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Italy – LD 196 2003 Data Protection



Source:	Legislative Decree of 30th June 2003, No. 196 (Data Protection Code – DPC) Code relating to the protection of personal data. (OJ 174 dated 07.29.2003 – Ordinary Supplement n. 123) Entry into force: 01/01/2004. The decree implemented Directive 95/46/EC on data protection (Data Protection Directive) and Directive 2002/58/EC on the protection of privacy in the electronic communications sector (E-Privacy Directive). http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2003-06-30;196!vig=
Title of relevant section:	Article 130
Article 130	(Unsolicited communications) 1. Without prejudice to the provisions of Articles 8 and 21 of Legislative Decree No. 70 of 9 April 2003, the use of automated call systems without the intervention of an operator for sending advertising or direct sale material or to carry out market research or effect marketing communications shall be permitted with the consent of the subscriber or user. 2. The provision referred to in paragraph 1 shall also apply to electronic communications effected for the purposes indicated therein via email, fax, MMS (Multimedia Messaging Service), SMS (Short Message Service) or other types of messages. 3. Apart from the cases referred to in paragraphs 1 and 2, further communications for the purposes referred to in the same paragraphs, effected by means other than those indicated therein, shall be permitted under the terms of Articles 23 and 24 as well as under the terms of paragraph 3-bis of this Article. 3-bis. By way of derogation from the provisions of Article 129, the processing of data referred to in Article 129, paragraph 1, via the use of the telephone or ordinary mail for the purposes referred to in Article 7, paragraph 4, clause b), shall be permitted in respect of persons who have not exercised the right of objection, via simplified methods and electronically, by registering the number for which they are the account holders and the other personal data referred to under Article 129, paragraph 1 in a public objection register (20). 3-ter. The register referred to in paragraph 3-bis is established by Presidential Decree to be adopted under the terms of Article 17, paragraph 2 of Law No. 400 of 23 August 1988, following a deliberation of the Council of Ministers and the obtaining of the opinion of the Council of State and Parliamentary Committees competent on the matter, which shall commit themselves within thirty days as from the request to do so, as well as, on account of the relative competence profiles, the opinion of the Italian Communications Regulator, which shall be given within the same deadline, in accordance with the

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following criteria and general principles:

a) Allocation of the establishment and management of the register to a public organisation or entity with competence on the matter;

b) Provision that the entity or organisation commissioned to establish and manage the register allocates the human resources and tools available thereto or entrusts the performance and management thereof to third parties, which shall assume the financial and organisational costs thereof in full, via a service contract, in accordance with the public contracts code relating to works, services and supplies, referred to in Legislative Decree No. 163 of 12 April 2006. Persons who use the register to make communications shall pay access charges based on the actual operating and maintenance costs. The Minister for Economic Development shall determine these charges by his own measure;

c) Provision that the technical operating methods of the register shall permit every user to ask that the number of which he is the account holder is entered in accordance with simplified methods and electronically or by telephone;

d) Provision for technical methods of operation and access to the register via selective questions that do not enable the transfer of data present in the register itself, providing for the tracking of operations carried out and the storage of data relating to access;

e) Regulation of the times and methods of entry in the register, without distinction between sectors of activity or commodity category and relative updating, as well as the correlative maximum period of usability of the data verified in the register itself, providing that the entry has an indefinite duration and may be revoked at any time, by means of tools that are easy to use and free of charge;

f) Obligation for individuals who carry out data processing for the purposes referred to in Article 7, paragraph 4, clause b) to guarantee the presentation of the identification of the line calling and to provide the user with suitable information, in particular on the possibility and methods of entry in the register to object to future contacts;

g) Provision that entry in the register does not preclude the processing of data otherwise acquired and processed in accordance with Articles 23 and 24.

3-quater. The supervision and control of the organisation and operation of the register referred to in paragraph 3-bis and the data processing shall be attributed to the Italian Data Protection Authority.

4. Without prejudice to the provisions of paragraph 1, if the data controller uses the email details provided by the interested party, for the purposes of the direct sale of its own products or services, within the context of the sale of a product or service, it may not request the consent of the interested party if this relates to services similar to those which are the object of the sale and the interested party, suitably informed, does not refuse such use, initially or during subsequent communications. At the time of collection and when sending any communication for the purposes referred to in this paragraph, the interested party shall be informed of the possibility of objecting to the processing at any time, easily and free of charge.

5. In each case, the dispatch of communications for the purposes referred to in paragraph 1 or, in any case, for promotional purposes, camouflaging or concealing the identity of the sender ((or in breach of Article 8 of Legislative Decree No. 70 of 9 April 2003)) or without providing a suitable address where the interested party may exercise the rights referred to in Article 7 ((, or urging the recipients to visit websites that infringe the aforesaid Article 8 of Legislative Decree No. 70 of 2003)) shall be prohibited.

6. In the event of the repeated infringement of the provisions referred to in this Article,

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the Data Protection Authority may also instruct electronic communication service providers to adopt filtering procedures or other practicable measures in relation to the email addresses from which the communications have been sent, pursuant to Art. 143, paragraph 1, clause b).

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