

Injunction against Gianolini Servizi e Trasporti s.r.l. - July 5, 2018

Register of measures

no. 413 of 5 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;

CONSIDERING the art. 1, paragraph 2, of the law of 24 November 1981, n. 689, pursuant to which the laws that provide for administrative sanctions are applied only in the cases and for the times considered in them;

NOTING that the Special Privacy Unit of the Guardia di Finanza, in execution of the request for information pursuant to art. 157 of the Code regarding the protection of personal data - Legislative Decree 30 June 2003, no. 196 (hereinafter referred to as the Code) no. 31540/114083 of 3 October 2017 formulated by this Authority, performed at Gianolini Servizi e Trasporti s.r.l. VAT number: 00767410145, with registered office in Sondrio, viale dello Stadio n. 22, in the person of the pro-tempore legal representative, the investigations referred to in the report of operations carried out dated 26 October 2017, from which, following the resolution of the reservations formulated and subsequently dissolved with the receipt of a specific communication via pec, it resulted that the company, as data controller, through a vehicle tracking system that uses GPS devices installed on board company vehicles in use since 1 March 2011, has failed to notify the Guarantor pursuant to art. 37, paragraph 1 lett. a) and 38 of the Code;

HAVING REGARD to the dispute report no. 3 of 9 January 2018 (which is understood to be referred to in full here) with which Gianolini Servizi e Trasporti s.r.l. the administrative violation provided for by art. 163 of the Code, in relation to art. 37, informing you of the right to make a reduced payment pursuant to art. 16 of the law n. 689/1981;

HAVING REGARD TO the report relating to the aforementioned notification, prepared by the Office pursuant to art. 17 of the law of 24 November 1981, n. 689, from which the reduced payment does not appear to have been made;

READ the written defense of February 6, 2018 and the minutes of the hearing of May 8, 2018, which here are intended to be referred to in full with which the company, after describing the functioning of the disputed geolocation system called Remote Angel and having illustrated " The fulfilments carried out by the undersigned (Gianolini Servizi e Trasporti s.r.l.) pursuant to

Law 300/1970 and Legislative Decree 196/03", noted how "(...) the undersigned company did not commit the disputed violation as through the system does not process any personal data and therefore there is no obligation to notify. Furthermore, not even in the authorization provision of the Territorial Labor Directorate, which contains specific provisions on privacy and information for employees, is there any mention of the obligation to notify the Guarantor and therefore, the undersigned company, also in consideration of the fact that no personal data processing is carried out through the system, it has not immediately notified the Guarantor"

CONSIDERING that the arguments put forward are not suitable for determining the closure of the sanctioning procedure initiated with the dispute in question.

With reference to the obligation to submit the notification to the Guarantor, envisaged, for treatments involving the geolocation of people or things, by art. 37, paragraph 1, letter a), of the Code, it must be premised that the Authority, with provision of 23 April 2004 (in [www.gdpd.it](http://www.gdpd.it), web doc. n. 993385) clarified that "the rule refers to the localization of people or objects, and therefore refers to the detection of their presence in certain places, through electronic communication networks managed or accessible by the data controller. The location must be notified when it allows to continuously identify - even with possible intervals - the location on the territory or in certain geographical areas, based on equipment or electronic devices held by the owner or by the person or placed on the objects. The location must in any case allow the identity of the interested parties to be traced, even indirectly through appropriate codes". The exclusion from the obligation to submit the notification to the Guarantor, established by provision no. 1 of 2004 (in [www.gdpd.it](http://www.gdpd.it), web doc. n. 852561), concerns only the "processing of data that indicate the geographical position of means of transport by air, sea and land, carried out exclusively for transport safety purposes" .

On the basis of what has been declared and pointed out in the company's defense brief, the treatments carried out using the geolocation system are configured as personal data treatments. This geolocation activity corresponds to that indicated in the art. 37 of the Code and in the aforementioned provision of 23 April 2004, since the system is configured to detect the movement of the means of transport every two minutes; moreover, in the case in question the applicability of provision no. 1/2004, since the main purpose of the geolocation system, as declared by the company during the inspection, is not transport safety but "(...) the control of particular areas or tools for the purpose of protecting goods or people, mapping, territory monitoring and traffic control, routes, stops and speeds (...)";

NOTING, therefore, that Gianolini Servizi e Trasporti s.r.l., on the basis of the considerations referred to above, appears to have committed, in its capacity as data controller, pursuant to art. 4, paragraph 1, lett. f), and 28 of the Code, the violation pursuant to articles 37, paragraph 1, lett. a), and 38 of the Code, for having processed data indicating the geographical position of persons or objects via an electronic communication network without having previously notified the Guarantor.

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

CONSIDERING that the conditions for applying the provisions of art. 164-bis, paragraph 1, of the Code according to which "if any of the violations pursuant to art. 161, 162, 162-ter, 163 and 164 is less serious, the minimum and maximum limits established in the same articles are applied to an extent equal to two fifths";

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;

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 company of the geolocation system, as inferred from the records of the inspection activity;

b) for the purposes of evaluating the work performed by the agent, it must be noted that the company, from the query of the general register of treatments, appears to have presented the notification to the Guarantor, for the treatments in question, on 10 May 2017;

c) about the personality of the author of the violation, the fact that the company is not burdened by previous sanctioning proceedings defined briefly or following an injunction must be considered;

d) 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 Law no. 689/1981, the amount of the pecuniary sanction, based on the aforementioned elements evaluated as a whole, in the amount of 8,000.00 (eight thousand) euros for the violation pursuant to art. 163, considered the decrease pursuant to art. 164-bis, paragraph 1, of the Code;

HAVING REGARD to the documentation in the deeds;

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

HAVING REGARD TO 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 Dr. Giovanna Bianchi Clerici;

ORDER

to Gianolini Servizi e Trasporti s.r.l. VAT number: 00767410145, with registered office in Sondrio, viale dello Stadio n. 22, in the person of the pro-tempore legal representative, to pay the sum of 8,000.00 (eight thousand) euros as an administrative fine for the violation indicated in the justification;

ENJOYS

to the same company to pay the sum of 8,000.00 (eight thousand) euros, 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 lodged 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, July 5th 2018

PRESIDENT

Soro

THE SPEAKER

Cleric Whites

THE SECRETARY GENERAL

Busia