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Injunction against Bonatti S.p.A - 11 February 2021

Register of measures

no. 47 of 11 February 2021

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 (hereinafter, the "Regulation");

HAVING REGARD TO the Code regarding the protection of personal data, containing provisions for the adaptation of the national legal system to Regulation (EU) 2016/679 (legislative decree 30 June 2003, n. 196, as amended by legislative decree 10 August 2018, n. 101, hereinafter "Code");

CONSIDERING the complaint presented to the Guarantor pursuant to article 77 of the Regulation by XX against Bonatti S.p.A.;

HAVING EXAMINED the documentation in the deeds;

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

SPEAKER Prof. Pasquale Stanzione;

WHEREAS

1. The complaint against the company and the preliminary investigation.

1.1. With a complaint dated April 15, 2019, presented by Mr. XX, alleged violations of the regulations on the protection of personal data by Bonatti S.p.A. were complained of. (hereinafter, the company) for which the complainant served from 2 May 2017 to 1 May 2019. In particular, the complainant complained that on 27 July 2018, the manager of the Security Department (Corporate Security Manager) would have forwarded to a third party - unrelated to the company structure - an email containing attached medical certificates complete with diagnosis sent to him the previous day by the complainant himself for the purpose of requesting the postponement, for health reasons, of an imminent scheduled intervention on a construction site abroad (see

complaint 15.4.2019 cit., page 2 and Annex 6). The complainant also complains that in the pre-employment phase (on 04.22.2017) the same executive would have requested the production of the criminal certificate and the pending charges in the criminal record "by failing to indicate a suitable legal basis (legislative or regulatory) for carrying out of the proposed treatments" (see complaint cited, p. 2 and Annex 7).

With the complaint, the Guarantor was asked to adopt a prescriptive and sanctioning measure against the company.

1.2. The company, in response to the request for elements formulated by the Office (on 16.6.2019), with a note dated 31 July 2019 stated that:

to. with reference to the complained communication to third parties of data relating to the complainant's health (medical certification complete with diagnosis) the "total extraneousness [...] is absolutely not permitted by any company regulation to send documentation relating to workers, especially [with regard to] data suitable for revealing the state of health" (see note 7/31/2019, p. 3);

b. "if the disputed circumstances are confirmed and they are unequivocally attributable to the [security manager, Corporate Security Manager], the latter would be considered independent data controller in relation to the email sent" (see cited note, p. 3);

c. "the activity carried out by the [security manager] is in no way attributable to instructions or practices endorsed by the [company]", as confirmed by the instructions provided to the same manager (see cited note, p. 4 and Annex 7) ;

d. the company has adopted the document "Policy for the protection of personal data" regarding the indication of internal privacy roles; "however, there are no specific instructions for personnel authorized to process data relating to the health of employees, because there are no employees authorized to do so" (see note cited, p. 4 and Annex 8);

And. the information relating to the complainant's state of health contained in the medical certificates complete with diagnosis attached to the email of 26 July 2018, subject of the complaint, "did not constitute an authorized treatment and consequently, to the best of [...] knowledge, are no longer subject to processing within its own systems" (see cited note, p. 5)

f. with reference to the processing of judicial data, the company is required "to demonstrate its compliance and integrity pursuant to art. 80 Legislative Decree n. 50/2016"; "also in the international field, the usual commissions of our. companies, mostly Oil Companies operating in the Oil & Gas sector, require candidates participating in tenders to fill out in-depth questionnaires where specific requests are made to know the possible infliction of sentences or even the mere pending of any

proceedings legal proceedings against the company or its employees and representatives" (see cited note, p. 5);

g. the data referring to the complainant contained in the criminal record certificate "are no longer subject to processing within [...] the company's systems" (see cited note, p. 6).

1.3. With rebuttals dated 17 October 2019, the complainant reiterated his requests and, with particular reference to the processing of employee health data by the company, attached a copy of two emails - dated 30 December 2017 and 5 January 2018 - sent by Bonatti Libyan Branch (HR Office Tripoli) to a plurality of recipients (including the complainant), containing attached copies of medical certificates complete with diagnosis, clinical data and administered therapies and a death certificate, referring to two workers (non-Italian) who worked at the Mellitah site in Libya (see Attachment 15, note 17.10.2019). The complainant also attached a copy of an email addressed to him, dated 4 July 2018, with the sender "HR Office Tripoli" (HR Personnel Department-Mellitah - Bonatti Libyan Branch), containing a medical certificate complete with diagnosis and pharmacological prescriptions as attachment referring to the complainant himself (see Annex 15, integration dated 21.10.2019).

1.4. In responding to a request for further clarification by the Authority formulated on 26 February 2020, reiterated pursuant to art. 157 of the legislative decree lgs. 196/2003, the company, with a note dated July 15, 2020, declared that:

to. with reference to the processing of data relating to the health of employees, these data "are processed exclusively by the company doctor (MC). The company only receives from the MC the certificate of suitability [...] which is addressed to a specific specifically designated figure of reference who follows the issues of Health & Hygiene employed by the Chief Medical Officer (CMO) of the company within the HSE department ” (note 15.7.2020, p. 1);

b. the company doctor collects the data in an archive organized by means of software (CartSan) to which only the doctor himself has access (note cit., p. 1);

c. the PC used by the [security manager] was replaced "due to a series of malfunctions reported in an internal communication sent on 11/21/2018"; on 2.12.2018 the IT office replaced it with a new PC; "apart from verifying the punctual aspects of malfunction reported, the company has not carried out any other checks and/or investigations on the contents of the PC"; the PC to be replaced "was no longer used or connected to the company network" (note cit., p. 2);

d. in relation to the processing of judicial data, it was reiterated that the complainant had offered his candidacy as security manager in a "production site in Libya of primary importance", in particular in Mellitah; in this regard "the usual commissions of

the company [...] require to know the possible infliction of sentences or even the mere pending of any legal proceedings against the company and/ its representatives" (note cit., p. 2).

1.5. On 19 October 2020, the Office carried out, pursuant to art. 166, paragraph 5, of the Code, the notification to the company of the alleged violations found, with reference to articles 5, par. 1, lit. a) and c), 9, par. 2, lit. b), 32 of the Regulation and 27 of the Code (text in force at the time of the facts object of the complaint) as well as Authorization n. 7/2016 of the Guarantor ("Authorization for the processing of judicial data by private individuals, economic public bodies and public entities"), adopted on the basis of the aforementioned art. 27.

With defense briefs dated November 18, 2020, the company stated that:

to. preliminary, the complainant "has expressly renounced the complaint itself as agreed with [the company] through the stipulation of a conciliation report with the union on 15.5.2020"; this will of the complainant would also emerge from the behavior of the same after the signing of the aforementioned agreement (lack of "impetus to the procedure" as well as email sent to the Guarantor on 11.5.2020) (see note 11.18.2020, p. 2);

b. with reference to the disputed e-mail dated 27 July 2018, sent by the security manager (with Corporate Security Manager functions), it was reiterated that "the aforementioned episode - in the unproven state, however, since the [complainant] limited himself to producing, instead of the alleged e-mail, what would appear to be a cumbersome photographic reconstruction which certainly does not have any probative value - is in no way attributable to the responsibility of Bonatti S.p.A." (see cited note, p. 3);

c. the company had "extensively trained the employee [in charge of security at the time of the incident, as well as in charge of "information security management activities"] on the methods of processing personal data" through participation in a training course and the delivery of instructions relating to the processing of data as well as the internal rules on the management of company e-mail (through regulation dated 23.5.2018, published on the company system) (see cited note, p. 4);

d. the company therefore "has never authorized [the safety manager] to acquire [...] [the complainant's] health data, learning of the occurrence of the event only following the latter's complaint") (see cited note, p. 5);

And. as for the content of the documents prepared by the company regarding the processing of personal data "it is represented [...] that at the time the GDPR had just entered into force [...] and given the complexity of the law, the company proceeded to prepare the first fundamental tools, in conjunction with the conclusion of a process of mapping the treatments and risk

analysis, from which the additional elements necessary for a refinement of the tools themselves were drawn" (see cited note, p. 5);

f. the company “over the last two years has invested considerable resources to adapt its organization to the regulation of the GDPR. In particular, the health data of employees are not acquired directly by the company, but by the competent doctor, who is the independent data controller, required to communicate [to the company] only the certificates of suitability [...] which are then addressed to a specific figure of reference [...] which follows the issues of Health & Hygiene employed by the Chief Medical Officer (CMO) of the company, within the HSE department” (see cited note, p. 5);

g. "to date there is no longer any processing of the personal data of the [complainant] nor of the health data attached to the e-mail communication of 28.7.2018. Furthermore, the PC that was in use by the [security manager] in July 2018 was delivered on 4.12.2018 [...] to the company's IT Department [due to alleged "malfunctions"]. The PC in question was then formatted by the IT office, in compliance with the company policy which requires the cancellation of all data present on the IT tools which can be reassigned to other users" (see cited note, p. 6);

h. with reference to the emails containing health data, dated 30.12.2017, 5.1.2018 and 4.7.2018, attached by the complainant, "the disputed fact would have been committed by an autonomous and foreign legal entity [Bonatti Lybian Branch, of the Bonatti group], on non-EU territory, to potential damage also to subjects without European citizenship and as such unrelated to the subjective scope of application of the GDPR and, in any case, in the case of 4.7.2018, with the authorization of the interested party"; in this regard, the company also represented that the treatment was "made necessary by emergency health circumstances, which determined the need to carry out acts, such as sending the recalled e-mails, indispensable for the coordination of multiple actors, all involved in achieving the ultimate goal of protecting the integrity of life, health and the person of the subjects concerned" (see note cit., p. 7);

the. in relation to the episodes covered by the aforementioned emails "there was a very exceptional and emergency need for the health data relating to the employees of the Bonatti Libyan Branch to be managed with the utmost urgency to speed up the evacuation practices from the construction site [...] of the subjects involved and, consequently, the [...] company provided support and consultancy to the Libyan company to ensure the rapid exit of the aforementioned employees from the aforementioned site" (see cited note, p. 8);

j. always in relation to the treatment carried out with the aforementioned emails, taking into account that Libya is "a place

considered by the Italian authorities to be at a high risk for the safety of people [...] the company must guarantee the highest levels of safety and protection for its employees [...], acquiring, in very exceptional and emergency cases, data relating to the health of the same, also to allow the carrying out of the bureaucratic procedures for entry, stay and exit from the country" (see note cit., p 8);

k. with reference to the processing of judicial data referring to the complainant in the pre-employment phase, in reiterating what has already been declared during the preliminary investigation with regard to the content of the tender contracts with companies "all of which are in the phase of participation in the call for tenders and in the execution of the any contract awarded, require timely confirmation of the absence of convictions and also the absence of pending legal proceedings against the company and its employees and representatives", the company represented that it had "introduced an internal procedure which provides, on the occasion of the hiring, the request for the criminal record" (see cited note, p. 8);

L. in the light of the tasks that were intended to be entrusted to the complainant (Security Expert responsible for the security of the Libyan shipyard of Mellitah), for the company it was "important to verify [...] the reliability and integrity of the worker who was hired"; therefore the legal basis of the treatment carried out lies in the art. 41 of the Constitution and in art. 2087 of the civil code, "also by virtue of the Authorization n. 7/2016 of the Guarantor" (see cited note, p. 9);

m. starting from 2018, the company started a complex process of adaptation to the provisions of the GDPR: carrying out of "Risk assessment" analyses; adoption of "Procedures and documents of the Privacy system"; designation of an external DPO; audit activities and implementation of privacy procedures; training activities; establishment of an internal Committee to support the DPO; "Analysis of health data flows", to be completed by 31.12.2020, launched "both following the entry into the company of the new figure of the Chief Medical Officer (April 2020) who was going to integrate the HSE organization on the health side , both for the Covid-19 issue"; activities of the Privacy Committee for the in-depth analysis of the issues that emerged during the investigation relating to the complaint presented to the Guarantor (see note cited, pp. 10-20).

2. The outcome of the investigation and of the procedure for the adoption of corrective and sanctioning measures.

2.1. Following the examination of the statements made to the Authority during the proceedings as well as the documentation acquired in the deeds, the complaint is founded for some profiles, in the terms described below.

2.2. Preliminarily, with reference to the company's request to declare no place to proceed following the "cessation of the disputed matter" as an effect of the "renunciation of the complaint", the following is observed.

The documents do not show that the complainant presented an "express waiver of the complaint" addressed to the Guarantor, contrary to what was stated by the company. A copy of the settlement agreement reached between the parties (Bonatti S.p.A./Bonatti Lybian Branch and claimant) on 15 May 2020, in relation to a dispute pending before the Court of Parma, labor section, was sent by the claimant on 5 November 2020 , with a note which does not indicate the will to waive the claims brought against the company before the Guarantor (the complainant, in fact, "although not legally obliged" communicates to the Authority "that in fact certain conciliatory agreements have taken place, substantially patrimonial nature", after having stated, among other things, that "the pronouncements issued by the Guarantor escape any inter partes negotiation/agreement" and that "the national and supranational legal system [...] has not provided for any legal institution that can be qualified as « waiver" of the complaint pursuant to Article 77 of the Regulation"). Furthermore, after the date of reaching the agreement, the complainant repeatedly urged the Authority to conclude the proceeding with the adoption of measures within its competence (see note dated 16.7.2020 with which the complainant represented the existence of an alleged "concrete risk of evidentiary pollution" as well as the note of 11.5.2020 with which the complainant filed a request for access to the documents of the procedure based on Article 24, paragraph 7, Law No. 241 of 1990, i.e. for purposes of protection of one's rights; see also the reminder with note dated 3.1.2021). Therefore, there is no evidence in the documents or an explicit declaration by the interested party who proposed the complaint to renounce the application presented and subsequent documents, nor is there any inactivity of the complainant himself with respect to the continuation of the procedure initiated.

Furthermore, the content of the settlement agreement was disclosed to the Guarantor after the initiation of the procedure for the adoption of measures and sanctions pursuant to art. 166, paragraph 5 of the Code, therefore subsequently to the ascertainment by the proceeding office of alleged offenses against the data controller, with the consequent obligation for the administration to complete the evaluation of the elements in its possession in relation to the conformity of the processing of personal data carried out by the company in accordance with current European legislation.

2.3. Given that, unless the fact constitutes a more serious offence, whoever, in a proceeding before the Guarantor, falsely declares or certifies news or circumstances or produces false deeds or documents is liable pursuant to art. 168 of the Code "False statements to the Guarantor and interruption of the execution of the duties or the exercise of the powers of the Guarantor", on the merits it emerged that on 27 July 2018, the head of the company's Security Department (Corporate Security Manager) forwarded to an acquaintance of yours outside the company - linked to the complainant by a family relationship -, via

the individualized company e-mail account, an e-mail (with the subject "Notification of illness (pursuant to art. 98 paragraph 2 – CCNL 19 April 2010 for employees of construction and similar companies and subsequent amendments and additions)", complete with attached medical certificates including diagnosis), sent to him the previous day by the complainant himself to represent the impossibility, for reasons of health, to go to a construction site abroad as planned (see complaint of 15.4.2019 cited, page 2 and Annex 6). This forwarding was accompanied by a negative assessment of the communication received ("[...] we're really not here"). The documentation relating to the alleged forwarding, produced by the complainant, consists of a copy of the e-mail sent by the complainant on July 26, 2018, to some recipients including the security manager. The document produced also shows that the "verification" section shows that the latter read the message on 27 July 2018, at 4.56 am. The complainant has also filed a photographic representation of a message received via WhatsApp on 28 July 2018, at 9.03 am, by the third recipient of the forwarding, containing a photograph of the message forwarded by the security manager (complete with attachments having the same name resulting from the email of 26.7.2018), displayed on a PC screen (on which the date 27.7.2018, 12.24 is readable). These photographic representations, evaluated in connection with the copy of the email sent by the complainant (on 26.7.2018), appear externally not counterfeit and authentic, however suitable to represent a copy of an electronic document; on the other hand, the company - which contested its authenticity not before receiving the notification of violation - did not highlight alleged and specific elements deemed inconsistent or untrue within the documents sent to the Authority.

Following receipt of the first invitation to provide feedback from the Authority, including a copy of the aforementioned documentation provided by the complainant, the company proceeded to initiate and conclude a disciplinary procedure against the safety manager, in relation to the fact alleged with the complaint (forwarding of the e-mail containing data relating to the complainant's health to a person outside the company structure). As part of the aforementioned disciplinary proceedings, the security manager claimed to "have no memory" of the disputed forwarding and to have unsuccessfully searched for this e-mail on his PC (in the state returned to the company's IT Department and stored there after having carried out the formatting, as communicated to the Guarantor by the company with the defense briefs). It does not appear that the company has investigated the PC provided for use by the security manager (or through other means) in order to verify the truthfulness of the alleged fact. In this context, the company also claimed that it was not involved in the fact that was the subject of the complaint, considering the author of the forwarding of the email dated 26 July 2018 to be the "independent owner" of the related processing, also in

light of the training and instructions given to this latest in personal data protection. In this regard, however, it should be noted that the document prepared by the company containing "Authorisation and instructions for the processing of personal data", addressed to the security manager, bears the latter's signature dated 6 September 2018, a date subsequent to the facts in question complaint. The request for the return of the form signed by the employee also followed these events (2.8.2018, reiterated on 6.9.2018).

In any event, it should also be noted that the aforesaid instructions contain indications of a general nature, without express reference to the specific guarantees established by the legal system - already prior to the date of the definitive application of the Regulation in our legal system - to protect the so-called data. details (albeit accidentally known), also in relation to the ordinary procedures relating to the communication of the state of illness (in particular where it is specified that: "any person, with the exception of activities expressly connected to their duties, is prohibited from divulging information containing data personal data, make copies of any kind [...] and destroy, remove or manipulate the contents of the databases unless expressly authorized by the data controller"; see Authorization and instructions cit.). Neither specific indications relating to the concrete scope of the treatments carried out on the basis of the duties performed can be found in the document "Policy for the protection of personal data" dated 30 April 2018. Finally, it should be noted that the certificate of participation in a training session of the manager of the security, dated 18 April 2018 (Doc. 3 defense briefs 18.11.2020), concerns Legislative Decree 231/01 and not privacy profiles.

In the context of the regulation of personal data protection, of a European Union matrix, the identification of the data controller is carried out in the light of the functional notion of the latter, i.e. preordained to the distribution of responsibilities in accordance with the roles actually covered. Having regard to the definition of data controller (art. 4, n. 7 of the Regulation), if the processing is carried out within the context of a legal person, the data controller is the entity as a whole rather than one or more natural persons placed at the within the organization (on this point see, most recently, European Data Protection Board, Guidelines 07/2020 on the concepts of controller and processor in the GDPR, 2 September 2020).

In this perspective, therefore, the concrete measures adopted by the company, at the time of the facts which are the subject of the complaint, regarding the management of the processing of data relating to the health of employees, must be evaluated, within the context of a complex organizational structure which also operates abroad in situations of risk to the health of workers.

Also taking into account what was declared by the company (see point 1.3., letter a above, where it claimed not to process health data except for the judgments of suitability drawn up by the competent doctor), it does not appear that the latter - as data controller − has prepared a system of adequate technical and organizational measures (see art. 24 of the Regulation) aimed at identifying the subjects authorized to process health data on the basis of the obligations imposed by current regulations on the protection of health and safety in the workplace, to delimit the scope of internal communications relating to such information and to issue specific instructions relating to the methods of processing particular data, even accidentally known, nor to adopt security measures appropriate to the risk. This taking into account that in the context of the employment relationship, the data controller/employer, on the basis of the sector regulations on social security and assistance, hygiene and safety at work and health protection, routinely processes data relating to the state of health of employees (with reference to: disability, infirmity, accidents, exposure to risk factors, psycho-physical suitability to perform certain tasks, belonging to certain protected categories, as well as data contained in the health certification certifying the state of illness, also professional data of the interested party, with the exception of data which, also on the basis of sector regulations on health surveillance, can only be processed by the competent doctor, for example diagnosis and anamnesis).

It is therefore not compliant with current legislation on the protection of personal data that the company, as declared, has designated a reference figure limited to the management of the certificates of fitness prepared by the competent doctor. This entailed the violation of the principle of lawfulness of the health data processing carried out as well as of the principle of minimization, as the owner did not adopt measures aimed at ensuring, in relation to this particular type of information, that only the data deemed adequate, pertinent and limited to what is necessary with respect to the purposes pursued.

Although the relationship between Bonatti S.p.A. and other companies of the group as well as the regime of circulation of personal data between them, have not been the subject of the investigation carried out by the Authority, it emerged, through the e-mails attached by the complainant during the proceeding (of 30.12.2017 and 5.1.2018, the authenticity of which has not been disputed), which at least in two circumstances a group company (Bonatti Lybian Branch - HR Office Tripoli) communicated to a plurality of recipients within the company Bonatti S.p.A. (identifiable through the account with the bonatti.it extension, in number of 12 recipients of the email dated 30.12.2017 and in number of 8 recipients of the email dated 5.1.2018), including the complainant, at the time responsible for site security of Mellitah in Libya, as well as to subjects external (presumably) to the company structure, a plurality of data relating to the health of employees, including medical certificates

complete with diagnoses, therapies and drugs administered and a death certificate. A third email (dated 4.7.2018), sent to the complainant by the same group company, precisely by representatives of the "HR Personnel Department-Mellitah", is accompanied by a medical certification complete with diagnosis and drug prescription referring to the complainant himself.
While acknowledging the reasons given by the company in relation to these episodes (need to provide "support and consultancy" to the group company based in Libya to "ensure the rapid exit from the aforementioned construction site" of an employee in danger of life and another deceased; provision of the consent of the same complainant in relation to the certification sent on 4.7.2018), these processing operations documented in the documents are taken into consideration as a further indication of the absence of procedures relating to the circulation of personal data relating to health prepared in relation to the specific levels of risk of the activity actually carried out by the company, at least at the time of the facts which are the subject of the complaint. In this regard, it is reiterated that even prior to the application of the Regulation, our legal system provided for a framework of specific guarantees regarding the processing of data relating to health, also with particular regard to the context of the employment relationship (with regard to the private sector see art. 26 of the previous Code and Authorization for the processing of sensitive data in employment relationships n. 1/2016).
It is also acknowledged that, on the basis of what is represented and documented during the proceeding, the company has started a complex process of adaptation to the regulations on the protection of personal data following the application of the Regulation in the national legal system, this also with reference to the management of data flows relating to the state of health (see previous point 1.5., letter m. and documentation produced in deeds). It is also acknowledged that, again according to what was declared during the proceeding, the company currently does not carry out "any processing of the personal data of the [complainant] nor of the health data attached to the e-mail communication dated 28.7.2018".
For the aforementioned reasons, the processing of the health data of the complainant and of the other workers in service at the material time, attributable to the company in its capacity as data controller, occurred in violation of data protection regulations and precisely in violation of the principles of lawfulness and minimization of data (see art. 5, paragraph 1, letters a) and c)) and of art. 9, par. 2, lit. b) of the Regulation, which indicates the conditions of lawfulness of the processing of particular data in the context of the employment relationship. It is also violated the art. 32 of the Regulation on the basis of which the owner is required to prepare adequate technical and organizational measures to guarantee a level of security referring to the specific risk profiles of the treatment carried out.

2.4. With reference to the acquisition of the criminal record certificate referring to the complainant on the occasion of the conclusion of the employment relationship, it is preliminarily noted that the fact object of the complaint occurred on a date prior to the entry into force of Regulation (EU) 2016/679 and that at present, according to what has been declared by the company, the latter does not process the complainant's judicial data (see previous point 1.1., letter g). The reference discipline was therefore established in art. 27 of Legislative Decree lgs. 30.6.2003, no. 196 (Code regarding the protection of personal data), text prior to the changes made with the d. lgs. 10.8.2018, no. 101, according to which the processing of judicial data is permitted only if authorized by express provision of the law or provision of the Guarantor which specify the relevant purposes of public interest of the processing, the types of data processed and the operations that can be performed, as well as in the Authorization of the Guarantor no. 7 of 2016 (Authorisation for the processing of judicial data by private individuals, economic public bodies and public subjects; with reference to the concrete case subject to the complaint, see in particular Chapter V, point 2, letter e), on the basis to which the processing of judicial data can be carried out "for the purpose of ascertaining the moral suitability requirement of those who intend to participate in tenders, in compliance with the provisions of the legislation on tenders").

Having said that, it is not applicable in the present case - as proposed by the company - article 80 of Legislative Decree lgs. 18.4.2016, no. 50 ("Public Contracts Code"), having regard to both the objective and subjective scope of application of the aforementioned provision (in the light, in this latter regard, of the role played by the complainant at the Mellitah site in Libya as reconstructed in deeds). In fact, the aforementioned article, read in connection with other provisions of the Public Procurement Code, is part of a complex management system of the procedures for the conclusion of tender and concession contracts and, in particular, for the selection of contractors. In this latter regard, the sector regulations identify the reasons for the exclusion of economic operators and the means of proof that the contracting authorities can use for the purpose of ascertaining the aforementioned reasons for exclusion (see, in this regard, the sentence of the Court of Milan, I civil section, n. 9890 of 2018, confirming a decision of the Authority). The production of the certificate extracted from the register by the claimant in the pre-employment phase does not comply with the aforementioned regulatory indications which set specific limits on the subject of verification of economic operators.

Nor, in any case, are the conditions established at the time by the aforementioned art. 27 of Legislative Decree lgs. no. 196 of 2003 (previous text).

Furthermore, the circumstance that the company's clients had requested "to know the possible infliction of sentences or even the mere pending of any legal proceedings against the company and/or its representatives" (see response of 15.7.2020; v . also previous point 1.5., letter k.) did not constitute a suitable legal basis to legitimize the processing of judicial data on the basis of the aforementioned reference regulation, given that the need to fulfill a contractual obligation is not a condition of lawfulness contemplated by the aforementioned art. 27 of the Code (previous text).

The treatment object of the complaint - currently no longer in existence - therefore appears to have been carried out in the absence of a legal basis, as the applicability of art. 80, d. lgs. 18.4.2016, no. 50 nor the stipulation of a contract with the clients (even assuming that in concrete terms the subjective requirement of this agreement had been satisfied, given that the same company speaks in this regard of the judicial data referring "to the company and/or [...] its representatives") was in itself sufficient to permit the treatment.

This results in violation of the art. 27 of Legislative Decree lgs. 30.6.2003, no. 196, Code regarding the protection of personal data, text in force at the time of treatment, and the provisions of Authorization n. 7/2016. It is also noted that the aforementioned cases correspond, with reference to the case subject of the complaint, in the legislation in force, to the articles 2-octies of the Code regarding the protection of personal data and 10 of the Regulation.

3. Conclusions: illegality of the treatment. Corrective measures pursuant to art. 58, par. 2, Regulation.

For the aforementioned reasons, the processing of personal data carried out by the company is unlawful, in the terms set out above, in relation to articles 5, par. 1, lit. a) and c), 9, par. 2, lit. b) and 32 of the Regulation and in art. 27 of the Code (text in force at the time of the events subject to the complaint).

Therefore, given the corrective powers attributed by art. 58, par. 2 of the Regulation, in the light of the circumstances of the specific case:

- a pecuniary administrative sanction is ordered pursuant to art. 83 of the Regulation, commensurate with the circumstances of the specific case (Article 58, paragraph 2, letter i), Regulation).

4. Injunction order.

Pursuant to art. 58, par. 2, lit. i) of the Regulation and of the art. 166, paragraphs 3 and 7 of the Code, the Guarantor orders the application of the pecuniary administrative sanction provided for by art. 83, par. 5, letter. a) of the Regulation, through the adoption of an injunction order (art. 18, l. 24.11.1981, n. 689), in relation to the processing of personal data carried out by the

company, the illegality of which has been ascertained, within the terms on exposed, in relation to the articles 5, par. 1, lit. a) and c), 9, par. 2, lit. b) and 32 of the Regulation and in art. 27 of the Code (text in force at the time of the facts subject to the complaint), following the outcome of the procedure referred to in art. 166, paragraph 5 carried out jointly with the data controller (see point 1.5 above).

Considering it necessary to apply paragraph 3 of the art. 83 of the Regulation where it provides that "If, in relation to the same treatment or related treatments, a data controller [...] violates, with willful misconduct or negligence, various provisions of this regulation, the total amount of the pecuniary administrative sanction does not exceed amount specified for the most serious violation", considering that the ascertained violations of art. 5 of the Regulation are to be considered more serious, as they relate to the non-compliance with a plurality of principles of a general nature applicable to the processing of personal data, the total amount of the fine is calculated so as not to exceed the maximum prescribed for the aforementioned violation .

Consequently, the sanction provided for by art. 83, par. 5, letter. a), of the Regulation, which sets the statutory maximum in the sum of 20 million euros or, for companies, in 4% of the annual worldwide turnover of the previous year, if higher.

With reference to the elements listed by art. 83, par. 2 of the Regulation for the purposes of applying the pecuniary administrative sanction and the relative quantification, taking into account that the sanction must "in any case [be] effective, proportionate and dissuasive" (art. 83, paragraph 1 of the Regulation), it is represented that In the present case, the following circumstances were considered:

a) in relation to the nature, gravity and duration of the violation, the nature of the violation which concerned the general principles of processing was considered relevant; the violations also concerned the conditions of lawfulness of the processing of particular data and judicial data and the provisions on security measures;

b) with reference to the intentional or negligent nature of the violation and the degree of responsibility of the owner, the negligent conduct of the company and the degree of responsibility of the same was taken into consideration which did not comply with the data protection regulations in relation to a plurality of provisions;

c) the company cooperated with the Authority during the proceeding;

f) the absence of specific precedents (relating to the same type of treatment) against the company.

It is also believed that they assume relevance in the present case, taking into account the aforementioned principles of effectiveness, proportionality and dissuasiveness with which the Authority must comply in determining the amount of the fine

(Article 83, paragraph 1, of the Regulation), in firstly, the economic conditions of the offender, determined on the basis of the revenues earned by the company with reference to the financial statements for the year 2019. Lastly, account is taken of the statutory sanction established, in the previous regime, for the corresponding administrative offenses and of the amount of sanctions imposed in similar cases.

In the light of the elements indicated above and the assessments made, it is believed, in the present case, to apply against Bonatti S.p.A. the administrative sanction of the payment of a sum equal to 40,000.00 (forty thousand) euros.

In this context, it is also considered, in consideration of the type of violations ascertained that concerned the general principles of treatment, the conditions of lawfulness of the processing of particular data and judicial data and the provisions on security measures, that pursuant to art. 166, paragraph 7, of the Code and of the art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019, this provision must be published on the Guarantor's website.

It is also believed 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 THAT BEING CONSIDERED, THE GUARANTOR

notes the illegality of the processing carried out by Bonatti S.p.A. in the person of the legal representative, with registered office in Parma, Via Alfred Bernhard Nobel 2/A, Tax Code: 02188130153, pursuant to art. 143 of the Code, for the violation of the articles 5, par. 1, lit. a) and c), 9, par. 2, lit. b) and 32 of the Regulation and in art. 27 of the Code (text in force at the time of the facts subject to the complaint);

ORDER

pursuant to art. 58, par. 2, lit. i) of the Regulations to Bonatti S.p.A. to pay the sum of 40,000.00 (forty thousand) euros as an administrative fine for the violations indicated in this provision;

ENJOYS

also to the same Company to pay the aforementioned sum of 40,000.00 (forty thousand) euros, according to the methods indicated in the attachment, within 30 days of notification of this provision, under penalty of adopting the consequent executive deeds pursuant to art. 27 of the law n. 689/1981. It should be remembered that the offender retains the right to settle the dispute by paying - always according to the methods indicated in the attachment - an amount equal to half of the fine imposed, within the term set out in art. 10, paragraph 3, of Legislative Decree lgs. no. 150 of 09.01.2011 envisaged for the lodging of the

appeal as indicated below (art. 166, paragraph 8, of the Code);

HAS

the publication of this provision on the Guarantor's website pursuant to art. 166, paragraph 7, of the Code and of the art. 16, paragraph 1, of the Guarantor's Regulation n. 1/20129, and believes that the conditions pursuant to art. 17 of Regulation no. 1/2019.

Pursuant to art. 78 of the Regulation, as well as articles 152 of the Code and 10 of the legislative decree no. 150/2011, opposition to the ordinary judicial authority may be lodged against this provision, with an appeal lodged with the ordinary court of the place identified in the same art. 10, within the term of thirty days from the date of communication of the measure itself, or sixty days if the appellant resides abroad.

Rome, 11 February 2021

PRESIDENT

Station

THE SPEAKER

Station

THE SECRETARY GENERAL

Matthew