MARTINE REICHERTS
MEMBER OF THE EUROPEAN COMMISSION

31 OCT. 2014

Brussels,
*Ares(2014)*3622856

Dear Lady Prashar,

Thank you for your letter of 29 July 2014 and the enclosed copy of the House of Lords' European Union Committee report on the "right to be forgotten". I also refer to your meeting with my services during your visit to Brussels on 4/9/2014 and the detailed explanations on the subject matter provided during that meeting.

I take note of all the work done by the Committee you chair and the concerns expressed in the report. Allow me to address those concerns.

In its judgment of 13 May 2014[1]*, the Court of Justice of the European Union ruled that individuals have the right to ask companies operating search engines to remove links with personal information about them – under certain conditions. This applies when information is inaccurate, inadequate, irrelevant, outdated or excessive for the purposes of data processing. The Court explicitly stated that the right to be forgotten is not absolute, but that it will always need to be balanced against other fundamental rights, such as the freedom of expression and the freedom of the media – which, by the way, are not absolute rights either.*

This ruling therefore does not give the all-clear for people or organisations to have content removed from the web simply because they find it inconvenient. The Court calls for a balance between the legitimate interests of internet users and individual's fundamental rights which must be found in each individual case.

As a consequence, I am afraid I am unable to agree with your findings on the Commission's understanding of Article 12 of the Directive 95/46/EC and Article 17 of the Proposal for a General Data Protection Regulation (GDPR). I also fail to see any incoherence between the Commission's data protection reform proposals and the Commission's position expressed in the observations submitted to the Court.

---

1 C-131/12 – Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González; ECLI:EU:C:2014:317.

Rt Hon Baroness Prashar CBE
Chairman of the European Union Sub-Committee on Home Affairs, Health and Education
House of Lords
London
SW1A 0PW

The judgment limits the "right to be forgotten" by recognising that the interest of the general public in having access to the information can override the data subject's right to the data no longer being available in some cases. Article 17 of GDPR does not defy this limitation. Therefore, the judgment does not call for amending the proposed Article 17. It would also be unwise to try to codify the judgment in the reform. The judgment is tied to a very specific set of facts. It relates to a very specific type of data processing. We should allow the case law to evolve rather than try to pin it down – in an inevitably heavy-handed manner – with a few words in the Regulation.

I respectfully disagree with the Committee's finding that the "right to be forgotten" is "misguided in principle and unworkable in practice", or "left the law in an impossible situation". The removal of such links is technically possible, as demonstrated by Google themselves, since they have started complying with the requests. Essentially, nothing changes for the way the search engines works as they already filter out some links from search results. For example, each day Google handles around one million take-down request for copyright violations.

The case by case assessment of citizens' requests performed by search engines is to be supervised by national data protection authorities, and national courts will equally have a final say on the matter. As a matter of fact, the European data protection supervisory authorities, coming together in the framework of the so-called "Article 29 Working Party", have agreed on a common 'tool-box' to ensure a coordinated approach to the handling of complaints resulting from search engines' refusals to "de-list" complainants from their results. In particular, they are working on guidelines to ensure the consistent and uniform implementation of the ruling throughout the Union.

I also consider the arguments by the Court compelling on finding that search engines operators must be regarded as controllers, in line with the current law (Directive 95/46/EC): the Court considered that a search engine operator by exploring the internet automatically, constantly and systematically in search of the information which is published there, "collects" such data which it subsequently "retrieves", "records" and "organizes" within the framework of its indexing programs, "stores" on its servers and, as the case may be, "discloses" and "makes available" to its users in the form of lists of search results. That is the reason why the Court considered the operator of a search engine as a personal data controller – like any other controller. Moreover the effect of the interference with rights of the data subject is heightened on account of the important role played by the internet and search engines in modern society, which render the information contained in a list of results ubiquitous.

Finally, I would like to stress the necessity of the "right to be forgotten" and other new rights envisaged in the GDPR for Digital Age. Currently, the trust of European citizens in digital services is low. It is precisely because global access to detailed personal information has become part of the way of life that we therefore need to put our citizens in control of their personal data. We should not be afraid of empowering our citizens. On the other hand, companies could reap the benefits of increased trust of users of their services.

Some search engines such as Google and other affected companies complain loudly. But they should remember this: processing personal data brings huge economic benefits to them. It also brings responsibility. These are two sides of the same coin, one cannot have one without the other.

The right to request the erasure of personal data already exists in the EU Data Protection Directive from 1995. The Regulation proposed by the Commission aims to strengthen this right and clarify it for the digital age. It seeks a fair balance of rights: it empowers citizens to manage their personal data while explicitly protecting the freedom of expression and of the media.

We need a strong, modern data protection framework for data protection in the Union, and we need it soon. Negotiations on the data protection reform have been ongoing for more than two and a half years. They have made good progress. But there is more work to be done. Heads of State and Government have committed themselves to a swift conclusion of negotiations. At the European Council at the end of June, they affirmed the importance of adopting "a strong EU General Data Protection framework by 2015".