

Order injunction against M.E.C. SPA - 11 January 2018

Record of measures

n. 7 of 11 January 2018

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

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

NOTING that the Special Privacy Unit of the Guardia di Finanza, in execution of the request for information no. 45/97157 of 2 January 2015, formulated pursuant to art. 157 of the legislative decree 30 June 2003 n. 196, containing the Code regarding the protection of personal data (hereinafter "Code"), carried out investigations at M.E.C. SPA (hereinafter the "Company"), with registered office in Montanera (CN), Via Circonvallazione n.26, carrying out the economic activity of "Production of non-volatile meat" P.I. 02119590046, formalized in the report of operations carried out on February 12, 2015, in order to verify the lawfulness of the processing of personal data carried out by the Company by means of a geolocation system aimed at detecting the geographical position of its vehicles through an electronic communication network, with particular reference to the modalities with which the notification obligation pursuant to art. 37 and 38 of the Code;

CONSIDERING that, on the basis of the declarations made during the inspections and the documentation sent by the company, upon dissolution of the reservations formulated during the inspection, it was found that:

- the M.E.C. S.p.a., established in 1989 as an S.n.c., from 1 January 2006 it was transformed into a S.p.a. and carries out slaughtering, processing and trading of meat with a service mainly aimed at large-scale distribution;
- the Company, in April 2011, entered into a contract with the company TRACKYSAT S.r.l. Cuneo for the provision of the geolocation service for three company cars on a fleet of 10 vehicles used by employees; "subsequently, in 2013, (...) (only) on two cars, for organizational needs. On two cars, entrusted as a benefit to two (...) sales staff, a geolocation system was installed for security purposes, in case of any road accidents and anti-theft, as, for work reasons, the cars were left unattended, even for long periods in public car parks such as airports "; (see Report of transactions carried out by the Special Unit of the Guardia di Finanza of 12 February 2015 - point 2, page 3)
- the object of the service provided by the company TRACKYSAT S.r.l., concerned the supply and installation of GPS

detectors, their maintenance and assistance, the detection of the position of vehicles equipped with GPS, as well as the provision of credentials for access to the reserved area of the website www.trackysat.com by the employee of the company M.E.C. S.p.a. to this task, in order to view, if necessary, the position of the two geolocalized cars;

- "(...) access to the site allowed the display and positioning of the vehicle (...)" (see Report of operations carried out by the Special Unit of the Guardia di Finanza of 12 February 2015 - point 2, page 3)

- the Company, by registered letter dated 19 September 2014, formally requested TRACKYSAT S.r.l. the termination of the existing contract regarding this service, which, therefore, was executed from 8 April 2011 to 18 September 2014;

- the Company is the owner of the processing of personal data, pursuant to art. 4, paragraph 1, lett. f) and 28 of Legislative Decree 196/2003 (hereinafter "Code"), with reference to the personal data processed in carrying out its business and, with reference to this circumstance, in the execution of the service contract rendered by the company TRACKYSAT S.r.l. from 8 April 2011 to 18 September 2014;

- "the Company did not notify the processing in question, assuming that it did not fall within the cases provided for by art. 37 as (...) it only carried out the detection of vehicles in the event of any thefts or accidents" (see Report of operations carried out by the Special Unit of the Guardia di Finanza of 12 February 2015 - point 4, page 3);

- HAVING REGARD to the minutes no. 30 of 16 March 2015 with which the Company, in the person of the pro-tempore legal representative, was charged with the administrative violation pursuant to art. 163 of the Code ("Omitted or incomplete notification"), for having carried out the processing of personal data pursuant to art. 37, paragraph 1, lett. a), (processing of data indicating the geographical position of people or objects through an electronic communication network) in the period between April 2011 and September 18, 2014, failing to notify the Guarantor, before the start of the treatment, according to the modalities indicated by the art. 38 of the Code;

NOTING that from the report prepared by the aforementioned Unit - pursuant to art. 17 of the law of 24 November 1981 n. 689

- no reduced payment has been made;

GIVEN the defense brief sent - pursuant to art. 18 of the law n. 689/1981 - by certified email on 23 April 2015, with which the Company reiterated what had already been highlighted during the verification operations by the Guardia di Finanza regarding the use of the geolocation system on two of the cars of its car fleet for "the purpose of locating the vehicle in the event of theft and / or accident" (see Report of operations carried out by the Special Unit of the Guardia di Finanza of 12 February 2015 -

point 4, page 3). Furthermore, he pointed out that the provisions of Articles 37, paragraph 1, lett. a) and 38 of the Code regarding the obligation to notify the Guarantor "was not respected in the, albeit erroneous, conviction that the case was not the subject of the aforementioned rule, given that (...) the employee using the vehicle was informed of the presence of the aforementioned device as well as the circumstance that the location of the same occurred only in the event of an alarm signal, nor did the granting company have an interest in monitoring the movements of the vehicle for which the same employee was authorized also for personal needs (...);

CONSIDERING that the Company, for the reasons set out above, requested, primarily, "the non-imposition of the sanction" and, in the alternative, the application of the sanction to the minimum extent in consideration of the fact "that any other fulfillment of the legislation has been correctly put in place ";

CONSIDERING that the arguments put forward are not suitable to determine the dismissal of the sanctioning procedure initiated with the above dispute. First of all, it is important to highlight that the purpose of security, anti-theft and crash alarm, for which the geolocation system in question was activated through the stipulation of the contract with the company TRACKYSAT S.r.l., does not exclude the applicability of the regulations on the subject including the compliance with the obligation to notify the Guarantor before the beginning of the treatment pursuant to art. 37 and 38 of the Code. In fact, the prescriptive provision of the Guarantor no. 370 of 4 October 2011 (web doc. No. 1850581) contemplates, among the geolocation hypotheses covered by the relative regulations, precisely the location of the vehicles in the context of the employment relationship to meet organizational and production needs or for safety in the workplace.

Secondly, it does not matter that the Company had informed employees of the presence of the satellite device or that the location of the same occurred only in the event of an alarm signal or, again, that the Company had no interest in monitoring the movements of vehicles that authorized employees could also use for personal needs: the installation, on company cars, of devices aimed at detecting the geographical position of people or objects and the consequent possibility for the employer to trace the identity at any time of the assignee of each vehicle, tracing its geographical position and movements, is sufficient to determine the obligation of notification to the Guarantor provided for by art. 37, paragraph 1, lett. a) and 38 of the Code. Moreover, the Company itself acknowledged that this obligation "was not respected in the, albeit erroneous, belief that the case was not the subject of the aforementioned regulation (...);

Hence, it has been discovered that M.E.C. SPA on the basis of the aforementioned considerations, appears to have

committed, as data controller, pursuant to art. 4, paragraph 1, lett. f), and 28 of the Code, the violation pursuant to art. 37, paragraph 1, lett. a), and 38 of the Code, for having processed data indicating the geographical position of people or objects through an electronic communication network from 8 April 2011 to 19 September 2014 without having previously submitted the notification to the Guarantor;

GIVEN art. 163 of the Code which punishes the violation of the provisions of art. 37 and 38 with a fine of between twenty thousand and one hundred twenty thousand euros;

Considering that, in the case in question, the diminuent referred to in art. 164-bis, paragraph 1, of the Code, which provides for the application of the minimum and maximum legal limits of the sanction to the extent of two fifths, in less serious cases;

CONSIDERING that, for the purposes of determining the amount of the pecuniary sanction, 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;

CONSIDERING, therefore, to have 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 assessed as a whole, in the minimum amount of € 8,000.00 (eight thousand) for the violation referred to in art. 163 of the Code;

HAVING REGARD to the documentation on file;

GIVEN the law n. 689/1981 and subsequent amendments and additions;

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

SPEAKER Dr. Augusta Iannini;

ORDER

to M.E.C. SPA with registered office in Montanera (CN), Via Circonvallazione n. 26, P.I. 02119590046, to pay the sum of € 8,000.00 (eight thousand) as a pecuniary administrative sanction for the violation indicated in the motivation;

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to the same company to pay the sum of 8,000.00 (eight thousand) euro, according to the methods indicated in the annex, within 30 days from the notification of this provision, under penalty of the adoption of the consequent executive acts pursuant to art. 27 of the law of 24 November 1981, n. 689.

Pursuant to art. 152 of the Code and 10 of Legislative Decree n. 150/2011, against this provision, opposition may be proposed to the ordinary judicial authority, with an appeal filed with the ordinary court of the place where the data controller resides, within thirty days from the date of communication of the provision itself. , or sixty days if the applicant resides abroad.

Rome, 11 January 2018

PRESIDENT

Soro

THE RAPPORTEUR

Iannini

THE SECRETARY GENERAL

Busia