



Italy's Data Protection Bill's main features

Italy's Constitution includes provisions relating to data protection. Such provisions define the 'level' of the balance of interests involved - as seen also in the laws concerning personality rights and in those governing economic activities. The laws concerning economic activities, according to jurisprudence, cannot be in conflict with the principles of personal freedom and human dignity. Moreover, there are several 'special' laws (Workers' Statute, AIDS laws, right of access to public documents) which the bill leaves intact.

Scope of the Bill: The new data protection law will not immediately apply to police data files (which are governed by Law no. 121 of 1981), to intelligence agencies, to justice or to matters under State secrecy - except as related to the principles of data security, quality of data, automated profiles and control by the supervisory authority. Still, the new data protection law will immediately apply to these sectors with regard to those articles allowing immediate ratification of the Strasbourg Convention and the Schengen Agreement. It will be determined, through delegated legislation, whether, and the extent to which, some principles may be applied to the processing of the above data.

Manual data: Manual data falls within the scope of the bill. The preceding Government has proposed that manual data should be governed by this law only if it was (or was expected to be) included in data files. The preceding Parliament held that they should be protected in any case.

Public and private sector: This distinction is related above all to the procedures for obtaining the data subject's consent. Consent is required only in the private sector, as an alternative to the requirements that are set out in the EU directive.

Information to the data subject: It is to be provided only at the moment of data collection (except for cases of right of access). Parliament can be expected to introduce amendments which entail further obligations in this area, as is provided for under article 11 of the EU Data Protection Directive (95/46/EC).

Data subject's consent: Consent is to be given in writing only for sensitive data. In other cases, express consent (orally or in writing) must be given freely and in a specified form.

Notification: To facilitate control by the supervisory authority and exercise access rights:

- a simple notification is available covering a wide range of personal data classes
- a similar notification applies to data transfer to third countries
- a special authorization is required for the processing of sensitive data.

Security: This principle has been assigned a high level of priority, with effects in the fields of civil and criminal legislation. Specific decrees will set out more detailed rules. Special safeguards are required for appointing a data processor and a processor must comply with them.

Legal persons and deceased persons: Data relating to legal persons falls within the scope of the bill as well as those concerning various other bodies. The processing of such data is not governed by the rules applying to the transfer of data to third countries and to the right of access. The rights concerning deceased persons may be exercised by those who have a justified interest.

Supervisory authority: The powers conferred on the independent supervisory authority are wide-ranging and include:

- keeping of the registry of processings,
- powers of direct access, and
- control.

Any data subject may apply to the supervisory authority either through a simple claim or by formally lodging a complaint which institutes a legal proceeding. The final decision rendered by the authority at the end of this proceeding is to be complied with under sanction of a criminal penalty. Such a decision may be appealed against by legal means. The data subject may also decide to apply directly to the judicial authorities.

Other features: The bill also includes: the concept of anonymous data, an equal discipline for temporary processing, rules concerning codes of conduct, transitional provisions, administrative and criminal punishments, regulations applying to research and statistics, provisions governing transfer of data to third countries.