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Autore: Marcoccio Gloria

Amendments to the Italian Privacy Code by the new Law Decree concerning simplification and development



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G.Marcoccio

The Council of Ministers headed by prime minister Mr. Monti continues its program of radical change in the status quo of Italian society and as a further milestone in this journey, on January 27 has approved a Law Decree, also called "Libera Italia" (make Italy free), which introduces many changes and simplifications addressed to enterprises, citizens and public administration.

The new provisions will come into force with the imminent publication in the Official Gazette, and may be subject to changes during the process of enactment (within 60 days of publication in the Official Gazette of the Decree). With regard to the Italian privacy legislation (Privacy Code: Legislative Decree 196/03) Article 47 of just approved Law Decree, in favor of all the data controllers subject to the Privacy Code removes the obligation of preparing the Security Policy Document (DPS) and consequently in favor of them removes also the obligation of referring about the DPS update in the management report that the data controller may be required to submit together with the relevant balance sheet.

The repealed provisions are those referred to in subparagraph g) of paragraph 1¹ and paragraph 1-bis² of Article 34 of the Privacy Code and those set out in paragraphs from 19 to 19.8³ and 26⁴ in the technical specifications regarding minimum security measures- Annex B of the Code.

However still remain in force all the other requirements of the Privacy Code and in particular those regulating security measures, and relative sanctions.

In its press release, the Government represents the DPS as a merely superfluous fulfillment and states that this measure was not included in the European privacy Directive 95/46/EC.

¹ Repealed provision: "1. Processing personal data by electronic means shall only be allowed if the minimum security measures referred to below are adopted in accordance with the arrangements laid down in the technical specifications as per Annex B: ...g) keeping an up-to-date security policy document,;..."

² Repealed provision: "1-bis Per i soggetti che trattano soltanto dati personali non sensibili e che trattano come unici dati sensibili e giudiziari quelli relativi ai propri dipendenti e collaboratori, anche se extracomunitari, compresi quelli relativi al coniuge e ai parenti, la tenuta di un aggiornato documento programmatico sulla sicurezza è sostituita dall'obbligo di autocertificazione, resa dal titolare del trattamento ai sensi dell' articolo 47 del testo unico di cui al decreto del Presidente della Repubblica 28 dicembre 2000, n. 445, di trattare soltanto tali dati in osservanza delle misure minime di sicurezza previste dal presente codice e dal disciplinare tecnico contenuto nell'allegato B). In relazione a tali trattamenti, nonché a trattamenti comunque effettuati per correnti finalità amministrativo-contabili, in particolare presso piccole e medie imprese, liberi professionisti e artigiani, il Garante, sentiti il Ministro per la semplificazione normativa e il Ministro per la pubblica amministrazione e l'innovazione, individua con proprio provvedimento, da aggiornare periodicamente, modalità semplificate di applicazione del disciplinare tecnico contenuto nel citato allegato B) in ordine all'adozione delle misure minime di cui al comma 1."

³ Repealed provision: 19. By 31 March of each year, the controller of processing operations concerning sensitive and/or judicial data shall draw up, also by the agency of the data processor, if nominated, a security policy document containing appropriate information with regard to: 19.1 the list of processing operations concerning personal data, 19.2 the distribution of tasks and responsibilities among the departments/divisions in charge of processing data, 19.3 an analysis of the risks applying to the data, 19.4 the measures to be taken in order to ensure data integrity and availability as well as protection of areas and premises insofar as they are relevant for the purpose of keeping and accessing such data, 19.5 a description of the criteria and mechanisms to restore data availability following destruction and/or damage as per point 23 below, 19.6 a schedule of training activities concerning the persons in charge of the processing with a view to informing them on the risks applying to the data, the measures that are available to prevent harmful events, the most important features of personal data protection legislation in connection with the relevant activities, the resulting liability and the arrangements to get updated information on the minimum security measures adopted by the data controller. Said training activities shall be planned as of the start of the employment relationship as well as in connection with changes in the task(s) discharged and/or the implementation of new, significant means that are relevant to the processing of personal data, 19.7 a description of the criteria to be implemented in order to ensure adoption of the minimum security measures whenever processing operations concerning personal data are externalised in accordance with the Code, 19.8 as for the personal data disclosing health and sex life referred to under point 24, the specification of the criteria to be implemented in order to either encrypt such data or keep them separate from other personal data concerning the same data subject.."

⁴ Repealed provision: "26. The circumstance that the security policy document has been drawn up and/or updated shall be referred to in the management report that the data controller may be required to submit together with the relevant balance sheet.."



Certainly it is acceptable representing as "merely superfluous", at this point, all the pure formal requirements (there are further formal requirements in the Italian privacy regulation). However it should be prevented that the removal of the obligation of drawing up the DPS is intended as a general less attention to security measures, that at the contrary are taking an increasingly important role in the context of Internet and electronic communications for commercial and social services addressed to consumers, citizens and enterprises.

As for the reference to 95/46/EC, it is noteworthy that in these days it has been started the process of its full review led by the EU authorities, based on a proposal prepared by the relevant European working committees, which will replace this Directive with a Regulation (and as such directly applicable in all EU member states): the draft version, published on January 25, appears to promote at European level the documental approach followed in Italy with the DPS.

In addition to the above mentioned repeal of DPS, the Law Decree always through its Article 47 introduces in the Privacy Code the new article 17-bis, which reads as follows: *"the processing of judicial data is also permitted when it is made in implementation of memoranda of understanding for the prevention and contrasting of the phenomenon of organized crimes, concluded with the Ministry of the Interior or its peripheral offices under Article 15, paragraph 2, of Legislative Decree 30 July 1999, No 300, which specify the type of data used and the permitted treatments."*

The introduction of such an article is addressed to the processes of cooperation / exchange of information especially among police agencies and enterprises (also represented in the above protocols by their sectorial representatives) for the prevention and contrasting of specific criminal phenomena .

It seems too early to make comments on this, although it may be already underlined the increasingly involvement of the enterprises in actions for preventing and contrasting criminal activities, resulting in an increase for them of efforts and obligations and law responsibilities, as well as risks of improper use of such sensitive information for all entities involved.