European Commission

Factsheet on the "Right to be Forgotten" ruling *(C-131/12)*

1) What is the case about and what did the Court rule?

In 2010 a Spanish citizen lodged a complaint against a Spanish newspaper with the national Data Protection Agency and against Google Spain and Google Inc. The citizen complained that an auction notice of his repossessed home on Google's search results infringed his privacy rights because the proceedings concerning him had been fully resolved for a number of years and hence the reference to these was entirely irrelevant. He requested, first, that the newspaper be required either to remove or alter the pages in question so that the personal data relating to him no longer appeared; and second, that Google Spain or Google Inc. be required to remove the personal data relating to him, so that it no longer appeared in the search results.

The Spanish court referred the case to the Court of Justice of the European Union asking:

(a) whether the EU's **1995 Data Protection Directive** applied to search engines such as Google;

(b) whether EU law (the Directive) applied to Google Spain, given that the company's data processing server was in the United States;

(c) whether an individual has the right to request that his or her personal data be removed from accessibility via a search engine (the 'right to be forgotten').

In its **ruling** of 13 May 2014[1] the EU Court said :

a) **On the territoriality of EU rules :** Even if the physical server of a company processing data is located outside Europe, EU rules apply to search engine operators if they have a branch or a subsidiary in a Member State which promotes the selling of advertising space offered by the search engine;

b) **On the applicability of EU data protection rules to a search engine :** Search engines are controllers of personal data. Google can therefore not escape its responsibilities before European law when handling personal data by saying it is a search engine. EU data protection law applies and so does the right to be forgotten.

c) **On the "Right to be Forgotten" :** Individuals have the right - under certain conditions - to ask search engines to remove links with personal information about them. This applies where the

[1] See also relevant **press release** from the Court of Justice of the European Union

information is **inaccurate, inadequate, irrelevant or excessive** for the purposes of the data processing (para 93 of the ruling). The court found that in this particular case the interference with a person's right to data protection could not be justified merely by the economic interest of the search engine. At the same time, the Court explicitly clarified that **the right to be forgotten is not absolute** but will always need to be balanced against other fundamental rights, such as the freedom of expression and of the media (para 85 of the ruling). A **case-by-case assessment** is needed considering the type of information in question, its sensitivity for the individual's private life and the interest of the public in having access to that information. The role the person requesting the deletion plays in public life might also be relevant.

2) The Right to be forgotten: The rules today (1995 Directive) and the rules tomorrow (proposed data protection Regulation)

The "Right to be forgotten" in the 1995 Data Protection Directive

The 1995 Data Protection Directive (on which the ruling is based) already includes the principle underpinning the right to be forgotten. A person can ask for personal data to be deleted once that data is no longer necessary (Article 12 of the Directive). Claims that the Commission has proposed something fundamentally new in the Data Protection Regulation are therefore wrong. They have been contradicted by the Court of Justice.

The data subject's right of access to data

Article 12 : Right of access

Member States shall guarantee every data subject the right to obtain from the controller : (...)

(b) as appropriate the **rectification, erasure or blocking of data the processing** of which does not comply with the provisions of this Directive, in particular because of the incomplete or inaccurate nature of the data;
(c) notification to third parties to whom the data have been disclosed of any rectification, erasure or blocking carried out in compliance with (b), unless this proves impossible or involves a disproportionate effort.

Why the proposed Data Protection Regulation is needed

The proposed Data Protection Regulation is about much more than the right to be forgotten. It is a fundamental modernisation of Europe's data protection rules, establishing a number of new rights for citizens of which the right to be forgotten is only one (data portability, data breach notifications for instance), creating a single market for data in the European Union and streamlining cooperation between the Member States' regulators.

In recognising that the right to be forgotten exists, the Court of Justice established a general principle. This principle **needs to be updated and clarified for the digital age.** The **Data Protection Regulation** strengthens the principle and improves legal certainty (Article 17 of the proposed Regulation):

1. The right to be forgotten would be an empty shell if EU data protection rules were not to apply to non-European companies and to search engines. The proposed data protection Regulation, for the first time, leaves no legal doubt that no matter where the physical server of a company processing data is located, **non-European companies, when offering services to European consumers, must apply European rules** (see Article 3 of

the proposed data protection Regulation).

2. To make the right to be forgotten more effective for individuals, the Commission has proposed **reversing the burden of proof** : it is for the company – and not the individual – to prove that the data cannot be deleted because it is still needed or is still relevant.

3.. The proposed Data Protection Regulation creates **an obligation for a controller who has made the personal data public** to take *'reasonable steps'* to inform third parties of the fact the individual wants the data to be deleted. The European Parliament went even further by including, in its compromise text, an obligation for the controller to ensure an erasure of these data. It also adds that individuals have the right to erasure where a court or regulatory authority based in the Union has ruled as final and absolute that the data concerned must be erased.

Commission Proposal	European Parliament Vote
Article 17 **Right to be forgotten and to erasure**	*Article 17* **Right to erasure**
1. The data subject shall have the right to obtain from the controller the erasure of personal data relating to them and the abstention from further dissemination of such data, especially in relation to personal data which are made available by the data subject while he or she was a child, where one of the following grounds applies: (a) the data are no longer necessary in relation to the purposes for which they were collected or otherwise processed; (b) the data subject withdraws consent on which the processing is based according to point (a) of Article 6(1), or when the storage period consented to has expired, and where there is no other legal ground for the processing of the data; (c) the data subject objects to the processing of personal data pursuant to Article 19; (d) the processing of the data does not comply with this Regulation for other reasons.	1. The data subject shall have the right to obtain from the controller the erasure of personal data relating to them and the abstention from further dissemination of such data, and to obtain from third parties the erasure of any links to, or copy or replication of that data, where one of the following grounds applies: (a) the data are no longer necessary in relation to the purposes for which they were collected or otherwise processed (b) the data subject withdraws consent on which the processing is based according to point (a) of Article 6 (1), or when the storage period consented to has expired, and where there is no other legal ground for the processing of the data; (c) the data subject objects to the processing of personal data pursuant to Article 19; (a) a court or regulatory authority based in the Union has ruled as final and absolute that the data concerned must be erased; (d) the data has been unlawfully processed.
2. Where the controller referred to in paragraph 1 has made the personal data public, it shall take all reasonable steps, including technical measures, in relation to data for the publication of which the controller is responsible, to inform third parties which are processing such data, that a data subject requests them to erase any links to, or copy or replication of that personal data. Where the controller has authorised a third party publication of personal data, the controller shall be considered responsible for that publication.	1a. The application of paragraph 1 shall be dependent upon the ability of the data controller to verify that the person requesting the erasure is the data subject. 2. Where the controller referred to in paragraph 1 has made the personal data public without a justification based on Article 6(1), it shall take all reasonable steps to have the data erased, including by third parties, without prejudice to Article 77. The controller shall inform the data subject, where possible, of the action taken by the relevant third parties.

4. The proposed Data Protection Regulation allows data protection authorities to impose fines of up to 2% of annual worldwide turnover where companies do not respect the rights of citizens, such as the right to be forgotten.
5. The proposed Data Protection Regulation is also specific as to the reasons of public interest that would justify keeping data online – the limitations of the right to be forgotten. These include the exercise of the right of freedom of expression, the interests of public health as well as cases in which data is processed for historical, statistical and scientific purposes.

Conclusion : The right to be forgotten ruling makes the adoption of the data protection reform more, not less, urgent.

3) The Right to be forgotten and freedom of expression and the media

The Court in its judgement did not elevate the right to be forgotten to a "super right" trumping other fundamental rights, such as the freedom of expression or the freedom of the media.

On the contrary, it confirmed that **the right to get your data erased is not absolute and has clear limits.** The request for erasure has to be assessed on a case-by-case basis. It only applies where personal data storage is no **longer necessary or is irrelevant** for the original purposes of the processing for which the data was collected. Removing irrelevant and outdated links is not tantamount to deleting content.

The Court also clarified, that a **case-by-case assessment** will be needed. Neither the right to the protection of personal data nor and the right to freedom of expression are absolute rights. A fair balance should be sought between the legitimate interest of internet users and the person's fundamental rights. Freedom of expression carries with it responsibilities and has limits both in the online and offline world.

This balance may depend on the nature of the information in question, its sensitivity for the person's private life and on the public interest in having that information. It may also depend on the personality in question: **the right to be forgotten is certainly not about making prominent people less prominent or making criminals less criminal.**

The case itself provides an example of this balancing exercise. While the Court ordered Google to delete access to the information deemed irrelevant by the Spanish citizen, it did not rule that the content of the underlying newspaper archive had to be changed in the name of data protection (paragraph 88 of the Court's ruling). The Spanish citizens' data may still be accessible but is no longer ubiquitous. This is enough for the citizen's privacy to be respected.

Google will have to assess deletion requests on a case-by-case basis and to apply the criteria mentioned in EU law and the European Court's judgment. These criteria relate to the accuracy, adequacy, relevance - including time passed - and proportionality of the links, in relation to the purposes of the data processing (paragraph 93 of the ruling). The criteria for accuracy and relevance for example may critically depend on how much time has passed since the original references to a person. While some search results linking to content on other webpages may remain relevant even after a considerable passage of time, others will not be so, and an individual may legitimately ask to have them deleted.

This is exactly **the spirit of the proposed EU data protection Regulation :** empowering individuals to manage their personal data while **explicitly protecting the freedom of expression and of the media.** Article 80 of the proposed Regulation includes a specific clause which obliges Member States to pass national legislation to reconcile data protection with the right to freedom of expression, including the processing of data for journalistic purposes. The clause specifically asks for the type of balancing that the Court outlined in its ruling whereas today's 1995 Directive is silent implying that data protection could rank above freedom of the media. The Commission proposes to strengthen freedom of expression and of the media through the revision of Europe's data protection rules.

Conclusion : The proposed Data Protection Regulation strikes the right balance between the right to the protection of personal data and freedom of expression.

Frequently Asked Questions

How will the Right to be Forgotten work in practice? Who can ask for a deletion of personal data and how?

In practice, a search engine will have to delete information when it receives a specific request from a person affected. This would mean that a citizen, whose personal data appears in search results linking to other webpages when a search is done with that person's name, requests the removal of those links. For example, John Smith will be allowed to request Google to delete all search links to webpages containing his data, when one enters the search query 'John Smith' in the Google search box.

Google will then have to assess the deletion request on a case-by-case basis and to apply the criteria mentioned in EU law and the European Court's judgment. These criteria relate to the accuracy, adequacy, relevance - including time passed - and proportionality of the links, in relation to the purposes of the data processing (paragraph 93 of the Court's ruling).

The request may for example be turned down where the search engine operator concludes that for particular reasons, such as for example the public role played by John Smith, the interest of the general public to have access to the information in question justifies showing the links in Google search results.

In such cases, John Smith still has the option to complain to national data protection supervisory authorities or to national courts. Public authorities will be the ultimate arbiters of the application of the Right to be Forgotten.

The Right to be Forgotten is a right which is given to all citizens in the EU, no matter what their nationality, subject to the conditions outlined above.

How is Google expected to comply with this ruling? Will it not be very costly for search engines to comply?

It is not yet possible to determine how the ruling of the Court on the Right to be Forgotten will impact the number of people who ask to have their data deleted from Google.

In any event, Google already has a system in place to handle deletion requests, such as national identification numbers (like U.S. Social Security Numbers), bank account numbers, credit card numbers and images of signatures. It also has set up a parallel system for dealing with take-down requests for copyright violations.

What will the Commission do now?

This ruling has confirmed the main pillars of the data protection reform. The Commission will continue pushing for a speedy adoption of the data protection reform, including the reinforced and modernised Right to be Forgotten.

The Commission expects search engine operators to further develop well-functioning tools and procedures, which ensure that individuals can request the deletion of their personal data when they are inaccurate, inadequate, or irrelevant or no longer relevant – under the control of competent authorities in particular data protection authorities.