

***Legislative Decree Nº 467 – 28th December 2001 - Provisions
to Amend and Supplement Legislation Applying to the
Protection of Personal Data, Pursuant to Section 1 of Act no.
127 of 24th March 2001***

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28 December 2001

The President of the Republic

Having regard to Articles 76 and 87 of the Constitution,

Having regard to Act no. 675 of 31.12.1996, as subsequently amended and supplemented,

Having regard to Act no. 676 of 31.12.1996, enabling the Government to pass legislation applying to the protection of individuals and other subjects with regard to the processing of personal data,

Having regard to directive 95/46/EC of the European Parliament and of the Council, of 24 October 1995, on the protection of individuals with regard to the processing of personal data, and on the free movement of such data,

Having regard to Act no. 127 of 24.03.2001, postponing the deadline set out in the enabling Act no. 676 of 31.12.1996,

Having regard to directive 97/66/EC of the European Parliament and of the Council, of 15 December 1997, on the processing of personal data and the protection of privacy in the telecommunications sector,

Having regard to Council of Europe Recommendation No. R(95)4 of 7 February 1995, on the protection of personal data in the area of telecommunication services, with particular regard to telephone services,

Having regard to legislative decree no. 171 of 13.05.1998, including provisions for the protection of private life in the telecommunications sector, pursuant to directive 97/66/EC of the European Parliament and of the Council,

Having heard the Garante per la protezione dei dati personali,

Having regard to the preliminary resolution adopted by the Council of Ministers in its meeting of the 21st November 2001,

Having acquired the opinions of the competent Committees at the Chamber of Deputies

and the Senate of the Republic,

Having regard to the resolution adopted by the Council of Ministers in its meeting of the 21st December 2001,

Acting on the Prime Minister's proposal in agreement with the Minister of Justice,

ISSUES

The following legislative decree:

Chapter I - Amendments and Additions to Act no. 675/1996 ➡

Article 1 - Definitions and Applicable National Law

1. For the purpose of implementing this decree, the definitions set out in Article 1(2) of Act no. 675 of 31.12.1996 shall apply.

2. In Article 2 of Act no. 675 of 31.12.1996 the following paragraphs shall be added:

"1-bis. This Act shall further apply to the processing of personal data that is performed by an entity established on the territory of a country outside the European Union, where said entity makes use in connection with the processing of equipment, whether automated, electronic or otherwise, situated on the State's territory, unless such equipment is used only for purposes of transit through the territory of the European Union.

1-ter. In the cases referred to in paragraph 1-bis, the controller established on the territory of a country outside the European Union must designate a representative established in the State's territory with a view to implementing the provisions of this Act. "

Article 2 - Processing for Exclusively Personal Purposes

1. In Article 3(2) of Act no. 675 of 31.12.1996, for the words "the provisions as per Articles 18 and 36" there shall be substituted the following: "laid down in Article 18".

Article 3 - Simplification of Notification Requirements and Arrangements

1. In Article 7(1) of Act no. 675 of 31.12.1996 the following sentence shall be added at the end: "exclusively in the cases and manner set out in the regulations as per Article 33(3), if the processing is liable to adversely affect the data subject's rights and freedoms on account of either the relevant mechanisms or the nature of the personal data."

2. In Article 7(2) of Act no. 675 of 31.12.1996, for the words "referred to in paragraph 4" there shall be substituted the following: "that must be specified".

3. In Article 7(4) of Act no. 675 of 31.12.1996, for the words "of the processor" there shall be substituted the following: "of the data controller's representative on the State's territory and at least one data processor, the latter being the entity referred to for the purposes set out in Article 13;"

4. The provisions referred to in paragraphs 3, 4, 5, 5-bis, 5-ter, 5-quater and 5-quinquies of

Article 7, in Article 13(1), subheading b), and in Article 28(7) of Act no. 675 of 31.12.96 shall be repealed as of the date of entry into force of the amendments to be made to the regulations referred to in Article 33(3) of said Act in pursuance of paragraph 1 of this Article.

Article 4 - Information to Data Subjects

1. In Article 10(1), subheading f), of Act no. 675 of 31.12.1996, for the words "and, where appointed, of the processor" there shall be substituted the following: ", the controller's representative on the State's territory and at least one data processor, the latter being the entity referred to for the purposes set out in Article 13, by specifying either the site in the communications network or the mechanisms for accessing, without constraint, the updated list of data processors."

Article 5 - Measures Taken Prior to Entering into a Contract and Balancing of Interests

1. In Article 12(1), subheading b), of Act no. 675 of 31.12.1996, for the words "for gathering information at the data subject's request prior to entering into a contract" there shall be substituted the following: "in order to take steps at the data subject's request prior to entering into a contract".

2. In Article 12(1) of Act no. 675 of 31.12.1996, the following subheading shall be inserted at the end:

"h-bis) if the processing is necessary to pursue a legitimate interest of either the data controller or a third party recipient in the cases specified by the Garante on the basis of the principles set out in the Act, unless said interest is overridden by the data subject's rights and fundamental freedoms, dignity or legitimate interests."

Article 6 - Access Rights Limitations

1. In Article 14(1) of Act no. 675 of 31.12.1996, the following subheading shall be added at the end:

"e-bis) by providers of publicly available telecommunications services in respect of the personal data allowing calling line identification, unless this may be prejudicial to performance of the investigations by defence counsel as per Act no. 397 of 07.12.2000."

Article 7 - Prerequisites for Data Communication and Dissemination

1. In Article 20(1) of Act no. 675 of 31.12.1996, the following subheading shall be inserted after subheading a):

"a-bis) if they are necessary for the performance of obligations resulting from a contract to which the data subject is a party, or in order to take steps at the data subject's request prior to entering into a contract;"

2. In Article 20(1) of Act no. 675 of 31.12.1996, the following subheading shall be added at the end:

"h-bis) as regards communication, if the latter is necessary to pursue a legitimate interest of either the data controller or a third party recipient in the cases specified by the Garante on the basis of the principles set out in the Act, unless said interest is overridden by the data subject's rights and fundamental freedoms, dignity or legitimate interests."

Article 8 - Sensitive Data

1. After paragraph 1-bis in Article 22 of Act no. 675 of 31.12.1996, there shall be inserted the following:

"1-ter. Paragraph 1 shall not be applicable, in addition, to the data concerning trade-union and/or trade associations or organisations joining other trade-union and/or trade associations, organisations or confederations."

2. For paragraph 4 in Article 22 of Act no. 675 of 31.12.1996, there shall be substituted the following:

"4. The personal data referred to in paragraph 1 may be processed subject to the Garante's authorisation

a) if the processing is carried out for lawful purposes by not-for-profit associations, bodies or organisations, whether recognised or not, of political, philosophical, religious or trade-unionist nature, including political parties and groups, religious denominations and communities, with regard to personal data concerning members and/or entities having regular contacts with said associations, bodies or organisations in connection with the abovementioned purposes, provided that the data are not communicated or disclosed outside the relevant scope and the bodies, associations or organisations lay down suitable safeguards in respect of the processing operations performed;

b) if the processing is necessary to protect the data subject's or a third party's life or bodily integrity and the data subject is unable to give his/her consent because(s)he is physically unable to do so, legally incapable or unable to distinguish right and wrong;

c) if the processing is necessary for the performance of the investigations by defence counsel referred to in Act no. 397 of 07.12.2000 or otherwise to establish or defend a legal claim, which must not be overridden by the data subject's claim where the data can disclose health and sex life, provided that the data are processed exclusively for the above purposes and for no longer than is necessary to achieve those purposes. The Garante shall lay down the measures and precautions referred to in paragraph 2 and stimulate adoption of a specific code of conduct and professional practice in accordance with the arrangements referred to in Article 31(1), subheading h). The provisions included in Article 43(2) are hereby left unprejudiced."

Article 9 - Prior Checking

1. After Article 24 in Act no. 675 of 31.12.1996 there shall be inserted the following:

"Article 24-bis(Other Special Categories of Data) - 1. Processing of data other than those referred to in Articles 22 and 24 shall be allowed in accordance with such measures and precautions as are laid down to safeguard data subjects, if the processing is likely to present specific risks to data subjects' fundamental rights and freedoms and dignity on account of the nature of the data, the arrangements applying to the processing or the effects the latter may produce.

2. The measures and precautions referred to in paragraph 1 shall be laid down by the Garante on the basis of the principles set out in the Act within the framework of a check to be performed prior to the start of the processing as also related to specific categories of controller or processing, following the request, if any, submitted by the data controller."

Article 10 - Simplification and Safeguards for Transfers of Personal Data to Foreign Countries

1. In Article 28(1) of Act no. 675 of 31.12.1996, for the words "or the transfer concerns the data as per articles 22 and 24" there shall be substituted the following: "and any of the circumstances specified in pursuance of Article 7(1) obtain".
2. In Article 28(3) of Act no. 675 of 31.12.1996, the words from "or" up to the end of the sentence shall be repealed.
3. In Article 28(4), subheading b), of Act no. 675 of 31.12.1996, for the words "for gathering information at the data subject's request prior to entering into a contract" there shall be substituted the following: "or to take steps at the data subject's request prior to entering into a contract".
4. In Article 28(4), subheading g), of Act no. 675 of 31.12.1996, the following words shall be inserted at the end: ", or else specified by the European Commission by way of the decisions mentioned in Article 25(6) and in Article 26(4) of Directive 95/46/EC of the European Parliament and the Council of 24 October 1995".

Article 11 - Measures Applying to Unlawful or Inappropriate Processing Operations

1. In Article 31(1), subheading c), of Act no. 675 of 31.12.1996, for the word "appropriate" there shall be substituted the following: "necessary or appropriate".
2. In Article 31(1), subheading l), of Act no. 675 of 31.12.1996, after the word "blocking [such processing]" there shall be inserted the following: "if the latter is found to be unlawful or incorrect partly because of the failure to take the necessary measures as per subheading c), or else".

Article 12 - Penalties in Connection with Notification Requirements

1. For Article 34 in Act no. 675 of 31.12.1996 there shall be substituted the following:

"Article 34 (Failure to Submit a Notification and Submission of an Incomplete Notification). -

1. Whoever fails to promptly submit the notification required under Articles 7, 16(1) and 28 or provides incomplete information in a notification, in breach of his/her duties, shall be the subject of an administrative sanction entailing payment of an amount ranging between Lit 10 and 60 million as well as of the additional sanction consisting in publication of the relevant injunction/order."

2. The provisions laid down in Sections 100, 101 and 102 of legislative decree no. 507 of 30.12.99 shall apply, as appropriate, to breaches of Article 34 of Act no. 675 of 31.12.1996, where they were committed prior to entry into force of this decree.

Article 13 - Unlawful Processing of Personal Data

1. In Article 35(2) of Act no. 675 of 31.12.1996, for the words "communicates or disseminates" there shall be substituted the following: "processes" and for the words "and 24, or" there shall be substituted the following: ", 24 and 24-bis, or".

Article 14 - Failure to Take Minimum Security Measures

1. For Article 36 in Act no. 675 of 31.12.1996 there shall be substituted the following:

"Article 36 (Failure to Take Measures Required for Data Security).

1. Whoever fails to take the measures required in order to ensure security of personal data, in breach of his/her duties and the regulations as per paragraphs 2 and 3 of Article 15, shall be punished either by imprisonment for up to two years or by a fine of between Lit 10 and 80 million.

2. A time limit shall be fixed either upon detecting the abovementioned offence or, in complex cases, by way of a subsequent provision issued by the Garante, for the offender to comply with the requirements referred to above. Said time limit shall not exceed the time span that is technically required; however, it may be extended in especially complex cases or else because of objective difficulties in complying, but it shall not be longer than six months. Within sixty days of the expiry of the above deadline, the offender shall be permitted by the Garante to pay an amount corresponding to one-fourth of the highest fine that can be imposed in connection with the offence referred to here, on condition that the relevant requirements have been complied with. Compliance and performance of the abovementioned payment shall extinguish the offence. The body in charge of fixing the time limit and the public prosecutor shall abide by the provisions made in Sections 21, 22, 23 and 24 of legislative decree no. 758 of 19.12.1994 as appropriate."

2. With regard to criminal proceedings in connection with the offence referred to in Article 36 of Act no. 675 of 31.12.96 as currently in force, the offender may, within forty days of entry into force of this decree [i.e., 1st February 2002], apply to the judicial authority for his/her case to be dealt with in accordance with the procedure described in Article 36(2) of said Act no. 675/1996 as replaced by this decree. The judicial authority shall stay the proceeding(s) and transfer the case file to the Garante, which shall deal with it pursuant to said Article 36(2).

Article 15 - Failure to Comply with Orders Prohibiting or Blocking Processing Operations

1. In Article 37(1) of Act no. 675 of 31.12.1996, for the words "or of Article 29, paragraphs 4 and 5," there shall be substituted the following: "paragraphs 4 and 5 of Article 29 or paragraph 1, subheading l) of Article 31,".

Article 16 - False Representations and Statements

1. After Article 37 in Act no. 675 of 31.12.1996 there shall be inserted the following:

"Article 37-bis (False Representations and False Notifications to the Garante). - 1. Whoever declares or attests to false information or circumstances, or else exhibits forged records or documents, in connection either with the notifications mentioned in Articles 7, 16(1) and 28 or with records, documents or statements that are exhibited or made, respectively, in a proceeding before the Garante or in the course of investigations, shall be punished by imprisonment for between six months and three years, unless the offence is more serious."

Article 17 - Upgrading of Administrative Sanctions

1. In Article 39(1) of Act no. 675 of 31.12.1996 for the words "between Lit 1 million and 6 million" there shall be substituted the following: "between Lit 5 million and Lit 30 million".

2. For Article 39(2) of Act no. 675 of 31.12.1996 there shall be substituted the following:

"2. Breach of the provisions referred to in Article 10 shall entail the administrative sanction of paying an amount ranging between Lit 3 and 18 million; in the cases referred to in Articles 22, 24 and 24-bis or if greater harm is suffered by one or more data subjects, said amount shall range between Lit 5 and 30 million. The amount of the sanction may be increased up to three times as much if it is found to be ineffective on account of the offender's economic status. Breach of the provision referred to in Article 23(2) shall be entail the administrative sanction of paying an amount ranging between Lit five hundred thousand and Lit three million."

3. In Article 39(3) of Act no. 675 of 31.12.1996, as subsequently amended and supplemented, for the words: "this Article" there shall be substituted the following: "this Chapter".

Article 18 - Deadline for Bringing Processing Operations into Line with Community Legislation

1. In Article 41(1) of Act no. 675 of 31.12.1996 there shall be added the following sentence at the end: "The provisions of this paragraph shall remain in force until the 30th June 2003."

Article 19 - Investigations by Defence Counsel

1. In Articles 10(4), 12(1), subheading h), 20(1), subheading g), and 28(4), subheading d), of Act no. 675 of 31.12.1996, for the words: "investigations referred to in Article 38 of the implementing, coordination and transitional provisions of the Criminal Procedure Code as approved by legislative decree no. 271 of 28 July 1989, subsequently amended," there shall be substituted the following: "investigations by defence counsel referred to in Act no. 397 of 07.12.2000,".

Chapter II - Implementing Data Protection Principles in Certain Sectors



Article 20 - Codes of Conduct and Professional Practice

1. With a view to full implementation of the principles laid down in connection with the processing of personal data, as required by Article 31(1), subheading h), of Act no. 675 of 31.12.1996, the Garante shall encourage adoption, by the 30th June 2002, of codes of conduct and professional practice as regards public and private entities that are involved in the processing of personal data in the sectors referred to in paragraph 2. In this connection, account shall be taken of the peculiarities of data processing activities in the individual sectors as well as of the guiding principles set forth in the Council of Europe recommendations mentioned in Article 1(1), subheading b), of Act no. 676 of 31.12.1996.

2. The codes referred to in paragraph 1 shall apply to the processing of personal data

a) that is performed by providers of communication and information services offered via electronic networks, with particular regard to the criteria aimed at ensuring and streamlining more adequate information and awareness for users of telecommunication networks - whether managed by public or private entities - in respect of the types of personal data processed and the relevant processing arrangements. Reference may be made, in particular, to the online provision of information in an easy, interactive fashion so as to enhance transparency and fairness with regard to users and full compliance with the

principles referred to in Article 9 of Act no. 675 of 31.12.1996, also with a view to possibly certifying quality of the arrangements made and the security level afforded;

b) that are required for social security purposes or in connection with the employer-employee relationship, by also setting forth specific arrangements to inform data subjects and obtain their consent, if necessary, in connection with publishing job ads and/or receiving CVs including personal - possibly sensitive - data;

c) that is performed for sending advertising material and/or for direct selling purposes, or else to carry out market surveys or interactive commercial communication activities, by also laying down simplified arrangements to indicate and highlight that one declares his/her objection to receiving certain communications where the data subject's consent is not a prerequisite for the processing;

d) that is performed for commercial information purposes, by also setting forth simplified arrangements to inform data subjects as well as appropriate mechanisms to improve quality and accuracy of the data collected and communicated, in line with the provisions made in Article 10(4) of Act no. 675 of 31.12.1996;

e) that is performed within the framework of information systems owned by private entities, where they are used to grant consumer credits or else concern data subjects' reliability and timeliness in performing payments, by also laying down specific arrangements to facilitate communication of accurate, up-to-date personal data in compliance with data subjects' rights;

f) that are included in archives, registers, lists, records or documents held by public bodies, by also specifying the cases in which the source of the data is to be mentioned and laying down suitable safeguards in connection with matching data from different archives, and by taking account of the provisions made in Council of Europe Recommendation No. R(91)10 as regards Article 9 in Act no. 675 of 31.12.1996;

g) that is performed by means of automated image acquisition devices, by setting forth specific processing arrangements and simplified mechanisms to inform data subjects in order to ensure lawfulness and fairness of the processing also in the light of Article 9 in Act no. 675 of 31.12.1996.

3. Compliance with the provisions included in the above codes shall be a prerequisite for the processing to be lawful.

4. The Garante shall be responsible for having the codes published in the Official Journal of the Italian Republic; the codes shall be annexed to the consolidated text of the relevant provisions as per Article 1(4) of Act no. 127 of 24.03.2001.

Chapter III - Amendments and Additions to Legislative Decree no. 171/1998 ➡

Article 21 - Payment Modalities Other than Billing

1. In Article 5(1) of legislative decree no. 171 of 13.05.1998, for the words: "shall allow" there shall be substituted the following: "shall take such measures as are appropriate in order for".

2. After paragraph 1 of Article 5 in legislative decree no. 171 of 13.05.1998 there shall be inserted the following:

"1-bis. The providers referred to in paragraph 1 shall have to give proof to the Garante by the 30th June 2002 of the measures they have taken. Failing said proof, the administrative sanction referred to in Article 39(1) of Act no. 675 of 31.12.1996 shall apply. Should the measures fail to be appropriate, the Garante shall additionally take steps as required by Article 31(1), subheadings c) and l), of the aforementioned Act."

Article 22 - Provision of Information to the Public Concerning Identification of Calling and Connected Line

1. In Article 6(6) of legislative decree no. 171 of 13.05.1998 for the words "of such service" there shall be substituted the following: "of such service as well as of the possibilities referred to in paragraphs 1, 2, 3 and 4."

Article 23 - Emergency Calls

1. Article 7 of legislative decree no. 171 of 13.05.1998 shall be amended as follows:

a) for the heading there shall be substituted the following: "Emergency and Nuisance Calls";

b) after paragraph 2 there shall be added the following

"2-bis. The provider of a public telecommunications network or a publicly available telecommunications service shall ensure that there are appropriate, transparent procedures in order to ensure that the services authorised to deal with emergency calls may override, on a per-line basis, the elimination of calling line identification."

Article 24 - Transitional Provisions

1. The provisions laid down in Articles 3(3), 4, 22 and 23 of this decree shall apply as of the 1st March 2002.

2. For the purpose of the initial application of this decree, the implementing measures in connection with the provisions laid down in Articles 5(2) and 9 shall be taken within 120 days as of the 1st October 2002.

3. For the purpose of the initial implementation of the provision referred to in subheading a) of Article 22(4) of Act no. 675 of 31.12.1996, as laid down in Article 8 of this decree, the safeguards as per said subheading a) shall be set forth by the relevant association, body or organisation within the 30th June 2002.

Article 25 - Entry into Force

1. The provisions referred to in this decree shall enter into force on the 1st February 2002.