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Data protection

EU: Internet search engine is responsible for the processing of personal data published by third parties

- In its **judgement** from 13 May, the **Court of Justice of the European Union (CJEU)** ruled that an **operator of Internet search engine is responsible** for the processing it carries out of **personal data** appearing on web **pages published by third parties**.
- The case was originally lodged with the **Spanish Data Protection Authority (AEPD)** by a Spanish national who filed a complaint against a daily newspaper publisher and against Google over the display of links to articles by *La Vanguardia* newspaper from 1998 that refer to legal proceedings of the complainant. While the AEPD rejected the complaint against *La Vanguardia*, as the information was lawfully published, the complaint was upheld as regards Google. The AEPD asked Google to remove the data from its search index. As Google opposed AEPD's decision, the Spanish court referred a series of questions to the CJEU.
- According to the **CJEU judgment**, an operator of Internet search engine is to be considered as **data processor** given that the operator retrieves records and organises the data in question. Within the meaning of the EU data protection Directive, the operator of the search engine is also the **controller** given the operator's determination of purposes and means of the data processing.
- As for the territorial scope of the EU Directive, the **Court rejected Google's argument that Google Spain does not process personal data in the context of its activities in Spain**. The Court argued that where data are processed for the purpose of search engine operated by an undertaking which, although has its seats outside the EU, has an establishment in an EU Member State, the processing is carried out in the context of that establishment activities.
- With regards to the extent of responsibility of the operator, the Court stated that in certain circumstances, **the operator is obliged to remove links to third parties pages** that contain information related to a person from the list of results displayed following a search on the basis of that person's name. This also applies to cases when the publication on those pages is lawful.
- The Court argued that in the context of the operator's processing of personal data, the list of results provided by the search engine enables other users to obtain a structured overview of the information related to the person in question. This information potentially concerns private aspects of this person's life that would be difficult to interconnect without the search engine. According to the Court, the **interference with the person's rights cannot be justified by economic interest**.
- As for the **interest of Internet users to have access to the information** in question, the Court argued that a **balance needs to be struck** between that interest and the fundamental rights of the data subject. The Court noted that the interest varies especially with regard to the role played by the data subject in public life.
- The **data subject could request that links to web pages be removed from results displays** on the grounds that he wishes the information appearing to be forgotten after a certain time. The Court reasoned that **inclusion of links may become incompatible with the Directive** where, having regard

to the circumstances of the case, the data in question appear to be inadequate, irrelevant or excessive in the light of the time that has elapsed.

- The **data subject may address a removal request directly to the search engine operator.**

EU: Reactions to the 'Google case' judgement

- The **UK's Information Commissioner's Office** welcomed the extent to which the judgment upholds the data protection rights of individuals and confirms the powers of data protection authorities to enforce them. **CNIL**, the French data protection watchdog, analysed the judgment underlining that Internet users may request, under certain conditions, the removal of links to information affecting their privacy.
- **Eco**, the association of the German Internet industry welcomed the judgment stating that, for the first time, there is a clarification with regard to the location of accountability. But, the association said that the role given to search engines in ensuring personal rights is fundamentally wrong, as the judgment assumes that search engines would assume the future role of a kind of **censorship authority**.
- **Jens-Henrik Jeppesen at CDT** said that the ruling of the CJEU lays the **ground to individual privacy rights to override Internet users' right to free expression** and access to public information. Jeppesen noted that the ruling seems a 180-degree turnaround from the Court's Advocate General's opinion from June 2013 in which it was argued that an overly broad right to be forgotten could be detrimental to free expression and access to information.
- **MEP Hannes Swoboda**, the Chair of Parliament's S&D group stated that the Court's decision demonstrates the spirit of European data handling which gives power to the user, not the company.

EU: Upcoming Justice Council raises expectations

- In the context of the ongoing negotiations on the proposed data protection Regulation, the **Greek Presidency** of the EU has recently submitted **proposals on the jurisdiction and powers of national data protection watchdogs**, together with a new **compromise legal text on the transfer of personal data to non EU-countries**. Even though major points of contention remain, the Presidency reiterated its intention to **broker a partial agreement** at a meeting of the **EU Justice Council on 5-6 June**.
- Under the current data protection framework, **personal data transfers to non EU-countries** are generally subject to an **adequacy decision** by the European Commission, which aims to ensure that the third country's data protection rules are comparable to those of the EU. While the proposed Regulation maintains the system, a number of Member States, notably the **UK**, have questioned **whether retaining the mechanism is feasible** given the context of cloud computing. **France, Luxembourg and Austria** support retaining the adequacy mechanism in the new Regulation. **Germany** has proposed that the Regulation should create a legal framework for **Safe Harbour-like arrangements**.
- As for the **one-stop-shop mechanism**, the main outstanding issue relates to deciding which country's supervisor will become the leading authority on any given data protection case.

Comment

An endorsement of the proposed compromises by a majority of EU countries would pave the way for the start of negotiations between the Member States and the European Parliament on the final text of the Regulation.