

Closing of the sanctioning procedure - 19 March 2019

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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, with deed no. XX of 20 April 2018 (notified on the same date by certified e-mail), which must be understood as fully reported here, contested the XX (hereinafter "the XX" or "the XX"), in the person of the pro-tempore legal representative , with registered office in XX, XX, via XX, XX, the violation provided for by articles 19, paragraph 3, 162, paragraph 2-bis, and 167 of the Code regarding the protection of personal data (legislative decree 30 June 2003, n. 196, hereinafter the "Code") in the formulation prior to the amendments introduced by the legislative decree . lg. no. 101/2018;

NOTING that from the examination of the documents of the sanctioning procedure initiated with the contestation of administrative violation, the following emerged, in summary:

- on 29 March 2016, the Authority received a report complaining of unlawful processing of personal data by the XX in relation to the publication on the XX website, in the section called "Transparent Authority", subsection "Anti-corruption ", of a letter of suggestions and proposals, sent by a citizen on January 15, 2016, on the occasion of the update of the Three-Year Plan for the Prevention of Corruption (PTPC) of the XX;
- the above letter had been published in its entirety, thus reporting the name and surname of the citizen who had drafted it, as well as other personal information of the same;
- with reference to this publication, the XX, with a note dated February 22, 2017, stated that "the note containing the observations does not contain any uniquely identifiable information of the whistleblower, exceeding the name and surname, which as such can be referable to other persons. Personal data is specific information on a subject which leads to the

exclusion of only the combination of a person's name and surname from the definition. The presentation of observations represents, moreover, a civic control activity which can be defined as virtuous and not suitable in abstract to cause damage. Precise directives have not been issued, at national level, with reference to the relationship, which cannot be taken for granted, between the regulation of the protection of personal data and the regulation of democratic participation in the context of the consultation procedure on the annual update of the PTPC, nor are indications on how to manage the cases of participatory requests and the related implications. While, on the one hand, citizens' civic control over the work of Public Administrations represents the main tool for the prevention of corruption and for transparency, on the other hand, the non-publication of citizens' observations can lead, in fact, to a limitation of opportunities for civic participation and knowledge of facts.";

- at the conclusion of the investigation into the case, communicated to the parties following a supplementary investigation, on 1 February 2018, the Department of Public Liberties and Health of the Office of the Guarantor represented that "in the case submitted to the attention of this Authority, recalls that the 2016 PNA [...] does not provide for the publication of the complete note of the whistleblower with the related observations, but only the concise and understandable publication of the deeds, including instructions in order to make the choices made clear and knowable" and that "at present of the documentation examined, of the legislation in force and taking into account the declarations provided, it is ascertained that this XX has carried out a dissemination of personal data in the absence of a suitable regulatory prerequisite, as it is not provided for by a law or regulation, in violation of the 'art. 19, paragraph 3, of the Code'";

- on the basis of the procedural documents, the Office contested the violation pursuant to articles 19, paragraph 3, 162, paragraph 2-bis, and 167 of the Code, for having disseminated personal data in the absence of suitable legal bases;

NOTING that with the aforementioned deed dated April 20, 2018, XX was charged with the aforementioned violation;

HAVING ACKNOWLEDGED that the XX has not made the reduced payment, as evidenced by the report drawn up pursuant to art. 17 of the law n. 689/1981;

READ the written defense dated 15 May 2018 and 13 February 2019, the latter sent on the basis of the provisions of art. 18, paragraph 4, of Legislative Decree lg. no. 101/2018, in which it is stated that:

- "The dispute asserts that the assessment originates from a report received on 29 March 2016. It should be noted that, pursuant to "Regulation no. 1/2007 of the Guarantor concerning the internal procedures of the Authority having external relevance, aimed at carrying out the tasks entrusted to the Guarantor for the protection of personal data - 14 December 2007",

the preliminary investigation must be started within three months and concluded within six months, extended to nine in complex cases that require further investigation (articles 10 and 11 - if treated as a complaint - or articles 13 and 14 - if treated as a report). Both the failure to formally communicate the initiation of the procedure, necessary pursuant to art. 7 of the aforementioned Regulation (as well as of Law no. 241/1990), that the lateness of both the first request for information, made with a note from the Department of Public Liberties and Health dated 27 January 2017, and the closure of the preliminary investigation, which took place on 2 February 2018.”;

- "It is first noted that public consultation is a duty and that, with reference to it, the provisions contained in the 2013 National Anti-Corruption Plan (PNA), adopted with Civit resolution no. 72/2013 prescribe the following "The outcome of the consultations must be published on the administration's website and in a specific section of the P.T.P.C., with an indication of the subjects involved, the methods of participation and the inputs generated by this participation.". The textual formulation given above, contained in point B.1.1.7 of Annex 1 leaves no room for interpretation when using the expression "involved parties". The XX Administration acted in the conviction of the legitimacy of the treatment, deeming that the publication of the name and surname of the citizens who participated in the definition of the PTPCT was due. In fact, providing one's contribution represents a virtuous behavior and the National Anti-Corruption Authority (ANAC) itself recommends several times, in updates to the PNA, to stimulate democratic participation by citizens".

- "It should also be noted that in 2016 there was a change in the indications regarding the consultation procedures for which the PNA currently provides that the institution takes care of the "summary and understandable publication of the documents, including the preliminary documents in order to make clear and the choices made are known. Following this change, the XX Administration has taken a new orientation and no longer deems it necessary to publish the name and surname of the subjects submitting observations, limiting itself to reporting the content in the preliminary document of the resolution approving the PTPCT. However, the publication object of the dispute was carried out under the 2013 PNA";

HAVING ACKNOWLEDGED that some of the arguments put forward by XX are well founded and, therefore, suitable for determining the closure of the sanctioning procedure initiated with the dispute referred to in the introduction.

CONSIDERING the provision, in the National Anti-Corruption Plan (PNA) in force at the time, of the mandatory publication of the results of the public consultations carried out by the Administrations called upon to draw up the Three-Year Plan for the Prevention of Corruption (PTPC);

CONSIDERING, therefore, the groundlessness of the dispute referred to in the premise and recognizing the need to consequently order the dismissal of the relative disciplinary procedure;

HAVING REGARD to the documentation in the deeds;

CONSIDERING the law n. 689/1981, and subsequent modifications and additions;

HAVING REGARD TO the observations made 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. Augusta Iannini;

HAS

the filing of the sanctioning procedure initiated, against the XX, relating to the contestation of the administrative violation pursuant to art. 19, paragraph 3, of the Code, in the terms set out in the justification.

Pursuant to articles 152 of the Code and 10 of Legislative Decree no. 150/2011, opposition to this provision may be lodged with the ordinary judicial authority, with an appeal lodged with the ordinary court of the place where the data controller has his residence, within the term of thirty days from the date of communication of the provision itself or sixty days if the appellant resides abroad.

Rome, 19 March 2019

PRESIDENT

Soro

THE SPEAKER

Iannini

THE SECRETARY GENERAL

Busia