

Legal bases COVID-19 apps:

### Italy:

According to the Italian Health Ministry, a surveillance network on new COVID-19 cases, controls, and screening is currently active under the coordination of a national task force established to regulate the use of technology to fight the spread of COVID-19.<sup>[23]</sup> Since January 31, 2020, when a state of emergency was declared, a Special Commissioner for the emergency has been appointed and a technical-scientific committee has been established to deal with emergencies.<sup>[24]</sup> The national task force is soon to announce potential technological solutions to trace and isolate those who have tested positive for COVID-19.<sup>[25]</sup> Tech companies and research institutions have provided suggestions to the Italian government, including one proposal “that would analyze user data from Facebook to determine the mass movement of people.”<sup>[26]</sup> Facebook’s Data for Good unit “has been sharing aggregated data collected from location tracking software on mobile phones with researchers at the University of Pavia,” while an extant proposal would also review ways to use from Facebook’s GeoInsights portal.<sup>[27]</sup>

A broadly used and voluntary application adopted by the government of Lombardy requests users “to fill out a questionnaire with their symptoms to build a map indicating the risk of contagion.”<sup>[28]</sup> The app, called “AllertaLOM,” captures “a phone’s IMEI code, the unique serial number that all smartphones carry, and the user’s IP address.”<sup>[29]</sup> The app is available from the Apple, Google Play, and Huawei stores.<sup>[30]</sup> It enables all users, whether symptomatic or not, to fill in an integrated questionnaire enabling the collection of data, in an anonymous format, and to make it available to the regional crisis unit and other authorities monitoring the spread of the pandemic in the Lombardy region.<sup>[31]</sup> The app was developed by the digital company ARIA S.p.A. in collaboration with the San Matteo Hospital and the University of Pavia.<sup>[32]</sup> It allows the authorities to compile statistic and epidemiological information that can be used to calculate the potential “level of risk contagion, thus reinforcing the protection of all citizens, whether or not symptomatic.”<sup>[33]</sup>

These and other proposals have triggered an ongoing discussion in Italy as to the level of privacy rights and data protection that these new technologies would afford to citizens.<sup>[34]</sup> Some argue that, based on the extent of the pandemic in Italy, “concerns about user privacy and data sharing should be temporarily put on hold.”<sup>[35]</sup> The national Constitution allows for measures aimed at protecting the health of a whole nation.<sup>[36]</sup>

In April, a company called Webtek released an app called “StopCovid19.” The app traces the movements of users using GPS by having users connect their phone numbers to the app, which in turn uploads their location into a database, so only health authorities may determine the contacts a person who has tested positive with COVID-19 has had in a determined period of time and venue.<sup>[37]</sup> In particular, the app “would record when the user came into proximity with another smartphone user with the app, for how long and at what distance and if a person tested positive for the coronavirus, authorities would be able to trace the contacts and alert them.”<sup>[38]</sup> The system would make “it possible to warn someone who comes into close contact with someone who then tests positive for COVID-19, even if they then travel on to another EU country.”<sup>[39]</sup>

Some observers have raised important issues of privacy and data control.<sup>[40]</sup> In this context, on April 30, 2020, the Italian government issued Decree-Law No. 28, which creates the

COVID-19 Alert System, which is designed to alert people who have had close contact with those who have tested positive for COVID-19 in order to protect their health through preventive measures.[41] The Alert System is based on an application to be installed voluntarily by citizens on their mobile telephones.[42] All data is compiled by several layers of government authorities coordinated by the Ministry of Health, which must ultimately adopt all the measures necessary to guarantee an adequate level of security, considering the risks involved and the rights and freedoms of the concerned parties.[43] Decree-Law No. 28 also makes explicit reference to all the guarantees and safeguards established for the use and protection of personal data by the EU GDPR.[44] The use of the app and of each piece of personal data acquired through it will cease when the state of emergency declared by the Council of Ministers on January 31, 2020, is lifted, and in any case the app cannot be used beyond December 31, 2020, when all personal data must be cancelled or classified as definitively anonymous.[45] The app, “which uses Bluetooth, won’t geo-localize users, and data will only be mined for purposes of containing the virus or for epidemiological study.”[46]

According to Decree-Law No. 28 the process to alert persons potentially contacted by infected individuals is based on the processing of proximity data of the devices, on an anonymous basis or, when not possible, pseudonymized, but at any rate the geolocation of individual users is forbidden.[47] The data collected through the app may only be processed for the purposes stated in Decree-Law No. 28, which includes the possibility of aggregation in an anonymous form, exclusively for public health, prevention, statistical or scientific research purposes.[48]

Italy has also signed a deal with telecoms operators to collect anonymized location data.[49]

The Italian government has stated that ultimately any movement-tracing technological solutions would have to comply with EU regulations and be sanctioned through legislation in the country,[50] and has reiterated that all data gathered during the pandemic will be discarded afterwards.[51]

Link naar Decree 28:

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