

ECRF Conference 2017

Business register and «The right to be forgotten»

Unioncamere and Padova Chamber of Commerce

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Chambers of commerce and business register

What are the Italian Chambers of Commerce:

- Italian Chambers of Commerce, Industry, Crafts and Agriculture are local autonomous Public Sector Organizations carrying out services of general interest for the private business system;
- Chambers of commerce represent all Italian companies;
- They are extremely important pillars for the different entrepreneurial sectors, both nationally and internationally;
- A leading system towards innovation for all public government sectors (e.g. Suap, Pec, e-signature...).

Chambers of commerce and business register

Main functions:

☐ Each Chamber carries out important functions in the administrative area (the most important is the business register) and offers enterprises a full range of services to facilitate market intelligence and skilled training, to stimulate companies and businesses in innovative efforts and to support business trade relations home and abroad;

☐ Business register:

- ☐ legal value, national network, no paper, ICT
- ☐ transparent, dynamic, knowledge-based economy

☐ Chambers are Administrations leading the path for innovation

Business register, publicity and privacy

Main law for transparency and publicity:

☐ Directive 2009/101/EU and directive 2012/17/EU

§ Objectives: coordination of safeguards of companies, required by Member States, for the protection of the interests of members and others,

§ Member States shall take the measures required to ensure compulsory disclosure by companies limited by share of some documents and particulars, such as:

Ø instrument of constitution and the statutes; any amendments; any change of the registered office of the company; the winding-up of the company

Ø the appointment, termination of office and particulars of the persons who either as a body constituted pursuant to law or as members of any such body;

☐ Business register interconnection system

Business register, publicity and privacy

Framework law for privacy:

Ü Directive 1995/46/EC

- § Objective: to protect the fundamental rights and freedoms of natural persons, and in particular their right to privacy with respect to the processing of personal data.
- § Criteria for making data processing legitimate: (...) when processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller or in a third party to whom the data are disclosed;

Legislative decree 196/2003

- § The transposition of the directive into Italian legislative framework

This framework is valid also for Business register

The “Manni case”, Business register and Court of justice

- ❑ Court of Lecce (Italy) considered that “it is difficult to see the need for or utility of the name of the person who was sole director of the company at the time of the liquidation being shown’, so “**after an appropriate period’ from the conclusion of the liquidation, stating the name of the person who was sole director at the time of the liquidation ceases to be necessary and useful**, for the purposes of Legislative Decree No 196, and the public interest can be satisfied by indicating the company’s difficulties together with anonymous data relating to the individual who was authorised to represent it”;
- ❑ It means that the Chamber of commerce (business register) was ordered to **anonymise the personal data** linking to this specific person and pay a compensation;
- ❑ But...

The “Manni case”, Business register and Court of justice

- Ü Court of Cassation decided to stop the proceedings and to refer the following questions to the European Court of Justice for a preliminary ruling:
- Is it permissible under Article 3 of ... Directive 68/151 ... by way of derogation from [the principles] that there should be no time limit and that anyone may consult the data published in the companies register, for the **data no longer to be subject to ‘disclosure’, in both those regards, but to be available for only a limited period** and only to certain recipients, on the basis of a case by case assessment by the data manager?
- ☐ In other words: What is prevalent? The “right to be forgotten” of a natural person which data are kept in the business register or the transparency and the publicity of the business register (right to be informed by system of disclosure through the commercial registers provided by...Directive 68/151 and following...and by national law)?

The “Manni case”, Business register and Court of Justice

Ü The Court of justice decided that there is not a “right to be forgotten”: it prevails the right to keep the commercial register in a transparent way where processing data is necessary “for compliance with a legal obligation or for archiving purposes in the public interest”:

- Ø Public registers such as **companies registers** can attain their **essential objective**, which is to reinforce legal certainty through transparent disclosure of legally reliable information, **only if access to them is open to all and is available indefinitely**.
- Ø The Court has recognized that the fair **balance between the fundamental rights** protected by EU law and the general interest recognized by the European Union may depend on the nature of the information, also according to the role played by the object of the data in public life.
- Ø The **choice made by natural persons to engage in economic life** through the medium of a commercial **company** has the corollary of a **permanent requirement of transparency**. Data appearing in companies registers, and ensuring disclosure of such data for an unlimited period and, consequently, the right to any person requesting access to that information, is **justified by the preponderant interest of third parties in having access to the information in question**.

Rule 679/2016 of the EU Parliament

- Ü The Regulation is part of what, together with Directive 2016/680, has been defined as the “European Data Protection Package”;
- Ü No transposition required but Member States have two years to adapt their own internal legislative framework as well as companies to be aware of the news introduced.
- Ü A complex rule regarding privacy with many news introduced;
- Ü In particular:
 - explicitly acknowledgement of the "right to be forgotten“: the possibility to decide that personal data can be “cancelled” and no longer processed if the purpose for which they were collected is no longer actual;
- Ü What about business register? ...

THANK YOU FOR YOUR ATTENTION

For any question:

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