

[doc. web n. 9777996]

Injunction order against Amiu s.p.a. - April 28, 2022 \*

Record of measures

n. 163 of 28 April 2022

## THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by 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.gdpd.it](http://www.gdpd.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.gdpd.it](http://www.gdpd.it), doc. web n. 1098801;

Rapporteur Dr. Agostino Ghiglia;

### 1. Introduction

From a report received by the Authority in the month of XX it emerged that the company Amiu s.p.a. (hereinafter, the company), manager of the municipal waste collection service for the Municipality of Taranto (hereinafter, the Municipality), has installed some video cameras in order to identify and sanction illegal behavior.

From what appears in the report, the company would have disseminated, through the publication in its Facebook profile, some videos (see video attachment delXX) and some images, collected through the video surveillance systems installed in the municipal area, from which some of them would be identified or identifiable. stakeholders.

## 2. The preliminary activity

With a note from the XX, in response to the Authority's request for information (prot. No. XX of the XX), the company stated, among other things, that:

- "operates in the sector of local public services, and in particular in that of waste cycle management. Among its objectives is the protection of the environment and the territory, for the achievement of which it carries out activities in the field of urban hygiene and decoration, collection, transport and disposal of waste ";
- "it is an in-house company with 100% control of the Municipality of Taranto";
- "Despite the efforts made by the police and in particular by the Municipal Police in the field of environmental protection and urban decor, the size of the territory in relation to the staffing facilities does not allow for an effective and widespread control activity. With the Trade Union Ordinance no.22 of 28/03/2012, the assignment to the staff of AMIU Taranto SPA, wholly owned by the Entity, was therefore ordered to ascertain and immediately contest administrative offenses deriving from the violation of municipal regulations on waste disposal. This conferment also concerns the ban on abandoning waste, pursuant to Article 255 of Legislative Decree 152/2006 ";
- "given the rampant phenomenon of waste abandonment, in order to contain these acts of incivility, the Administration of the Municipality of Taranto and AMIU Taranto S.p.A., have shared the desire to install in the most sensitive sites, where abandonments are repeated, of video surveillance / camera traps systems ";
- "the Municipality of Taranto [...] with the Trade Union Decree [...] of 03/15/2021, has assigned the task of ecological auxiliaries to the employees of AMIU Taranto S.p.A.";
- "in this Decree, the methods of transmission of the offenses are also indicated: it will transmit the reports of ascertainment of the infringements, with the imposition of the sanction, to the Local Police Department of Taranto, which will take care of the consequential obligations relating to the verification of the reduced payment or " activation of the procedure pursuant to art. 18 Law no. 689/81 [...] ";
- "With reference to the aforementioned publication of some video images on social media, the following is specified: In order

to improve the media action of the surveillance system and implement greater deterrence of the installed video surveillance system, the AMIU Taranto S.p.A. publishes some images on social media, taking care to hide the elements that can allow the identification of the natural persons involved directly or indirectly. All in order not to identify such images as personal data and therefore not subject to the application of the Privacy ".

The company has attached to the aforementioned note some documents including the trade union ordinance of 28 March 2012, with which the functions of ascertaining and challenging the administrative offenses deriving from the violation of municipal regulations on disposal were conferred on the company's staff. of waste, as well as for the violations referred to in the T.U. n. 152/2006 on the disposal of waste (annex 1); the act of appointment, as external manager pursuant to art. 28 of the Regulations of the company ITS s.r.l., supplier of the video surveillance system in question signed on November 9, 2020 (Annex 5); some images published on the company's Facebook profile (annex 7).

With a note of the XX, in response to a further request for information from the Authority (prot. No. XX of the XX, the company declared "with reference to the aforementioned publication on Facebook of some videos and images in which some interested parties are identifiable [...] we take note of the unfortunate situation linked to a mere careless error of the personnel authorized to mask the subjects before publication. This situation does not comply with the provisions of internal procedures since, before publishing on social networks, the authorized personnel takes care to conceal the elements that can allow the identification of the natural persons involved directly or indirectly. All in order not to identify such images as personal data subject to the application of the Privacy. The images in question were promptly removed from the Facebook page " .

Therefore, also on the basis of what is admitted by the company itself, the dissemination of personal data (such as the publication of images and videos, concerning interested parties, via social networks), collected for the execution of a task of public interest or connected to the exercise of public authority, it is noted that the same can only take place if provided for by a law or regulation (Article 2-ter, paragraphs 3 and 4, letter b of the Code, in the text prior to the amendments made by Legislative Decree 8 139, in force at the time of the events to be reported). Since the documents do not reveal the conditions of lawfulness underlying the processing in question, the violation of the principle of "lawfulness, correctness and transparency" pursuant to art. 5, par. 1, lett. a), as well as art. 6 of the Regulation and art. 2-ter of the Code.

Also taking into account that the images collected through the video surveillance system in question are processed, originally for the purpose of ascertaining the offenses, as agreed with the Municipality, the data controller, it appears that the further

processing deriving from the dissemination of the images through the Facebook channel of the company, for alleged so-called purposes. of moral suasion, are in contrast with the principle of limitation of the purposes referred to in art. 5, par. 1, lett. b) of the Regulations.

To the aforementioned note, the company has also attached the "agreement pursuant to art. 28 of EU REG 2016/679 "with the Municipality in which, among other things, the company ITS s.r.l., supplier of the video surveillance system, is correctly qualified, in agreement with the Municipality, as a sub-manager. This agreement, which also concerns the processing by means of the video surveillance system in question, was signed on 14 January 2022.

It follows that the company participated in the processing in question, starting from March 28, 2012 and until January 14, 2022, without its role, from the point of view of the protection of personal data having been defined, as well as that the first appointment of the company ITS s.r.l. as "data processor" (instead of sub-processor) occurred without "prior written authorization, specific or general, of the data controller" in violation of art. 28 of the Regulation.

Finally, it emerged from the documents that the company has not appointed a data protection officer, nor have any reasons emerged that may have led the company and not deem such appointment necessary, in violation of art. 37, par. 1, lett. b) of the Regulations (see also the "Guidance document on the designation, position and duties of the Data Protection Officer (DPO) in the public sphere" attached to the Authority's provision no. 186 of 29 April 2021 - doc. web. 9589104-where it is envisaged, in paragraph 3, the opportunity to appoint a DPO for the concessionaires of local public transport services or waste collection, when they use systems that involve the processing, on a large scale, of employee data and users, associated with regular or systematic monitoring; the Guidelines on data protection officers "of the Article 29 Working Group adopted on 13 December 2016 and amended on 5 April 2017; Faq on the Data Protection Officer (DPO) in private sector of 26 March 2018 - doc. web n. 8036793).

With a note of the XX (prot. No. XX), the Office, on the basis of the elements acquired, notified the company, pursuant to art. 166, paragraph 5, of the Code, the initiation of the procedure for the adoption of the measures referred to in art. 58, par. 2, of the Regulation, inviting the company 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 n. 689 of 11/24/1981). With the aforementioned note, the Office found that the company carried out the processing of personal data in a manner that did not comply with the principles of "lawfulness, correctness and transparency", as well as "purpose limitation" of the data, in violation

of art. 5, par. 1, lett. a) and b) of the Regulations; without his role as "data processor" previously defined by the Municipality, the data controller and, therefore, in the absence of a condition of lawfulness (Articles 5 and 6 of the Regulation), in the absence of a suitable legal basis also with regard to the publication on Facebook of images and videos collected through the video surveillance system, in violation of articles 2-ter of the Code and 6 of the Regulations; in violation of art. 28 of the Regulation and in the absence of the appointment of the data protection officer referred to in art. 37 of the Regulation.

The company has not presented defensive briefs.

### 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 Taranto) 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)]. Municipal solid waste management is one 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 comply with the additional principles on data protection, including those of "correctness and transparency", on the basis of which the data must be processed, as well as lawfully, also "fair and transparent towards the data subject" and in compliance with the principle of "purpose limitation", according to which the data must be "collected for specific, explicit and legitimate purposes, and subsequently processed in such a way that it is not incompatible with these purposes "(art. 5, par. 1, lett. a) and b) of the Regulation).

#### 3.1 The treatment carried out by the company regarding the municipal solid waste management service, including video surveillance

Pursuant to art. 28 of the Regulation, the owner may also entrust processing to third parties who present sufficient guarantees regarding the implementation of technical and organizational measures suitable to ensure that the processing complies with the regulations on the protection of personal data ("responsible for treatment").

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, par. 1 and 3 of the Regulation).

As emerged in the course of the investigation, the processing of the data in question, carried out by the company on behalf of the Municipality (against which a specific provision is simultaneously adopted), was initiated without the role being regulated pursuant to art. 28 of the Regulation (nor pursuant to Article 29 of the previous Code), as the trade union order of 28 March 2012 by which the functions of ascertaining and challenging the administrative offenses deriving from the violation of municipal regulations on waste disposal, does not meet the characteristics of the legal act aimed at regulating the relationship with the Manager, as it does not contain the elements provided for by art. 29 of the previous Code nor the elements provided for by art. 28 of the Regulation.

Also pursuant to art. 29 c. 4, 4 bis and 5 of the previous Code, in fact "The tasks entrusted to the manager are analytically specified in writing by the owner", "The owners stipulate legal acts with the aforementioned managers in writing, which specify the purpose pursued, the type of data , the duration of the processing, the obligations and rights of the data controller and the methods of processing; the aforementioned acts are adopted in compliance with standard schemes prepared by the Guarantor "and" The manager carries out the treatment in compliance with the conditions established pursuant to paragraph 4-bis and the instructions given by the owner, who, also through periodic checks, supervises the timely observance of the provisions referred to in paragraph 2, of their instructions and of what is established in the acts referred to in paragraph 4-bis ". Not having been identified as data controller and not having been indicated by the company specific conditions that legitimized the processing of personal data, it must be concluded that the same was carried out in the absence of the conditions of lawfulness and therefore in violation of Articles 5, par. 1, lett. a) and 6 of the Regulations as previously clarified by the Guarantor with regard to similar cases (see provision no.161 of 17 September 2020, web doc. 9461321; provision no. 281 of 17 December 2020, web doc 9525315; provision no. 292 of 22 July 2021, web doc. 9698558; provision no. 293 of 22 July 2021, web doc. 9698597; provision no. 352 of 29 September 2021, web doc. 9713902; Guidelines "on concepts of owner and manager of the treatment in the GDPR "n. 07/2020, in particular note 35).

Furthermore, it is ascertained that the company contacted ITS s.r.l., the supplier of the video surveillance system in November 2020 (designating it as the "data processor") without the "prior written authorization, specific or general, of the data controller "in violation of art. 28, par. 2 of the Regulations.

Only later, in the "agreement pursuant to art. 28 of EU REG 2016/679 ", signed between the company Amiu s.p.a. and the Municipality on 14 January 2022, the data controller explained that "the company, subject to the written authorization of the Municipality, may have to communicate or make available the personal data owned by the latter to one or more third parties (such as sub responsible), in order to entrust these subjects with part of the processing activities "(point 6). In the list of sub-managers envisaged to date, inserted at the bottom of the agreement, the aforementioned company ITS srl is correctly inserted.

### 3.2 The dissemination of images and videos collected on Facebook

From the attachments to the report received (see in particular, the video of the XXth) and from what emerged during the investigation, the dissemination of images and videos concerning some identified or identifiable citizens is ascertained.

It should be clarified that in order to consider a person identifiable "it is appropriate to consider all the means [of which] a third party can reasonably use to identify that natural person directly or indirectly" (paragraph 26 of the Regulation). By "identify" we do not mean "only the possibility of recovering the name and / or address of a person, but also the potential identifiability through identification, correlation and deduction" (Working Group Art. 29, Opinion 05/2014 on anonymization techniques, WP216). The dissemination of images of natural persons, even if their face is not visible or has been previously obscured, may, in some cases, still allow the identification of the same, when certain elements of the context, considered in association between they lead back to a specific interested party (eg clothing, car model, etc.).

The publication of images and videos of interested parties was, among other things, confirmed by the company itself which stated in the note of the XX that it had published "on Facebook some videos and images in which some interested parties are identifiable", supporting , however, that "this situation does not comply with the provisions of internal procedures since, before publishing on social networks, the authorized personnel take care to conceal the elements that can allow the identification of the natural persons involved directly or indirectly. All in order not to identify such images as personal data subject to the application of the Privacy ". On this point, however, no documentation was provided to the Authority regarding the alleged internal procedure addressed to staff, regarding the concealment of images.

Since, from the documents, the legal basis that would have legitimized the disclosure of personal data is not indicated, the violation of the principle of "lawfulness, correctness and transparency" (Article 5, paragraph 1 letter a) of the Regulation is ascertained. ), the absence of a suitable legal basis pursuant to art. 6 of the Regulation and art. 2-ter of the Code (in the text

prior to the amendments made by Legislative Decree 8 October 2021, n.139, in force at the time of the facts reported).

### 3.3. The principle of purpose limitation

The collection of images with the video surveillance system in question is aimed at the acquisition of evidence for ascertaining and contesting administrative offenses resulting from the violation of municipal regulations on waste disposal, as well as for the violations referred to in the Consolidated Law on Finance. n. 152/2006 on the disposal of waste. The documents do not provide information demonstrating the compatibility of the further processing (publication on Facebook) with the purposes on the basis of which the data were previously collected and processed, with consequent violation of the principle of "purpose limitation" referred to in art. 5 par. 1, lett. b) of the Regulations.

It should be remembered that given the diffusion capacity - and therefore, potentially highly damaging for the interested parties - of the so-called social networks, in general, it is advisable to adopt a prudential attitude in using them, through the publication of images or videos of clearly identified or identifiable citizens, for "demonstration and educational" purposes, aimed at the community, resorting, if necessary, exclusively to the institutional communication tools in charge of this.

### 3.4. Failure to designate the Data Protection Officer

Finally, there is no evidence that the company has appointed a data protection officer.

On this point, given the substantially public nature of the activity carried out by this company, which involves the processing of personal data of thousands of citizens in the context of the collection, transport and disposal of waste, also for the purpose of ascertaining and challenging the administrative offenses deriving from the violation of municipal regulations, also taking into account the use of a video surveillance system capable of involving "regular and systematic monitoring of data subjects on a large scale", it is believed that this company should have appointed a data protection officer, figure essential in the support and supervision of the correctness of the personal data processing carried out. The violation of art. 37 of the Regulation.

## 4. Conclusions

In light of the aforementioned assessments, it is not possible to overcome the findings notified by the Office with the act of initiating the procedure.

From the checks carried out on the basis of the elements acquired, as well as from subsequent assessments, the non-compliance of the treatments carried out by the company, in the name and on behalf of the Municipality of Taranto, concerning the regulation of the municipal solid waste management service was ascertained.



As a preliminary point, it is noted that, even if the conduct subject to the investigation by the company began before the date of full application of the Regulation, in order to determine the applicable rule in terms of time, the principle of legality must be recalled as per 'art. 1, paragraph 2, of law no. 689 of 11/24/1981 which, in providing as "The laws that provide for administrative sanctions are applied only in the cases and times considered in them", asserts the recurrence of the principle of the tempus regit actum. The application of this principle determines the obligation to take into consideration the provisions in force at the time of the committed violation. In the case that concerns us, this moment - considering the permanent nature of the contested conduct - must be identified at the moment of cessation of the unlawful conduct, which from the documents of the investigation appears to have lasted at least until January 14, 2022, i.e. after the 25th May 2018, the date on which the Regulation became fully applicable.

The preliminary assessments of the Office are therefore confirmed and the unlawfulness of the processing of personal data carried out by the company starting from March 2012 is noted, as it occurred in a manner that did not comply with the general principles of processing, in the absence of a condition of lawfulness, resorting to a "sub-processor" without the "prior written authorization, specific or general, of the data controller" and in the absence of designation of the data protection officer, in violation of art. 5, 6, 28, 37 of the Regulation and art. 2-ter of the Code.

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, 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 March 2012 and still in progress, had as its object the data, potentially, of all citizens whose personal data were processed in the context of the management of the municipal solid waste service, in violation of the principle of "lawfulness, correctness and transparency" and "purpose limitation" pursuant to art. 5 of the Regulation, in the absence of a condition of lawfulness, using a "sub-processor" without the "prior written authorization, specific or general, of the data controller" and in the absence of designation of the data protection officer.

This violation was brought to the attention of the Authority through a report; it does not appear that the company has adopted adequate measures to ensure compliance of the treatments put in place with the legislation on the protection of personal data, nor has it collaborated during the procedure, not even presenting the defense briefs.

On the other hand, the non-malicious behavior of the violation and the absence of previous violations against the company 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 € 200,000 for the violation of Articles 5, 6, 28, 37 of the Regulation and art. 2-ter of the Code as a pecuniary administrative sanction deemed effective, proportionate and dissuasive pursuant to art. 83, par. 1, of the same Regulation.

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) of the Regulation and art. 144 of the Code, notes the unlawfulness of the processing carried out by the company, for the violation of Articles 5, 6, 28 and 37 of the Regulation and art. 2-ter of the Code, in the terms set out in the motivation

ORDER

To the company Amiu s.p.a., in the person of the pro-tempore legal representative, with registered office in Taranto, piazza

Sandro Pertini n. 4, 74100 - CF 00170540736 - to pay the sum of Euro 200,000 (two hundred thousand) 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;

INJUNCES

to the company Amiu s.p.a. to pay the sum of € 200,000 (two hundred thousand) - 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, April 28, 2022

THE VICE-PRESIDENT

Cerrina Feroni

THE RAPPORTEUR

Ghiglia

THE SECRETARY GENERAL

Mattei

\* The provision was challenged