

# Get prepared for Italy's Data Protection Code

Businesses have until January 1st 2004 to prepare themselves for Italy's new Data Protection Code. **Lilly Taranto** examines how the code will affect data protection in the private sector.

**O**n June 30th 2003, the Italian Council of Ministers approved a new Data Protection Code, which will become effective on January 1st 2004. The code is the outcome of a complex exercise that led to the establishment of a reference text for data protection. The code unifies and integrates all the various legislative decrees, codes of conducts and other regulations that have amended Italy's 1996 Data Protection Law over the past six years.

The enactment of the code effectively turns these provisions into primary legislation, thereby affording a higher level of protection for individuals. In addition to simplifying the legal framework, the code also implements the E-communic-

**Part 2** addresses the processing of personal data in specific sectors (for example, the judiciary, police forces, defence, social security, banking, finance, insurance, Internet, and direct marketing). In addition to bringing together existing sectoral regulation, part 2 of the code also introduces long awaited regulations for the healthcare and employment sectors.

**Part 3** regulates administrative and judicial remedies, sanctions and powers, and the activities of the Personal Data Protection Authority.

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## CONSENT

Section 23 of the code states that private or public organisations may process personal data if the data subject has given their consent. Written consent is required for sensitive data. It is important to note that the scope of the consent requirement has been reduced through specific exemptions. As provided by section 24, consent is not required when the processing:

- is necessary to fulfil a legal obligation
- concerns data from public registers or directories
- concerns data relevant for the activities of certain banking groups
- is necessary to safeguard the life of a third party
- is necessary for judicial investigations, although data may not be disclosed in this case
- is necessary to pursue a legal interest of the data subject, or of a third party, who is recipient of the data
- is carried out by non-profit organisations with regard to their members (disclosure is not permitted in this case); and
- is necessary for historical, scientific or statistical purposes and in compliance with the relevant codes of practice.

## NOTIFICATION

The notification system is the process by which organisations inform the Data Protection Authority about the categories of data which they are processing. The code reverses the previous provisions by requiring noti-

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tions Privacy Directive (2002/58) which regulates privacy over telecoms networks. Finally, the code introduces several innovations which brings the code into line with the Personal Data Protection Authority's case law. The Code is divided into three parts:

**Part 1** sets the general principles and obligations that apply to all data processing, except as provided in Part 2 with regard to specific categories of processing. In particular, Part 1, after setting the general principles and individuals' rights, regulates the data processing, security measures and data transfers for both public and private sectors.

provisions regarding privacy. At around 150 pages in length, the code contains a great deal of detail, so this article looks at the relevant corporate issues, examining the general principles and obligations outlined in Part 1 of the code and the specific sectoral rules set out in Part 2.

## PART 1 OF THE CODE

This section of the code explicitly proclaims that every individual has the right to the protection of personal data. This right has recently been reaffirmed by Article 8 of the Charter of Fundamental Rights of the European Union.

fication to the Data Protection Authority only in cases regarding certain types of data processing (which are listed in section 37). This provision simplifies the existing system which requires every party not specifically exempted to notify with the Authority. The notification process has also been simplified. It can be done electronically and according to the Authority's instructions regarding the use of digital signatures. The types of processing that require notification include:

- genetic data
- data regarding health and sexual activities
- data electronically treated to define or analyse individuals' personality
- transborder data flows
- sensitive data kept in data bases for recruitment purposes, opinion polls and market research; and
- patrimonial data (eg. data relating to individuals' assets).

#### SECURITY

Sections 31-34 of the code contain provisions for the security of electronic data processing systems. Section 31 states that processing must occur in a fashion that minimises the risk of destruction, loss or accidental access by third parties to personal data. Section 32 provides additional security requirements for telecoms operators and Internet service providers. Finally, Section 34 sets minimum standards for processing with electronic systems. Other sections of the code contain provisions to protect sensitive information or judicial acts, as well as minimum-security measures for all kinds of data processing.

#### DATA TRANSFERS

Sections 42-45 lay out the rules on data transfers within the European Union and to non-member states. Regarding transfers within the EU there are no limitations unless the recipient country has adopted regulations aimed at restricting freedom of personal data circulation. Section 43 lists the cases when data transfers to non-member states are allowed. These are:

- the data subject has given consent
- it is necessary to comply with the law
- it is necessary to safeguard a public interest
- it is necessary to safeguard the life or health of a third party
- to establish or defend a legal claim
- the transfer relates to administrative records or publicly available sources of information and is in compliance with provisions applying to this subject-matter
- it is necessary for scientific, historical or statistical purposes and in compliance with relevant codes of conducts; and

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### The code is one of few attempts globally to unify several legal provisions regarding privacy.

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- the processing concerns data relating to legal persons, bodies or associations.

Section 45 reaffirms the prohibition on data transfers to non-member states in which an adequate level of protection cannot be guaranteed.

#### PART 2 OF THE CODE

Part 2 of the code contains provisions aimed at regulating personal data processing within specific sectors. As well as rules covering the judiciary and public sector organisations, there are provisions relating to healthcare, employment, banking and insurance, the Internet, telecommunications, and video surveillance.

In addition to the provisions for these sectors, the code also provides for the creation of more specific rules of conduct that will be developed in cooperation with the main players in sectors

such as employment, Internet, video surveillance, banking and insurance, and direct marketing. Although there is no mention that these codes of conduct require approval from the DPA, they must be created in line with the guidelines set by the authority and referred to in the new code.

Overall, codes of conduct have attracted a great deal of attention and are acquiring binding force. Some of these have already been adopted under Section 12 of the new Data Protection Code and include codes of conduct for processing historical data, processing for statistical purposes and for journalistic activities. It is expressly stated that compliance with their provisions shall be a general prerequisite in order for the processing of personal data by public and private entities to be lawful.

#### HEALTHCARE

In this particular sector, new rules have been introduced to simplify the data controllers' formal obligations. Section 81, for example, states that a single patient consent will be valid for a range of medical services rendered by different hospitals, or hospital departments. Moreover, there are measures to safeguard patients' rights.

#### EMPLOYMENT

According to section 111 of the code, the Data Protection Authority promotes the adoption of a code of conduct regulating areas such as employee consent, the use of recruitment advertisements to collect data, and handling CVs or resumes.

Section 114 of the code reaffirms existing provisions which prohibit employers from keeping workers under surveillance at a distance (eg. video/CCTV surveillance) or to interfere with their private lives.

#### INTERNET/TELECOMS PRIVACY

The code contains detailed provisions on electronic communications. These provisions set out the rights of telephone subscribers, and contain rules governing the use of traffic data, billing information, caller line identification (CLI), unsolicited communications, and telephone directories.

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