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**Personal data protection in the Vatican City State:
Views on the applicability and enforceability of Italian
data protection legislation ***

SUMMARY: 1. General framework of the applicability of Italian legislation within the Vatican City State - 2. The right to privacy under European and canon law - 3. Applicability and enforceability of the Italian Data Protection Code within the Vatican City State.

1 - General framework of the applicability of Italian legislation within the Vatican City State

On October 1, 2008, Pope Benedict XVI, on his own initiative (*Motu Proprio*), adopted Law no. LXXI (which took effect on January 1, 2009) on the sources of law of the Vatican City State (hereinafter also referred to as “*Legge sulle fonti del diritto*” or “LFD”)¹, which replaces the previous law on the same matter, i.e. Law no. II of June 7 1929, adopted by Pope Pius XI on the same day that the Lateran Treaty with the Reign of Italy took effect.

Apart from the Fundamental Law², the LFD

“must indubitably be considered the most important of Vatican laws, as it rules the entire framework of the legal system of the Vatican State. That is, it establishes the sources of law in an objective sense [i.e., what the applicable laws are]”³.

Regarding the sources of law, the Vatican City State has several distinct qualities, since not only laws that have been generated by the

*Article subjected to peer review.

1 In *Acta Apostolicae Sedis, Suppl.*, no. 79 [2008], pp. 65–70.

2 Law of November 26, 2000, in force since February 22, 2001, in *Acta Apostolicae Sedis, Suppl.*, no. 71 [2000], pp. 75–83.

3 **A. SARAIS**, *Le fonti del diritto vaticano*, Lateran University Press, Vatican State, 2011, p. 41. The translation is mine.



legislative bodies of the Vatican itself, but also heteronomous laws (in particular canon law and Italian law) are applicable in the Vatican City State. The residual applicability of Italian law has its roots in the birth of the Vatican City itself, and has always been based on (and limited by) a specific sovereign decision by Vatican authorities. Such a decision was once provided for in Law no. II of 1929 (now abrogated) and is currently set forth in the LFD.

Pursuant to Article 1 of the LFD, canon law is to be considered the “first source of law and the first principle of interpretation” of law in the Vatican City State. The other main sources of law are the Fundamental Law of the Vatican City State and the laws adopted by the Supreme Pontiff and by the Pontifical Commission or other entities authorized by the Pope to exercise such power. This latter provision refers to the circumstance that, pursuant to Section 1 of the Vatican Fundamental Law of 2001, the Supreme Pontiff is the sovereign of the Vatican City State and thus alone possesses “the fullness of legislative, executive, and judicial powers”. As a consequence, even if legislative power is currently exercised by a pontifical commission — comprising a cardinal as chairman and other cardinals appointed by the Supreme Pontiff for a five-year term (pursuant to Section 3.1 of the Fundamental Law) — the Pope can reserve, wholly or in part, the exercise of such power for himself or other persons. Thus, in all cases and at any time, the Supreme Pontiff (or other subjects authorized by him) may issue laws on his (or their) own initiative, with “no obligation to respect any particular legislative procedure”⁴. Similarly, the Pope can personally exercise (or delegate the exercise of) executive and judicial powers to their full extent.

Other valid sources of law, pursuant to Article 1.3 of the LFD, include decrees, regulations, and other normative provisions adopted on a legitimate basis and specifically tailored to the Vatican City State. Article 1.4 provides for the applicability of both general international law and those provisions arising from international treaties signed by the Holy See, providing they do not conflict with canon law.

Furthermore, pursuant to Article 3 of the LFD, Italian laws shall also be applicable providing that:

a) they do not concern matters also regulated by specific Vatican laws (*application on a suppletive basis*). The laws that have been directly issued by Vatican authorities shall prevail over those that have been implemented —

⁴ F. CLEMENTI, *Città del Vaticano*, il Mulino, Bologna 2009, p. 71. The translation is mine.



pursuant to the terms of the LFD — in the Vatican City State from Italian legislation “not because they are placed on a hierarchically higher level, but because of their specialty in respect of other types of sources: indeed, they are issued specifically for the Vatican City State in order to regulate in a specific and different legal way the life of the Vatican City State”⁵

b) they comply with the above-mentioned *juridical requirement* in not conflicting with divine law, with the general principles of canon law, or with the provisions of the Lateran Treaty and of subsequent agreements. Some commentators have defined this requirement as the Vatican’s “*ordre public*” (i.e., a body of indefeasible principles forming the basis of the legal system of the State)⁶

c) they comply with the *factual requirement* by being actually applicable to the Vatican City State “in relation to the actual current situation” there⁷. The reason that this requirement was first provided for under the original law regarding the sources of law of 1929 and remains in force in the new LFD seems clear. Essentially, the needs and the factual situation of the Italian State were and continue to be deeply different from those of the Vatican City State, since many of the provisions adopted by the Italian Parliament to face the social, economic, and political issues of a large European State with over 60 million citizens are totally useless or inapplicable to an “minute State” such as the Vatican.

d) the relevant Vatican authorities have implemented them by approving a specific statute.

Article 4 of the LFD provides that, subject to the restrictions set forth in Article 3 of the Italian Civil Code — as amended on January 1, 2009 — it is applicable to the Vatican City State except for eleven matters listed under Article 4 itself, that fall within the exclusive competence of the Vatican legislator or the scope of canon laws.

Conversely, Article 12 of the LFD provides for a list of nine matters in relation to which all relevant Italian laws in force on January 1, 2009,

5 **A. SARAIS**, *Le fonti del diritto vaticano*, cit., pp. 62–63. The translation is mine.

6 See **P. A. BONNET**, *Le fonti normative e la funzione legislative nello Stato della Città del Vaticano*, in *Archivio giuridico “Filippo Serafini,”* 239, 2009, p. 538; **A. SARAIS**, *Le fonti del diritto vaticano*, cit., pp. 146–147.

7 This is the same wording as Article 3 of abrogated Law no. II of 1929.

8 The matters are: Vatican citizenship, the capacity of Vatican citizens who are also members of institutes of consecrated life or of societies of apostolic life to act legally, marriages, adoptions, prescription in relation to ecclesiastical goods, donations, and wills for pious purposes, documents and registers of births/marriages/deaths, employment relationships, regulations applicable to public notaries, a land registry, and registers of mortgages/transcriptions/inscriptions.



including regulations, treaties ratified by the Italian State, and relevant application regulations, are applicable within the Vatican City State. Indeed, notwithstanding the fact that, pursuant to Article 12, the application of such laws shall be subject to the restrictions set forth under Article 3 (i.e., the fulfillment of juridical and factual requirements and implementation by the appropriate Vatican authority), leading commentators consider that Article 3 has itself expressly and fully implemented Italian regulations on the listed matters in effect on January 1, 2009⁹, and, as a consequence, no further act of implementation in this respect is necessary.

In other words, it seems that the sole requirement for the applicability of Italian laws relating to the matters listed under Article 12 must be the mere fulfillment of juridical and factual requirements.

It is worth noting that among the matters listed under Article 12 are “telecommunications and relevant services, both for landlines and mobile networks, in all their components” (Article 12.1.a.5).

With particular reference to telecommunications, our contemporary information society allows the “location independence” of information through Internet technologies and, in some cases, the actual “ubiquity” of access to computing resources¹⁰, as well as unprecedented ease in data dissemination. Many issues relating to the rights of individuals and enterprises could never have been imagined as applicable to the Vatican City State but may now have the same actual or potential effect there as they do in other, larger states. Yet some activities that may be carried out through the Internet from the territory of the Vatican State may have a major effect on foreign countries all over the world.

As a consequence, the fulfillment of the factual requirement of certain Italian laws must necessarily be evaluated in light of this new situation.

2 - The right to privacy under European law and canon law

The right to privacy is a fundamental right granted, in Europe, under Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)¹¹.

⁹ See A. SARAIS, *Le fonti del diritto vaticano*, cit., p. 164.

¹⁰ See P. MELL, T. GRANCE, *The NIST definition of Cloud Computing*, Special Publication 800-145, p. 6.

¹¹ Article 8 of the ECHR: “Everyone has the right to respect for his private and family



Several European directives have created a harmonized European framework of rules in areas traditionally referred to as protection of privacy and personal data protection. The first one of these was Directive 95/46/EC¹². This directive may currently be considered the “centerpiece of the European data protection policy”¹³. It applies to any processing of personal data falling within its scope, irrespective of the technical means used, in order “to protect the fundamental rights and freedoms of individuals, and in particular their right to privacy with respect to the processing of personal data”¹⁴. It was followed by Directive 97/66/EC¹⁵, which was abrogated and entirely replaced by Directive 2002/58/EC¹⁶.

Directive 2002/58/EC particularizes and complements the general Directive 95/46/EC by establishing specific legal and technical provisions for the telecommunications sector. In particular, it “applies to the processing of personal data in connection with the provision of publicly available telecommunication services in public telecommunication networks in the Community”, including the Internet, that “forms part of the public telecommunication sector”¹⁷.

life, his home, and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

12 Directive 95/46/EC of October 24, 1995, on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

13 **ARTICLE 29 WORKING PARTY**, *First annual report*, June 25, 1997. The Article 29 Working Party is a working group in charge of the protection of individuals with regard to the processing of personal data, established by Article 29 of European Directive 95/46/EC. The working party comprises representatives of the independent authorities of the Member States charged with data protection, of a representative of the commission, and also includes a representative of those authorities in charge of data protection matters within European institutions.

14 **ARTICLE 29 WORKING PARTY**, *Recommendation 1/2000 on the Implementation of Directive 95/46/EC*, February 3, 2000, p. 2, at <http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2000/wp30en.pdf>.

15 Directive 97/66/EC of December 15, 1997, concerning the processing of personal data and the protection of privacy in the telecommunication sector.

16 It was amended by Directive 2006/26/EC of March 15, 2006, on the retention of data generated or processed in connection with the provision of publicly available electronic communication services or of public communication networks.

17 **ARTICLE 29 WORKING PARTY**, *Privacy on the Internet: An integrated EU Approach to On-line Data Protection*, November 21, 2000, p. 22, at <http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2000/wp37en.pdf>.



The Italian Republic has now implemented both Directive 95/46/EC and Directive 2002/58/EC through the Legislative Decree of June 30, 2003, no. 196, the so-called Data Protection Code. Also, Directive 2006/26/EC has been implemented by amending the Data Protection Code¹⁸.

Finally, on January 25, 2012, the European Commission released its proposal for regulation of the European Parliament and of the Council of the European Union regarding the protection of individuals in the processing of personal data and the free movement of such data (General Data Protection Regulation) to reform the European Union's data protection framework¹⁹. The General Data Protection Regulation may go into effect by 2014.

Solely regarding the Catholic Church as established in Italy, the 46th General Assembly of Italian Bishops, held in Rome from May 17 to May 21, 1999, approved a "General Decree" that regulates the collection, retention, and processing of the personal data of the faithful, as well as of ecclesiastical entities, ecclesiastical aggregations, and any person who comes into contact with the above-mentioned subjects, to be carried out in accordance with Canon 220 of the Code of Canon Law of 1983 (see below)²⁰. Cardinal Camillo Ruini, the president of the Italian Episcopal Conference, promulgated the General Decree on October 20, 1999, in decree no. 1285/99.

Conversely, in the Vatican City State there are no specific laws adopted either by the Supreme Pontiff, by the Pontifical Commission, or by other legitimate Vatican City State authorities in relation to the fundamental right to privacy of natural and legal persons. However, as noted earlier, a provision related to this matter may be found in the Code of Canon Law, which, pursuant to Article 1 of the LFD, shall be considered the "first source of law and the first principle of interpretation"

18 On December 22, 2011, the Italian Parliament converted into law the Decree of December 6, 2011, no. 201, by which the Data Protection Code has been significantly amended by excluding the information relating to legal persons who are (or may be) identified from the definition of "personal data" and also excluding legal persons from the definition of "data subjects". Following the above-mentioned changes, any processing of information directly or indirectly related to legal persons who are (or may be) identified is no longer subject to the Italian Data Protection Code. This does not mean that the legal persons shall not be subject in any case to the Italian Data Protection Code: any provision related to legal persons as personal data controllers, co-controllers, or data processors shall remain in force as in the past.

19 COM (2012) 11/4 draft, including explanatory memorandum.

20 Available at http://www.governo.it/Presidenza/USRI/confessioni/norme/conferenza_episcopale.pdf.



of law in the Vatican City State.

Canon 220 refers to the protection of the good reputation and of so-called *intimitas* (which may be translated as “privacy” or “personal intimacy”)²¹, that is,

“a sphere of private life that others may not and should not interfere with. Personal intimacy is the deepest, most secret, and most sacred thing a human being possesses, and, as a fundamental right arising from human nature itself, it must be sought and defended against undue external interference”²².

By adopting the provisions of Canon 220,

“the canonic legislator’s attention, however, was essentially aimed at eliminating discrimination within religious institutions and other associations rather than at addressing the issues of personal data processing”²³

especially since, in 1983, personal data protection issues as we now conceive them were not part of the Catholic Church’s agenda (or even of the EEC’s agenda). Only Canon 643, with reference to the admission to the novitiate, expressly refers to Canon 220 (as a limit to the verifications to be carried out for admission as a novitiate)²⁴. However, as demonstrated by the promulgation of the General Decree of October 20, 1999, regarding the Catholic Church as established in Italy, the Code of Canon Law does not provide for specific or self-sufficient rules related to personal data protection; it contains only general principles that can (and should) be articulated in more specific regulations.

Further, it must be said that Canon 220, which may be considered the sole rule provided under canon law regarding the right to privacy, “does not match the standpoint of the European law or of the Italian law in relation to the right to privacy”²⁵, as the Roman Catholic Church

21 Canon 220: “No one is permitted to harm illegitimately the good reputation that a person possesses or to injure the right of any person to protect his or her own privacy.”

22 V. PIGNEDOLI, *Privacy e libertà religiosa*, Giuffrè, Milan, 2001, p. 197. The translation is mine.

23 V. PIGNEDOLI, *Privacy e libertà religiosa*, p. 198. The translation is mine.

24 Canon 642: “[W]ith vigilant care, superiors are only to admit those who, besides being of the required age, have the health, suitable character, and sufficient qualities of maturity to embrace the proper life of the institute. This health, character, and maturity are to be verified even by using experts, if necessary, without prejudice to the prescript of can. 220.”

25 V. PIGNEDOLI, *Privacy e libertà religiosa*, p. 199. The translation is mine.



“does not have as its primary goal in this matter the least possible interference in the sphere of the intimacy of each person. The Church is in fact mainly interested in the truth of the canonical status of the faithful in the present and in history, a truth that cannot be modified or canceled even in the presence of serious grounds (e.g., the good reputation of the faithful or the danger of scandal) to keep it reserved or even secret”²⁶.

However, the fact that each legal system has its own priorities in terms of values and goals — and that there are several differences between the law of the European States and canon law in this respect — does not prevent the right to privacy being regulated in a modern and European-like way even in a State (i.e., the Vatican City State) with its own distinct values.

Indeed, in practical cases, Vatican authorities in charge of the enforcement of rights in the Vatican City State should always be able to decide whether to protect certain legitimate interests to the detriment of the right to privacy of individuals, according to the Vatican’s legal values and priorities, in the manner of the Vatican, which differs from the European standpoint in this matter. In other practical cases, where the right to privacy does not conflict with rights that are as predominant under Vatican City State law, it may be safeguarded in the Vatican City State according to the same standards of protection that are currently in force within Europe.

In other words, there is no doubt that the right to personal data protection may not be regarded as absolutely inviolable under canon law²⁷; but this circumstance cannot be seen as an obstacle to protecting the personal data of Vatican citizens through those practical solutions set forth in European legislation in the field, especially considering the fact that modern technologies, including the Internet, bring the same personal data protection issues to the fore throughout the world — and even in the Vatican City State —, regardless of national borders. After all,

“the Church, for her part, founded on love of the Redeemer ... by preaching the truths of the Gospel, and bringing to bear on all fields of human endeavor the light of her doctrine and of a Christian

26 C. REDAELLI, *Tutela della libertà religiosa e normativa civile sulla privacy*, in *Quaderni di diritto ecclesiale* 1998, pp. 327–328. The translation is mine.

27 The right to privacy is neither always, nor in every case, absolutely inviolable under European legislation since it may be balanced in practice by other fundamental rights.



witness ... respects and fosters the political freedom and responsibility of citizens”²⁸.

Further, there is a slight possibility that a conflict might be found between personal data protection needs and other rights and values granted under canon law in such cases where the processing of personal data is carried out by Vatican authorities (e.g., the Institute for Works of Religion) in the context of their civil (i.e., non-canonical) activities.

As evidence that the Vatican City State is no stranger to data protection issues, it must be said that the Vatican Information Service — which is hosted by the Vatican Internet Office, established “within the walls of Vatican City State”²⁹ — provides its users with a privacy policy that seems to fulfill most of the requirements provided under EU Directive 95/46/EC³⁰.

In light of the above, there are grounds to believe that, generally speaking, European data protection legislation does not conflict with either divine law or the general principles of canon law. It might, in fact, apply to the Vatican City State in relation to the actual current situation.

3. Applicability and enforceability of the Italian Data Protection Code within the Vatican City State

The legal way in which part of the Italian data protection legislation currently in force in Italy might apply within the Vatican City State seems to be covered by Article 12.1.a.5 of the LFD:

“Save as otherwise provided by specific Vatican legislation and conditioned upon the reservations provided in Section 3, in the Vatican City State shall be applicable: (a) the law in force in Italy until the coming into force of this law, including regulations and treaties ratified by Italy and the rules of enforcement of those treaties, covering: ... telecommunications and relevant services, both of landline and mobile networks, in all their components”.

The above text means that all relevant Italian laws in force as of January 1, 2009, relating to the sector of *telecommunications and relevant*

²⁸ *Pastoral Constitution on the Church in the Modern World*, “Gaudium et Spes,” para. 76. Emphasis added.

²⁹ <http://mlists.vatican.va/mailmanicons/en/privacy.html>.

³⁰ <http://mlists.vatican.va/mailmanicons/en/privacy.html>.



services, both of landline and mobile networks, in all their components, apply to the Vatican City State insofar as they do not conflict with divine law, the general principles of canon law, or the provisions of the Lateran Treaty, and insofar as they are actually applicable in relation to the actual current situation in the Vatican City State. The chief commentators, as stated above, consider that a further act of implementation in this respect — as set forth in Section 3 of the LFD — will be not necessary, as this is a dynamic reference, having the effect of automatically implementing into the Vatican City State's legal system any Italian law that relates to this matter as soon as it takes effect in Italy.

Therefore, it seems possible to conclude that only the provisions of the Italian Data Protection Code that have implemented in Italy provisions of Directive 2002/58/EC of July 12, 2002, concerning the processing of personal data and the protection of privacy *in the telecommunication sector* — as well as any other provision concerning the sector of telecommunications and relevant services, both of landline and mobile networks, in all their components — should be automatically applicable within the Vatican City State. These provisions are mainly included in Title X of the Italian Data Protection Code (entitled “Electronic Communications,” including Articles 121 to 134) and within the definitions listed under Article 4. Conversely, the provisions that give effect in Italy to Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, insofar as they do not concern telecommunications or relevant services, should be applicable in the Vatican City State only if the competent Vatican authorities issue a specific act of implementation.

Since:

1) Directive 2002/58/EC implies and somehow includes the basic categories of Directives 95/46/EC and 2002/21/EC, as it “particularise[s] and complement[s] Directive 95/46/EC” in order to harmonize the provisions of the Member States required to ensure the right to privacy with respect to the processing of personal data in the electronic communication sector and to ensure the free movement of such data and of electronic communication equipment and services (Article 1 of Directive 2002/58/EC);

2) the legal framework provided under the code has “a structure that might be defined as “pyramidal,” i.e., it is grounded on basic provisions applicable to any processing, which other provisions for public and private sectors shall be added to, and these latter are integrated by



other specific provisions included into Part II of the Code”³¹; it can be reasoned that the application within the Vatican City State of Title X of the Italian Data Protection Code should necessarily also trigger the application of the other provisions of the Italian Data Protection Code.

However, due to the specific scope and limited range of application of the provisions included in Title X of the code (and in Directive 2002/58/EC), it seems preferable to consider that application in the Vatican City State of Title X of the Italian Data Protection Code might be possible even without the contextual application of the other provisions of the Italian Data Protection Code that do not concern the telecommunications field.

Also from a factual point of view, the only issues of personal data protection that the Vatican City State may share with other, larger states, such as Italy, are those arising from the so-called contemporary information society, i.e., those linked to the processing of personal data in the electronic communications sector and to the free movement of such data and of electronic communications equipment and services.

As a consequence, there are grounds to believe that, in the absence of a specific act of implementation of the entire Italian Data Protection Code issued by the competent Vatican authorities — only the above-mentioned provisions concerning the processing of personal data and the protection of privacy in the telecommunications sector will (automatically) be applicable in the Vatican City State. Similarly, the possible coming into force of the new General Data Protection Regulation proposed by the European Commission on January 25, 2012, might affect Vatican City State legislation only with regard to those elements relating to telecommunications and relevant services, both for landlines and mobile networks.

Finally, another important issue in this regard is the enforceability of Italian data protection legislation in the Vatican City State. Indeed, pursuant to Section 141 ff. of the Italian Data Protection Code, the authority for the enforcement of Title X of the Data Protection Code is the *Garante per la Protezione dei Dati Personali* (the “Garante”), that is, the Italian independent authority set up in 1997 to protect fundamental rights and freedoms in connection with the processing of personal data. Since the Garante, being an Italian administrative body, has no direct jurisdiction within the territory of the Vatican City State, the organs constituted

³¹ S. MELCHIONNA, *I principi generali*, in R. Acciai (ed.), *Il diritto alla protezione dei dati personali*, Maggioli, Rimini, 2004, p. 68. The translation is mine.



according to the judicial structure of the Vatican City State (as regulated by Law no. CXIX of 1987) must be considered the sole judicial bodies responsible for the enforcement of applicable provisions in the field of personal data protection within the Vatican State.

Abstract:

In the Vatican City State no specific laws have been adopted either by the Supreme Pontiff, the Pontifical Commission, or other legitimate Vatican City State authorities in relation to the fundamental right to privacy of natural and legal persons. Canon 220 of the Code of Canon Law refers to the protection of a good reputation and of *intimitas*, but does not provide for specific or self-contained rules related to personal data protection; it contains only general principles that can (and should) be articulated in more specific regulations.

Therefore, it seems feasible that the provisions of the Italian Data Protection Code concerning the processing of personal data and the protection of privacy *in the telecommunications sector* - as well as any other provision concerning the sector of telecommunications and relevant services, both of landline and mobile networks, in their entirety - should be automatically applicable within the Vatican City State, pursuant to Article 12.1.a.5 of Law no. LXXI on the sources of law of the Vatican City State.

Keywords: personal data protection, *intimitas*, Vatican City State, sources of law.