

COVID-19 Emergency Possible Phase 2 scenarios in Italy



Q&A
11.04.2020

Covid-19 task force*

The decline of new coronavirus cases in Italy opens the country for the so-called "Phase 2". Government said the restart of activities will be gradual and slow. New regulations are expected both at national and supranational level. In this scenario, measures with different impact on citizens' freedoms, also in respect to privacy, are being discussed.

Phase 2 – Privacy and citizens' freedom

Q: Can Italian authorities require citizens to undergo diagnostic tests to detect Covid-19?

■ Yes, it is possible, but only passing appropriate laws. The right to good health must be safeguarded and protected as an expression of an individual right in the interest of the community.

Q: Is it possible that the use of transport services (e.g. flights) will continue to be subject to body temperature measurement?

■ Yes, but the results of the tests must be anonymous and must not be retained. As long as the risk of epidemic remains, each state, through appropriate legislative provisions, can continue, even in the so-called Phase 2, to keep containment efforts. These measures must be adequate and proportionate, as well as supported by the indications that will certainly come from the World Health Organization and by the Data Protection Authorities of each state. There should be uniformity of measures at European (and world) level, so as to guarantee effectively and simultaneously the same level of protection.

Q: Can employees in Italy be required undergo diagnostic tests to detect Covid-19 in order to return to work?

■ Yes, the employer may require testing or other measures in order to keep a safe workplace. Unless there are State measures in this regard, employees may abide to the request on a voluntary basis, and always with prior information on purposes and means of data processing.

Q: If diagnostic tests to detect Covid-19 are positive, is it possible for the Italian authorities to track the user's movements (via GPS, Bluetooth or other technology)?

■ Presently in Italy authorities carry out investigations on the possible spread of the contagion by a patient diagnosed with Covid-19 based on the information provided by the same. The country is moving towards the possible tracking, on a voluntary basis, of the contacts of the Covid-19 infected person with the acquisition of past information on the interaction with other subjects through various techniques: telephone cells, GPS, Bluetooth (contact tracing).

The Italian Data Protection Authority favours technologies that keep the contact diary only on the user's device, for the maximum period of potential development of the disease. If the user is positive, he should provide the identification of his device to a central server in order to calculate the contacts occurred with other people who also used contact tracing technology, who would then receive an alert of potential contagion. The Italian Data Protection Authority recommends that the information is managed at a public level, not private.

For the time being, tracking to verify abidance to the stay at home prescription in case of contagion, appear to be excluded.

Q: What are the legal means to force Italian citizens to respect quarantine in case diagnostic tests to detect Covid-19 are positive or in case of contact with a person who is infected with Covid-19?

■ Containment provisions related to the COVID-19 emergency ban mobility of persons subject to quarantine or positive to the virus.

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Phase 2 – Privacy and citizens' freedom

The overriding interest of community health (Article 32 of the Italian Constitution), grant Italian authorities the power to restrict constitutionally guaranteed rights such as freedom of movement, expatriation, worship, assembly, education and free economic initiative. Violation of mandatory quarantine is a crime.

Q: Is it foreseeable that Italian authorities may use drones to monitor the movement of citizens in phase 2? What are the guarantees to protect privacy?

■ Yes. ENAC (National Civil Aviation Authority), in order to ensure the containment of the epidemiological emergency, authorized the police to use drones to monitor the movement of citizens within cities. This authorisation, initially granted until 3 April 2020, was extended by ENAC to 28 April 2020. It is foreseeable that it may still be renewed for the same purposes.

Considering the limitation of privacy that this use entails, it will be necessary to provide clear information to citizens on the decision to monitor with drones certain areas. This information notice will also have to detail the means and purposes of processing and data retention and the protection systems for the data subjects.