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Closing of the sanctioning procedure - 11 October 2018

Register of measures

no. 469 of 11 October 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 prof.ssa Licia Califano and of dott.ssa Giovanna Bianchi Clerici, members and of dott. Giuseppe Busia, general secretary;

CONSIDERING the art. 24 of the 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 repealing Directive 95/46/EC (General Data Protection Regulation)";

CONSIDERING the art. 27, paragraph 1, lett. c), no. 2), of the legislative decree 10 August 2018, n. 101, pursuant to which the art. 169 of the legislative decree n. 196 of 2003, containing the «Code regarding the protection of personal data» (hereinafter the Code);

HAVING REGARD to the combined provisions of articles 33, 167 and 162, paragraph 2-bis, of the Code, in the text prior to the amendments made by the aforementioned legislative decree no. 101 of 2018;

GIVEN the note dated 10 September 2018 with which the Public Prosecutor's Office at the Court of XX transmitted to this Authority the documents relating to the criminal proceedings initiated following the communication from this Authority dated 30 July 2018 (prot. no. 22817/126442) pursuant to articles 24 and 25 of the aforementioned Legislative Decree no. 101 of 2018;

CONSIDERING that on 15 May 2018 the offense referred to in the combined provisions of articles 33, 167 and 162, paragraph 2-bis, of the Code, then in force, for the same fact referred to in the aforementioned criminal proceeding;

NOTING that the provisions of art. 18 of Legislative Decree no. 101 of 2018;

CONSIDERING that the possible application, to the same fact, of two administrative pecuniary sanctions, one pursuant to art. 18 Legislative Decree 101 and the other pursuant to art. 24 of the same decree, would inevitably lead to a violation of the ne bis in idem principle, on a par with the criteria sanctioned by consolidated jurisprudence of the Court of Justice of the European Union and the European Court of Human Rights (see, ex plurimis, Court of Justice of the EU, Grand Section, 20 March 2018,

C-524/15, Menci; C-537/16, Garlsson Real Estate and others; as well as the European Court of Human Rights, Grand Chamber, A. and B. against Norway, 15 November 2016, applications 24130/11 and 29578/11);

CONSIDERED it necessary to apply, to the same fact which is the subject of both proceedings (administrative and criminal sanctions), only the pecuniary administrative sanction pursuant to art. 18 of the legislative decree n. 101, to prevent the aforementioned violation of the ne bis in idem principle;

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;

HAS

the filing of the proceeding initiated following receipt of the aforementioned note from the Public Prosecutor's Office of XX.

Rome, 11 October 2018

PRESIDENT

Soro

THE SPEAKER

Iannini

THE SECRETARY GENERAL

Busia