

Reports

This part of the EDPL hosts reports in which our correspondents keep readers abreast of various national data protection developments in Europe, as well as on the most recent questions in different privacy policy areas. The Reports are organised in cooperation with the Institute of European Media Law (EMR) in Saarbrücken (www.emr-sb.de) of which the Reports Editor Mark D. Cole is Director for Academic Affairs. If you are interested in contributing or would like to comment, please contact him at mark.cole@uni.lu.

Introduction

Recent Developments and Overview of the Country and Practitioner's Reports

*Mark D Cole**

The Covid19-pandemic is still keeping us in its stronghold. Accordingly the privacy related issues that come with the reactions to the pandemic by the States and private parties continue to be a source of a lot of controversial discussions. It is not surprising therefore that we again have reports in this issue that deal with directly related matters and this will certainly continue for some time.

Naturally one of the areas that has been scrutinised the most from a data protection perspective has been the idea – and in many States actual introduction – of tracing contacts via smart phone apps. The general comments by the EDPB, as well as many statements of the national DPAs, which we presented in reports in the last edition, focussed on these applications and the requirements for them. The Commission has also been eager to exert its influence, not only to make sure that EU data protection rules are taken into account, but also by pushing for them to be interoperable. The latter has yet to be achieved, while doubts surrounding proposed or introduced solutions hamper the former. Therefore, now and in the future, these applications are a good object to analyse to what extent standards of the GDPR are included in technical development. In this issue *Alina Škiljić* does exactly that in her report entitled “**Stop COVID-19: The Croatian Application for Contact Tracing - Overview and Privacy-related Uncertainties**” from which we can learn not only specifics of the Croatian solution but also problems that exist for other approaches, too.

Another area, in which the major changes that the pandemic – more precisely the reactions to it – has brought with it, has raised numerous privacy concerns, is the workplace. Not only is the massive increase in the number of people of people working from home a challenge for ensuring the security and protection of personal employee data but also the security of the files that they are working on. Employers also resorted to different methods to assess the health status of their employees coming to offices or production plants. In this context *Angela Busacca* shows us in her report ‘**Covid-19 Emergency and Personal Data Protection at the Workplace: A Focus on the Italian Situation**’ how important it is that the reaction to the pandemic stays within the limits of data protection laws, including in the realm of people’s professional lives.

Besides these very interesting additions to what in later times might be looked at as a specific part of the Reports section, the ‘Covid-Reports’, we are very happy to also continue with our **GDPR Implementation Series** which still needs to be completed as to the Member States reactions and amendments to the national data protection laws in order to bring them in line with the ‘new’ EU data protection framework. In this edition we are looking at one of the last missing

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States in the series. *Martin Zahariev and Radoslava Makshutova* give us an overview of **Bulgaria** and focus especially on the ‘opening clauses’ of GDPR and how they were used in national law. Especially interesting in that context is the inclusion of an exception for data processing in a humanitarian context which includes processing data in a disaster event. In terms of the first fines that have been issued by the national DPA, the report shows that these focus on cases where companies failed to implement appropriate technical and organisational measures to protect data.

The readers will then find two extensive reports from the **United Kingdom**. Beyond being of interest because of the subject matter they cover, they prove to us the value of continuing to observe developments in that non-EU Member State also in the future. UK courts, irrespective of the specific outcome in the cases presented, with their common law basis will continue to integrate the case law of the Strasbourg Court even after the transition period post-Brexit and thereby give valuable interpretation perspectives also for the ‘EU community’ of academics and practitioners.

In the first report *David Erdos* asks ‘**Ensuring Legal Accountability of the UK Data Protection Authority: From Cause for Data Subject Complaint to a Model for Europe?**’. He discusses the problem of DPAs taking a highly discretionary and selective approach to data subject complaints which can lead to very different standards of protection in practice. Even with guidance from the CJEU there is an ‘accountability gap’ which remains. It is illustrated with a detailed analysis of recent cases before the tribunal system which was introduced in the UK in order to give data subjects the possibility to have the DPA ordered to progress with its complaint. The report suggests that this could be a valuable model for any European DPA accountability but criticizes the first decisions in the Tribunal system to have taken a very limiting approach to the new rights.

Last year, we started presenting a number of reports on automated facial recognition and, as was suggested, this is a topic that will continue to be of high relevance while the technology further develops and irrespective of strong controversies about its new use cases appear. *Lorna Woods* gives us an extensive overview in her report ‘**Automated Facial Recogni-**

tion in the UK: The Bridges Case and Beyond’. In what is one of the first cases where the use of automated facial recognition by police forces has been challenged, she shows us how the initial judgment widely accepted the use. In a very recent appeals judgment this was overturned in parts but the report – we are very grateful to the author for providing it so shortly after the judgment – shows us the continuing problem of the interpretation of the underlying principles. As mentioned, UK courts include in their analysis Art. 8 ECHR standards and the outcome of the Court of Appeals judgment deserves discussion beyond the UK in questioning whether it is sufficiently safeguarding the rights of individuals in light of the Strasbourg Court’s jurisprudence.

Finally, we have an interesting perspective in the **Practitioners Corner** on voice recording systems. *Alvaro Moretón and Ariadna Jaramillo* share their views from ongoing research on an issue with highly practical consequences: ‘**How can Private Information Recorded by Voice-enabled Systems be Identified?**’. Voice recording files can be processed automatically and information extracted and depending on the setting from where the recording originates, there likely will be personal data concerned. They suggest how categories of such information could be created which would allow to better preserve privacy without obstructing the use of such technology. They make concrete proposals what should be done technically in order to reach a higher level of privacy protection, namely as examples the suppression of characteristics of the voice (‘neutralising’ it), of background noises and of specific words that allow identification. This is a good example of a report that presents ‘work-in-progress’ that deserves attention as the outcome is very relevant for future practical implementation.

This overview of our reports once again demonstrates the diversity of topics and developments that we can cover thanks to our Country Correspondents. We, the editors together with the Institute of European Media Law (EMR), hope to have made a good selection in sharing with you these interesting reports for this edition and that they prove useful to you. We invite you to continue to suggest reports on future national and European developments. To submit a report or to share a comment please reach me at: <mark.cole@uni.lu>.