



The Right to be Forgotten

Principles and Implementation

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Is this RtbF a new right?

Access rights

without constraint at reasonable intervals

without excessive delay or expense

in an intelligible form

knowledge of the logic involved when automated decision making

Correction rights

rectification, erasure or blocking of data if not in line with Directive

in particular because of the incomplete or inaccurate nature of the data

notification to third parties to whom the data have been disclosed of any rectification, erasure or blocking,

unless this proves impossible or involves a disproportionate effort.

Right to object

in principle not, but

in some cases (cfr (e) and (f)): at any time on compelling legitimate grounds relating to his particular situation.

direct marketing free of charge

Krant hoeft online-archief niet te wissen



Newspaper not required to erase article from online archive

Gepubliceerd: Dinsdag 23 februari 2010

Auteur: Ernst-Jan Hamel

Het Eindhovens Dagblad mag een artikel over een ontslagen vrouw gewoon online laten staan. De ex-werkneemster van de TU Eindhoven claimde dat het artikel haar op Google dwars zat.

Het oude nieuwsbericht over het ontslag van de vrouw bij de Technische Universiteit hoeft niet te worden aangepast, oordeelt de Amsterdamse voorzieningenrechter in een kort geding. Als de krant hier aan zou beginnen dan zou het archief telkens aangepast moeten worden als iemand schade ervaart, zo oordeelt de rechter. "Het archief zou daardoor niet meer compleet zijn."

De vrouw had de zaak aangespannen omdat ze bij sollicitaties zegt last te hebben van het bericht. Ze eiste dat de krant het artikel uit het digitale archief zou verwijderen, zodat Google het niet meer indexeert. De krant weigert dit omdat zo'n aanpassing een verminking van het archief zou betekenen en ingaat tegen het belang van de geschiedsschrijving.

EUROPEAN BUSINESS NEWS

French Court Tells Google to Filter Max Mosley Images From Search Engine

Case Closely Watched as Test of Controlling Privacy on Web

By RUTH BENDER and SAM SCHECHNER

Nov. 6, 2013 11:29 a.m. ET

PARIS—A French court on Wednesday ordered Google Inc. to remove private images of a prominent British man from its search engine, in a ruling that could influence broader European efforts to tighten Web-privacy rules.

In a closely watched case brought by former Formula One racing boss Max Mosley, Paris's Tribunal de Grande Instance said that Google must automatically filter out nine images from its search engine, after Mr. Mosley sued to get the Internet giant to scrub grainy scenes of a sexual escapade.



Costeja v Google (May 2014)



LA VANGUARDIA 33

SOCIEDAD

CIUDADANOS: La polémica sobre la eutanasia tras la muerte de Sampedro

El Parlamento negó la eutanasia en el debate del Código Penal

El PP solicitó que se equiparara al homicidio, IU-IC, la despenalización, y el PSOE, mayoritario, optó por una postura intermedia, manteniendo la legalidad pero con penas atenuadas

El diagnóstico: Ramón Sampedro hospitalizado en su domicilio en 1989

OPINIÓN

e Sampedro no debió repetirse

El Código Penal que se aprobó a finales de los años 80... (text continues with opinion on the law and Sampedro's case)

MASTERS

ENTRO DE ESTUDIOS FINANCIEROS

LA VANGUARDIA

Otro récord de Leo apuntala la victoria ante el Granada (1-2)

exsocio de Urdangarin publica a la infanta Cristina

El exsocio de Urdangarin publica a la infanta Cristina

El impuesto asegura que se comió en La Zarzuela para hablar de un libro en Valdelella

A la caza del dossier

El dossier de Mértola se declara por sorpresa ante la policía

Mataró, propietat de FERNANDO CANO MOYA. Superfície: 63 m². Càrregues: 1,2 milions de ptes. Tipus de subhasta: 2,05 milions de ptes.

U.R.E. 08/20 (SANT FELIU DE LLOBREGAT) Tel. 666 56 12

Meitat indivisa d'un solar al carrer Baix, 55, d'Esparreguera, propietat de DANIEL COCA MAGDALENO. Superfície: 160 m². Sense càrregues. Tipus de subhasta: 3,7 milions de ptes.

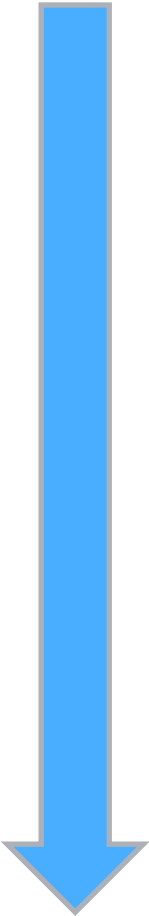
Les dues meitats indivises d'un habitatge al carrer Montseny, 8, propietat de MARIO COSTEJA GONZÁLEZ i ALICIA VARGAS COTS, respectivament. Superfície: 90 m². Càrregues: 8,5 milions de ptes. Tipus de subhasta: 2 milions de ptes. cadascuna de les meitats.

Meitat indivisa d'un habitatge unifamiliar al carrer Begonia, 8, de la Urb. Mas d'en Gall d'Esparreguera, propietat d'ALFREDO FERNÁNDEZ FERNÁNDEZ. Superfície (total): 317 m². Càrregues: 6,2 milions de ptes. Tipus de subhasta: 2,3 milions de ptes.

U.R.E. 08/23 (VILAFRANCA DEL PENEDÈS) Tel. 817 19 60


Parcel·la amb edificació (xalet), al carrer Pensament, 11, de la Urb. Plana de les Torres de Torrelles de Foix, propietat de JUAN ANTONIO ALBA VILLALÓN. Superfície (total): 1.430 m². Sense càrregues. Tipus de subhasta: 14,2 milions de ptes.

- The citizen filed a complaint with the Spanish data protection authority (the "AEPD") in 2010 against La Vanguardia and against Google Spain & Google Inc.
- He requested:
 - **La Vanguardia** either to remove or alter those pages so that the personal data relating to him no longer appeared or to use certain tools made available by search engines in order to protect the data.
 - **Google Spain or Google Inc.** be required to remove or conceal the personal data relating to him so that they ceased to be included in the search results and no longer appeared in the links to La Vanguardia

- 
- AEPD decided in July 2010:
 - **Rejected the complaint towards La Vanguardia**, because the publication was legally justified as it took place upon order of the Ministry of Labour and Social Affairs and was intended to give maximum publicity to the auction in order to secure as many bidders as possible
 - **Required Google to withdraw the data** and the prohibition of access to certain data by the operators of search engines when it considers that the locating and dissemination of the data are liable to compromise the fundamental right to data protection and the dignity of persons in the broad sense, and this would also encompass the mere wish of the person concerned that such data not be known to third parties.
 - Google questioned the decision of the AEPD and went into appeal.
 - The Audiencia Nacional (the National High Court of Spain) submitted prejudicial question to the European Court of Justice.

1. Google Inc.'s and Google Spain's operations are so inextricably linked that Google Spain may be considered an establishment of Google Inc. pursuant to the EU Data Protection Directive;
2. Google Inc.'s processing of personal data is carried out "in the context of the activities" of Google Spain;
3. Consequently, Google Inc. is a data controller under the Directive;
4. Google Inc. must de-index links to web pages containing data that is **"inadequate, irrelevant or no longer relevant, or excessive in relation to the purposes of the processing at issue carried out by the operator of the search engine."**

JUDGMENT OF THE COURT (Grand Chamber)

13 May 2014 

(Personal data — Protection of individuals with regard to the processing of such data — Directive 95/46/EC — Articles 2, 4, 12 and 14 — Material and territorial scope — Internet search engines — Processing of data contained on websites — Searching for, indexing and storage of such data — Responsibility of the operator of the search engine — Establishment on the territory of a Member State — Extent of that operator's obligations and of the data subject's rights — Charter of Fundamental Rights of the European Union — Articles 7 and 8)

In Case C-131/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Audiencia Nacional (Spain), made by decision of 27 February 2012, received at the Court on 9 March 2012, in the proceedings

Google Spain SL,

Google Inc.

v

Agencia Española de Protección de Datos (AEPD),

Mario Costeja González,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, M. Ilešič (Rapporteur), L. Bay Larsen, T. von Danwitz, M. Safjan, Presidents of Chambers, J. Malenovský, E. Levits, A. Ó Caoimh, A. Arabadjiev, M. Berger, A. Prechal and E. Jarašiusas Judges,

Advocate General: N. Jääskinen,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 26 February 2013,

after considering the observations submitted on behalf of:

- Google Spain SL and Google Inc., by F. González Díaz, J. Baño Fos and B. Holles, abogados,
- Mr Costeja González, by J. Muñoz Rodríguez, abogado,
- the Spanish Government, by A. Rubio González, acting as Agent,
- the Greek Government, by E.-M. Mamouna and K. Boskovits, acting as Agents,

- **Case by case decision**

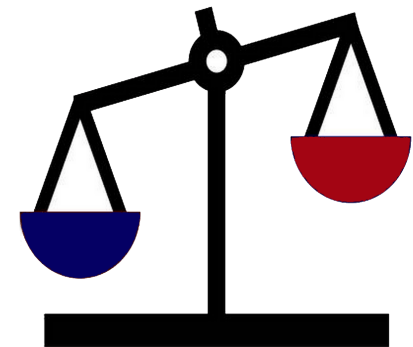
- [The local judge should examine] whether the data subject has a right that the information in question relating to him personally should, at this point in time, no longer be linked to his name by a list of results displayed following a search made on the basis of his name, without it being necessary that the inclusion of that information prejudices the data subject.

- **RtbF is a fundamental right**

- As the data subject may request that the information in question no longer be made available to the general public on account of its inclusion in such a list of results, those rights override, as a rule, not only the economic interest of the operator of the search engine but also the interest of the general public in having access to that information upon a search relating to the data subject's name.

- **But should be balanced against public interest**

- However, that would not be the case if it appeared, for particular reasons, such as the role played by the data subject in public life, that the interference with his fundamental rights is justified by the preponderant interest of the general public in having, on account of its inclusion in the list of results, access to the information in question.

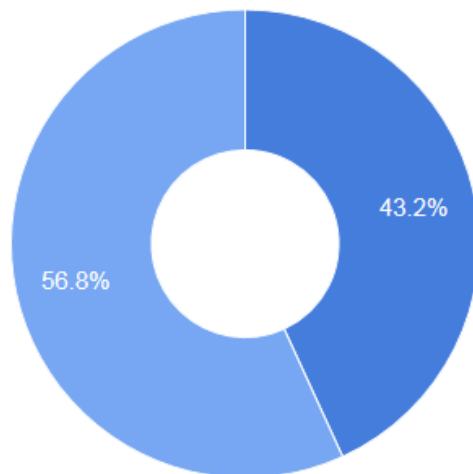


Right to be forgotten

General public interest

URL removal request totals

The graph below shows data on the percentages of URLs we have reviewed and processed. The figures on the right are based on the total number of requests received. These data date back to the launch of our official request process on May 29, 2014.



● URLs Removed ● URLs Not Removed

Total URLs that Google has evaluated for removal:

1,717,714 URLs

Total requests Google has received: **565,412 requests**

The graph reflects URLs that have been fully processed, while the figures above reflect the total evaluated. URLs that require more information or are pending review are not included in the graph.

All FR DE GB ES IT Other Countries

The WP29 Implementation Guidelines for DPA's:

1. Does the search result relate to a natural person – i.e., an individual? And does the search result come up against a search on the data subject's name?
2. Does the data subject play a role in public life? Is the data subject a public figure?
3. Is the data subject a minor?
4. Is the data accurate?
5. Is the data relevant and not excessive?
6. Is the information sensitive within the meaning of Article 8 of the Directive 95/46/EC?
7. Is the data up to date? Is the data being made available for longer than is necessary for the purpose of the processing?
8. Is the data processing causing prejudice to the data subject? Does the data have a disproportionately negative privacy impact on the data subject?
9. Does the search result link to information that puts the data subject at risk?
10. In what context was the information published? Was the content voluntarily made public by the data subject? Was the content intended to be made public? Could the data subject have reasonably known that the content would be made public?
11. Was the original content published in the context of journalistic purposes?
12. Does the publisher of the data have a legal power – or a legal obligation – to make the personal data publicly available?
13. Does the data relate to a criminal offence?



Les salaires ont été épargnés par la crise

SELON une enquête du site d'offres d'emploi Références et de la KULeuven, l'impact de la crise sur le salaire des 63.193 personnes sondées a été limité.

C'est le grand enseignement de la grande enquête bi-mensuelle de Références/Vacature sur les salaires, réalisée avec la KULeuven: « Le marché de l'emploi a certes été fortement touché par la crise, les sommes du recrutement se sont quasiment arrêtées pendant de longs mois, mais l'impact sur les salaires a été limité », conclut le Gert Thruwssen, chercheur à l'université flamande. En son-

me, les entreprises ont préféré limiter leurs coûts. Au-delà, l'intervention du gouvernement par le biais de mesures anti-crise, comme l'introduction sous conditions de chômage économique pour les employés, a permis de stabiliser quelque peu la situation. Sans parler du mécanisme d'indexation des salaires, qui a aussi joué un rôle stabilisateur. Du coup, le salaire brut médian de l'année (52.120 euros)

s'élève cette année à 2.648 euros, contre 2.500 euros il y a deux ans, soit en hausse de 5,92 %.

Quant au salaire brut moyen de notre enquête, il s'élève à 3.004 euros, ce qui correspond peu ou prou aux derniers chiffres publiés par le SPF Economie (2.936 euros).

► P.25 LES RÉSULTATS
DÉTAILS DE L'ENQUÊTE

Le coaching payant fâche les profs

P.6 Les profs estiment que cette pratique est une source d'inégalités entre élèves.

Grand péril pour SNCB Logistics

P.23 Restructuration bloquée: trois mille emplois sont menacés à la filiale cargo de la SNCB.

Les 5 salaires les plus hauts...

Médecine (médecin dentiste)	3.158 €
Sciences pharmaceutiques	2.739 €
Ingenieur civil / ingénieur architecte	2.689 €
Biogéologue / ingénieur agronome	2.540 €
Informaticien	2.476 €

... et les plus bas

Journaliste et journaliste publicitaire	1.840 €
Homme / Architecte d'intérieur	1.820 €
Études artistiques (théâtre, musique, design, arts plast.)	1.747 €
	1.740 €

Van Rompuy n'est « pas le président des Européens »

Il y a un an, le 30 novembre 2009, Herman Van Rompuy était désigné premier président permanent du Conseil européen. Son bilan? Depuis son entrée en fonction en janvier 2010, il a abattu un travail considérable, mais - et c'est à l'image du personnage - plutôt discret. En pleine tempête financière, Van Rompuy a mis en œuvre tout son pragmatisme pour apaiser les angles entre Angela Merkel et Nicolas Sarkozy, ceux qui l'ont fait roi. Revers de la médaille, il a négligé de communiquer vers les citoyens, et refusé d'être le visage des valeurs de l'Europe. « Je suis le président du Conseil européen, pas celui des Européens », aime-t-il préciser à ce propos.



« Vande Lanotte peut réussir »

P.4 Etienne de Callatay, un des 6 experts nommés par le conciliateur, trace les contours d'un consensus, qui se résume en 3 axes.

► P.2 L'ÉTOILE
► P.2 & 3 NOTRE DOSSIER

ONÉMAS	20	BONS À DÉCOUPER	37	LOTTERIE	42
SOURCES & MARCHÉS	28-29	TÉLÉVISION	40	TÉLÉVISION	42-43
NÉCROLOGIE & ANNONCES	31	BÊTE, JEUX & HOROSCOPE	41	MÉTÉO & PETITE GAZETTE	44

Du Côté du Brabant Wallon... Quelques bons restaurants à retenir...

Le Bistrot de Lac avenue de Lac, 100 1320 Tournai 02 344 44 44 www.bistrotlacs.be	L'Opéra Chaussée de Triepens, 138 1410 Waterloo 02 344 44 44 www.opera.be	A Côté de Chez Clément rue de la Brèche, 228 1410 Waterloo 02 344 44 44 www.maisonachezclément.com	Le Bistrot de l'Empereur rue du Lion, 255-259 1410 Waterloo 02 344 44 44 www.bistrotdelempeur.be	Hôtel Nivellen Sud Chaussée de Morn, 22 1400 Nivelles 02 71 87 21 www.hotelnivellen.be
Le Bistrot de la Chapelle 4 1360 Vieux-Église 02 344 44 44 www.bistrot.be	Pierre Romano rue de la Chapelle, 29 1410 Waterloo 02 344 21 90 www.pierro Romano.be	Le Pépinière Chaussée de Triepens, 132 1410 Waterloo 02 344 44 44 www.pepiniere.be	Aux Trois Canards rue de la Marche, 51 1380 Ohaan 02 344 21 91 www.auxtroiscanards.be	La Maison Basse rue de la Marche, 52 1380 Ohaan 02 344 21 91 www.lamaisonbasse.be

Lotus Finesse 20+4 GRATIS
SPAR EUROSPAR 749

- Facts of the case:
 - 1994 car accident in which two people died. The Belgian newspaper 'Le Soir' had published an article containing the full name of the driver (a doctor).
 - In 2008, Le Soir made part of its archives freely available online, also including the 1994 article.
 - In 2010, the driver requested to remove the article or to anonymise it.
- Court decision
 - "The right to privacy and right to be forgotten expressed by the claimant justify the limitation of the right to freedom of expression from Le Soir. Therefore, Le Soir needs to remove the name of the applicant from the article in its database."
- The Court of Cassation rules in favour of the right to be forgotten, given
 - the important lapse of time,
 - the fact that there is no actual interest in communicating the name of the claimant
 - the fact that suppression of the name does not have an impact on the essence of the information



Codification of RtbF in GDPR

New rights for individuals

right to be forgotten

data portability right

protection of children

profiling

location data

explicit consent

New obligations for companies

data protection assessments

documentation requirements

data protection officer

security breach notification

Data minimisation

Processor obligations

Privacy by default/by design

Stronger enforcement of infringements

heavy sanctions

shift of burden of evidence

class actions?

stronger agencies

accountability

Article 17 : The data subject shall have the right to obtain from the controller

1. the **erasure** of personal data
2. **concerning him or her**
3. **without undue delay**
4. if one of the **following grounds** applies:
 - a) the personal data are **no longer necessary** for the purposes for which they were collected or otherwise processed;
 - b) the data subject **withdraws consent** and there is no other legal ground for the processing;
 - c) the data subject **objects** to the processing and there are no overriding legitimate grounds for the processing
 - d) the personal data have been **unlawfully processed**;
 - e) the personal data have to be erased for compliance with a **legal obligation** in EU or MS law to which the controller is subject;
 - f) the personal data have been collected in relation to the offer of information society services towards minus 16 (**children**)



- Towards other controllers
 - The controller, taking account of available technology and the cost of implementation, shall take **reasonable steps**, including technical measures, **to inform** controllers which are processing the personal data that the data subject has requested the erasure by such controllers of any links to, or copy or replication of, those personal data.
- Towards other recipients
 - The controller **shall communicate** any rectification or erasure of personal data to each recipient to whom the personal data have been disclosed, **unless this proves impossible or involves disproportionate effort**.
 - The controller shall inform the data subject about those recipients if the data subject requests it.



1. Facilitation

- You shall facilitate the exercise of the RtbF rights.

2. Form

- Concise, transparent, intelligible and easily accessible form, using clear and plain language.
- In writing, or by other means, including, where appropriate, by electronic means.
- Where the data subject makes the request by electronic form means, the information shall be provided by electronic means where possible, unless otherwise requested by the data subject.

3. Time period

- Information on action taken on a RtbF request to the data subject without undue delay and in any event within one month of receipt of the request.
- May be extended by two further months where necessary, taking into account the complexity and number of the requests. Data subject to be informed of any such extension within one month of receipt of the request, together with the reasons for the delay.

4. In case of denial of request

- If no action on the request of the data subject, you shall inform the data subject without delay and at the latest within one month of receipt of the request of the reasons for not taking action and on the possibility of lodging a complaint with a supervisory authority and seeking a judicial remedy

5. Cost

- The erasure should be provided free of charge.
- Where requests from a data subject are manifestly unfounded or excessive, in particular because of their repetitive character, you may either: (a) charge a reasonable fee taking into account the administrative costs of providing the information or communication or taking the action requested; or (b) refuse to act on the request.
- You shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request.

6. Identification

- If reasonable doubts concerning the identity of the natural person making the request, you may request the provision of additional information necessary to confirm the identity of the data subject.





Exceptions possible?

1. Archiving exception

- The further retention of the personal data should be lawful where it is **necessary** (article 17.3 & recital 65)
 - for exercising the right of freedom of expression and information
 - for compliance with a legal obligation
 - for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller
 - on the grounds of public interest in the area of public health
 - for **archiving purposes in the public interest**
 - for scientific or historical research purposes or statistical purposes
 - for the establishment, exercise or defence of legal claims.

Recital 158: public interest archiving

- Where personal data are processed for archiving purposes, **this Regulation should also apply** to that processing, bearing in mind that this Regulation should not apply to deceased persons.
- Public authorities or public or private bodies that hold records of public interest should be services which, pursuant to Union or Member State law, have a **legal obligation** to acquire, preserve, appraise, arrange, describe, communicate, promote, disseminate and provide access to records of enduring value for general public interest.
- Member States should also be authorised to provide for the **further processing** of personal data for archiving purposes, for example with a view to providing specific information related to the political behaviour under former totalitarian state regimes, genocide, crimes against humanity, in particular the Holocaust, or war crimes.



Safeguards and derogations relating to processing for archiving purposes in the public interest

Public interest archives exempted from RtbF rule but

Data Minimisation Principle

- Processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, **shall be subject to appropriate safeguards**, in accordance with this Regulation, for the rights and freedoms of the data subject. (Article 89)
 - Those safeguards shall ensure that **technical and organisational measures** are in place in particular in order to ensure respect for the principle of data minimisation.
 - Those measures may include pseudonymisation provided that those purposes can be fulfilled in that manner.
 - Where those purposes can be fulfilled by further processing which does not permit or no longer permits the identification of data subjects, those purposes shall be fulfilled in that manner.

The conditions and safeguards in question **may entail specific procedures for data subjects** to exercise those rights if this is appropriate in the light of the purposes sought by the specific processing along with **technical and organisational measures** aimed at minimising the processing of personal data in pursuance of the proportionality and necessity principles.



2. General public interest exception

Member States may introduce public interest exceptions (article 23)

- Union or Member State law to which the data controller or processor is subject may restrict by way of a legislative measure the scope of [the right to be forgotten]
 - when such a restriction respects the essence of the fundamental rights and freedoms and is a necessary and proportionate measure in a democratic society to safeguard [...] other important objectives of general public interest of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, including monetary, budgetary and taxation matters, public health and social security
 - Recital 73: [...] other important objectives of general public interest,[...] in particular an important economic or financial interest of the Union or of a Member State, the keeping of public registers kept for reasons of general public interest, further processing of archived personal data to provide specific information related to the political behaviour under former totalitarian state regimes or the protection of the data subject or the rights and freedoms of others, including social protection, public health and humanitarian purposes. Those restrictions should be in accordance with the requirements set out in the Charter and in the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- Attention: is national law of the controller (& processor), not the data subject



3. Freedom of expression and information exception

Member States may introduce exemptions or derogations if necessary to reconcile the right to the protection of personal data with the freedom of expression and information (article 85)

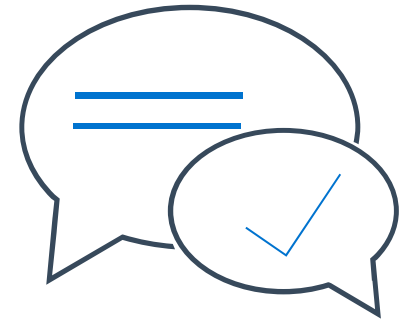
1. Member States shall by law reconcile the right to the protection of personal data pursuant to this Regulation with the right to freedom of expression and information, including processing for journalistic purposes and the purposes of academic, artistic or literary expression.
2. For processing carried out for journalistic purposes or the purpose of academic artistic or literary expression, Member States shall provide for exemptions or derogations from [the right to be forgotten] if they are necessary to reconcile the right to the protection of personal data with the freedom of expression and information.
3. Each Member State shall notify to the Commission the provisions of its law which it has adopted pursuant to paragraph 2 and, without delay, any subsequent amendment law or amendment affecting them.





Next steps

1. Build procedures and tools for accommodating the **Data Minimisation Principle**.
2. **National policy makers** should work together towards an harmonised EU approach when issuing appropriate safeguards, specifications and derogations for the public archival sector.
3. Work together to draft a **European Code of Conduct** for personal data processing in the public archives sector





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He is a specialist in privacy and data protection issues and advises on the legal impact of big data, cloud computing and Internet of Things.

Patrick advises multinational organisations on data protection and privacy issues and has in-depth knowledge of regulatory developments both in Belgium, EU Member States, and on a pan-European level.