

Coronavirus pandemic in the EU – Fundamental Rights Implications

Country: Italy

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1 Measures taken by government/public authorities

1.1 Emergency laws/states of emergency, including enforcement actions

In **Italy**, the State of emergency was declared with the Resolution of the Italian Government of 31 January 2020¹ for a six-month period (until 31 July 2020). The Italian Civil Protection (*Protezione Civile*) was the public body entrusted with the mandate to manage and organise the activities necessary to deal with the emergency, as far as the support to the population and the re-organisation of public services are concerned (in compliance with the Legislative Decree No. 1 of 2 January 2018², governing the activities of the Italian Civil Protection). With the Resolution, the Head of the Civil Protection was given the authority to issue Ordinances to deploy the interventions, in conformity with the in-force legislation. The Resolution also earmarked an initial budget to cope with the emergency of EUR 5,000,000, drained from the Fund for National Emergencies (*Fondo per le Emergenze Nazionali*). This budget was increased of additional EUR 450,000,000 with the Resolution of the Italian Government of 6 April 2020³ and of additional EUR 900,000,000 with the Resolution of the Italian Government of 20 April 2020⁴.

As per the emergency laws, it is necessary to consider the Law-Decrees adopted by the Italian Government since the end of January until the present time. Only the last one will be considered in this section. In **Italy**, the Law-Decree No. 19 of 25 March 2020 on “Urgent Measures to address the Covid-19 emergency”⁵ was passed: the Law-Decree is immediately effective and must be converted into Law by the Parliament within 60 days. The Law-Decree listed a wide range of measures that can be adopted on the entire national territory or in specific areas through the approval of Decrees of the President of the Italian Government, once the opinions of the competent Ministries or regional Presidents are obtained. The measures cannot last more than 30 days and can be renewed more than once until 31 July; they must respect the principles of proportionality and adequacy to the risk. These measures can include: limitations to the circulation of people, including restrictions to the possibility to leave the house unless for specific work reasons, necessity or urgency, health necessities; locking of public parks and gardens and any other public space; limitations or prohibitions of movement from and to municipal and regional territories; absolute prohibition to leave the house for the people subject to quarantine measure because positive to the virus; limitations or prohibition of meetings and gatherings in public spaces; limitations or suspensions to demonstrations or any other type of public events; suspension of civil and religious ceremonies, limitations to the access to worship facilities; locking of cinemas, theatres, concert halls, clubs, cultural, social and leisure centres;

¹ Delibera del Consiglio dei Ministri 31 gennaio 2020, “Dichiarazione dello stato di emergenza in conseguenza del rischio sanitario connesso all'insorgenza di patologie derivanti da agenti virali trasmissibili”, available at: <https://www.gazzettaufficiale.it/eli/id/2020/02/01/20A00737/sg>.

² Decreto Legislativo 2 gennaio 2018, n. 1, “Codice della Protezione Civile”, available at: <https://www.gazzettaufficiale.it/eli/id/2018/1/22/18G00011/sg>.

³ Delibera del Consiglio dei Ministri 6 aprile 2020, “Ulteriore stanziamento per la realizzazione degli interventi in conseguenza del rischio sanitario connesso all'insorgenza di patologie derivanti da agenti virali trasmissibili”, available at: www.gazzettaufficiale.it/eli/id/2020/04/14/20A02133/sg.

⁴ Delibera del Consiglio dei Ministri 20 aprile 2020, “Ulteriore stanziamento per la realizzazione degli interventi in conseguenza del rischio sanitario connesso all'insorgenza di patologie derivanti da agenti virali trasmissibili”, available at: www.gazzettaufficiale.it/eli/id/2020/04/24/20A02315/sg.

⁵ Decreto-Legge 25 marzo 2020, n. 19, “Misure urgenti per fronteggiare l'emergenza epidemiologica da COVID-19”, available at: <https://www.gazzettaufficiale.it/eli/id/2020/03/25/20G00035/sg>.

suspension of conferences, meetings or any other type of social event, unless it is possible to perform them via video-conference; limitation or suspension of sport events and competitions in public and private spaces, including the locking of any sport facility; limitation or suspension of outdoor leisure and sport activities; the possibility for the competent national and regional authorities to limit, reducing or suspending any mean of transport of people and goods; suspension of education activities of all grades (including universities and other academic institutions); suspension of school trips and exchanges; limitation to the presence of employees in public offices and services, except for the staff necessary to ensure essential services, fostering the use of smart-working; limitation or suspension of retailing commercial activities, except for those selling food and basic necessities if the safety interpersonal distance of 1 metre is respected; limitation or suspension of commercial activities administering food and beverages to the public, including restaurants and bars; limitation or suspension of any other professional and business activity, except those concerning necessary services if safety protocols are adopted to prevent the infection and the use of facial masks if the 1-metre interpersonal distance cannot be maintained; limitation to public markets, except those selling food and basic necessities; limitations to the access of relatives and visitors to institutions and hospices, including those destined to older people and non-independent patients, as well as to detention facilities, including juvenile detention facilities; obligation to communicate to the national healthcare services the transit or stay in areas classified by the WHO or the Ministry of Health as at epidemic risk; adoption of information and prevention measures concerning the epidemic risk; fostering smart-working whenever possible; obligation for the owners of work activities that are allowed to continue to adopt safeguard measures to prevent the infection, such as the 1-metre interpersonal distance or – if it is not possible – the introduction of facial masks for all the employees. The President of the Italian regions are allowed to adopt measures that are more restrictive than those adopted by the above-mentioned Decrees of the President of the Italian Government, only in their fields of competence; on the opposite, local mayors are not allowed to adopt ordinances that are in contrast with the Government measures. The enforcement of these measures is coordinated by local Prefects, deploying law enforcement officers and – if necessary – military forces. As per the sanctions-governed by Art. 4 of the Law-Decree No. 19/2020 – the violation of any of the adopted measure is punished with an administrative sanction of EUR 400-3,000. If the violation is perpetrated using a vehicle, the sanction is increased by up to one third. If the violation is perpetrated by a commercial activity, the administrative sanction is aggravated by the additional sanction of the locking of the activity for a period of 5-30 days. If the violation of the same measure is reiterated, the administrative sanction is doubled, and the additional sanction is always of 30 days of suspension of the activity. The violation of the quarantine for infected persons is sanctioned with 3-18 months of detention and with a financial sanction of EUR 500-5,000. Since the previous discipline countering the epidemic envisaged a criminal sanction for the violation of the adopted measures – rather than an administrative sanction – the new discipline is applied also to all the cases of violations reported by law enforcement agencies before 25 March: in these cases, the administrative sanction always amounts to EUR 200.

In **Italy**, on 6 April the network “In Difesa Di – Per i diritti umani e chi li difende” sent a letter⁶ to the Inter-ministerial Committee on Human Rights (*Comitato Interministeriale per i Diritti Umani* – CIDU) of the Ministry of Foreign Affairs, asking to formally notify to the United Nations the adoption of the State of Emergency and to carry out a monitoring of the derogation to fundamental human rights during the emergency phase.

⁶ The letter is available at: www.indifesadi.org/wp-content/uploads/2020/04/Lettera-della-rete-In-Difesa-Di-al-CIDU-Covid19.pdf.

1.2 Measures affecting the general population

1.2.1 Social distancing

Focus on:

- *Stay at home orders and physical distancing when outside the house*
- *Enforcement and penalties*

In **Italy**, the Decree of the President of the Italian Government of 1st April 2020⁷, prolonged the validity of the Decree of the President of the Italian Government of 9 March 2020⁸ - extending the red zone to the whole Italian territory and prohibiting any type of gathering in public spaces or places open to the public – until 13 April 2020. The Decree also prolonged until 13 April the validity of the Ordinance of 20 March 2020 of the Ministry of Public Health⁹ which prohibited access to public parks and gardens and any leisure and recreational activity in the open air. Sport activities were allowed if practiced alone and respecting the 1-metre distance from other people.

In **Italy**, the Decree of the President of the Italian Government of 10 April 2020¹⁰ - implementing the Law-Decree No. 19 of 25 March 2020 on “Urgent Measures to address the Covid-19 emergency”¹¹ and valid until 3 May 2020 – confirmed on the entire Italian territory the limitations to the circulation of people, including restrictions to the possibility to leave the house unless for specific work reasons, necessity or urgency, health necessities. Nobody is allowed to leave the territory of the municipality s/he is at the moment of the approval of the Decree and the possibility is excluded to go back to the municipality of residence. All the people showing symptoms of respiratory infection or fever (at least 37.5°), are invited to remain at home and limit any social interaction. Those who are subject to quarantine or positive to the virus are obliged to remain at home. Outdoor individual sport activities are allowed if the 1-metre interpersonal distance is respected. The access to worship facilities is allowed if the interpersonal distance is respected and no ceremonies are organised, to avoid the risk of gatherings.

In Italy, the Decree of the President of the Italian Government of 26 April 2020¹² introduced the so-called Phase 2 of the emergency in Italy. As for social distancing, the Decree confirmed the previous

⁷ Decreto del Presidente del Consiglio dei Ministri 1 aprile 2020, “Disposizioni attuative del decreto-legge 25 marzo 2020, n. 19, recante misure urgenti per fronteggiare l'emergenza epidemiologica da COVID-19, applicabili sull'intero territorio nazionale”, available at: www.gazzettaufficiale.it/eli/id/2020/04/02/20A01976/sg.

⁸ Decreto Del Presidente Del Consiglio Dei Ministri 9 marzo 2020, “Ulteriori disposizioni attuative del decreto-legge 23 febbraio 2020, n. 6, recante misure urgenti in materia di contenimento e gestione dell'emergenza epidemiologica da COVID-19, applicabili sull'intero territorio nazionale”, available at: www.gazzettaufficiale.it/eli/id/2020/03/09/20A01558/sg.

⁹ Ordinanza 20 marzo 2020, “Ulteriori misure urgenti in materia di contenimento e gestione dell'emergenza epidemiologica da COVID-19, applicabili sull'intero territorio nazionale”, available at: www.gazzettaufficiale.it/eli/id/2020/03/20/20A01797/sg.

¹⁰ Decreto del Presidente del Consiglio dei Ministri 10 aprile 2020, “Ulteriori disposizioni attuative del decreto-legge 25 marzo 2020, n. 19, recante misure urgenti per fronteggiare l'emergenza epidemiologica da COVID-19, applicabili sull'intero territorio nazionale”, available at: www.gazzettaufficiale.it/eli/id/2020/04/11/20A02179/sg.

¹¹ Decreto-Legge 25 marzo 2020, n. 19, “Misure urgenti per fronteggiare l'emergenza epidemiologica da COVID-19”, available at: <https://www.gazzettaufficiale.it/eli/id/2020/03/25/20G00035/sg>.

¹² Decreto Del Presidente Del Consiglio Dei Ministri 26 aprile 2020, “Ulteriori disposizioni attuative del decreto-legge 23 febbraio 2020, n. 6, recante misure urgenti in materia di contenimento e gestione dell'emergenza epidemiologica da COVID-19, applicabili sull'intero territorio nazionale”, available at: www.gazzettaufficiale.it/eli/id/2020/04/27/20A02352/sg.

regime, but it also introduced the possibility to move within the regional territory to visit family members, close relatives, and stable relationships. The possibility was also restored to go back to the municipality of residence for those who had been blocked somewhere else by the national red zone at the beginning of March. Moreover, the Decree decided to open public parks and gardens if the respect of the 1-metre interpersonal distance is respected and without allowing gatherings of people. Outdoor and individual sport activities are allowed, respecting the interpersonal distance. The possibility to celebrate funerals was restored, as long as the ceremonies are attended only by no more than 15 close relatives and celebrated in the open air, using facial masks, and respecting the interpersonal distance.

In **Italy**, on 31 March 2020 the Italian Independent Authority for Children and Adolescents (*Autorità garante per l'infanzia e l'adolescenza*) sent a letter to the Italian Government¹³ asking to clearly state in legislative documents governing the emergency phase that children are allowed to spend time out of their homes, accompanied by one of the two parents. This possibility was already allowed by the Law-Decrees and Decrees previously approved; however, the Authority stressed the importance to state it explicitly and clearly. The Government followed this recommendation and explicitly envisaged this possibility in the Decree of the President of the Italian Government of 26 April 2020¹⁴. Already on 27 March, the Authority had sent another letter to the Italian Government¹⁵, stressing the necessity to adopt and implement specific measures for the following critical issues concerning the rights of children, especially the most vulnerable ones: the right to health must be balanced with the principle of the supreme interest of the child and the right to non-discrimination, especially when vulnerable children are concerned, such as children with disabilities, children in foster care or living in community-based institutions, children from disadvantaged social groups and children of detainees or who are in detention; children who are infected by the virus must be immediately ensured protection measures that do not deprive them from the support of their family members and that include also psychological support; the education gap caused by the different access to technological devices in the emergency period must be adequately and promptly filled; those children who do not dispose of PCs or tablets to attend online classes must be rapidly given the opportunity to afford these devices; children of detainees must be granted the possibility to see their parents, even if through on-line platforms; children who are in detention must be directed as much as possible to alternatives to detention; children living in families where they are at risk of (assisted) violence must be ensured a simplified procedure to get in contact with law enforcement agencies and to the services countering domestic violence; unaccompanied migrant children must be ensured the continuity of reception measures, avoiding unnecessary transfers to other reception facilities and allowing them to remain in the facility even after they turn 18; eventually, guardians of unaccompanied migrant children must be promptly appointed and the staff working in reception facilities must be provided with the necessary equipment to work safely.

¹³ The Authority's press release concerning the letter is available at: www.garanteinfanzia.org/sites/default/files/31-03-2020_coronavirus_lautorita_garante_lora_daria_per_i_bambini_e_gia_possibile_con_le_dovute_cautele.pdf.

¹⁴ Decreto Del Presidente Del Consiglio Dei Ministri 26 aprile 2020, "Ulteriori disposizioni attuative del decreto-legge 23 febbraio 2020, n. 6, recante misure urgenti in materia di contenimento e gestione dell'emergenza epidemiologica da COVID-19, applicabili sull'intero territorio nazionale", available at: www.gazzettaufficiale.it/eli/id/2020/04/27/20A02352/sg.

¹⁵ The Authority's letter is available at: www.garanteinfanzia.org/sites/default/files/nota-agia-coronavirus_1.pdf; the press release concerning the letter is available at: www.garanteinfanzia.org/sites/default/files/27-03-2020-vulnerabili-coronavirus.pdf.

As per enforcement and penalties, the Ministry of the Interior regularly provides data on law enforcement activities carried out by police officers on the Italian territory¹⁶. During the week 28 March-3 April, 1,561,527 people were stopped and controlled by police officers: 47,447 were sanctioned for the violation of stay-at-home and social distancing provisions; 668 were charged for making false statements to law enforcement officers (Articles 495-496 of the Italian Criminal Code¹⁷); 205 people tested positive to the virus were charged for the violation of the quarantine; 612, 682 commercial activities were controlled; 1,021 were sanctioned; 121 were temporarily closed; 109 were definitely closed. During the week 4-10 April 2020, 1,851,558 people were stopped and controlled by police officers: 71,420 were sanctioned for the violation of stay-at-home and social distancing provisions; 408 were charged for making false statements to law enforcement officers (Articles 495-496 of the Italian Criminal Code); 136 people tested positive to the virus were charged for the violation of the quarantine; 641, 129 commercial activities were controlled; 1,079 were sanctioned; 155 were temporarily closed; 96 were definitely closed. During the week 11-17 April 2020, 1,878,234 people were stopped and controlled by police officers: 77,374 were sanctioned for the violation of stay-at-home and social distancing provisions; 495 were charged for making false statements to law enforcement officers (Articles 495-496 of the Italian Criminal Code); 166 people tested positive to the virus were charged for the violation of the quarantine; 615, 360 commercial activities were controlled; 1,031 were sanctioned; 209 were temporarily closed; 105 were definitely closed. During the week 18-24 April 2020, 1,742,147 people were stopped and controlled by police officers: 47,812 were sanctioned for the violation of stay-at-home and social distancing provisions; 408 were charged for making false statements to law enforcement officers (Articles 495-496 of the Italian Criminal Code); 106 people tested positive to the virus were charged for the violation of the quarantine; 685, 314 commercial activities were controlled; 974 were sanctioned; 164 were temporarily closed; 81 were definitely closed. During the week 25 April- 1st May 2020, 1,793,042 people were stopped and controlled by police officers: 43,406 were sanctioned for the violation of stay-at-home and social distancing provisions; 329 were charged for making false statements to law enforcement officers (Articles 495-496 of the Italian Criminal Code); 74 people tested positive to the virus were charged for the violation of the quarantine; 648,459 commercial activities were controlled; 1,122 were sanctioned; 182 were temporarily closed; 73 were definitely closed.

1.2.2 Education

Focus on:

- *Ensuring continuity of education for children from socioeconomically disadvantaged backgrounds, including measures to ensure distance learning for this group*

In **Italy**, the Decree of the President of the Italian Government of 10 April 2020¹⁸, confirmed the suspension of school activities and university activities, as indicated in the Law-Decree No. 19/2020

¹⁶ All data is available at the Ministry of the Interior's website, at: www.interno.gov.it/it/coronavirus-i-dati-dei-servizi-controllo.

¹⁷ Articoli 495-496 Codice Penale, available at: www.brocardi.it/codice-penale/libro-secondo/titolo-vii/capoviv/art495.html and www.brocardi.it/codice-penale/libro-secondo/titolo-vii/capoviv/art496.html?utm_source=internal&utm_medium=link&utm_campaign=articolo&utm_content=nav_art_suc_c_top.

¹⁸ Decreto del Presidente del Consiglio dei Ministri 10 aprile 2020, "Ulteriori disposizioni attuative del decreto-legge 25 marzo 2020, n. 19, recante misure urgenti per fronteggiare l'emergenza epidemiologica da COVID-19, applicabili sull'intero territorio nazionale", available at: www.gazzettaufficiale.it/eli/id/2020/04/11/20A02179/sg.

on “Urgent Measures to address the Covid-19 emergency”¹⁹. School directors are requested to ensure remote teaching and to carefully consider the needs of students with disabilities. Remote teaching is used also for academic activities. This regime was further confirmed by the Decree of the President of the Italian Government of 26 April 2020²⁰, introducing the so-called Phase 2 of the emergency.

In **Italy**, the Law-Decree No. 22 of 8 April 2020 on “Urgent measures to ensure the conclusion of the school year, the beginning of the new school year and on final exams”²¹ was passed. The Law-Decree allowed the adoption of specific Ordinances of the Ministry of Education ruling the following crucial issues: guidelines for the evaluation of the performance of the students; the conclusion of the school-year; the final exams and how to perform them using digital devices; the measures to start the next school-year in September and the possibility to fill any education gap caused by the emergency. Art. 1.5 specifically stresses that these Ordinances must carefully consider the needs of students with disabilities or any other specific education necessities. Art. 2.3 recalled the necessity for all teachers to ensure the continuity of teaching using remote on-line platforms and any other available technological devices. The Law-Decree is immediately effective, but it needs to be converted by the Italian Parliament within 60 days. The Parliamentary debate on the conversion is still undergoing and the Italian Independent Authority for Children and Adolescents expressed its opinion to the Parliament²², stressing that remote teaching cannot replace ordinary teaching since the risk exists of exacerbating social differences and depriving children and adolescents of the crucial socialisation function of the schools. The Authority also stressed that each student must be provided with equal opportunities, providing the devices and instruments that are necessary to participate to remote school activities. The Authority also highlighted the importance to restore ordinary school functioning as soon as the epidemic emergency is under control and no later than September 2020 in the entire Italian territory. Eventually, the Authority recalled three issues that deserve specific attention in order to correctly implement the restoring of the ordinary school activity: safety conditions in school facilities; the necessity to ensure that potential education gaps are adequately filled; the specific needs of vulnerable students, such as students with disabilities, or with disadvantaged and marginalised family and social background. On grounds of this Law-Decree, some Ministerial Ordinances were adopted ruling specific aspects of the school-system, especially the final exams of the secondary schools: a Circular Letter concerned the final exams of schools and training centres for adults, as well as for detainees²³; in the upcoming days a specific Ordinance should be issued concerning the final exams of the secondary schools and the other school grades.

In **Italy**, on 6 April the Italian Independent Authority for Children and Adolescents – in cooperation with the Ministry of Education – issued an online document destined to teachers aimed at designing

¹⁹ Decreto-Legge 25 marzo 2020, n. 19, “Misure urgenti per fronteggiare l'emergenza epidemiologica da COVID-19”, available at: <https://www.gazzettaufficiale.it/eli/id/2020/03/25/20G00035/sg>.

²⁰ Decreto Del Presidente Del Consiglio Dei Ministri 26 aprile 2020, “Ulteriori disposizioni attuative del decreto-legge 23 febbraio 2020, n. 6, recante misure urgenti in materia di contenimento e gestione dell'emergenza epidemiologica da COVID-19, applicabili sull'intero territorio nazionale”, available at: www.gazzettaufficiale.it/eli/id/2020/04/27/20A02352/sg.

²¹ Decreto-Legge 8 aprile 2020, n. 22, “Misure urgenti sulla regolare conclusione e l'ordinato avvio dell'anno scolastico e sullo svolgimento degli esami di Stato”, available at: www.gazzettaufficiale.it/eli/id/2020/04/08/20G00042/sg.

²² The Authority's opinion is available at: www.garanteinfanzia.org/sites/default/files/parere_agia_ddl_1774.pdf.

²³ Circolare n. 6474 del 27 aprile 2020, available at: www.miur.gov.it/documents/20182/2432359/m_pi.AOODGOSV.REGISTRO+UFFICIALE%281%29.0006214.21-04-2020.pdf/5359bfb1-3681-ded7-89fb-2a2ed980d082?version=1.0&t=1588150954681.

basic guidelines on online teaching, suggesting practical activities and providing information on the rights of the children²⁴.

In **Italy**, the Ministry of Education issued several documents and measure to govern school activities in this phase. On 28 March, operative indications were addressed to all school institutions concerning extraordinary cleaning of school facilities and implementation of online teaching²⁵. As per the latter point, the indications established how to use the EUR 85 million earmarked by Art. 120 of the Law-Decree No. 18 of 17 March 2020²⁶ to finance online teaching: EUR 10 million is to be destined to make available to school institutions digital instruments to foster the access to e-learning platforms, with a specific attention to the accessibility for students with disabilities; EUR 70 million is to be used to make available to disadvantaged students individual digital devices in a free loan-for-use regime; EUR 5 million is to be used to provide online training sessions to teachers on methodologies and techniques for on-line teaching. On 17 April, the Ministry announced that additional EUR 80 million was to be earmarked to finance the purchase of PCs, tablets, and devices for Internet connection in Italian schools²⁷. Since the beginning of the emergency, the Ministry issued and updates FAQs²⁸ explaining the legislative dispositions adopted during the emergency phase that concern and have an impact on the school system. The Ministry also collected several promising practices available at national level to develop on-line teaching activities, including specific practices destined to students with disabilities²⁹. On 21 April, the Ministry of Education set up an Experts Committee³⁰ whose mission is to design and present ideas and proposals to Ministerial authorities, concerning the continuity of the school system during the emergency phase, as well as to improve the quality of the Italian school system. More specifically, the Committee is expected to present proposals concerning: the beginning of the school-year in September 2020; school facilities; digital innovation; training of school staff; development of a network of services to be destined to young students, aged 0-6; the improvement of the quality-level of the school system in the emergency phase. The Committee is formed by 18 experts (8 women and 10 men) and it will soon start a round of auditions with relevant stakeholders, including associations representing students and parents. The experts will work for free and their mandate will expire on 31 July. The first meeting of the Committee was held on 23 April³¹.

In **Italy**, an on-line petition³² was launched by parents of students with severe disabilities, asking the Government to allow teachers and special assistants to provide support to their children at home,

²⁴ The Authority's online guidelines are available at: [www.garanteinfanzia.org/sites/default/files/miniguia-mi-
agia-didattica-a-distanza.pdf](http://www.garanteinfanzia.org/sites/default/files/miniguia-mi-
agia-didattica-a-distanza.pdf).

²⁵ The Ministry's operative indications are available at: [www.miur.gov.it/documents/20182/0/Nota+prot.n.+562+del+28+marzo+2020.pdf/75b48ea1-c6d4-178c-
55c1-f6a37a25821e?version=1.0&t=1585419275262](http://www.miur.gov.it/documents/20182/0/Nota+prot.n.+562+del+28+marzo+2020.pdf/75b48ea1-c6d4-178c-
55c1-f6a37a25821e?version=1.0&t=1585419275262).

²⁶ Decreto-Legge 17 marzo 2020, n. 18, "Misure di potenziamento del Servizio sanitario nazionale e di sostegno economico per famiglie, lavoratori e imprese connesse all'emergenza epidemiologica da COVID-19", available at: www.gazzettaufficiale.it/eli/id/2020/03/17/20G00034/sg.

²⁷ Information available at: [www.miur.gov.it/web/guest/-/didattica-a-distanza-in-arrivo-altri-80-milioni-da-
risorse-pon-per-l-acquisto-di-pc-e-tablet-nelle-scuole-del-i-ciclo-azzolina-lavoriamo-per-arrivare-](http://www.miur.gov.it/web/guest/-/didattica-a-distanza-in-arrivo-altri-80-milioni-da-
risorse-pon-per-l-acquisto-di-pc-e-tablet-nelle-scuole-del-i-ciclo-azzolina-lavoriamo-per-arrivare-).

²⁸ The Ministry of Education's FAQs are available at: www.istruzione.it/coronavirus/faq.html.

²⁹ Promising practices are available at: www.istruzione.it/coronavirus/didattica-a-distanza.html.

³⁰ Information available at: [www.miur.gov.it/web/guest/-/coronavirus-azzolina-istituto-comitato-di-esperti-
metteremo-rapidamente-a-punto-il-nostro-piano-per-la-scuola-](http://www.miur.gov.it/web/guest/-/coronavirus-azzolina-istituto-comitato-di-esperti-
metteremo-rapidamente-a-punto-il-nostro-piano-per-la-scuola-).

³¹ Information available at: [www.miur.gov.it/web/guest/-/coronavirus-insediato-comitato-esperti-azzolina-
risposte-in-tempi-rapidi-](http://www.miur.gov.it/web/guest/-/coronavirus-insediato-comitato-esperti-azzolina-
risposte-in-tempi-rapidi-).

³² The petition is available at: [www.change.org/p/giuseppe-conte-corona-virus-bambino-disabile-a-casa-da-
scuola-senza-nessuna-
assistenza?recruiter=39542936&utm_source=share_petition&utm_medium=twitter&utm_campaign=psf_com](http://www.change.org/p/giuseppe-conte-corona-virus-bambino-disabile-a-casa-da-
scuola-senza-nessuna-
assistenza?recruiter=39542936&utm_source=share_petition&utm_medium=twitter&utm_campaign=psf_com)

since these students cannot participate to on-line teaching. Moreover, the parents ask the increase of the hours of leave at the disposal of parents who need to take care of children with disabilities.

1.2.3 Work

Focus on:

- *People in precarious work*
- *Measures related to 'essential workers' and those already returning to work, e.g. what is identified as an 'essential' function, physical distancing measures in the workplace, relaxing restrictions on working hours, additional financial support*

In **Italy**, the Government adopted the Law Decree No. 18 of 17 March 2020, converted into the Law No. 27 of 24 April 2020³³. The Decree was aimed at supporting the economic system and all the people who are financially suffering due to the shortcomings of the epidemic (for instance, those who had precarious or irregular jobs and lost them; small companies that had to stop or reduce their production). The Law Decree is complex and envisages many measures. These include the following actions. Tax compliances to be paid between 8 March-31 May 2020 are suspended. Tax credits are ensured to shops and selling activities for an amount of 60% of the rental fee. Tax credits are ensured to shops and selling activities for an amount 50% of the sanitation costs. Judicial proceedings – except for the proceedings mentioned above – are suspended until 15 April 2020. Regions can introduce redundancy-fund measures to support companies that are currently facing difficulties. Self-employed workers and people with other types of precarious contracts, as well as agricultural workers, are entitled to benefit from a one-off compensation of EUR 500. The public fund to obtain mortgages for the purchase of a home (*Fondo Prima Casa*) is extended also to self-employed people who declare a reduction of their work activity due to the current emergency situation (more than 33% reduction of the revenue). A specific 15-day parental leave is introduced for employees of the private sector with children aged less than 12: the leave is worth 50% of the ordinary wage and can be taken up by both parents alternatively. If parents do not want to apply for this parental leave, they can apply for a specific EUR 600 financial bonus for baby-sitting services. Parents working as public employees can count on a paid parental leave: the period of leave and its conditions are negotiated with the public administration they work for. Until 31 July 2020, the Italian Civil Protection is entitled to order the requisition of public and private healthcare facilities or any other facility that might be useful to increase the capacity of the public healthcare system. Tax credits were introduced for SMEs up to 33% of the loans they had obtained before the emergency period. EUR 5 million was earmarked to sustain the debits of SMEs. The debate is currently ongoing on the necessity to approve another Law Decree on this kind by the month of May 2020. The Italian Government is also considering the opportunity to introduce specific measures to provide a regular residence permit to all the third-country citizens irregularly working in Italy, especially in some economic sectors such as the agricultural one. This possibility was suggested by the Italian Ministry of Agricultural, Food and Forestal Policies and it would concern either irregular workers of specific economic sectors (such as domestic care and agriculture) or all the irregular third-country citizens living in Italy³⁴. This regularisation was requested also by some

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³³ Decreto-Legge 17 marzo 2020, n. 18, "Misure di potenziamento del Servizio sanitario nazionale e di sostegno economico per famiglie, lavoratori e imprese connesse all'emergenza epidemiologica da COVID-19", available at: www.gazzettaufficiale.it/eli/id/2020/03/17/20G00034/sg.

³⁴ La Repubblica (2020), "600 mila immigrati regolarizzati subito per decreto: l'offensiva di Bellanova per braccianti e colf", 4 May 2020, available at:

trade unions operating in the agricultural field – supported by several NGOs and civil-society organisations – who sent a public appeal³⁵ to the President of the Italian Republic and other Ministerial authorities asking for the regularisation of irregular labourers living in informal encampments in appalling living conditions and irregularly employed in the Italian agricultural sector. Italian political forces are currently negotiating this measure, even if some political parties are not in favour of the regularisation³⁶.

In **Italy**, the Decree of the President of the Italian Government of 1st April 2020³⁷, prolonged the validity of the Decree of the President of the Italian Government of 22 March 2020³⁸ until 13 April 2020. The Decree of 22 March imposed the suspension of all manufacturing and commercial activities except for those listed in Annex I to the Decree. Professional activities were not suspended, and public administrations could continue providing essential services, respecting tough the health safeguards (use of facemasks, hand sanitiser etc.; the obligation to maintain a 1-metre compulsory distance between people). It was allowed to continue those working activities that are necessary to ensure continuity to the activities listed in Annex I, as well as to public utilities. The decision to continue such activities must be communicated to local Prefects. Museums and cultural institutions are not included – for the purposes of this Decree – in public utilities; schooling is not included neither and it must be ensured using long-distance teaching methods. Transportation, production and delivery of medicines, medical devices, agricultural and food products are allowed. Continuous production-cycle activities are permitted if the suspension can severely compromise the plant or cause serious accidents: Prefects can suspend such activities if they consider that such risks do not actually exist. Some productive sectors – such the defence, aerospace industry and other strategic productive sectors – can continue their activities. All the companies whose activities are not suspended are compelled to respect the measures aimed at contrasting the virus propagation in workplaces (established through the Protocol of 14 March 2020³⁹, negotiated by the Government and the social partners). This regime was further confirmed by the Decree of the President of the Italian Government of 26 April 2020⁴⁰, introducing the so-called Phase 2 of the emergency. However, the Decree allowed stores selling food and restaurants to restore the take-away services (and not only home delivery), if the interpersonal

www.repubblica.it/politica/2020/05/04/news/l_offensiva_di_bellanova_nel_decreto_maggio_regolarizzare_s_ubito_600_mila_immigrati_-255625147/.

³⁵ The appeal is available at: www.terraonlus.it/2020/03/20/regolarizzare-braccianti-coronavirus-caporalato/.

³⁶ La Repubblica (2020), “Migranti, scontro nella maggioranza, Crimi (M5S): “No a sanatoria”. Bellanova (Iv): “Valuto dimissioni”, 6 May 2020, available at: www.repubblica.it/politica/2020/05/06/news/migranti_crimi_m5s_no_a_una_sanatoria_stile_maroni_-255814735/.

³⁷ Decreto del Presidente del Consiglio dei Ministri 1 aprile 2020, “Disposizioni attuative del decreto-legge 25 marzo 2020, n. 19, recante misure urgenti per fronteggiare l'emergenza epidemiologica da COVID-19, applicabili sull'intero territorio nazionale”, available at: www.gazzettaufficiale.it/eli/id/2020/04/02/20A01976/sg.

³⁸ Decreto del Presidente del Consiglio dei Ministri 22 marzo 2020, “Ulteriori disposizioni attuative del decreto-legge 23 febbraio 2020, n. 6, recante misure urgenti in materia di contenimento e gestione dell'emergenza epidemiologica da COVID-19, applicabili sull'intero territorio nazionale”, available at: www.gazzettaufficiale.it/eli/id/2020/03/22/20A01807/sg.

³⁹ Available at: www.inail.it/cs/internet/docs/alg-protocollo-14-marzo-sicurezza-lavoratori-covid-19-2020.pdf.

⁴⁰ Decreto Del Presidente Del Consiglio Dei Ministri 26 aprile 2020, “Ulteriori disposizioni attuative del decreto-legge 23 febbraio 2020, n. 6, recante misure urgenti in materia di contenimento e gestione dell'emergenza epidemiologica da COVID-19, applicabili sull'intero territorio nazionale”, available at: www.gazzettaufficiale.it/eli/id/2020/04/27/20A02352/sg.

distance is respected and with the prohibition of consuming the products in the facility and of clients gathering nearby the facility.

In **Italy**, the Law Decree No. 23 of 8 April 2020⁴¹ was approved. The Law Decree governs a wide range of crucial issues, such as the measures fostering companies' access to credit, the continuity of production, protection of work and health. Art. 30 introduced tax credits aimed at sustaining the purchase of safety equipment (such as facial masks and any other device to ensure the 1-metre interpersonal distance) in the workplace. Art. 41 extended to the employees hired between 24 February 2020 and 17 March 2020 some of the support measures that had been introduced with the Law-Decree No. 18 of 17 March 2020⁴², namely wage subsidies and the extraordinary redundancy fund (*cassa integrazione in deroga*).

In **Italy**, the Decree of the President of the Italian Government of 10 April 2020⁴³, confirmed the suspension of all commercial activities with the exception of those listed in Annex I to the Decree. Differently from previous Decrees, bookshops, flower shops, shops selling children clothes and art supply stores were included in the list of allowed commercial activities. These activities must ensure the respect of the 1-metre interpersonal distance and a strict control of the accesses in order to avoid clients gathering inside the facility and staying more time than needed to purchase the goods. Other safety measures – such as the cleaning and disinfection of the premises, the availability of hand sanitiser for the employees and clients – are recommended and listed in Annex 5 to the Decree. Art. 2 confirmed the suspension of all manufacturing activities (unless they are performed with smart working techniques) with the exception of those listed in Annex 3 to the Decree and those providing essential services, as defined by Art. 1 of the Law No. 146 of 12 June 1990⁴⁴ – namely those aimed at ensuring the fundamental rights to life, health, freedom, security, assistance and social security, education, the freedom of movement and communication. Theatres, museums, and schools are temporarily suspended. The production, transport, sale and delivery of medicines, medical technologies and devices, agricultural and food products are allowed. The continuous-cycle manufacturing activities and the activities of strategic economic sectors (such as the defence) are allowed as well.

⁴¹ Decreto-legge 8 aprile 2020, n. 23, "Misure urgenti in materia di accesso al credito e di adempimenti fiscali per le imprese, di poteri speciali nei settori strategici, nonché interventi in materia di salute e lavoro, di proroga di termini amministrativi e processuali", available at: www.gazzettaufficiale.it/eli/id/2020/04/08/20G00043/sg.

⁴² Decreto-Legge 17 marzo 2020, n. 18, "Misure di potenziamento del Servizio sanitario nazionale e di sostegno economico per famiglie, lavoratori e imprese connesse all'emergenza epidemiologica da COVID-19", available at: www.gazzettaufficiale.it/eli/id/2020/03/17/20G00034/sg.

⁴³ Decreto del Presidente del Consiglio dei Ministri 10 aprile 2020, "Ulteriori disposizioni attuative del decreto-legge 25 marzo 2020, n. 19, recante misure urgenti per fronteggiare l'emergenza epidemiologica da COVID-19, applicabili sull'intero territorio nazionale", available at: www.gazzettaufficiale.it/eli/id/2020/04/11/20A02179/sg.

⁴⁴ Legge 12 giugno 1990, n. 146, "Norme sull'esercizio del diritto di sciopero nei servizi pubblici essenziali e sulla salvaguardia dei diritti della persona costituzionalmente tutelati. Istituzione della Commissione di garanzia dell'attuazione della legge", available at: www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1990-06-12:146!vig=2016-01-25.

1.2.4 Access to justice

Focus on:

- *Restrictions to court proceedings (e.g. adjournment of proceedings, written procedures, extension of deadlines, determination of what constitutes 'urgent cases')*
- *Use of alternatives to detention*

In **Italy**, the Law Decree No. 23 of 8 April 2020⁴⁵ prolonged until 11 May, the suspension of judicial proceedings introduced with the Law-Decree No. 18 of 17 March 2020⁴⁶. This suspension is excluded for proceedings concerning some specific judicial fields, such as, for instance, guardianship proceedings, divorce proceedings, domestic violence and return procedures of third-country citizens.

The Decree of the President of the Italian Government of 10 April 2020⁴⁷ recommends avoiding work-releases or partial-freedom regimes (that is alternatives to detention in prison), in order to avoid the coming and going of detainees. This regime was further confirmed by the Decree of the President of the Italian Government of 26 April 2020⁴⁸, introducing the so-called Phase 2 of the emergency.

Moreover, Art. 123 of the Law-Decree No. 18 of 17 March 2020⁴⁹ introduced the possibility of home-custody for all detainees filing a request who still have to serve a sentence no longer than 18 months; this possibility is precluded to detainees imprisoned for specific criminal offences, such as members of criminal and terrorist organisations, persecutory acts, domestic violence, and in any case to detainees deemed to be socially dangerous or who received disciplinary sanctions during imprisonment. The requests of home custody are always assessed and authorised by parole officers (*giudice di sorveglianza*). Paragraph 3 of the same article establishes that the respect of the home-custody regime is monitored through the use of electronic bracelets, except for minor detainees and detainees whose sentence to serve is no longer than 6 months. After the approval of this disposition, criticisms emerged due to the exclusion from home-custody of people in pre-trial custody (this provision only applies to detainees serving definitive sentences)⁵⁰ and for the lack of electronic bracelets that effectively prevent detainees from benefitting from alternatives to detention⁵¹. On 14

⁴⁵ Decreto-legge 8 aprile 2020, n. 23, "Misure urgenti in materia di accesso al credito e di adempimenti fiscali per le imprese, di poteri speciali nei settori strategici, nonché interventi in materia di salute e lavoro, di proroga di termini amministrativi e processuali", available at: www.gazzettaufficiale.it/eli/id/2020/04/08/20G00043/sg.

⁴⁶ Decreto-Legge 17 marzo 2020, n. 18, "Misure di potenziamento del Servizio sanitario nazionale e di sostegno economico per famiglie, lavoratori e imprese connesse all'emergenza epidemiologica da COVID-19", available at: www.gazzettaufficiale.it/eli/id/2020/03/17/20G00034/sg.

⁴⁷ Decreto del Presidente del Consiglio dei Ministri 10 aprile 2020, "Ulteriori disposizioni attuative del decreto-legge 25 marzo 2020, n. 19, recante misure urgenti per fronteggiare l'emergenza epidemiologica da COVID-19, applicabili sull'intero territorio nazionale", available at: www.gazzettaufficiale.it/eli/id/2020/04/11/20A02179/sg.

⁴⁸ Decreto Del Presidente Del Consiglio Dei Ministri 26 aprile 2020, "Ulteriori disposizioni attuative del decreto-legge 23 febbraio 2020, n. 6, recante misure urgenti in materia di contenimento e gestione dell'emergenza epidemiologica da COVID-19, applicabili sull'intero territorio nazionale", available at: www.gazzettaufficiale.it/eli/id/2020/04/27/20A02352/sg.

⁴⁹ Decreto-Legge 17 marzo 2020, n. 18, "Misure di potenziamento del Servizio sanitario nazionale e di sostegno economico per famiglie, lavoratori e imprese connesse all'emergenza epidemiologica da COVID-19", available at: www.gazzettaufficiale.it/eli/id/2020/03/17/20G00034/sg.

⁵⁰ Associazione tra gli Studiosi del Processo Penale (2020), Documento del Consiglio direttivo della ASPP - 13 aprile 2020, available at: <https://sistemapenale.it/it/documenti/documento-associazione-professori-procedura-penale-sulle-disposizioni-eccezionali-per-la-giustizia-penale-nellemergenza-covid-19>.

⁵¹ Il Sole 24 Ore (2020), "Coronavirus, emergenza carceri: è corsa all'aumento dei braccialetti elettronici", 1 April 2020, available at: www.ilssole24ore.com/art/coronavirus-emergenza-carceri-e-corsa-all-aumento-braccialetti-elettronici-ADAdONH.

April, the Government Commissioner for the Implementation and Coordination of Measures countering the Covid-19 Epidemic Emergency (*Commissario straordinario del Governo per l'attuazione ed il coordinamento delle misure per il contenimento ed il contrasto dell'emergenza epidemiologica Covid-19*) announced that 4,700 additional bracelets have been commissioned to the communications company that already has a contract with the Ministry of the Interior for the provision of these devices: the bracelets should be available by May 2020⁵². The National Guarantor for the Rights of Persons Detained or Deprived of Liberty (*Garante nazionale dei diritti delle persone detenute o private della libertà personale*) reported in its periodic bulletin of 8 May that 3,116 detainees have been sent to home detention since 31 March: 835 are being monitored with electronic bracelets⁵³.

1.2.5 Freedom of movement

Focus on:

- *Closure of borders/restrictions on movement within the EU and categories of people allowed to enter the Member State (including EU citizens, legally-residing third country nationals and their families, asylum applicants)*
- *Special provisions for cross-border commuters (especially health and care workers) or other workers from neighbouring non-EU countries*

In **Italy**, the Decree of the President of the Italian Government of 1st April 2020⁵⁴, prolonged the validity of the Decree of the Ministries of Health and Transports and Infrastructures of 28 March 2020⁵⁵, governing the access to the Italian territory. All people willing to enter the Italian territory – regardless the means of transport – is compelled to deliver to the carrier a signed declaration reporting the reasons of the journey; the Italian address where the passenger is going to spend the 14 days of isolation, as well as the means of transport to reach this address; a phone number. The carriers are compelled to check these documents and to control the body temperature of each passenger, forbidding the departure to all passengers with fever symptoms. Carriers are also compelled to adopt the safety measures (interpersonal distance and use of facial masks for passengers and crew). Once in Italy, passengers are compelled to inform the local healthcare services about their presence and undergo a 14-day period of isolation: if symptoms emerge, they are compelled to inform the healthcare department using the dedicated phone line. If passengers enter the Italian territory using a private means of transport (such as a car), they are compelled to immediately inform the local healthcare department about their arrival and to undergo the 14-day period of isolation. If passengers do not have a dwelling for the period of isolation or it is impossible to reach it from the border, the local health department – in cooperation with the Civil Protection – provides the passengers with a facility for the isolation period whose costs are to be borne by the passengers themselves. Moreover,

⁵² gNews (2020), “Per detenuti a domiciliari con residuo pena 7-18 mesi, 4.700 braccialetti”, 14 April 2020, available at: www.gnewsonline.it/arcuri-4-700-braccialetti-per-i-detenuti-a-domiciliari-con-residuo-di-pena-tra-7-e-18-mesi/.

⁵³ The Authority's ~~bulletin~~ bulletin of 8 May 2020 is available at: <http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/dd01d09d2c5075749beacc0718219d87.pdf>.

⁵⁴ Decreto del Presidente del Consiglio dei Ministri 1 aprile 2020, “Disposizioni attuative del decreto-legge 25 marzo 2020, n. 19, recante misure urgenti per fronteggiare l'emergenza epidemiologica da COVID-19, applicabili sull'intero territorio nazionale”, available at: www.gazzettaufficiale.it/eli/id/2020/04/02/20A01976/sg.

⁵⁵ Ordinanza 28 marzo 2020, “Ulteriori misure urgenti di contenimento e gestione dell'emergenza epidemiologica da COVID-19”, available at: www.gazzettaufficiale.it/eli/id/2020/03/29/20A01921/sg.

the Decree of 28 March, prohibited the disembarking on the Italian territory of the owners and captains of foreign vessels arriving in Italian ports. These dispositions are applied to all passengers, regardless of the nationality, as long as their entry and presence on the Italian territory is regular. This discipline was also confirmed by Art. 4 of the Decree of the President of the Italian Government of 10 April 2020⁵⁶. Paragraph 9 of the same Article established that this discipline does not apply to the following categories of subjects: the crew of the means of transport; the travelling staff of companies based in Italy; medical staff entering Italy for professional reasons; cross-border commuters entering or leaving the Italian territory for demonstrated work reasons or while going back to their places of residence. This regime was further confirmed by the Decree of the President of the Italian Government of 26 April 2020⁵⁷, introducing the so-called Phase 2 of the emergency.

In **Italy**, the Decree of the President of the Italian Republic of 9 April 2020⁵⁸ ratified the invalidation of the Ordinance of the Mayor of Messina No. 105 of 5 April 2020, decided by the Council of State on 7 April 2020⁵⁹. The Ordinance had introduced the obligation for any passenger willing to enter Sicily through the port of Messina, to preliminarily register (at least 48 hours before the arrival) in an online database providing identity information and other personal data, and to wait for the authorisation of municipal authorities. According to the Ministry of the Interior – that proposed the invalidation – and to the Council of State, the Ordinance represented a threat to the unity of the State and of its legal system and was therefore illegitimate.

⁵⁶ Decreto del Presidente del Consiglio dei Ministri 10 aprile 2020, “Ulteriori disposizioni attuative del decreto-legge 25 marzo 2020, n. 19, recante misure urgenti per fronteggiare l'emergenza epidemiologica da COVID-19, applicabili sull'intero territorio nazionale”, available at: www.gazzettaufficiale.it/eli/id/2020/04/11/20A02179/sg.

⁵⁷ Decreto Del Presidente Del Consiglio Dei Ministri 26 aprile 2020, “Ulteriori disposizioni attuative del decreto-legge 23 febbraio 2020, n. 6, recante misure urgenti in materia di contenimento e gestione dell'emergenza epidemiologica da COVID-19, applicabili sull'intero territorio nazionale”, available at: www.gazzettaufficiale.it/eli/id/2020/04/27/20A02352/sg.

⁵⁸ Decreto del Presidente della Repubblica 9 aprile 2020, “Annullamento straordinario dell'ordinanza n. 105 del 5 aprile 2020 del sindaco del comune di Messina”, available at: www.gazzettaufficiale.it/eli/id/2020/04/10/20A02168/sg.

⁵⁹ Consiglio di Stato, Cons. St., sez. I, 7 aprile 2020, n. 735, available at: www.giustizia-amministrativa.it/portale/pages/istituzionale/visualizza?nodeRef=&schema=consul&nrg=202000260&nomeFile=202000735_27.html&subDir=Provvedimenti.

1.3 Impact of measures on particular groups

Select the *three* most relevant groups from the following:

- *persons with disabilities,*
- *homeless people,*
- *older people (which should include older persons in institutions),*
- *Roma and Travellers (FRA would like to see this group covered in those Member States with significant Roma populations)*
- *detainees*
- *or another group not listed that have immersed in your country as facing particular challenges - before selection, this should be discussed with FRA.*

1.3.1 Older people

In **Italy**, on 6 March 2020, the Italian Society of Anesthesiology, Reanimation and Intensive Care (*Società Italiana di Anestesia Analgesia Rianimazione e Terapia Intensiva – SIAARTI*) issued guidelines on how to manage shortages of places in intensive-care departments during the Covid-19 emergency⁶⁰. According to this medical professional association, in case of shortages of available places in intensive care – and considering the expected increase of patients in need of this kind of therapy – priority should be given to those patients who have highest expectations of recovery. This extraordinary admission criteria should be applied in this phase to all patients needing intensive care – not just those affected by Covid-19 – and can be applied differently depending on the local situation.

In **Italy**, the Decree of the President of the Italian Government of 10 April 2020⁶¹, confirmed the limitations to the possibility for relatives and family members to visit older people living in hospices and institutions (the *Residenze Sanitarie Assistite – RSA*): the managers of such facilities can introduce specific procedures to allow the visits in specific cases, adopting protocols to avoid the propagation of the infection. This regime was further confirmed by the Decree of the President of the Italian Government of 26 April 2020, introducing the so-called Phase 2 of the emergency.

In **Italy**, on 24 March the National Health Institute (*Istituto Superiore di Sanità – ISS*) started a national survey in cooperation with the National Guarantor for the Rights of Persons Detained or Deprived of Liberty (*Garante nazionale dei diritti delle persone detenute o private della libertà personale*) on the propagation of Covid-19 in Italian RSAs⁶². The survey is aimed at monitoring the situation and adopting strategies to reinforce prevention programmes and principles. The survey is destined to the 3,400 RSAs mapped in Italy and is based on an online questionnaire gathering information on the

⁶⁰ SIAARTI (2020), “Raccomandazioni di etica clinica per l’ammissione a trattamenti intensivi e per la loro sospensione, in condizioni eccezionali di squilibrio tra necessità e risorse disponibili”, 6 March 2020, available at: <https://www.siaarti.it/SiteAssets/News/COVID19%20-%20documenti%20SIAARTI/SIAARTI%20-%20Covid19%20-%20Raccomandazioni%20di%20etica%20clinica.pdf>.

⁶¹ Decreto del Presidente del Consiglio dei Ministri 10 aprile 2020, “Ulteriori disposizioni attuative del decreto-legge 25 marzo 2020, n. 19, recante misure urgenti per fronteggiare l'emergenza epidemiologica da COVID-19, applicabili sull'intero territorio nazionale”, available at: www.gazzettaufficiale.it/eli/id/2020/04/11/20A02179/sg.

⁶² Information on the “Survey nazionale sul contagio COVID-19 nelle strutture residenziali e sociosanitarie”, is available at the Ministry of Health’s website: www.salute.gov.it/portale/news/p3_2_1_1_1.jsp?lingua=italiano&menu=notizie&p=dalministero&id=4446.

management of suspect or confirmed cases of Covid-19 infections. Period reports showing the emerging results have been published on the ISS website. According to the third report – released on 14 April 2020⁶³ - 3,276 RSAs have been contacted for the survey, that is 96% of the mapped ones, covering the entire Italian territory. As of 14 April, 33% of them (1,802 RSAs) have replied to the questionnaire. On average, each RSA can count on 2.5 doctors, 9 nurses and 33 social-health professionals (*operatori socio-sanitari*, OSS). 11% of the of the facilities declared that no doctors were working for the RSA. On average, 43 professionals work in each RSA; each RSA offers on average 77 places (capacity ranging from 8 to 667 places).

The ratio between available places and members of staff is, on average, 2 places for each member of the staff; if only doctors and nurses are considered, this ratio is 8 places for each member of the staff (ratio ranging from 0.6 to 49). As of 1st February 2020, the 3,276 facilities reported that 80,131 patients were living in the facilities. If all causes of death are considered, 6,773 people died in the considered RSAs since 1st February: 45% in Lombardy, 16.1% in Veneto and 10.1% in Piedmont. The mortality rate was estimated at 8.2%. Out of these 6,773 patients, 40.2% (2,724 patients) either had tested positive to Covid-19 (364) or showed flu symptoms (2,360). RSAs were also asked to indicate the most crucial challenges they had to face while dealing with the emergency (more than one option could be chosen): 1,018 RSAs replied to the question. 82.7% (842 RSAs) reported the lack of individual safety devices; 19.9% (203 RSAs) reported the inadequacy of information provided by public authorities; 10.3% (105 RSAs) reported the lack of medicines; 32.9% (335 RSAs) reported the lack of staff; 10.9% (111 RSAs) reported difficulties in transferring patients with Covid-19 to hospital facilities; 25.5% (260 RSAs) reported difficulties in isolating the patients affected by Covid-19; 143 RSAs reported the impossibility to carry out tampon tests. As per the other difficulties mentioned by the respondents, these include receiving inconsistent or discordant information and the lack of coordination mechanisms.

In **Italy**, on 17 April 2020 the ISS issued *ad interim* guidelines⁶⁴ on how to prevent and control the propagation of the epidemic of Covid-19 in RSAs.

1.3.2 Detainees

In **Italy**, the Decree of the President of the Italian Government of 10 April 2020⁶⁵ governed the possibility of new detentions – both in the juvenile and in the ordinary detention system – establishing that the local healthcare departments must provide support to the Ministry of Justice in order to ensure the adoption of safety measures and protocols to avoid the propagation of the virus. Detainees entering the facilities must undergo an isolation period and the possibility of alternatives to detention (such as home custody) must always be considered. Moreover, detainees are ensured the possibility to communicate with their families and relatives using phones and videoconference: in presence visits are forbidden. In exceptional cases, such visits can be allowed if a 2-metre interpersonal distance can

⁶³ The third report is available at: www.epicentro.iss.it/coronavirus/pdf/sars-cov-2-survey-rsa-rapporto-3.pdf. The first report of 30 March is available at: www.epicentro.iss.it/coronavirus/pdf/sars-cov-2-survey-rsa-rapporto.pdf. The second report of 6 April is available at: www.epicentro.iss.it/coronavirus/pdf/sars-cov-2-survey-rsa-rapporto-2.pdf.

⁶⁴ The guidelines are available at: www.epicentro.iss.it/coronavirus/pdf/rapporto-covid-19-4-2020.pdf.

⁶⁵ Decreto del Presidente del Consiglio dei Ministri 10 aprile 2020, “Ulteriori disposizioni attuative del decreto-legge 25 marzo 2020, n. 19, recante misure urgenti per fronteggiare l'emergenza epidemiologica da COVID-19, applicabili sull'intero territorio nazionale”, available at: www.gazzettaufficiale.it/eli/id/2020/04/11/20A02179/sg.

be guaranteed. The Decree also recommends avoiding work-releases or partial-freedom regimes, in order to avoid the coming and going of detainees. This regime was further confirmed by the Decree of the President of the Italian Government of 26 April 2020⁶⁶, introducing the so-called Phase 2 of the emergency.

In **Italy**, on 21 March the National Guarantor for the Rights of Persons Detained or Deprived of Liberty (*Garante nazionale dei diritti delle persone detenute o private della libertà personale*) sent a letter⁶⁷ to the Directors of detention facilities concerning the rights of detainees to the continuity of contacts with their relatives. The Authority stressed the importance of correctly informing all detainees about the measures adopted by the Government and the reasons why they cannot meet their relatives in person. Moreover, detainees must be informed about the alternative measures adopted by competent authorities to ensure that the continuity of the relationship between the detainees and their families is ensured. These measures shall include: the increase of the communication devices at the disposal of detention facilities and detainees; the possibility to use video-conference techniques with no additional costs to the detainees; the increase of the time at the disposal of the detainees to call their families. The Authority also suggested other measures to limit the propagation of the virus in detention facilities, such as the possibility for detainees to use for free the laundry services.

In **Italy**, the National Guarantor for the Rights of Persons Detained or Deprived of Liberty continued releasing a periodic bulletin on the situation of detained people in this emergency period. These bulletins also cover the situation of irregular immigrants undergoing administrative detention in Italian CPRs, nursing homes for older people and judicial psychiatric institutions. In its bulletin issued on 1st May 2020⁶⁸, the Authority reported that 53,187 people are currently detained in Italian prisons and 159 cases of Covid-19 infection have been registered so far among prisoners and 215 among prisons' staff. The Authority also reported that a 54-year-old detainee died of Covid-19 in Milan. As of 29 April, 2,810 detainees have been transferred to home-custody, 704 of whom with the electronic bracelet to monitor their movements. As per Italian CPRs, on 26 March, the Ministry of the Interior issued a Circular Letter addressed to the Prefects of the cities where CPRs are located, listing the safety measures to implement in the detention centres⁶⁹: a constant monitoring of the health conditions of the detainees; the provision of safety equipment to the detainees and to the staff, as well as a constant sanitation of the facilities; new detainees must undergo a medical check to exclude the infection and they should be accommodated in isolated areas for 14 days; meetings with external people are allowed ensuring a 2-metre distance between the detainee and the other person (the lawyer for instance); visitors should undergo – if possible – a body-temp test before accessing the detention facility; despite confirming the prohibition of mobile-phones in the accommodation blocks, the detainees must be ensured the possibility to communicate with their relatives who cannot visit the

⁶⁶ Decreto Del Presidente Del Consiglio Dei Ministri 26 aprile 2020, "Ulteriori disposizioni attuative del decreto-legge 23 febbraio 2020, n. 6, recante misure urgenti in materia di contenimento e gestione dell'emergenza epidemiologica da COVID-19, applicabili sull'intero territorio nazionale", available at: www.gazzettaufficiale.it/eli/id/2020/04/27/20A02352/sg.

⁶⁷ The letter is available at: www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/8ade27e82be1537b88229839217c9a4a.pdf.

⁶⁸ The bulletin is available at: <http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/208fcabff8ed5c8f002c2ee3f4fff90c.pdf>

⁶⁹ The Circular Letter of 26 March is available at: www.interno.gov.it/sites/default/files/allegati/circolare_immigrazione_diffusione_del_virus_covid-19_26.3.2020.pdf.pdf

facility. Civil society organisations and immigration lawyers have been asking Italian authorities to improve alternative to administrative detentions, in order to reduce the propagation of the epidemic in these detention facilities. On 14 March, the association “Legal Team Italia” sent a letter to the Ministry of the Interior, the Prefects and the Chiefs of the Italian Police – which was signed by dozens of lawyers and associations, including ASGI – asking for the immediate liberation of all people detained in Italian CPRs, since the necessary safeguard measures to limit the propagation cannot be implemented in the centres⁷⁰. A similar request was suggested also by the Council of Europe Commissioner for Human Rights in a statement of 26 March⁷¹. In its last bulletin of 1st May 2020 (see footnote No. 63), the National Guarantor for the Rights of Persons Detained or Deprived of Liberty reported the number of irregular third-country citizens detained in Italian CPRs is constantly decreasing: as of 30 April, 229 people were detained and the CPR of Caltanissetta (Sicily) has been completely emptied. The CPR with the highest number of detainees is the one located in Turin (71 people out of 107 places of capacity); in the CPR of Rome (250 places of capacity) – the only one with a female branch – there are currently 31 men and 6 women. As per recently-arrived migrants, as of 30 April 116 people were hosted in the hotspot of Lampedusa: all of them had concluded the 14-day period of isolation after the arrival and they are about to be transferred in other facilities. 100 migrants have started the isolation period in the hotspot of Pozzallo. Eventually, 183 migrants are undergoing the isolation period on board of the “Raffaele Rubattino” vessel, one mile off the port of Palermo: after the conclusion of this period they will be disembarked.

In **Italy**, the National Health Institute (*Istituto Superiore di Sanità* – ISS) created a specific section on its website on Covid-19 and detention⁷². In this section, the ISS reported and explained the WHO Interim Guidance on “Preparedness, prevention and control of COVID-19 in prisons and other places of detention”.

In **Italy**, a urgent complaint was filed to the European Court of Human Rights (ECHR) by a lawyer based in Turin – supported by the association “Strali (STRAtegic Ltigation)” – concerning the health conditions of a detainee who tested positive to Covid-19 and had other previous health pathologies⁷³. Despite this critical situation and even if the prison’s health service reported on 8 April the incompatibility of such health conditions with the detention regime, the detainee was not released. The ECHR asked for clarifications to the Italian Government about the situation of this specific detainee but also about the measures adopted by the prison’s director to cope with the infection risk.

1.3.3 Homeless people

In **Italy**, civil society organisations immediately raised attention concerning the critical situation of homeless people, especially focusing on the necessity to design measures to foster their access to prevention and healthcare measures and facilities.

On 16 March, the President of the association “Avvocato di Strada” sent a letter to the Prime Minister, the Presidents of the Italian regions, and the Italian mayors⁷⁴. The President of the Italian Government

⁷⁰ The letter is available at the ASGI website: www.asgi.it/wp-content/uploads/2020/03/lettera-a-ministro-dellinterno-prefetti-questori-coronavirus-e-emergenza-CPR.pdf.

⁷¹ The statement is available at: www.coe.int/en/web/portal/-/commissioner-calls-for-release-of-immigration-detainees-during-covid-19-crisis.

⁷² The section is available at: www.epicentro.iss.it/coronavirus/sars-cov-2-luoghi-detenzione.

⁷³ StraLi press release is available at: www.strali.org/ilcasocovid-1.

⁷⁴ The letter is available at: www.avvocatodistrada.it/io-vorrei-restare-a-casa-ma-se-una-casa-non-ce-lho-appello-al-presidente-del-consiglio-ai-presidenti-delle-regioni-e-ai-sindaci-dei-comuni/.

and the Presidents of Italian regions are asked to stop sanctioning homeless people violating emergency measures (especially the prohibition to leave the house); to earmark specific resources to provide shelters and emergency accommodation to homeless people; to ensure the access of homeless people to healthcare services and to general practitioners even if these people do not have a legal residence on the municipal territory. Italian mayors are asked to extend the opening hours of the facilities used to host homeless people during the winter period; to ease the procedures to enrol these people in the local civil registries in order to foster their access to local healthcare services.

On 23 March, the Italian Federation of Organisms for Homeless People (*Federazione Italiana Organismi per le Persone Senza Dimora* - fio.PSD) and the Italian Red Cross published a leaflet – available in different languages – providing basic information to homeless people on how to prevent the infection and what to do in case symptoms emerge⁷⁵.

On 25 March, the fio.PSD sent a letter to the Italian Civil Protection and to the Italian Government, asking to distribute individual safety devices (such as facial masks) to professionals providing essential services to homeless people and to foster emergency shelters and accommodations on the entire national territory destined to homeless people who must undergo the compulsory isolation period, homeless people who tested positive but without symptoms or those who have been in contact with infected people. The Federation also stressed that many local services destined to homeless people – such as shelters, social canteens, health practices etc. – had to increase their activities since the beginning of the emergency, often arriving to a 24-hour provision. This is the reason why – according to the letter – it is pivotal to design and implement shared operative protocols involving municipalities and local healthcare departments, that can be promptly activated at the local level to cope with vulnerable situations. On 9 April, the Italian Civil Protection replied to the letter, stressing that: individual safety devices can be booked and obtained through the official website of the Italian Civil protection; Municipalities are the public authorities in charge of managing the resources to be destined to emergency accommodation solutions; the Ministry of Health has been informed about the necessity to adopt the above-mentioned protocols⁷⁶.

On the same day, the the fio.PSD sent a letter to the Italian Ministry of the Interior and to the Italian Ministry of Labour and Social Policies⁷⁷, stressing that around 55,000 people are homeless in Italy and they cannot respect the social isolation dispositions adopted to cope with the emergency. They cannot stay at home – as the emergency legislation would require – since they do not have a home. Considering this situation, the letter asks to stop sanctioning homeless people for the violation of the emergency legislation; the competent authorities are also asked to issue specific guidelines on this issue destined to law enforcement agencies in charge of the controls. According to the Federation, police officers detecting homeless people must re-direct them to the local available services; moreover, municipalities should activate local street units to provide assistance.

In Italy, the Municipalities are given the mandate to provide services and assistance to homeless people, in general and during this emergency period. The situation of homeless people is therefore extremely different, depending on the municipality. In the city of Rome, municipal authorities have extended the opening hours of emergency shelters active in the winter period from 15 to 24 hours per day, allowing the people to spend the whole day in the centre. Some local associations – such as the “Comunità di Sant’Egidio, Caritas and the association “Binario 95” – are continuing providing meals

⁷⁵ The leaflet is available at: www.fiopsd.org/volantino-coronavirus-senza-dimora/.

⁷⁶ The two letters are available at: www.fiopsd.org/fio-psd-domanda-protezione-civile-risponde/.

⁷⁷ The letter is available at: www.fiopsd.org/basta-multe-e-denunce-alle-persone-senza-dimora/.

and essential goods to people living in the street and have converted some facilities they can dispose of into 24-hour shelters. The association “Binario 95” – that runs a shelter nearby Termini railway station – started distributing hygienic kits and offering a shower service, as well a psychological support service⁷⁸. On 5 April, the NGO “Amnesty International” sent a letter to the Mayor of Rome⁷⁹, asking her to introduce specific measures to support the 8,000 homeless people living in the city, ensuring an accommodation and the access to essential healthcare services. On 27 April, the NGO “Intersos” reported that – since the beginning of the emergency – the measures so far adopted at local level are not adequate⁸⁰. The NGO carried out 600 medical visits and monitored 1,800 homeless people living in Rome: in its report, the NGO stressed that there is an overall lack of coordination among stakeholders and the practices that are adopted by Rome local healthcare departments are extremely different. There are no reception facilities for the most vulnerable subjects. Eventually, the NGO stressed the lack of a coordination mechanism involving all the competent public authorities and the civil-society organisations active in this field.

2 Users’ data - privacy and data protection

2.1 Arrangements between public authorities and other actors to allow collection, sharing and processing of user data

In **Italy**, on 23 March 2020 a three-day call for contributions⁸¹ was launched by the Ministry of Health and the National Health Institute (*Istituto Superiore di Sanità* – ISS) – with the cooperation of the WHO – aimed at finding the best available digital solutions and technologies for telemedicine, home care applications, and for the “active” monitoring of the risk of contagion. The adoption and use of these solutions and technologies will be coordinated nationally to better monitor and contrast the spread of Covid-19. The call’s objective is to identify technological solutions already implemented in the following areas: apps and technical solutions for remote assistance of patients at home, both for diseases related to COVID-19, and for other pathologies of chronic nature. This area includes apps and chatbots for health condition self-monitoring suited for all citizens or only for certain groups (such as individuals under fiduciary isolation); technologies and solutions for continuous tracking, alerting and timely control of the level of people’s exposure to the risk, and consequently, of the evolution of the epidemic. This area includes data analysis tools, hardware, and software technologies for health emergency management.

In **Italy**, on 31 March 2020 the Ministry of Technological and Digital Innovation – in cooperation with the Ministry of Health – set up a task force of 74 experts whose mission is to assess and propose data-driven technological solutions supporting the Government and the other public authorities dealing

⁷⁸ The information of this paragraph is available at: www.unimondo.org/Notizie/Covid-19-e-persone-senza-dimora-l-emergenza-ai-tempi-dell-emergenza-194467.

⁷⁹ The letter is available at: www.amnesty.it/appello-alla-sindaca-di-roma-siano-garantiti-i-diritti-alla-salute-e-a-un-alloggio-adequato-alle-persone-senza-fissa-dimora/.

⁸⁰ The NGO’s report is available at: www.intersos.org/covid-19-preoccupa-la-fase-2-a-roma-tra-i-senza-fissa-dimora/.

⁸¹ The English version of the call is available at: <https://innovazione.gov.it/tele-medicine-and-monitoring-systems-a-call-for-technologies-to-contrast-the-spread-of-covid-19/>.

with policies to counter Covid-19 propagation⁸². The experts were selected by the two Ministries, with the support of the National Health Institute (*Istituto Superiore di Sanità – ISS*), the WHO, the Antitrust Authority, the Communications Authority and the Data Protection Authority. The specific goals of the task force are: mapping the available data-driven technological solutions and the proposals arrived in response to the call described in the previous paragraph; analysing and assessing the data provided by public and private stakeholders concerning the epidemic emergency, respecting the in-force data protection legislation.

On 21 April, the Ministry of Technological and Digital Innovation informed about the results of the call for contributions: 319 proposals were submitted for the monitoring and 504 for telemedicine. All the proposals were submitted to the task force which released its opinion on the best options to adopt for a pilot-test. The working sub-group on “Legal profiles on the management of personal data in the emergency context” (*Profili giuridici della gestione dei dati connessa all'emergenza*) stressed that the solutions that were more in line with the in-force legislation were those using the Bluetooth Low-Energy signal of the users who voluntarily decided to download the tracing app; if a user is diagnosed the Covid-19, his/her device transmits this information to the server of the public entity managing the system, which will inform the other users that they are at risk of infection because they got in contact with the infected person. The requirements for the use of this kind of app are the following: i. the integrated contact-tracing system must be entirely managed by one or more public bodies and its code must be open and subject to revision by any independent entity ; ii. Data must be adequately anonymised so as to impede the identification of the data subjects; iii. the app must be voluntarily downloadable; iv. stored data must be cancelled when the purpose is achieved, with the exception of anonymous data to be used for research and statistical purposes; v. the adopted solution shall be considered effective to counter the epidemic so as to justify limitation placed on fundamental rights and freedoms of the data subjects. The app must not have access to the data subjects' phone contacts, must not ask the phone numbers and will not send messages to inform the individuals at risk. On grounds of these indications, on 16 April 2020 the Government Commissioner for the Implementation and Coordination of Measures countering the Covid-19 Epidemic Emergency (*Commissario straordinario del Governo per l'attuazione ed il coordinamento delle misure per il contenimento ed il contrasto dell'emergenza epidemiologica Covid-19*) established contacts with the Bending Spoons corporation, negotiating a contract⁸³ for the voluntary provision to the Government of the open, free and irrevocable licence of the source code of all the app's components. The corporation also committed to complete *pro bono* all the developments of the software that would be necessary to develop the national digital contact-tracing system⁸⁴. According to the information provided by the Ministry of Technological and Digital Innovation during a hearing before the Public Works Committee of the Italian Senate on 29 April 2020⁸⁵, the app is named “Immuni” and it will be a contact-tracing app using the Bluetooth technology. The app won't have access neither to the users' location data or to their contacts lists. The app will be free and voluntary. The integrated contact-tracing system will be entirely managed by one or more public bodies and its source code will be free and subject to revisions/updates by any independent entity willing to improve it. The collected data will be

⁸² Information available at: <https://innovazione.gov.it/nasce-la-task-force-italiana-per-l-utilizzo-dei-dati-contro-l-emergenza-covid-19/>.

⁸³ The contract is available at: www.governo.it/sites/new.governo.it/files/CSCovid19_Ord_10-2020_txt.pdf.

⁸⁴ The information reported in the whole paragraph was provided by the Ministry of Technological and Digital Innovation, at: <https://innovazione.gov.it/un-aggiornamento-sull-applicazione-di-contact-tracing-digitale-per-l-emergenza-coronavirus/>.

⁸⁵ The video of the hearing held in video conference is available at the Senate's website, at: http://webtv.senato.it/4621?video_evento=76901.

anonymised so as to prevent user identification. When the purpose of the data collection is achieved, all data will be deleted, with the exception of aggregated and anonymised data to be used for research and statistical purposes. The app will be available for downloading in the month of May⁸⁶.

2.2 Legal framework enabling collection, processing, sharing and storage of user data

In **Italy**, the debate concerning the use of contact-tracing app ended up in the approval of the Law-Decree No. 28 of 30 April 2020⁸⁷. The Law-Decree provides the final discipline governing the functioning of the “Immuni” app. In particular, Section 6(1) provides that ‘the data relating to the close contacts shall be stored, also in the users’ mobile devices, for as long as is strictly necessary for the purposes of the processing, whose duration shall be set out by the Ministry of Health and specified as part of the measures laid down in this paragraph; the data shall be erased automatically upon expiry of the said period’; paragraph 3 provides that ‘The data collected via the app mentioned in paragraph 1 may not be processed for purposes other than those referred to in paragraph 1, subject to the possibility of using them in aggregate or anonymous format exclusively for purposes of public health, preventive treatment, statistics or scientific research pursuant to Article 5(1)a and Article 9(2), letters i) and j) of Regulation (EU) 2016/679’; paragraph 6 provides additionally that ‘Use of the app and the platform and any processing of personal data that is carried out under the terms of this Section shall terminate on the date the state of emergency is lifted as declared by way of a resolution of the Council of Ministers on 31 January 2020; in any case such processing shall terminate no later than by the 31st of December 2020, and any personal data processed in that connection shall be erased or anonymised by the said date.’

2.3 Privacy and data protection concerns and possible solutions

In **Italy**, in April 2020 the Parliamentary Committee for the Security of the Republic (*Comitato Parlamentare per la Sicurezza della Repubblica – COPASIR*) started a round of hearings concerning the implications of the app for national security. Several public authorities were involved in the hearings, including: the Ministry of Health, the President of the Bank of Italy, the director and vice-director of

⁸⁶ Adnkronos (2020), “Coronavirus, Arcuri: “App Immuni operativa da maggio”, 28 April 2020, available at: www.adnkronos.com/fatti/cronaca/2020/04/28/coronavirus-arcuri-app-immuni-operativa-maggio_x7Mn9ISNSB7eUCQ2YO8juM.html?refresh_ce.

⁸⁷ Decreto-legge 30 aprile 2020, n. 28, “Misure urgenti per la funzionalità dei sistemi di intercettazioni di conversazioni e comunicazioni, ulteriori misure urgenti in materia di ordinamento penitenziario, nonché disposizioni integrative e di coordinamento in materia di giustizia civile, amministrativa e contabile e misure urgenti per l'introduzione del sistema di allerta Covid-19”, available at: www.gazzettaufficiale.it/eli/id/2020/04/30/20G00046/sg.

the Department of Security Information (*Dipartimento delle informazioni per la sicurezza* – DIS). The calendar of hearings is public, but their content is not⁸⁸.

In Italy, on 8 April the President of the Italian Data Protection Authority was auditioned by the Committee IX of the Italian Chamber of Deputies (Transportation, Post, Telecommunications)⁸⁹. The hearing also dealt with contact-tracing technologies and how these should be used to counter the virus propagation. The Authority stressed “the advisability of relying on approaches that are based on the voluntary acceptance of the individuals allowing their locations to be traced. Still, this consent should be in no way conditional so as to ensure that it is truly free and therefore valid with a view to data processing [...] In any case, the effectiveness of this solution for diagnostic purposes is related to the support received from citizens since the data could only be collected, by definition, from that part of the population that would give their consent to ‘tracing’. It is estimated that at least 60% of the population should give their consent in order to achieve effectiveness”. As per the impact on data protection, the Authority reported that “one should certainly prefer a solution whereby a ‘contact journal’ would be created on the very device owned by the individual at issue. This would avoid storage of the personal data in the telecom operators’ databases, which might raise the criticalities already flagged by the EU Court of Justice regarding data retention. The necessity, proportionality and minimization criteria highlighted by the EU Court point anyhow to the need for limiting these privacy restrictions to what is strictly necessary in order to achieve relevant, important purposes by undermining data subjects’ rights to the minimum possible extent. If one goes in this direction, one should firstly prefer the most selective measure, that is to say, the measure enabling the least possible use of identifying information for both collection and storage of the data. Thus, Bluetooth technology – that is the one used by the upcoming “Immuni” app – would appear to be preferable in order to select possibly infected individuals out of a more reliable sample, limited to significant contacts, as it yields data on spatially closer interactions compared to those that are identifiable within the much larger area covered by a phone cell”. Eventually, the Authority suggested to “introduce specific statutory offences to punish any entity that, being authorised to access the data on whatever ground, including for operational activities, uses such data for whatever different purpose”.

On 22 April, a computer science Italian Professor released an interview to a national newspaper, expressing his concerns about the Immuni App⁹⁰. He criticised the lack of transparency concerning this issue, the lack of specific information concerning the functioning of the app and also proposed to adopt a Decentralised Privacy-Preserving Proximity Tracing (Dp-3t) approach, rather than Pan-European Privacy-Preserving Proximity Tracing (Pepp-Pt), as it is the case of the Immuni app. More specifically, the former approach envisages the transfer to the server only of the data of infected individuals who downloaded the app, in order to retrace the contacts; according to the latter approach, the app is expected to store the data of all the users, regardless of their epidemic status.

⁸⁸ The calendar is available at the COPASIR website:

www.camera.it/leg18/1364?shadow_organo_parlamentare=2875&id_tipografico=25.

⁸⁹ The English transcription of the hearing is available at: www.gdpd.it/web/guest/home/docweb/-/docweb-display/docweb/9308774#english_version.

⁹⁰ La Repubblica (2020), “Coronavirus. “Dell’app Immuni si sa troppo poco. Meglio la soluzione svizzera”, 22 April 2020, available at:

www.repubblica.it/tecnologia/2020/04/22/news/coronavirus_sull_app_immuni_si_sa_troppo_poco_ecco_per_che_temiamo_-254703493/?ref=RHPPLF-BH-I254707704-C8-P12-S2.4-T1.

2.4 Any other privacy and data protection concerns

In **Italy**, one of the FAQs (No. 18) made available by the Ministry of Education – and mentioned in Section 1 of this report – concerns the protection of students’ personal data and it was prepared in cooperation with the Italian Data Protection Authority. More specifically, the Ministry explained that schools do not need to obtain parents’ consent for on-line teaching activities. This is because such activities – even if carried out in a virtual manner – are an integral part of the ordinary activities of the school system. The treatment of personal data is necessary to implement such activities that are connected to an essential and crucial service. School institutions are compelled to inform data subjects about the treatment of their personal data in compliance with Articles 13 and 14 of the Regulation 2016/679/EU if they are using platforms that were not already in use before the emergency started. In this case, the schools are requested to update the information notice provided to the data subjects (students and their parents) at the moment of the enrolment: the updated information notice must therefore include the additional subjects that – managing these platforms – have access to the students’ data and treat such data on behalf of school institutions.

In **Italy**, the Italian Data Protection Authority redacted specific FAQs concerning data processing and protection during the emergency period⁹¹. These FAQs cover diverse fields of intervention and data collection carried out by public and private controllers; they cover the health care sector, employer-employee relations, processing of students’ and pupils’ data by schools, research and activities by local authorities. As per data processing in health care, all health professionals may collect the information they consider necessary as part of the care of their patients, including information linked to the presence of symptoms due to COVID-19. This is without prejudice to the detection and collection of information on Coronavirus symptoms and of the information on the recent movements of each individual, which rest with healthcare professionals and the civil protection system, respectively, being the bodies responsible for ensuring compliance with the public health rules that were recently adopted. A healthcare body may indicate the rules to be followed by quarantined persons in the manner they consider most effective, while respecting the confidentiality of the data subjects. If emails are used to inform simultaneously all parties about the provisions they are required to comply with, the recipients’ addresses will have to be entered in the ‘Ccn’ field in order to avoid that all the recipients become aware of the e-mail addresses of the other quarantined persons. The in-force legislation prohibits the dissemination of data concerning health. This prohibition was not lifted by the emergency legislation related to the COVID-19 epidemiological emergency. Therefore, healthcare bodies and any other public or private entity may not disseminate, via websites or other channels, the names of individuals found to be affected by COVID-19 or placed under home confinement for the purpose of containing the spread of the epidemics.

In **Italy**, on 30 March the Data Protection Authority issued preliminary indications on e-learning⁹² in the context of the emergency situation due to COVID-19. Schools and universities should adopt e-learning techniques that are based on “privacy by design and by default” principles. If the selected platforms envisage the collection and storage of users’ personal data, the relationship with the services’ providers must be strictly ruled through a specific contract, in compliance with Art. 28 of the

⁹¹ The English version of the Authority’s FAQs is available at:
www.garanteprivacy.it/temi/coronavirus/fag#health-emergency.

⁹² Data Protection Authority provision No. 64 of 26 March 2020, available at:
www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/9300784#allegato.

EU Regulation. Moreover, this data processing must be strictly connected to the provision of the e-learning services, no other purposes can be allowed. School and university institutions must ensure transparency and accuracy of data-processing operations.

In **Italy**, on 16 April the Data Protection Authority sent a letter to the Ministry of Justice⁹³ concerning the use of video-conference techniques in criminal proceedings during the emergency period (introduced through the Law-Decrees No 11 and 18/2020). The letter stressed that the Ministry did not address any opinion request to the Italian DPA concerning either this legislation or the platforms used for this purpose and the relevant data processing techniques. For this reason, the DPA formally asked the Ministry to provide information on the characteristics of data-processing techniques used in criminal proceedings held in video conference during the emergency period.

In **Italy**, the Data Protection Authority issued a collection of all the legislative dispositions adopted in the emergency phase that have an impact on the fundamental rights to privacy and data protection. This document is available online and freely downloadable⁹⁴. No legislative dispositions or policy measures have been adopted so far to reform the in-force data protection legislation, as to allow an exceptional access of public authorities to telecommunication data of private subjects.

⁹³ The letter is available at: www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/9316889.

⁹⁴ Garante per la Protezione dei Dati Personali (2020), "Coronavirus e protezione dei dati", 19 April 2020, available at: www.garanteprivacy.it/documents/10160/0/Raccolta+delle+principali+disposizioni+adottate++in+relazione+allo+stato+di+emergenza+epidemiologica+da+Covid-19+avanti+implicazioni+in+materia+di+protezione+dei+dati+personali+%28AGGIORNATO+AL+19+APRILE+2020%29.pdf/a3c13c1b-f14a-2cb3-c63b-d65dce1df8b7?version=1.6.