

Injunction against BUSITALIA VENETO S.p.A. - July 11, 2018

Register of measures

no. 419 of 11 July 2018

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, in the presence of Dr. Antonello Soro, president, of dott.ssa Augusta Iannini, vice president, of dott.ssa Giovanna Bianchi Clerici and of prof.ssa Licia Califano, members and of dott. Giuseppe Busia, general secretary;

HAVING REGARD to the report received by this Guarantor Authority from the "Sindacato Lavoro Società" relating to the unlawful processing of personal data, carried out by the company "Busitalia Veneto S.p.A.", a company operating in public transport (hereinafter the "Company") with registered office in Padua, via del Pescarotto 25/27, P.I. 04874020284, towards its employees through the installation on their company vehicles of a geolocation system aimed at detecting the geographical position of the local public transport means (bus-tram), managed by the Company, in the city of Padua;

NOTING that the Privacy Unit of the Guardia di Finanza, in execution of the request for information no. 38479/100671 of 21 December 2016, formulated pursuant to art. 157 of Legislative Decree June 30, 2003 n. 196, containing the Code regarding the protection of personal data (hereinafter the "Code"), carried out checks at the Company formalized in the report of operations carried out on 1 February 2017 in order to verify the lawfulness of the processing of personal data by means of the system mentioned above;

CONSIDERING that, on the basis of the statements made during the inspections and the documentation produced by the Company to resolve the reservations formulated during the inspections, it was found that:

- the Company, established in 2015 from the merger of the business units contributed by Busitalia Sita Nord S.r.l and APS Holding S.p.A., is the transferee of the urban transport service for the cities of Padua and Rovigo, carried out by bus and tram;
- since March 2007, when the tram line service was managed by APS Holding S.p.A., a geolocation system was installed on board the trams and, subsequently, also on the buses;
- "(...) the system installed on the coaches is not fully operational and the display of the position of the vehicles at the Operations Center has not been activated, as is the case for trams, but only the information that can be viewed by users (...)" (see report of transactions carried out on 1 February 2017, point no. 2, page 3);

- "(...) the system installed on board the trams, in addition to the position of the vehicle, also indicates the name of the driver who logs into the system at the beginning of the shift by entering his serial number (...)" (ibidem, as above);
- the display of geolocated trams is continuous and is "(...) necessary so that there can be timely intervention for the correct management of the service (...)" (ibidem, as above);
- "(...) the data relating to geolocation are processed by 6 people, employees of the Company, employees of the Operations Center (...)" (see report of operations carried out of 1 February 2017, point no. 5, page 4);
- the Company, pursuant to art. 4, paragraph 1, lett. f), and 28 of the Code, is the owner of the processing of personal data carried out in the execution of the aforementioned activity;
- the Company has failed to appoint the employees who process the specific personal data relating to the geolocation system as persons in charge of processing and to provide them with the relative instructions in accordance with the provisions of Article 30 of the Code (see note sent by the Company to the Special Privacy Unit of the Guardia di Finanza of 16 February 2017 prot. 3138/2017, point no. 5, page 4);

GIVEN the note prot. 3138/17 of 16 February 2017, sent via PEC to the Guarantor and the Guardia di Finanza following the assessment of 1 February 2017, in which the company claimed that "(...) however, they were not found in the Company's archives , nor in those of APS Holding, the documents certifying the formal designation of the persons in charge of the treatment. In this regard (...) we mean that the Company took immediate action to regularize the designation and undertakes to complete it within a short time (...)"

CONSIDERING the report n. 21 of 27 February 2017 with which the Special Privacy Unit of the Guardia di Finanza contested the Company's violation of art. 33, sanctioned by art. 162, paragraph 2-bis, of the Code, due to the failure to adopt the minimum security measures having failed to appoint "in charge of processing", as well as to promptly instruct, the personnel assigned to access and manage the geolocation system used on the vehicles of public transport managed by the Urban Transport Company in the city of Padua;

HAVING REGARD to the defense brief dated 13 April 2017 with which the Company represented that the "Exercise Regulation - SIR 1" drawn up by APS Holding S.p.A. - still in force in Busitalia Veneto S.p.A. and widely disseminated to all personnel, in paragraphs 3.2 and 3.4, expressly establishes that the management of the SAE system ("Sistema di Auxilio all'Operazione", which includes the localization system) is delegated to the DCOs - Central Operations Managers - correspondents to the

employees of the Operations Center mentioned in the Report of Completed Operations of 1/2/2017; a fact which, even if in a minimal form and certainly room for improvement, identifies in writing and "by homogeneous category" the persons in charge of processing the geolocation data". The The Company also intended to highlight that the aforementioned points of this Regulation contain instructions and indications of safety measures. In consideration of this, the Company has requested, in relation to this finding, primarily, to dismiss the sanctioning procedure and, subordinately, to reduce the amount of the applicable administrative fine to the minimum amount.

CONSIDERING that the arguments put forward are not suitable for determining the closure of the sanctioning procedure in relation to the violation pursuant to art. 33 of the Code. The specific provision contained in the Code (article 30, paragraph 2) provides that the designation of the persons in charge of the treatment "should be made in writing and punctually identify the scope of the permitted treatment. The documented preposition of the natural person to a unit for which the scope of treatment permitted to the employees of the same unit is also considered as such".

In this regard, in relation to what was represented by the Company in the aforementioned defense brief, dated 13 April 2017, regarding the widespread dissemination to all personnel of the "Operating Regulations - SIR 1" drawn up by APS Holding S.p.A., it should be noted that in cited paragraphs 3.2 and 3.4. of this Regulation, indications are provided relating to the beginning and end of the daily service of the central operational managers, without identifying the scope of the processing of personal data to the latter permitted, as required by the aforementioned art. 30, paragraph 2, of the Code.

In fact, the art. 3.2 of the document only states that "At the time set for the start of the duty shift, the DCO must report to the Operations Centre, where he must:

- Enable the station and check that all the technologies have been correctly activated and at the same time that there are no diagnostic or alarm signals;
- Check for any Orders or Service Communications.

Access to the Operations Center is permitted only to authorized personnel".

And, the art. 3.4: "At the end of the daily service, the DCO must:

- Close the work session so that no operation can be performed, except by authorized persons;
- Diligently fill in the daily Report of the Operations Centre, which must be forwarded daily to the Operations Management;
- Make sure that the entrances to the Operations Center are closed".

NOTING, therefore, that the Company, on the basis of the elements set out above, appears to have committed the violation of art. 33, sanctioned by art. for the failure to adopt the minimum security measures having failed to appoint the persons in charge of the treatment and to promptly instruct such personnel to access and manage the geolocation system;

CONSIDERING the art. 162, paragraph 2-bis, of the Code, which punishes the violation of art. 33 of the same Code with the administrative sanction of the payment of a sum from ten thousand to one hundred and twenty thousand euros;

WHEREAS, for the purpose of determining the amount of the fine, it is necessary to take into account, pursuant to art. 11 of the law n. 689/1981, of the work carried out by the agent to eliminate or mitigate the consequences of the violation, the seriousness of the violation, the personality and economic conditions of the offender;

WHEREAS, in the present case:

a) as regards the aspect of gravity with reference to the elements of the extent of the injury or danger and the intensity of the psychological element, the violation is not characterized by specific elements, also having regard to the concrete methods of use by the geolocation system company;

b) about the personality of the perpetrator of the violation, the fact that the company, in the context of the same assessment, has been the recipient of another sanction against which it has exercised the option of paying a reduced amount, envisaged by art. 16 of Law 689/81;

c) with regard to the economic conditions of the agent, the elements of the ordinary financial statements for the year 2017 were taken into consideration;

CONSIDERED, therefore, of having to determine, pursuant to art. 11 of the law n. 689/1981, the amount of the pecuniary sanction, on the basis of the aforementioned elements evaluated as a whole, in the minimum amount of 10,000.00 (ten thousand) euros for the violation pursuant to art. 33, sanctioned by art. 162, paragraph 2-bis, of the Code;

CONSIDERING the art. 1, paragraph 2, of the aforementioned law, pursuant to which the laws that provide for administrative sanctions are applied only in the cases and for the times considered in them;

HAVING REGARD to the documentation in the deeds;

CONSIDERING the law n. 689/1981 and subsequent modifications and additions;

GIVEN the observations of the Office formulated by the Secretary General pursuant to art. 15 of the Guarantor's regulation n. 1/2000, adopted with resolution of 28 June 2000;

SPEAKER Prof. Licia Califano;

ORDER

to BUSITALIA VENETO S.p.A. with registered office in Padua, via del Pescarotto 25/27, P.I. 04874020284, to pay the sum of 10,000.00 (ten thousand) euros as an administrative fine for the violation indicated in the justification;

ENJOYS

to the same company to pay the sum of Euro 10,000.00 (ten thousand), according to the methods indicated in the attachment, within 30 days of notification of this provision, under penalty of adopting the consequent executive acts pursuant to art. 27 of the law of 24 November 1981, n. 689.

Pursuant to articles 152 of the Code and 10 of Legislative Decree no. 150/2011, opposition to this provision may be lodged with the ordinary judicial authority, with an appeal filed with the ordinary court of the place where the data controller has his residence, within the term of thirty days from the date of communication of the provision itself or sixty days if the appellant resides abroad.

Rome, 11 July 2018

PRESIDENT

Soro

THE SPEAKER

Califano

THE SECRETARY GENERAL

Busia