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European national news

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ABSTRACT

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The regular article tracking developments at the national level in key European countries in the area of IT and communications are 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

2.1. New Danish Public Procurement Act

The Danish Parliament is to adopt a new Danish Public Procurement Act (the "Act") to implement the EU public procurement directives from February 2014. Due to the Danish general election held in June 2015, the adoption of the Act has been postponed and is not expected until the autumn of 2015, with entry into force expected in the first quarter of 2016.

The aim of the new Act is to ensure that public procurement is conducted efficiently, expeditiously, and with the lowest possible transaction costs for buyers and suppliers. The draft

bill consists of 198 sections, which in some aspects will change the way that public entities make purchases.

Various services which did not previously have to be put out to tender will fall within the scope of the new Act. For example, personnel placement and personnel supply services and education and vocational education services will have to be put out to tender.

The new simplified procedures will facilitate negotiations between the contracting entity and bidders about available solutions and contractual terms.

Contracting entities will have wider access to conducting a negotiated tender procedure or a competitive dialogue with bidders. The extended negotiation option will apply to all cases where the contracting entity is not procuring standard off-the-shelf items. The contracting entities may opt to apply these procedures when the contracting entity's requirements cannot be fulfilled without adaptation of an existing solution, or when the goods or services include design or innovative solutions.

Procurements of IT services are rarely standard off-the-shelf items, and the legislative history of the Act emphasises that the broader access to conducting negotiations is particularly relevant for such services, stating that the negotiation

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provisions are particularly relevant in relation to complex purchases such as procurements of IT services.

Other substantial and noteworthy changes to the current legal framework which the Act will introduce are the revocation of advertising requirements for procurements below the threshold value, earlier access to the procurement documents, and requirements as to candidates' and tenderers' revenues.

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5. Italy

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5.1. Cookies: new regime and clarifications by the Italian Data Protection Authority

On 2 June 2015 the deadline to comply with the obligations provided by the provision "Simplified Arrangements to Provide Information and Obtain Consent Regarding Cookies" of 8 May 2014 (the "Provision") of the Italian Data Protection Authority ("DPA") expired.

In particular, pursuant to the Provision, the DPA established that information to be provided to users by website managers regarding profiling cookies and other devices installed by or through their websites shall be given through a suitably sized banner to be displayed on screen immediately when a user accesses the home page or any other page of a website. Such banners shall inform users that:

- (1) the website uses profiling cookies to send advertising messages in line with the user's online navigation preferences;
- (2) the website allows sending third-party cookies (if this is the case);

- (3) a clickable link to an extended informative note is available where additional information must be accessible (including, where applicable, information on the use of technical and analytic cookies; tools available to select the cookies to be enabled; possibility for the user to configure browser settings as a further mechanism to select the preferred use of cookies by the website; updated links to third parties' webpages containing information and consent forms relating to the cookies etc.);
- (4) users may refuse to consent to the installation of any cookies; and
- (5) if the user continues browsing by accessing any other section or selecting any item on the website (e.g. by clicking a picture or a link), the user shall be deemed to have provided consent to the use of cookies.

On 5 June 2015, following many requests for clarifications submitted by website managers, the DPA published some clarifications relating to the implementation of the Provision (the "Clarifications"). According to the Clarifications:

- (a) websites that do not use cookies are not subject to any obligations;
- (b) technical cookies only require the informative note (which can be included in the privacy policy of the website) and the banner is not required;
- (c) analytic cookies are subject to the same requirements as those which apply to technical cookies only in case they are created and used directly by the website manager to improve the website;
- (d) informative note and consent are not required in case of links to third-party websites that do not require the installation of profiling cookies (e.g. banner ads, links to social networks); and
- (e) the above requirements apply to all websites that install profiling cookies on users' terminals, regardless of the existence of an office seated in Italy.

(<http://www.garanteprivacy.it/cookie>)

6. The Netherlands

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6.1. The Dutch Data Protection Authority sets strict requirements for the security of absence systems

The Dutch Data Protection Authority ("DPA") recently conducted an investigation into the security of the absence systems 'Humannet Starter' and 'Humannet Absence' ("the absence systems") of IT-company Humannet B.V. ("Humannet"). Humannet's customers (employers and those offering occupational health and safety services) use such systems for absence management for employees, including re-integration following a period of sick leave. For the purpose of absence

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