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KeyNews

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I ANCIC Code of Conduct

The Italian Data Protection Authority approved the New Code of Conduct ("Code") drafted by the National Association of undertakings for commercial and credit management information ("*Associazione Nazionale tra le Imprese di Informazioni Commerciali e di Gestione del Credito*" or "ANCIC").

The Code, according to Article 20 of the Legislative Decree 10 August 2018, no. 101, sets additional safeguards for surveyed subjects, requires a data protection impact assessment in line with Article 35 of the Regulation (EU) no. 679/2016 ("GDPR") and, adjusting to European best practices, establishes a new monitoring body over member undertakings.

The Code allows those companies offering information services concerning the commercial reliability of entrepreneurs and managers to process – without prejudice to the accountability principle – the personal data of surveyed subjects without asking for their consent but rather by using legitimate interest as a legal basis for processing. These undertakings shall nevertheless guarantee greater safeguards to data subjects (both in relation to the privacy

notice as well as at the moment of the exercise of the rights of the data subjects provided by the applicable law).

Members shall also, among other obligations, (i) operate pursuant to an approach based on risk, adopting technical, procedural, material and organizational measures, useful to prevent or minimize the risks connected to the processing; (ii) undertake to follow the guidelines, recommendations and best practices adopted by the European Data Protection Board ("EDPB") or by other sector competent authorities; (iii) appoint a data protection officer ("DPO").

Finally, the Code provides for the establishment of an Independent Monitoring Body ("*Organismo di monitoraggio*" – "IMB"), external to ANCIC, made of individuals chosen based on honorability, autonomy, independence and professionalism criteria, in line with GDPR and as further detailed in the European Guidelines recently finally approved. The IMB shall verify compliance with the Code by its members and manage claim resolutions.
The Italian Data Protection Authority clarified that the Code's coming into effect is dependent on the accreditation of the IMB as provided by GDPR, according to criteria to be set by EDPB.
The Code as recently approved replaces and updates the former Code of conduct on commercial information (also known as *Codice A7*) which is to remain in force until September 19, 2019.

Here the New Code of Conduct.

II The New PSI Directive

The new EU Directive on open data and the re-use of public sector information has been approved (now Directive (EU) 2019/1024 – "PSI Directive"). The Directive was published on the Official Journal of the European Union on June 26, 2019 and will enter into force on the 20th day after its publication. Member States will have two years to implement its provisions at a national level.

The new PSI ("Public Sector Information") Directive includes amendments to the Directive 2003/98/CE, broadening the application of the re-use of public sector information, including, in addition to data coming from public sector bodies, also those of undertakings active in the transport, water, energy and postal services sector, as long as created while carrying out general interest economic services.

The public sector bodies and public undertakings are called to make available their information in any pre-existing format or language and, where applicable and possible, via electronic means, "*in formats that are open, machine-readable, accessible, findable and re-usable, together with their metadata*".

The re-use of documentation remains free of charge. However, it is possible to recover marginal costs sustained for reproduction, making available and dissemination of documentation, and of anonymization of personal data or for measures adopted to protect confidential commercial information. Nevertheless, the free-of-charge rule has exemptions as to public bodies obliged to generate revenues to cover a substantial part of their costs relating to performance of other public tasks, and as to libraries, museums and archives and public undertakings. In these instances, the total amount of fees are calculated based on objective, transparent and verifiable criteria defined by Member States.

The Directive provides for the re-use of "*dynamic data*", meaning documents in a digital form, subject to frequent or real-time updates. This category includes environment, traffic and meteorological data, whose financial value depends on their immediate availability and regular updates. Dynamic data should be made available after collection or via an application programming interface (API) in order to facilitate the development of internet, mobile and cloud applications based on such data.

The Directive defines the rules concerning documents falling within the definition of "*high-value datasets*". This category includes geospatial data (e.g. cover postcodes, national and local maps), earth observation and environment data (e.g. energy consumption and satellite images), meteorological data, statistics data (demographic and economic indicators), companies and company ownership data (business registers and registration identifiers) and mobility data (road signs and inland waterways). High-value datasets must be re-used free of charge and are to be made available for their re-use in a machine-readable format, via appropriate API and, where applicable, for bulk download.

Finally, as to standard licenses, the documents re-use cannot be made subject to conditions unless those conditions are objective, proportionate, non-discriminatory and justified based on an objective general interest. Moreover, imposing those conditions must not unnecessarily restrict possibility for re-use, nor shall they be used to restrict competition.

III Unlawful processing of personal data

With decision no. 20013/2019 the Supreme Cassation Court (Third Criminal Section) ruled that, as to the unlawful processing of personal data as provided by Article 167, paragraph 2 of Legislative Decree no. 196/2003, the law includes, among the element of advantage/injury of the crime, the aim characterizing the specific intent required.
However, the Court reminds that, for the agent to be punishable, the law does not require that the aim pursued (profit/damage) is actually achieved.
The case at hand concerned the transfer by a bank employee of some data of a client for the purpose of gathering interested buyers from the market to the client's real property in order to satisfy the claim of the bank on it, recouping the overdraft.
As to the "injury" element, the Court ruled that Article 167, paragraph 2, Legislative Decree no. 196/2003 does not include any specification and can, accordingly, take the form of any legally relevant prejudice to the passive party.

IV Dissemination of personal data

With decision no. 19855/2019, the Italian Supreme Court (*Corte di Cassazione* -Second Criminal Section) ruled over a case concerning the use of personal data of a third party in the context of the occurrence of the crime of criminal impersonation ensued through the falsification of the driver's license to obtaining funding.
The Court, in line with previous decisions, ruled that the use of personal data one time only, for a specific purpose, does not constitute "dissemination" as defined by Article 4, paragraph 1, letter m) of Legislative Decree no. 196/2003. The latter, indeed, requires that personal data are communicated to more undetermined persons, in any form.

Accordingly, the conduct of the defendant, albeit being an unlawful communication of the injured party's data for personal purposes, does not amount to the crime of unlawful processing

of personal data as listed under Article 167 of Legislative Decree no. 196/2003, which would be absorbed in the context of the broader wording of Article 494 of the penal code (i.e. criminal impersonation).

V Obbligations of Hosting Providers

The Advocate General of the European Court of Justice, Maciej Szpunar, presented its conclusions on June 4 on the case ECJ C-18/18, involving Facebook Ireland Limited. Specifically, the Advocate General maintained that the directive 2000/31CE ("E-commerce Directive") does not preclude a hosting provider managing a social network platform to be forced to identify, via a judge imposed injunctive measure, all the information "identical" to a defamatory comment of which the unlawfulness has been ascertained.

Moreover, the hosting provider may be forced to take down those content considered "equivalent" (i.e. where the message remains substantially unaltered) to those considered unlawful too, to the extent the take down activity does not translate in a general monitoring obligation and in any case concerning content posted by the same user that published the information considered defamatory.

A judge called to rule over the take down of equivalent information should guarantee that the effects of its ruling are "clear, precise and foreseeable". In doing so, he or she will need to balance the fundamental rights of those involved with the proportionality principle.

Here the link to the ECJ website

VI Usurpation of Community designs

With decision no. 24141/2019 the Italian Supreme Court (*Corte di Cassazione* - Third Criminal Section) ruled that the usurpation of the "community design" (in this case that of a shoe model) can be prosecuted *ex officio* and, accordingly, the remission of the lawsuit by the person holding title to the industrial property is ineffective.

Specifically, this case concerned two companies active in the wholesale and footwear importation market, convicted for having introduced and sold in the Italian territory footwear made by usurping a shoe model, registered as a community design by a third party.

In this context, the Court ruled that the combined reading of the first and second paragraph of Article 517-*ter* in question, titled "*manufacturing and sale of goods made by usurping a title to industrial property*" includes two different types of offence. The crime under paragraph 1 concerns the manufacturing and commercial use of goods made by usurping or infringing an industrial property title, whereas the crime under paragraph 2, at issue in this case, concerns the different conducts of introduction in the country, storing for sale, or in any case selling these goods, additionally requiring the "*purpose of gaining profit*". Therefore, the Court ruled that the complaint at hand is available only for the crime listed under paragraph 1. Conversely, an analogous obligation does not apply for the crime listed under paragraph 2.