



KEEPING THE INTERNET
OPEN • INNOVATIVE • FREE

www.cdt.org

CENTER FOR DEMOCRACY
& TECHNOLOGY

1634 I Street, NW
Suite 1100
Washington, DC 20006

P +1-202-637-9800
F +1-202-637-0968
E info@cdt.org

ON THE “RIGHT TO BE FORGOTTEN”: CHALLENGES AND SUGGESTED CHANGES TO THE DATA PROTECTION REGULATION

May 2, 2013

I. Introduction

Since January 2012, the European Union institutions have been debating draft legislation to reform European rules on data protection (commonly referred to as the Data Protection Regulation (DPR)).¹ Once adopted, the DPR is intended to replace the 1995 Data Protection Directive, updating rules in the light of rapid technological development, and creating more consistent application and enforcement of the rules across the European Union.

CDT published its initial analysis of the proposed DPR in April 2012.² In our commentary, we stated our broad support for the main elements of the DPR, and applauded Commissioner Viviane Reding for her ambition to establish and maintain a high level of data protection for consumers and citizens.

However, we drew particular attention to the concept of the ‘Right To Be Forgotten’ set out by Article 17 of the DPR. Briefly, Article 17 would allow a user to request that an online service provider delete all data – including data that has been made public – it has about that user. While CDT is sympathetic to the concerns that underlie Article 17, we have recommended that it be redrafted and narrowed substantially. As laid out in the Commission’s proposal it would significantly limit users’ free expression rights and impose unreasonable burdens on online platforms and ISPs, likely leading to fewer platforms for user speech. Private companies are ill-equipped to take responsibility for decisions that balance the right to privacy with the right to free expression. Such questions are ultimately for courts to decide, interpreting carefully drawn legislative mandates in light of relevant human rights jurisprudence. Moreover, we believe that the measures to protect journalistic and artistic expression – namely, those granted by Article 80 of the DPR – are too narrowly drafted and do not satisfy international human rights obligations regarding free expression.

II. The European Parliament’s and Member States’ views on Article 17

The concerns expressed about a broad “right to be forgotten” have resonated with the European Parliament. European Parliament Rapporteur Jan Albrecht

¹ European Commission, *Commission Proposes a Comprehensive Reform of the Data Protection Rules* (Jan. 25, 2012), http://ec.europa.eu/justice/newsroom/data-protection/news/120125_en.htm.

² Center for Democracy and Technology, *CDT Analysis of the European Commission’s Proposed Data Protection Regulation* (Apr. 9, 2012), https://www.cdt.org/report/cdt-analysis-european-commissions-proposed-data-protection-regulation_

(LIBE Committee) has proposed amendments that limit the scope of Article 17 significantly.³ Albrecht suggests deleting binding obligations on third parties and adds a provision calling for erasure requests to be carefully balanced against free expression concerns. Sean Kelly, rapporteur for the ITRE Committee, has suggested similar amendments. As we discuss below, these amendments go a long way in addressing concerns with Article 17, but more needs to be done.

Currently, Member States are conducting their review of the DPR. Early indications suggest that at least some Member States have concerns about whether Article 17, as proposed by the European Commission, could be implemented effectively.⁴

The Parliament and Member States are far from reaching conclusions about how to balance freedom of expression and privacy concerns in a revised Article 17. Much debate lies ahead. In this memorandum, CDT aims to do three things:

1. Further examine the issues and challenges involved in the “right to be forgotten” discussion;
2. Examine proposed amendments; and
3. Offer some concrete suggestions for further amendments that we think will be helpful in the deliberations on this important matter.

III. Analysis

As proposed, Article 17 is quite sweeping. It allows any user to request that an online service provider delete all of the data about her that the service provider possesses. If the information has been made public – for example, on a social networking site – it requires data controllers to notify third parties that link to or have copies of the data about the deletion request. The proposal is based on the fundamental principle that the right to privacy means that individuals should be able to exercise control over how their data are processed. However, while the proposed Article 17 rightly seeks to grant consumers more awareness of and control over their data,⁵ it fails to adequately consider the implications for free expression that result from its broad scope.

The right to free expression is universally protected in international human rights instruments, and restrictions on the right must be narrowly drawn pursuant to a legitimate purpose and clearly prescribed by law.⁶ The right generally protects the lawful reproduction

³ Jan Albrecht, *Draft Report on the Proposal for a Regulation of the European Parliament and of the Council on the Protection of Individual with Regard to the Processing of Personal Data and on the Free Movement of Such Data* (Jan. 16, 2013), available at http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-501.927+04+DOC+PDF+V0//EN&language=EN_

⁴ See, e.g., Information Commissioner’s Office, *Proposed New EU General Data Protection Regulation: Article-by-Article Analysis Paper* (Feb. 12, 2013), available at http://www.ico.org.uk/news/~media/documents/library/Data_Protection/Research_and_reports/ico_proposed_dp_regulation_analysis_paper_20130212_pdf.ashx (a preliminary analysis by the United Kingdom data protection authority).

⁵ Specifically, Article 17 (1) (a), (c), and (d) are duplicative of language included in Article 19 of the Data Protection Regulation. The provisions in Article 17 (1) (a), (c), and (d) grant users the right to data minimization; however, Article 19’s grant of a right to refuse data processing achieves the same results. In Article 15, the DPR grants a right of access to the individual, and in Article 16, the DPR grants a right of rectification. These rights, which correspond to several of the Fair Information Principles, grant users significant control over their personal data, and are more narrowly scoped than the right to be forgotten.

⁶ European Convention on Human Rights, Art. 10.

and referencing (e.g., in the form of quoting and commentary) of content originally provided by others – activities facilitated by a growing number of online communication services. A broad right to delete data that has served as a basis for reposting, commentary, and discussion by others thus impacts the free expression rights of third parties. To the extent that Article 17 restricts the expression of opinion regarding historical facts, it may be inconsistent with international human rights law.⁷ As a result, Article 17 as proposed risks jeopardizing the rights of Internet users, failing to set out an appropriate system to balance between individuals’ data-protection rights and the free expression rights of others.

It is the role of legislatures and ultimately the courts to ensure that human rights are protected and respected in law, and to address conflicts where they arise between rights. Article 17 as proposed does not sufficiently address how privacy and free expression are to be balanced in practice.⁸ For example, many countries have made the policy decision to expunge juvenile conviction and arrest records after a certain period of time (often conditioned on an individual’s “clean record” as an adult), in order to prevent lifelong stigmatization of individuals for actions undertaken as minors. By restricting publication of or access to an expunged juvenile record, legislatures are making a difficult, though appropriate, determination of when reputational and privacy rights trump free expression and access to factual information. By contrast, the far broader “right to be forgotten” has been proposed without full engagement in the difficult but critical task of determining in which circumstances an individual’s right to privacy should take precedence over other individuals’ free expression rights. The Parliament and Council should confront this difficult balancing act, and, in doing so, significantly narrow the provision.

The proposed DPR leaves questions of balancing free expression and privacy rights wholly to Member States. Article 21 allows for restrictions on Article 17, among other provisions, where such restrictions are necessary to protect the rights of others, but such limitations are not required. Article 80 requires that Member States make a limited accommodation for free expression, but this provision falls short. Its requirement that Member States “provide for exemptions or derogations . . . for the processing of personal data carried out solely for journalistic purposes or the purpose of artistic or literary expression” presents a narrow formulation of the right to free expression that is not in accord with the Universal Declaration of Human Rights or the European Convention on Human Rights, which grants *everyone* “the right to freedom of expression . . . include[ing] freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.”⁹ Moreover, human rights doctrine requires that any limits on free expression be narrowly drawn and clearly defined – the DPR’s broad right to demand erasure with minimal limits to accommodate what it calls “rules governing freedom of expression” does the inverse.¹⁰ The potential variation in the scope of free expression rights recognized by Member States pursuant to Article 80 could create substantial enforcement challenges and

⁷ See, e.g., UN Human Rights Committee (HRC), *General comment no. 34, Article 19, Freedoms of opinion and expression*, (Sept. 12, 2011), CCPR/C/GC/34, para. 49.

⁸ See *id.*, para. 28 (discussing the care with which restrictions on freedom of expression pursuant to the right to privacy must be crafted).

⁹ UDHR Article 19. Article 10 of the ECHR similarly holds, “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.”

¹⁰ See United Nations, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, A/HRC/17/27, 2011, para. 68, available at <http://www2.ohchr.org/english/bodies/hrcouncil/17session/reports.htm> (“The full guarantee of the right to freedom of expression must be the norm, and any limitation considered as an exception, and that this principle should never be reversed.”).

cross-jurisdictional conflicts. For example, an individual who incorporates personal information posted by a data subject into their own blog (e.g., in a commentary about the original posting) may find their free expression claim fails based not on the interpretation of Article 80 in their home country, but rather on the views of the Member State where the controller or the original data subject resides.

By avoiding the hard question of rights-balancing, Article 17 in effect allocates the responsibility for balancing these fundamental rights to content platforms and other intermediaries, who will be asked to delete a broad range of content upon request. Companies are simply not equipped to undertake the balancing of rights that implementing these various requests would require. Obligating intermediaries to remove content based on non-adjudicated notices is not appropriate when alleged violations of the law require complicated factual or legal analysis, and is even less appropriate when fundamental rights are in tension. The European Court of Human Rights has developed a complex body of jurisprudence addressing the conflict between human rights generally, and between privacy and free expression in particular, which has been the subject of considerable scholarly examination and debate.¹¹ It is unreasonable to expect companies to fully understand the jurisprudence, let alone apply it to the multitude of take down requests that are likely to ensue if Article 17 is enacted in its current form. Moreover, the significant penalties under the DPR make fair balancing unlikely: facing the prospect of liability under the DPR, an intermediary is likely to swiftly and uncritically comply with all deletion notices, with little consideration of other rights and interests at stake.

In sum, how to respond to conflicts between two fundamental rights is simply not a matter for intermediaries. It must be determined in the first instance by legislatures and ultimately by courts. What little guidance the DPR does provide is preferentially framed, giving little weight to free expression rights. At best, free expression will be afforded minimal protection through a patchwork of potentially conflicting derogations and exemptions.¹²

In the sections that follow, we present some of the complex questions that are raised by Article 17, describe how the narrowing language of the Albrecht amendment resolves some but not all of the questions, and offer additional amendment language to resolve outstanding concerns.

IV. Questions and Free Expression Challenges Raised by Article 17

A. What is the scope of the data covered under the “right to be forgotten”? Does it cover only information the data subject provided, or true public information provided by other users as well?

As drafted, Article 17 would apply to not only personally identifying information a user has given to a controller or processor during the course of completing a transaction, but also any information about a user that has been posted publicly online. Furthermore, it covers not just information the data subject has provided about herself, such as a blog post she has written describing her ideas for a new business in her town, but also information about her that

¹¹ See, e.g. Stijn Smet, *Freedom of Expression and the Right to Reputation: Human Rights in Conflict*, 26 AM. U. INT'L. L. REV. 183 (2010).

¹² While not the focus of this paper, CDT also has concerns of the precedent adoption of Article 17 in its current form might set for the world. We fear that if similar laws are adopted in countries without strong democratic traditions and rule of law, the right to be forgotten will become a powerful tool of incumbent regimes to take down unfavorable political speech, much as libel laws have been used in many countries. We believe this concern deserves greater consideration by the Parliament.

others provide. This kind of conflict between an individual's right to privacy and the free expression rights of others who are reporting or commenting on that individual's actions is already playing out in the courts. The Court of Justice of the European Union is currently reviewing the Spanish Data Protection Authority's order to Google Spain to remove search results relating to a user's former tax delinquency.¹³ The CJEU must decide whether the order to Google to take down search results pointing to lawful and accurate (if outdated) information is an impermissible burden on free expression, even given the user's potential privacy and reputational interests.

The original version of Article 17 would not only raise free expression questions for intermediaries, however: its application could cover any information that one user provides about another. For example, if two friends go out for dinner one night, and one of them posts a status update on Facebook about the evening, the other would have a blanket right under Article 17 to demand that Facebook remove that post. Article 17 thus goes far beyond the right to delete data provided by a data subject to a controller. There is also no limiting principle that would require the user demonstrate that the information was particularly sensitive, or that its publication somehow harmed him or went beyond the scope of what he might have reasonably expected based on the context of the interaction. Likewise, there is no consideration in Article 17 for the potential that the information is about a public figure, or any other free expression consideration that might weigh against a requirement for the content host to immediately and totally erase the information at the data subject's request. But rather than foster a healthy discussion about the appropriate bounds and developing norms around users posting information about each other, Article 17 forecloses the debate and casts free expression as the loser.

B. How far does the right to be forgotten extend into other individuals' expression? Does Article 17 include personal information provided by the data subject that other individuals have quoted or otherwise incorporated into their expression?

In addition to giving users broad rights over information about themselves that others provide, Article 17 would give users broad rights to interfere with the content of other users' speech. Article 17 includes no limits in consideration of other users' quoting, citation, or commentary based on information originally provided by the data subject. For example, if a user makes a post on a message board discussing her opinions of a new film, others reply to her post, and some of these replies include direct quotations of her original post, under Article 17 the user would have the right to require the message board erase not only her original posting, but also the quoted material within the replies. This is clearly a situation in which one user's interest in removing information she provided online directly confronts another user's right to express herself and engage in public debate. Again, however, the broad formulation of Article 17 decides things entirely in the privacy-seeking user's favor.

C. How far do the obligations to inform third parties of a data subject's request for erasure extend? What implications do burdens on intermediaries regarding user content have for free expression online?

Finally, Article 17's requirement that first-party data controllers inform all third parties that are processing the information of the data subject's request that the data be erased is likewise overbroad in a way that will have a significant impact on other users' free expression rights. Article 17 contains no requirement that limits the obligation to notify third parties to only

¹³ Data Guidance, *EU: Spain Consults CJEU on Extent of Right to Be Forgotten* (Mar. 13, 2012), <http://www.dataguidance.com/news.asp?id=1745>.

those third parties that the first-party controller affirmatively exchanged or shared the data with. For example, one could imagine an individual who uses a small remote content-hosting service to host his own website, on which he posts his own political commentary. One of his posts goes viral and ends up being cited, reposted, discussed on social media, and indexed by search engines across the web. If the user decides he wants to take down his original post, under Article 17 the small content-hosting service, who merely provides server space for the user's website, would have an obligation to inform an untold (and unknown to them) number of third parties who have made some copy or link to that user's original public post.

This would create a massive burden on content platforms and hosts, who would likely respond by restricting users' ability to post content – precisely the reason why intermediaries' liability for user content is limited under the E-Commerce Directive. Further, while it is not clear exactly how intermediaries should implement the requirement that first parties take "all reasonable steps, including technical measures," to inform third parties, it is difficult to envision a system that would both be technically workable and of a sufficient scope to satisfy the requirement.

V. Proposed Amendments to the Right to Be Forgotten

European Parliament Rapporteur Jan Albrecht (LIBE Committee) has proposed in a draft report several amendments related to Article 17, which attempt to address concerns about the right's impact on freedom of expression. In CDT's view, while the proposed amendments make some progress, they do not fully resolve the issues described above. This section analyzes the impact these proposed amendments would have, and offers alternatives for addressing the concerns.

A. The Draft Report

The draft report makes three sets of changes. First, it offers amendments to the DPR's recitals that would reframe the 'right to be forgotten' as the "right to erasure and to be forgotten" (Amendments 34 and 35). This is intended to substantially narrow the provision, but because it fails to change the definition of personal data subject, the "erasure" would continue to apply broadly to all data about a person, not just data that the person has herself submitted to a data controller or processor, raising substantial free expression concerns.

Article 80's protection for free expression would be improved by Amendment 324. This amendment would strike the reference to journalistic, artistic, and literary purposes, and specify that Member States make allowances for free expression whenever it is necessary and in accordance with the Charter of Fundamental Rights of the European Union and the ECHR. While CDT supports further narrowing of Article 17 in addition to this amendment to Article 80, due to the concerns discussed above, Amendment 324 is critically important to ensuring adequate protection for online freedom of expression in the implementation of Article 17.

Lastly, the substantive changes proposed for Article 17 would achieve a slight narrowing of the 'right to be forgotten,' but one in CDT's view that remains insufficient to ensure that freedom of expression is fully and uniformly protected within the DPR. Amendment 147 would change controllers' obligation under Article 17(2) when data have been made public. As proposed by the Commission, controllers would be required to notify third parties processing any data that had been made public "that a data subject requests them to erase any links to, or copy or replication of that personal data." Under the amendment, controllers would only be obliged to take "all necessary steps to have the data erased" with respect to

third-party controllers or processors if the controller has made the data public “without a justification based on Article 6(1).”

In explaining this change, the report notes correctly that if publication takes place based on legal grounds under the regulation, then “a ‘right to be forgotten’ is neither realistic nor legitimate.” Narrowing the obligation to apply only where the controller has acted unlawfully in publishing the data is therefore a positive change. The amendment also commendably removes the reference to links, focusing instead on the actual data to be deleted (Amendment 153 makes a corresponding change). Nonetheless, the obligation to “take all necessary steps” is a broad obligation without bounds. Nothing in this amendment would limit the controller’s obligation to only those parties with whom it had directly shared the data at issue. While CDT does not object to placing some obligations on data controllers who have unlawfully publicized personal data, we would support limiting the obligation to “all reasonable steps” or otherwise clarifying that the obligation is not without limits.

The principal shortcoming of the proposed amendments is that they leave the general right under Article 17(1) and the definition of personal data virtually untouched (save for Amendment 146’s deletion of a reference to data collected from children). Therefore, even with the amendments in place, Article 17 could still be interpreted to apply to any data about a person – be it an article, a link, or a tweet – rather than more narrowly applying only to data supplied by the data subject.

B. CDT’s Proposal for a Right to Erasure of Personal Data

To address the remaining free expression concerns raised by Article 17, CDT has proposed an amended version of the article that narrows its scope to cover personal data that a data subject has provided to a controller or processor. Amendments to paragraph (1) limit its scope to situations *where a data subject has previously chosen to remotely store or host personal information and subsequently desires to remove and delete the data*.¹⁴ This narrowing is critical to promote the data subject’s ability to call for the erasure of data she has stored with or provided to a data controller, while avoiding a rule that burdens other users’ free expression rights. This version of the right to erasure would not give data subjects the ability to silence others’ truthful, lawful statements about them, but it would also have no effect on existing laws against defamation, harassment, or copyright infringement that provide more appropriate vehicles for a data subject who is seeking to stop another user’s harmful commentary about them.

Further, CDT’s proposed amendments to paragraph (2) would ensure that first-party *controllers and processors are only required to contact entities they have a direct contractual relationship with*.¹⁵ This narrower obligation will require first parties to undertake appropriate measures to comply with a data subject’s request for erasure, but will limit the obligation to data-transfers that the first party initiated or was directly involved in. This will avoid the free expression questions and technical implementation challenges of a broad obligation on controllers or processors to identify any potential third party who may have accessed the data while it was publicly available.

¹⁴ We also suggest the removal of 17(1)(a), (c), and (d), as those rights are already addressed elsewhere in the Regulation.

¹⁵ Data breach, where a controller or processor inadvertently makes a data subject’s personal information available to the public beyond the scope of its agreement with the subject, is a separate issue and is addressed in Article 19.

Finally, CDT also supports an additional revision to Article 80. The draft report’s proposed amendment (Amendment 324), coupled with the narrow conception of Article 17’s scope described above, would go a long way toward ensuring freedom of expression is sufficiently protected in the DPR. Nonetheless, the Commission and Parliament could add certainty to this protection by inserting an unambiguous statement that “nothing in the Regulation shall be interpreted to supersede or limit any free expression rights guaranteed by Article 10 of the European Convention on Human Rights.” In addition, to achieve consistent and sufficient protection for freedom of expression across the Union, the EU government should provide guidance to Member States as to when derogations under Article 80 are necessary and appropriate.

C. Amendment Text

Below find the original proposed text of Article 17; the amendments offered in the Albrecht Report; and CDT’s amendments to Article 17. Additions and deletions are marked in bold.

Original Text	Albrecht Amendment	CDT Amendment
<i>Deletions in bold reflect CDT Amendments</i>		
Article 17 – Right to be Forgotten and to Erasure	Article 17 – Right to be Forgotten and to Erasure	Article 17 – Right to Erasure
<p>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:</p> <p>(a) the data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;</p> <p>(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;</p> <p>(c) the data subject objects to the processing</p>	<p>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, where one of the following grounds applies:</p> <p>(a) the data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;</p> <p>(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;</p> <p>(c) the data subject objects to the processing of personal data pursuant to Article 19;</p> <p>(d) the processing of the data does not comply with this Regulation for other reasons.</p>	<p>1. The data subject shall have the right to obtain from a controller or processor the erasure of personal data relating to them and the abstention from further dissemination of such data, where the data subject has directly used the controller or processor to process personal data and subsequently withdraws consent for the processing of that data, or when the storage or hosting period consented to has expired, and where there is no other legal ground for the processing of the data.</p> <p>2. Where the controller or processor 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 direct third parties which are</p>

<p><i>of personal data pursuant to Article 19;</i> <i>(d) the processing of the data does not comply with this Regulation for other reasons.</i></p> <p>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 <i>inform</i> third parties which are processing such data, <i>that a data subject requests them</i> to erase any <i>links to, or</i> copy or replication of that personal data. <i>Where the controller has authorised a third party publication of personal data, the controller shall be considered responsible for that publication.</i></p> <p>3. The controller shall carry out the erasure without delay, except to the extent that the retention of the personal data is necessary:</p> <ul style="list-style-type: none"> (a) for exercising the right of freedom of expression in accordance with Article 80; (b) for reasons of public interest in the area of public health in accordance with Article 81; (c) for historical, statistical and scientific research purposes in accordance with Article 83; (d) for compliance with a legal obligation to retain the personal data by Union or Member State law to which the controller is subject; Member State laws shall meet an objective of public interest, respect the essence of the right to the protection of personal data and be 	<p>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 necessary steps to have the data erased, without prejudice to Article 77.</p> <p>2a. Any measures for erasure of published personal data shall respect the right to freedom of expression, as referred to in Article 80.</p> <p>3. The controller shall carry out the erasure without delay, except to the extent that the retention of the personal data is necessary:</p> <ul style="list-style-type: none"> (a) for exercising the right of freedom of expression in accordance with Article 80; (b) for reasons of public interest in the area of public health in accordance with Article 81; (c) for historical, statistical and scientific research purposes in accordance with Article 83; (d) for compliance with a legal obligation to retain the personal data by Union or Member State law to which the controller is subject; Member State laws shall meet an objective of public interest, respect the essence of the right to the protection of personal data and be proportionate to the legitimate aim pursued; (e) in the cases referred to in paragraph 4. <p>4. Instead of erasure, the controller shall restrict processing of personal data in such a way that it is not subject to the normal data access and processing operations of the controller and can not be changed</p>	<p>processing such data on behalf of the controller or processor, to erase any copy or replication of that personal data.</p> <p>3. The controller or processor shall carry out the erasure without unreasonable delay, except to the extent that the retention of the personal data is necessary:</p> <ul style="list-style-type: none"> (a) for exercising the right of freedom of expression in accordance with Article 10 of the European Convention on Human Rights or Article 80 of this Regulation; (b) for reasons of public interest in the area of public health in accordance with Article 81; (c) for historical, statistical and scientific research purposes in accordance with Article 83; (d) for compliance with a legal obligation to retain the personal data by Union or Member State law to which the controller is subject; Member State laws shall meet an objective of public interest, respect the essence of the right to the protection of personal data and be proportionate to the legitimate aim pursued; (e) for a reasonable period of time to ensure that the request to erase was not fraudulent or to determine whether the data should not be erased because of an exception listed in 3(a)-3(d) above; (f) in the cases referred to in paragraph 4. <p>4. Instead of erasure, the controller or processor shall restrict processing of personal data where:</p>
--	---	---

<p>proportionate to the legitimate aim pursued; (e) in the cases referred to in paragraph 4.</p> <p>4. Instead of erasure, the controller shall restrict processing of personal data where:</p> <p>(a) their accuracy is contested by the data subject, for a period enabling the controller to verify the accuracy of the data;</p> <p>(b) the controller no longer needs the personal data for the accomplishment of its task but they have to be maintained for purposes of proof;</p> <p>(c) the processing is unlawful and the data subject opposes their erasure and requests the restriction of their use instead;</p> <p>(d) the data subject requests to transmit the personal data into another automated processing system in accordance with Article 18(2).</p> <p>5. Personal data referred to in paragraph 4 may, with the exception of storage, only be processed for purposes of proof, or with the data subject's consent, or for the protection of the rights of another natural or legal person or for an objective of public interest.</p> <p>6. Where processing of personal data is restricted pursuant to paragraph 4, the controller shall inform the data subject before lifting the restriction on processing.</p> <p>7. The controller shall implement mechanisms to ensure that the time limits established for the erasure of</p>	<p>anymore, where:</p> <p>(a) their accuracy is contested by the data subject, for a period enabling the controller to verify the accuracy of the data;</p> <p>(b) the controller no longer needs the personal data for the accomplishment of its task but they have to be maintained for purposes of proof;</p> <p>(c) the processing is unlawful and the data subject opposes their erasure and requests the restriction of their use instead;</p> <p>(d) the data subject requests to transmit the personal data into another automated processing system in accordance with Article 15(2) and 2a.</p> <p>5. Personal data referred to in paragraph 4 may, with the exception of storage, only be processed for purposes of proof, or with the data subject's consent, or for the protection of the rights of another natural or legal person or for compliance with a legal obligation to process the personal data by the Union or national law to which the controller is subject.</p> <p>6. Where processing of personal data is restricted pursuant to paragraph 4, the controller shall inform the data subject before lifting the restriction on processing.</p> <p>7. The controller shall implement mechanisms to ensure that the time limits established for the erasure of personal data and/or for a periodic review of the need for the storage of the data are observed.</p>	<p>(a) their accuracy is contested by the data subject, for a period enabling the controller to verify the accuracy of the data;</p> <p>(b) the controller no longer needs the personal data for the accomplishment of its task but they have to be maintained for purposes of proof;</p> <p>(c) the processing is unlawful and the data subject opposes their erasure and requests the restriction of their use instead;</p> <p>(d) the data subject requests to transmit the personal data into another automated processing system in accordance with Article 18(2);</p> <p>(e) the data has been de-identified by the controller to a reasonable level of confidence, and the controller has made a public commitment to maintain data in a de-identified fashion, and all other parties to which the data has been made available have also publicly committed to maintain the data in a de-identified fashion, taking full account of the technological "state of the art";</p> <p>(f) it is unreasonably burdensome or otherwise infeasible to erase all copies of the data, and the controller or processor has implemented measures to prevent any third party for accessing the data.</p> <p>5. Personal data referred to in paragraph 4(a)–(c) may, with the exception of storage, only be processed for purposes of proof, or with the data subject's consent, or for the protection of the rights of another natural or legal person or for an objective</p>
--	--	---

<p>personal data and/or for a periodic review of the need for the storage of the data are observed.</p> <p>8. Where the erasure is carried out, the controller shall not otherwise process such personal data.</p> <p>9. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying:</p> <p>(a) the criteria and requirements for the application of paragraph 1 for specific sectors and in specific data processing situations;</p> <p>(b) the conditions for deleting links, copies or replications of personal data from publicly available communication services as referred to in paragraph 2;</p> <p>(c) the criteria and conditions for restricting the processing of personal data referred to in paragraph 4.</p>	<p>8. Where the erasure is carried out, the controller shall not otherwise process such personal data.</p> <p>9. The Commission shall be empowered to adopt, after requesting an opinion of the European Data Protection Board, delegated acts in accordance with Article 86 for the purpose of further specifying:</p> <p>(a) the criteria and requirements for the application of paragraph 1 for specific sectors and in specific data processing situations;</p> <p>(b) the conditions for deleting personal data from publicly available communication services as referred to in paragraph 2;</p> <p>(c) the criteria and conditions for restricting the processing of personal data referred to in paragraph 4.</p>	<p>of public interest.</p> <p>6. Where processing of personal data is restricted pursuant to paragraph 4, the controller or processor shall inform the data subject before lifting the restriction on processing.</p> <p>7. The controller or processor shall implement mechanisms to ensure that the time limits established for the erasure of personal data and/or for a periodic review of the need for the storage of the data are observed.</p> <p>8. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying:</p> <p>(a) the criteria and requirements for the application of paragraph 1 for specific sectors and in specific data processing situations;</p> <p>(b) the conditions for deleting links, copies or replications of personal data from publicly available communication services as referred to in paragraph 2;</p> <p>(c) the criteria and conditions for restricting the processing of personal data referred to in paragraph 4.</p>
<p style="text-align: center;">Original Text</p> <p><i>Deletions in bold reflect CDT Amendments</i></p> <p>Article 80 – Processing of personal data and freedom of expression</p> <p>1. Member States shall provide for exemptions or derogations from the provisions on the general principles in Chapter II,</p>	<p style="text-align: center;">Albrecht Amendment</p> <p>Article 80 – Processing of personal data and freedom of expression</p> <p>1. Member States shall provide for exemptions or derogations from the provisions on the general principles in Chapter II, the rights of the data subject in</p>	<p style="text-align: center;">CDT Amendment</p> <p>Article 80 – Processing of personal data and freedom of expression</p> <p>1. Member States shall provide for exemptions or derogations from the provisions on the general principles in Chapter II, the rights of the data subject in</p>

<p>the rights of the data subject in Chapter III, on controller and processor in Chapter IV, on the transfer of personal data to third countries and international organisations in Chapter V, the independent supervisory authorities in Chapter VI and on co-operation and consistency in Chapter VII for the processing of personal data carried out solely for journalistic purposes or the purpose of artistic or literary expression in order to reconcile the right to the protection of personal data with the rules governing freedom of expression.</p> <p>2. Each Member State shall notify to the Commission those provisions of its law which it has adopted pursuant to paragraph 1 by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment law or amendment affecting them.</p>	<p>Chapter III, on controller and processor in Chapter IV, on the transfer of personal data to third countries and international organisations in Chapter V, the independent supervisory authorities in Chapter VI and on co-operation and consistency in Chapter VII whenever this is necessary in order to reconcile the right to the protection of personal data with the rules governing freedom of expression in accordance with the Charter of Fundamental Rights of the European Union and its referral to the ECHR.</p> <p>2. Each Member State shall notify to the Commission those provisions of its law which it has adopted pursuant to paragraph 1 by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment law or amendment affecting them.</p>	<p>Chapter III, on controller and processor in Chapter IV, on the transfer of personal data to third countries and international organisations in Chapter V, the independent supervisory authorities in Chapter VI and on co-operation and consistency in Chapter VII <i>whenever this is necessary</i> in order to reconcile the right to the protection of personal data with the rules governing freedom of expression. <i>Nothing in the Regulation shall be interpreted to supersede or limit any free expression rights guaranteed by Article 10 of the European Convention on Human Rights.</i></p> <p><i>1a. The European Data Protection Supervisor shall issue guidance on when such exemptions or derogations may be necessary, after consultation with representatives of the press, authors and artists, data subjects and relevant civil society organisations.</i></p> <p>2. Each Member State shall notify to the Commission those provisions of its law which it has adopted pursuant to paragraph 1 by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment law or amendment affecting them.</p>
---	--	---