

ISOC European Regional Bureau Newsletter

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Data protection

EU: Italy believes Member States can reach common position on data protection overhaul within months

- A representative of the Italian executive stated that EU Member States should be able to finalise their position on the proposed EU data protection Regulation early next year. Justice Ministers met on 10 October to find a **compromise on obligations that would be imposed on data controllers** (Chapter IV of the proposed Regulation). Sources inside the Italian government said that reaching a compromise on an additional chapter by the end of the year would allow for the completion of all amendments during the first months of 2015.
- Reportedly, **rules on setting fines** for companies breaching the law, and the extent to which public authorities should be bound by the new provisions, remain among the **elements to be finalised**.

The Netherlands: Dutch court limits application of the right to be forgotten ruling

- In what was reportedly the first time that a national court was asked to apply the EU ruling on the **right to be forgotten**, the Court of **Amsterdam** narrowed down the test provided by the Court of Justice of the EU (CJEU).
- In the case before the Court of Amsterdam, the complainant wanted to have links to online publications reporting on a crime he had committed removed from Google search results. As Google refused to comply fully with this request, the complainant brought suit against Google to have all the search results referring to his conviction removed.
- In its ruling, the Court rejected the complaint arguing that the **right to be forgotten judgment does not intend to protect individuals against all negative Internet communication**. The right to be forgotten should be applied to protect individuals against being pursued for a long time by irrelevant, excessive or unnecessarily defamatory expressions, argued the Court.
- The decision is perceived as balanced, as it **does not imply that privacy should prevail over freedom of information and speech**.

Digital Single Market

EU: Andrus Ansip wins approval after a successful hearing

- **Andrus Ansip, Vice President-designate for the Digital Single Market** gained the approval from the European Parliament's Internal Market Committee (IMCO).
- During his Parliamentary hearing, Ansip underlined the **importance of data protection**, as a pre-condition for a well-functioning Digital Single Market that provides the **necessary trust in digital**. Highlighting the importance of a high level of security, Commissioner-designate Ansip stressed that a **right balance** needs to be found, taking into account the needs of various data users, e.g. researchers.
- With regards to **Safe Harbour**, Ansip said that while the US has to clarify their stance on the national security exception, the EU should maintain the possibility of suspending the agreement.
- As for the **right to be forgotten**, Ansip stated that the right needs to remain an exception, as the CJEU

did not say that everybody has the right to be forgotten.

- Touching upon the **Connected Continent** proposal, Ansip said that he will **enshrine the principle of net neutrality into legislation**. Commissioner-designate Ansip widened his definition of net neutrality, denouncing **abuses by search engines**.
- With regards to **copyright framework**, Ansip suggested that the outdated rules need to be modernised, putting an end to a territorial fragmentation that wrongly restricts access to viewing content online. The concerns around **geoblocking** are under investigation by the European Commission's antitrust department.
- Commenting on the hearing, MEP **Jan Philipp Albrecht** (Greens, Germany), Rapporteur on the proposed data protection Regulation, underlined that the Commissioner-designate understands the challenges of digitalisation, with data protection and net neutrality being preconditions for a well-functioning digital market.

Net neutrality

EU: Commission closes investigation into Internet connectivity market

- The **European Commission** has **closed an investigation into Internet connectivity practices** by European telecom operators. The investigated operators provide Internet access services to end users and also often have an Internet transit division, allowing them to charge for interconnection capacity.
- Based on the review of evidence obtained during inspections that were carried out in July 2013, the Commission has provisionally concluded that the **observed practices do not appear to breach EU antitrust rules**, as no evidence of behaviour aimed at foreclosing transit services or at providing an unfair advantage to the telecoms operators' own proprietary content services was uncovered. The Commission underlined that it will continue monitoring the sector to ensure that telecom operators do not **throttle Internet traffic** in order to gain an unfair advantage over rivals.

Germany: Broadband versus net neutrality

- **Jens Koeppen** (CDU, Chancellor Merkel's Christian Democratic Union), chairman of the Bundestag's Committee for Digital Agenda, wants to allow providers to offer additional services, when they connect rural regions to fast Internet. The expansion of the network is high on the agenda of Koeppen with the newly established Committee. However, SPD, the left-wing coalition partner, has opposed this proposal.
- In order to increase digital potential, there needs to be fast-working Internet also in rural regions, Koeppen explained, arguing that the **legislator cannot only allocate the funds necessary to expand broadband in rural areas**, but it needs to **promote business models**, which will help network operators refinance their investment.
- Lars Klingbeil, SPD spokesperson for network policies, stated that net neutrality issues fall within competence of the Federal Ministry of Economy. Therefore, decisions touching upon it should be decided on by Minister Sigmar Gabriel (SPD). However, the latter is currently waiting for the outcome of discussions at the EU level.

Cybersecurity

EU: Ministers and Internet players discuss ways to address terrorist propaganda on the Internet

- On 8 October, EU Home Affairs Commissioner Cecilia Malmström and the Italian Minister of Interior Angelino Alfano hosted an informal dinner that brought together EU Home Affairs Ministers and representatives of Facebook, Google, Microsoft and Twitter. The participants discussed the challenges posed by the **terrorist propaganda on the Internet**.
- The event is part of the forum announced by the Commission's Communication on the matter published on 15 January 2014.

- As a way to address the challenge, the participants agreed to organise joint training and awareness raising workshops for law enforcement authorities, Internet industry representatives and civil society.

Internet governance

France: Secretary Lemaire calls on the EU to be Internet governance reform leader

- Axelle Lemaire, French Secretary of State for Digital Affairs, has **called** on her European counterparts to promote a strong position of the EU with regards to Internet governance reform.
- Lemaire stated that the **EU needs to rapidly propose concrete solutions** to improve Internet governance, respecting the principles agreed upon at the NETmundial conference, namely an open, inclusive and transparent multistakeholder model of governance that respects fundamental rights and the role of governments.
- According to Lemaire, the proposal on Internet domain names such as .vin demonstrates the limits of the current functioning of ICANN. Furthermore, the Secretary underlined the proposed reforms of ICANN and IANA as insufficient. It is therefore necessary to maintain the reform's dynamic launched at the NETmundial, argued Lemaire.

Open Internet

Turkey: Internet freedom is part of the freedom of expression, says Turkish MP

- **MP Riza Turmen**, former European Court of Human Rights judge, discussed the recent **partial annulment** of the amended **Internet law** by Turkey's Constitutional Court, suggesting the future evolution of the law.
- Several provisions of the law which tightened the state's control of the Internet, by expanding powers of the country's telecommunications authority (TIB) to close websites without a court order on the basis of national security, protecting public order or preventing crime, were overturned last week.
- According to Turmen, the **Constitutional Court decision is in line with the 2012 judgment of the European Court of Human Rights** on the original 2007 law regulating the Internet in Turkey. The court decided that **freedom of expression was breached** by this law as it lacked mechanisms to avoid arbitrary blocking of Internet access. As a result of the ruling, the government had to amend the law in line with the verdict, but it instead made the law more restrictive, giving TIB the authority to block websites and by forcing ISPs to collect personal data.
- The judgment of the Constitutional Court will come into force after its publication in the Official Journal. Turmen expects the government to amend the law in line with the guidelines provided in the judgment of the Constitutional Court.
- According to Turmen, the Turkish government should **understand that Internet freedom is part of the freedom of expression**.

General

EU: Commission given an extra month to respond to Connected Continent drafting concerns

- The European Commission has received an additional month to respond to the allegations that it broke EU rules when drafting the proposed **Connected Continent package**. The **European Ombudsman** requested the Commission to reply following a formal complaint lodged in May by the **European Competitive Telecommunications Association (ECTA)**, representing 150 alternative providers. ECTA claimed that the Commission infringed the law by failing to consult the interested parties.

EU: Parliamentary Committees back Jourová as Justice Commissioner

- **Věra Jourová, the Commissioner-designate for Justice**, won approval of the relevant Committees of the European Parliament. Jourová appeared last week before the Parliament's Legal Affairs, Civil

Liberties, Internal Market and Women's Rights Committees, but the members were unsatisfied with her answers and sent her a list of written questions for further clarification.

- In the answers, Jourová reiterated her conviction that the **overhaul of the EU data protection framework** could be completed **within six months**, given the recent positive signals and partial agreements found by Member States on some of the issues. She said that inspiration should be drawn from the text adopted by the Parliament.
- As for **Safe Harbour**, Jourová said that while the suspension of the agreement is one of the options, the **EU should not suspend it at the moment**, as the US are in the process of restoring privacy protection, replacing mass surveillance with targeted intelligence.

France: Digital Council launches a series of new consultations

- The French **National Digital Council** (*Conseil national du numérique*) has launched five new **consultations on digital economy**.
- The consultations cover the following topics: new economic and organisational models to support digital transformation of French enterprises; scalability and models of international presence to accompany French start-ups deployment; business financing; new digital clusters; and support to innovation.
- Earlier, French Prime Minister Manuel Valls **charged** the Council with the organisation of citizens dialogues on social and economic issues related to digital transformation.