

Order injunction against Tiberia Assicurazioni s.a.s. - April 15, 2021

Record of measures

n. 138 of 15 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 legislative decree 30 June 2003, n. 196 (Code regarding the protection of personal data, hereinafter the "Code") as amended by Legislative Decree 10 August 2018, n. 101 on "Provisions for the adaptation of national legislation to the provisions of Regulation (EU) 2016/679";

GIVEN the report submitted to the Guarantor on 4 July 2019 by Mr. XX complaining about the receipt, on the work email inbox, of a communication from Tiberia Assicurazioni sas, concerning an insurance contract proposal, in the absence of the legitimacy conditions referred to in art. 6 of the Regulations;

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;

Rapporteur Dr. Agostino Ghiglia;

## WHEREAS

### 1. Reporting and preliminary investigation.

1.1 With the report presented on 4 July 2019, Mr. XX complained of having received a communication from his insurance agency Tiberia Assicurazioni s.a.s. to his work email address (XX@bancaditalia.it) di Tiberia Paola e c., with which a new insurance policy was proposed. The reporting party specified that he had never given his consent to the use of the aforementioned e-mail address, rather than having always received such communications at the e-mail address indicated for this purpose (XX).

1.2. The Office, therefore, sent a request for information to the aforementioned Agency (note prot. business email of the reporting party and any consent collected for sending commercial communications. Considering that the aforementioned request for information, duly notified by certified email on 12.9.2019, had no response, the Office proceeded to formulate a new request for information pursuant to art. 157 of the Code regarding the protection of personal data (prot. No. 38049 of 6.11.2019), with an indication of the deadline within which to provide feedback and the consequences related to any non-compliance.

1.3. Having found that the aforementioned request for information was duly notified by certified e-mail on November 6, 2019, the Office delegated the notification of a request for information to the Privacy and Technological Fraud Protection Unit of the Guardia di Finanza, aimed at gathering useful elements for the definition of the report, and of the act of initiating the sanctioning procedure, pursuant to art. 166, paragraph 5, of the Code, in relation to the violation of art. 157 of the same Code.

1.4. The Privacy Protection and Technological Fraud Unit of the Guardia di Finanza notified Tiberia Assicurazioni s.a.s., in the person of the pro-tempore legal representative, both acts on February 27, 2020 and to collect the requested information, drawing up a report of operations in this regard. accomplished. From the examination of the documentation acquired, it emerged that:

- following notification of the request for information formulated by the Office, the company's lawyer was interested in providing the appropriate feedback which, however, was never provided;
- contacts with Mr. XX have always occurred through the use of a personal e-mail address or by telephone. Only on two occasions, the e-mail address of the workplace was used to initiate contacts with the customer;
- in particular, with reference to the situation in question, "the work email was used since in the period in which Mr. XX had requested the change of the policy for the purchase of a new vehicle, the agency was closed due to mourning. (...)

Distractedly, the undersigned (...) instead of replying to the e-mail address of the request, typed the e-mail address used by the employees of the Bank of Italy (...) affiliated with this company ";

- following the alleged episodes, there were other contacts with the person concerned, always using his personal e-mail address.

1.5. It should be noted that the company, following the notification of the act of initiation of the sanctioning procedure, did not make use of the powers provided for by art. 18 of the law n. 689/1981, neither sending defensive writings nor asking to be

heard.

## 2. The outcome of the investigation and the sanctioning procedure.

2.1. Upon the outcome of the declarations made by the company during the procedure, provided that, unless the fact constitutes a more serious crime, whoever, in a procedure before the Guarantor, falsely declares or certifies news or circumstances or produces false documents or documents, is liable for it. pursuant to art. 168 of the Code, it emerged that the company did not respond to the request for information made pursuant to art. 157 of the Code, believing that the company's lawyer had done so.

It is noted, however, that this argument, among other things not supported by any documentation that proves that it has actually entrusted the task to another person, is not suitable for excluding the responsibility of the party with respect to what is disputed, given that the aforementioned request of information was addressed to the data controller who was the only person required to provide feedback.

2.2. Therefore, in the present case, it is clear that the company failed to provide a response to the request for information dated November 6, 2019 formulated pursuant to art. 157 of the Code, duly notified by certified e-mail whose delivery notice is in the file records. Based on art. 157 of the Code "Within the scope of the powers referred to in art. 58 of the Regulations, 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 pursuant to art. 83, par. 5, of the Regulation.

## 3. Order of injunction.

3.1. The Guarantor, pursuant to art. 58, par. 2, lett. i) of the Regulations and art. 166 of the Code, has the power to impose a pecuniary administrative sanction provided for by art. 83, par. 5, of the Regulations, through the adoption of an injunction order (art. 18. Law no. 689 of 24 November 1981), in relation to the failure to reply to the request for information formulated pursuant to art. 157 of the Code.

3.2. 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 be "in each individual case effective, proportionate and dissuasive" (Article 83, par. 1 of the Regulations), that, in the present case, the following circumstances were taken into consideration:

- with regard to the nature, gravity and duration of the violation, the negligent conduct of the data controller was taken into consideration who, only following notification of the request for information by the Privacy Protection and Technological Fraud Unit of the Financial Police, to provide useful information for the purposes of defining the procedure;
- the absence of specific precedents against the Company relating to violations of the regulations on the protection of personal data;
- the tenuousness of the violation, due to the receipt by the interested party of a single unwanted promotional email;
- the circumstance that the Company did not cooperate with the Authority during the procedure;

3.3. Due to the aforementioned elements, assessed as a whole, it is believed to determine the amount of the financial penalty in the amount of 1,500.00 (one thousand five) euros for the violation of art. 157 of the Code.

3.5. In this context, also in consideration of the type of violation ascertained, it is believed that, pursuant to art. 166, paragraph 7, of the Code and art. 16, paragraph 1, of the regulation of the Guarantor n. 1/2019, this provision should be published on the Guarantor's website.

Finally, it is noted 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, pursuant to art. 57, par. 1, lett. f) and 83 of the Regulations, the unlawfulness of the processing carried out, in the terms set out in the motivation, for the violation of art. 157 of the Code;

ORDER

at Tiberia Assicurazioni s.a.s. di Tiberia Paola e c., in the person of the pro-tempore legal representative, with registered office in Rome, via Terni n. 59, P.I. 01824151003, to pay the sum of Euro 1,500.00 (one thousand and five) as a pecuniary administrative sanction for the violation indicated in the motivation;

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then to the same Company to pay the sum of 1,500.00 euros (one thousand five), according to the methods indicated in the annex, within 30 days of the notification of this provision, under penalty of the adoption of the consequent executive acts pursuant to art. 27 of the law n. 689/1981. It is represented that pursuant to art. 166, paragraph 8 of the Code, 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 September 2011 envisaged for the submission of the appeal as indicated below.

HAS

pursuant to art. 166, paragraph 7, of the Code and art. 16, paragraph 1, of the regulation of the Guarantor n. 1/2019, the publication of this provision on the website of the Guarantor and believes that the conditions set out in art. 17 of regulation no. 1/2019.

Pursuant to art. 78 of the Regulation, of art. 152 of the Code and 10 of Legislative Decree 1 September 2011, n. 150, 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, April 15, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Ghiglia

THE SECRETARY GENERAL

Mattei