



PURPOSE: For information
CONCERNING: Data protection - Amendments
AUTHOR: Annabel Seebohm- CPME Secretariat

CPME NUMBER: CPME 2012/160
DATE: 30 October 2012
CONFIDENTIAL

CPME amendments to the
Proposal for a Regulation of the European Parliament and the Council on the protection of
individuals with regard to the processing of personal data and on the free movement of such data
(General Data Protection Regulation)



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Amendment 1

Recital 53

Proposal of the Commission	Amendment
<p>(53) Any person should have the right to have personal data concerning them rectified and a 'right to be forgotten' where the retention of such data is not in compliance with this Regulation. In particular, data subjects should have the right that their personal data are erased and no longer processed, where the data are no longer necessary in relation to the purposes for which the data are collected or otherwise processed, where data subjects have withdrawn their consent for processing or where they object to the processing of personal data concerning them or where the processing of their personal data otherwise does not comply with this Regulation. This right is particularly relevant, when the data subject has given their consent as a child, when not being fully aware of the risks involved by the processing, and later wants to remove such personal data especially on the Internet. However, the further retention of the data should be allowed where it is necessary for historical, statistical and scientific research purposes, for reasons of public interest in the area of public health, for exercising the right of freedom of expression, when required by law or where there is a reason to restrict the processing of the data instead of erasing them.</p>	<p>(53) Any person should have the right to have personal data concerning them rectified and a 'right to be forgotten' where the retention of such data is not in compliance with this Regulation. In particular, data subjects should have the right that their personal data are erased and no longer processed, where the data are no longer necessary in relation to the purposes for which the data are collected or otherwise processed, where data subjects have withdrawn their consent for processing or where they object to the processing of personal data concerning them or where the processing of their personal data otherwise does not comply with this Regulation. This right is particularly relevant, when the data subject has given their consent as a child, when not being fully aware of the risks involved by the processing, and later wants to remove such personal data especially on the Internet. However, the further retention of the data should be allowed where it is necessary for historical, statistical and scientific research purposes, for health purposes, for exercising the right of freedom of expression, when required by law or where there is a reason to restrict the processing of the data instead of erasing them.</p>

Justification

In the interest of legal certainty and while recognising the limits stipulated by law, the exceptions for the erasure of data by the controller (also in the light of the recital (59); Article 17.3.(b); Article 17.3(d); Article 17.4(b) and Article 81) should apply to health care data processed in a patient-doctor relationship.



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Amendment 2

Article 17 – Right to be forgotten and to erasure

Proposal of the Commission	Amendment
<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 <i>of public interest in the area of public health in accordance with Article 81;</i>(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>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 <i>in accordance with Article 81;</i>(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.

Justification

In the interest of legal certainty and while recognising the limits stipulated by law, the exceptions for the erasure of data by the controller (also in the light of the recitals (53) and (59); Article 17.3(d); Article 17.4(b) and Article 81) should apply to health care data processed in a patient-doctor relationship



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Written question to the European Commission

Subject: Revision of the Data protection Directive

The European Commission published on 25 January 2012 its proposal for a comprehensive Regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

The proposed Regulation is horizontal and covers very diverse areas and sectors for which data may be processed. This includes health data.

1. As regard the data protection impact assessment (Art. 33) and the data protection officer (Art. 35), how does the Commission foresee the economic burden for small and medium sized healthcare entities to comply with the requirements of Art. 33 and Art. 35?
How will the Commission approach this specific issue while adopting delegated acts?
2. Does Art. 34. Para. 2 (prior consultation) applies in a third country context only?
3. Art. 7(4) states that “consent shall not provide a legal basis for the processing when there is a significant imbalance between the data subject and the controller”. This might have an impact on the patient-doctor relationship.
How does the Commission understand the concept of “significant imbalance”?