

**PROVISIONS REGARDING
EXTRAORDINARY AND URGENT MEASURES TO COPE WITH THE
EPIDEMIOLOGICAL EMERGENCY CAUSED BY COVID-19**

**START OF PHASE 2 WITH PRIME MINISTERIAL DECREE OF APRIL
26, 2020**

Update of April 28, 2020

**GENERAL ISSUES
PRIVACY ISSUES**

The provision of last Prime Ministerial Decree of April 26, 2020 ([link](#)) will enter into force on May 4 (except for a limited number of provisions with effectiveness anticipated as of April 27, 2020 as per article 2) and will be effective until May 17, 2020, unless extended.

The adopted measures replace those introduced by previous Prime Ministerial Decrees (most recently by Prime Ministerial Decree of April 10, 2020) without prejudice to the most restrictive containment measures where adopted by Regions.

We will analyse below some provisions of the captioned Decree, with particular reference to commercial and industrial production activities.

1. The following activities stay suspended:

- retail commercial activities, except for activities related to the sale of foods and essential items identified in **annex 1** ([link](#)). Markets are closed, regardless of activities carried out, except for those activities aimed to the sale of foods;
- activities of catering services (among which bars, restaurants, ice cream shops, pastry shops), except for canteens and catering regulated by contracts, guaranteeing the safety distance of one metre. Catering with home delivery is allowed in compliance with sanitary regulations both for packaging and delivery activity, as well as catering with take-away without prejudice to the obligation to meet the safety distance of one metre, the prohibition to eat/drink inside the restaurant or similar and to linger in the surrounding areas;
- activities of serving food and beverage inside railway and lake stations, as well as in the service areas and fuel stations, except for those located on the highways which can only sell take-away products to be eaten/drunk outside; the activities located in the hospitals and airports stay open, with the obligation to ensure in any case the safety distance of one metre;
- activities related to personal services (among which hairdressers, barber shops, beauty salons) other than those identified in **annex 2** ([link](#));

2. Furthermore, pursuant to Article 2:

- all industrial or commercial production activities other than those listed in **annex 3** of Prime Ministerial Decree **stay suspended** ([link](#)). We point out that the list of codes as per annex 3 may be amended by decree of the Minister for Economic Development.
- The enterprises authorized to restart their activities starting from May 4, 2020 may carry out all preliminary activities aiming to the restarting **from April 27, 2020**.

The productive activities suspended as a consequence of the provisions of article 2 **may anyway carry on if organized at a distance or in smart working**.

3. As far as the suspended activities for any reasons are concerned:

- All activities necessary to the suspension, including the shipment of old stocks, shall be completed within the deadline of three days of the adoption of the amendment decree or anyway of the provision establishing their suspension;
- The access to business premises is allowed, with prior communication to the Prefect, to employees or third parties carrying out security services, conservation or maintenance activities, payment processing as well as cleaning and sanitization activities. With prior communication to the Prefect, shipment of old stocks to third parties as well as receipt of goods and supplies in the storage.

4. Businesses which can carry on their activities:

- newsstands, tobacconists, pharmacies and drug stores. The safety distance of one metre must be anyway guaranteed;
- businesses providing services of public utility, as well as essential services as per law of June 12, 1990, no. 146, without prejudice to the limitations provided for by article 1 for museums and other places of culture, as well as services in connection with education;
- the businesses related to production, carriage, selling and delivery of drugs, health technology and medical surgical devices as well as food and agricultural products;
- bank, financial and insurance services as well as the activities related to agricultural, livestock and food processing sectors including supply chains providing goods and services;
- all businesses anyway aiming to face the emergency;
- any activity already allowed as of the date of entry into force of the Prime Ministerial Decree, provided that safety measures included in the protocols as per **point 5** below are met.
- Professional activities, for which the following advices are recommended:
 - (a) implementation of smart working as much as possible for those activities that may be carried out at home or at a distance;
 - (b) encouraging vacations and paid leaves as well as other instruments provided for by collective bargaining;
 - (c) enforcement of security protocols to avoid infections and, if not possible, keeping the safety distance of one metre as main containment measure, with the adoption of personal safety equipment;
 - (d) encouraging the sanitization operations of workplaces, also using to this end social safety nets.

5. Measures to contain the infection aimed to safely carry out industrial and commercial productive activities

The businesses whose activity is not suspended pursuant to the Prime Ministerial Decree shall ensure, further to the safety distance of one metre, that the accesses take place one by one and nobody can linger inside the business no more than the time necessary to the purchase of goods. The enforcement of measures as per **annex 5** is also recommended ([link](#));

Furthermore, article 2 of Prime Ministerial Decree sets forth that **all allowed activities** included in annex 3 shall in any case, **as condition necessary to the restarting or continuation of the activity, meet, on the basis of their own area of:**

- (I) **The content of the standardized protocol for regulation of measures to face and contain the spreading of Covid-19 in the workplaces signed on April 24, 2020 by and between the Government and the social partners [as per annex 6 \(link\)](#),**
- (II) **the standardized protocol for regulation of measures to face and contain the spreading of Covid-19 in the construction sites, signed on April 24, 2020 by the Minister of Infrastructure and Transport, Ministry of Labour and Social Policy and the social partners, [as per annex 7 \(link\)](#), and**
- (III) **the standardized protocol for regulation of measures to face and contain the spreading of Covid-19 in the transport and logistic sector signed on March 20, 2020, [as per annex 8 \(link\)](#).**

It is advised that failure to implement the protocols and in any case the lacking of proper security levels shall determine the suspension of the activity until the re-establishment of safety conditions.

6. Further provisions:

Articles 4 and following of the Prime Ministerial Decree deal with ad hoc measures **in relation to access to Italy, transit and short-stay** inside the country as well **in relation to cruise ships, ships of foreign flags, transport ships, shipping lines, as well as to some peculiar provisions for disability.**

1. The impact of the health emergency caused by Covid-19 on the processing of personal data in light of the so called “Phase 2” introduced by the Prime Ministerial Decree of April 26, 2020:

As already pointed out (please see the update of March 13, 2020 of our newsletter), the legislative provisions issued by the Italian Government for the containment of epidemic caused by Covid-19 lead to, already since the first phase of the health emergency, notable consequences on the processing of personal data, also with specific reference to the provisions set forth for the tracking of infected individuals, both on private and work context. Moreover, such consequences seems to become more and more significant considering the proposed implementation (i) of widespread screening of population by the use of “swabs” or other medical tests to detect the “positivity” to Covid-19 virus and (ii) of “intelligent” technologies for geo-localization and detection of contacts “at risk” of individuals by “App” to be downloaded on the smartphone.

In light of the current situation and in order to protect the public health and safety, the provisions issued in these last few months and their actual enforcement already lead to a temporary limitation of the rights of those interested, probably aimed to worsen at the end of the lock-down in the new scenario of co-existence with Covid-19 virus, also as regards processing of so called “particular” data, namely those highly sensitive as per Article 9 of EU Regulation 2016/679 (GDPR – General Data Protection Regulation), which was and will be carried out sometimes also outside a professional health care setting, but which will be in any case carried out in compliance with regulations of GDPR and Legislative Decree no. 196/2003 (Privacy Code), undertaking, therefore, the organizational and technical measure more suitable to guarantee a proper proportion of the interests at stake.

The new operating procedures that the businesses adopt to comply with the changed regulatory and social framework, both in the relationships with employees and collaborators (for instance work at a distance) and with their clients (for instance implementation of new forms of marketing, e-commerce and so on) will be surely relevant as regards processing of personal data.

2. Check of the access to workplaces, handling of symptomatic employees and relevant processing of collected personal data:

One of the most critical issues is the introduction of check/inspection on the state of health of the employees at their access and during their stay in the workplace, which is moreover the subject-matter of the standardized Protocol of March 14, 2020, signed by the social partners in application of the Government recommendations included in the Prime Ministerial Decree of March 11, 2020 and the new Protocols of regulation of the measures to face and contain the widespread of Covid-19, shared between the Government and the social partners, as per Annex 6 (workplaces), 7 (construction sites) and 8 (transport and logistics) to the new Prime Ministerial Decree of April 26, 2020.

Among the instruments to contain the infection as per the Protocols mentioned above, beyond those aimed to redraw the concrete ways of work organization, as a matter of fact, the possibility to adopt some measures of direct control on the employee has been envisaged – for instance the possibility to check the state of health by body temperature detection at the access to the workplace or to ask for a declaration not to come from areas at risk of infection or absence of contacts with individuals positive to Covid-19 in the 14 previous days.

Moreover, the employer may be connected with peculiar personal data of the employee in case of managing situations in which the employee seems to have symptoms consistent with Covid-19 virus during his stay in the workplace.

The processing of such personal data, even if it justifies its legal base in the necessary balance of the rights of those interested and other fundamental personal rights (as provided for by the same GDPR articles 6 and 9 in presence of authorization national provisions), in order to comply with the law shall be in any case organized and managed in compliance of some fundamental principles related, among other things, to (i) the obligation to provide those interested with a specific information which must be clear, accurate and detailed as regards the end of the processing, (ii) ways and duration of the captioned processing and to the (iii) compliance with the principles of need, appropriateness and proportionality of the same processing (as pointed out by the Goup of European Study as regards Privacy, by declaration stated on March 19, 2020).

3. Work at a distance and organization and safety measures:

Both in a scenario of suspension of the activities which is predominant up to today and in a phase of progressive “re-opening” of the production activities introduced by the Prime Ministerial Decree of March 26, 2020, the enterprises, now and in the next future, shall adopt peculiar measures to organize work in order to limit the risks of infection, such for example, as to guarantee the healthiness of the workplace and the distance among employees. Moreover, the emergency provisions issued (and the standardized Protocols mentioned above) have encouraged (if consistent with the business organization structure), also on an exceptional basis, smart working or, more generally, work at a distance.

Further to the certain labour consequences (for instance in relation to the prohibition to control employees at a distance by software or other tools), such way of carrying out work establishes the need to handle some issues related to the processing of personal data (both of employees and clients and/or third parties whose personal data are processed by the employees outside the workplace), which shall be in any case organized and carried out in compliance with the principles of minimization, appropriateness and relevance as per GDPR.

According to the privacy compliance, the enterprises must therefore appropriately carry on, together with the Data Protection Officer (DPO) if appointed, a (re) evaluation (so called Privacy Impact Assessment) of the appropriateness, also pursuant to Article 32 of GDPR, of the technical, organisation and safety measures in relation to work at a distance, checking, adding and drawing the attention of the employees (also by means of appropriate complementary training) for instance: (i) the corporate regulation for the use of computer systems and business devices; (ii) the regulation for the use of personal devices by employees for work purposes (so called policy BYOD) and the adoption of necessary safety systems; (iii) the regulation and technical ways to let smart workers access to the corporate network; (iii) the authorization to employees to process data outside the workplace and the relevant technical and organizational instructions to guarantee data safety; (iv) the processing register.

4. The role of the Data Protection Officer (DPO):

the Data Protection Officer (DPO) if appointed pursuant to GDPR, carried out during the lock-down phase and will continue to carry out during the so called “Phase 2” an important work as regards the corporate privacy compliance, supporting the Data Controller in the planning and coordination of new data streams which become necessary or appropriate and supervising their proper management.

The DPO and the Data Controller must therefore work together in order to ensure that the organisational instruments for the containment of the infection are in compliance with the regulation related to the processing of personal data and the rights of those interested, considering the peculiarity and complexity of each business. Moreover, under such circumstances, the DPO may be considered as responsible for organizing and planning the recovery of business and market, perhaps right by means of those new computer tools for processing of personal data which technology offers to us nowadays.

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If in order to adjust to the new regulatory and social framework a reorganization of the corporate activity is carried out and this latter leads to the change of nature or risks of the processing carried out and/or to a considerable increase of the relevant streams, however the Data Controller may consider as appropriate to carry out a new check of the assumptions which render the appointment of the DPO mandatory pursuant to GDPR.

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