

Injunction order against Alfa Shipyard s.r.l. - March 10, 2022 *

Record of measures

n. 83 of 10 March 2022

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

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

RAPPORTEUR prof. Pasquale Stanzione;

WHEREAS

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

With report presented to this Authority by Mr. XX, on 26 November 2019, alleged violations of Regulation (EU) 2016/679 (hereinafter "RGPD") were reported, with reference to the lack of response by the company Alfa Shipyard S.r.l. (hereinafter Company), to the exercise of rights regarding the protection of personal data (with particular reference to the request for deletion of data).

Following the investigation carried out by the Department, provision no. 166 of April 29, 2021, notified to the Company, via certified e-mail, on May 13, 2021, with which the Authority, in addition to ordering the application of a pecuniary administrative sanction pursuant to art. 83, par. 2 of the Regulation, has ordered the same to "satisfy the requests of the reporting party

pursuant to art. 12 of the Regulation and conform the processing carried out to the principles of lawfulness ", pursuant to art. 58, par. 2, lett. c) and d) of the Regulations, providing "conclusive and unequivocal feedback to the interested party" and "ensuring that all necessary measures have been taken to prevent the forwarding of further communications to the whistleblower", within 60 days of receipt of the provision same.

2. Failure to comply with the requirements of the Guarantor.

After the established term, without any feedback being received by the Authority and the reporting party (as per the same press release), the Department invited the Company, pursuant to art. 157 of the Code, with communication sent by certified e-mail on 07/26/2021 (protocol reference 39080), to inform the Authority about the fulfillment of the prescription contained in the provision. The aforementioned note is regularly sent to the recipient, as per receipts from the certified e-mail service, in the proceedings.

In consideration of the failure to respond to the duly notified request for information, on 08/26/2021 the Department notified Alfa Shipyard S.r.l., pursuant to art. 166 paragraph 5 of the legislative decree n. 196/2003, the communication of the initiation of the sanctioning procedure, reiterating the need to acquire the information requested. This communication is also regularly transmitted to the recipient, as per receipts from the certified e-mail service, in the proceedings.

In consideration of the lack of response from the Company, on 4 October 2021 the acquisition of information from the Company was delegated to the Special Privacy Protection and Technological Fraud Unit of the Guardia di Finanza.

On 14 October 2021, the Nucleus carried out the assessment at the headquarters of the Company. As part of the minutes drawn up by the Nucleus, lawyer XX (who represented the Company by proxy of the legal representative, just power of attorney of October 14, 2021, acquired in the acts), stated that the Company had not given Mr. XX, the response required by the provision of the Guarantor n. 166 of 29 April 2021 (duly notified and known by the Company itself), as it was not in possession of any of its references "except the e-mail address used by the reporting party on 24 October 2019, address, the latter not certified" .

Consequently, only following the intervention of the Core, the Company arranged, on 21 October 2021, to send the interested party (to the aforementioned e-mail address) a communication declaring that the Company had "never had in his own archives no personal data "attributable to him.

As for the lack of cooperation with the Authority, consisting in the failure to respond to requests for information sent by the

Department, the lawyer XX generically reported that these omissions had been the consequence of the commitments related to the sale of a business unit to another company and the scarcity of staff.

As part of the investigations carried out by the Unit, the lawyer XX also added that his response to the investigative requests of the Department of 18 December 2020, forwarded to the Authority after the first notification of violation due to lack of response to the Guarantor (prot. 38045/20), had been "erroneous and superficial, reporting that the Mr. XX had been deleted from the database (inaccurate response, as the reporting party was never a customer of Alfa Shipyard S.r.l.) and charging the forwarding of the email to a spam that would have hit the Company's mail server ". With regard to this last point, it was then reported in the minutes that the sending of the e-mail to Mr. XX would instead have been attributable to Mr. XX, freelance, business finder of the Company, but not structurally part of it.

It is also represented that the interested party (Mr. XX), following the reply received by the Company after the inspections, on 21 October 2021, sent some communications to the Office (including an e-mail dated 21 October 2021, prot. 53142) with which he contested the statements of Avv. XX, underlining, unlike what was instead claimed by the Company in the proceeding, that it had received more than one e-mail from different persons belonging to the company, attaching, in support of what is represented, some exchanges of e-mails with other persons belonging to the "Management of the Company" (Messrs. XX and XX), again in 2016.

Based on what emerged from the investigations carried out, with note prot. n. 60437 of December 3, 2021, the Department notified the Company, pursuant to art. 166, paragraph 5, of the Code, the initiation of a further 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, as the Company has not provided, as expressly requested, within the period of 60 days from receipt of the provision, "a conclusive and unequivocal reply to the interested party, ensuring that it has adopted all the necessary measures to prevent the forwarding of further communications to the whistleblower "nor did he inform the Authority of the reasons for this non-fulfillment, thus forcing the Department to send requests for information, to which it did not respond, and to request a specific on-site investigation from the Special Unit of the Finance Police in order to clarify the situation.

The conduct held by Alfa Shipysard S.r.l. therefore it is in contrast with the obligation to comply with the requirements established by the supervisory authority and in particular with what is specifically indicated in the corrective provision of 29 April 2021 no. 166, duly notified and known by the Company itself and with the general duty of cooperation with the

supervisory authority in the performance of its duties, provided for by art. 31 of the Regulation.

3. Content of the defense brief sent by the Company.

In relation to the two separate notifications of violations sent, respectively on 08/26/2021 and December 3, 2021, the company sent a single defense brief, on December 23, 2021, in which it briefly represented, as far as the interest of the method: to be the victim of an illegitimate report made by Mr. XX to the Guarantor for the protection of personal data as he would admit, "with an email dated 24 October 2019, sent from the non-certified address seasidemc@hotmail.com [...] to have" recently received an email from your owner or former owner Mr. XX "and therefore, not by Alfa Shipyard s.r.l. .; that Mr. XX "admits that the email he received would have come from the account of Mr. XX "and that" The only data in the possession of Alfa Shipyard s.r.l. is the email address seasidemc@hotmail.com to which, within the term assigned by the Special Unit for the Protection of Privacy and Technological Frauds, a communication was regularly sent informing the complainant that the undersigned company had never had any sensitive data, made except for the aforementioned non-certified email received by XX himself to complain about a communication received from Mr. XX "; that Mr. "XX, as per the documentation produced by the Special Unit for the Protection of Privacy and Technological Fraud, is a freelance professional who, without any subordination or exclusivity constraint, works as an independent procurer also in favor of Alfa Shipyard s.r.l. .. Any communication sent by the latter to Mr. XX cannot be considered as coming from Alfa Shipyard s.r.l. ".

As part of the defense brief, the Company also asked for a "meeting [...] so that the writer [XX] can further clarify the entire dispute". Although the company was formally invited to the hearing (by sending a note of January 7, 2022), it did not respond within the required deadline (see note of January 21, 2022 - prot. 4625 - in documents).

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

Upon the outcome of the assessment carried out by the Special Unit of the Guardia di Finanza and of the facts that emerged as a result of the investigation, a picture of general negligence on the part of the Company emerges regarding compliance with the basic provisions on the protection of personal data , both with reference to the rights of the interested party, and as regards loyal cooperation with the supervisory authority in order to remedy the violations ascertained and to mitigate their possible negative effects.

In the first place, it is ascertained that the Company did not respond to the request for information sent by the Department on

07/26/2021 (protocol reference 39080). In this regard, the Company has not provided any explanation in the report of the operations carried out drawn up by the Unit, nor in the defense briefs. 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 in this regard 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.

It is also established that Alfa Shipyard S.r.l. has not complied, being required to comply with the provisions of the provision of the Guarantor of 29 April 2021, duly notified and known by the Company.

In particular, the Company has not provided "a conclusive and unequivocal 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 the provision, nor has it informed the Authority of the reasons for this non-fulfillment.

The circumstance, represented by the Company, in the minutes of the transactions carried out, of not having done what was ordered by the Guarantor because "we had not found any reference to him [of Mr. XX] except for the email address used by the reporting party on 24 October 2019, the latter address not certified "does not constitute an exempt cause for two reasons. Firstly, because the ordinary e-mail address was also a valid reference for making the communications required by the Guarantor's provision to the person concerned; proof of this is that, after the inspection by the Unit, on 21 October 2021, the Company sent Mr. XX a communication to the ordinary e-mail address of the interested party (seasidemc@hotmail.com) and the message was regularly received by the same, so much so that Mr. XX replied.

Secondly, even in the event that the Company had been uncertain about the methods of compliance, it could have contacted the Authority and represented its doubts, which it did not do.

In the defense brief, the Company, instead of providing elements regarding the violations notified by the Department sent on 08/26/2021 and December 3, 2021 (relating to the failure to respond to the request for information and failure to comply with the provision), instead provided a new feedback (and different from that provided in the context of the proceeding concluded with the adoption of provision no. 166 of 29 April 2021), with respect to the merits of the report presented by Mr. XX on November 26, 2019.

This is linked to what was declared by the lawyer XX, in the report of operations completed drawn up by the Unit, in which the

Company's lawyer defines the response sent to the Guarantor, at the time in the context of the procedure, "erroneous and superficial, reporting that Mr. XX had been deleted from the database (inaccurate response, as the reporting party was never a customer of Alfa Shipyard S.r.l.) and charging the forwarding of the email to a spam that would have hit the Company's mail server ". According to this new reconstruction, since the e-mail was sent to Mr. XX occurred by a freelancer who operated, as represented, without subordination or exclusivity, as a procurer of Alfa Shipyard s.r.l. (XX), this circumstance would exclude the involvement of the Company from the matter which is the subject of the proceeding.

Given that this circumstance does not concern the merits of this proceeding, it does not appear in itself even decisive, contrary to what the Company believes, for the purposes of defining the ownership of data processing, being able also subjects, legally distinct from the owner, to carry out treatments on his behalf. This in particular with reference to the specific content of the e-mail sent at the time by Mr. XX which concerned the restoration of a boat. On the other hand, the fact remains that the Company has processed the data of Mr. XX, on the occasion of various conversations with him via e-mail in relation to matters relating to work always relating to the same to a boat, in relation to which, as established by provision no. 166, of 29 April 2021, in view of the exercise of the right by the same, has not complied with the obligation to promptly provide feedback to the interested party about the initiatives taken, 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 ".

It is therefore proven that Alfa Shipyard s.r.l. has not observed an order from the supervisory authority, formulated pursuant to art. 58, paragraph 2 of the Regulation and reported in the operative part of provision no. 166, of April 29, 2021 (duly notified). In relation to this violation, the sanction provided for in Article 83, par. 6, of the Regulation.

5. Injunction order.

As a result of the complex procedure it therefore appears that Alfa Shipyard s.r.l. has violated Articles 83, paragraph 6 of the Regulation and 157 of the Code. For the violation of the aforementioned provisions, the application of the administrative sanctions respectively provided for by art. 83, par. 6 and 5 of the Regulation.

Considering it necessary to apply paragraph 3 of art. 83 of the Regulation where it provides that "If, in relation to the same treatment or related treatments, a data controller [...] violates, with intent or negligence, various provisions of this regulation, the total amount of the pecuniary administrative sanction does not exceed the amount specified for the most serious violation

"and considering that the violations of the Regulation ascertained are of equal gravity, being the maximum legal penalty of both fixed 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 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:

with regard to the nature, gravity and duration of the violation, it is noted that the violation is to be considered significant, as it refers to the failure to comply with a provision of the Authority, duly notified and the failure to respond to the investigative requests of the Department, a circumstance this the last one which lengthened the timeframe of the procedure and involved a waste of public resources for the effective ascertainment of the facts which required the intervention of the special unit for the protection of privacy and technological frauds of the Guardia di Finanza;

with reference to the duration of the violation, it is noted that it continued, with reference to the breach of an order by the Authority, for the period of time elapsed between the expiry of the term to fulfill the prescription, indicated in the provision (60 days from the notification via p.e.c. on 13 May 2021) and the date of sending the communication to the interested party, which took place on 21 October 2021; as regards the request for information, for the period of time elapsed between the deadline indicated therein (15 days from receipt, which took place on 26 July 2021 having been sent via certified e-mail) and the date of the assessment carried out by the Special Unit privacy and technological fraud protection of the Finance Police on 14 October 2021;

with reference to the willful or negligent nature of the violation and the degree of responsibility of the owner, the conduct of the Company was taken into consideration throughout the proceedings with reference to the alleged breaches;

with respect to the degree of cooperation with the supervisory authority, the Company's lack of cooperation in all phases of the procedure was assessed;

finally, as regards the presence of specific precedents against the company, the content of provision no. 166, of 29 April 2021.

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 with specific reference to the

revenues achieved by the company with reference to the financial statements for the year 2020.

In light of the set of elements indicated above and the assessments made, it is considered, in this case, to apply against Alfa Shipyard s.r.l. the administrative sanction for the payment of a sum equal to Euro 10,000 (ten thousand).

In this context, it is also considered, in consideration of the types of violations ascertained, which concerned the non-compliance with an order of the Authority and the failure to respond to the preliminary inquiries of the same, that 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 Alfa Shipyard s.r.l. pursuant to art. 143 of the Code, for the violation of art. 83, par. 6 of the Regulations and for the violation of art. 157 of the Code;

ORDER

to Alfa Shipyard 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 € 10,000 (ten thousand), as a pecuniary administrative sanction for violations relating respectively to the violation of art. 83, par. 6 and failure to respond to requests for information made by the Authority, pursuant to art. 157 of the Code;

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also to the same Company to pay the sum of € 10,000 (ten thousand), according to the methods indicated in the annex, within 30 days of notification of this provision, under penalty of the adoption of the consequent executive acts pursuant to art. 27 of the l. n. 689/1981. Please note that the offender has the right to settle the dispute by paying - again 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, March 10, 2022

PRESIDENT

Stanzione

THE RAPPORTEUR

Stanzione

THE SECRETARY GENERAL

Mattei

* The provision was challenged