

Injunction order against Alfa Shipyard s.r.l. - April 29, 2021

Record of measures

n. 166 of 29 April 2021

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 the cons. Fabio Mattei, general secretary;

GIVEN the Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016 (hereinafter, the "Regulation");

GIVEN the Code regarding the protection of personal data, containing provisions for the adaptation of the national system to Regulation (EU) 2016/679 (Legislative Decree 30 June 2003, n.196, as amended by Legislative Decree 10 August 2018, no. 101, hereinafter the "Code");

GIVEN the report submitted to the Guarantor concerning the processing of personal data carried out by Alfa Shipyard S.r.l.;

EXAMINED the documentation in deeds;

HAVING REGARD to the observations made by the Secretary General pursuant to art. 15 of the regulation of the Guarantor n. 1/2000;

SPEAKER Attorney Guido Scorza;

WHEREAS

1. Reporting to the company and the preliminary investigation.

1.1. With notification of November 26, 2019, Mr. XX complained about alleged violations of the Regulations by Alfa Shipyard s.r.l. (hereinafter, the company), with reference to the failure to respond to the exercise of rights regarding the protection of personal data.

With a note dated 25 February 2020, the Office invited the company to provide feedback on the facts reported. In the absence of feedback from the company and due to the difficulties caused by the pandemic in progress, as it emerged that the activity at the Varazze headquarters had ceased at the beginning of 2020, a new inquiry request was sent on 29 July 2020 in the towards the registered office of Alfa Shipyard s.r.l., located in Milan, by sending it to the pec address. of society.

1.2. As no response was received from the company, both the aforementioned note and the subsequent one sent pursuant to art. 157 of the Code on 9 September 2020, the Office requested the collaboration of the Special Unit for the Protection of Privacy and Technological Frauds of the Guardia di Finanza also in order to obtain feedback on the facts subject to reporting, through the notification of the request for information pursuant to art. . 157 of the Code.

1.3. With note prot. n. 38045 of 13 October 2020, the Office therefore notified the company pursuant to art. 166, paragraph 5, of the Code, the initiation of the procedure for the adoption of the measures referred to in art. 58, par. 2, and the penalties referred to in art. 83 of the RGPD, in relation to violations of art. 157 of the Code. The company has not made use of the faculties provided for by art. 18 of the law n. 689/1981, by not sending defensive writings or documents to the Authority or asking to be heard about the alleged violations.

1.4. Only on 18 December 2020, the lawyer Giuseppe Pierfrancesco Mussumeci, in the name and on behalf of the company, sent a reply regarding the note of this Office of 9 September 2020 (notified by the Guardia di Finanza), with particular reference to the requests of Mr. XX, declaring that the company had "already for some time proceeded to delete any personal data referable to Mr. XX ". In this reply, the lawyer Mussumeci also specified that his name had been "reproduced in a spam message created by a malware in the e-mail account" of the company Alfa Shipyard S.r.l., a circumstance that would have confirmed "the absence of responsibility on the part of the itself [Company] for the facts disputed by Mr. XX ", with the consequence that any violation of the legislation on the protection of personal data could be attributed to Alfa Shipyard S.r.l ..

1.5. The interested party, who sent numerous communications and clarifications during the procedure, in particular indicated by e-mail dated February 28, 2021 (prot. 11763) to continue to receive unsolicited e-mails "referring to shipyards or to former beneficial owner of Alfa Shipyard Mr. XX ".

1.6. Following a supplementary investigation conducted by the Office through a further request for clarification, regarding the failure to reply to Mr. XX, the methods and timing of the cancellation, in addition to a more comprehensive explanation in relation to the malware capable of replicating deleted data (prot. 11042/1 of 24 February 2021), the Company has not produced any other response.

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

2.1. Upon examination of the meager statements made by the data controller to the Authority during the procedure as well as of the documentation acquired, provided that, unless the fact constitutes a more serious crime, whoever, in a proceeding

before the Guarantor, declares or falsely certifies news or circumstances or produces false deeds or documents and is liable pursuant to art. 168 of the Code, "False statements to the Guarantor and interruption of the execution of the tasks or the exercise of the powers of the Guarantor", it emerged that the company did not provide feedback to the request submitted pursuant to Articles 15-22 of the Regulation on 24 October 2019 by Mr. XX, concerning the aforementioned rights, including the request for cancellation of the personal data of the reporting party. The scant feedback provided by the company's lawyer, only after the notification made through the Guardia di Finanza, was not only late but also incomplete. According to the regulation, the company should have provided a reply to the interested party, even negative, in a manner consistent with the provisions of the legal system, representing, in conclusion, having deleted the data object of the request and adopting suitable measures to preclude the " forwarding of subsequent promotional messages.

Therefore, the company has not complied with the obligation to provide feedback to the interested party, as required by art. 12 of the Regulation according to which "the data controller provides the data subject with information relating to the action taken regarding a request pursuant to articles 15 to 22 without undue delay and, in any case, at the latest within one month of receipt of the request itself ".

2.2. It also emerged that the company also failed to provide feedback to the request for information of 9 September 2020 made by this Authority pursuant to art. 157 of the Code. According to the aforementioned article 157 of the Code "Within the scope of the powers referred to in article 58 of the Regulation, and for the performance of its duties, the Guarantor may request the holder, [...] to provide information and exhibit documents" . Art. 166, paragraph 2, of the Code establishes that the violation of art. 157 of the Code is subject to the administrative sanction referred to in Article 83, par. 5, of the Regulation.

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

For the aforementioned reasons, the processing of personal data relating to the reporting party carried out by the company due to the failure to reply to the requests for exercise of the rights presented by them, as well as the complete omission of the request for information formulated by the Authority pursuant to art. 157, is illegal, in the terms set out above, in relation to art. 12 of the Regulations and art. 157 of the Code.

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

- the Company is required to provide conclusive and unambiguous feedback to the interested party, ensuring that it has taken

all necessary measures to prevent the forwarding of further communications to the whistleblower within 60 days of receipt of this provision;

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

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Pursuant to art. 58, par. 2, lett. i) of the Regulations and art. 166, paragraphs 3 and 7 of the Code, the Guarantor provides for the application of the pecuniary administrative sanction provided for by art. 83, par. 5, of the Regulations, through the adoption of an injunction order (Article 18, Law 11/24/1981, n. 689), in relation to the failure to reply to the request for information formulated by the Authority, pursuant to art. 157 of the Code.

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

a) with regard to the nature, severity and duration of the violation, it is noted that the violation is to be considered significant, referring to the feedback to be provided to the Authority. Among other things, with reference to the duration of the violation, it is noted that the same lasted for a long time and only ceased following the intervention of the GdF;

b) with reference to the willful 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 its representatives who have not complied with the regulations on data protection have been taken into consideration in relation to the provisions of the Code;

c) with respect to the degree of cooperation with the supervisory authority, the company's failure to cooperate in all stages of the procedure was assessed;

d) the absence of specific precedents (relating to the same type of treatment) charged to 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 to which the Authority must comply in determining the amount of the sanction (Article 83, paragraph 1, of the Regulation), economic conditions of the offender, determined on the basis of the revenues achieved by the company with reference to the financial statements for the year 2019.

In light of the elements indicated above and the assessments carried out, it is considered, in the present case, to apply against Alfa Shipyard s.r.l. the administrative sanction for the payment of a sum equal to Euro 5,000.00 (five thousand).

In this context, it is also believed, in consideration of the type of violation ascertained, which concerned the failure to respond to the requests of the Authority, which pursuant to art. 166, paragraph 7, of the Code and art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019, this provision should be published on the Guarantor's website.

Finally, it is believed that the conditions set out in art. 17 of Regulation no. 1/2019 concerning internal procedures with external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

WHEREAS, THE GUARANTOR

declares the unlawfulness of the conduct held by Alfashipyard s.r.l. pursuant to art. 144 of the Code, for the violation of art. 5, par. 1, lett. a), c) and f) of the Regulations and for the violation of art. 157 of the Code;

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pursuant to art. 58, par. 2, lett. c) and d) of the Regulations to Alfa Shipyard s.r.l. to satisfy the requests of the whistleblower pursuant to art. 12 of the Regulation and conform the processing carried out as set out in the introduction to the principles of lawfulness, within 60 days of receipt of this provision;

ORDER

to Alfashipyard s.r.l., with registered office in Piazzale Nizza n. 3, Milan PI: 07218580962, pursuant to art. 58, par. 2, lett. i), of the Regulations, to pay the sum of 5,000.00 (five thousand) euros as a pecuniary administrative sanction for violations relating to the failure to reply to the request for information formulated by the Authority, pursuant to art. 157 of the Code;

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also to the same Company to pay the sum of 5,000.00 (five thousand) euros, 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 according to the methods indicated in the annex - of an amount equal to half of the sanction imposed, within the term set out 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, and believes that the conditions set out in art. 17 of regulation no. 1/2019 concerning internal procedures with external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

Pursuant to art. 78 of the Regulations, as well as articles 152 of the Code and 10 of Legislative Decree no. 150/2011, an opposition to the ordinary judicial authority may be proposed against this provision, with an appeal filed with the ordinary court of the place identified in the same art. 10, within thirty days from the date of communication of the provision itself, or sixty days if the applicant resides abroad.

Rome, April 29, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Peel

THE SECRETARY GENERAL

Mattei