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Closing of the sanctioning procedure - 6 May 2019

Register of measures

no. 112 of 6 May 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;

HAVING REGARD TO Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data, as well as on the free circulation of such data and repealing Directive 95/46 /CE (General Data Protection Regulation, hereinafter "Regulation");

HAVING REGARD TO 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 natural persons with regard to the processing of personal data, as well as the free circulation of such data and repealing Directive 95/46/EC;

HAVING EXAMINED the order-injunction n. 340 of 22 May 2018, with which the Guarantor applied the administrative sanction of payment of the sum of 10,000 euros to Ms XX born in XX(XX), the XX, for the violation pursuant to articles 33 and 162, paragraph 2-bis, of the Code regarding the protection of personal data (legislative decree n. 196/2003), in the formulation prior to the changes introduced by d. lg. no. 101/2018;

CONSIDERING the articles 14, paragraphs 1 and 2, of law no. 689/1981, 21-octies and 21-nonies of law no. 241/1990;

NOTING that the order-injunction indicated above originates from the notice of dispute no. 19950/106955 of 6 July 2016, which appears to have been erroneously notified not to the offender but to the lawyer XX of the forum of Rome, without the acts resulting in elections of domicile by the offender himself with specific reference to the notification of the documents of the administrative sanctioning procedure;

HAVING DEEMED that the above notice of contestation has not been notified to the offender and that the terms of notification pursuant to art. 14, paragraph 2, of the law n. 689/1981;

CONSIDERING, therefore, that in the case in question the elements indicated in art. 21-nonies of law no. 241/1990 to proceed

with the ex officio cancellation of the aforementioned order-injunction and, in particular: a) the illegitimacy of the order, taking into account that the offender's lack of knowledge of the notice of dispute prevented him from exercising one's right of defense and to have a concrete effect on the operative content of the order itself; b) the reasons of public interest connected with the circumstance that an appeal against the order in question is pending before the Civil Court of Rome, the continuation of which would expose the parties to an unjustified increase in expenses;

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

for the above reasons, to cancel the order-injunction n. 340 of 22 May 2018 and for the effect of filing the sanctioning procedure initiated with the notice of administrative violation no. 19950/106955 of 6 July 2016.

Rome, 6 May 2019

PRESIDENT

Soro

THE SPEAKER

Cleric Whites

THE SECRETARY GENERAL

Busia