

Closing of the sanctioning procedure - 7 February 2019

Register of measures

n.41 of 7 February 2019

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 Special Privacy Unit of the Guardia di Finanza, in execution of the request for information pursuant to art. 157 of the Code regarding the protection of personal data - Legislative Decree 30 June 2003, no. 196 (hereinafter referred to as the Code) (XX), carried out the investigations referred to in the reports of operations carried out on 8 and 9 June 2016 against XX.

VAT number: XX, with registered office in XX, via XX, in the person of the pro-tempore legal representative, from which it emerged that the company, using two collection forms called "contact form" and "insert cv" present on the site web XX, carried out, as owner, a treatment of data of the interested parties, without being given suitable information pursuant to art. 13 of the Code as it contains the indication of a data controller (XX) other than the real one (XX);

CONSIDERING the report no. 63 dated 23 June 2016 with which it was contested, in the attenuated form pursuant to art. 164-bis, paragraph 1 of the Code, to XX, the administrative violation, provided for by art. 161 of the Code, in relation to art. 13, informing you of the right to make a reduced payment pursuant to art. 16 of the law of 24 November 1981, n. 689;

RECORDED from the report, prepared pursuant to art. 17 of the law of 24 November 1981, n. 689, relating to the aforementioned dispute report, that the reduced payment does not appear to have been made;

CONSIDERING the written defense dated 12 August 2016, sent pursuant to art. 18 of the law of 24 November 1981, n. 689, and 11 December 2018, sent for the purposes of art. 18 of Legislative Decree 10 August 2018 n. 101, with which the XX, providing useful elements for quantifying the amount of the sanction that can be imposed for the purposes of art. 11 of the law n. 689/1981, highlighted how "(...) the company XX incorporated the company XX and at the same time changed its company name to XX: this corporate operation has the effect of continuity of the legal relations of the incorporating company, which

continues both in those (...) of its own and those of the incorporated company (art. 2504 bis of the civil code). The change of name (...) does not change the identity of the legal person. In the light of this, XX is therefore not juridically another subject with respect to XX; it is the same subject, which retains full ownership of all juridical relationships. The indication of XX (company indicated as data controller in the disclosure deemed unsuitable for this reason and subject to dispute) should therefore be considered a mere clerical error and not the indication of a different subject".

Furthermore, he observed that "In the face of a plurality of possibilities to receive the updated information, there is only one case in each site in which the information shows the old name of the same subject".

He also noted that "(...) the intention of the company (XX) to provide correct information is evident, which has actually been provided. If a fault were recognized in the contested violation, it would be very minimal. The good faith of the Company is also evident from the immediate correction of the old name of the owner as soon as it is pointed out by the investigating agents (...)"

HAVING REGARD TO the report of the hearing of the party drawn up on 12 December 2016, pursuant to art. 18 of the law n. 689/1981, in which XX essentially reaffirmed what was argued in the two defense briefs produced;

CONSIDERING that the arguments put forward are suitable for excluding the liability of the party in relation to the disputed since the website and the two personal data collection forms called "contact form" and "insert CV" present therein are structured in such a way as to make easily understandable to users as the ownership of the treatment can be found in the head of "XX", through clear references on the corporate merger operation of the "XX" into "XX";

CONSIDERING, therefore, that the party has provided users with a constant and concrete possibility of being correctly informed;

HAVING REGARD to the documentation in the deeds;

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

HAVING REGARD TO the observations of the Office, formulated by the general secretary pursuant to art. 15 of the Guarantor's regulation n. 1/2000;

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 13 and 161 of the Code, in the terms referred to in the justification.

Rome, 7 February 2019

PRESIDENT

Soro

THE SPEAKER

Cleric Whites

THE SECRETARY GENERAL

Busia