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COVID-19 – LAW 27/20 CONVERTING THE “CURA ITALIA” LAW DECREE: The privacy legal framework

Under Law no. 27 dated 24 April 2020 (the “**Conversion Law**”) published in the Official Gazette no. 110 of 29 April 2020, the Parliament converted into law the Law Decree no. 18 dated 17 March 2020 (the “**Cura Italia Law Decree**”).

1. Treatment of personal data (art. 17-bis)

Article 17-bis of the Conversion Law includes provisions relating to the treatment of personal data in the context of the transnational health emergency caused by the spread of Covid-19. These provisions are in line with expectations and necessary to define and regulate the treatment of personal data by identifying simplified rules to allow such treatment in the context of the Covid-19 emergency.

Compared to the previous legal framework, article 17-bis enlarges the cases in which treatment of personal data is allowed: in this regard, not only the collection of health data - which is obvious during a health emergency - is allowed, but also the collection of judicial data, i.e. information regarding criminal convictions.

Set out below is a summary of the new provisions.

2. When is the collection of personal data allowed?

Generally speaking, under article 9 of the EU Regulation no. 679 of 2016 all health data may be treated without the consent of the party concerned when such treatment is required, among others, (i) to pursue goals of public interest; (ii) for preventive medicine, work, diagnostic, assistance or therapy purposes, etc., and (iii) for public interests in the public health sector “*on the basis of the EU law or the law of the member States which provides for appropriate and specific measures to protect the rights and freedoms*”.

In light of the above, in order to legitimately treat health data without the consent of the relevant party involved, a legal provision is required not only to identify the correct public interest justifying such treatment, but also to define the appropriate measures to protect the rights and freedom of the individuals concerned. Therefore, the Italian legislator must act to pursue the two abovementioned goals.

Under article 17-bis treatment of health and judicial data is allowed to ensure (i) the containment of the health emergency on a transnational scale caused by the spread of Covid-19 through the adoption of preventive measures, (ii) the diagnosis and health assistance of the infected persons or (iii) the management in the current emergency framework of the national health service.

3. Who is allowed to treat personal data??

Under par. 1 Italian law enlarges the number of individuals allowed to treat health data, including the right to communicate such data among the same individuals, when required for the purposes of performing the tasks assigned in the context of the health emergency.

The individuals allowed to treat personal data are:

- (a) individuals working for the civil protection national service (art. 4 and 13 of the Code of civil protection). The reference to such articles enlarges the number of the subjects involved, considering that the State, Regions and autonomous provinces as well as the local entities are part of the national service and implement all the civil protection activities, with an aim at forecasting, preventing and reducing the risks, and at managing the emergency framework. The implementation of these activities is carried out through the operational structures of the national service of civil protection such as: fire brigades, the army; the police; research entities known on a national scale with civil protection purposes, the national institute of geophysics and volcanology and the national research council; the entities of the national health service; civil protection volunteers; the Italian Red Cross Association; the national mountain and caving rescue corps; the national system for the protection of the environment; the entities providing for meteorological services on a national scale; the central and peripheral entities of the Ministry for Cultural goods and activities and for the Tourism entrusted with the task of protecting the cultural assets in case of emergencies arising from natural disasters.
- b) the subjects identified in the ordinance of the Head of the civil protection department (ordinance no. 630 dated 3 February 2020) such as economic and non-economic public entities as well as private entities acting on the basis of specific directives in order to face the emergency arising from the health risks connected with the rise of illnesses caused by transmissible viruses. These subjects, as identified by the Head of the civil protection department, shall provide support in order to, among others: (i) organize and implement assistance in favor of the persons facing the Covid-19 emergency and urgent measures aimed at removing the situations of danger for the public and private safety, (ii) buy drugs, medical and individual protection devices; (iii) restore or strengthen the public services and the infrastructures necessary to overcome the current emergency framework and adopt all those measures aimed at ensuring the issuance of assistance services within the relevant territories.
- c) the offices of the Ministry of health and of the Italian Institute of health;
- d) the public and private entities operating in the context of the national health service;
- e) the subjects entitled to control and ensure the implementation of the measures provided under the law decree no. 6 dated 23 February 2020, converted with amendments into law no. 13 dated 5 March 2020. Reference is made, in particular, to prefecture activities, to the police and to the army.

The extension of the persons allowed to treat personal data and the possibility to communicate and exchange such data is aimed at using alternative technologies to contain the virus and manage the health emergency, such as the use of contact tracing systems to

rebuild the chain of the contagions.

The number of persons allowed to treat personal data is further increased under article 17-bis, par. 2, which allows the communication of health and judicial data to public and private entities other than those identified under par. 1, when the communication is *“required in order to implement the activities connected with the management of the health emergency”*.

Apparently, the new provision is aimed at allowing the communication of the data to all persons who are obliged to adopt supervisory and precaution measures (for example, disinfection, work reorganization) in the offices for which they are responsible, such as all individuals who are identified as employers for H&S purposes.

4. Which principles should be observed while treating personal data?

Paragraph 3 of the new provisions highlight that in any event personal data shall be treated in accordance with the provisions set forth under the EU Regulation no. 679 of 2016 and in particular under article 5, namely:

- (a) lawfulness, fairness and transparency while treating personal data *vis-à-vis* the relevant party concerned;
- (b) limit the purpose of the treatment, including the obligation to ensure that any further treatments shall not be inconsistent with the purpose of the personal data collection;
- (c) minimize the treatment of personal data, which means that the personal data treated shall be pertinent and limited to what is necessary to ensure the respect of the treatment's purpose;
- (d) accuracy and update of the personal data, including the immediate cancellation of the personal data which are not accurate with respect to the treatment's purpose;
- (e) limit the time period during which the personal data is kept: in particular, the personal data shall be kept for a time period not greater than what is necessary in relation to the purpose for which the personal data has been treated;
- (f) integrity and confidentiality: personal data shall be appropriately protected.

The owner shall not only comply with the above principles, but shall also be capable of proving their adoption, in accordance with the principle of accountability.

5. Under which modalities may individuals be enabled to treat personal data?

Under art. 2-quaterdecies of the Privacy Code the owner, or responsible of the treatment shall identify specific tasks and functions related to the treatment of personal data to be granted to specific individuals, which shall operate under their authority (for example employees, collaborators, etc.)

The identification of the appropriate modalities to issue such authorizations of treating personal data are determined by the owner or the responsible of such treatment. Generally such authorizations are issued in written form also in order to satisfy the accountability principle and thus to prove the adoption of the principles set forth under the Regulation.

The Italian Legislator, being well aware of the issues existing during a health emergency to implement written authorizations, identifies under par. 4 simplified modalities in favor of the authorized subjects (identified above and mentioned under par. 1 of art. 17-bis) to grant tasks and functions related to the treatment of personal data in favor of individuals by allowing the oral implementation of such authorizations.

6. Which modalities may be implemented to provide the informative note to the parties involved?

Under the EU Regulation, depending on the purposes of the treatment, the owner shall provide the parties involved, before such treatment, with the information required by the EU Regulation through a specific informative note (articles 13 and 14). Article 13 lists the information that needs to be provided when the personal data are collected directly from the party concerned, which should receive the information related to the treatment of his personal data at the moment in which such data are collected from the party or, if the information are obtained from another source, within a reasonable term, the length of which shall be determined on a case by case basis. It is clear that during situations of emergency the fulfillment of such an obligation may be difficult and sometimes even impossible.

For this reason par. 5 allows the persons identified under par. 1 to refrain from providing the information on the treatment of personal data or from providing a simplified information, upon the prior oral communication to the parties concerned of the reasons of such omission.

7. For how long the personal data may be treated?

At the moment it is not possible to identify a specific period of time for the treatment of personal data; however on the basis of the principles set forth under the EU Regulation, the Italian Legislator identifies a criterion for the conservation of personal data, namely the continuation of the state of emergency provided under the resolution of the Council of Ministers dated 31 January 2020, at the end of which – according to the information provided by the Guarantor – all subjects involved in the treatment of personal data during the emergency situation provided under par. 1 of art. 17-bis shall undertake to adopt appropriate measures in order to restore the treatment of personal data within the ordinary powers and regulations of these persons.

Gianni, Origoni, Grippo, Cappelli & Partners has set up an in-house **Task Force** to constantly monitor the evolution of legislation in the regions affected by the Coronavirus and is at your entire disposal to support you in defining, drafting and implementing the most advisable strategies to limit the impact of the spread of the Coronavirus on the operations of your business and the management of your existing commercial relations. For our previous newsletters on this subject, please [click here](#).

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