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EU Justice and Home Affairs Proposes Plans for Airline Passenger Data System

On September 5, 2007, European Union Justice and Home Affairs Commissioner Franco Frattini confirmed his intention to follow the example of the United States in collecting personal data on airline passengers. Mr. Frattini wants to ensure that each Member State collects PNR records, processes them and exchanges them with Member States. He will also propose an EU plan on the security of explosives along with a European explosives database at Europol and a proposal about terrorist misuse of the Internet. The details of the proposals are expected to be issued this autumn. The current Portuguese presidency of the EU wants to make a decision on this matter by December.

The full speech (in English) is available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/07/505&format=HTML&aged=0&language=EN&guiLanguage=en>

France: Council of State Confirms Data Retention Obligations for ISPs

On August 7, 2007, France's Council of State (Conseil d'Etat) upheld rules that require Internet service providers, cyber-café operators and telecommunications companies to retain user connection data and make them available upon request to law enforcement authorities for up to one year (see French Decree for telecommunication data retention of March 24, 2006). The Council of State also upheld a ministerial order establishing the terms under which Internet service providers and telecommunications companies may claim reimbursement for the costs incurred by providing client activity data to law

enforcement agencies or judicial officials (Ministerial order of August 22, 2006). The French private sector association representing Internet access providers and Internet services providers (Association des Fournisseurs d'Accès et de Services Internet — AFA), had opposed the one year data retention rule and claimed that the rules were not clear about the type of data to be stored. The Council of State rejected all of AFA's arguments.

The unofficial versions of the Council of State decisions are available (in French) at: http://www.legalis.net/jurisprudence-imprimer.php3?id_article=2000

France: Amendment to Data Protection Law Authorizes Limited Collection of Ethnic and Racial Data for Workplace Studies

On September 20, 2007, France's National Assembly approved a modification of the French Data Protection Act that will allow companies to collect, analyze and store data about the ethnic and racial origins of employees in connection with specific studies on diversity and antidiscrimination programs carried out in the workplace. The current French data protection rules prohibit the use of such sensitive data. Under the proposed modification of the law, the processing of such data would still be subject to prior authorization by the CNIL, and would also be subject to compliance with other provisions of French data protection law. The text is subject to debate in the Senate prior to final approval.

The official version of the amendment is available (in French) at: <http://www.assemblee-nationale.fr/13/amendements/0057/005700055.asp>

Germany: German DPA Sends out DP Compliance Questionnaire to 1,000 Companies

On September 3, 2007, the DPA of the Federal State of Mecklenburg-Vorpommern began a survey on some 1,000 companies in all industry sectors concerning their compliance with data protection law. The questionnaire addresses the handling of customer, supplier and employee data. The results of the survey are expected to be evaluated and published by the end of the year.

The press release is available at: <http://www.datenschutz-mv.de/dschutz/presse/pmgrunddaten.pdf>

Italy: Garante Prohibits Sending of Unsolicited E-mails and Faxes

On August 30, 2007, the Italian Data Protection Authority (Garante) prohibited the distribution of unsolicited electronic communications and faxes by an Internet website — TecaLibri — and by two Italian companies — Microsite s.r.l. and Onedirect s.r.l. These service providers were processing data for marketing purposes without the data subjects' consent. In the first case, TecaLibri, an online bookshop, was sending advertising e-mails to potential new clients. The other two cases involved two companies sending faxes to individuals listed in a telephone directory. As the recipients were listed in the sections reserved for professionals, both companies relied on Art. 24 (1) letter d) of the Italian Privacy Act (Legislative Decree No. 196 of June 30, 2003), which contains an exception to the express consent rule when the processing concerns data relating to economic activities that are processed in compliance with the legislation in force as applying to

business and industrial secrecy. The Garante made its ruling based on Art. 130 (2) of the Privacy Act on Unsolicited Communications, which requires that data subjects consent to commercial communications sent by e-mail, facsimile, MMS or SMS-type messages.

The press release is available (in Italian) at: <http://www.garanteprivacy.it/garante/navig/jsp/index.jsp>

Luxembourg: Data Protection Law Updated

On September 1, 2007, a new law (the "Law") came into force that amends Luxembourg's data protection rules to bring them in line with EU Data Protection Directive (95/46/EC). The Law updates the law of August 2, 2000 on the processing of personal data, the law of May 30, 2005 on the protection of private life in electronic communications, and the law of June 8, 2004 on freedom of the press. The Law introduces several new exemptions from the requirement to notify and get prior approval when processing personal data: (i) for certain professions, including journalists, writers, artists, lawyers, notaries and court clerks; (ii) for businesses, government offices, associations and professions for the most common types of data processing; (iii) for health and social service professionals using data concerning the health and sexual life of patients except for genetic data; (iv) for financial sector professionals as regards credit and solvency-related data pertaining to their own customers; and (v) for certain types of video surveillance and other security means that do not involve the recording of data. Companies with a data processing officer, who can now be an employee of the firm, are exempt from notification requirements. Moreover, the

data processing rules no longer cover the processing of data of legal entities.

The full text of the new law (in French) is available at: http://www.cnpd.lu/objets/fr/doc_loi020820002mod_fr.pdf

A description of the new exemptions is available (in French) at: http://www.cnpd.lu/fr/nouvelle_loi_exemptions/index.html

United Kingdom: ICO Takes Action against Companies for Unsolicited Faxes

On September 11, 2007, the UK Information Commissioner's Office (ICO) announced that enforcement action had been commenced under the Privacy and Electronic Communications Regulations (PERC) against two debt recovery companies, ADC Organisation Ltd. and Clear Debt Solutions. Both companies had previously been accused of violating the PERC but had continued sending unsolicited faxes to companies and individuals despite being repeatedly asked to stop that practice. Under the enforcement notices, the two companies are obliged to cease sending such faxes within 30 days of the date the enforcement actions were served. If they fail to do so, they will face prosecution. Both companies were found to be in breach of Section 20 of PERC, which prohibits the faxing of marketing material to individuals and corporate subscribers who have previously objected to such practice.

The enforcement notices are available (in English) at: http://www.ico.gov.uk/upload/documents/library/privacy_and_electronic/notices/cds_final.pdf

http://www.ico.gov.uk/upload/documents/library/privacy_and_electronic/notices/adc_final.pdf

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