

Injunction order against Transpe S.p.A. - February 1, 2018

Record of measures

n. 56 of 1 February 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 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 the "Code"), carried out the investigations at Transpe S.p.A. (hereinafter "the company"), part of the Gavio S.p.A. and operating the road haulage of fuels, oils and fuels, as well as goods and containers on behalf of third parties, with headquarters in Tortona (AL), via Cavalieri di Vittorio Veneto n. 8, P.I. 01410840068, formalized in the minutes of operations carried out on March 31 and April 1, 2015, aimed at verifying the lawfulness of the processing of personal data carried out by the company and aimed at detecting the geographical position of persons or objects through an electronic communication network, with particular reference to the modalities with which the obligation to notify was fulfilled pursuant to art. 37 and 38 of the Code;

CONSIDERING that, on the basis of the declarations made during the inspections and the note sent on 14 April 2015, to dissolve the reservations formulated during the inspection, it was found that the company, since 2010, has installed on its own vehicles a geolocation system, aimed at "satisfying logistical needs, to ensure more efficient management and maintenance of the vehicle fleet, to ensure the safety and security of workers and to prevent and combat criminal events to the detriment of company assets" (minutes of transactions completed on March 31, 2015). With respect to the processing of personal data carried out through the aforementioned geolocation system, the company has communicated that it has notified the Guarantor, pursuant to art. 37 and 38 of the Code, on 26 March 2015;

GIVEN the minutes n. 37/2015 of 20 April 2015 (which is referred to here in full) with which the company was charged with the administrative violation envisaged by art. 163 of the Code, 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), failing to submit the notification to the Guarantor before the start of the processing, as required by art. 38 of the Code;

NOTING that the report prepared by the aforementioned Unit pursuant to art. 17 of the law of 24 November 1981 n. 689, the reduced payment does not appear to have been made;

GIVEN the defensive writings dated 5 June 2015, sent pursuant to art. 18 of the law n. 689/1981, with which the party specified that it had signed, in July 2009, a contract with the company TrackySat s.r.l., which "equipped over time 44 road tractors of the exponent with the related satellite devices, capable of identifying, by the software managed by this company, the geographic position of the exponent's means "; even before that, in 2008, "9 tankers of the exponent were equipped with similar geolocation systems at the request of the customer ENI Spa". Having said this, the company observed that it was not aware of its qualification as data controller, pursuant to art. 4 and 28 of the Code, and, consequently, of the obligation relating to the notification of the treatment to the Guarantor, pursuant to art. 37 and 38 of the same Code, as "was and is TrackySat s.r.l. owner of the hardware (provided on the means on loan to the exponent) and of the software (directly managed by the same), necessary for geolocation (...), [while] Transpe was and is contractually recognized the only right of remote access to the data recorded by the servers of TrackySat s.r.l. (...)" . In any case, after having signed a trade union agreement for the use of GPS tracking systems, "having arisen the doubt of holding the title of data controller on his own", he proceeded to notify the Guarantor of which in art. 37 of the Code on March 26, 2015. The party then complained that the administrative sanction was not applied to the extent of the legal minimum, in consideration of the tenuousness of the violation detected, which, in its opinion, is not of particular importance if reported to other types of processing for which notification is required. Finally, the party noted that "even in the event that the dispute raised with the report in question were correct, the same would not in any case be required to pay the administrative sanction, whatever it was, which should actually be challenged with the order injunction ", due to the prescription of the right to collect the sums due for the relative violation, pursuant to art. 28 of the law n. 689/1981. In fact, "it is undisputed that the violation was consummated in 2008 as regards tank trucks and in 2009 as regards engines and that the first act of interruption of the limitation period can only be recognized in the complaint report in question, of the year 2015, it follows that in any case the right of this Administration to collect the sums it should order has already been prescribed for some time ";

READ the minutes of the hearing of November 16, 2015, held pursuant to art. 18 of the law n. 689/1981, with which the party

reaffirmed what had already been declared in the defense briefs, requesting the cancellation of the dispute or, in the alternative, the application of the minimum legal requirement with the application of the diminution of which in art. 164-bis, paragraph 1, in consideration of the fact that there are no previous sanctioning proceedings against him and that the conduct can be considered minor;

CONSIDERING that the arguments put forward are not suitable to determine the dismissal of the sanctioning procedure initiated with the above dispute. In fact, the argument that the party has formulated with reference to the attribution of ownership of the treatment by the company TrackySat must be rejected, on the assumption that this is the owner of the electronic devices, necessary for the provision of the geolocation service, and that has itself installed them on Transpe vehicles and given them on free loan. Pursuant to art. 4, paragraph 1, lett. f), of the Code, in fact, the data controller is "the natural person, the legal person (...), who is responsible, even jointly with another owner, for the decisions regarding the purposes, methods of processing personal data and the tools used (...) ". In this case, if from a contractual point of view Transpe is a customer of TrackySat and uses the latter's satellite system to monitor the movements of its vehicles in order to better manage the work activity, it is observed that, from the point of view of the protection of personal data, Transpe undoubtedly holds the title of data controller, having taken decisions regarding the purposes and methods of processing geolocation data, carried out by means of a satellite system provided by TrackySat. Therefore, the administrative violation complaint was correctly attributed to Transpe, as data controller. As regards, however, the alleged prescription of the right of the Guarantor to collect the sums due for the violation of art. 37 of the Code (based on art. 28 of law no. 689/1981), it is noted that the alleged violation (relating to failure to notify) constitutes an offense of a permanent nature. Therefore, the moment of the commission of the offense coincides with that of the cessation of the conduct itself, which must be identified on the date of March 26, 2015, when, that is, the company has notified the Authority. Up to that moment, the geolocation activity was carried out illegally, as was promptly verified during the inspections and correctly contested with the minutes of 20 April 2015, notified in compliance with the terms set out in art. 14 of the law n. 689/1981. Finally, as regards the request to apply the administrative sanction envisaged for the violation of art. 37 with the diminuent referred to in art. 164-bis, paragraph 1, of the Code, it is noted that it is inapplicable due to the characteristics of the ascertained violation, which cannot be considered of lesser seriousness. The assessments regarding the lack of previous sanctioning proceedings against the company and regarding the lightness of the conduct put in place are carried out in view of the application of the criteria referred to in art. 11 of the law n. 689/1981 in

the determination of the amount of the sanction to be imposed, which is quantified, in this case, to the extent of the legal minimum;

NOTING, therefore, that Transpe S.p.A., on the basis of the above 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 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, 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, based on the aforementioned elements assessed as a whole, to the extent of Euro 20,000.00 (twenty thousand) for the violation referred to in art. 163;

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 Prof. Licia Califano;

ORDER

to Transpe S.p.A., with registered office in Tortona (AL), via Cavalieri di Vittorio Veneto n. 8, P.I. 01410840068, to pay the sum of € 20,000.00 (twenty 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 € 20,000.00 (twenty thousand), 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, 1st February 2018

PRESIDENT

Soro

THE RAPPORTEUR

Califano

THE SECRETARY GENERAL

Busia