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Closing of the sanctioning procedure - 7 November 2018

Register of measures

no. 478 of 7 November 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 law n. 689/1981, and subsequent modifications and additions;

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

GIVEN the report of 24 June 2017 - addressed to the undersigned Authority - with which two condominiums residing in the condominium located in Rome, via XX - Tax Code XX (hereafter "Condominium"), complained of an alleged violation of Legislative Decree 196/2003 - containing the Code regarding the protection of personal data (hereinafter "Code") - put in place by the condominium administrator for having transmitted accounting documentation and, in particular, the condominium financial statements from 2013 to 2016, to the borrower of one of the apartments located in the condominium building, in the absence of the authorization of the reporting condominiums;

HAVING REGARD to the note from the Department of Economic and Productive Realities prot. no. XX of 16 February 2018 with which the Guarantor requested the Condominium and, in particular, the administrator of the same, as pro tempore legal representative, information regarding the aforementioned report;

CONSIDERING that the aforementioned request, duly notified on 1 March 2018 by registered letter with return receipt - the delivery notice of which is in the file - was found to be unanswered;

GIVEN the subsequent note prot. no. XX of 20 March 2018 signed by the Secretary General, with which the Guarantor, in consideration of the lack of response from the Condominium, renewed the request to provide, pursuant to Article 157 of the Code and by 16 April 2018, the information already requested with the previous note of 16 February 2018, recalling that, in the event of non-compliance, the pecuniary administrative sanction pursuant to art. 164 of the Code;

GIVEN the note prot. no. XX of 17 May 2018 with which the Economic and Productive Realities Department sent the

documents to the Inspection Activities Department in order to evaluate the initiation of an administrative sanction procedure against the condominium administrator in relation to the failure to inform the Guarantor;

CONSIDERING the act n. XX of 6 June 2018 with which the Guarantor, in the face of the failure to respond to the request for information prot. no. XX of 20 March 2018, challenged the Condominium, in the person of the pro-tempore legal representative, for the violation of the provision pursuant to art. 157, sanctioned by art. 164 of the Code;

NOTING that from the administrative report prot. no. 29074/118748 of 4 October 2018, prepared by the Office of the Guarantor pursuant to art. 17 of the law of 24 November 1981 n. 689, the reduced payment pursuant to art. 16 of law 689/81;

GIVEN the note of the Guarantor prot. XX of 6 June 2018, addressed to the Special Privacy Unit of the Guardia di Finanza with a request to provide for the notification of the aforementioned notification, as well as to acquire information by drafting a report of the operations carried out;

HAVING REGARD TO the report of operations carried out by the Special Privacy Unit of the Guardia di Finanza dated 13 June 2016, during which the condominium administrator declared that "As regards the failure to reply to the two requests for information sent to me by the Guarantor Authority, I declare not having done so, as being overworked in this period, I did not take into account the limited time limits for responding to the Guarantor Authority and therefore, despite myself, I found myself in a clear defect towards said Authority for something I regret".

HAVING REGARD to the defense brief, dated 7 July 2016, formulated pursuant to art. 18 of the law n. 689/1981, with which the lawyer appointed by the Condominium administrator, with reference to the notice of dispute no. XX of 6 June 2018, intended to represent:

a) preliminary " (...) that the dispute in question was raised against the Condominium in Via XX in Rome, in the person of the Supervisor, while the report / complaint (...) (by two condominiums ) it was to to the pro tempore Administrator (...), for having granted access to the (...) borrower of the property (...) (owned by one of these two condominiums) to the condominium accounting documentation without no permission. For this reason, the nullity of the contestation of administrative violation notified on 06.13.2018 due to incorrect indication of the entitled person is contested";

b) that the "(...) omitted response (...) (of the pro-tempore administrator) to the two requests for information (...) (of the Guarantor) (...) (has occurred due to) mere forgetfulness due to the large amount of work (...) at that time. Furthermore, precisely due to the fact that the complaint came from (...) (one of the whistleblowers) the due interest was not shown: in fact,

(...) (this whistleblower) over the years has literally submerged (...) (the administrator of the condominium) of correspondence with requests and disputes";

In view of the above, the party requested, in addition to the hearing before the Guarantor, to "(...) cancel the administrative violation (...) and, consequently, cancel the relative sanction for the reasons set out above".

GIVEN the communication from the lawyer appointed by the Condominium administrator, sent to the PEC address of the Guarantor on 20 September 2018, regarding the party's renunciation of the hearing;

HAVING DEEMED that the conditions for confirming the findings raised with notice of dispute no. XX of 6 June 2018, as the dispute was raised against the Condominium, while the request for information from this Authority was presented against the administrator of the same;

CONSIDERING, therefore, that it is necessary to file the sanctioning procedure relating to the violation of art. 157 of the Code, referred to in the notice of dispute no. XX of 6 June 2018;

HAVING REGARD to the documentation in the deeds;

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;

HAS

the filing of the administrative sanction procedure relating to the contestation of the administrative violation referred to in articles 157 and 164 of the Code, in the terms referred to in the justification.

Rome, 7 November 2018

PRESIDENT

Soro

THE SPEAKER

Cleric Whites

THE SECRETARY GENERAL

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