



REPUBLIC OF SAN MARINO

We the Captains Regent of the Serene Republic of San Marino

Having regard to Article 4 of Constitutional Law no. 185/2005 and Article 6 of Qualified Law no. 186/2005;

Hereby promulgate and order the publication of the following Ordinary Law approved by the Great and General Council in its sitting of 20 July 2009.

LAW no. 98 of 21 July 2009

LAW ON INTERCEPTIONS

Art. 1

(Interceptions as a means to acquire evidence in criminal proceedings)

1. With a view to supplementing the Code of Criminal Procedure, this Law shall regulate interceptions as a means to search for and collect evidence in criminal proceedings.

Art. 2

(Definitions)

1. Interceptions shall consist of capturing communications that may be related to the investigated person by eavesdropping, possibly using suitable devices able to go beyond ordinary sensory capacities. Interceptions may regard one or more communications, even jointly, between the accused and other persons, in any form and by any means.

Art. 3

(Admissibility of interceptions)

1. Interceptions shall be authorised exclusively in criminal proceedings related to the following criminal offences:

- 1) Criminal offences subject to the statutory punishment of imprisonment of no less than third degree as a minimum;
- 2) Criminal offences against safety, public health and the natural environment;
- 3) Criminal offences related to narcotic drugs or psychotropic substances under Article 244 of the Criminal Code;
- 4) Criminal offences committed in the exercise of banking, financial and insurance activities, which are subject to the statutory punishment of imprisonment of no less than second degree as a minimum;
- 5) Criminal offences under Articles 177, 177bis, 177ter and 177quater of the Criminal Code;
- 6) The criminal offence under Article 204, paragraph 3 of the Criminal Code;
- 7) Criminal offences under Articles 305 and 305bis of the Criminal Code;
- 8) Criminal offences under Articles 371, 372, 373, 374, 375, 376 and 377 of the Criminal Code;
- 9) Criminal offences committed by post or telephone or by radio, IT or telecommunication technologies;

- 10) The criminal offence under Article 169 of the Criminal Code;
- 11) Any other criminal offence for which the law expressly sets forth the opportunity to adopt such device for collecting evidence.
2. With a view to establishing the degree of imprisonment under paragraph 1, where it is necessary to determine the admissibility of interceptions, no account shall be taken of any degree increase or reduction due to aggravating or mitigating circumstances, whether general or special.

Art. 4

(Conditions and contents of the authorisation decree)

1. The Investigating Judge, when serious evidence of crime exists and there are reasonable grounds to believe that the interception is absolutely necessary to carry on investigations, shall request, with reasoned decree, the authorisation to conduct interception operations, specifying the modalities and duration, which however shall not exceed three months.
2. The authorisation shall be granted, through reasoned decree by the Deciding Judge other than the one competent to decide on such issues according to the ordinary criteria for the assignment of judicial work or, in his place, in case of absence, impossibility, incompatibility or for other similar reasons, by another Law Commissioner appointed by the Head Magistrate, who in the trial assumes the title of Judge responsible for Interceptions. The Deciding Judge, or in his place the other Law Commissioner appointed by the Head Magistrate, may establish in the decree modalities and duration different from those indicated in the request, in order to avoid unnecessary prejudice to the confidentiality of people.
3. The Investigating Judge shall order the interception by decree, indicating the modalities and duration of the operations, as provided for in the authorisation decree. If the duration is less than three months, the Judge responsible for Interceptions may, upon request, authorise that the interception, taking into account the results obtained and the investigation context, continue for a maximum total period of three months. Upon request, the Judge responsible for Interceptions may exceptionally extend the interception up to a maximum of a further three months, in the presence of new specific elements. These elements shall be expressly indicated in the extension measure, together with the conditions indicated in paragraph 1.
4. In cases of urgency, when there are well-founded reasons to believe that the delay may cause serious prejudice to the investigations, the Investigating Judge shall order the interception by means of a reasoned decree, in which the serious prejudice justifying the urgency of the interception shall be specified. The decree shall be notified immediately, and in any case no later than twenty-four hours, to the Judge responsible for Interceptions, who, within forty-eight hours of the notification, shall decide on the validation by reasoned decree. If the decree of the Investigating Judge is not validated, the interception shall not be continued and the results of the interception shall not be used and shall be destroyed in the manner referred to in Article 8, paragraph 2.
5. The time-limits referred to in paragraphs 1, 2 and 3 shall be doubled in case of proceedings for criminal offences for which imprisonment of no less than sixth degree is envisaged. However, interceptions shall not be extended beyond the maximum time-limit provided for the regime of temporary secrecy of investigations referred to in Article 5, paragraph 3 of Law no. 93 of 17 June 2008.
6. In a special confidential register kept at each office of the Investigating Judge, the date and time of issue and the date and time of deposit of the decrees ordering, authorising, validating or extending interceptions shall be immediately recorded in chronological order, including, for each interception, the beginning and end of the operations.
7. The register referred to in the preceding paragraph shall be signed by the Investigating Judge and shall be certified by the Judge responsible for Interceptions for each interception; such register may be inspected by the Investigating Magistrate for the necessary verifications.

Art. 5

(Execution of interception operations)

1. The Investigating Judge shall carry out interception operations personally or by resorting to a judicial police officer or other suitable personnel indicated in the request.
2. Intercepted communications shall be captured or detected by technical means suitable for reproduction and verification and, where possible, for transcription and translation into another language, decryption or transposition into another computer language.
3. Interceptions shall be carried out with all appropriate precautions to prevent the suspect and/or third parties from becoming aware of them, in accordance with the provisions of this Law.
4. Interception operations shall be carried out exclusively within ad hoc premises in the Single Court.

Art. 6

(Minute taking of interception operations)

1. Those who physically carry out interceptions shall draw up the minutes of the relevant operations.
2. The content of intercepted communications shall be transcribed, even briefly, in the minutes.
3. The minutes shall also contain:
 - a) The details of the decree that ordered the interception;
 - b) The description of the interception methods and technical means used both for the interception and for recording and reproducing communications;
 - c) The day and time when interception operations started and ended;
 - d) The names of the persons who took part in the interception operations.

Art 7

(Deposit of the minutes with the Investigating Judge)

1. Those who have carried out the interceptions shall immediately transmit to the Investigating Judge the minutes referred to in the preceding Article, together with audio, computer, telematic or other recordings of intercepted communications as soon as the operations are concluded and in any case before the expiry of the time-limit of each interception period.
2. The Investigating Judge shall carefully examine the material obtained from interceptions in order to identify the elements useful for investigations.
3. Pending the deposit referred to in the following Article, the minutes and recordings shall be kept in the confidential archive of interceptions.

Art. 8

(Deposit and obtaining of the minutes and recordings and their possible destruction)

1. Within thirty days from the transmission of the recordings referred to in paragraph 1 of the preceding Article, the Investigating Judge shall file with the Registry the minutes and recordings relating to the interceptions that he considers relevant for the purposes of investigations and shall indicate the reasons for such relevance. The decrees ordering, authorising, validating or extending the interceptions shall be deposited at the same time, including the relevant requests.
2. When they have randomly concerned conversations, behaviours or facts that are among those whose use is prohibited or that have turned out to be completely unrelated to the investigations or in any case irrelevant, interceptions and the related minutes shall be immediately destroyed, subject to the prior consent of the Judge responsible for Interceptions, through procedures ensuring that they cannot be recovered or reconstructed.
3. The Judge responsible for Interceptions may authorise the Investigating Judge to delay the deposit referred to in paragraph 1 no later than the end of preliminary investigations under temporary secrecy regime, if the deposit may cause serious prejudice to the investigations.

Art. 9

(Examination of interceptions by defending lawyers)

1. Once the deposit referred to in the preceding Article has been made, the parties' defending lawyers shall be notified immediately that, within the time-limit referred to in the following paragraph, they shall be entitled:
 - a) To examine the documents deposited and those kept in the confidential archive of interceptions;
 - b) To listen to recordings, including those kept in the confidential archive of interceptions, or to become aware of computer or telematic communication flows;
 - c) To resort to a technical expert of their choice in the exercise of these rights;
 - d) To indicate specifically to the Deciding Judge the communications, which have not been deposited and which they request, stating the reasons for their relevance;
 - e) To indicate specifically to the Deciding Judge the deposited conversations which they consider non-relevant or whose use is prohibited.
2. The documents shall remain deposited for the time established by the Investigating Judge, and in any case no less than sixty days from notification of the communication referred to in paragraph 1 above.
3. In order to protect the effectiveness of the right of defence, the Judge responsible for Interceptions may authorise the defending lawyers to extract a copy of the deposited documents.
4. Once the time-limit referred to in paragraph 2 has expired, the Judge responsible for Interceptions, having heard the parties without any formality, shall order the obtaining of the conversations that he deems relevant and whose use is not prohibited.
5. Deposited documents that the Judge responsible for Interceptions has not ordered to be obtained shall be immediately returned to the Investigating Judge and kept in the confidential archive of interceptions; if it emerges that such documents fall within those referred to in Article 8, paragraph 2, they shall be destroyed.
6. The Procuratore del Fisco (Prosecuting Magistrate) and the parties' defending lawyers may extract copies of the interceptions ordered to be obtained, as well as the relevant minutes.
7. The defending lawyers may examine the documents and listen to the recordings kept in the confidential archive of interceptions, in accordance with the procedures laid down in Article 13, paragraph 3.
8. At any stage and instance of the proceedings, the competent judge may always examine, if he deems it necessary, the documents kept in the confidential archive of interceptions.

Art. 10

(Transcription of the recordings)

1. Having completed the formalities referred to in Article 8, the Judge responsible for Interceptions shall order, where necessary for the purpose of greater clarity, to resort to an expert for the transcription of the recordings or the printing or reproduction, in as clear and comprehensible a form as possible, of the information contained in the computer or telematic communication flows obtained. At the end of the operations, the minutes and recordings used to carry out the task shall be immediately returned to the Investigating Judge and kept in the confidential archive of interceptions. It shall be forbidden to transcribe parts of communications relating exclusively to facts or circumstances that are not related to the investigations. The Judge responsible for Interceptions shall order that the names or identification data of persons not related to the investigations be removed from transcripts or printouts.
2. Interception results which, where possible, are not transcribed or printed or otherwise reproduced in an intelligible form prior to the beginning of proceedings shall not be used.

Art. 11

(Use of interceptions during preliminary investigations)

1. In order to submit his requests to the Judge responsible for Interceptions, the Investigating Judge may order the transcription, also in summary form, of the communications or the printing in intelligible form of the information contained in the computer or telematic communication flows obtained, which he deems relevant. The Investigating Judge shall order that, in making transcriptions or printouts, the judicial police or the technical expert remove the parts of communications that are certainly not related to the investigations, as well as the identification data of persons not related to the investigations, where this does not prejudice the establishment of the facts being prosecuted.
2. Together with the request, the Investigating Judge shall transmit to the Judge responsible for Interceptions the minutes, recordings, transcripts, printouts and reproductions, which he deems relevant, also in favour of the person under investigation, and whose use is not prohibited. The Judge responsible for Interceptions may request to examine the recordings and computer storage media directly.
3. The Judge responsible for Interceptions shall order that the material relevant to the decision be included in the case file and that the other conversations be kept in the confidential archive of interceptions. After the person under investigation or his defending lawyers have become aware of the measure, the defending lawyers shall be immediately informed of the right to view the communications obtained and those kept in the confidential archive, in order to request the Judge responsible for Interceptions, within ten days, that the communications previously considered non-relevant be obtained.

Art. 12

(Access by the Deciding Judge to the documents kept in the confidential archive)

1. After the conclusion of preliminary investigations, the Deciding Judge, competent to decide on the merits, may always order, also ex officio, for the purposes of the decision to be taken, the examination of the documents kept in the confidential archive of interceptions. Once this examination has been concluded, the Deciding Judge may order that interceptions previously deemed non-relevant be obtained, after they have been transcribed or printed.

Art. 13

(Confidential archive of interceptions)

1. A confidential archive of interceptions shall be established at the secretariat of the Investigating Judge.
2. The archive shall be kept under the responsibility, direction and supervision of the Investigating Judge, or his delegate, in such a way as to ensure the secrecy of the documents contained therein. Such modalities shall be provided for in a specific Regulation adopted by means of a Delegated Decree by 31 October 2009, issued on the proposal of the Head Magistrate, which shall also indicate the forms and manners of keeping the book of interceptions.
3. In addition to the supporting staff authorised by the Investigating Judge, the archive shall be accessed, in the cases established by law, by the Judge responsible for Interceptions and the defending lawyers - the latter in the manner and terms indicated in the preceding articles - as well as, after the conclusion of the preliminary investigations, by the Deciding Judge and the Procuratore del Fisco, and, at the complaint and appeal stage, by the Judge of Appeal. Each access shall be recorded in a specific register, indicating the date, the starting and ending time of the access and the documents examined.

Art. 14
(Record keeping)

1. The storage media containing copies and audio, computer, telematic or other recordings of intercepted communications, together with the relevant minutes, shall be kept in full in the confidential archive of interceptions.
2. Such media, to be put in ad hoc numbered and sealed cases, shall be placed in a packaging indicating the type, subject and date of the interception, the names of the persons whose communications have been intercepted, the number of the criminal proceedings and the number which, with reference to the allowed recording, results from the register of interceptions provided for in Article 4, paragraph 6.
3. Without prejudice to the provisions of Article 16, the documents concerning interceptions shall be kept in the confidential archive of interceptions for a period of two years after the judgement is no longer subject to appeal or complaint, or from the date on which a decree to dismiss the case can no longer be claimed. Once these time-limits have expired, the Deciding Judge shall order the destruction of the documents referred to in paragraph 1 in the manner set forth in Article 8, paragraph 2 above. However, where the documents have proved to be non-relevant for the purposes of the proceedings, if they have not already been destroyed in accordance with Article 8, paragraph 2, the persons concerned may request their early destruction in order to protect confidentiality. The Deciding Judge shall decide on the request by reasoned decree. In such a case, early destruction shall not be ordered without the consent of the parties.
4. The destruction shall be carried out under the control of the Deciding Judge. Minutes shall be taken of the operation.

Art. 15
(Use in other proceedings)

1. If the contents of interceptions reveal information useful to establish other crimes for which imprisonment of no less than sixth degree is envisaged and for which interceptions may constitute a source of evidence under this Law, the Investigating Judge shall transmit a copy of the documents to the Judge that has jurisdiction over the crime that has accidentally emerged. In any case, the right of the Procuratore del Fisco and the civil plaintiff's defending lawyers to ask the judge to obtain or transmit the results of the interceptions to another case file, which was open for offences for which imprisonment of no less than sixth degree is envisaged, shall remain unaffected.
2. Under the same condition, the results of interceptions, which were not considered relevant in the proceedings in which they were ordered, may be obtained. To this end, the Investigating Judge, the Procuratore del Fisco and the defending lawyers in the different proceedings shall have the right to examine the media containing the copies and audio, computer, telematic or other recordings of intercepted communications, together with the relevant minutes, kept in the confidential archive and to request a copy, transcription, transposition and printing thereof to the Deciding Judge in the proceedings to which they are parties. The provisions referred to in Articles 9, 10, 11 and 12 shall apply insofar as compatible.
3. Interceptions may always be used, at the request of any defendants in other proceedings, when their content is useful for the purposes of their defence.

Art. 16

(Objective prohibition of interception and use)

1. Where interceptions have concerned communications not falling within the cases provided for in Article 3 above, or without the authorisation or validation referred to in Article 4, they shall not be used.
2. At any stage and instance of the proceedings, the Investigating Judge, the Judge responsible for Interceptions or the Deciding Judge shall order that all the documents of interceptions provided for in the preceding paragraph be destroyed, unless they constitute the corpus delicti.

Art. 17

(Subjective prohibition of interception and use)

1. The following shall not be intercepted:
 - a) Communications by persons bound to secrecy, when they relate to acts or facts known by reason of their ministry, office or profession, unless such persons have testified to these facts or otherwise disclosed them;
 - b) Conversations or communications of the Captain Regents;
2. Where interceptions have concerned communications covered by the prohibition referred to in paragraph 1, they shall not be used.
3. At any stage and instance of the proceedings, the Investigating Judge, with the consent of the Judge responsible for Interceptions, or the Deciding Judge shall order that all the documents of interceptions provided for in the preceding paragraphs be destroyed, unless they constitute the corpus delicti.

Art. 18

(Sanctions)

1. Unless the fact constitutes a more serious crime, anyone who carries out interceptions and violates the provisions of this Law shall be punished by terms of second-degree imprisonment.
2. The activities, documents, whether on paper, computer, audiovisual form or in any other form, and materials related to interceptions shall be subject to the provisions of Article 8, paragraph 1 of Law no. 93 of 17 June 2008. Secrecy shall continue to be applied to the activities, documents and materials to be destroyed under Article 8, paragraph 2 and Article 9, paragraph 5 of this Law even after the parties are given access to the case file.
3. Those who materially carry out the interception operations and those who, entrusted by the judicial authority, have an opportunity to work on the documents resulting from interceptions, even if not employed in the Public Administration, shall be considered public officials.
4. Computerised data collected in application of this Law shall not subject to the provisions of Law no. 70 of 23 May 1995.

Art. 19

(Regulation governing the technical modalities of interceptions)

1. Within six months from the entry into force of this Law, the Congress of State shall issue a Regulation governing the technical modalities to carry out interceptions.

Art. 20
(Repeal)

1. Any provision in conflict with this Law shall be repealed.

Art. 21
(Entry into force)

1. This Law shall enter into force on 1 January 2010.

Done at Our Residence, on 21 July 2009

THE CAPTAINS REGENT
Massimo Cenci – Oscar Mina

THE MINISTER
OF INTERNAL AFFAIRS
Valeria Ciavatta