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A B S T R A C T

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The regular article tracking developments at the national level in key European countries in the area of IT and communications – co-ordinated by Herbert Smith Freehills LLP and contributed to by firms across Europe. This column provides a concise alerting service of important national developments in key European countries. Part of its purpose is to complement the Journal's feature articles and briefing notes by keeping readers abreast of what is currently happening "on the ground" at a national level in implementing EU level legislation and international conventions and treaties. Where an item of European National News is of particular significance, CLSR may also cover it in more detail in the current or a subsequent edition.

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1. Belgium

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No contribution for this issue.

2. Denmark

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2.1. General Data Protection Regulation – status on expected implementation process

On 4 May 2016 the General Data Protection Regulation ("Regulation") was published in the *Official Journal of the European Communities*. This means that the Regulation officially entered into force on 25 May 2016 and will be applicable from 25 May 2018.

In Denmark, the Ministry of Justice is the main public authority responsible for the implementation of the Regulation. The Ministry of Justice will cooperate with the Danish Data Protection Authority, which is an authority under the Ministry of Justice, as well as the Inter-ministerial Project Office, which is an authority under the Ministry of Finance. Furthermore, the Ministry of Justice will involve other Ministries where this is relevant and presumably delegate relevant implementation responsibilities to them.

In April 2016 the Ministry of Justice published a memorandum on the Regulation implementation framework. The Ministry of Justice estimates that the project work on the Regulation implementation must be finalised in Q1 2017, in order to propose the necessary legislative proposals in the Danish Parliament in October 2017, leaving sufficient time for the proposed legislation to be processed and adopted.

However, the Ministry of Justice and the Data Protection Authority have already started a project with a steering committee and project groups who will be responsible for the Regulation implementation work. The project will be divided into two project groups; one that will work with national provisions under the Regulation, and one that will work with the Regulation's impact on the general data protection legislation in

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Denmark. So far, there have been no announcements regarding the national provisions that Denmark intends to implement as a consequence of the Regulation.

The project groups will be supported by several task forces with relevant employees from the Ministry of Justice, the Data Protection Authority and, where relevant, employees from other authorities, such as the Ministry of Finance, the Inter-ministerial Project Office, the Ministry of Taxation, the Ministry of Health, the Ministry of Higher Education and Science, the Ministry of Business and Growth, the Ministry of Social Affairs and the Interior, Municipalities and regions. The project groups will also be supported by an expert reference group, and an inter-ministerial data protection network established by the Ministry of Justice.

Finally, several meetings are expected to be held where NGOs and law firms specialised in data protection will be invited to discuss the Regulation implementation framework.

3. France

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4. Germany

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4.1. Liability of free WiFi providers

The Advocate General recently published his Opinion in the McFadden case before the Court of Justice of the European Union (CJEU). He takes the view that operators who offer a wireless local network (WiFi) free of charge to the public are not liable for copyright infringements that are committed by users of such a network.

In the case at hand, Tobias McFadden had offered his customers free of charge access to a non-password protected WiFi-network. Sony Music claimed that this connection was being used to illegally download their copyrighted material and applied, *inter alia*, for a cease and desist order and compensation for its legal fees. The German court referred the case to the CJEU asking whether Mr McFadden is an access provider within the meaning of the E-Commerce Directive (2000/31/EC) and, accordingly, to what extent he can be held liable for the unlawful acts of the users of his WiFi-network.

In his Opinion, the Advocate General stated that Mr McFadden should benefit from the limitation of liability provisions for access providers in the E-Commerce Directive. Specifically, he should not be obliged to terminate the WiFi connection in order to put an end to infringements by its users or to pay damages, the attorney fees for the formal cease and desist letter or other court costs related to such a copyright infringement.

Finally, he stated that the provider of a free WiFi network is under no obligation to password protect the access to it or to monitor transmitted communications.

This statement seems to have put an end to the debate in Germany on whether or not WiFi providers can be held liable for copyright infringements by users if they fail to secure their WiFi properly. The German government is currently revising the German Telemedia Act. Under its latest draft of September 2015, the liability limitations for access providers would have applied to WiFi providers only if they password protected their network and had their users undertake not to infringe third parties' copyrights. However, these additional requirements now appear to have been dropped in order to clear the path for open WiFi providers.

5. Italy

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5.1. The Italian Data Protection Authority rules on the applicability of Italian Data Protection law and orders Facebook to hand over fake account data

By a decision issued on 11 February 2016 (the "Decision") the Italian Data Protection Authority ordered Facebook *inter alia* to (i) communicate in an intelligible form to an Italian natural person (the "Claimant") all his personal data, including personal information, photos, videos and posts, that were published on a fake account set up by a third party Facebook user using the name of the Claimant, (ii) stop the processing of any such data, and (iii) retain all the same data so as to make them available for the purposes of a criminal investigation by the competent authorities. In addition, Facebook was ordered to provide to the Claimant all information pursuant to Article 7 of the Italian Data Protection Code ("Right to Access Personal Data and Other Rights").

The Decision concerns a fake account created by a Facebook user under the name of the Claimant, containing personal data of the Claimant, including manipulated and photo-shopped pictures and videos which seriously damaged the Claimant's reputation.

The Decision is of crucial importance since the Italian Data Protection Authority – based on the ECJ's recent decision of 1 October 2015 in the "Weltimmo" case and on the WP 179 Update of 16 December 2015 – ruled that the Italian data protection law applied to the case at issue on the grounds that Facebook is present in Italy with a stable organisation (namely a company: Facebook Italy S.r.l.) whose activity (the supply of internet and sale services, online advertising space sale, marketing and related activities), although not consisting of data processing, was found to be "inextricably linked" to the activities of the Irish company (Facebook Ireland Ltd) that actually carried out the processing of the data challenged since the activity of the Italian company is aimed at making the services rendered by the Irish company economically profitable.

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