensure a better balance between the need for transparency and the guarantee of workers' right to data protection".

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 the processing operations which consist in the "dissemination" of personal data are permitted only when provided for by art. 2-ter, paragraphs 1 and 3 of the Code.

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 appropriate guarantees " (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).

In particular, data relating to health, i.e. those "related to the physical or mental health of a natural person, including the provision of health care services, which reveal information relating to his state of health" (Article 4, paragraph 1 , n. 15, of the Regulation; see also cons. 35 of the same), due to their particular delicacy, "they cannot be disclosed" (art. 2-septies, paragraph 8, and art. 166, paragraph 2, of the Code and article 9, paragraphs 1, 2, 4, of the Regulation).

In any case, the data controller is required to respect the principles of data protection, including that of "lawfulness, correctness and transparency" as well as "data minimization", according to which personal data must be "processed in a lawful, correct and transparent manner in relation to the interested party" and must be "adequate, pertinent and limited to what is necessary with respect to the purposes for which they are processed" (Article 5, paragraph 1, letter a) and c), of the Regulation).

3.2 The dissemination of personal data.

As can be seen from the deeds and declarations made by the data controller during the preliminary investigation, as well as from the assessment carried out on the basis of the elements acquired following the preliminary activity and from the subsequent evaluations of this Department, the Regional School Office for Lombardy , Territorial area of Brescia, has published provision no. XX of the XX, concerning the validation of the application presented by the complainant in relation to the mobility of teaching staff for the year XX and the consequent transfer of the same to another workplace following the recognition of precedence. This provision contains, in particular, information regarding the presentation of the appeal before the work section of the Court of Brescia by the complainant and the relative outcome, the indication of the requests presented by the same to the School Office as well as the indication of the reason for " precedence" attributed to the interested party in territorial mobility operations, identified in the "assistance to the XX", pursuant to l. 5 February 1992, no. 104.

As a preliminary point, it should be noted that, in order for a specific processing of personal data to be lawfully carried out by a public entity, such processing must be necessary for the fulfillment of a legal obligation by the data controller or for the

execution of a task of public interest or connected to the exercise of public powers and must find its basis in a provision that has the characteristics set forth in art. 2-ter of the Code.

In this context, the public administration is required to verify, also for common data, the existence of a law or regulation that legitimizes the publication of the personal data of the interested parties.

In this regard, it should be noted that the School Office has not indicated any specific legal basis suitable for legitimizing the disclosure of the complainant's personal data, since the aforementioned provisions are not possible (see Supplementary National Collective Agreement XX and Ordinance of the Minister of Education of the XX, no. XX) constitute a legitimate prerequisite for the publication of the provision in question, containing information referring to events connected to the complainant's work activity.

Similarly, the further reasons put forward by the School Office on the basis of which the publication of the provision in question would have "been carried out [...] for the sole purpose of guaranteeing transparency in mobility operations and satisfying the information needs of users and, in particular, of aspirants to mobility", since this possible objective could well be pursued, in accordance with the provisions in force, with less invasive methods for the right to privacy of the interested party.

In this regard, the Guarantor has reiterated in numerous decisions that, even in the presence of a rule of law which provides for the obligation to publish certain deeds and documents (for example, those to be carried out on the online Praetorian Register), all the limits apply provided for by the principles of data protection with regard to the lawfulness and minimization of data (see Article 5, paragraph 1, letter c), of the Regulation; part II, par. 3.a. of the Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for the purpose of publicity and transparency on the web by public subjects and other obliged bodies" of 15 May 2014, doc. web no. 3134436, see also provision of 25 February 2021, n. 68, web document 9567429).

With regard to the publication, in the aforementioned provision, of the indication of the "precedence" reason attributed to the interested party in territorial mobility operations, identified in the "assistance to the XX" pursuant to law 5 February 1992, no. 104, the following is highlighted.

Preliminarily, in recalling that, pursuant to art. 4 par.1, no. 15 of the Regulation are considered data relating to health "personal data relating to the physical and mental health of a natural person, including the provision of health care services, which reveal information on his state of health", it should be noted that, as recently clarified by the Guarantor, also the reference to law 104,

which notoriously regulates benefits and guarantees for the assistance, social and work integration of XX persons or their family members, allows to obtain information on the state of health of a person (see al in this regard, provision of 1 September 2022, no. 290, web doc. 9811361, provision of 28 April 2022, no. 150, web doc. no. 9777200 and provision of 28 May 2020, no. 92, web doc. No. 9434609).

It is also represented that the Guarantor has, for some time, clarified that "the publication of any information from which one can infer, even indirectly, the state of illness or the existence of pathologies of the interested parties is prohibited, including any reference to the conditions of disability, XX or physical and/or mental handicap" (see "Guidelines" referred to above).

With particular reference to the present case, the reasons put forward by the School Office according to which "the indication of the name and surname of the teacher [...] is not, however, sufficient to identify the XX", are also questionable, not being indicated in the provision "the general information of the person XX", this because the definition of personal data contained in the Regulation, instead considers "identifiable the natural person who can be identified, directly or indirectly, with particular reference [...] to one or more characteristic elements of his physical, physiological, genetic, psychic, economic, cultural or social identity" (Article 4, paragraph 1, no. 1, of the Regulation). In this case, the reference to the "XX" in any case makes the person to whom the health data refer identifiable, albeit indirectly.

From the documentation in the documents it appears that the Scholastic Office has published, since the twentieth, on the institutional website, the provision referred to above, also containing the indication of the "precedence" reason attributed to the interested party in territorial mobility operations, determining the diffusion of personal data also relating to health. Following the interested party's request, on the 20th date, the School Office proceeded to "obscure the information relating to the priority on the Municipality of Brescia for assistance to the 20th" without, however, removing the aforementioned provision which is still available for consultation and freely downloadable on the institutional website of the School Office.

Therefore, in the light of the foregoing considerations and of the documentation in the records, it is believed that the publication on the institutional website of the School Office of provision no. XX of the XX, containing information regarding personal, family and work events relating to the complainant, as well as personal data relating to health limited to the XX period, occurred in violation of articles 5, 6 and 9 of the Regulation and art. 2-ter as well as art.2-septies, paragraph 8, of the Code.

4. Further investigations by the Office.

During the checks carried out by the Office in relation to the circumstances to be assessed pursuant to art. 83, par. 2 of the

Regulation, for the purposes of quantifying the sanction applicable to the specific case, it was possible to verify that it is still visible on the institutional website of the School Office, at the address <https://...>, (documentation acquired in deeds) and freely downloadable, provision no. XX of the XX. This provision, despite having been obscured in the parts containing the data relating to health, is still freely available at the aforementioned address and bears, clearly visible, the personal data of the complainant.

5. 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 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 School Office is noted, in relation to the publication on the institutional website of the School Office of provision n. XX of the XX, containing information regarding personal, family and work events related to the complainant, as well as personal data relating to health, in violation of articles 5, 6 and 9 of the Regulation and articles 2-ter and 2-septies, paragraph 8, of the Code.

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.

6. Corrective measures (Article 58, paragraph 2, letter f of the Regulation).

As ascertained during the investigation, it appears that the School Office, although it has obscured the health data contained in provision no. XX of the XX, continued to make the same document available on its institutional website, containing the complainant's personal data, in the absence of a suitable legal basis.

The art. 58, par. 2, lit. f), of the Regulation provides that the Guarantor has the corrective powers to "impose a temporary or definitive limitation to the treatment, including the prohibition of treatment".

In this context, due to the illegality of the processing carried out, it is considered necessary to have, pursuant to art. 58, par. 2,

lit. f), the limitation of the processing in progress by prohibiting the School Office from any further dissemination of the complainant's personal data.

Pursuant to art. 157 of the Code, the School Office will also have to provide to communicate to this Authority the initiatives undertaken in order to implement the above ordered pursuant to the aforementioned art. 58, par. 2, lit. f) within thirty days of notification of this provision.

7. 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 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 aforementioned elements, the particular delicacy of personal data unlawfully disclosed as relating to health was considered (the latter being disclosed since the 20th century), as well as the current and continuing dissemination of the complainant's personal data concerning personal, family and related work, carried out in contrast with the indications that, for some time, the Guarantor has provided to public and private employers with the aforementioned Guidelines and with numerous decisions on the individual cases referred to above.

On the other hand, it was considered that the School Office took steps to obscure the data relating to health contained in the provision in question, on the XX date, following the request of the interested party and that the provision in question was not indexed on the motors of search for generalists. The data processing concerned only one interested party. It was also taken

into consideration that the violation took place during a particularly delicate phase (July-September XX) in which the School Offices were busy dealing with the particular needs deriving from the state of emergency. Furthermore, there are no previous violations of the relevant Regulation committed specifically by the Regional School Office for Lombardy Office IV - Territorial Area of Brescia.

Based on the aforementioned elements, evaluated as a whole, it is decided to determine the amount of the pecuniary sanction, in the amount of 6,000 (six thousand) euros for the violation of articles 5, 6, 9 of the Regulation and of the articles 2-ter and 2-septies, paragraph 8, 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 the nature of the data being processed, it is also believed that the accessory 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 unlawfulness of the processing of personal data carried out by the Regional School Office for Lombardy Office IV - Brescia Territorial Area in the terms described in the justification, consisting in the violation of articles 5, 6, 9 of the Regulation and of the articles 2-ter and 2-septies, paragraph 8, 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 Regional Scholastic Office for Lombardy, Office IV - Territorial Area of Brescia, in the person of its pro-tempore legal representative, with registered office in via S. Antonio n.14, 25133 Brescia, Tax Code 80049150172, of pay the sum of 6,000 (six 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 Ministry of Education and Merit, Regional Scholastic Office for Lombardy, Office IV - Territorial Area of Brescia:

- without prejudice to the provisions of art. 166, paragraph 8 of the Code, to pay the sum of 6,000 (six thousand) euros according to the methods indicated in the annex, 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;
- pursuant to art. 58, par. 2, lit. f), the limitation of the treatments in progress, prohibiting the School Office from any further online dissemination of the personal data of the complainant contained in the provision n. XX of the XX;
- pursuant to articles 58, par. 1, lit. a), of the Regulation and 157 of the Code, to communicate to this Authority, providing an adequately documented response, within thirty days of notification of this provision, the initiatives undertaken to ensure compliance of data processing with the Regulation;

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, 11 January 2023

PRESIDENT

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THE SPEAKER

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THE SECRETARY GENERAL

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