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Online Proctoring Manager – Further education program for supporting digital transformation at Higher Education Institutions

Unit 4.4 Italian legislation in online Proctoring

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1. Italian Legislation in online Proctoring

This section will analyse the Italian legislation in Online Proctoring, this sector is still confused and not clearly “legalized” as it has been developed only in the last years and some “openings” have been done only during the pandemic as the Italian Emergency Law for pandemic authorized universities to experiment online exams. In the below subchapters a detailed analysis will be delivered about the Italian legal system on online exams.

1.1 Actual Italian law

The Italian decree that establishes the Telematic Universities¹ clarify in Article 4, paragraph 2: *“The assessment of students of telematic universities, by means of profit verifications, is carried out on the premises of the universities themselves, by university professors and researchers.”*

In the last “Ministry of education” circular was clearly stated in the **“General guidelines for university programming 2019-2021 and indicators for the periodic evaluation of results”**² that:

*“Fully distance learning courses. In such courses, all educational activities are carried out by telematic means; the conduct of in-person examinations of profit and discussion of final examinations remains unaffected.”*³

The emergency law decree⁴ issued on 17/03/2020 from the Italian government gave some directives on online exams where indicated, in order to respect the “contract of study between institution and student” the possibility to develop online exams:

*“During the period of suspension referred to in paragraph 1, educational activities and student services provided by distance mode according to the indications of the universities to which they belong shall be counted for the purpose of the fulfillment of contractual obligations under Article 23 of Law December 30, 2010 no. 240.”*⁵

The above mentioned means that all the disciplines for online exams should have been considered only temporary and circumstantial

¹ <https://www.gazzettaufficiale.it/eli/id/2003/04/29/03A05400/sg>

²

<https://www.miur.gov.it/documents/20182/228988/DM+n.+989+del+25+ottobre+2019+formato+accessibile.pdf/6a0afe8d-4698-b641-b859-417224056548?version=1.0&t=1574247831395>

³

<https://www.miur.gov.it/documents/20182/228988/DM+n.+989+del+25+ottobre+2019+formato+accessibile.pdf/6a0afe8d-4698-b641-b859-417224056548?version=1.0&t=1574247831395> – PAGE 15 Allegato 3 Point A subpoint D

⁴ <https://www.gazzettaufficiale.it/eli/id/2020/03/17/20G00034/sg> article 101

⁵ <https://www.gazzettaufficiale.it/eli/id/2020/03/17/20G00034/sg>



After the Emergency period due to Covid pandemic officially ended in Italy the rules that Italian Universities should respect are the one indicated in the second point of this paragraph as the circular of the Ministry of education is the one must be followed by Italian Universities.

At the moment the Ministry of University will not derogate or approve any kind of online exams at University level.

All the above will not exclude the possibility to use online proctoring software for not-university level courses and exams but, in that case, will intervene (as indicated below) the Italian Privacy Guarantor⁶.

Finally Italy follows the European Data Protection Board Guidelines which last version was delivered in February 2019⁷. These guidelines explains how to deal with the personal data when making a video with some other people. Those data have been receipt by the circular of the Ministry of University as indicated above.

1.2 The “Bocconi” Case

The Bocconi University in Milan has being fined 200,000 euros for failing to comply with directives on the processing of personal data of enrolled students. The university in fact "spied" on students during exams in last year's lockdown weeks through software programmed to record every movement of the face of those in front of the webcam.

The university allegedly used two pieces of software - Repondus monitors and LockDown Browsers - to monitor students' faces and temporarily lock their electronic devices, so as to prevent them from finding information elsewhere. According to the Privacy Guarantor, this was too intrusive a practice and thus resulted in the fine (which drops to 100,000 if it pays within a month).

Another problem found by the Guarantor⁸ concerns the retention of documents captured during the recording. Indeed, it remains to be clarified how long such images can remain on file and where, although it has been ascertained that personal data undergoes transfer to the United States of America.

The U.S. software used by the university to administer online exams is, in the words of the Privacy Guarantor, unduly invasive and exceeds actual needs. Those softwares can no longer be used.

⁶ <https://www.garanteprivacy.it/>

⁷ https://edpb.europa.eu/our-work-tools/our-documents/guidelines/guidelines-32019-processing-personal-data-through-video_it

⁸ <https://www.garanteprivacy.it/home/docweb/-/docweb-display/docweb/9703988>



Specifically, among the behaviors defined as exceeding actual needs was "the photograph taken by the system at the beginning of the test of the student, who was then asked to show ID and take a panoramic shot of his or her surroundings."

1.3 EU Regulation 2016/679

Italy has not specifically regulated by law the online proctoring having denied the use of those kind of softwares for privacy issues.

There are two different levels to be analysed:

1. In Italy, at university level, in normal conditions, meaning without any exceptional law due a specific situation (see pandemic), is forbidden to make online exams.

This point has been again clarified by the "circular" of 2019 of the Ministry of University.

2. The second level regards the privacy issues as the Guarantor clarified that is not possible to "invade" with online proctoring softwares the privacy of students/citizens.

The EU Regulation 2016/679⁹ specify that the protection of natural persons in relation to the processing of personal data is a fundamental right.

The principles of, and rules on the protection of natural persons with regard to the processing of their personal data should, whatever their nationality or residence, respect their fundamental rights and freedoms, in particular their right to the protection of personal data.

This regulation is complex and has a total of 99 articles, it introduce the "online" word and specify the protection of the freedom of European Citizens in Social Media.

This specific regulation is the one followed by all the organizations and single citizens that "manipulate" personal data.

The Italian Guarantor for Privacy identified in the extreme and detailed requirements by the online proctoring softwares as a violation of the principles of freedom of the citizens and for this reason fined Bocconi University.

⁹ <https://eur-lex.europa.eu/eli/reg/2016/679/oj>



Conclusions

To the date of 20 of July 2022 Italy has not specific law that regulates the online proctoring softwares but, in the meantime, fines who makes online exams as this is forbidden by Italian Law and, in order to preserve the privacy of citizens, make sanctions to whom is, also experimentally, tries to use online proctoring softwares for online University level exams. For other kind of exams, not at University Level, is not forbidden the use of proctoring softwares but is not regulated so the risk of a sanction to a private entity on behalf of the Italian Privacy Guarantor is possible.

It is important to highlight that online proctoring is not regulated but what was done was:

1. A Reaction for the safeguard of privacy
2. A document that, in general, denied the possibility to make online university exams



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