

05 RIGHT TO BE FORGOTTEN

What is needed?

Article 17 of the draft Regulation on the 'Right to be forgotten and to erasure' means that data controllers, such as social networks, will have to comply with users' requests to delete everything they have published about themselves online. This right already exists in the 1995 Directive and is very important for holding controllers accountable for correctly managing the data they process. It empowers data subjects to have control over their own data.

It is important to note that this proposal does not create open-ended rights to have newspaper articles or blogs deleted or to overturn legal obligations on companies to store certain data. There is a specific exception in Article 80 on freedom of speech, and this article can be strengthened and clarified to minimise any risk of misunderstanding. For clarity, the wording "erasure" should be used throughout, as "the right to be forgotten" has led to a great deal of confusion.

negative amendments

Many amendments aim at restricting the right to erasure of the data subject and would undermine legal certainty. For example, a right to simply "request" deletion makes no legal sense. Moreover, the amendment to only delete data where "appropriate" only adds confusion. Some amendments make reference to an undefined "retention period" adding further confusion. The following is a small selection of the negative amendments tabled:

ALDE: 1386, 1388, 1390, 1391, 1393, 1395, 1396, 1397, 1399, 1400, 1401, 1405

EPP: 1392

ECR: 1389

S&D: 1398, 1402, 1418, 1419

Suggested exemptions for anonymous and pseudonymous data - such as amendment 1420 by the EPP - do not make sense; this could increase the liability of intermediaries and wrongly incentivise them to monitor and delete information

for which they are not responsible. Furthermore, the drafters appear not to understand that anonymisation, *by definition*, cannot be undone.

positive amendments

Some amendments have been tabled in order to clarify the title and change it into "erasure". These amendments are:

ALDE: 1380, 1383; EPP: 1381; S&D: 1382

Some amendments have been tabled in order to delete Article 17, paragraph 2 since this provision, as proposed by the Commission, is unclear and could increase the liability of intermediaries and wrongly incentivise them to monitor, restrict or delete information over which they have no control.

These amendments are: ECR: 1411 - EPP: 1412 - ALDE: 1413, 1414

LAW ENFORCEMENT ACCESS

Recent revelations have shown that the existence of databases that store large amounts of data create risks for individuals' privacy. It is clearly appropriate that individuals should always have the right to require their data to be deleted.