Available online at www.sciencedirect.com

ScienceDirect

www.compseconline.com/publications/prodclaw.htm

Computer Law & Security Review

European national news

Nick Pantlin *

Herbert Smith Freehills LLP, London, United Kingdom

Keywords:
Internet
ISP/Internet service provider
Software
Data protection
IT/Information technology
Communications
European law/Europe

A B S T R A C T

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. It is 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.

1. Belgium

Cédric Lindenmann, *Associate,* cedric.lindenmann@stibbe.com *and* **Carol Evrard**, *Associate,* carol.evrard@stibbe.com *from Stibbe, Brussels (Tel.: +32 2533 53 51).*

No contribution for this issue

2. Denmark

Arly Carlquist, *Partner,* ac@bechbruun.com *and* **Niclas Jensen**, *Junior Associate,* nic@bechbruun.com *from Bech-Bruun, Copenhagen office, Denmark (Tel.: +45 7227 0000).*

No contribution for this issue

3. France

Alexandra Neri, *Partner,* alexandra.neri@hsf.com *and* **Jean-Baptiste Thomas-Sertillanges**, *Avocat,* Jean-Baptiste.Thomas-Sertillanges@hsf.com *from the Paris Office of Herbert Smith Freehills LLP (Tel.: +33 1 53 57 78 57).*

No contribution for this issue

4. Germany

Dr. Alexander Molle, *LL.M. (Cambridge), Counsel,* alexander.molle@gleisslutz.com, *from the Berlin Office of Gleiss Lutz, Germany (Tel.: +49 30800979210)*

4.1. *The right to be forgotten*

The Regional Court of Frankfurt a.M. recently specified the conditions on which individuals can claim the removal of search results on the internet on the basis of the right to be forgotten. The decision has important consequences for the practical enforcement of the right to be forgotten.

In the case at hand, the claimant was the manager of the regional branch of a well-known business. In 2011, the claimant

For further information see: www.herbertsmithfreehills.com.

* Herbert Smith Freehills Exchange House, Primrose St, London EC2A 2HS, United Kingdom.
E-mail address: Nick.Pantlin@hsf.com.

https://doi.org/10.1016/j.clsr.2018.02.003

had to stop working due to health issues. Shortly afterwards the regional branch under his management showed a deficit of roughly one million EUR. Local and regional press reported these events, sometimes showing the full name of the claimant. These articles could also be found on the internet via Google. The claimant requested the removal of the respective links from the Google search engine on the basis of his right to be forgotten.

The court decided that search engine providers could not have recourse to an exemption from liability for access providers pursuant to the German Telemedia Act. Such an exemption would only be warranted due to the neutrality of access providers, who do not actively influence the data supplied by them. Contrary to this reasoning, the personalised algorithms used by Google and other search engines would influence the search results for each individual user. Search engine providers would therefore not qualify as a neutral access provider.

Irrespective of that, the claimant still failed to succeed with his claim. According to the court, the right to be forgotten has to be balanced against the public interest in the matter concerned. In doing so, the fact that the reports at hand included sensitive medical data was taken into consideration in favour of the claimant. However the substantial public interest, the relatively short time frame of only six years after the event and the fact that the data involved did not concern the personal privacy of the claimant together outweighed the interests of the claimant according to the court.

5. Italy

Salvatore Orlando, *Partner,* s.orlando@macchi-gangemi.com and ***Laura Liberati,*** *Senior Associate,* l.liberati@macchi-gangemi.com, *Rome office of Macchi di Cellere Gangemi (Rome Office tel. +39 06 362141)*

5.1. *Italy strengthens the Do Not Call Register legislation*

On 11 January 2018 the Italian Parliament approved Law No. 5 of 2018 (the "**Law**") which will strengthen the national provisions on the Do Not Call Register (the "**Register**") provided by the Presidential Decree No. 178 of 2010 (the "**Decree**"). Currently under the Decree only landline numbers appearing in public phone books or directories can be communicated to the Register in order to opt-out from unsolicited calls (e.g. for telemarketing or statistical surveys purposes), but the Law will also allow mobile numbers and landline numbers not appearing in public phone books/directories to be registered with the Register in order to not receive nuisance calls.

The prohibition on calling numbers in the Register also extends to businesses and general third parties to which companies outsource call centre activities. In the event of a breach of the new rules, companies and their third party affiliates, outsourced service providers and sub-contractors are subject to fines ranging from 10,000 to 120,000 EUR. In the case of the most serious breaches, the Italian Communications Authority ("**AGCOM**") may suspend or even revoke their licence.

The Law provides that the registration with the Register automatically revokes all prior consents, in whatever form expressed, authorising the processing of telephone, landline or mobile numbers effected through an operator using the telephone number for advertising or selling purposes as well as for market research or commercial communication purposes. This general and automatic opt-out consequence stemming from the registration with the Register does not apply to consents given in the context of contracts for the supply of goods or services as long as the contractual relationship is in place and for a period of 30 days after the termination of the contract.

According to the Law, all operators using telephone systems for advertising or selling purposes as well as for market research or commercial communication will be obliged to consult the Register every month, and in any case ahead of the start of any advertising campaign, in order to check whether the numbers they wish to call are registered in the Register, and to update their lists accordingly. In this respect it is worth noting that the consultation of the Register is not free and has a cost for the operators. The Law provides that the Italian Ministry of Economic Development will set ad-hoc tariffs for the consultation of the Register provided that the tariffs will have to be determined in a measure so as to cover at least the costs to maintain the Register. The tariffs will have to be determined by the Ministry within six months of the Law entering into force.

Another important aspect of the Law is that within 90 days from the Law entering into force, AGCOM will have to approve specific prefix/code numbers to be exclusively used for telemarketing and promotional calls, as well as different specific prefix/code numbers to be exclusively used for calls for statistical and research purposes, in order to allow consumers to immediately recognise the nature of the incoming call. Once AGCOM approves the new prefix/code numbers, companies will have 60 days to comply, by applying for the assignment of the new numeration.

6. The Netherlands

Joe Jay de Hass, JoeJay.deHaas@stibbe.com, *Amsterdam office of Stibbe (Tel.: +31 20 546 0036).*

6.1. *Dutch Data Protection Authority officially criticises PSD2 privacy provisions*

In an unprecedented move, the Dutch data protection authority (*Autoriteit Persoonsgegevens*, "**AP**") has published an unsolicited and critical opinion regarding the implementation of the revised Payment Services Directive ("**PSD2**"). After being provided with the draft version of both the law and the explanatory memorandum, the regulator made its reservations clear through an official communication on its website.

In the AP's view, the current draft of the law is unsatisfactory on several fronts. Among other things, the regulator argues that the language used needs to be technologically neutral, that the General Data Protection Regulation must always take precedence in case of a conflict with PSD2 and that a Privacy