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Provision of January 31, 2019

Register of measures

no. 32 of 31 January 2019

## 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 Office of the Guarantor for the protection of personal data (hereinafter the Guarantor), with note no. 13583 of 9 May 2018, ascertained that the Higher Secondary Education Institute "E. Ferdinando", tax code 91033020743, with registered office in Mesagne (BR), via Eschilo, in the person of its pro-tempore legal representative, has published on its institutional website, from the link [http://www.iissferdinando.it/documenti/graduatoria%20III%20fascia .pdf](http://www.iissferdinando.it/documenti/graduatoria%20III%20fascia.pdf), the "(...) lists of over 500 third level teachers by publishing tax codes, landline and mobile telephone numbers, private emails, etc. (...)" and reporting "(...) some alphabetical abbreviations including the letter "S" (...) which, according to what is indicated in Annex 6 (preference codes) of the Decree of the Ministry of Education, University and Research of 1 April 2014, no. 235 (...) identifies the category of "invalid and maimed civilians" (...)", thereby causing the dissemination of personal data of a sensitive nature, in violation of art. 22, paragraph 8 of Legislative Decree 30 June 2003, no. 196 laying down the Personal Data Protection Code (hereinafter referred to as the Code);

CONSIDERING the report n. 17169/123520 of 6 June 2018 with which it was challenged to the Higher Secondary Education Institute "E. Ferdinando", in the person of the pro-tempore legal representative, the administrative violation envisaged by art. 162, paragraph 2-bis, of the Code, in relation to art. 22, paragraph 8, regarding the dissemination of sensitive data of the interested parties, informing them of the right to make the payment in a reduced amount pursuant to art. 16 of the law n. 689/1981;

HAVING EXAMINED the report of the Guarantor's Office prepared 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;

HAVING REGARD TO the written defense dated 5 July 2018 sent pursuant to art. 18 of the law n. 689/1981, with which the Institute of Secondary Education "E. Ferdinando", describing the methods with which he remedied the disputed conduct, noted how "(...) the disputed violation occurred due to a mere material error made by a person in charge of the treatment who, in fulfilling its by now very numerous tasks (...) failed to tick the privacy box envisaged by the Sidi ministerial portal, with the main purpose of avoiding the dissemination of sensitive data, when publishing the rankings in question online", also specifying how of this error " (...) would have been known and which would have been promptly remedied, were it not for the institutional portal (<http://www.iissferdinando.it>), on which the rankings subject to today's dispute were published , is no longer used and updated since 2016. This is because, in the meantime, the school proceeded to activate the institutional site, compliant with current legislation (<http://www.iissferdinando.gov.it>) and do extended validation certificate status”;

HAVING REGARD TO the report of the hearing of the party drawn up on 18 September 2018, pursuant to art. 18 of the law n. 689/1981, in which the “E. Ferdinando”, he essentially reiterated what was argued in the defense brief;

CONSIDERING that the arguments put forward do not allow for the exclusion of the liability of the Istituto di educazione Secondaria Superiore "E. Ferdinando" in relation to the dispute in question, given that the deduction does not allow the qualification of any of the constituent elements of the discipline on excusable errors commonly definable as good faith, pursuant to art. 3 of the law n. 689/1981, also on the basis of what is asserted by the jurisprudence (Cass. Civ. section I of 15 May 2006 n. 11012; Cass. Civ. section II of 13 March 2006, n. 5426);

NOTING, therefore, that the Higher Secondary Education Institute “E. Ferdinando” has disseminated on its institutional website, from the link <http://www.iissferdinando.it/documenti/graduatoria%20III%20fascia.pdf>, the lists of third level teachers reporting, among other things, the alphabetical initials of referred to in letter "S" which, according to what is indicated in Annex 6 (preference codes) of the Decree of the Ministry of Education, University and Research of 1 April 2014, n. 235 (...) identifies the category of "invalid and maimed civilians" (...)", thereby causing the dissemination of personal data of a sensitive nature, in violation of art. 22, paragraph 8;

CONSIDERING the art. 162, paragraph 2-bis, of the Code, which punishes the violation of the provisions indicated in art. 167 of the Code, including the one referred to in art. 22, paragraph 8, of the same Code, with the administrative sanction of the payment of a sum from ten thousand euros to one hundred and 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 of 24 November 1981 n. 689, of the seriousness of the violation, but also of the offender's personality and economic conditions;

CONSIDERING, as regards the offender's personality and his economic conditions, that it is a public school which carries out important institutional activities in very modest economic conditions:

NOTING, as regards the seriousness of the conduct, that the preliminary investigation revealed that the unlawfulness of the processing is achieved only through an operation of combination between the letter "S" indicated in the ranking and the Decree of the Ministry of Education, University and Research of 235 of 1 April 2014, which brings this letter back to the category of "civil invalids";

DETECTED, that the preliminary investigation revealed that the dispute occurred a few days after the date of 25 May 2018, set by art. 18 of Legislative Decree no. 101/2018 as a limit for access to the facilitated definition time limit with respect to which the offender has no power to intervene;

HAVING ACKNOWLEDGED that the "E. Ferdinando", with note 4927/2018 of 20 December 2018, communicated to the Authority the liquidation, with mandate no. 599 of 20 December 2018, of the facilitated definition, pursuant to art. 18 of Legislative Decree 10 August 2018 n. 101 containing "Provisions for the adaptation of national legislation to the provisions of 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 movement of such data and which repeals Directive 95/46/EC (general regulation on data protection) (GU General Series n.205 of 09-04-2018)", of the pecuniary administrative sanction referred to in the dispute report n. . 17168/123520 dated 6 June 2018;

CONSIDERING that, for all the aforementioned reasons, the present case can be traced back, despite the particular nature of the data processed, to hypotheses of lesser gravity pursuant to art. 164-bis, paragraph 1, of the Code and that, therefore, the application of a pecuniary sanction quantified in the minimum amount of Euro 4,000.00 (four thousand) appears adequate;

CONSIDERING therefore that the amount of the fine quantified at 4,000.00 (four thousand) euros must be reduced by the amount of 4,000.00 (four thousand) euros paid by the Institute and that therefore the amount of the pecuniary sanction has already been paid in full;

HAVING ACKNOWLEDGED the extinction of the sanctioning procedure;

HAVING REGARD to the law of 24 November 1981 n. 689, and subsequent modifications and additions;

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;

SPEAKER Dr. Augusta Iannini;

ALL THAT CONSIDERED, THE GUARANTOR

declares the sanctioning procedure against the Istituto di educazione Secondaria Superiore "E. Ferdinando", tax code 91033020743, with registered office in Mesagne (BR), via Eschilo, in the person of its pro-tempore legal representative.

Rome, 31 January 2019

PRESIDENT

Soro

THE SPEAKER

Iannini

THE SECRETARY GENERAL

Busia