

Injunction order against the Municipality of Formia - 29 September 2021

Record of measures

n. 351 of 29 September 2021

## 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, concerning the protection of individuals with regard to the processing of personal data, as well as the free circulation of such data and which repeals Directive 95/46 / EC, "General Data Protection Regulation" (hereinafter the "Regulation");

GIVEN the legislative decree 30 June 2003, n. 196, "Code regarding the protection of personal data", as amended by Legislative Decree 10 August 2018, n. 101, containing provisions for the adaptation of national law to the Regulation (hereinafter the "Code");

GIVEN the Regulation n. 1/2019 concerning internal procedures with external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor for the protection of personal data, approved by resolution no. 98 of 4 April 2019, published in the Official Gazette n. 106 of 8 May 2019 and in [www.gpdp.it](http://www.gpdp.it), doc. web n. 9107633 (hereinafter "Regulation of the Guarantor no. 1/2019");

GIVEN the documentation in the deeds;

HAVING REGARD to the observations of the Office made by the Secretary General pursuant to art. 15 of the Guarantor Regulation n. 1/2000 on the organization and operation of the office of the Guarantor for the protection of personal data, in [www.gpdp.it](http://www.gpdp.it), doc. web n. 1098801;

Rapporteur Prof. Ginevra Cerrina Feroni;

### 1. Introduction

From a complaint presented to the Authority in the month of XX it emerged that, in order to subscribe to the "authorized parking" service in the territory of the Municipality of Formia (hereinafter, the Municipality), it is required to fill in some forms , containing "excess data" with respect to the stated purpose.

## 2. The preliminary activity

In response to the request for information from this Authority, with note prot. n. XX of the XX, the Municipality declared that it had regulated the paid parking service within its territory with Municipal Council Resolutions, making a differentiation for the season ticket regime, identifying three different types of subjects who, for various reasons, they can access favorable subscription conditions compared to those provided for tourists, which are more expensive. The first type concerns residents in the municipal area and residents in neighboring municipalities who can request a paid parking pass through self-certification in application of the provisions of Presidential Decree 445/2000.

The Municipality, then, "intended to grant these favorable conditions to the following non-resident subjects:" owners of properties not resident in the Municipality of Formia, and subject to payment of the IMU and the TARI "; "Non-resident citizens renting apartments in the Municipality of Formia"; "Employees not resident in the Municipality of Formia, freelancers, self-employed workers and non-resident business owners of the Municipality of Formia". Therefore, the aforementioned provisions contained in the Municipal Council Resolutions impose proof of possession of the preferential title to these categories of subjects. Therefore, for "owners of properties not resident in the Municipality of Formia, and subject to payment of the IMU and the TARI" or for "non-resident citizens renting apartments in the Municipality of Formia", the "rental contract or possession of the 'property or alternatively payment of the last TARI ", for" employees not resident in the Municipality of Formia, freelancers, self-employed workers and non-resident business owners of the Municipality of Formia ", a" copy of the employment contract "is required o "copy of registration with the chamber of commerce".

The Municipality has also declared that the paid parking service in the municipal area has been entrusted to the company K-City s.r.l. that "it did not operate, nor was it allowed otherwise, any assessment as to whether or not to request such documentation, limiting itself to applying the provisions received from the administration in the Special Tender Specifications, adopted by virtue of the Council Resolution Municipal n. XX of the XX and subsequent amendments [...] on xx to the company K-City s.r.l. the parking management service was delivered for a fee by means of a delivery report of the Service subject to the law and at the same time the "External Data Processor" was appointed until the signing of the contract at which time the formal appointment of External Data Processing Manager ".

From the documents it emerged that this trade union decree appointing the company K-city s.r.l. as "data processor", containing the specific instructions of the owner, was issued only on the XXth, therefore after the start of the investigation by

the Guarantor's Office, while the company manages the service in question from the XXth.

With regard to the information relating to the processing in question, the Municipality stated that "to the extent of its competence, K-city s.r.l. has provided through its information the provisions of art. 12, 13 and 14 of EU Regulation 2016/679 ". It has been ascertained, however, that the information provided by the company K-city s.r.l. generically concerns the treatments carried out by it as "data controller", and is not relevant to the treatment relating to the paid parking service performed, on behalf of the Municipality, as "data processor", nor does it appear to have been conferred to the interested parties, by the Municipality, any specific information in relation to the processing of data underlying the paid parking subscription service.

In response to a further request for information from the Authority, the Municipality, with a note of the XXth, declared: "with reference to what was requested in relation to the point" the actual need, with respect to the alleged purpose of managing the parking passes for citizens , to collect the documentation currently required, specifying, for each type of documentation acquired, the actual need and the impossibility of using measures more compliant with the "minimization" principle described above (eg certificate issued by the employer, self-declaration of the deed of notoriety pursuant to Article 47 of Presidential Decree 445/2000, the complete family status of all members of the family unit, etc.) ", by virtue of the Municipal Council resolution no. XX of the XX, the K-city contracting company requested the necessary and essential documentation for the correct issue of the concessionary permit for the parking permit (see points 3 and 4 of the aforementioned Municipal Council resolution) and not directly acquired by the contracting company for the issue of subscriptions. In particular, the request for the certificate issued by the employer as well as the registration with the Chamber of Commerce by the user was necessary to obtain the concessions intended for the issue of the subscription in favor of the "employee / self-employed / owner of commercial activity "in order to prove the place of work in the territory of the Municipality of Formia, as provided for in point 4 of resolution no. XX of the XX. Also, with reference to the request for "substitutive declaration of the deed of notoriety pursuant to art. 47 of the Presidential Decree 445/2000, ", it is represented that it was necessary for the issuance of the facilitated season ticket for two number plates belonging to the same family unit, as provided for in point 2 of resolution no. XX. Finally, with reference to the request of the "Rental / possession contract and last TARI" represents that it was necessary for the purpose of issuing the subsidized season ticket for non-resident owners of properties in the Municipality of Formia to prove ownership of the property and / or possession in the Municipality of Formia as established in point 3 of resolution no. XX of the XX ".

In relation to the data retention times with reference to the treatment in question, in the aforementioned note the Municipality stated "that this aspect is regulated in point 7, subpoint 3, entitled" Retention and cancellation "of the" Privacy Manual drawn up in accordance with current legislation in the processing of personal data "adopted by the company K-city s.r.l.".

However, this manual is drawn up by the company K-city s.r.l. for the treatments carried out as data controller and is therefore not relevant to the treatments, such as the one in question, carried out "on behalf" of the Municipality of Formia as the data processor.

With a note of the XX (prot. No. XX, the Office, on the basis of the elements acquired, notified the Municipality, pursuant to art. 166, paragraph 5, of the Code, the initiation of the procedure for the adoption of provisions pursuant to art.58, par.2, of the Regulation, inviting the aforementioned holder to produce defensive writings or documents to the Guarantor or to ask to be heard by the Authority (art. 166, paragraphs 6 and 7, of the Code; as well as art. 18, paragraph 1, of law no. 689 of 11/24/1981). With the aforementioned note, the Office found that the Municipality has put in place the processing of personal data relating to subjects interested in the paid parking subscription, collecting "excess" information with respect to the alleged purpose, without having provided suitable information to the interested parties, in the absence of definition of the role of the external subject involved in the treatment and without having defined the retention times of the collected data, in violation of the articles of articles 5, p ar. 1, lett. a) and c) and e), 12, 13, 14, 25 and 28 of the Regulation.

With the XXth note, the Municipality sent its defense writings to the Guarantor in relation to the notified violations, declaring that "with a view to loyal collaboration between Public Administrations, it intends to adapt to what is highlighted by this Authority and mitigate any possible negative effect; [...] Will therefore adapt the forms according to what is contested, distinguishing the forms according to the tariff concessions requested. For each form no non-essential data will be requested and directly referable to the concession: for the concessions to freelancers, for self-employed workers and for the owners of commercial activities not resident in the Municipality of Formia, a self-certification will be required for the related information companies, while for employees, only a certificate of service will be requested; for the concessions to residents in the Municipality of Formia, the obligation to attach the certificate of family status will be removed, but a self-certification relating to the owners of motor vehicles in the family context will be required; for owners of properties not resident in the Municipality of Formia and subject to payment of the IMU and TARI, for non-resident citizens renting apartments in the Municipality of Formia, as well as for all members of the family unit or for the cohabitants of the tenants or owners a self-certification will suffice. The

information addressed to citizens will be integrated on the possibility for them to be able to obscure any data not necessary for the issuance of the subscription or the requested facility [...] The data retention methods will be limited and indicated as referring exclusively to the period of validity of the subscription and subsequently canceled from the archive in the manner prescribed by law. The forms will be agreed with the concession holder which will be expressly requested to comply with the new provisions. "

On the 20th, the hearing was held pursuant to art. 166, paragraph 6, of the Code, during which the Municipality declared that it had "adopted timely corrective measures, asking the concessionaire to delete the excess data previously acquired and to adopt a new form, which will be used for new subscriptions starting from December 2020. The new forms minimize the personal data of the interested parties, in accordance with what is indicated in the defensive briefs of the Municipality [...] In any case, the treatments concerned common data and not also data belonging to particular categories or judicial data. The treatments concerned about 256 interested parties and therefore not a large database. In any case, it was only a retention of personal data and not a dissemination ".

### 3. Outcome of the preliminary investigation

Pursuant to the regulations on the protection of personal data, the processing of personal data carried out by public entities (such as the Municipality of Formia) is lawful only if necessary "to fulfill a legal obligation to which the data controller is subject" or "for the execution of a task in the public interest or connected to the exercise of public authority vested in the data controller "[art. 6, par. 1, lett. c) and e)]. The regulation of stops and parking in the area is part of the institutional activities entrusted to local authorities.

Even in the presence of a condition of lawfulness, in any case, the data controller is required to respect the principles of data protection, including those of "lawfulness, correctness and transparency", according to which the data must be "processed in a lawful, correct and transparent manner towards the interested party", of "minimization" of data, on the basis of which the data must be "adequate, relevant and limited to what is necessary with respect to the purposes for which they are processed" and "conservation limitation", according to which the data must be "kept in a form that allows identification of the data subjects for a period of time not exceeding the achievement of the purposes for which they are processed" (Article 5, par. 1, letters a) and c) and e) of the Regulation).

#### 3.1 The principles of minimization, limitation of retention, data protection by design and data protection by default

According to the Regulation, the processing must be "necessary" with respect to the lawful purpose pursued (Article 6, par. 1 of the Regulation) and have as its object only the data "adequate, relevant and limited to what is necessary with respect to the purposes for which are processed "(art. 5, par. 1, letter c), of the Regulation).

As emerges from the documents, the Municipality has not highlighted suitable reasons to demonstrate the actual need to collect all the information required of citizens to regulate the parking subscription service (by way of example, the entire individual workers' contract; copy of the registration with the Chamber of Commerce, complete family status of all members of the family registry), merely reiterating the need to acquire such documentation, nor are organizational measures adopted to ensure compliance with the aforementioned principle of minimization (e.g. instructions addressed to citizens on the need to obscure unnecessary data in the documentation to be produced to request the subscription).

The Municipality has declared that it has adopted, starting from December 2020, a new form, which allows citizens, mainly, to self-certify the possession of the requirements to obtain the concession for the parking pass, in order to collect the only essential data, and to have given instructions to the data controller to delete the excess data previously acquired.

It follows that starting from September 2019, until December 2020, the processing took place in violation of the minimization principle pursuant to art. 5 par. 1, lett. c) of the Regulations.

Furthermore, from the elements collected in the investigation, it emerged that the Municipality had not established the maximum terms for retention of the collected data.

With a note of the XXth, the Municipality declared that it had defined the maximum retention times for personal data and that "The methods of data retention will be limited and indicated as referring exclusively to the period of validity of the subscription and subsequently deleted from the archive with the procedures required by law ".

In this regard, it is the responsibility of the data controller, "taking into account the state of the art and implementation costs, as well as the nature, scope of application, context and purposes of the processing, as well as risks having different probabilities and gravities for the rights and freedoms of natural persons "to implement" appropriate technical and organizational measures to ensure that, by default, only the personal data necessary for each specific purpose of the processing are processed. This obligation applies to the quantity of personal data collected, the scope of the processing, the retention period and accessibility "(Article 25, paragraphs 1 and 2 of the Regulation).

It is therefore ascertained that the processing of the data collected, in order to regulate the paid parking service in the

municipal area, took place, starting from September 2019 and up to August 2020, in violation of the principle of "conservation limitation "(Art. 5, par. 1, lett. E) and in violation of art. 25 of the Regulation.

### 3.2 Information for interested parties

From the documentation in the documents it emerges that, from the date on which the Municipality adopted the forms in question (September 2019) to the date on which the owner approved with municipal council resolution no. XX a new forms accompanied by the information to the interested parties (December 2020) it is ascertained that the information has not been provided to the interested parties.

In fact, the Municipality declared (prot. Note n. XX of the XX) "as far as it is concerned, the K-city s.r.l." has fulfilled the obligation to provide information to the interested parties.

It has been ascertained, however, that the information provided by the company K-city s.r.l. concerns the treatments carried out by it as "data controller", and is not relevant to the treatment relating to the paid parking service performed, on behalf of the Municipality, as "data processor", nor does it appear to have been conferred to interested, by the Municipality, any specific information in relation to the processing of data underlying the paid parking subscription service.

Therefore, the processing appears to have been carried out in violation of the obligation that requires the data controller to provide the data subjects with prior information, in accordance with the provisions of Articles 12, 13 and 14 of the Regulation, also in compliance with the "principle of transparency" (Article 5, letter a) of the Regulation).

### 3.3 Appointment of the data controller

For the purposes of compliance with the legislation on the protection of personal data, it is necessary to precisely identify the subjects who, for various reasons, can process personal data and clearly define their respective powers, in particular that of owner and manager of the treatment and subjects who operate under their direct responsibility (Article 4, paragraph 1, point 7 of the Regulation and Articles 28 and 29 of the Code).

In particular, the owner is the subject on whom the decisions regarding the purposes and methods of processing the personal data of the interested parties fall as well as a "general responsibility" on the treatments put in place (see art. 5, par. 2 so-called "accountability "And 24 of the Regulation), even when these are carried out by other subjects" on its behalf "(cons. 81, art. 4, point 8) and 28 of the Regulation; cf. also provision no. 81 of 7 March 2019, doc. web 9121890; provision no. 160 of 17 September 2020, doc. web 9461168; provision no. 294 of 22 July 2021, doc. web 9698724).

The relationship between owner and manager is governed by a contract or other legal act, stipulated in writing which, in addition to mutually binding the two figures, allows the owner to give instructions to the manager and provides, in detail, which is the subject matter, the duration, nature and purposes of the processing, the type of personal data and the categories of data subjects, the obligations and rights of the owner. The Data Processor is therefore entitled to process the data of the interested parties "only on the documented instruction of the owner" (Article 28, paragraph 3, letter a) of the Regulation).

The Regulation also governed the obligations and other forms of cooperation to which the data controller is required when acting on behalf of the owner and the scope of their respective responsibilities (see articles 30, 33, par. 2 and 82 of the Regulation) .

Based on art. 24 of the Regulation, taking into account the nature, scope, context and purposes of the processing, as well as the risks with different probability and severity for the rights and freedoms of natural persons, it is primarily up to the data controller to put adequate technical and organizational measures in place to guarantee, and be able to demonstrate, that the processing is carried out in accordance with the Regulations. These measures must also be reviewed and updated as necessary.

From what emerged during the investigation, the service for the management of the paid parking was entrusted, on the XXth, to the company K-city s.r.l., by means of a "report of delivery of the Service", formally appointing it as "External Data Processor" and referring to the stipulation of a specific Trade Union Decree governing the relationship with the aforementioned company as "External Data Processing Manager".

It is ascertained that the trade union appointment decree, containing the specific instructions to the "data controller", was issued only on the XXth date. It follows that starting from 18 September 2019 and until 27 April 2020, the company K-city s.r.l. participated in the processing without his role being properly defined by the owner, in violation of art. 28 of the Regulation.

#### 4. Conclusions

In light of the aforementioned assessments, it is noted that the statements made by the data controller in the defense writings □ whose truthfulness may be called upon to answer pursuant to art. 168 of the Code □ although worthy of consideration, they do not allow to overcome the findings notified by the Office with the act of initiation of the procedure and are insufficient to allow the filing of this procedure, however, none of the cases provided for by the art. 11 of the Guarantor Regulation n. 1/2019.

From the checks carried out on the basis of the elements acquired, also through the documentation sent by the data controller,



as well as from the subsequent evaluations, the non-compliance of the treatments carried out by the Municipality concerning the regulation of the subscription service for the parking of paid vehicles was ascertained.

The violation of personal data, object of the investigation, took place in full force of the provisions of the Regulation and the Code, as amended by Legislative Decree No. 101/2018, and therefore, in order to determine the regulatory framework applicable under the time profile (art.1, paragraph 2, of the law of November 24, 1981, n.689), these constitute the provisions in force at the time of the committed violation, which took place starting from September 2019.

The preliminary assessments of the Office are therefore confirmed and the unlawfulness of the processing of personal data carried out by the Municipality is noted, as it occurred in a manner that did not comply with the general principles of processing, in the absence of suitable information, in the absence of the definition of the maximum retention times of personal data and in the absence of regulation of the role played by the company K-City s.r.l. as "data processor", in violation of art. 5, 12, 13, 14, 25 and 28 of the Regulation.

The violation of the aforementioned provisions makes the administrative sanction applicable pursuant to art. 58, par. 2, lett. i), and 83, para. 4 and 5, of the same Regulation, as also referred to by art. 166, paragraph 3, of the Code.

5. Adoption of the injunction order for the application of the pecuniary administrative sanction and ancillary sanctions (articles 58, par. 2, lett. I and 83 of the Regulation; art. 166, paragraph 7, of the Code).

The Guarantor, pursuant to art. 58, par. 2, lett. i), and 83 of the Regulations as well as art. 166 of the Code, has the power to "inflict an administrative pecuniary sanction pursuant to Article 83, in addition to the [other] [corrective] measures referred to in this paragraph, or instead of such measures, depending on the circumstances of each single case "and, in this context," the College [of the Guarantor] adopts the injunction order, with which it also disposes with regard to the application of the ancillary administrative sanction of its publication, in whole or in excerpt, on the website of the Guarantor pursuant to Article 166, paragraph 7, of the Code "(Article 16, paragraph 1, of the Guarantor Regulation no. 1/2019).

In this regard, taking into account art. 83, par. 3, of the Regulations, in this case the violation of the aforementioned provisions is subject to the application of the same administrative fine provided for by art. 83, par. 5, of the Regulation.

The aforementioned administrative fine imposed, depending on the circumstances of each individual case, must be determined in the amount, taking into account the elements provided for by art. 83, par. 2, of the Regulation.

For the purposes of applying the sanction, it was considered that the processing started from September 2019 and continued

until December 2020, concerned the data of about 256 interested parties in the subscription service for paid parking in the municipal area. , in violation of the principles of art. 5 of the Regulations, in the absence of the provision of the information to the interested parties, in the absence of definition of the maximum retention times of personal data and in the absence of definition of the relationship with the company involved in the processing as "data processor".

This violation was brought to the attention of the Authority through a complaint.

On the other hand, it is represented that the Municipality has taken action in order to remedy the violation and mitigate its possible negative effects, introducing new forms more compliant with the minimization principle referred to in art. 5, par. 1, lett. c) of the Regulations, setting the maximum terms for retention of the collected data and providing suitable information to the interested parties. In any case, the non-malicious behavior of the violation and the absence of previous violations against the Municipality are highlighted.

Due to the aforementioned elements, assessed as a whole, it is deemed necessary to determine pursuant to art. 83, par. 2 and 3, of the Regulations, the amount of the pecuniary sanction, provided for by art. 83, par. 5, lett. a) of the Regulations, to the extent of € 30,000 for the violation of Articles 5, 12, 13, 14, 25 and 28 of the Regulation as a pecuniary administrative sanction deemed effective, proportionate and dissuasive pursuant to art. 83, par. 1, of the same Regulation.

Taking into account the number of interested parties, the failure to provide the information and the failure to define the role of the data controller, it is believed that the ancillary sanction of the publication on the website of the Guarantor of this provision, provided for by art. 166, paragraph 7 of the Code and art. 16 of the Guarantor Regulation n. 1/2019.

Finally, it is believed that the conditions set out in art. 17 of Regulation no. 1/2019.

WHEREAS, THE GUARANTOR

pursuant to art. 57, par. 1, lett. a) and f) of the Regulations, notes the unlawfulness of the processing carried out by the Municipality of Formia, for the violation of Articles 5, 12, 13, 14, 25 and 28 of the Regulations, in the terms set out in the motivation

ORDER

to the Municipality of Formia, in the person of the pro-tempore legal representative, with registered office in via Vitruvio, n. 190 - 04023 - Tax Code 81000270595– to pay the sum of 30,000 euros as a pecuniary administrative sanction for the violations mentioned in the motivation; it is represented that the offender, pursuant to art. 166, paragraph 8, of the Code, has the right to

settle the dispute by paying, within 30 days, an amount equal to half of the sanction imposed;

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to the Municipality of Formia to pay the sum of € 30,000 - in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, according to the methods indicated in the annex, within thirty 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;

#### HAS

the publication of this provision on the website of the Guarantor, pursuant to art. 166, paragraph 7, of the Code and art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019;

the annotation of this provision in the internal register of the Authority, provided for by art. 57, par. 1, lett. u), of the Regulations, violations and measures adopted in compliance with art. 58, par. 2, of the Regulation.

Pursuant to art. 78 of the Regulation, of art. 152 of the Code and 10 of Legislative Decree no. 150/2011, against this provision, it is possible to appeal before the ordinary judicial authority, under penalty of inadmissibility, within thirty days from the date of communication of the provision itself or within sixty days if the applicant resides abroad.

Rome, 29 September 2021

#### PRESIDENT

Stanzione

#### THE RAPPORTEUR

Cerrina Feroni

#### THE SECRETARY GENERAL

Mattei