

COUNTRY UPDATE-Italy: GDPR

May 04 2018 [TRRI commissioning team](#)



The [General Data Protection Regulation](#) (GDPR) comes into force across the European Union on May 25, 2018. Many of its provisions contain "opening clauses" enabling member states to introduce national laws that take GDPR requirements further.



This article provides an oversight of the relevant law in Italy by [Laura Liguori](#) and [Eleonora Curreli](#) of [Portolano Cavallo](#).

GDPR basics

This section briefly outlines some core GDPR provisions.

Application: The GDPR applies to EU-based controllers and processors of personal data. It also applies to non-EU bodies where they process an EU resident's personal data in relation to offering them goods or services or the behaviour of individuals within the EU is being monitored.

General principles: Set in Article [5.1](#). Personal data must be processed "lawfully, fairly and in a transparent manner". Among additional requirements, processing must be limited to a specified, explicit and legitimate purpose, the data must be accurate and processed in a manner that ensures it appropriate security.

Article [5.2](#): The person controlling the data is responsible for, and must demonstrate compliance with the [5.1](#) requirements.

Legal bases: Article [6](#). There are six legal bases for data processing. These include compliance with a legal obligation, legitimate interest and, subject to conditions in article [7](#), consent of the subject.

Rights of data subjects: Articles [12-23](#). These include right to be informed, to object, of data access, rectification, portability and erasure.

Data protection officer (DPO): Article [37](#). Where a data controller or processor's core activities require 'regular and systematic monitoring of data subjects on a large scale' they must appoint a DPO.

Impact assessments: Article [35](#). Before a data controller conducts processing that presents a high risk to people's rights and freedoms, in particularly using new technologies, it must carry out a data protection impact assessment (a DPIA).

1. What pre-GDPR national data protection or processing legislation did Italy have and how did it compare to the basic Data Protection Directive 95/46/EC requirements?

The Italian Data Protection Code (Legislative Decree no. 196/2003) has implemented the Data Protection Directive 95/46/EC in Italy and regulates the collection and use of personal data and the general right to privacy. In addition, the Italian Data Protection Code contains the provisions implementing other European directives, such as the e-Privacy Directive 2002/58/EC and the Electronic Communications Networks and Services Directives 2009/136/EC and 2009/140/CE. The Italian Data Protection Code is completed and detailed by the general resolutions and guidelines issued, from time to time, by the Italian Data Protection Authority (*Garante per la protezione dei dati personali* – "**Garante**").

The Italian Data Protection Code sets forth general principles which basically replicate those provided under Data Protection Directive 95/46/EC. However, on some specific issues it adopted a different approach. For example, the Italian Data Protection Code provides for some limitations as regards to the possibility for data controllers to rely on "legitimate interest" as a legal ground. Indeed, under Italian law data controllers cannot rely on "legitimate interest" as a legal ground for the processing of non-sensitive data based on their autonomous decisions. On the contrary, a general or ad hoc decision of the Garante applying the "balancing of interests" test is always required.

2. What will happen to existing national data law when the GDPR comes into force?

As anticipated, the Italian Data Protection Code is currently in force. Although the GDPR will become directly applicable in Italy starting from May 25, 2018, nevertheless a formal act of the Italian Parliament will be needed to formally repeal/amend the provisions of the Italian Data Protection Code that are in contrast with the GDPR.

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In this respect, on November 2017 the European Delegation Law (Law no. 163/2017) entrusted the Italian Government with the approval of one or more legislative decrees adapting the Italian statutory framework on data protection to the GDPR. At the moment, the Italian Government has not approved such decrees yet, but they are expected by May 21.

3. Which regulator will supervise the GDPR and have there been any indications of how it will approach oversight and enforcement?

The Italian Data Protection Authority (the Garante) is the competent authority to supervise the GDPR enforcement. In the past months, the Garante has been very active in providing indications regarding the application of the GDPR. Among others, the Garante issued a [Guide](#) to the application of the GDPR which is available in Italian language only.

4. Any new national legislation that extends GDPR requirements been introduced or planned?

Further to the European Delegation Law, a few modifications to the Italian data protection law have been carried out by the following recent statutes:

- the European Law 2017 (Law No.167/2017) introduced – in compliance with the European Union obligations - amendments mainly concerning the data processor role, the retention terms of both telephone traffic data and electronic communications traffic data, the re-use of personal data (except for genetic data) for scientific research or statistical purposes;
- the Budget Law (Law no. 205/2017) introduced some specifications concerning the data processing based on the legitimate interest, the information notice to be provided to the data subjects and mandatory communication duties to the Garante. In particular, the Budget Law provides that if the data controller wants to rely on the legitimate interest as legal ground for a processing involving the use of either new technologies or automated means, the data controller is required to prior notify this to the Garante by filing the model that shall be provided for by the Authority, providing details on the subject of the processing, together with the relevant purposes and context. Once that the term of 15 days from the transmission of this notification to the Garante has expired, in the absence of an official answer from the Garante, the data controller shall proceed with the processing in question. Due to the fact that the Government is working on decrees adapting the existing law to the GDPR we cannot exclude that these amendments will be cancelled by the new legislation.

5. Any other legal considerations around data processing that financial services firms should be aware of?

Financial services firms, to the extent that they provide payment services, should also comply with the provisions of the [Payment services Directive](#) (EU) 2015/2366 and in particular with those setting forth the strong authentication requirements, as recently detailed by the European Commission Delegated Regulation (EU) 2018/389 on Strong Authentication and Open Standards. The PSD2 was implemented in Italy by Legislative Decree no. 2017/2017, which was published in the Official Gazette on January 2018.

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