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Judgment of the Court in Case C-129/21 | Proximus (Public electronic directories)

The controller of personal data is required to take reasonable steps to inform internet search engine providers of a request for erasure by the data subject

The controller of personal data must, by means of appropriate technical and organisational measures, inform the other controllers that have provided those data to it or that have received such data from it of the withdrawal of the consent of the data subject. Where various controllers rely on the single consent of the data subject, it is sufficient that the data subject contacts any one of the controllers for the purpose of withdrawing his or her consent

Proximus, a provider of telecommunications services in Belgium, also publishes telephone directories and directory enquiry services. Those directories contain the name, address and telephone number of the subscribers of the various providers of public telephone services. Those contact details are communicated to Proximus by the operators, except where the subscriber has expressed the wish not to be included in the directories. Proximus also supplies the contact details that it receives to another provider of directories.

Telenet, a telephone service operator in Belgium, passes on the contact details of its subscribers to providers of directories, including to Proximus. One of those subscribers asked Proximus not to include his contact details in directories published both by Proximus and by third parties. Proximus changed the status of that subscriber so that his contact details would no longer be made public.

Subsequently, however, Proximus received from Telenet an update of the data of the subscriber concerned, which were not indicated as being confidential. That information was processed automatically by Proximus and was recorded with the result that it was again included in the directories.

In response to the repeated requests of the subscriber for his data not to be included, Proximus stated that it had withdrawn the data concerned from the directories and had contacted Google to have the relevant links to Proximus' website deleted. Proximus also informed that subscriber that it had forwarded his contact details to other providers of directories and that, via the monthly updates, those providers had been informed of the request.

At the same time, the subscriber concerned submitted a complaint to the Belgian Data Protection Authority. The Litigation Chamber of that authority ordered Proximus to take remedial action and to pay a fine of € 20 000 for infringement of several provisions of the General Data Protection Regulation (GDPR).¹

¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ 2016 L 119, p. 1, and corrigendum OJ 2018 L 127, p. 2).

Proximus brought an appeal against that decision before the cour d'appel de Bruxelles (Court of Appeal, Brussels, Belgium), arguing that the consent of the subscriber is not required for the purposes of the publication of his or her personal data in the telephone directories, rather the subscribers must themselves request not to be included in those directories under an 'opt-out' system. In the absence of such a request, the subscriber concerned may in fact be included in those directories.

Taking the opposite view, the Data Protection Authority contends that the Directive on privacy and electronic communications requires the 'consent of subscribers' within the meaning of the GDPR in order for the providers of directories to be able to process and pass on their personal data.²

Given that no specific rules have been drawn up concerning the withdrawal by a subscriber of his or her statement of wishes or of that 'consent', the cour d'appel de Bruxelles (Court of Appeal, Brussels) has referred questions to the Court of Justice for a preliminary ruling.

In its judgment delivered today, the Court confirms that consent by a subscriber who has been duly informed is necessary for the purposes of the publication of his or her personal data in a public directory and extends to **any subsequent processing** of data by third-party undertakings active in the market for publicly available directory enquiry services and directories, provided that such processing pursues the same purpose.

That consent requires a 'freely given, specific, informed and unambiguous' indication of the data subject's wishes in the form of a statement or of 'a clear affirmative action' signifying agreement to the processing of personal data relating to him or her. However, such consent does not require that, on the date on which it is given, the data subject is necessarily aware of the identity of all the providers of directories which will process his or her personal data.

The Court also notes that subscribers **must have the opportunity to have their personal data withdrawn from directories**. It takes the view that the request by a subscriber to have his or her data withdrawn may be regarded as making use of the right to erasure within the meaning of the GDPR.³

Next, the Court confirms that it follows from the general obligations laid down in the GDPR that a controller of personal data such as Proximus must, by means of appropriate technical and organisational measures, inform the other providers of directories that have received such data from it of the withdrawal of the consent of the data subject. Such a controller must also ensure that the telephone service operator that has communicated those personal data to it is informed so that that operator amends the list of personal data that it automatically forwards to that provider of directories. Where, as in the present case, various controllers rely on the single consent of the data subject, it is sufficient, in order for that person to withdraw such consent, that he or she contacts any one of the controllers.

Lastly, the Court holds that a controller such as Proximus is required, under the GDPR, to ensure that **reasonable steps** are taken **to inform search engine providers** of the request addressed to it by the subscriber of a telephone service operator for erasure of his or her personal data.

² Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ 2002 L 201, p. 37), as amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 (OJ 2009 L 337, p. 11).

³ Article 17 of the GDPR.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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