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This article tracks developments at the national level in key European countries in the area of IT and communications and provides a concise alerting service of important national developments in these European countries. It is co-ordinated by Herbert Smith Freehills LLP and contributed to by firms across Europe. 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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5.1. The Italian data protection authority denies authorisation to data profiling for "reputation rating" (Mevaluate)

On 24 November 2016 the Italian Data Protection Authority (the "Authority") rejected a request to start profiling personal data to rate the same for reputational purposes. In 2015 two companies and an association – Mevaluate Holding Ltd., Mevaluate Italia S.r.l. and Mevaluate Onlus ("Mevaluate") – notified the

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Authority of their plan to implement a website and relevant online database aimed to give a reputational rating to physical persons and legal entities (jointly, the “users”) for professional and commercial purposes. Users would register with the website, create a personal profile detailing and uploading several mandatory information and documents like certified criminal records (if any), certified public records of good standing, professional and commercial records (e.g. admission to bar for lawyers), or press articles concerning the user. Once registered, users could create not only a personal profile, but also a profile relevant to third parties (“profilo contro terzi”) using public available information on such third parties.

Accorded to the plan, the data and information so gathered would be preliminarily assessed and evaluated by an expert committee, and then they would be processed and elaborated through a particular algorithm which would finally rate the reputation of the users and of the third party profiles.

The Authority, in denying the authorisation noted that the system showed many criticalities among which: the preventive consent by the profiled third parties was utterly absent; the data processing was not in line with the adequacy principle and, with respect to sensitive judicial data such processing did not comply with a number of regulations issued by the Authority. In addition, the authorisation was denied on the basis that the system security was not adequately guaranteed since it was based on weak authentication measures (mainly ID and relevant password). The Authority also expressed its concern as to the efficacy of a reputational rating system mostly based on an algorithm and the possible negative consequences on the dignity and reputation of the persons profiled.

<http://www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/5796783>

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7.1. Personalised services and AI

As the topic of their annual joint report on the status and trends regarding data protection, the Norwegian Data Protection Authority (Datatilsynet) and the Norwegian Board of Technology (Teknologirådet) chose to focus on personalised services and artificial intelligence. The report includes the results of a survey regarding the processing of personal data by, respectively, the financial sector and public sector.

Once the EU’s Revised Payment Services Directive comes in January 2018, new e-commerce actors will be able to provide

banking services as long as their customers have consented. This will enable firms which already process enormous amounts of personal data on their users, such as Facebook or Google, to have direct access to their customer’s bank accounts and transactions, and to be in a position to offer even more personalised services to their customers. In a similar manner, firms such as supermarket chains are entering the insurance market and offering insurance services to their customers. Some insurance firms are offering reduced premiums to those customers who are willing to allow their driving behaviour to be registered and who display safe driving habits.

The survey shows that 79% of the participants are sceptical to receiving banking services from firms such as Facebook or Google. Nor are many Norwegians happy to have insurance premiums calculated on the basis of detailed daily monitoring of their driving behaviour, even if this means that they could benefit from lower premiums. The persons surveyed were, however, more favourably disposed towards the use of automated systems in the public sector to identify tax or social security fraud.

The report highlights that when the services people receive are based on their own personal data, there is a risk that such persons alter their behaviour to obtain a more favourable service. Though this may not always be negative, it could also have a chilling effect and lead to self-censorship.

8. Spain

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8.1. New data protection act to be drafted

Following the recent approval of Regulation (EU) 2016/679 on General Data Protection (GDPR), the Spanish Ministry of Justice has moved forward in the process of passing a new Spanish data protection act.

On February 7, the Ministry submitted for public consultation the need for amending the current Spanish data protection laws in order to ensure the fulfilment of the new requirements, obligations and general scheme outlined in the GDPR. In this respect, any concerned citizen, organisation or association can provide its comments on the suitability of any such amendment until next February 28. Note, however, that said comments are to be made on the convenience of starting a legislative procedure on this subject, but not on a particular piece of draft legislation – which the Spanish government has yet to prepare.

In the text submitted for consultation, the Ministry of Justice argues that the modification of the current Spanish legislative framework on data protection is critical to avoid any divergences and inconsistencies between national regulations and the GDPR, as well as to implement certain topics that have been open to the domestic law of Member States. In addition, the Spanish legislator will be updating and enhancing some sector-specific regulations in the field of personal data

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