



## Italy's new government gives priority to data protection bill

Italy remains the only European Union Member State, together with Greece, where a comprehensive data protection law has not yet been enacted. *The Privacy Laws & Business Newsletter* has been reporting on successive bills since 1987. However, this month, the new government submitted data protection bills to the Chamber of Deputies and Judge Giovanni Butarelli, the principal author of the bills, based at Italy's Ministry of Justice, reports that the new government has made use of the "priority route" to facilitate adoption of the draft legislation. Here he explains the background to the bill and then summarises the main features.

In 1989, Italy's Parliament authorized the ratification of the Council of Europe Convention no. 108. The instrument of ratification has not yet been deposited. No general law in Italy governs data protection. Instead, special provisions apply which are found in different laws.

In November 1993, Italy's Chamber of Deputies approved, almost unanimously, a data protection bill (no. 1670/S). However, in February 1994, it came to a halt in the Senate owing to heavy pressure exerted by a number of organisations in the private sector which opposed provisions, especially the protection of data relating to legal persons.

Following national political elections in March 1994, the Ministry of Justice considered a few modifications aimed at ensuring undiminished protection of personal data with less red tape and general costs for data controllers, for example:

- a few cases of exemption and simplification regarding notification
- the number of provisions applying to data on legal persons was reduced
- a few periods of time laid down in the transitional provisions were extended
- the "principle of intent" was given greater weight regarding a few criminal offences.

In January 1995, the Italian government approved a new bill (1901/C) whose framework was largely similar to the previous one, although

introducing modifications in accordance with the text of then current version of the EU Data Protection Draft Directive. The bill aimed to implement the basic principles in the Council of Europe Convention and took into consideration the EU Directive, except for a few issues, such as applicable national law and transfers of data to third countries which will be addressed at a later stage.

Following a lively debate of over 10 months duration, the bill was approved without major amendments in November 1995 after having been split into two separate items (no. 2296/S and no. 2343/S). Dissolution of Parliament in January 1996 prevented the bills from being passed at this stage.

However, on 7th June this year, the Government which resulted from the general elections of 21st April, again submitted the bills to the Chamber of Deputies without any amendments, in order to make use of the "priority route" established by parliamentary regulations. Obviously, changes may still be made to the texts. The new government has stated that it intends to deposit the instrument of ratification of Council of Europe convention no. 108 immediately the bills are adopted into law.

### Public opinion pushes bill forward

The temporary exclusion of Italy from the Schengen agreement, owing to the absence of a data protection law, caused an uproar in the media and public opinion. For the first time since there was an attempt to adopt a data protection bill in 1975, the new government went beyond a formal commitment and undertook to rapidly approve the current data protection bill. The approach favoured by the law's opponents, to approve a data protection bill relating only to the Schengen Information System, was considered not practical. Instead, the government considered that a comprehensive law was necessary to allow ratification of Convention no. 108.

Reactions to the bill were mixed. The bill was judged favourably by all branches of the public administration. Conversely, despite the many amendments meeting the requirements of the private sector, it was received with greater and more spirited opposition by publishers, computer equipment companies, insurance companies, small and medium-sized companies which fuelled a



lively campaign against its approval in the press and through reports submitted to Parliament.

### **Timetable**

It is expected that the bill will be finally approved by September 1996 and enter into force in January 1997. By the third week of June, 23 of the bill's 45 articles had been approved.

The long period of discussion in Parliament is due to the painstaking paragraph by paragraph analysis by the parliamentary review committee and a lively debate caused by the mass media's request for exemption the provisions of this law which many parliamentary groups considered out of all proportion to their perceived problems with the bill.

The competent parliamentary committee strengthened the safeguards provided for in the government's bill, for example, by establishing the same rules for automated and manual data. The committee has not, so far, considered any amendments conflicting either with the principles of the Council of Europe Convention no. 108 or with the principles or with the guidelines proposed by Italy's private sector.

Probably, for the first time in the history of the Italian legal system, the bill expressly mentions the Council of Europe's individual recommendations in the field of data protection, including R (95) 4 on telecommunications. The bill

provides for the issuing of delegated legislation in which the general data protection principles set out in the new law will be implemented through specific regulations governing the individual areas which are covered by the Council of Europe recommendations. These regulations must follow guidelines established by the new law.

### **Progress on other data protection initiatives**

Italy has ratified EU Directive 388 on access and competition in the field of telecommunications and introduced a clause which specifies that there will be no prejudice to the implementation of any provisions on data protection approved in the future.

The most widely debated data protection issue concerns the relationship between data protection and the new telecommunications media; and the way in which future legal provisions governing the transfer of data to third countries should be applied to Internet connections.

It is widely expected that a law will be adopted which would include:

- establishing the responsibilities of service providers and users
- whether anonymous access to bulletin board systems should be permitted, and
- whether encryption systems may be used.



## 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.