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*Committee on Civil Liberties, Justice and Home Affairs*

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**2012/0011(COD)**

17.12.2012

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## **DRAFT REPORT**

on the proposal for a regulation of the European Parliament and of the Council on the protection of individual with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) (COM(2012)0011 – C7-0025/2012 – 2012/0011(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Jan Philipp Albrecht

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council on the protection of individual with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)  
(COM(2012)0011 – C7-0025/2012 – 2012/0011(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0011),
  - having regard to Article 294(2) and Article 16(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0025/2012),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union
  - having regard to the opinions of the European Economic and Social Committee<sup>1</sup> and the Committee of the Regions<sup>2</sup>
  - having regard to Rules 55 of its Rules of Procedure,
  - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the France Senate, the Belgian Chamber of Representatives, the Swedish Riksdag, the Italian Chamber of Ministers and the German Bundesrat, asserting that the draft legislative act does not comply with the principle of subsidiarity,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Legal Affairs, the Committee on Industry, Research and Energy, the Committee on the Internal Market and Consumer Protection and Committee on Employment and Social Affairs (A7-0000/2012),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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<sup>1</sup> OJ C 329, 31.7.2012 p90

<sup>2</sup> XXXX

## Amendment 1

### Proposal for a regulation

#### Recital 4

*Text proposed by the Commission*

(4) The economic and social integration resulting from the functioning of the internal market has led to a substantial increase in cross-border flows. The exchange of data between economic and social, public and private actors across the Union increased. National authorities in the Member States are being called upon by Union law to cooperate and exchange personal data so as to be able to perform their duties or carry out tasks on behalf of an authority in another Member State.

*Amendment*

(4) The economic and social integration resulting from the functioning of the internal market has led to a substantial increase in cross-border flows. The exchange of data between economic and social, public and private actors across the Union increased. National authorities in the Member States are being called upon by Union law to cooperate and exchange personal data so as to be able to perform their duties or carry out tasks on behalf of an authority in another Member State.  
***Member States have a positive obligation under the European Convention for the protection of Human Rights and Fundamental Freedoms (ECHR) to ensure that such data flows are appropriately regulated.***

Or. en

#### *Justification*

*Fundamental rights safeguard clause to ensure that national levels of data protection and other fundamental rights are not undermined when applying this Regulation. See related Article 85a.*

## Amendment 2

### Proposal for a regulation

#### Recital 5

*Text proposed by the Commission*

(5) Rapid technological developments and globalisation have brought new challenges for the protection of personal data. The

*Amendment*

(5) Rapid technological developments and globalisation have brought new challenges for the protection of personal data. The

scale of data sharing and collecting has increased spectacularly. Technology allows both private companies and public authorities to make use of personal data on an unprecedented scale in order to pursue their activities. Individuals increasingly make personal information available publicly and globally. Technology has transformed both the economy and social life, and requires to further facilitate the free flow of data within the Union and the transfer to third countries and international organisations, while ensuring a high level of the protection of personal data.

scale of data sharing and **collection** has increased spectacularly. Technology allows both private companies and public authorities to make use of personal data on an unprecedented scale in order to pursue their activities. Individuals increasingly make personal information available publicly and globally. Technology has transformed both the economy and social life, and requires **improved legal safeguards which will** facilitate the free flow of data within the Union and the transfer to third countries and international organisations, ensuring a high level of the protection of personal data.

Or. en

### Amendment 3

#### Proposal for a regulation Recital 6

##### *Text proposed by the Commission*

(6) These developments require building a strong and more coherent data protection framework in the Union, backed by strong enforcement, given the importance to create the trust that will allow the digital economy to develop across the internal market. Individuals should have control of their own personal data **and** legal and practical certainty for individuals, economic operators and public authorities should be reinforced.

##### *Amendment*

(6) These developments require building a strong and more coherent data protection framework in the Union, backed by strong enforcement, given the importance to create the trust that will allow the digital economy to develop across the internal market. Individuals should have control of their own personal data. **Legal** and practical certainty for individuals, economic operators and public authorities should be reinforced.

Or. en

## Amendment 4

### Proposal for a regulation Recital 7

#### *Text proposed by the Commission*

(7) The objectives and principles of Directive 95/46/EC remain sound, but it has not prevented fragmentation in the way data protection is implemented across the Union, legal uncertainty and a widespread public perception that there are significant risks for the protection of individuals associated notably with online activity. Differences in the level of protection of the rights and freedoms of individuals, notably to the right to the protection of personal data, with regard to the processing of personal data afforded in the Member States may prevent the free flow of personal data throughout the Union. These differences may therefore constitute an obstacle to the pursuit of economic activities at the level of the Union, distort competition and impede authorities in the discharge of their responsibilities under Union law. This difference in levels of protection is due to the existence of differences in the implementation and application of Directive 95/46/EC.

#### *Amendment*

(7) The objectives and principles of Directive 95/46/EC remain sound, but ***this*** has not prevented fragmentation in the way data protection is implemented across the Union, legal uncertainty and a widespread public perception that there are significant risks for the protection of individuals associated notably with online activity. Differences in the level of protection of the rights and freedoms of individuals, notably to the right to the protection of personal data, with regard to the processing of personal data afforded in the Member States may prevent the free flow of personal data throughout the Union ***and inevitably lead to breaches of the fundamental rights to privacy and data protection.*** These differences may therefore constitute an obstacle to the pursuit of economic activities at the level of the Union, distort competition and impede authorities in the discharge of their responsibilities under Union law. This difference in levels of protection is due to the existence of differences in the implementation and application of Directive 95/46/EC.

Or. en

#### *Justification*

*Inconsistent application of data protection legislation inevitably leads to restrictions on the fundamental rights of citizens.*



## Amendment 5

### Proposal for a regulation Recital 9

#### *Text proposed by the Commission*

(9) Effective protection of personal data throughout the Union requires strengthening and detailing the rights of data subjects and the obligations of those who process and determine the processing of personal data, but also equivalent powers for monitoring and ensuring compliance with the rules for the protection of personal data and equivalent sanctions for offenders in the Member States.

#### *Amendment*

(9) Effective protection of personal data throughout the Union requires strengthening and detailing the rights of data subjects and the obligations of those who process and determine the processing of personal data, but also equivalent powers ***and technical and operational capacity*** for monitoring and ensuring compliance with the rules for the protection of personal data and equivalent sanctions for offenders in the Member States.

Or. en

## Amendment 6

### Proposal for a regulation Recital 11

#### *Text proposed by the Commission*

(11) In order to ensure a consistent level of protection for individuals throughout the Union and to prevent divergences hampering the free movement of data within the internal market, a Regulation is necessary to provide legal certainty and transparency for economic operators, including micro, small and medium-sized enterprises, and to provide individuals in all Member States with the same level of legally enforceable rights and obligations and responsibilities for controllers and processors, to ensure consistent monitoring of the processing of personal data, and equivalent sanctions in all Member States as well as effective co-operation by the supervisory authorities of different

#### *Amendment*

(11) In order to ensure a consistent level of protection for individuals throughout the Union and to prevent divergences hampering the free movement of data within the internal market, a Regulation is necessary to provide legal certainty and transparency for economic operators, including micro, small and medium-sized enterprises, and to provide individuals in all Member States with the same level of legally enforceable rights and obligations and responsibilities for controllers and processors, to ensure consistent monitoring of the processing of personal data, and equivalent sanctions in all Member States as well as effective co-operation by the supervisory authorities of different

Member States. To take account of the specific situation of micro, small and medium-sized enterprises, this Regulation includes a number of derogations. In addition, the Union institutions and bodies, Member States and their supervisory authorities are encouraged to take account of the specific needs of micro, small and medium-sized enterprises in the application of this Regulation. The notion of micro, small and medium-sized enterprises should draw upon Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

Member States. ***Where demonstrably necessary and without undermining either the protection of personal data or single market principles***, to take account of the specific situation of micro, small and medium-sized enterprises, this Regulation includes a number of derogations. In addition, the Union institutions and bodies, Member States and their supervisory authorities are encouraged to take account of the specific needs of micro, small and medium-sized enterprises in the application of this Regulation. The notion of micro, small and medium-sized enterprises should draw upon Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

Or. en

## Amendment 7

### Proposal for a regulation

#### Recital 14

##### *Text proposed by the Commission*

(14) This Regulation does not address issues of protection of fundamental rights and freedoms or the free flow of data related to activities which fall outside the scope of Union law, nor does it cover the processing of personal data by the Union institutions, bodies, offices and agencies, which are subject to Regulation (EC) No 45/2001, or the processing of personal data by the Member States when carrying out activities in relation to the common foreign and security policy of the Union.

##### *Amendment*

(14) This Regulation does not address issues of protection of fundamental rights and freedoms or the free flow of data related to activities which fall outside the scope of Union law, nor does it cover the processing of personal data by the Union institutions, bodies, offices and agencies, which are subject to Regulation (EC) No 45/2001 *of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data*, or the processing of personal data by the Member States when carrying out activities in relation to the common foreign and security policy of the Union. ***In order to***

***ensure a coherent data protection framework, Regulation (EC) No 45/2001 should be brought into line with this Regulation.***

Or. en

*Justification* This amendment seeks to ensure consistency between the Regulation and the laws regulating EU institutions, bodies and agencies, such as Regulation (EC) No 45/2001 but equally of all the EU agencies that currently have their own data protection regulations, leading to a patchwork of rules that makes it very hard for the data subject to exercise its rights. See related Articles 2(b), 89a

## **Amendment 8**

### **Proposal for a regulation**

#### **Recital 15**

##### *Text proposed by the Commission*

(15) This Regulation should not apply to processing of personal data by a natural person, which are exclusively personal or domestic, such as correspondence and the holding of addresses, and ***without any gainful interest and thus*** without any connection with a professional or commercial activity. The exemption should also not apply to controllers or processors which provide the means for processing personal data for such personal or domestic activities.

##### *Amendment*

(15) This Regulation should not apply to processing of personal data by a natural person, which is exclusively personal or domestic, such as correspondence, the holding of addresses ***or the personal use of certain electronic services. The exemption should not apply where the processing of personal data is done in pursuit of a professional or commercial objective. The nature of the personal data processed and whether it is available to a definite or indefinite number of persons shall be taken into account in determining whether the processing falls within the exemption.*** The exemption should also not apply to controllers or processors which provide the means for processing personal data for such personal or domestic activities.

Or. en

##### *Justification*

*The processing of personal data by a natural person for private and household purposes can sometimes have a gainful interest (e.g. when selling private belongings to other private*

persons) but still should fall outside the scope of the Regulation as long as there is no connection to a professional or commercial activity. See related Article 2(2)d.

## Amendment 9

### Proposal for a regulation

#### Recital 16

##### *Text proposed by the Commission*

(16) The protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data, is subject of a specific legal instrument at Union level. Therefore, this Regulation should not apply to the processing activities for those purposes. However, data processed by public authorities under this Regulation when used for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties should be governed by the more specific legal instrument at Union level (Directive XX/YYYY).

##### *Amendment*

(16) The protection of individuals with regard to the processing of personal data by competent **public** authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data, is subject of a specific legal instrument at Union level. Therefore, this Regulation should not apply to the processing activities for those purposes. However, data processed by public authorities under this Regulation when used for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties should be governed by the more specific legal instrument at Union level (Directive XX/YYYY).

Or. en

##### *Justification*

*The Regulation specifies that the exclusion from the scope of the Regulation only covers competent public authorities for law enforcement activities (not private entities). See related amendment to Articles 2(2)(e), 21.*

## Amendment 10

### Proposal for a regulation

#### Recital 17

##### *Text proposed by the Commission*

(17) This Regulation should be without

##### *Amendment*

(17) ***The limitations on liability under the***

prejudice to the application of Directive 2000/31/EC, in particular of the liability rules of intermediary service providers in Articles 12 to 15 of that Directive.

*Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on Electronic Commerce) are horizontal in nature and therefore apply to relevant activities of all information society service providers. This Regulation establishes the rules for the processing of personal data while the Directive 2000/31/EC sets out the conditions by which an information service provider is liable for third party infringements of the law. In the interests of legal certainty, the clear and distinct roles of the two instruments need to be consistently respected.* This Regulation should be without prejudice to the application of Directive 2000/31/EC, in particular of the liability rules of intermediary service providers in Articles 12 to 15 of that Directive.

Or. en

#### *Justification*

*This is a clarification to ensure that intermediaries are only held liable for activities over which they have control.*

#### **Amendment 11**

##### **Proposal for a regulation**

##### **Recital 18**

###### *Text proposed by the Commission*

(18) This Regulation allows the principle of public access to official documents to be taken into account when applying the provisions set out in this Regulation.

###### *Amendment*

(18) This Regulation allows the principle of public access to official documents to be taken into account when applying the provisions set out in this Regulation.  
***Personal data in documents held by a public authority or public body may be disclosed by that authority or body in accordance with Union or Member State***

*law regarding public access to official documents, if it is necessary for reconciling the right to data protection with the right of public access to official documents and constitutes a fair balance of the various interests involved.*

Or. en

*Justification*

*This amendment seeks to clarify the relationship between data protection and public access to official documents.*

**Amendment 12**

**Proposal for a regulation**

**Recital 20**

*Text proposed by the Commission*

(20) In order to ensure that individuals are not deprived of the protection to which they are entitled under this Regulation, the processing of personal data of data subjects residing in the Union by a controller not established in the Union should be subject to this Regulation where the processing activities are related to the offering of goods or services to such data subjects, or to the monitoring *of the behaviour* of such data subjects.

*Amendment*

(20) In order to ensure that individuals are not deprived of the protection to which they are entitled under this Regulation, the processing of personal data of data subjects residing in the Union by a controller not established in the Union should be subject to this Regulation where the processing activities are related to the offering of goods or services, *including services offered free of charge*, to such data subjects, or to the monitoring of such data subjects.

Or. en

*Justification*

*The Regulation should also be applicable to a controller not established in the Union when processing activities are aimed at the offering of goods or services to data subjects in the Union, irrespective of whether payment for these goods or services is required, or the monitoring of such data subjects. See related amendment to Article 3(2)(a).*

## Amendment 13

### Proposal for a regulation Recital 21

#### *Text proposed by the Commission*

(21) In order to determine whether a processing activity can be considered to ‘monitor ***the behaviour***’ of data subjects, it should be ascertained whether individuals are tracked ***on the internet with*** data processing techniques which consist of applying a ‘profile’ ***to an individual***, particularly in order to take decisions concerning her or him or for analysing or predicting her or his personal preferences, behaviours and attitudes.

#### *Amendment*

(21) In order to determine whether a processing activity can be considered to ‘monitor’ data subjects, it should be ascertained whether individuals are tracked on the internet ***or through other means, or if other data about them is collected, including from public registers and announcements in the Union that are accessible from outside of the Union, including with the intention to use, or potential of subsequent use of*** data processing techniques which consist of applying a ‘profile’, particularly in order to take decisions concerning her or him or for analysing or predicting her or his personal preferences, behaviours and attitudes.

Or. en

#### *Justification*

*The Regulation should cover not only the monitoring of the behaviour of Union residents by data controllers outside of the Union, such as through internet tracking, but all collection and processing of personal data about Union residents. The amendment clarifies what "monitoring" means. See related amendment to Article 3(2)(b).*

## Amendment 14

### Proposal for a regulation Recital 23

#### *Text proposed by the Commission*

(23) The principles of protection should apply to any information concerning an identified or identifiable person. To determine whether a person is identifiable, account should be taken of all the means likely reasonably to be used either by the controller or by any other person to

#### *Amendment*

(23) The principles of protection should apply to any information concerning an identified or identifiable person. To determine whether a person is identifiable, account should be taken of all the means likely reasonably to be used either by the controller or by any other person to

identify the individual. The principles of data protection should not apply to data rendered anonymous in such a way that the data subject is no longer identifiable.

identify the individual. ***This Regulation should not apply to anonymous data, meaning any data that can not be related, directly or indirectly, alone or in combination with associated data, to a natural person or where establishing such a relation would require a disproportionate amount of time, expense, and effort, taking into account the state of the art in technology at the time of the processing and the possibilities for development during the period for which the data will be processed.***

Or. en

#### *Justification*

*The concept of personal data is further clarified with objective criteria for anonymous data, based on Council of Europe Recommendation 2006(4). See related amendment to Article 4(1), Recital 24.*

#### **Amendment 15**

##### **Proposal for a regulation Recital 24**

###### *Text proposed by the Commission*

(24) When using online services, individuals may be associated with online identifiers provided by their devices, applications, tools and protocols, such as Internet Protocol addresses or cookie identifiers. ***This may leave traces which, combined with unique identifiers and other information received by the servers, may be used to create profiles of the individuals and identify them. It follows that identification numbers, location data, online identifiers or other specific factors as such need not necessarily be considered as personal data in all circumstances.***

###### *Amendment*

(24) When using online services, individuals may be associated with ***one or more*** online identifiers provided by their devices, applications, tools and protocols, such as Internet Protocol addresses, cookie identifiers ***and other unique identifiers.*** ***Since such identifiers leave traces and can be used to single out natural persons, this Regulation should be applicable to processing involving such data, unless those identifiers demonstrably do no relate to natural persons, such as for example the IP addresses used by companies, which cannot be considered as 'personal data' as defined in this Regulation.***



*Justification*

*The concept of personal data is further clarified with objective criteria. Identifiers that have a close relation to a natural person must be regarded as personal data. See related amendment to Article 4(1), Recital 23.*

**Amendment 16****Proposal for a regulation****Recital 29***Text proposed by the Commission*

(29) Children deserve specific protection of their personal data, as they may be less aware of risks, consequences, safeguards and their rights in relation to the processing of personal data. To determine when an individual is a child, this Regulation should take over the definition laid down by the UN Convention on the Rights of the Child.

*Amendment*

(29) Children deserve specific protection of their personal data, as they may be less aware of risks, consequences, safeguards and their rights in relation to the processing of personal data. To determine when an individual is a child, this Regulation should take over the definition laid down by the UN Convention on the Rights of the Child. ***No reference to child protection in this Regulation should be understood as an implicit instruction that protection of the personal data of adults should be treated with less care than would have been the case if the reference was not included.***

*Justification*

*Children deserve special protection, but inversely this does not imply adults deserve less protection. See related Articles 8, 17(1).*

**Amendment 17****Proposal for a regulation****Recital 31***Text proposed by the Commission*

(31) In order for processing to be lawful,

*Amendment*

(31) In order for processing to be lawful,

personal data should be processed on the basis of the consent of the person concerned or some other legitimate basis, laid down by law, either in this Regulation or in other Union or Member State law as referred to in this Regulation.

personal data should be processed on the basis of the *specific, informed and explicit* consent of the person concerned or some other legitimate basis, laid down by law, either in this Regulation or in other Union or Member State law as referred to in this Regulation.

Or. en

## Amendment 18

### Proposal for a regulation Recital 32

#### *Text proposed by the Commission*

(32) Where processing is based on the data subject's consent, the controller should have the burden of proving that the data subject has given the consent to the processing operation. In particular in the context of a written declaration on another matter, safeguards should ensure that the data subject is aware that and to what extent consent is given.

#### *Amendment*

(32) Where processing is based on the data subject's consent, the controller should have the burden of proving that the data subject has given the consent to the processing operation. In particular in the context of a written declaration on another matter, safeguards should ensure that the data subject is aware that and to what extent consent is given. ***To comply with the principle of data minimisation, the burden of proof should not be understood as requiring the positive identification of data subjects unless necessary.***

Or. en

## Amendment 19

### Proposal for a regulation Recital 33

#### *Text proposed by the Commission*

(33) In order to ensure free consent, it should be clarified that consent does not provide a valid legal ground where the individual has no genuine and free choice

#### *Amendment*

(33) In order to ensure free consent, it should be clarified that consent does not provide a valid legal ground where the individual has no genuine and free choice

and is subsequently not able to refuse or withdraw consent without detriment.

and is subsequently not able to refuse or withdraw consent without detriment. ***The use of default options which the data subject is required to modify to object to the processing, such as pre-ticked boxes, does not express free consent.***

Or. en

## Amendment 20

### Proposal for a regulation Recital 34

#### *Text proposed by the Commission*

(34) Consent should not provide a valid legal ground for the processing of personal data, where there is a clear imbalance between the data subject and the controller. This is especially the case where the data subject is in a situation of dependence from the controller, among others, where personal data are processed by the employer of employees' personal data in the employment context. Where the controller is a public authority, there would be an imbalance only in the specific data processing operations where the public authority can impose an obligation by virtue of its relevant public powers and the consent cannot be deemed as freely given, taking into account the interest of the data subject.

#### *Amendment*

(34) Consent should not provide a valid legal ground for the processing of personal data, where there is a clear imbalance between the data subject and the controller. This is especially the case where the data subject is in a situation of dependence from the controller, among others, where personal data are processed by the employer of employees' personal data in the employment context, ***where the processor or controller is in a dominant market position with respect to the products or services offered to the data subject or where a unilateral and non-essential change in terms of service gives a data subject no option other than to accept the change or abandon an online resource in which they have invested significant time.*** Where the controller is a public authority, there would be an imbalance only in the specific data processing operations where the public authority can impose an obligation by virtue of its relevant public powers and the consent cannot be deemed as freely given, taking into account the interest of the data subject.

Or. en

## *Justification*

*The concept of "significant imbalance" is further clarified to further include situations of market dominance or customer lock-in.*

### **Amendment 21**

#### **Proposal for a regulation**

##### **Recital 36**

###### *Text proposed by the Commission*

(36) Where processing is carried out in compliance with a legal obligation to which the controller is subject *or where processing is necessary for the performance of a task carried out in the public interest* or in the exercise of an official authority, the processing should have a legal basis in Union law, or in a Member State law which meets the requirements of the Charter of Fundamental Rights of the European Union for any limitation of the rights and freedoms. It is also for Union or national law to determine whether the controller performing a task carried out *in the public interest or* in the exercise of official authority should be a public administration or another natural or legal person governed by public law, or by private law such as a professional association.

###### *Amendment*

(36) Where processing is carried out in compliance with a legal obligation to which the controller is subject or in the exercise of an official authority, the processing should have a legal basis in Union law, or in a Member State law which meets the requirements of the Charter of Fundamental Rights of the European Union for any limitation of the rights and freedoms. It is also for Union or national law to determine whether the controller performing a task carried out in the exercise of official authority should be a public administration or another natural or legal person governed by public law, or by private law such as a professional association.

Or. en

### **Amendment 22**

#### **Proposal for a regulation**

##### **Recital 38**

###### *Text proposed by the Commission*

(38) The legitimate interests of a controller may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the

###### *Amendment*

(38) *In exceptional circumstances*, the legitimate interests of a controller may provide a legal basis for processing, provided that the interests or the

data subject are not overriding. This would need careful assessment in particular where the data subject is a child, given that children deserve specific protection. The data subject should have the right to object the processing, *on grounds relating to their particular situation and* free of charge. To ensure transparency, the controller should be obliged to explicitly inform the data subject on the legitimate interests pursued and on the right to object, and also be obliged to document these legitimate interests. Given that it is for the legislator to provide by law the legal basis for public authorities to process data, this legal ground should not apply for the processing by public authorities in the performance of their tasks.

fundamental rights and freedoms of the data subject are not overriding. This would need careful assessment in particular where the data subject is a child, given that children deserve specific protection. The data subject should have the right to object the processing free of charge. To ensure transparency, the controller should be obliged to explicitly inform the data subject on the legitimate interests pursued and on the right to object, and also be obliged to document these legitimate interests. Given that it is for the legislator to provide by law the legal basis for public authorities to process data, this legal ground should not apply for the processing by public authorities in the performance of their tasks.

Or. en

## Amendment 23

### Proposal for a regulation

#### Recital 39

##### *Text proposed by the Commission*

(39) The processing of data to the extent strictly necessary for the purposes of ensuring network and information security, i.e. the ability of a network or an information system to resist, *at a given level of confidence*, accidental events or unlawful or malicious actions that compromise the availability, authenticity, integrity and confidentiality of stored or transmitted data, and the security of the related services offered by, or accessible via, these networks and systems, by public authorities, Computer Emergency Response Teams – CERTs, Computer Security Incident Response Teams – CSIRTs, providers of electronic communications networks and services and by providers of security technologies and

##### *Amendment*

(39) The processing of data to the extent strictly necessary for the purposes of ensuring network and information security, i.e. the ability of a network or an information system to resist accidental events or malicious actions that compromise the availability, authenticity, integrity and confidentiality of stored or transmitted data, and the security of the related services offered by these networks and systems, by public authorities, Computer Emergency Response Teams – CERTs, Computer Security Incident Response Teams – CSIRTs, providers of electronic communications networks and services and by providers of security technologies and services, *in specific incidents*, constitutes a legitimate interest

services, constitutes a legitimate interest of the concerned data controller. This could, for example, include preventing unauthorised access to electronic communications networks and malicious code distribution and stopping ‘denial of service’ attacks and damage to computer and electronic communication systems.

of the concerned data controller. This could, for example, include preventing unauthorised access to electronic communications networks and malicious code distribution and stopping ‘denial of service’ attacks and damage to computer and electronic communication systems.

***The processing of personal data to restrict abusive access to and use of publicly available network or information systems, such as the blacklisting of Media Access Control (MAC) addresses or electronic mail addresses by the operator of the system, also constitutes a legitimate interest.***

Or. en

## **Amendment 24**

### **Proposal for a regulation Recital 39 a (new)**

*Text proposed by the Commission*

*Amendment*

***(39a) The enforcement of legal claims against a data subject, such as debt collection or civil damages and remedies, constitutes a legitimate interest, provided the legal claim was established prior to the collection and processing of personal data. The same principle also applies to the prevention or limitation of damages through the data subject suffered by the controller, for example to prevent payment default.***

Or. en

## Amendment 25

### Proposal for a regulation Recital 39 b (new)

*Text proposed by the Commission*

*Amendment*

***(39b) The interests and fundamental rights of the data subject override the interest of the data controller where personal data are processed in circumstances where data subjects do not expect further processing, for instance when a data subject enters a search query, composes and sends an electronic mail or uses another electronic private messaging service. Any processing of such data, other than for the purposes of performing the service requested by the data subject, should not be considered in the legitimate interest of the controller.***

Or. en

## Amendment 26

### Proposal for a regulation Recital 41

*Text proposed by the Commission*

*Amendment*

(41) Personal data which are, by their nature, particularly sensitive and vulnerable in relation to fundamental rights or privacy, deserve specific protection. Such data should not be processed, unless the data subject gives his explicit consent. However, derogations from this prohibition should be explicitly provided for in respect of specific needs, in particular where the processing is carried out in the course of legitimate activities by certain associations or foundations the purpose of which is to permit the exercise of fundamental freedoms.

(41) Personal data which are, by their nature, particularly sensitive and vulnerable in relation to fundamental rights or privacy, deserve specific protection. Such data should not be processed, unless the data subject gives his explicit ***and informed*** consent. However, derogations from this prohibition should be explicitly provided for in respect of specific needs, in particular where the processing is carried out in the course of legitimate activities by certain associations or foundations the purpose of which is to permit the exercise of fundamental freedoms ***by the data subjects in question.***

**Amendment 27****Proposal for a regulation****Recital 42***Text proposed by the Commission*

(42) Derogating from the prohibition on processing sensitive categories of data should also be allowed if done by a law, and subject to suitable safeguards, so as to protect personal data and other fundamental rights, where grounds of public interest so justify and in particular for health purposes, including public health and social protection and the management of health-care services, especially in order to ensure the quality and cost-effectiveness of the procedures used for settling claims for benefits and services in the health insurance system, ***or for historical, statistical and scientific research purposes.***

*Amendment*

(42) Derogating from the prohibition on processing sensitive categories of data should also be allowed if done by a law, and subject to suitable safeguards, so as to protect personal data and other fundamental rights, where grounds of public interest so justify and in particular for health purposes, including public health and social protection and the management of health-care services, especially in order to ensure the quality and cost-effectiveness of the procedures used for settling claims for benefits and services in the health insurance system.

Or. en

*Justification*

*Processing of sensitive data for historical, statistical and scientific research purposes is not as urgent or compelling as public health or social protection. Consequently, there is no need to introduce an exception which would put them on the same level as the other listed justifications.*

**Amendment 28****Proposal for a regulation****Recital 45***Text proposed by the Commission*

(45) If the data processed by a controller do not permit the controller to identify a natural person, the data controller should

*Amendment*

(45) If the data processed by a controller do not permit the controller to identify ***or single out*** a natural person, the data



not be obliged to acquire additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation. In case of a request for access, the controller should be entitled to ask the data subject for further information to enable the data controller to locate the personal data which that person seeks.

controller should not be obliged to acquire additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation. In case of a request for access, the controller should be entitled to ask the data subject for further information to enable the data controller to locate the personal data which that person seeks.

Or. en

## **Amendment 29**

### **Proposal for a regulation Recital 45 a (new)**

*Text proposed by the Commission*

*Amendment*

***(45a) The right to the protection of personal data is based on the right of the data subject to exert the control over the personal data that are being processed. To this end the data subject should be granted clear and unambiguous rights to the provision of transparent, clear and easily understandable information regarding the processing of his or her personal data, the right of access, rectification and erasure of their personal data, the right to data portability and the right to object to profiling. Moreover the data subject should have also the right to lodge a complaint with regard to the processing of personal data by a controller or processor with the competent data protection authority and to bring legal proceedings in order to enforce his or her rights as well as the right to compensation and damages resulting of an unlawful processing operation or from an action incompatible with this Regulation. The provisions of this Regulation should strengthen, clarify, guarantee and where appropriate, codify those rights.***

*Justification*

*Introductory summary of the rights of data subjects, similar to the summary Article 5 on principles.*

**Amendment 30**

**Proposal for a regulation**  
**Recital 47**

*Text proposed by the Commission*

(47) Modalities should be provided for facilitating the data subject's exercise of their rights provided by this Regulation, including mechanisms to request, free of charge, in particular access to data, rectification, erasure and to exercise the right to object. The controller should be obliged to respond to requests of the data subject within a fixed deadline and give reasons, in case he **does not** comply with the data subject's request.

*Amendment*

(47) Modalities should be provided for facilitating the data subject's exercise of their rights provided by this Regulation, including mechanisms to **obtain** free of charge, in particular access to data, rectification, erasure and to exercise the right to object. The controller should be obliged to respond to requests of the data subject within a fixed deadline and give reasons, in case he **cannot** comply with the data subject's request.

Or. en

**Amendment 31**

**Proposal for a regulation**  
**Recital 50**

*Text proposed by the Commission*

(50) However, it is not necessary to impose this obligation where the data subject already disposes of this information, or where the recording or disclosure of the data is expressly laid down by law, or where the provision of information to the data subject proves impossible or would involve disproportionate efforts. ***The latter could be particularly the case where processing is for historical, statistical or***

*Amendment*

(50) However, it is not necessary to impose this obligation where the data subject already disposes of this information, or where the recording or disclosure of the data is expressly laid down by law, or where the provision of information to the data subject proves impossible or would involve disproportionate efforts.

*scientific research purposes; in this regard, the number of data subjects, the age of the data, and any compensatory measures adopted may be taken into consideration.*

Or. en

#### *Justification*

*The deleted text may be misunderstood as promoting a lower level of protection for certain kinds of data processing. See related Article 14(5).*

### **Amendment 32**

#### **Proposal for a regulation**

##### **Recital 51**

###### *Text proposed by the Commission*

(51) Any person should have the right of access to data which has been collected concerning them, and to exercise this right easily, in order to be aware and verify the lawfulness of the processing. Every data subject should therefore have the right to know and obtain communication in particular for what purposes the data are processed, for what period, which recipients receive the data, what is the logic of the data that are undergoing the processing and what might be, at least when based on profiling, the consequences of such processing. This right should not adversely affect the rights and freedoms of others, including trade secrets or intellectual property and in particular the copyright protecting the software. However, the result of these considerations should not be that all information is refused to the data subject.

###### *Amendment*

(51) Any person should have the right of access to data which has been collected concerning them, and to exercise this right easily, in order to be aware and verify the lawfulness of the processing. Every data subject should therefore have the right to know and obtain communication in particular for what purposes the data are processed, for what period, which recipients receive the data, what is the logic of the data that are undergoing the processing and what might be, at least when based on profiling, the consequences of such processing. This right should not adversely affect the rights and freedoms of others, including trade secrets or intellectual property, *such as in relation to* the copyright protecting the software. However, the result of these considerations should not be that all information is refused to the data subject.

Or. en

### *Justification*

*Technical clarification that "intellectual property" here relates to the copyright protecting the software used for the processing of personal data, not to intellectual property protection in general, which would be outside the scope of this Regulation. See related Article 15.*

## **Amendment 33**

### **Proposal for a regulation Recital 52**

#### *Text proposed by the Commission*

(52) The controller should use all reasonable measures to verify the **identity of a data subject that requests** access, in particular in the context of online services and online identifiers. A controller should not retain personal data for the unique purpose of being able to react to potential requests.

#### *Amendment*

(52) The controller should use all reasonable measures to verify the **authenticity of a subject access request**, in particular in the context of online services and online identifiers. A controller should not retain personal data for the unique purpose of being able to react to potential requests.

Or. en

### *Justification*

*If pseudonyms are used, which is encouraged by this Regulation, the user only needs to authenticate himself/herself, e.g. by providing proof that he/she is the owner of an account, without providing identity information. See related Articles 10, 11(2) and 15(1).*

## **Amendment 34**

### **Proposal for a regulation Recital 53**

#### *Text proposed by the Commission*

(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

#### *Amendment*

(53) Any person should have the right to have personal data concerning them rectified and a 'right to **erasure and 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.

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. 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.

Or. en

#### *Justification*

*As the rights being accorded to all citizens in this recital are comprehensive, there appears to be little specific value to demand “particular” attention for children. The text proposed by the Commission could have the effect of implying a less than comprehensive protection for adults. Furthermore, there are already special requirements for the validity of consent from children to the processing of their data. In this regard, the deleted text would be a mere duplication. See related Recital 29 and Article 8(1).*

### **Amendment 35**

#### **Proposal for a regulation**

#### **Recital 54**

##### *Text proposed by the Commission*

(54) To strengthen the 'right to be forgotten' in the online environment, the right to erasure should also be extended in such a way that a controller who has made

##### *Amendment*

(54) To strengthen the 'right ***to erasure and*** to be forgotten' in the online environment, the right to erasure should also be extended in such a way that a controller who has

the personal data public should be obliged to *inform third parties which are processing such data that a data subject requests them to erase any links to, or copies or replications of that personal data. To ensure this information, the controller should take all reasonable steps, including technical measures, in relation to data for the publication of which the controller is responsible. In relation to a third party publication of personal data, the controller should be considered responsible for the publication, where the controller has authorised the publication by the third party.*

made the personal data public *without legal justification* should be obliged to *take all necessary steps to have the data erased, but without prejudice to the right of the data subject to claim compensation.*

Or. en

#### *Justification*

*The right to erasure and the right to rectification remain important for data subjects, as more and more information is disclosed which can have a significant impact. However, if a publication of personal data took place based on legal grounds, as referred to in Article 6(1) of this Regulation, a “right to be forgotten” is neither realistic nor legitimate. See related amendments to Articles 17(2) and 17(2a). This does not imply that third parties can further process published personal data if there is no legal ground for them to do so.*

### **Amendment 36**

#### **Proposal for a regulation**

#### **Recital 55**

##### *Text proposed by the Commission*

(55) To further strengthen the control over their own data and their right of access, data subjects should have the right, *where personal data are processed by electronic means and in a structured and commonly used format*, to obtain *a copy of* the data concerning them also in commonly used electronic format. The data subject should also be allowed to transmit those data, which they have provided, from one automated application, such as a social

##### *Amendment*

(55) To further strengthen the control over their own data and their right of access, data subjects should have the right, to obtain *free of charge* the data concerning them also in commonly used, *interoperable, and where possible open source* electronic format. The data subject should also be allowed to transmit those data, which they have provided, from one automated application, such as a social network, into another one. *Providers of*

network, into another one. *This should apply where the data subject provided the data to the automated processing system, based on their consent or in the performance of a contract*

*information society services should not make the transfer of those data mandatory for the provision of their services. Social networks should be encouraged as much as possible to store data in a way which permits efficient data portability for data subjects.*

Or. en

#### *Justification*

*The requirement that the data already has to be processed in a structured and commonly used format for the right to data portability to be exercised can hinder the application of this provision and limit the right of the data subject to portability. Data controllers should be able to export any structured data, even if in a special and uncommon format, into a commonly used format. See related Article 15(2) as amended. The second part clarifies that porting data into a platform should not be a pre-condition for its use, in order to protect consumers.*

### **Amendment 37**

#### **Proposal for a regulation Recital 57**

##### *Text proposed by the Commission*

(57) Where personal data are processed for the purposes of **direct marketing**, the data subject should have the right to object to such processing free of charge and in a manner that can be easily and effectively invoked.

##### *Amendment*

(57) Where personal data are processed **for one or more specific purposes**, the data subject should have the right to object to such processing **in advance**, free of charge and in a manner that can be easily and effectively invoked.

Or. en

#### *Justification*

*There are no acceptable grounds to argue that processing for the purpose of direct marketing should be subject to fewer safeguards than other forms of processing. See related Article 19(2).*

## Amendment 38

### Proposal for a regulation Recital 58

#### *Text proposed by the Commission*

(58) Every natural person should have the right not to be subject to **a** measure **which is** based on profiling by means of automated processing. However, such measure should be allowed when expressly authorised by law, carried out in the course of entering or performance of a contract, or when the data subject has given his consent. In any case, such processing should be subject to suitable safeguards, including specific information of the data subject and the right to obtain human intervention and that such measure should not concern a child.

#### *Amendment*

(58) Every natural person should have the right not to be subject to **profiling** or measures based on profiling by means of automated processing. However, such measure should be allowed when expressly authorised by law, carried out in the course of entering or performance of a contract, or when the data subject has given his consent. In any case, such processing should be subject to suitable safeguards, including specific information of the data subject. **Such measures should not lead to discrimination, concern children, or produce legal or significant effects for the data subject without human intervention.**

Or. en

#### *Justification*

*As is the case with any collection, processing and use of data, a general ban is introduced on profiling as defined in Article 4 and it is only permissible where provided for by law, i.e. either by means of the data subject's consent or a statutory provision. Consent will primarily be an option in the private sector (including contracts), whereas statutory permission will especially but not only be relevant in the public sector. Including the requirement that the data subject must consent to the profiling prevents what often happens in practice, namely that profiles are created without the data subject's knowledge. See related amendments to Articles 4(3b), 14(1)(g), (ga), (gb), 15(1), 20.*

## Amendment 39

### Proposal for a regulation Recital 59

#### *Text proposed by the Commission*

(59) Restrictions on specific principles and on the rights of information, **access**, rectification and erasure or on the right to data portability, the right to object,

#### *Amendment*

(59) Restrictions on specific principles and on the rights of information, rectification and erasure or on the right of **access and** data portability, the right to object,



*measures based on* profiling, as well as on the communication of a personal data breach to a data subject and on certain related obligations of the controllers may be imposed by Union or Member State law, as far as necessary and proportionate in a democratic society to safeguard public security, including the protection of human life especially in response to natural or man made disasters, the prevention, investigation and prosecution of criminal offences or of breaches of ethics for regulated professions, other public interests of the Union or of a Member State, in particular *an important economic or financial interest of the Union or of a Member State*, or the protection of the data subject or the rights and freedoms of others. Those restrictions should be in compliance with requirements set out by the Charter of Fundamental Rights of the European Union and by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

profiling, as well as on the communication of a personal data breach to a data subject and on certain related obligations of the controllers may be imposed by Union or Member State law, as far as necessary and proportionate in a democratic society to safeguard public security, including the protection of human life especially in response to natural or man made disasters, the prevention, investigation and prosecution of criminal offences or of breaches of ethics for regulated professions, other public interests of the Union or of a Member State, in particular the protection of the data subject or the rights and freedoms of others. Those restrictions should be in compliance with requirements set out by the Charter of Fundamental Rights of the European Union and by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Or. en

#### *Justification*

*Consequential amendment based on the merging of the rights to access and to data portability and the clarifications on profiling. See related Articles 15, 18, 20 and 21(2).*

#### **Amendment 40**

##### **Proposal for a regulation**

##### **Recital 60**

###### *Text proposed by the Commission*

(60) Comprehensive responsibility and liability of the controller for any processing of personal data carried out by the controller or on the controller's behalf should be established. In particular, the controller should ensure and be *obliged* to demonstrate the compliance of each

###### *Amendment*

(60) Comprehensive responsibility and liability of the controller for any processing of personal data carried out by the controller or on the controller's behalf should be established *in order to ensure accountability*. In particular, the controller should ensure and be *able* to demonstrate

processing operation with this Regulation.

the compliance of each processing operation with this Regulation.

Or. en

### *Justification*

*The concept of accountability should be mentioned explicitly, and it should be clarified that this includes only an obligation to be able to demonstrate compliance on request. See related Article 22.*

## **Amendment 41**

### **Proposal for a regulation Recital 61**

#### *Text proposed by the Commission*

(61) The protection of the rights and freedoms of data subjects with regard to the processing of personal data require that appropriate technical and organisational measures are taken, both at the time of the design of the processing and at the time of the processing itself, to ensure that the requirements of this Regulation are met. In order to ensure and demonstrate compliance with this Regulation, the controller should adopt internal policies and implement appropriate measures, which meet in particular the principles of data protection by design and data protection by default.

#### *Amendment*

(61) The protection of the rights and freedoms of data subjects with regard to the processing of personal data require that appropriate technical and organizational measures are taken, both at the time of the design of the processing and at the time of the processing itself, to ensure that the requirements of this Regulation are met. In order to ensure and demonstrate compliance with this Regulation, the controller should adopt internal policies and implement appropriate measures, which meet in particular the principles of data protection by design and data protection by default. ***The principle of data protection by design require data protection to be embedded within the entire life cycle of the technology, from the very early design stage, right through to its ultimate deployment, use and final disposal. The principle of data protection by default requires privacy settings on services and products which should by default comply with the general principles of data protection, such as data minimisation and purpose limitation.***

Or. en

### *Justification*

*If “data protection by design” is going to be effective, it needs to be implemented at all stages in the life cycle of data processing systems. Both “data protection by design” and “data protection by default” should be defined more clearly, as the amendment proposes. See related Article 23*

## **Amendment 42**

### **Proposal for a regulation Recital 63**

#### *Text proposed by the Commission*

(63) Where a controller not established in the Union is processing personal data of data subjects residing in the Union whose processing activities are related to the offering of goods or services to such data subjects, or to the monitoring *their behaviour*, the controller should designate a representative, unless the controller is established in a third country ensuring an adequate level of protection, or the controller is a *small or medium sized* enterprise or a public authority or body or where the controller is only occasionally offering goods or services to such data subjects. The representative should act on behalf of the controller and may be addressed by any supervisory authority.

#### *Amendment*

(63) Where a controller not established in the Union is processing personal data of data subjects residing in the Union whose processing activities are related to the offering of goods or services to such data subjects, or to the monitoring *of such data subjects*, the controller should designate a representative, unless the controller is established in a third country ensuring an adequate level of protection, or the controller is *an* enterprise or a public authority or body or where the controller is only occasionally offering goods or services to such data subjects. The representative should act on behalf of the controller and may be addressed by any supervisory authority.

Or. en

### *Justification*

*In the digital environment, it is no longer appropriate to use employee numbers as a measure of the relevance of data processing. Instagram, an online photo service company, was recently purchased by Facebook for one billion dollars and had 13 employees at the time. What matters is the number of data subjects whose data is being processed.*

## Amendment 43

### Proposal for a regulation Recital 65

#### *Text proposed by the Commission*

(65) In order to demonstrate compliance with this Regulation, the controller or processor should document each processing operation. Each controller and processor should be obliged to co-operate with the supervisory authority and make this **documentation**, on request, available to it, so that it might serve for monitoring those processing operations.

#### *Amendment*

(65) In order to demonstrate compliance with this Regulation, the controller or processor should document each processing operation ***in order to be able to provide sufficient information to the data subject***. Each controller and processor should be obliged to co-operate with the supervisory authority and make ***at least this information***, on request, available to it, so that it might serve for monitoring those processing operations.

Or. en

## Amendment 44

### Proposal for a regulation Recital 66

#### *Text proposed by the Commission*

(66) In order to maintain security and to prevent processing in breach of this Regulation, the controller or processor should evaluate the risks inherent to the processing and implement measures to mitigate those risks. These measures should ensure an appropriate level of security, taking into account the state of the art and the costs of their implementation in relation to the risks and the nature of the personal data to be protected. When establishing technical standards and organisational measures to ensure security of processing, the ***Commission should promote*** technological neutrality, interoperability and innovation, and, where appropriate, ***cooperate with*** third countries.

#### *Amendment*

(66) In order to maintain security and to prevent processing in breach of this Regulation, the controller or processor should evaluate the risks inherent to the processing and implement measures to mitigate those risks. These measures should ensure an appropriate level of security, taking into account the state of the art and the costs of their implementation in relation to the risks and the nature of the personal data to be protected. When establishing technical standards and organisational measures to ensure security of processing, technological neutrality, interoperability and innovation ***should be promoted***, and, where appropriate, third countries ***should be encouraged***.

*Justification*

*There appears to be no valid reason that the measures to be promoted should be restricted to the Commission.*

**Amendment 45****Proposal for a regulation**  
**Recital 67***Text proposed by the Commission*

(67) A personal data breach may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud, to the individual concerned. Therefore, as soon as the controller becomes aware that such a breach has occurred, the controller should notify the breach to the supervisory authority without undue delay and, where feasible, within **24** hours. Where this cannot be achieved within **24** hours, an explanation of the reasons for the delay should accompany the notification. The individuals whose personal data could be adversely affected by the breach should be notified without undue delay in order to allow them to take the necessary precautions. A breach should be considered as adversely affecting the personal data or privacy of a data subject where it could result in, for example, identity theft or fraud, physical harm, significant humiliation or damage to reputation. The notification should describe the nature of the personal data breach as well as recommendations as well as recommendations for the individual concerned to mitigate potential adverse effects. Notifications to data subjects should be made as soon as reasonably feasible, and in close cooperation with the supervisory authority and respecting guidance provided by it or other relevant

*Amendment*

(67) A personal data breach may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud, to the individual concerned. Therefore, as soon as the controller becomes aware that such a breach has occurred, the controller should notify the breach to the supervisory authority without undue delay and, where feasible, within **72** hours. Where this cannot be achieved within **72** hours, an explanation of the reasons for the delay should accompany the notification. The individuals whose personal data could be adversely affected by the breach should be notified without undue delay in order to allow them to take the necessary precautions. A breach should be considered as adversely affecting the personal data or privacy of a data subject where it could result in, for example, identity theft or fraud, physical harm, significant humiliation or damage to reputation. The notification should describe the nature of the personal data breach as well as recommendations as well as recommendations for the individual concerned to mitigate potential adverse effects. Notifications to data subjects should be made as soon as reasonably feasible, and in close cooperation with the supervisory authority and respecting guidance provided by it or other relevant

authorities (e.g. law enforcement authorities). For example, the chance for data subjects to mitigate an immediate risk of harm would call for a prompt notification of data subjects whereas the need to implement appropriate measures against continuing or similar data breaches may justify a longer delay.

authorities (e.g. law enforcement authorities). For example, the chance for data subjects to mitigate an immediate risk of harm would call for a prompt notification of data subjects whereas the need to implement appropriate measures against continuing or similar data breaches may justify a longer delay.

Or. en

#### *Justification*

*As notification to within 24 hours is not always feasible, the rapporteur proposes to extend the period within which to notify a personal data breach to the supervisory authority to 72 hours. To prevent notification fatigue to data subjects, only in cases where a data breach is likely to adversely affect the protection of the personal data or privacy of the data subject, for example in cases of identity theft or fraud, financial loss, physical harm, significant humiliation or damage to reputation, should the data subject be notified. See related Articles 31(1) and 32(1)*

#### **Amendment 46**

##### **Proposal for a regulation**

##### **Recital 73**

*Text proposed by the Commission*

*Amendment*

***(73) Data protection impact assessments should be carried out by a public authority or public body if such an assessment has not already been made in the context of the adoption of the national law on which the performance of the tasks of the public authority or public body is based and which regulates the specific processing operation or set of operations in question.***

***deleted***

Or. en

#### *Justification*

*Even where public authorities process data based on a legal obligation, a data protection impact assessment should be done in order to ensure compliance with this Regulation,*

*especially to ensure data minimisation and data security and to mitigate any risks to the rights and freedoms of data subjects. See related deletion of Article 33(5).*

## **Amendment 47**

### **Proposal for a regulation**

#### **Recital 74**

##### *Text proposed by the Commission*

(74) Where a data protection impact assessment indicates that processing operations involve a high degree of specific risks to the rights and freedoms of data subjects, such as excluding individuals from their right, or by the use of specific new technologies, the supervisory authority should be consulted, prior to the start of operations, on a risky processing which might not be in compliance with this Regulation, and to make proposals to remedy such situation. Such consultation should equally take place in the course of the preparation either of a measure by the national parliament or of a measure based on such legislative measure which defines the nature of the processing and lays down appropriate safeguards.

##### *Amendment*

(74) Where a data protection impact assessment indicates that processing operations involve a high degree of specific risks to the rights and freedoms of data subjects, such as excluding individuals from their right, or by the use of specific new technologies, ***the data protection officer*** or the supervisory authority should be consulted, prior to the start of operations, on a risky processing which might not be in compliance with this Regulation, and to make proposals to remedy such situation. Such consultation should equally take place in the course of the preparation either of a measure by the national parliament or of a measure based on such legislative measure which defines the nature of the processing and lays down appropriate safeguards.

Or. en

## **Amendment 48**

### **Proposal for a regulation**

#### **Recital 75**

##### *Text proposed by the Commission*

(75) Where the processing is carried out in the public sector or where, in the private sector, processing is carried out by a large enterprise, or where its core activities, regardless of the size of the enterprise, involve processing operations which

##### *Amendment*

(75) Where the processing is carried out in the public sector or where, in the private sector, processing is carried out by a large enterprise ***or relates to more than 500 data subjects per year***, or where its core activities, regardless of the size of the

require regular and systematic monitoring, a person should assist the controller or processor to monitor internal compliance with this Regulation. Such data protection officers, whether or not an employee of the controller, should be in a position to perform their duties and tasks independently.

enterprise, involve processing operations which require regular and systematic monitoring, a person should assist the controller or processor to monitor internal compliance with this Regulation. ***When establishing whether data about a large number of data subjects are processed, archived data that is restricted in such a way that they are not subject to the normal data access and processing operations of the controller and can no longer be changed should not be taken into account.*** Such data protection officers, whether or not an employee of the controller ***and whether or not performing that task full time***, should be in a position to perform their duties and tasks independently. ***The data protection officer should in particular be consulted prior to the design, procurement, development and setting-up of systems for the automated processing of personal data, in order to ensure the principles of privacy by design and privacy by default.***

Or. en

#### *Justification*

*In the age of cloud computing, where even very small controllers can process large amounts of data through online services, the threshold for the mandatory designation of a data protection officer should not be based on the size of the enterprise but rather on the relevance of data processing. This includes the categories of personal data processed, the type of processing activity and the number of individuals whose data are processed. See related Article 35(1)*

#### **Amendment 49**

##### **Proposal for a regulation Recital 75 a (new)**

*Text proposed by the Commission*

*Amendment*

***(75a) The data protection officer should have at least the following qualifications: extensive knowledge of the substance and***



*application of data protection law, including technical and organizational measures and procedures; mastery of technical requirements for privacy by design, privacy by default and data security; industry-specific knowledge in accordance with the size of the controller or processor and the sensitivity of the data to be processed; the ability to carry out inspections, consultation, documentation, and log file analysis; and the ability to work with employee representation. The controller should enable the data protection officer to take part in advanced training measures to maintain the specialized knowledge required to perform his or her duties.*

Or. en

#### *Justification*

*This amendment specifies the necessary qualifications of the DPO and makes clear the need for the possibility to take advanced training.*

### **Amendment 50**

#### **Proposal for a regulation Recital 76**

##### *Text proposed by the Commission*

(76) Associations or other bodies representing categories of controllers should be encouraged to draw up codes of conduct, within the limits of this Regulation, so as to facilitate the effective application of this Regulation, taking account of the specific characteristics of the processing carried out in certain sectors.

##### *Amendment*

(76) Associations or other bodies representing categories of controllers should be encouraged to draw up codes of conduct, within the limits of this Regulation, so as to facilitate the effective application of this Regulation, taking account of the specific characteristics of the processing carried out in certain sectors ***Such codes should make the application of this Regulation clearer for the respective business sectors.***

Or. en

## Amendment 51

### Proposal for a regulation Recital 77

#### *Text proposed by the Commission*

(77) In order to enhance transparency and compliance with this Regulation, the establishment of certification mechanisms, data protection seals and marks should be encouraged, allowing data subjects to quickly assess the level of data protection of relevant products and services.

#### *Amendment*

(77) In order to enhance transparency and compliance with this Regulation, the establishment of certification mechanisms, data protection seals and marks should be encouraged, allowing data subjects to quickly, **reliably and verifiably** assess the level of data protection of relevant products and services.

Or. en

*Relates to Article 39 para 1*

## Amendment 52

### Proposal for a regulation Recital 80

#### *Text proposed by the Commission*

(80) The Commission may decide with effect for the entire Union that certain third countries, or a territory **or a processing sector** within a third country, or an international organisation, offer an adequate level of data protection, thus providing legal certainty and uniformity throughout the Union as regards the third countries or international organisations which are considered to provide such level of protection. In these cases, transfers of personal data to these countries may take place without needing to obtain any further authorisation.

#### *Amendment*

(80) The Commission may decide with effect for the entire Union that certain third countries, or a territory within a third country, or an international organisation, offer an adequate level of data protection, thus providing legal certainty and uniformity throughout the Union as regards the third countries or international organisations which are considered to provide such level of protection. In these cases, transfers of personal data to these countries may take place without needing to obtain any further authorisation.

Or. en

*Justification*

*Consequential amendment based on amended Article 41(1).*

**Amendment 53**

**Proposal for a regulation**

**Recital 82**

*Text proposed by the Commission*

(82) The Commission may equally recognise that a third country, or a territory or a ***processing sector*** within a third country, or an international organisation offers no adequate level of data protection. Consequently the transfer of personal data to that third country should be prohibited. In that case, provision should be made for consultations between the Commission and such third countries or international organisations.

*Amendment*

(82) The Commission may equally recognise that a third country or a territory within a third country, or an international organisation offers no adequate level of data protection. Consequently the transfer of personal data to that third country should be prohibited. In that case, provision should be made for consultations between the Commission and such third countries or international organisations.

Or. en

*Justification*

*Consequential amendment based on amended Article 42(2)(b).*

**Amendment 54**

**Proposal for a regulation**

**Recital 89**

*Text proposed by the Commission*

(89) In any case, where the Commission has taken no decision on the adequate level of data protection in a third country, the controller or processor should make use of solutions that provide data subjects with a guarantee that they will continue to benefit from the fundamental rights and safeguards as regards processing of their data in the Union once this data has been transferred.

*Amendment*

(89) In any case, where the Commission has taken no decision on the adequate level of data protection in a third country, the controller or processor should make use of solutions that provide data subjects with a ***legally binding*** guarantee that they will continue to benefit from the fundamental rights and safeguards as regards processing of their data in the Union once this data has been transferred. ***That guarantee should***

*include financial indemnification in cases of loss or unauthorised access or processing of the data and an obligation, regardless of national legislation, to provide full details of all access to the data by public authorities in the third country.*

Or. en

#### *Justification*

*Clarification that data transfers to third countries should always be on the basis of a legally binding instrument that also ensures indemnification and information to supervisory authorities. Relates to Articles 42(1), 44(1)(h).*

### **Amendment 55**

#### **Proposal for a regulation**

##### **Recital 92**

###### *Text proposed by the Commission*

(92) The establishment of supervisory authorities in Member States, exercising their functions with complete independence, is an essential component of the protection on individuals with regard to the processing of their personal data. Member States may establish more than one supervisory authority, to reflect their constitutional, organisational and administrative structure.

###### *Amendment*

(92) The establishment of supervisory authorities in Member States, exercising their functions with complete independence, is an essential component of the protection on individuals with regard to the processing of their personal data. Member States may establish more than one supervisory authority, to reflect their constitutional, organisational and administrative structure. ***An authority shall have adequate financial and personal resources to fully carry out its role, taking into account the size of the population and the amount of personal data processing.***

Or. en

#### *Justification*

*Supervisory authorities, which must be completely independent, need to be sufficiently resourced for the effective performance of their tasks. The amendment gives clearer guidance*

on how to establish the adequacy of resources. See related amendment to Recital 95. Relates to Article 47(5).

## Amendment 56

### Proposal for a regulation

#### Recital 94

##### *Text proposed by the Commission*

(94) Each supervisory authority should be provided with the adequate financial and human resources, premises and infrastructure, which is necessary for the effective performance of their tasks, including for the tasks related to mutual assistance and cooperation with other supervisory authorities throughout the Union.

##### *Amendment*

(94) Each supervisory authority should be provided with the adequate financial and human resources, ***paying particular attention to ensuring adequate technical and legal skills of staff***, premises and infrastructure, which ***are*** necessary for the effective performance of their tasks, including for the tasks related to mutual assistance and co-operation with other supervisory authorities throughout the Union.

Or. en

## Amendment 57

### Proposal for a regulation

#### Recital 95

##### *Text proposed by the Commission*

(95) The general conditions for the members of the supervisory authority should be laid down by law in each Member State and should in particular provide that those members should be ***either*** appointed by the parliament or the government of the Member State, and include rules on the personal qualification of the members and the position of those members.

##### *Amendment*

(95) The general conditions for the members of the supervisory authority should be laid down by law in each Member State and should in particular provide that those members should be appointed by the parliament or the government ***after consultation of the parliament*** of the Member State ***concerned taking due care to minimise the possibility of political interference***, and include rules on the personal qualification of the members, ***the avoidance of conflicts of interest*** and the position of those members.

*Justification*

*The independence of the members of supervisory authorities is further clarified. Relates to Articles 48(1), 49.*

**Amendment 58****Proposal for a regulation**  
**Recital 97***Text proposed by the Commission*

(97) Where the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union takes place in more than one Member State, one single supervisory authority should ***be competent for monitoring the activities of*** the controller or processor throughout the Union, in order to increase the consistent application, provide legal certainty and reduce administrative burden for such controllers and processors.

*Amendment*

(97) Where the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union takes place in more than one Member State, one single supervisory authority should ***act as the single contact point for*** the controller or processor throughout the Union and taking the related decisions, in order to increase the consistent application, provide legal certainty and reduce administrative burden for such controllers and processors.

*Justification*

*Relates to the proposed new consistency mechanism. See Article 54a (new).*

**Amendment 59****Proposal for a regulation**  
**Recital 98***Text proposed by the Commission*

(98) The ***competent*** authority, providing such one-stop shop, should be the supervisory authority of the Member State in which the controller or processor has its main establishment.

*Amendment*

(98) The ***lead*** authority, providing such one-stop shop, should be the supervisory authority of the Member State in which the controller or processor has its main establishment. The European Data

Protection Board may designate the lead authority in certain cases on the request of a competent authority.

Or. en

*Justification*

*Relates to the proposed new consistency mechanism. See Articles 48(1), 49.*

**Amendment 60**

**Proposal for a regulation**

**Recital 101**

*Text proposed by the Commission*

(101) Each supervisory authority should hear complaints lodged by any data subject and should investigate the matter. The investigation following a complaint should be carried out, subject to judicial review, to the extent that is appropriate in the specific case. The supervisory authority should inform the data subject of the progress and the outcome of the complaint within a reasonable period. If the case requires further investigation or coordination with another supervisory authority, intermediate information should be given to the data subject.

*Amendment*

(101) Each supervisory authority should hear complaints lodged by any data subject ***or by association acting in the public interest*** and should investigate the matter. The investigation following a complaint should be carried out, subject to judicial review, to the extent that is appropriate in the specific case. The supervisory authority should inform the data subject ***or the association*** of the progress and the outcome of the complaint within a reasonable period. If the case requires further investigation or coordination with another supervisory authority, intermediate information should be given to the data subject.

Or. en

*Justification*

*See Articles 48(1), 49.*

## Amendment 61

### Proposal for a regulation Recital 104

*Text proposed by the Commission*

(104) Each supervisory authority should have the right to participate in joint operations between supervisory authorities. The requested supervisory authority should be obliged to respond to the request in a defined time period.

*Amendment*

(104) Each supervisory authority should have the right to participate in joint operations between supervisory authorities. The requested supervisory authority should be obliged to respond to the request in a defined time period. ***The European Data Protection Board should be able to coordinate such activities, where the supervisory authorities concerned so wish.***

Or. en

*Justification*

*Relates to the proposed new consistency mechanism. See Articles 52(3), 56 (2).*

## Amendment 62

### Proposal for a regulation Recital 106 a (new)

*Text proposed by the Commission*

*Amendment*

***(106a) In order to ensure the consistent application of this Regulation, the European Data Protection Board may adopt a binding measure, if a two thirds majority of its members so decides.***

Or. en

*Justification*

*Relates to the proposed new consistency mechanism. The European Data Protection Board should have, as last resort, the powers to adopt a binding decision in case a measure is disputed among supervisory authorities involved.*



## Amendment 63

### Proposal for a regulation Recital 107

#### *Text proposed by the Commission*

(107) In order to ensure compliance with this Regulation, the Commission may adopt an opinion on *this* matter, **or a decision, requiring the supervisory authority to suspend its draft measure.**

#### *Amendment*

(107) In order to ensure compliance with this Regulation, the Commission may adopt an opinion **on matters raised. The Commission may appeal to the Court of Justice of the European Union. It may request the Court to suspend the measure in the course of an urgency procedure, if necessary to avoid irreparable damage.**

Or. en

#### *Justification*

*The Commission may adopt a decision on a matter dealt with in the new consistency mechanism, which has to be taken into utmost account by the concerned supervisory authority. If it does not follow the Commission, it has to provide a reasoned opinion. As a last resort, the Commission can challenge a binding decision of the European Data Protection Board before the EU Court of Justice and request the suspension of the measure. Relates to Article 61a (new).*

## Amendment 64

### Proposal for a regulation Recital 110

#### *Text proposed by the Commission*

(110) At Union level, a European Data Protection Board should be set up. It should replace the Working Party on the Protection of Individuals with Regard to the Processing of Personal Data established by Directive 95/46/EC. It should consist of a head of a supervisory authority of each Member State and of the European Data Protection Supervisor. The Commission should participate in its activities. The European Data Protection Board should contribute to the consistent application of this Regulation throughout the Union,

#### *Amendment*

(110) At Union level, a European Data Protection Board should be set up. It should replace the Working Party on the Protection of Individuals with Regard to the Processing of Personal Data established by Directive 95/46/EC. It should consist of a head of a supervisory authority of each Member State and of the European Data Protection Supervisor. The Commission should participate in its activities. The European Data Protection Board should contribute to the consistent application of this Regulation throughout the Union,

including by advising the Commission and promoting cooperation of the supervisory authorities throughout the Union. The European Data Protection Board should act independently when exercising its tasks.

including by advising the *institutions of the European Union* and promoting cooperation of the supervisory authorities throughout the Union, *including the coordination of joint operations*. The European Data Protection Board should act independently when exercising its tasks.

Or. en

*Justification*

*Relates to Article 64(1).*

**Amendment 65**

**Proposal for a regulation**  
**Recital 112**

*Text proposed by the Commission*

(112) Any body, organisation or association *which aims to protect the rights and interests of data subjects in relation to the protection of their data and* is constituted according to the law of a Member State should have the right to lodge a complaint with a supervisory authority or exercise the right to a judicial remedy on behalf of data subjects, or to lodge, independently of a data subject's complaint, an own complaint where it considers that a personal data breach has occurred.

*Amendment*

(112) Any body, organisation or association *acting in the public interest which* is constituted according to the law of a Member State should have the right to lodge a complaint with a supervisory authority or exercise the right to a judicial remedy on behalf of data subjects, or to lodge, independently of a data subject's complaint, an own complaint where it considers that a personal data breach has occurred.

Or. en

*Justification*

*There is a need to provide for better possibilities for effective redress, including by associations acting in the public interest. See related amendment to Articles 73(2), 76(1).*

## Amendment 66

### Proposal for a regulation Recital 114

#### *Text proposed by the Commission*

(114) In order to strengthen the judicial protection of the data subject in situations where the competent supervisory authority is established in another Member State than the one where the data subject is residing, the data subject may request any body, organisation or association ***aiming to protect the rights and interests of data subjects in relation to the protection of their data*** to bring on the data subject's behalf proceedings against that supervisory authority to the competent court in the other Member State.

#### *Amendment*

(114) In order to strengthen the judicial protection of the data subject in situations where the competent supervisory authority is established in another Member State than the one where the data subject is residing, the data subject may request any body, organisation or association ***acting in the public interest*** to bring on the data subject's behalf proceedings against that supervisory authority to the competent court in the other Member State.

Or. en

#### *Justification*

*Clarification that not only specialised data protection associations can act on behalf of data subjects. Relates to Article 74(3).*

## Amendment 67

### Proposal for a regulation Recital 116

#### *Text proposed by the Commission*

(116) For proceedings against a controller or processor, the plaintiff should have the choice to bring the action before the courts of the Member States where the controller or processor has an establishment or where the data subject resides, unless the controller is a public authority acting in the exercise of its public powers.

#### *Amendment*

(116) For proceedings against a controller or processor, the plaintiff should have the choice to bring the action before the courts of the Member States where the controller or processor has an establishment or where the data subject resides, unless the controller is a public authority ***of a Member State*** acting in the exercise of its public powers.

Or. en

## Justification

Clarification that this does not apply to public authorities of third countries. Relates to Article 75(2).

### Amendment 68

#### Proposal for a regulation

##### Recital 121

###### *Text proposed by the Commission*

(121) The processing of personal data ***solely for journalistic purposes, or for the purposes of artistic or literary expression*** should qualify for exemption from the requirements of certain provisions of this Regulation in order to reconcile the right to the protection of personal data with the right to freedom of expression, and notably the right to receive and impart information, as guaranteed in particular by Article 11 of the Charter of Fundamental Rights of the European Union. This should apply in particular to processing of personal data in the audiovisual field and in news archives and press libraries. Therefore, Member States should adopt legislative measures, which should lay down exemptions and derogations which are necessary for the purpose of balancing these fundamental rights. Such exemptions and derogations should be adopted by the Member States on general principles, on the rights of the data subject, on controller and processor, on the transfer of data to third countries or international organisations, on the independent supervisory authorities and on co-operation and consistency. This should not, however, lead Member States to lay down exemptions from the other provisions of this Regulation. In order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary to interpret notions relating to that freedom, such as journalism, broadly. ***Therefore, Member States should classify***

###### *Amendment*

(121) ***Whenever necessary, exemptions or derogations*** from the requirements of certain provisions of this Regulation for the processing of personal data ***should be possible*** in order to reconcile the right to the protection of personal data with the right to freedom of expression, and notably the right to receive and impart information, as guaranteed in particular by Article 11 of the Charter of Fundamental Rights of the European Union. This should apply in particular to processing of personal data in the audiovisual field and in news archives and press libraries. Therefore, Member States should adopt legislative measures, which should lay down exemptions and derogations which are necessary for the purpose of balancing these fundamental rights. Such exemptions and derogations should be adopted by the Member States on general principles, on the rights of the data subject, on controller and processor, on the transfer of data to third countries or international organisations, on the independent supervisory authorities and on co-operation and consistency. This should not, however, lead Member States to lay down exemptions from the other provisions of this Regulation. In order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary to interpret notions relating to that freedom, such as journalism, broadly.

*activities as "journalistic" for the purpose of the exemptions and derogations to be laid down under this Regulation if the object of these activities is the disclosure to the public of information, opinions or ideas, irrespective of the medium which is used to transmit them. They should not be limited to media undertakings and may be undertaken for profit-making or for non-profit making purposes.*

Or. en

#### *Justification*

*Clarification that freedom of expression is protected in general, not just for journalists, artists or writers. Relates to Article 80(1).*

### **Amendment 69**

#### **Proposal for a regulation**

#### **Recital 122**

##### *Text proposed by the Commission*

(122) The processing of personal data concerning health, as a special category of data which deserves higher protection, may ***often*** be justified ***by a number of legitimate reasons*** for the benefit of individuals and society as a whole, in particular in the context of ensuring continuity of cross-border healthcare. Therefore this Regulation should provide for harmonised conditions for the processing of personal data concerning health, subject to specific and suitable safeguards so as to protect the fundamental rights and the personal data of individuals. This includes the right for individuals to have access to their personal data concerning their health, for example the data in their medical records containing such information as diagnosis, examination results, assessments by treating physicians and any treatment or interventions

##### *Amendment*

(122) The processing of personal data concerning health, as a special category of data which deserves higher protection, may be justified for the benefit of individuals and society as a whole, in particular in the context of ensuring continuity of cross-border healthcare. Therefore this Regulation should provide for harmonised conditions for the processing of personal data concerning health, subject to specific and suitable safeguards so as to protect the fundamental rights and the personal data of individuals. This includes the right for individuals to have access to their personal data concerning their health, for example the data in their medical records containing such information as diagnosis, examination results, assessments by treating physicians and any treatment or interventions provided.

provided.

Or. en

*Justification*

*Relates to Article 81(1).*

**Amendment 70**

**Proposal for a regulation**

**Recital 124**

*Text proposed by the Commission*

(124) The general principles on the protection of individuals with regard to the processing of personal data should also be applicable to the employment context. Therefore, in order to regulate the processing of employees' personal data in the employment context, Member States should be able, *within the limits* of this Regulation, to adopt by law specific rules for the processing of personal data in the employment sector.

*Amendment*

(124) The general principles on the protection of individuals with regard to the processing of personal data should also be applicable to the employment *and the social security* context. Therefore, in order to regulate the processing of employees' personal data in the employment context, Member States should be able, *in accordance with* this Regulation, to adopt by law specific rules for the processing of personal data in the employment sector.

Or. en

*Justification*

*Similar to the employment context, social security is a highly complex area regulated in many details on the national level. Therefore, Member States should be allowed to adopt or keep specific laws regulating the details of data protection for public institutions in this area. Relates to Articles 82 and 82a (new).*

**Amendment 71**

**Proposal for a regulation**

**Recital 129**

*Text proposed by the Commission*

(129) In order to fulfil the objectives of this Regulation, namely to protect the

*Amendment*

(129) In order to fulfil the objectives of this Regulation, namely to protect the

fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. In particular, delegated acts should be adopted *in respect of lawfulness of processing; specifying the criteria and conditions in relation to the consent of a child; processing of special categories of data; specifying the criteria and conditions for manifestly excessive requests and fees for exercising the rights of the data subject; criteria and requirements for the information to the data subject and in relation to the right of access; the right to be forgotten and to erasure; measures based on profiling; criteria and requirements in relation to the responsibility of the controller and to data protection by design and by default; a processor; criteria and requirements for the documentation and the security of processing; criteria and requirements for establishing a personal data breach and for its notification to the supervisory authority, and on the circumstances where a personal data breach is likely to adversely affect the data subject; the criteria and conditions for processing operations requiring a data protection impact assessment; the criteria and requirements for determining a high degree of specific risks which require prior consultation; designation and tasks of the data protection officer; codes of conduct; criteria and requirements for certification mechanisms; criteria and requirements for transfers by way of binding corporate rules; transfer derogations; administrative sanctions; processing for health purposes; processing in the employment context and processing for historical, statistical and scientific research purposes. It is of particular importance that the Commission carry out appropriate consultations during*

fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. In particular, delegated acts should be adopted specifying *the technical standards to give consent; specifying conditions of icon-based mode for provision of information; specifying the criteria and conditions for fees for exercising the rights of the data subject; criteria and requirements for the information to the data subject and in relation to the right of access; the right to be forgotten and to erasure; criteria and requirements for verification of the responsibility of the controller; criteria and requirements for establishing a personal data breach and for its notification to the supervisory authority, and on the circumstances where a personal data breach is likely to adversely affect the data subject; the criteria and conditions for processing operations requiring a data protection impact assessment; the criteria and requirements for determining a high degree of specific risks which require prior consultation; codes of conduct; criteria and requirements for certification mechanisms; the adequate level of protection afforded by a third country or an international organisation; administrative sanctions; processing for health purposes; processing in the employment context and processing for historical, statistical and scientific research purposes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level in particular with the European Data Protection Board. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and*

its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

Council.

Or. en

### *Justification*

*Relates to Article 86(1).*

## **Amendment 72**

### **Proposal for a regulation**

#### **Recital 130**

##### *Text proposed by the Commission*

(130) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission for: specifying standard forms in relation to the processing of personal data of a child; standard procedures and forms for exercising the rights of data subjects; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access; ***the right to data portability***; standard forms in relation to the responsibility of the controller to data protection by design and by default and to the documentation; ***specific requirements for the security of processing***; the standard format and the procedures for the notification of a personal data breach to the supervisory authority and the communication of a personal data breach to the data subject; ***standards and procedures for a data protection impact assessment***; forms ***and procedures*** for prior authorisation and prior consultation; ***technical standards and mechanisms for***

##### *Amendment*

(130) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission for: specifying standard forms in relation to the processing of personal data of a child; standard procedures and forms for exercising the rights of data subjects; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access; standard forms in relation to the responsibility of the controller to data protection by design and by default and to the documentation; the standard format and the procedures for the notification of a personal data breach to the supervisory authority and the communication of a personal data breach to the data subject; forms for prior authorisation and prior consultation; ***standard form for notification of decision of third country requesting disclosure of the the personal date; format and procedures for the exchange of information by electronic means on***



*certification; the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an international organisation; disclosures not authorized by Union law; mutual assistance; joint operations;* decisions under the consistency mechanism. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers. In this context, the Commission should consider specific measures for micro, small and medium-sized enterprises.

*binding corporate rules;* decisions under the consistency mechanism. *It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level in particular with the European Data Protection Board.* Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers. In this context, the Commission should consider specific measures for micro, small and medium-sized enterprises.

Or. en

#### *Justification*

*Relates to Article 87(1).*

### **Amendment 73**

#### **Proposal for a regulation**

#### **Recital 131**

##### *Text proposed by the Commission*

(131) The examination procedure should be used for the adoption of specifying standard forms in relation to the processing of personal data of a child; standard procedures and forms for exercising the rights of data subjects; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access *the right to data portability*; standard forms in relation to the responsibility of the controller to data protection by design and by default and to the documentation; *specific requirements*

##### *Amendment*

(131) The examination procedure should be used for the adoption standard procedures and forms for :specifying standard forms in relation to the processing of personal data of a child; standard procedures and forms for exercising the rights of data subjects; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access; standard forms in relation to the responsibility of the controller to data protection by design and by default and to the documentation; the

*for the security of processing*; the standard format and the procedures for the notification of a personal data breach to the supervisory authority and the communication of a personal data breach to the data subject; *standards and procedures for a data protection impact assessment*; forms *and procedures* for prior authorisation and prior consultation; *technical standards and mechanisms for certification*; *the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an international organisation*; *disclosures not authorized by Union law*; *mutual assistance*; *joint operations*; given that those acts are of general scope.

standard format and the procedures for the notification of a personal data breach to the supervisory authority and the communication of a personal data breach to the data subject; forms for prior authorisation and prior consultation; *standard form for notification of decision of third country requesting disclosure of the the personal date*; *format and procedures for the exchange of information by electronic means on binding corporate rules*; decisions under the consistency mechanism, given that those acts are of general scope.

Or. en

#### **Amendment 74**

##### **Proposal for a regulation Recital 132**

*Text proposed by the Commission*

*Amendment*

*(132) The Commission should adopt immediately applicable implementing acts where, in duly justified cases relating to a third country or a territory or a processing sector within that third country or an international organisation which does not ensure an adequate level of protection and relating to matters communicated by supervisory authorities under the consistency mechanism, imperative grounds of urgency so require.*

*deleted*

Or. en

*Justification*

*Adequacy is now based on a delegated act, therefore there is no longer any scope for urgency*

*procedure.*

## **Amendment 75**

### **Proposal for a regulation Recital 134**

*Text proposed by the Commission*

(134) Directive 95/46/EC should be repealed by this Regulation. However, Commission decisions adopted and authorisations by supervisory authorities based on Directive 95/46/EC should remain in force.

*Amendment*

(134) Directive 95/46/EC should be repealed by this Regulation. However, Commission decisions adopted and authorisations by supervisory authorities based on Directive 95/46/EC should remain in force. ***Commission decisions and authorisations by supervisory authorities relating to transfers of personal data to third countries should remain in force for a transition period of two years.***

Or. en

*Justification*

*Specifies a transition period to bring decisions and authorisations in line with the new Regulation.*

## **Amendment 76**

### **Proposal for a regulation Recital 135 a (new)**

*Text proposed by the Commission*

*Amendment*

***(135a) This Regulation does not apply to the processing of personal data carried out by European Union institutions, bodies, offices and agencies, which is governed by different legal instruments, particularly Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000. As a result, this Regulation does not remedy the existing lack of comprehensiveness of the data protection legal rules in the***

*European Union and the uneven level of protection of the rights of data subjects. Since Article 8 of the EU Charter and Article 16 TFEU imply that the fundamental right to the protection of personal data should be ensured in a consistent and homogeneous manner throughout the Union, Union institutions, bodies, offices and agencies should be subject to the same rules as laid down in this Regulation, and the Commission should present appropriate legal proposals before (date of application of this Regulation) reviewing the legal framework applicable to the processing of personal data by Union institutions, bodies, offices and agencies when carrying out their activities in order to bring it into line with the provisions/principles of this Regulation.*

Or. en

#### *Justification*

*This amendment seeks to ensure consistency between the Regulation and the laws regulating EU institutions, bodies and agencies, such as Regulation No (EC) 45/2001, but as well of all the EU agencies that currently have their own data protection regulations, leading to a patchwork of rules that makes it very hard for the data subject to exercise its rights. See related Article 89a (new).*

#### **Amendment 77**

##### **Proposal for a regulation**

##### **Recital 139**

###### *Text proposed by the Commission*

(139) In view of the fact that, as underlined by the Court of Justice of the European Union, the right to the protection of personal data is not an absolute right, but must be considered in relation to its function in society and be balanced with other fundamental rights, in accordance with the principle of proportionality, this

###### *Amendment*

(139) In view of the fact that, as underlined by the Court of Justice of the European Union, the right to the protection of personal data is not an absolute right, but must be considered in relation to its function in society and be balanced with other fundamental rights, in accordance with the principle of proportionality, this

Regulation respects all fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union as enshrined in the Treaties, notably the right to respect for private and family life, home and communications, the right to the protection of personal data, the freedom of thought, conscience and religion, the freedom of expression and information, the freedom to conduct a business, the right to an effective remedy and to a fair trial as well as cultural, religious and linguistic diversity.

Regulation respects all fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union as enshrined in the Treaties, notably the right to respect for private and family life, home and communications, the right to the protection of personal data, the freedom of thought, conscience and religion, the freedom of expression and information, the freedom to conduct a business, the right to an effective remedy and to a fair trial as well as cultural, religious and linguistic diversity.

***In particular, the jurisdiction of the courts of Member States, of the Court of Justice of the European Union and of the European Court of Human Rights should be respected.***

Or. en

## **Amendment 78**

### **Proposal for a regulation**

#### **Article 2 – paragraph 2–point a)**

##### *Text proposed by the Commission*

(a) in the course of an activity which falls outside the scope of Union law, ***in particular concerning national security***;

##### *Amendment*

(a) in the course of an activity which falls outside the scope of Union law;

Or. en

##### *Justification*

*National security falls outside of the scope of EU competence anyway, so we do not need to repeat it here.*

## Amendment 79

### Proposal for a regulation

#### Article 2 – paragraph 2 – point d)

*Text proposed by the Commission*

(d) by a natural person ***without any gainful interest*** in the course of its own exclusively personal or household activity;

*Amendment*

(d) by a natural person in the course of its own exclusively personal or household activity;

Or. en

#### *Justification*

*The processing of personal data by a natural person for private and household purposes can sometimes have a gainful interest (e.g. when selling private belongings to other private persons) but still should fall outside the scope of the Regulation as long as there is no connection to a professional or commercial activity.*

## Amendment 80

### Proposal for a regulation

#### Article 2 – paragraph 2 – point e)

*Text proposed by the Commission*

(e) by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties.

*Amendment*

(e) by competent ***public*** authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties.

Or. en

#### *Justification*

*The Regulation specifies that the exclusion from the scope of the Regulation only covers competent public authorities for law enforcement activities (not private entities) and that the applicable legislation should provide adequate safeguards based on the principles of necessity and proportionality. See related amendment to Article 21.*

## Amendment 81

### Proposal for a regulation Article 3 – paragraph 2

*Text proposed by the Commission*

2. This Regulation applies to the processing of personal data of data subjects residing in the Union by a controller not established in the Union, where the processing activities are **related to**:

*Amendment*

2. This Regulation applies to the processing of personal data of data subjects residing in the Union by a controller not established in the Union, where the processing activities are **aimed at**:

Or. en

#### *Justification*

*The Regulation should also be applicable to a controller not established in the Union when processing activities are aimed at the offering of goods or services to data subjects in the Union, irrespective of whether payment for these goods or services is required, or the monitoring of such data subjects*

## Amendment 82

### Proposal for a regulation Article 3 – paragraph 2 – point a)

*Text proposed by the Commission*

(a) the offering of goods or services to such data subjects in the Union; or

*Amendment*

(a) the offering of goods or services to such data subjects in the Union, **irrespective of whether payment is required for these goods or services**; or

Or. en

#### *Justification*

*The Regulation must apply to all processing activities related to services, regardless of the fact whether or not these services are free of charge. This addition ensures the applicability of the Regulation to so-called 'free services'.*

## Amendment 83

### Proposal for a regulation

#### Article 3 – paragraph 2 – point b)

*Text proposed by the Commission*

(b) the monitoring of their behaviour.

*Amendment*

(b) the **monitoring of such data subjects**.

Or. en

#### *Justification*

*The Regulation should cover not only the monitoring of the behaviour of Union residents by data controllers outside of the Union, such as through internet tracking, but all collection and processing of personal data about Union residents. See related amendment to Recital 21.*

## Amendment 84

### Proposal for a regulation

#### Article 4 – point 1

*Text proposed by the Commission*

(1) 'data subject' means an identified natural person or a natural person who can be identified, directly or indirectly, by means reasonably likely to be used by the controller or by any other natural or legal person, in particular by reference to an **identification number**, location data, online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person;

*Amendment*

(1) 'data subject' means an identified natural person or a natural person who can be identified **or singled out**, directly or indirectly, **alone or in combination with associated data**, by means reasonably likely to be used by the controller or by any other natural or legal person, in particular by reference to a **unique identifier**, location data, online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, social **or gender** identity **or sexual orientation** of that person;

Or. en

#### *Justification*

*The concept of personal data is further clarified with objective criteria. See related amendment to Recitals 23, 24.*



## **Amendment 85**

### **Proposal for a regulation Article 4 – point 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***(2a) 'pseudonym' means a unique identifier which is specific to one given context and which does not permit the direct identification of a natural person, but allows the singling out of a data subject;***

Or. en

*Justification*

*For the use of pseudonymous data, there could be alleviations with regard to obligations for the data controller. See related amendments to Recital 23 and Article 7.*

## **Amendment 86**

### **Proposal for a regulation Article 4 – point 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***(3a) 'transfer' means any communication of personal data, actively made available to a limited number of identified parties, with the knowledge or intention of the sender to give the recipient access to the personal data;***

Or. en

*Justification*

*The definition of "transfer" is necessary to distinguish it from making data (publicly) available.*

## **Amendment 87**

### **Proposal for a regulation Article 4 – point 3 b (new)**

*Text proposed by the Commission*

*Amendment*

***(3b) 'profiling' means any form of automated processing of personal data intended to evaluate certain personal aspects relating to a natural person or to analyse or predict in particular that natural person's performance at work, economic situation, location, health, personal preferences, reliability or behaviour;***

Or. en

*Justification*

*In order to ensure an informed consent to profiling activities, these need to be defined and regulated. See related amendments to Articles 14(1)(g) and (ga), (gb); 15(1), 20.*

## **Amendment 88**

### **Proposal for a regulation Article 4 – point 6 a (new)**

*Text proposed by the Commission*

*Amendment*

***(6a) 'producer' means a natural or legal person, public authority, agency or any other body which creates automated data processing or filing systems designed for the processing of personal data by data controllers and data processors;***

Or. en

## Amendment 89

### Proposal for a regulation Article 4 – point 8

#### *Text proposed by the Commission*

(8) 'the data subject's consent' means any freely given specific, informed and explicit indication of his or her wishes by which the data subject, either by a statement or by a clear affirmative action, signifies agreement to personal data relating to them being processed;

#### *Amendment*

(8) 'the data subject's consent' means any freely given specific, informed and explicit indication of his or her wishes by which the data subject, either by a statement or by a clear affirmative action, signifies agreement to personal data relating to them being processed ***for one or more specific purposes***;

Or. en

## Amendment 90

### Proposal for a regulation Article 4 – point 9

#### *Text proposed by the Commission*

(9) 'personal data breach' means ***a breach of security leading to*** the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;

#### *Amendment*

(9) 'personal data breach' means the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;

Or. en

#### *Justification*

*A data breach can also occur without a security breach, e.g. by accidental loss or disclosure.*

## Amendment 91

### Proposal for a regulation

#### Article 5 – paragraph 1 - point a)

*Text proposed by the Commission*

1. Personal data **must** be:
- (a) processed lawfully, fairly and in a transparent manner in relation to the data subject

*Amendment*

1. Personal data **shall** be:
- (a) processed lawfully, fairly and in a transparent manner in relation to the data subject (**transparency**);

Or. en

## Amendment 92

### Proposal for a regulation

#### Article 5 – paragraph 1 – point b)

*Text proposed by the Commission*

- (b) collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes;

*Amendment*

- (b) collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes (**purpose limitation**);

Or. en

## Amendment 93

### Proposal for a regulation

#### Article 5 – paragraph 1 – point c)

*Text proposed by the Commission*

- (c) adequate, relevant, and limited to the minimum necessary in relation to the purposes for which they are processed; they shall only be processed if, and as long as, the purposes could not be fulfilled by processing information that does not involve personal data;

*Amendment*

- (c) adequate, relevant, and limited to the minimum necessary in relation to the purposes for which they are processed; they shall only be processed if, and as long as, the purposes could not be fulfilled by processing anonymous information that does not involve personal data (**data minimisation**);

## Amendment 94

### Proposal for a regulation Article 5 – paragraph 1 – point d)

#### *Text proposed by the Commission*

(d) accurate and kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay;

#### *Amendment*

(d) accurate and kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay (*integrity*);

Or. en

## Amendment 95

### Proposal for a regulation Article 5 – paragraph 1 - point e)

#### *Text proposed by the Commission*

(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the data will be processed solely for historical, statistical or scientific research purposes in accordance with the rules and conditions of Article 83 and if a periodic review is carried out to assess the necessity to continue the storage;

#### *Amendment*

(e) kept in a form which permits identification *or singling out* of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the data will be processed solely for historical, statistical or scientific research purposes in accordance with the rules and conditions of Article 83 and if a periodic review is carried out to assess the necessity to continue the storage (*storage minimisation*);

Or. en

## Amendment 96

### Proposal for a regulation

#### Article 5 – paragraph 1 – point e) a (new)

*Text proposed by the Commission*

*Amendment*

***(ea) processed in a way that effectively allows the data subject to exercise his or her rights as described in Articles 11 to 21 (intervenability);***

Or. en

## Amendment 97

### Proposal for a regulation

#### Article 5 – paragraph 1 – point f)

*Text proposed by the Commission*

*Amendment*

(f) processed under the responsibility and liability of the controller, who shall ensure and demonstrate for each processing operation the compliance with the provisions of this Regulation.

(f) processed under the responsibility and liability of the controller, who shall ensure and ***be able to*** demonstrate for each processing operation the compliance with the provisions of this Regulation (***accountability***).

Or. en

## Amendment 98

### Proposal for a regulation

#### Article 5 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. Processing of personal data shall be organised and carried out in a way that ensures compliance with the principles referred to in paragraph 1; producers, data controllers and data processors shall take technical and operational measures to ensure such compliance in the design, set-up, and operation of automatic data***

*processing or filing systems.*

Or. en

*Justification*

*Producers of automated data processing systems (i.e. hard- and software) should also take into account the principle of privacy by design and by default, even if they do not process personal data themselves. This is especially relevant for widely used standard applications, but also should be respected for niche products.*

**Amendment 99**

**Proposal for a regulation**

**Article 6 – paragraph 1 - point f)**

*Text proposed by the Commission*

*Amendment*

*(f) processing is necessary for the purposes of the legitimate interests pursued by a controller, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. This shall not apply to processing carried out by public authorities in the performance of their tasks.*

*deleted*

Or. en

*Justification*

*Point f of paragraph 1 is replaced by much more detailed guidance on "legitimate interest" in the new paragraphs 1a, 1b and 1c. See related amendments to Articles 6(1a), (1b) and (1c). The amendments give clearer guidance and provide legal certainty for data processing based on the legitimate interest of the data controller. The related delegated act in Article 6(5) is deleted, because it would have touched on the essence of the law.*

## **Amendment 100**

### **Proposal for a regulation**

#### **Article 6 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. If none of the legal grounds for the processing of personal data referred to in paragraph 1 apply, processing of personal data shall be lawful if and to the extent that it is necessary for the purposes of the legitimate interests pursued by the controller, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require the protection of personal data. The data controller shall in that case inform the data subject about the data processing explicitly and separately. The controller shall also publish the reasons for believing that its interests override the interests or fundamental rights and freedoms of the data subject. This paragraph shall not apply to processing carried out by public authorities in the performance of their tasks.***

Or. en

#### *Justification*

*The amendments give clearer guidance and provide legal certainty for data processing based on the legitimate interest of the data controller. See related amendments 6(1)(f), 6(1b) and 6(1c).*

## **Amendment 101**

### **Proposal for a regulation**

#### **Article 6 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***1b. The legitimate interests of the controller as referred to in paragraph 1a override the interests or fundamental***



*rights and freedoms of the data subject, as a rule, if*

*(a) processing of personal data takes place as part of the exercise of the right to freedom of expression, the media and the arts, within the limits of Union or national law;*

*(b) processing of personal data is necessary for the enforcement of the legal claims of the data controller or of third parties on behalf of whom the data controller is acting in relation to a specific identified data subject, or for preventing or limiting damage by the data subject to the controller;*

*(c) the data subject has provided personal data to the data controller on the legal ground referred to in point (b) of paragraph 1, and the personal data are used for direct marketing for its own and similar products and services and are not transferred, and the data controller is clearly identified to the data subject;*

*(d) processing of personal data takes place in the context of professional business-to-business relationships and the data were collected from the data subject for that purpose;*

*(e) processing of personal data is necessary for registered non-profit associations, foundations and charities, recognised as acting in the public interest under Union or national law, for the sole purpose of collecting donations.*

Or. en

#### *Justification*

*The amendments give clearer guidance and provide legal certainty for data processing based on the legitimate interest of the data controller. See related amendments 6(1)(f), 6(1a) and 6(1c).*

## Amendment 102

### Proposal for a regulation

#### Article 6 – paragraph 1 c (new)

*Text proposed by the Commission*

*Amendment*

***1c. The interests or fundamental rights and freedoms of the data subject as referred to in paragraph 1a override the legitimate interest of the controller, as a rule, if***

***(a) the processing causes a serious risk of damage to the data subject;***

***(b) special categories of data as referred to in paragraph 1 of article 9, location data, or biometric data are processed;***

***(c) the data subject can reasonably expect, on the basis of the context of the processing, that his or her personal data will only be processed for a specific purpose or treated confidentially, unless the data subject concerned has been informed specifically and separately about the use of his or her personal data for purposes other than the performance of the service;***

***(d) personal data are processed in the context of profiling;***

***(e) personal data is made accessible for a large number of persons or large amounts of personal data about the data subject are processed or combined with other data;***

***(f) the processing of personal data may adversely affect the data subject, in particular because it can lead to defamation or discrimination; or***

***(g) the data subject is a child.***

Or. en

### *Justification*

*The amendments give clearer guidance and provide legal certainty for data processing based on the legitimate interest of the data controller. See related amendments 6(1)(f), 6(1a) and 6(1b).*

### **Amendment 103**

#### **Proposal for a regulation Article 6 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

**4. Where the purpose of further processing is not compatible with the one for which the personal data have been collected, the processing must have a legal basis at least in one of the grounds referred to in points (a) to (e) of paragraph 1. This shall in particular apply to any change of terms and general conditions of a contract.** *deleted*

Or. en

### *Justification*

*Paragraph 4 should be deleted, because for a change of purpose, one of the legal grounds in paragraph 1 needs to apply anyway. Directive 95/46/EC also does not allow for a change of purpose, so the level of protection should be kept here.*

### **Amendment 104**

#### **Proposal for a regulation Article 6 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

**5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the conditions referred to in point (f) of paragraph 1 for various sectors and data processing situations, including as regards the processing of** *deleted*

*personal data related to a child.*

Or. en

*Justification*

*The amendments give clearer guidance and provide legal certainty for data processing based on the legitimate interest of the data controller. Paragraph 4 should be deleted, because for a change of purpose, one of the legal grounds in paragraph 1 needs to apply anyway. Directive 95/46/EC also does not allow for a change of purpose, so the level of protection should be kept here.*

**Amendment 105**

**Proposal for a regulation**  
**Article 7 - paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. If the data subject's consent is to be given in the context of the use of information society services where personal data are processed only in the form of pseudonyms, consent may be given by automated means using a technical standard with general validity in the Union in accordance with paragraph 4c, which allows the data subject to clearly express his or her wishes without collecting identification data.***

Or. en

*Justification*

*This allows for the use of standards such as "Do Not Track", combined with an incentive to use only pseudonymous data based as found e.g. in §15 of the German Tele-Media Law. In order to ensure such a standard is in line with this Regulation, it needs to be approved by the Commission. See related amendments to Articles 4(2a), 7(4c) and Recital 23*

## **Amendment 106**

### **Proposal for a regulation Article 7 - paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. Consent loses its effectiveness as soon as the processing of personal data is no longer necessary for carrying out the purpose for which they were collected.***

Or. en

## **Amendment 107**

### **Proposal for a regulation Article 7 – paragraph 4 b (new)**

*Text proposed by the Commission*

*Amendment*

***4b. The execution of a contract or the provision of a service may not be made conditional on the consent to the processing or use of data that is not necessary for the execution of the contract or the provision of the service pursuant to Article 6(1)(b).***

Or. en

### *Justification*

*This clarification is based on the so-called tying prohibition known from consumer protection law.*

## Amendment 108

### Proposal for a regulation

#### Article 7 – paragraph 4 c (new)

*Text proposed by the Commission*

*Amendment*

***4c. The Commission shall be empowered to adopt, after requesting an opinion from the European Data Protection Board, delegated acts in accordance with Article 86 for the purpose of further specifying the requirements and conditions for technical standards referred to in paragraph 2a, and for declaring that a technical standard is in line with this Regulation and has general validity within the Union.***

Or. en

#### *Justification*

*In order to ensure a technical standard for expressing consent is in line with this Regulation, it needs to be approved by the Commission. See related amendments to Articles 4(2a), 7(2a) and Recital 23.*

## Amendment 109

### Proposal for a regulation

#### Article 8 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. For the purposes of this Regulation, in relation to the offering of information society services directly to a child, the processing of personal data of a child below the age of 13 years shall only be lawful if and to the extent that consent is given or authorised by the child's parent or custodian. The controller shall make reasonable efforts to obtain verifiable consent, taking into consideration available

1. For the purposes of this Regulation, in relation to the offering of **goods or** services directly to a child, the processing of personal data of a child below the age of 13 years shall only be lawful if and to the extent that consent is given or authorised by the child's parent **or legal representative**. The controller shall make reasonable efforts to obtain verifiable consent, taking into consideration available technology. **The methods to obtain**

technology.

***verifiable consent shall not lead to the further processing of personal data which would otherwise not be necessary.***

Or. en

## Amendment 110

### Proposal for a regulation Article 8 – paragraph 3

*Text proposed by the Commission*

***3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the methods to obtain verifiable consent referred to in paragraph 1. In doing so, the Commission shall consider specific measures for micro, small and medium-sized enterprises.***

*Amendment*

***3. The European Data Protection Board shall be entrusted with the task of further specifying the criteria and requirements for the methods to obtain verifiable consent referred to in paragraph 1, in accordance with Article 66.***

Or. en

## Amendment 111

### Proposal for a regulation Article 8 – paragraph 4

*Text proposed by the Commission*

4. The Commission may lay down standard forms for specific methods to obtain verifiable consent referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

*Amendment*

4. The Commission may lay down standard forms for specific methods to obtain verifiable consent referred to in paragraph 1. Those implementing acts shall be adopted ***after requesting an opinion from the European Data Protection Board***, in accordance with the examination procedure referred to in Article 87(2).

Or. en

## Amendment 112

### Proposal for a regulation Article 9 – paragraph 1

*Text proposed by the Commission*

1. The processing of personal data, revealing race or ethnic origin, political opinions, religion or beliefs, trade-union membership, and the processing of genetic data or data concerning health or sex life or criminal convictions or related security measures shall be prohibited.

*Amendment*

1. The processing of personal data, revealing race or ethnic origin, political opinions, religion or ***philosophical*** beliefs, ***sexual orientation or gender identity***, trade-union membership ***and activities***, and the processing of genetic data or data concerning health or sex life or criminal convictions, or related security measures shall be prohibited.

Or. en

## Amendment 113

### Proposal for a regulation Article 9 – paragraph 2 point b)

*Text proposed by the Commission*

(b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller in the field of employment law in so far as it is authorised by Union law or Member State law providing for adequate safeguards; or

*Amendment*

(b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller in the field of employment law in so far as it is authorised by Union law or Member State law providing for adequate safeguards ***for the fundamental rights and the interests of the data subject***; or

Or. en

## Amendment 114

### Proposal for a regulation Article 9 - paragraph 2 – point g)

*Text proposed by the Commission*

(g) processing is necessary for the

*Amendment*

(g) processing is necessary for the



performance of a task carried out in the public interest, on the basis of Union law, or Member State law which shall provide for suitable measures to safeguard the *data subject's legitimate* interests; or

performance of a task carried out in the public interest, on the basis of Union law, or Member State law which shall provide for suitable measures to safeguard the *fundamental rights and the interests of the data subject*; or

Or. en

## Amendment 115

### Proposal for a regulation

#### Article 9 - paragraph 2 – point j)

##### *Text proposed by the Commission*

(j) processing of data relating to criminal convictions or related security measures is carried out under the control of official authority when the processing is necessary for compliance with a legal or regulatory obligation to which a controller is subject, or for the performance of a task carried out for important public interest reasons, and in so far as authorised by Union law or Member State law providing for adequate safeguards. A complete register of criminal convictions shall be kept only under the control of official authority.

##### *Amendment*

(j) processing of data relating to criminal convictions or related security measures is carried out under the control of official authority when the processing is necessary for compliance with a legal or regulatory obligation to which a controller is subject, or for the performance of a task carried out for important public interest reasons, and in so far as authorised by Union law or Member State law providing for adequate safeguards *for the fundamental rights and interests of the data subject*. A complete register of criminal convictions shall be kept only under the control of official authority.

Or. en

## Amendment 116

### Proposal for a regulation

#### Article 9 - paragraph 3

##### *Text proposed by the Commission*

3. *The Commission* shall be *empowered to adopt delegated acts in accordance with Article 86 for the purpose* of further

##### *Amendment*

3. *The European Data Protection Board* shall be *entrusted with the task* of further specifying the criteria, conditions and

specifying the criteria, conditions and appropriate safeguards for the processing of the special categories of personal data referred to in paragraph 1 and the exemptions laid down in paragraph 2.

appropriate safeguards for the processing of special categories of personal data referred to in paragraph 1 and the exemptions laid down in paragraph 2, *in accordance with Article 66*.

Or. en

## **Amendment 117**

### **Proposal for a regulation Article 10**

#### *Text proposed by the Commission*

If the data processed by a controller do not permit the controller to identify a natural person, the controller shall not be obliged to acquire additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation

#### *Amendment*

If the data processed by a controller do not permit the controller to identify *or single out* a natural person, *or consist only of data relating to pseudonyms*, the controller shall not be obliged to acquire additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation.

Or. en

#### *Justification*

*Data controllers may use a unique identifier for the same person across different services and contexts, while still not being able to identify a natural person on their basis. Pseudonyms as defined in the amendment to Article 4 are limited to a specific context. The amendment makes clear that the article applies to both cases.*

## **Amendment 118**

### **Proposal for a regulation Article 11 – paragraph 3 (new)**

#### *Text proposed by the Commission*

#### *Amendment*

*3. Information for data subjects shall be provided in a format offering data subjects the information needed to understand their position and make decisions in an appropriate way.*

***Therefore the controller shall provide and communicate its data protection policies through an easily understandable icon-based mode of description for the different types of data processing, their conditions and consequences. Full information shall be available on request in accordance with Article 14.***

Or. en

#### *Justification*

*Data protection policies are complex documents containing a vast amount of situation-specific details. The aim of multi layered notices is to help improving the quality of information on data protection received by focusing each layer on the information that the data subject needs to understand its position and make decisions. Thus multi-layered formats can improve the readability of notices. Without having to deal with all the details of a data protection policy, the data subject can at one glance at the simple icons know if and how his or her data is being used. See related amendments to Articles 4(2a), 7(2a) and Recital 23.*

#### **Amendment 119**

##### **Proposal for a regulation Article 11 – paragraph 4 (new)**

*Text proposed by the Commission*

*Amendment*

***4. The Commission shall be empowered to adopt after requesting an opinion of The European Data Protection Board, delegated acts in accordance with Article 86 for the purpose of further specifying the icon-based mode of description referred to in paragraph 3 concerning the nature of the processing, duration of storage, transfer or erasure of data by establishing icons or other instruments in order to provide information in a standardised way.***

Or. en

## *Justification*

*This new delegated act is necessary to specify the icon-based simple information on data protection policies.*

### **Amendment 120**

#### **Proposal for a regulation Article 12 - paragraph 4**

##### *Text proposed by the Commission*

4. The information and the actions taken on requests referred to in paragraph 1 shall be free of charge. Where requests are manifestly excessive, in particular because of their repetitive character, the controller may charge a fee for providing the information or taking the action requested, ***or the controller may not take the action requested***. In that case, the controller shall bear the burden of proving the manifestly excessive character of the request.

##### *Amendment*

4. The information and the actions taken on requests referred to in paragraph 1 shall be free of charge. Where requests are manifestly excessive, in particular because of their repetitive character, the controller may charge a ***reasonable*** fee for providing the information or ***taking*** the action requested. In that case, the controller shall bear the burden of proving the manifestly excessive character of the request.

Or. en

### **Amendment 121**

#### **Proposal for a regulation Article 12 - paragraph 5**

##### *Text proposed by the Commission*

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for ***the manifestly excessive requests and*** the fees referred to in paragraph 4.

##### *Amendment*

5. The Commission shall be empowered to adopt, ***after requesting an opinion the European Data Protection Board,*** delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for the fees referred to in paragraph 4.

Or. en

## *Justification*

*Guidance on what constitutes as manifestly excessive requests is moved to the new Article 12(6a) and handed over from the Commission to the European Data Protection Board, because DPAs know this better from practical experience. See related amendment to Article 12(6a).*

### **Amendment 122**

#### **Proposal for a regulation Article 12 - paragraph 6**

##### *Text proposed by the Commission*

6. The Commission may lay down standard forms ***and specifying standard procedures*** for the communication referred to in paragraph 2, including the electronic format. ***In doing so, the Commission shall take the appropriate measures for micro, small and medium-sized enterprises.*** Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

##### *Amendment*

6. The Commission may lay down standard forms for the communication referred to in paragraph 2, including the electronic format. Those implementing acts shall be adopted, ***after adopting an opinion of the European Data Protection Board,*** in accordance with the examination procedure referred to in Article 87(2).

Or. en

### **Amendment 123**

#### **Proposal for a regulation Article 12 - paragraph 6 a (new)**

##### *Text proposed by the Commission*

##### *Amendment*

***6a. The European Data Protection Board shall be entrusted with the task of further specifying the criteria and conditions for manifestly excessive requests as referred to in paragraph 4, in accordance with Article 66.***

Or. en

### *Justification*

*Guidance on what constitutes as manifestly excessive requests is moved over Article 12(5) and handed over from the Commission to the European Data Protection Board, because DPAs know this better from practical experience. See related amendment to Article 12(5).*

## **Amendment 124**

### **Proposal for a regulation Article 13**

#### *Text proposed by the Commission*

#### Rights in relation to recipients

The controller shall communicate any rectification or erasure carried out in accordance with Articles 16 and 17 to each recipient to whom the data have been **disclosed**, unless this proves impossible or involves a disproportionate effort.

#### *Amendment*

#### Rights in relation to recipients

The controller shall communicate any rectification or erasure carried out in accordance with Articles 16 and 17 to each recipient to whom the data have been **transferred**, unless this proves impossible or involves a disproportionate effort. **The controller shall inform the data subject about those third parties.**

Or. en

### *Justification*

*There is no definition of 'disclose', but the rapporteur is proposing a definition of 'transfer', see Article 4(3a). The controller should inform a data subject about those third parties to which a rectification or erasure request has been communicated, in order to allow the data subject to exercise its rights directly towards them.*

## **Amendment 125**

### **Proposal for a regulation Article 14 – paragraph 1 – point a)**

#### *Text proposed by the Commission*

(a) the identity and the contact details of the controller and, if any, of the controller's representative and of the data protection officer;

#### *Amendment*

(a) the identity and the contact details of the controller and, if any, of the controller's representative, of the data protection officer **and of joint controllers; in the case of joint controllers, an indication of their respective roles and responsibilities;**

## Amendment 126

### Proposal for a regulation

#### Article 14 – paragraph 1 – point a) a (new)

*Text proposed by the Commission*

*Amendment*

***(aa) the category of personal data collected and processed;***

Or. en

#### *Justification*

*The content of Article 28 on documentation requirements is moved to Article 14 on information rights. The proposed regulation can be simplified by merging information and documentation, essentially being two sides of the same coin. This will reduce administrative burdens for data controllers and make it easier for individuals to understand and exercise their rights. See related amendment to Article 28.*

## Amendment 127

### Proposal for a regulation

#### Article 14 – paragraph 1 – point b)

*Text proposed by the Commission*

*Amendment*

(b) the purposes of the processing for which the personal data are intended, including the contract terms and general conditions where the processing is based on point (b) of Article 6(1) and the legitimate interests pursued by the controller where the processing is based on ***point (f) of*** Article 6(1);

(b) the purposes of the processing for which the personal data are intended, including the contract terms and general conditions where the processing is based on point (b) of Article 6(1) and the legitimate interests pursued by the controller where the processing is based on ***paragraphs 1a and 1b of*** Article 6;

Or. en

*Justification*

*Consequential amendment based on the new structure of Article 6, see amendments to Articles 6(1)(f), 6(1a), 6(1b), 6(1c).*

**Amendment 128**

**Proposal for a regulation**

**Article 14 – paragraph 1 – point b) b (new)**

*Text proposed by the Commission*

*Amendment*

***(bb) the reasons for believing that its interests override the interests or fundamental rights and freedoms of the data subject pursuant to in Article 6 (1a);***

Or. en

*Justification*

*Consequential amendment based on the new structure of Article 6, see amendments to Articles 6(1)(f), 6(1a), 6(1b), 6(1c).*

**Amendment 129**

**Proposal for a regulation**

**Article 14 – paragraph 1 – point f)**

*Text proposed by the Commission*

*Amendment*

***(f) the recipients *or categories of recipients* of the personal data;***

***(f) the recipients of the personal data;***

Or. en



## Amendment 130

### Proposal for a regulation

#### Article 14 – paragraph 1 – point g)

*Text proposed by the Commission*

(g) where applicable, that the controller intends to transfer to a third country or international organisation and on the level of protection afforded by that third country or international organisation by reference to an adequacy decision by the Commission;

*Amendment*

(g) where applicable, that the controller intends to transfer **the data** to a third country or international organisation and on the level of protection afforded by that third country or international organisation by reference to an adequacy decision by the Commission, **or in case of transfers referred to in Article 42, Article 43, or point (h) of Article 44(1), by reference to the appropriate safeguards and the means to obtain a copy of them;**

Or. en

#### *Justification*

*The content of Article 28 on documentation requirements is moved to Article 14 on information rights. The proposed regulation can be simplified by merging information and documentation, essentially being two sides of the same coin. This will reduce administrative burdens for data controllers and make it easier for individuals to understand and exercise their rights. See related amendment to Article 28.*

## Amendment 131

### Proposal for a regulation

#### Article 14 – paragraph 1 – point g) a (new)

*Text proposed by the Commission*

*Amendment*

**(ga) where applicable, information about the existence of profiling, of measures based on profiling, and of mechanisms to object to profiling;**

Or. en

#### *Justification*

*This provision is moved from Article 20(4) on profiling to Article 14 on information*

*obligations, in order to ensure all information obligations are covered under one article. The addition of "mechanisms to object..." is relevant to ensure information about standards such as Do Not Track. See related amendments to Articles 4(3b) 14(1)(g), and (gb), 15(1), 20(4).*

## **Amendment 132**

### **Proposal for a regulation**

#### **Article 14 – paragraph 1 – point g) b (new)**

*Text proposed by the Commission*

*Amendment*

***(gb) intelligible information about the logic involved in any automated processing;***

Or. en

#### *Justification*

*This provision already exists in the Data Protection Directive 95/46/EC. It should be also included in the new Regulation, in line with the expressed position of the Parliament to not go below the already existing level of protection.*

## **Amendment 133**

### **Proposal for a regulation**

#### **Article 14 – paragraph 1 – point h) a (new)**

*Text proposed by the Commission*

*Amendment*

***(ha) the rights and mechanisms to oppose or avoid the processing of the personal data.***

Or. en

## Amendment 134

### Proposal for a regulation Article 14 – paragraph 7

#### *Text proposed by the Commission*

7. The Commission shall be empowered to adopt after request an opinion of the European Data protection Board, delegated acts in accordance with Article 86 for the purpose of further specifying the criteria for categories of recipients referred to in point (f) of paragraph 1, the requirements for the notice of potential access referred to in point (g) of paragraph 1, the criteria for the further information necessary referred to in point (h) of paragraph 1 for specific sectors and situations, and the conditions and appropriate safeguards for the exceptions laid down in point (b) of paragraph 5. In doing so, the Commission shall take the appropriate measures for micro, small and medium-sized-enterprises.

#### *Amendment*

7. The Commission shall be empowered to adopt, ***after requesting an opinion of the European Data Protection Board,*** delegated acts in accordance with Article 86 for the purpose of further specifying the criteria for categories of recipients referred to in point (f) of paragraph 1, the requirements for the notice of potential access referred to in point (g) of paragraph 1, the criteria for the further information necessary referred to in point (h) of paragraph 1 for specific sectors and situations, and the conditions and appropriate safeguards for the exceptions laid down in point (b) of paragraph 5. In doing so, the Commission shall take the appropriate measures for micro, small and medium-sized-enterprises.

Or. en

## Amendment 135

### Proposal for a regulation Article 14 – paragraph 8

#### *Text proposed by the Commission*

8. The Commission may lay down standard forms for providing the information referred to in paragraphs 1 to 3, taking into account the specific characteristics and needs of various sectors and data processing situations where necessary. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

#### *Amendment*

8. The Commission ***shall*** lay down standard forms for providing the information referred to in paragraphs 1 to 3, taking into account the specific characteristics and needs of various sectors and data processing situations where necessary ***as well as the needs of the relevant stakeholders.*** Those implementing acts shall be adopted, ***after requesting an opinion of the European Protection Board,*** in accordance with the

examination procedure referred to in Article 87(2).

Or. en

## Amendment 136

### Proposal for a regulation Article 15 – paragraph 1

*Text proposed by the Commission*

1. The data subject shall have the right to obtain from the controller at any time, on request, confirmation as to whether or not personal data relating to the data subject are being processed. Where such personal data are being processed, the controller shall provide the following information:

*Amendment*

1. The data subject shall have the right to obtain from the controller at any time, on request, ***in clear and plain language***, confirmation as to whether or not personal data relating to the data subject are being processed, ***and as to the existence of profiling and measures based on profiling in respect of the data subject*** the controller shall provide the following information:

Or. en

*Justification*

*In order to ensure an informed consent to profiling activities, these need to be defined and regulated. See related amendments to Articles 4(3b) 14(1)(g), (ga) and (gb), 20.*

## Amendment 137

### Proposal for a regulation Article 15 – paragraph 1 – point c)

*Text proposed by the Commission*

(c) the recipients ***or categories of recipients*** to whom the personal data are to be or have been disclosed, ***in particular*** to recipients in third countries;

*Amendment*

(c) the recipients to whom the personal data are to be or have been disclosed, ***including*** to recipients in third countries;

Or. en

## Amendment 138

### Proposal for a regulation

#### Article 15 – paragraph 1 – point h)

*Text proposed by the Commission*

(h) the **significance and** envisaged consequences of **such processing, at least in the case of measures referred to in Article 20.**

*Amendment*

(h) the envisaged consequences of **profiling and of measures based on profiling;**

Or. en

#### *Justification*

*In order to ensure an informed consent to profiling activities, these need to be defined and regulated. See related amendments to Articles 4(3b) 14(1)(g), (ga) and (gb), 20.*

## Amendment 139

### Proposal for a regulation

#### Article 15 – paragraph 1 – point h a (new)

*Text proposed by the Commission*

*Amendment*

**(ha) intelligible information about the logic involved in any automated processing;**

Or. en

#### *Justification*

*This provision already exists in the Data Protection Directive 95/46/EC. It should be also included in the new Regulation, in line with the expressed position of the Parliament to not go below the already existing level of protection.*

## Amendment 140

### Proposal for a regulation

#### Article 15 – paragraph 1 – point h b (new)

*Text proposed by the Commission*

*Amendment*

*(hb) in the event of disclosure of personal data to a public authority as a result of a public authority request, confirmation of the fact that such a request has been made, information about whether or not the request has been fully or partly complied with and an overview of the data that were requested or disclosed.*

Or. en

*Justification*

*Individuals have a right to be informed about all processing of their data, including the disclosure to public authorities. This amendment is notwithstanding the restrictions specified in Article 21, e.g. in the case of ongoing law enforcement investigations.*

## Amendment 141

### Proposal for a regulation

#### Article 15 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. The data subject shall have the right to obtain from the controller communication of the personal data undergoing processing. Where the data subject makes the request in electronic form, the information shall be provided in electronic form, unless otherwise requested by the data subject.

2. The data subject shall have the right to obtain from the controller communication of the personal data undergoing processing. Where the data subject makes the request in electronic form, the information shall be provided in ***an electronic and structured format which is commonly used and allows for further use by the data subject***, unless otherwise requested by the data subject.

Or. en

### *Justification*

*Article 18 is merged with Article 15. If data subjects want to exercise their right to access their personal data, it should be provided to them in an electronic format which they can use. This further use includes the right to move it to other platforms and services if the data subject wants this. The right to data portability, therefore, is a mere specification of the right to data access.*

### **Amendment 142**

#### **Proposal for a regulation**

#### **Article 15 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Where the data subject has provided the personal data and the processing is based on consent or on a contract, the data subject shall have the right to transmit those personal data, where technically feasible and appropriate, and retained by an automated processing system, into another one, in an electronic format which is commonly used, without hindrance from the controller from whom the personal data are withdrawn.***

Or. en

### *Justification*

*Article 18 is merged with Article 15. If data subjects want to exercise their right to access their personal data, it should be provided to them in an electronic format which they can use. This further use includes the right to move it to other platforms and services if the data subject wants this. The right to data portability, therefore, is a mere specification of the right to data access.*

### **Amendment 143**

#### **Proposal for a regulation**

#### **Article 15 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***2b. This Article shall be without prejudice to the obligation to delete data when no***

*longer necessary under Article 5(1)(e).*

Or. en

#### **Amendment 144**

##### **Proposal for a regulation Article 15 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

**3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the communication to the data subject of the content of the personal data referred to in point (g) of paragraph 1.**

*deleted*

Or. en

#### *Justification*

*The Commission should not be empowered to define what a commonly used electronic format is, because it may change quicker than the adoption of implementing acts takes. This can be left to the supervisory authorities if needed.*

#### **Amendment 145**

##### **Proposal for a regulation Article 15 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

4. The Commission may specify standard forms **and procedures** for requesting and granting access to the information referred to in paragraph 1, including for verification of the identity of the data subject and communicating the personal data to the data subject, taking into account the specific features and necessities of various sectors and data processing situations. Those implementing acts shall be adopted

4. The Commission may specify standard forms for requesting and granting access to the information referred to in paragraph 1, including for verification of the identity of the data subject and communicating the personal data to the data subject, taking into account the specific features and necessities of various sectors and data processing situations. Those implementing acts shall be adopted, **after requesting an**



in accordance with the examination procedure referred to in Article 87(2).

***opinion of the European Protection Board***, in accordance with the examination procedure referred to in Article 87(2).

Or. en

### *Justification*

*Guidance on standard procedures for exercising the right to data subject access and data portability should come from the supervisory authorities, not from the Commission and after having requested the opinion of the European Data Protection Board.*

## **Amendment 146**

### **Proposal for a regulation Article 17 - paragraph 1**

#### *Text proposed by the Commission*

1. The data subject shall have the right to obtain from the controller the erasure of personal data relating to them and the abstention from further dissemination of such data, ***especially in relation to personal data which are made available by the data subject while he or she was a child***, where one of the following grounds applies:

#### *Amendment*

1. The data subject shall have the right to obtain from the controller the erasure of personal data relating to them and the abstention from further dissemination of such data, where one of the following grounds applies:

Or. en

### *Justification*

*The right to erasure applies to all data subjects equally. The deleted text could have been read to imply that for adults there are limitations to this right.*

## **Amendment 147**

### **Proposal for a regulation Article 17 – paragraph 2**

#### *Text proposed by the Commission*

2. Where the controller referred to in paragraph 1 has made the personal data

#### *Amendment*

2. Where the controller referred to in paragraph 1 has transferred or made the

public, *it shall take all reasonable steps, including technical measures, in relation to data for the publication of which the controller is responsible, to inform third parties which are processing such data, that a data subject requests them to erase any links to, or copy or replication of that personal data. Where the controller has authorised a third party publication of personal data, the controller shall be considered responsible for that publication.*

personal data public *without a justification based on Article 6(1), it shall take all necessary steps to have the data erased, without prejudice to Article 77.*

Or. en

#### *Justification*

*The right to erasure and the right to rectification remain important for data subjects, as more and more information are disclosed which can have significant impacts. However, if a publication of personal data took place based on legal grounds as referred to in Article 6(1), a “right to be forgotten” is neither realistic nor legitimate. See related amendment to Article 17(2a) and Recital 54. This does not imply that third parties can further process published personal data if there is no legal ground for them to do so.*

### **Amendment 148**

#### **Proposal for a regulation Article 17 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Any measures for erasure of published personal data shall respect the right to freedom of expression, as referred to in Article 80.***

Or. en

#### *Justification*

*It should be made clear that the right to be forgotten needs to be balanced with the right to freedom of expression. See related amendment to Article 17(2), Recital 54.*

## Amendment 149

### Proposal for a regulation Article 17 – paragraph 4

*Text proposed by the Commission*

4. Instead of erasure, the controller shall restrict processing of personal data where:

*Amendment*

4. Instead of erasure, the controller shall restrict processing of personal data ***in such a way that it is not subject to the normal data access and processing operations of the controller and can not be changed anymore***, where:

Or. en

## Amendment 150

### Proposal for a regulation Article 17 – paragraph 4 – point d)

*Text proposed by the Commission*

(d) the data subject requests to transmit the personal data into another automated processing system in accordance with Article **18(2)**.

*Amendment*

(d) the data subject requests to transmit the personal data into another automated processing system in accordance with Article **15(2) and 2a**.

Or. en

*Justification*

*Consequential amendment based on the merging of Articles 15 and 18.*

## Amendment 151

### Proposal for a regulation Article 17 – paragraph 5

*Text proposed by the Commission*

5. Personal data referred to in paragraph 4 may, with the exception of storage, only be processed for purposes of proof, or with the data subject's consent, or for the

*Amendment*

5. Personal data referred to in paragraph 4 may, with the exception of storage, only be processed for purposes of proof, or with the data subject's consent, or for the

protection of the rights of another natural or legal person or for *an objective of public interest*.

protection of the rights of another natural or legal person or for *compliance with a legal obligation to process the personal data by the Union or national law to which the controller is subject*.

Or. en

#### *Justification*

*Any public interest must be laid down in law in order to create a legal obligation for the data controller to outweigh the right to erasure of the data subject.*

### **Amendment 152**

#### **Proposal for a regulation Article 17 – paragraph 9**

##### *Text proposed by the Commission*

9. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying:

##### *Amendment*

9. The Commission shall be empowered to adopt, *after requesting an opinion of the European Data Protection Board*, delegated acts in accordance with Article 86 for the purpose of further specifying:

Or. en

#### *Justification*

*Consequential amendment based on the new and stricter "right to be forgotten" in Article 17(2).*

### **Amendment 153**

#### **Proposal for a regulation Article 17 – paragraph 9 – point b)**

##### *Text proposed by the Commission*

(b) the conditions for deleting *links, copies or replications of* personal data from publicly available communication services as referred to in paragraph 2;

##### *Amendment*

(b) the conditions for deleting personal data from publicly available communication services as referred to in paragraph 2;

### *Justification*

*In the case of published data, the original data controller shall only be obliged to inform those third parties which it can reasonably expect to be further processing the data and also inform the data subject about them. This also allows for the data subject to contact them directly and request from them to inform further third parties and it also gives the data subject a fuller understanding of the spreading of his/her personal data. It is important to maintain the inclusion of third parties that only process data without publishing it, in order to also cover companies that "scrape" personal data from public sources for further internal processing, such as credit rating, direct marketing, etc. It should be made clear that the right to be forgotten needs to be balanced with the right to freedom of expression. The exceptions in paragraph 3 are only a duplication of the general limitations in Article 21 and do not add any value here.*

## **Amendment 154**

### **Proposal for a regulation Article 18**

*Text proposed by the Commission*

*Amendment*

#### ***Right to Data Portability***

***deleted***

***1. The data subject shall have the right, where personal data are processed by electronic means and in a structured and commonly used format, to obtain from the controller a copy of data undergoing processing in an electronic and structured format which is commonly used and allows for further use by the data subject.***

***2. Where the data subject has provided the personal data and the processing is based on consent or on a contract, the data subject shall have the right to transmit those personal data and any other information provided by the data subject and retained by an automated processing system, into another one, in an electronic format which is commonly used, without hindrance from the controller from whom the personal data are withdrawn.***

***3. The Commission may specify the electronic format referred to in paragraph***

***1 and the technical standards, modalities and procedures for the transmission of personal data pursuant to paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).***

Or. en

#### *Justification*

*Article 18 is merged with Article 15 on data subject access. If data subjects want to exercise their right to access their personal data, it should be provided to them in an electronic format which they can use. This further use includes the right to move it to other platforms and services if the data subject wants this. The right to data portability, therefore, is a mere specification of the right to data access. See related amendments to Article 15.*

#### **Amendment 155**

##### **Proposal for a regulation Article 19 – paragraph 1**

###### *Text proposed by the Commission*

1. The data subject shall have the right to object, ***on grounds relating to their particular situation***, at any time to the processing of personal data which is based on points (d), (e) ***and (f)*** of Article 6(1), ***unless the controller demonstrates compelling legitimate grounds for the processing which override the interests or fundamental rights and freedoms of the data subject.***

###### *Amendment*

1. The data subject shall have the right to object at any time to the processing of personal data which is based on points (d) ***and*** (e) of Article 6(1).

Or. en

#### **Amendment 156**

##### **Proposal for a regulation Article 19 – paragraph 2**

###### *Text proposed by the Commission*

2. Where personal data are processed ***for***

###### *Amendment*

2. Where personal data are processed ***based***

*direct marketing purposes*, the data subject shall have the right to object free of charge to the processing of their personal data *for such marketing*. This right shall be explicitly offered to the data subject in an intelligible manner and shall be clearly distinguishable from other information.

*on Article 6(1a)*, the data subject shall have the right to object free of charge *in all cases* to the processing of their personal data. This right shall be explicitly offered to the data subject in an intelligible manner, *using clear and plain language, adapted to the data subject, in particular for any information addressed specifically to a child*, and shall be clearly distinguishable from other information.

Or. en

#### *Justification*

*The right to object to further data processing should always be free of charge and it should be explicitly offered to the data subject by using a clear, plain and adapted language. See related amendments to Article 6(1)(f), 6(1a), 6(1b) and 6(1c).*

### **Amendment 157**

#### **Proposal for a regulation Article 19 – paragraph 3**

##### *Text proposed by the Commission*

3. Where an objection is upheld pursuant to paragraphs 1 and 2, the controller shall no longer use or otherwise process the personal data concerned.

##### *Amendment*

3. Where an objection is upheld pursuant to paragraphs 1 and 2, the controller *shall erase* the personal data concerned.

Or. en

#### *Justification*

*It should be clarified that the right to object, if upheld by the data subject, should result in the erasure of the data by the controller*

## Amendment 158

### Proposal for a regulation Article 20– paragraph 1

*Text proposed by the Commission*

*Amendment*

Measures based on **profiling**

**Profiling**

**1. Every natural person shall have the right not to be subject to a measure which produces legal effects concerning this natural person or significantly affects this natural person, and which is based solely on automated processing intended to evaluate certain personal aspects relating to this natural person or to analyse or predict in particular the natural person's performance at work, economic situation, location, health, personal preferences, reliability or behaviour.**

**1. The processing of personal data for the purposes of profiling, including in relation to the offering of electronic information and communication services, shall only be lawful if it:**

Or. en

#### *Justification*

*As is the case with any collection, processing and use of data, a general ban is introduced on profiling as defined in article 4, and it is only permissible where provided for by law, i.e. either by means of the data subject's consent or a statutory provision. Consent will primarily be an option in the private sector (including contracts), whereas statutory permission will especially, but not only be relevant in the public sector. Including the requirement that the data subject must consent to the profiling prevents what often happens in practice, namely that profiles are created without the data subject's knowledge. See related amendments to Articles 4(3b) 14(1)(g), (ga) and (gb), 15(1).*

## Amendment 159

### Proposal for a regulation Article 20– paragraph 2

*Text proposed by the Commission*

*Amendment*

**2. Subject to the other provisions of this Regulation, a person may be subjected to a measure of the kind referred to in paragraph 1 only if the processing:**

**deleted**



*Justification*

*Paragraph 2 is covered by the new paragraph 3a as a consequence of the re-structuring of Article 20.*

**Amendment 160**

**Proposal for a regulation**

**Article 20– paragraph 2 – point a)**

*Text proposed by the Commission*

(a) *is carried out in the course* of the entering into, or performance of, a contract, where the request for the entering into or the performance of the contract, lodged by the data subject, has been satisfied **or where suitable measures to safeguard the data subject's legitimate interests have been adduced, such as the right to obtain human intervention;** or

*Amendment*

(a) is **necessary for** the entering into, or performance of, a contract, where the request for the entering into or the performance of the contract, lodged by the data subject, has been satisfied, or where suitable measures to safeguard the data subject's legitimate interests have been adduced, such as the right to obtain human intervention; or

Or. en

**Amendment 161**

**Proposal for a regulation**

**Article 20– paragraph 2 – point b)**

*Text proposed by the Commission*

(b) is expressly authorized by a Union or Member State law **which also lays down suitable measures to safeguard the data subject's legitimate interests;** or

*Amendment*

(b) is expressly authorized by a Union or Member State law **in accordance with this Article,** or

Or. en

## Amendment 162

### Proposal for a regulation Article 20– paragraph 3

*Text proposed by the Commission*

**3. Automated processing of personal data intended to evaluate certain personal aspects** relating to a natural person **shall not be based solely on** the special categories of personal data referred to in Article 9.

*Amendment*

**2. Profiling activities** relating to a natural person shall **not include or generate any** data that fall under the special categories of personal data referred to in Article 9, **except when falling within the exceptions listed in Article 9(2).**

Or. en

#### *Justification*

*Clarification to cover circumstances where profiling is not based on sensitive data, but used to draw conclusions which imply sensitive data. For example, address information is per se not sensitive but, for example, information that a person regularly goes to an address combined with the additional information that at that address there is a boxing club can be used to draw conclusions about the health status of the person, which has to be considered sensitive data.*

## Amendment 163

### Proposal for a regulation Article 20– paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**2a. Profiling that has the effect of discriminating against individuals on the basis of race or ethnic origin, political opinions, religion or beliefs, trade union membership, sexual orientation or gender identity, or that results in measures which have such effect, shall be prohibited.**

Or. en

## **Amendment 164**

### **Proposal for a regulation Article 20– paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***2b. Profiling shall not be used to identify or single out children.***

Or. en

## **Amendment 165**

### **Proposal for a regulation Article 20 – paragraph 2c (new)**

*Text proposed by the Commission*

*Amendment*

***2c. Measures based on profiling which produce legal effects concerning the data subject or significantly affect the data subject shall not be based solely on automated processing***

Or. en

## **Amendment 166**

### **Proposal for a regulation Article 20– paragraph 4**

*Text proposed by the Commission*

*Amendment*

***4. In the cases referred to in paragraph 2, the information to be provided by the controller under Article 14 shall include information as to the existence of processing for a measure of the kind referred to in paragraph 1 and the envisaged effects of such processing on the data subject.***

*deleted*

Or. en

*Justification*

*The information obligation has been moved to Article 14 on information to the data subject, see related amendment to Article 14(1) (g a).*

**Amendment 167**

**Proposal for a regulation  
Article 20– paragraph 5**

*Text proposed by the Commission*

*Amendment*

***5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for suitable measures to safeguard the data subject's legitimate interests referred to in paragraph 2.***

***deleted***

Or. en

**Amendment 168**

**Proposal for a regulation  
Article 21 – paragraph 1 – point c)**

*Text proposed by the Commission*

*Amendment*

(c) other public interests 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 ***and the protection of market stability and integrity;***

(c) other public interests 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;

Or. en

## Amendment 169

### Proposal for a regulation

#### Article 21 – paragraph 1 – point e)

*Text proposed by the Commission*

*(e) a monitoring, inspection or regulatory function connected, even occasionally, with the exercise of official authority in cases referred to in (a), (b), (c) and (d);*

*Amendment*

*deleted*

Or. en

## Amendment 170

### Proposal for a regulation

#### Article 21– paragraph 2

*Text proposed by the Commission*

2. In particular, any legislative measure referred to in paragraph 1 ***shall contain specific provisions at least as to*** the objectives to be pursued by the processing ***and*** the determination of the controller.

*Amendment*

2. In particular, any legislative measure referred to in paragraph 1 ***must be necessary and proportionate in a democratic society and*** shall contain specific provisions at least as to:

***(a)*** the objectives to be pursued by the processing;

***(b)*** the determination of the controller;

***(c)*** *the specific purposes and means of processing;*

***(d)*** *the categories of persons authorised to process the data;*

***(e)*** *the procedure to be followed for the processing;*

***(f)*** *the safeguards to prevent abuse;*

***(g)*** *the right of data subjects to be informed about the restriction.*

Or. en

### *Justification*

*Any restrictions to the data subjects' rights have to be based on law. The applicable legislation should provide adequate safeguards based on the principles of necessity and proportionality. See related amendment to Article 2(2)(e).*

#### **Amendment 171**

##### **Proposal for a regulation**

##### **Article 22 – paragraph 2 – point d)**

###### *Text proposed by the Commission*

(d) complying with the requirements for prior authorisation or prior consultation of the supervisory authority pursuant to Article 34(1) and (2);

###### *Amendment*

(d) complying with the requirements for prior authorisation or prior consultation of the supervisory authority ***and the data protection officer*** pursuant to Article 34(1) and (2);

Or. en

#### **Amendment 172**

##### **Proposal for a regulation**

##### **Article 22 – paragraph 2 – point e a (new)**

###### *Text proposed by the Commission*

###### *Amendment*

***(ea) establishing transparent information and communication to and with the data subject pursuant to Article 11.***

Or. en

#### **Amendment 173**

##### **Proposal for a regulation**

##### **Article 22 – paragraph 3**

###### *Text proposed by the Commission*

###### *Amendment*

3. The controller shall ***implement mechanisms to ensure the verification of***

3. The controller shall ***be able to demonstrate*** the effectiveness of the

the effectiveness of the measures referred to in paragraphs 1 and 2. If proportionate, this **verification** shall be **carried out** by independent internal or external auditors.

measures referred to in paragraphs 1 and 2. If proportionate, this shall be **verified** by independent internal or external auditors.

Or. en

#### *Justification*

*In line with the accountability principle, auditing mechanisms for compliance with the Regulation shall only be used if proportionate.*

### **Amendment 174**

#### **Proposal for a regulation**

#### **Article 22 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**3a. The controller shall make public a summary of the measures taken pursuant to paragraphs 1 and 2.**

Or. en

### **Amendment 175**

#### **Proposal for a regulation**

#### **Article 22 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of specifying **any further criteria and requirements for appropriate measures referred to in paragraph 1 other than those already referred to in paragraph 2**, the conditions for the verification and auditing mechanisms referred to in paragraph 3 and as regards the criteria for proportionality under paragraph 3, and considering specific measures for micro, small and

4. The Commission shall be empowered to adopt, **after requesting an opinion of the European Data Protection Board**, delegated acts in accordance with Article 86 for the purpose of specifying the conditions for the verification and auditing mechanisms referred to in paragraph 3 and as regards the criteria for proportionality under paragraph 3, and considering specific measures for micro, small and medium-sized-enterprises.

medium-sized-enterprises.

Or. en

*Justification*The role of the Commission should be limited to further specifying the conditions for auditing mechanisms

## Amendment 176

### Proposal for a regulation Article 23 – paragraph 1

#### *Text proposed by the Commission*

1. Having regard to the state of the art and the cost of implementation, the controller shall, both at the time of the determination of the means for processing and at the time of the processing itself, implement appropriate technical and organisational measures and procedures in such a way that the processing will meet the requirements of this Regulation and ensure the protection of the rights of the data subject

#### *Amendment*

1. Having regard to the state of the art and the cost of implementation, the controller shall, both at the time of the determination of the ***purposes and*** means for processing and at the time of the processing itself, implement appropriate technical and organisational measures and procedures in such a way that the processing will meet the requirements of this Regulation and ensure the protection of the rights of the data subject, ***in particular with regard to the principles laid out in Article 5. Where the controller has carried out a data protection impact assessment pursuant to Article 33, the results shall be taken into account when developing those measures and procedures.***

Or. en

#### *Justification*

*Data protection by design is applauded as a core innovation of the reform. This would ensure that only data that are necessary for a specific purpose will actually be processed. The amendment clarifies the implementation of this principle.*



## Amendment 177

### Proposal for a regulation Article 23 – paragraph 2

*Text proposed by the Commission*

2. The controller shall **implement mechanisms for ensuring** that, by default, only those personal data are processed which are necessary for each specific purpose of the processing and are especially not collected or retained beyond the minimum necessary for those purposes, both in terms of the amount of the data and the time of their storage. In particular, those mechanisms shall ensure that by default personal data are not made accessible to an indefinite number of individuals.

*Amendment*

**2. Where the data subject is given a choice regarding the processing of personal data,** the controller shall **ensure** that, by default, only those personal data are processed which are necessary for each specific purpose of the processing and are especially not collected or retained beyond the minimum necessary for those purposes, both in terms of the amount of the data and the time of their storage. In particular, those mechanisms shall ensure that by default personal data are not made accessible to an indefinite number of individuals **and that data subjects are able to control the distribution of their personal data.**

Or. en

*Justification*

*The principle of data protection by default is further clarified.*

## Amendment 178

### Proposal for a regulation Article 23 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**2a. Data processors and producers shall implement appropriate technical and organisational measures and procedures to ensure that their services and products allow controllers by default to meet the requirements of this Regulation, in particular those referred to in paragraph 1 and 2.**

*Justification*

*Data processors and producers of data processing systems should implement appropriate measures to ensure the application of the principles of privacy by design and privacy by default, in order to ease the compliance with the Regulation by data controllers.*

**Amendment 179****Proposal for a regulation  
Article 23 – paragraph 3***Text proposed by the Commission*

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of specifying any further criteria and requirements for appropriate measures and mechanisms referred to in paragraph 1 and 2, in particular for data protection by design requirements applicable across sectors, products and services.

*Amendment*

3. ***The European Data Protection Board*** shall be ***entrusted with the task*** of specifying any further criteria and requirements for appropriate measures and mechanisms referred to in paragraphs ***1, 2, and 2a***, in particular for data protection by design requirements applicable across sectors, products and services, ***in accordance with Article 66.***

*Justification*

*Data processors and producers of data processing systems should implement appropriate measures to ensure the application of the principles of privacy by design and privacy by default, in order to ease the compliance with the Regulation by data controllers.*

**Amendment 180****Proposal for a regulation  
Article 23 – paragraph 4***Text proposed by the Commission*

4. The Commission may lay down technical standards for the requirements laid down in paragraph 1 and 2. Those implementing acts shall be adopted in accordance with the examination procedure

*Amendment*

4. The Commission may lay down technical standards for the requirements laid down in paragraph 1 and 2. Those implementing acts shall be adopted, ***after requesting an opinion by the European***

referred to in Article 87(2).

**Data Protection Board**, in accordance with the examination procedure referred to in Article 87(2).

Or. en

## Amendment 181

### Proposal for a regulation Article 24

#### *Text proposed by the Commission*

Where a controller determines the purposes, conditions and means of the processing of personal data jointly with others, the joint controllers shall determine their respective responsibilities for compliance with the obligations under this Regulation, in particular as regards the procedures and mechanisms for exercising the rights of the data subject, by means of *an* arrangement between them.

#### *Amendment*

Where a controller determines the purposes, conditions and means of the processing of personal data jointly with others, the joint controllers shall determine their respective responsibilities for compliance with the obligations under this Regulation, in particular as regards the procedures and mechanisms for exercising the rights of the data subject, by means of a *written* arrangement between them. ***Where such determination is lacking or is not sufficiently clear, the data subject may exercise his or her rights against any one of the controllers, who shall be jointly and severally liable.***

Or. en

## Amendment 182

### Proposal for a regulation Article 25 -- paragraph 2 – point b)

#### *Text proposed by the Commission*

(b) an enterprise *employing fewer than* 250 persons; or

#### *Amendment*

(b) an enterprise *processing personal data relating to fewer than 500 data subjects per year*; or

Or. en

*Justification*

*Consequential amendment based on the new threshold for data protection officers. See related amendment to Article 35(1)(b).*

**Amendment 183**

**Proposal for a regulation  
Article 25 -- paragraph 3**

*Text proposed by the Commission*

3. The representative shall be established in one of those Member States where the data subjects whose personal data are processed *in relation to the offering of goods or services to them, or whose behaviour is monitored*, reside.

*Amendment*

3. The representative shall be established in one of those Member States where the data subjects whose personal data are processed *as referred to in Article 3(2)* reside.

Or. en

**Amendment 184**

**Proposal for a regulation  
Article 26 – paragraph 2 – point a)**

*Text proposed by the Commission*

(a) act only on instructions from the controller, *in particular, where the transfer of the personal data used is prohibited*;

*Amendment*

(a) act only on instructions from the controller,

Or. en

## Amendment 185

### Proposal for a regulation

#### Article 26 - paragraph 2 – point h a (new)

*Text proposed by the Commission*

*Amendment*

*(ha) take into account the principle of data protection by design and by default.*

Or. en

## Amendment 186

### Proposal for a regulation

#### Article 26 - paragraph 5

*Text proposed by the Commission*

*Amendment*

*5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the responsibilities, duties and tasks in relation to a processor in line with paragraph 1, and conditions which allow facilitating the processing of personal data within a group of undertakings, in particular for the purposes of control and reporting.*

*deleted*

Or. en

## Amendment 187

### Proposal for a regulation

#### Article 27 - paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

*1a. Where the processor is or becomes the determining part in relation to the purposes, means, or methods of data processing or does not act only on the instructions of the controller, it shall be*

*considered a joint controller pursuant to Article 24.*

Or. en

## **Amendment 188**

### **Proposal for a regulation Article 28 – paragraph 2**

*Text proposed by the Commission*

2. The documentation shall contain at least the *following* information:

- (a) the name and contact details of the controller, or any joint controller or processor, and of the representative, if any;*
- (b) the name and contact details of the data protection officer, if any;*
- (c) the purposes of the processing, including the legitimate interests pursued by the controller where the processing is based on point (f) of Article 6(1);*
- (d) a description of categories of data subjects and of the categories of personal data relating to them;*
- (e) the recipients or categories of recipients of the personal data, including the controllers to whom personal data are disclosed for the legitimate interest pursued by them;*
- (f) where applicable, transfers of data to a third country or an international organisation, including the identification of that third country or international organisation and, in case of transfers referred to in point (h) of Article 44(1), the documentation of appropriate safeguards;*
- (g) a general indication of the time limits for erasure of the different categories of data;*

*Amendment*

2. The documentation shall contain at least the information *listed in Article 14.*

*(h) the description of the mechanisms referred to in Article 22(3).*

Or. en

#### *Justification*

*The content of Article 28 on documentation requirements is moved to article 14 on information rights. The proposed regulation can be simplified by merging information and documentation, essentially being two sides of the same coin. This will reduce administrative burdens for data controllers and make it easier for individuals to understand and exercise their rights. See related amendments to Article 14.*

### **Amendment 189**

#### **Proposal for a regulation Article 28 – paragraph 4 – point a)**

*Text proposed by the Commission*

*Amendment*

4. The obligations referred to in paragraphs 1 and 2 shall not apply to *the following controllers and processors:*

4. The obligations referred to in paragraphs 1 and 2 shall not apply to a natural person processing personal data without a commercial interest.

*(a) a natural person processing personal data without a commercial interest; or*

Or. en

### **Amendment 190**

#### **Proposal for a regulation Article 28 – paragraph 4 – point b)**

*Text proposed by the Commission*

*Amendment*

*(b) an enterprise or an organisation employing fewer than 250 persons that is processing personal data only as an activity ancillary to its main activities.*

*deleted*

Or. en

## **Amendment 191**

### **Proposal for a regulation Article 28– paragraph 5**

*Text proposed by the Commission*

*Amendment*

**5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the documentation referred to in paragraph 1, to take account of in particular the responsibilities of the controller and the processor and, if any, the controller's representative.** *deleted*

Or. en

#### *Justification*

*Already in current data protection law, small and medium-sized companies have to provide information to data subjects, as reflected in Article 14. Because information and documentation obligations are now merged in Article 14, these companies would have the information at hand anyway and therefore do not need to be exempted from the documentation obligations anymore. In other words: the rules are made simpler but apply to every data controller.*

## **Amendment 192**

### **Proposal for a regulation Article 28– paragraph 6**

*Text proposed by the Commission*

*Amendment*

**6. The Commission may lay down standard forms for the documentation referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).** *deleted*

Or. en



## Amendment 193

### Proposal for a regulation Article 30 – paragraph 1

*Text proposed by the Commission*

1. The controller and the processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected, having regard to the state of the art and the costs of their implementation

*Amendment*

1. The controller and the processor shall implement appropriate technical and organisational measures **and procedures** to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected, having regard to the state of the art and the costs of their implementation.

Or. en

## Amendment 194

### Proposal for a regulation Article 30 – paragraph 3

*Text proposed by the Commission*

3. The **Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose** of further specifying the criteria and conditions for the technical and organisational measures referred to in paragraphs 1 and 2, including the determinations of what constitutes the state of the art, for specific sectors and in specific data processing situations, in particular taking account of developments in technology and solutions for privacy by design and data protection by default, unless paragraph 4 applies.

*Amendment*

3. The **European Data Protection Board shall be entrusted with the task** of further specifying the criteria and conditions for the technical and organisational measures referred to in paragraphs 1 and 2, including the determinations of what constitutes the state of the art, for specific sectors and in specific data processing situations, in particular taking account of developments in technology and solutions for privacy by design and data protection by default, unless paragraph 4 applies, **in accordance with Article 66**.

Or. en

## Amendment 195

### Proposal for a regulation Article 30 – paragraph 4 a)

*Text proposed by the Commission*

*Amendment*

**4. The Commission may adopt, where necessary, implementing acts for specifying the requirements laid down in paragraphs 1 and 2 to various situations, in particular to:** *deleted*

**(a) prevent any unauthorised access to personal data;**

Or. en

## Amendment 196

### Proposal for a regulation Article 30 – paragraph 4 b)

*Text proposed by the Commission*

*Amendment*

**(b) prevent any unauthorised disclosure, reading, copying, modification, erasure or removal of personal data;** *deleted*

Or. en

## Amendment 197

### Proposal for a regulation Article 30 – paragraph 4 c)

*Text proposed by the Commission*

*Amendment*

**(c) ensure the verification of the lawfulness of processing operations. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).** *deleted*

Or. en

## Amendment 198

### Proposal for a regulation Article 31 – paragraphe 4 a (new)

*Text proposed by the Commission*

*Amendment*

***4a. The supervisory authority shall keep a public register of the types of breaches notified***

Or. en

#### *Justification*

*In line with the new Directive on attacks against information systems, a consolidated overview of the types of breaches occurring should be maintained, in order to educate the public about the types and amounts of data breaches.*

## Amendment 199

### Proposal for a regulation Article 31 – paragraphe 5

*Text proposed by the Commission*

*Amendment*

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for establishing the data breach referred to in paragraphs 1 and 2 and for the particular circumstances in which a controller and a processor is required to notify the personal data breach.

5. The Commission shall be empowered to adopt, ***after requesting an opinion of the European Data Protection Board,*** delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for establishing the data breach referred to in paragraphs 1 and 2 and for the particular circumstances in which a controller and a processor is required to notify the personal data breach.

Or. en

## Amendment 200

### Proposal for a regulation Article 31 – paragraphe 6

*Text proposed by the Commission*

6. The Commission may lay down the standard format of such notification to the supervisory authority, the procedures applicable to the notification requirement and the form and the modalities for the documentation referred to in paragraph 4, including the time limits for erasure of the information contained therein. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

*Amendment*

6. The Commission may lay down the standard format of such notification to the supervisory authority, the procedures applicable to the notification requirement and the form and the modalities for the documentation referred to in paragraph 4, including the time limits for erasure of the information contained therein. Those implementing acts shall be adopted, ***after requesting an opinion of the European Data Protection Board***, in accordance with the examination procedure referred to in Article 87(2).

Or. en

## Amendment 201

### Proposal for a regulation Article 32 – paragraph 1

*Text proposed by the Commission*

1. When the personal data breach is likely to adversely affect the protection of the personal data or privacy of the data subject, the controller shall, after the notification referred to in Article 31, communicate the personal data breach to the data subject without undue delay.

*Amendment*

1. When the personal data breach is likely to adversely affect the protection of the personal data or privacy of the data subject, ***for example in cases of identity theft or fraud, physical harm, significant humiliation or damage to reputation***, the controller shall, after the notification referred to in Article 31, communicate the personal data breach to the data subject without undue delay.

Or. en

### *Justification*

*To prevent notification fatigue to data subjects, only in cases where a data breach is likely to adversely affect the protection of the personal data or privacy of the data subject, for example in cases of identity theft or fraud, financial loss, physical harm, significant humiliation or damage to reputation, should the data subject be notified.*

### **Amendment 202**

#### **Proposal for a regulation Article 32 – paragraph 2**

##### *Text proposed by the Commission*

2. The communication to the data subject referred to in paragraph 1 shall describe the nature of the personal data breach and contain at least the information and the recommendations provided for in *points (b) and (c) of Article 31(3)*.

##### *Amendment*

2. The communication to the data subject referred to in paragraph 1 shall describe the nature of the personal data breach and contain at least the information and the recommendations provided for in Article 31(3) **and information about the rights of the data subject, including redress.**

Or. en

### *Justification*

*The notification should also comprise a description of the nature of the personal data breach, and information regarding the rights, including possibilities regarding redress*

### **Amendment 203**

#### **Proposal for a regulation Article 32 – paragraph 5**

##### *Text proposed by the Commission*

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements as to the circumstances in which a personal data breach is likely to adversely affect the personal data referred to in paragraph 1.

##### *Amendment*

5. The Commission shall be empowered to adopt, **after requesting an opinion of the European Data Protection Board,** delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements as to the circumstances in which a personal data breach is likely to adversely affect the personal data referred to in paragraph 1.

## Amendment 204

### Proposal for a regulation Article 32 – paragraph 6

#### *Text proposed by the Commission*

6. The Commission may lay down the format of the communication to the data subject referred to in paragraph 1 and the procedures applicable to that communication. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

#### *Amendment*

6. The Commission may lay down the format of the communication to the data subject referred to in paragraph 1 and the procedures applicable to that communication. Those implementing acts shall be adopted, ***after requesting an opinion of the European Data Protection Board***, in accordance with the examination procedure referred to in Article 87(2).

## Amendment 205

### Proposal for a regulation Article 33 – paragraph 2 – point a)

#### *Text proposed by the Commission*

(a) ***a systematic and extensive evaluation of personal aspects relating to a natural person or for analysing or predicting in particular the natural person's economic situation, location, health, personal preferences, reliability or behaviour, which is based on automated processing*** and on which measures are based that produce legal effects concerning the individual or significantly affect the individual;

#### *Amendment*

(a) ***profiling*** on which measures are based that produce legal effects concerning the individual or significantly affect the individual;

## Amendment 206

### Proposal for a regulation Article 33 – paragraph 2 – point c)

*Text proposed by the Commission*

(c) monitoring publicly accessible areas, especially when using optic-electronic devices (*video surveillance*) **on a large scale**;

*Amendment*

(c) monitoring publicly accessible areas, especially when using optic-electronic **or other sensory** devices;

Or. en

*Justification*

*The amendments on data protection impact assessments aim at further determining the situations where this assessment should be conducted (Article 33(2) and the elements to assess (Article 33(3)).*

## Amendment 207

### Proposal for a regulation Article 33 – paragraph 2 – point d)

*Text proposed by the Commission*

(d) **personal** data **in large scale filing systems** on children, **genetic data** or biometric data;

*Amendment*

(d) **processing of special categories of data as referred to in Article 9(1), location data**, biometric data, or **data** on children;

Or. en

## Amendment 208

### Proposal for a regulation Article 33 – paragraph 2 – point d a (new)

*Text proposed by the Commission*

*Amendment*

**(da) where personal data are made accessible to a large number of persons or if high volumes of personal data about the data subject are processed or combined**

*with other data;*

Or. en

## **Amendment 209**

### **Proposal for a regulation Article 33 – paragraph 2 – point e)**

*Text proposed by the Commission*

(e) other processing operations for which the consultation of the supervisory authority is required pursuant to point (b) of Article 34(2).

*Amendment*

(e) other processing operations for which the consultation of the ***data protection officer or*** supervisory authority is required pursuant to point (b) of Article 34(2).

Or. en

## **Amendment 210**

### **Proposal for a regulation Article 33 – paragraph 3**

*Text proposed by the Commission*

3. The assessment shall contain at least a ***general*** description of the envisaged processing operations, an assessment of the risks to the rights and freedoms of data subjects, the measures envisaged to address the risks, safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Regulation, taking into account the rights and legitimate interests of data subjects and other persons concerned.

*Amendment*

3. The assessment shall contain at least a ***systematic*** description of

***(a)*** the envisaged processing operations ***and their necessity and proportionality in relation to the purpose,***

***(b)*** an assessment of the risks to the rights and freedoms of data subjects,

***(c)*** the measures envisaged to address the



risks *and minimise the volume of personal data which is processed,*

(d) safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Regulation, taking into account the rights and legitimate interests of data subjects and other persons concerned.

Or. en

### *Justification*

*The amendments on Privacy Impact Assessments aim at further determining the situations where this assessment should be conducted (Article 33(2)) and the elements to assess (Article 33(3)).*

## **Amendment 211**

### **Proposal for a regulation Article 33 – paragraph 4**

#### *Text proposed by the Commission*

4. The controller shall seek the views of data subjects or their representatives on the intended processing, *without prejudice to the protection of commercial or public interests or the security of the processing operations.*

#### *Amendment*

4. The controller shall seek the views of data subjects or their representatives on the intended processing.

Or. en

## **Amendment 212**

### **Proposal for a regulation Article 33 – paragraph 5**

#### *Text proposed by the Commission*

*5. Where the controller is a public authority or body and where the*

#### *Amendment*

*deleted*

*processing results from a legal obligation pursuant to point (c) of Article 6(1) providing for rules and procedures pertaining to the processing operations and regulated by Union law, paragraphs 1 to 4 shall not apply, unless Member States deem it necessary to carry out such assessment prior to the processing activities.*

Or. en

#### *Justification*

*Even where public authorities process data based on a legal obligation, a data protection impact assessment should be done in order to ensure compliance with this Regulation, especially to ensure data minimisation and data security, and to mitigate any risks to the rights and freedoms of data subjects.*

#### **Amendment 213**

##### **Proposal for a regulation Article 33 – paragraph 6**

###### *Text proposed by the Commission*

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for the processing operations likely to present specific risks referred to in paragraphs 1 and 2 and the requirements for the assessment referred to in paragraph 3, including conditions for scalability, verification and auditability. In doing so, the Commission shall consider specific measures for micro, small and medium-sized enterprises.

###### *Amendment*

6. The Commission shall be empowered to adopt, ***after requesting an opinion of the European Data Protection Board,*** delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for the processing operations likely to present specific risks referred to in paragraphs 1 and 2 and the requirements for the assessment, referred to in paragraph 3, including conditions ***and procedures*** for scalability, verification and auditability. In doing so, the Commission shall consider specific measures for micro, small and medium-sized enterprises.

Or. en

*Justification*

*The main essence of the implementing act in paragraph 7 has been merged into the delegated act in this paragraph.*

**Amendment 214**

**Proposal for a regulation  
Article 33 – paragraph 7**

*Text proposed by the Commission*

*Amendment*

***7. The Commission may specify standards and procedures for carrying out and verifying and auditing the assessment referred to in paragraph 3. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).***      ***deleted***

Or. en

*Justification*

*The main essence of the implementing act has been merged into the delegated act in paragraph 6.*

**Amendment 215**

**Proposal for a regulation  
Article 34 – paragraph 1-**

*Text proposed by the Commission*

*Amendment*

**1. The controller or the processor as the case may be shall obtain an authorisation from the supervisory authority prior to the processing of personal data, in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where a controller or processor adopts contractual clauses as provided for in point (d) of Article 42(2) or *does not provide for the appropriate***

**1. The controller or the processor as the case may be shall obtain an authorisation from the supervisory authority prior to the processing of personal data, in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where a controller or processor adopts contractual clauses as provided for in point (d) of Article 42(2) or *where it transfers personal to a third***

*safeguards in a legally binding instrument as referred to in Article 42(5) for the transfer of personal data to a third country or an international organisation.*

*country or an international organisation based on the derogations in Article 44.*

Or. en

*Justification*

*This is to clarify that even if personal data are transferred to third countries without legally binding safeguards, this still must have a legal basis in the derogations provisions of this Regulation.*

**Amendment 216**

**Proposal for a regulation  
Article 34 - paragraph 2**

*Text proposed by the Commission*

2. The controller or processor acting on the controller's behalf shall consult the supervisory authority prior to the processing of personal data in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where:

*Amendment*

2. The controller or processor acting on the controller's behalf shall consult ***the data protection officer or*** the supervisory authority prior to the processing of personal data in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where:

Or. en

*Justification*

*Instead of consulting the supervisory authorities prior to data processing that involves specific risks, the data controller should make use of its own data protection officer if it has appointed one. This takes unnecessary burdens from the authorities while strengthening the role of the data protection officer.*

## Amendment 217

### Proposal for a regulation

#### Article 34 - paragraph 2 – point b)

*Text proposed by the Commission*

(b) the supervisory authority deems it necessary to carry out a prior consultation on processing operations that are likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope and/or their purposes, and specified according to paragraph 4.

*Amendment*

(b) ***the data protection officer or*** the supervisory authority deems it necessary to carry out a prior consultation on processing operations that are likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope and/or their purposes, and specified according to paragraph 4.

Or. en

## Amendment 218

### Proposal for a regulation

#### Article 34 - paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

***3a. Where the data protection officer has reasons to doubt that the intended processing complies with this Regulation, or where the data controller processes personal data in breach of a prohibition as referred to in paragraph 3, the data protection officer shall consult the supervisory authority.***

Or. en

## Amendment 219

### Proposal for a regulation

#### Article 34 - paragraph 4

*Text proposed by the Commission*

*Amendment*

4. The ***supervisory authority*** shall establish and make public a list of the processing

4. The ***European Data Protection Board*** shall establish and make public a list of the

operations which are subject to prior consultation pursuant to *point (b) of paragraph 2. The supervisory authority shall communicate those lists to the European Data Protection Board.*

processing operations which are subject to prior consultation pursuant to paragraph 2.

Or. en

*Justification*

*In order to have consistent criteria for establishing when data processing involves specific risks, such a list should be provided by the European Data Protection Board. See related amendment to paragraph 5.*

**Amendment 220**

**Proposal for a regulation  
Article 34 - paragraph 5**

*Text proposed by the Commission*

*Amendment*

***5. Where the list provided for in paragraph 4 involves processing activities which are related to the offering of goods or services to data subjects in several Member States, or to the monitoring of their behaviour, or may substantially affect the free movement of personal data within the Union, the supervisory authority shall apply the consistency mechanism referred to in Article 57 prior to the adoption of the list.***

***deleted***

Or. en

*Justification*

*Consequential amendment based on paragraph 4. The consistency mechanism is not needed here anymore, since the European Data Protection Board is now tasked with providing such a list. The proposed delegated act could also touch upon essential elements of this legislation, and supervisory authorities are better equipped to define risk based on their practical experience.*

## Amendment 221

### Proposal for a regulation Article 34 – paragraph 8

*Text proposed by the Commission*

*Amendment*

**8. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for determining the high degree of specific risk referred to in point (a) of paragraph 2.**

**deleted**

Or. en

## Amendment 222

### Proposal for a regulation Article 34 – paragraph 9

*Text proposed by the Commission*

*Amendment*

9. The Commission may set out standard forms **and procedures** for prior authorisations and consultations referred to in paragraphs 1 and 2, and standard forms **and procedures** for informing the supervisory authorities pursuant to paragraph 6. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

9. The Commission may set out standard forms for prior authorisations and consultations referred to in paragraphs 1 and 2, and standard forms for informing the supervisory authorities pursuant to paragraph 6. Those implementing acts shall be adopted, **after requesting an opinion of the European Data Protection Board**, in accordance with the examination procedure referred to in Article 87(2).

Or. en

## Amendment 223

### Proposal for a regulation Article 35 – paragraph 1 – point b)

*Text proposed by the Commission*

*Amendment*

(b) the processing is carried out by an

(b) the processing is carried out by **a legal**

enterprise employing 250 persons or more;  
or

***person and relates to more than 500 data subjects per year.***

Or. en

*Justification*

*In the age of cloud computing, where even very small controllers can process large amounts of data through online services, the threshold for the mandatory designation of a data protection officer should not be based on the size of the enterprise, but rather on the relevance of data processing. This includes the categories of personal data processed, the type of processing activity, and the number of individuals whose data are processed.*

**Amendment 224**

**Proposal for a regulation**

**Article 35 – paragraph 1 – point c)**

*Text proposed by the Commission*

(c) the core activities of the controller or the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects.

*Amendment*

(c) the core activities of the controller or the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring ***or profiling*** of data subjects.

Or. en

**Amendment 225**

**Proposal for a regulation**

**Article 35 – paragraph 1 – point c a (new))**

*Text proposed by the Commission*

*Amendment*

***(ca) the core activities of the controller or the processor consist of processing special categories of data pursuant to Article 9(1).***

Or. en

*Justification*

*In the age of cloud computing, where even very small controllers can process large amounts*



*of data through online services, the threshold for the mandatory designation of a data protection officer should not be based on the size of the enterprise, but rather on the relevance of data processing. This includes the categories of personal data processed, the type of processing activity, and the number of individuals whose data are processed.*

## **Amendment 226**

### **Proposal for a regulation Article 35 – paragraph 7**

*Text proposed by the Commission*

7. The controller or the processor shall designate a data protection officer for a period of at least **two** years. ***The data protection officer may be reappointed for further terms.*** During their term of office, the data protection officer may only be dismissed, if the data protection officer no longer fulfils the conditions required for the performance of their duties.

*Amendment*

7. The controller or the processor shall designate a data protection officer for a period of at least **four** years. During their term of office, the data protection officer may only be dismissed if the data protection officer no longer fulfils the conditions required for the performance of their duties.

Or. en

### *Justification*

*The minimum period of two years is too short. Experience shows that even with recessed knowledge and skills, a newly named data protection officer needs at least half a year to rise in the activity somewhat acquainted. Were he to be replaced by a new one - without good reason - after only two years, this would complicate the implementation of the company's data protection requirements. Experience shows that an independent activity of the officer requires dismissal protection.*

## **Amendment 227**

### **Proposal for a regulation Article 35 – paragraph 9**

*Text proposed by the Commission*

9. The controller or the processor shall communicate the name and contact details of the data protection officer to the supervisory authority and to the public.

*Amendment*

9. The controller or the processor shall communicate the name and contact details of the data protection officer to the supervisory authority and to the public.  
***Where a controller decides to not appoint***

*a data protection officer, it shall communicate to the supervisory authority the reasons for its decision.*

Or. en

*Justification*

*This introduces a general obligation for all data controllers or processors to take a conscious decision about this once. Such a communication to the supervisory authority can be done electronically and with standard forms and does not provide an overly large administrative burden.*

**Amendment 228**

**Proposal for a regulation  
Article 35 – paragraph 11**

*Text proposed by the Commission*

11. The **Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose** of further specifying the criteria and requirements for the core activities of the controller or the processor referred to in point (c) of paragraph 1 and the criteria for the professional qualities of the data protection officer referred to in paragraph 5.

*Amendment*

11. The **European Data Protection Board shall be entrusted with the task** of further specifying the criteria and requirements for the core activities of or the controller or the processor referred to in point (c) of paragraph 1 and the criteria for professional qualities of the data protection officer referred to in paragraph 5, **in accordance with Article 66.**

Or. en

**Amendment 229**

**Proposal for a regulation  
Article 36 – paragraph 2**

*Text proposed by the Commission*

2. The controller or processor shall ensure that the data protection officer performs the duties and tasks independently and does not receive any instructions as regards the exercise of the function. The data

*Amendment*

2. The controller or processor shall ensure that the data protection officer performs the duties and tasks independently and does not receive any instructions as regards the exercise of the function. The data

protection officer shall directly report to the management of the controller or the processor.

protection officer shall ***be a direct subordinate of the head of*** the management of the controller or the processor.

Or. en

## Amendment 230

### Proposal for a regulation Article 36 – paragraph 3

*Text proposed by the Commission*

3. The controller or the processor shall support the data protection officer in performing the tasks and shall provide staff, premises, equipment and any other resources necessary to carry out the duties and tasks referred to in Article 37.

*Amendment*

3. The controller or the processor shall support the data protection officer in performing the tasks and shall provide ***all means, including*** staff, premises, equipment and any other resources necessary to carry out the duties and tasks referred to in Article 37, ***and to maintain his or her professional knowledge.***

Or. en

## Amendment 231

### Proposal for a regulation Article 36 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

***3a. Data protection officers shall be bound by secrecy concerning the identity of data subjects and concerning circumstances enabling data subjects to be identified, unless they are released from that obligation by the data subject. Where in the course of their activities data protection officers become aware of data for which the head of the data controller or a person employed by the data controller has the right to refuse to give evidence, that right shall also apply to***

*data protection officers and their assistants.*

Or. en

## **Amendment 232**

### **Proposal for a regulation Article 37 – paragraph 1 – point a)**

*Text proposed by the Commission*

(a) to inform and advise the controller or the processor of their obligations pursuant to this Regulation and to document this activity and the responses received;

*Amendment*

(a) to inform and advise the controller or the processor of their obligations pursuant to this Regulation, ***in particular with regards to technical and organisational measures and procedures***, and to document this activity and the responses received;

Or. en

## **Amendment 233**

### **Proposal for a regulation Article 37 – paragraph 1 – point h a (new)**

*Text proposed by the Commission*

*Amendment*

***(ha) to verify the compliance of processing under the prior consultation mechanism laid out in Article 34.***

Or. en

*Justification*

*Consequential amendment based on amendment to Article 34(4).*

## Amendment 234

### Proposal for a regulation Article 37 – paragraph 2

*Text proposed by the Commission*

2. The *Commission* shall be *empowered to adopt delegated acts in accordance with Article 86 for the purpose* of further specifying the criteria and requirements for tasks, certification, status, powers and resources of the data protection officer referred to in paragraph 1.

*Amendment*

2. The *European Data Protection Board* shall be *entrusted with the task* of further specifying the criteria and requirements for tasks, certification, status, powers and resources of the data protection officer referred to in paragraph 1, *in accordance with Article 66*.

Or. en

## Amendment 235

### Proposal for a regulation Article 38 – paragraph 2

*Text proposed by the Commission*

2. Associations and other bodies representing categories of controllers or processors in one Member State which intend to draw up codes of conduct or to amend or extend existing codes of conduct may submit them to an opinion of the supervisory authority in that Member State. The supervisory authority *may* give an opinion whether the draft code of conduct or the amendment is in compliance with this Regulation. The supervisory authority shall seek the views of data subjects or their representatives on these drafts.

*Amendment*

2. Associations and other bodies representing categories of controllers or processors in one Member State which intend to draw up codes of conduct or to amend or extend existing codes of conduct may submit them to an opinion of the supervisory authority in that Member State. The supervisory authority *shall* give an opinion in *due time* whether the draft code of conduct or the amendment is in compliance with this Regulation. The supervisory authority shall seek the views of data subjects or their representatives on these drafts.

Or. en

## Amendment 236

### Proposal for a regulation Article 38 – paragraph 4

*Text proposed by the Commission*

4. The Commission *may adopt implementing acts* for deciding that the codes of conduct and amendments or extensions to existing codes of conduct submitted to it pursuant to paragraph 3 have general validity within the Union. ***Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).***

*Amendment*

4. The Commission ***shall be empowered to adopt, after requesting an opinion of the European Data Protection Board, delegated acts in accordance with Article 86*** for deciding that the codes of conduct and amendments or extensions to existing codes of conduct submitted to it pursuant to paragraph 3 ***are in line with this Regulation and*** have general validity within the Union. ***This delegated act shall confer enforceable rights on data subjects.***

Or. en

## Amendment 237

### Proposal for a regulation Article 39 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. The data protection certification mechanisms shall set down the formal procedure for the issue and withdrawal of a data protection seal or mark and ensure the financial and factual independence and proficiency in data protection of the issuing organisation. The criteria for certification, the individual results of a successful certification and an intelligible meaningful summary justification shall be made readily accessible to the public.***

Or. en

*Justification*

*Any certification mechanisms must set out the formal procedure for the issuance and withdrawal of the seal and must be independent.*

**Amendment 238**

**Proposal for a regulation  
Article 39 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***1b. The data protection certification mechanisms shall in particular ensure compliance with the principles set out in Article 5, 23 and 30, the obligations of the controller and the processor, and the data subject's rights.***

Or. en

*Justification*

*Any certification mechanisms must ensure compliance with data protection principles and data subject rights.*

**Amendment 239**

**Proposal for a regulation  
Article 39 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the data protection certification mechanisms referred to in paragraph 1, including conditions for granting and withdrawal, and requirements for recognition within the Union and in third countries.

2. The Commission shall be empowered to adopt, ***after requesting an opinion of the European Data Protection Board,*** delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the data protection certification mechanisms referred to in paragraph 1, including conditions for granting and withdrawal, and requirements for recognition ***and promotion*** within the Union and in third countries.

## Amendment 240

### Proposal for a regulation Article 39 – paragraph 3

*Text proposed by the Commission*

*Amendment*

**3. The Commission may lay down technical standards for certification mechanisms and data protection seals and marks and mechanisms to promote and recognize certification mechanisms and data protection seals and marks. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).**

*deleted*

Or. en

## Amendment 241

### Proposal for a regulation Article 41 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. A transfer may take place where the Commission has decided that the third country, or a territory **or a processing sector** within that third country, or the international organisation in question ensures an adequate level of protection. Such transfer shall not require any further authorisation.

1. A transfer may take place where the Commission has decided that the third country, or a territory within that third country, or the international organisation in question ensures an adequate level of protection. Such transfer shall not require any further authorisation.

Or. en

#### *Justification*

*The proposed new option of recognising sectors in third countries as adequate is rejected, as it would increase legal uncertainty and undermine the Union's goal of a harmonised and coherent international data protection framework.*



## Amendment 242

### Proposal for a regulation

#### Article 41 – paragraph 2 – point a)

##### *Text proposed by the Commission*

(a) the rule of law, relevant legislation in force, **both general and sectoral**, including concerning public security, defence, national security and criminal law, the professional rules and security measures which are complied with in that country or by that international organisation, as well as effective and enforceable rights including effective administrative and judicial redress for data subjects, in particular for those data subjects residing in the Union whose personal data are being transferred;

##### *Amendment*

(a) the rule of law, relevant legislation in force, including concerning public security, defence, national security and criminal law, the professional rules and security measures which are complied with in that country or by that international organisation, as well as effective and enforceable rights including effective administrative and judicial redress for data subjects, in particular for those data subjects residing in the Union whose personal data are being transferred;

Or. en

## Amendment 243

### Proposal for a regulation

#### Article 41 – paragraph 2 – point b)

##### *Text proposed by the Commission*

(b) the existence and effective functioning of one or more independent supervisory authorities in the third country or international organisation in question responsible for ensuring compliance with the data protection rules, for assisting and advising the data subjects in exercising their rights and for co-operation with the supervisory authorities of the Union and of Member States; and

##### *Amendment*

(b) the existence and effective functioning of one or more independent supervisory authorities in the third country or international organisation in question responsible for enforcing compliance with the data protection rules **including sufficient sanctioning powers**, for assisting and advising the data subjects in exercising their rights and for co-operation with the supervisory authorities of the Union and of Member States; and

Or. en

## Amendment 244

### Proposal for a regulation Article 41 – paragraph 3

*Text proposed by the Commission*

3. The Commission *may* decide that a third country, or a territory *or a processing sector* within that third country, or an international organisation ensures an adequate level of protection within the meaning of paragraph 2. *Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).*

*Amendment*

3. The Commission *shall be empowered to adopt delegated acts in accordance with Article 86 to* decide that a third country, or a territory within that third country, or an international organisation ensures an adequate level of protection within the meaning of paragraph 2.

Or. en

*Justification*

*Consequential amendment based on the amendments to paragraph 1.*

## Amendment 245

### Proposal for a regulation Article 41 – paragraph 4

*Text proposed by the Commission*

4. The *implementing* act shall specify its *geographical and sectoral* application, and, *where applicable*, identify the supervisory authority mentioned in point (b) of paragraph 2.

*Amendment*

4. The *delegated* act shall specify its *territorial* application, and identify the supervisory authority mentioned in point (b) of paragraph 2.

Or. en

*Justification*

*Consequential amendment based on the amendments to paragraph 1.*

## Amendment 246

### Proposal for a regulation

#### Article 41 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

***4a. The Commission shall, on an ongoing basis, monitor developments that could affect the fulfilment of the elements listed in paragraph 2 in third countries and international organisations concerning which delegated act pursuant to paragraph 3 has been adopted.***

Or. en

## Amendment 247

### Proposal for a regulation

#### Article 41 – paragraph 5

*Text proposed by the Commission*

*Amendment*

5. The Commission *may* decide that a third country, or a territory ***or a processing sector*** within that third country, or an international organisation does not ensure an adequate level of protection within the meaning of paragraph 2 of this Article, in particular in cases where the relevant legislation, ***both general and sectoral***, in force in the third country or international organisation, does not guarantee effective and enforceable rights including effective administrative and judicial redress for data subjects, in particular for those data subjects residing in the Union whose personal data are being transferred. ***Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2), or, in cases of extreme urgency for individuals with respect to their right to personal data protection, in accordance with the procedure referred to in Article***

5. The Commission ***shall be empowered to adopt delegated acts in accordance with Article 86 to*** decide that a third country, or a territory within that third country, or an international organisation does not ensure an adequate level of protection within the meaning of paragraph 2 of this Article, in particular in cases where the relevant legislation in force in the third country or international organisation, does not guarantee effective and enforceable rights including effective administrative and judicial redress for data subjects, in particular for those data subjects residing in the Union whose personal data are being transferred.

87(3).

Or. en

## Amendment 248

### Proposal for a regulation Article 41 – paragraph 6

*Text proposed by the Commission*

6. Where the Commission decides pursuant to paragraph 5, any transfer of personal data to the third country, or a territory *or a processing sector* within that third country, or the international organisation in question shall be prohibited, without prejudice to Articles 42 to 44. At the appropriate time, the Commission shall enter into consultations with the third country or international organisation with a view to remedying the situation resulting from the Decision made pursuant to paragraph 5 of this Article.

*Amendment*

6. Where the Commission decides pursuant to paragraph 5, any transfer of personal data to the third country, or a territory within that third country, or the international organisation in question shall be prohibited, without prejudice to Articles 42 to 44. At the appropriate time, the Commission shall enter into consultations with the third country or international organisation with a view to remedying the situation resulting from the Decision made pursuant to paragraph 5 of this Article.

Or. en

## Amendment 249

### Proposal for a regulation Article 41 – paragraph 6 a (new)

*Text proposed by the Commission*

*Amendment*

***6a. Prior to adopting a delegated act as referred to in paragraph 3 or 5, the Commission shall request the European Data Protection Board to provide an opinion on the adequacy of the level of protection. To that end, the Commission shall provide the European Data Protection Board with all necessary documentation, including correspondence with the government of the third country,***

*territory or international organisation.*

Or. en

## **Amendment 250**

### **Proposal for a regulation Article 41 – paragraph 8**

*Text proposed by the Commission*

8. Decisions adopted by the Commission on the basis of Article 25(6) or Article 26(4) of Directive 95/46/EC shall remain in force, until ***amended, replaced or repealed by the Commission.***

*Amendment*

8. Decisions adopted by the Commission on the basis of Article 25(6) or Article 26(4) of Directive 95/46/EC shall remain in force until ***two years after the entry into force of this Regulation.***

Or. en

## **Amendment 251**

### **Proposal for a regulation Article 42 – paragraph 1**

*Text proposed by the Commission*

1. Where the Commission has taken no decision pursuant to Article 41, a controller or processor may transfer personal data to a third country or an international organisation ***only if*** the controller or processor has adduced appropriate safeguards with respect to the protection of personal data in a legally binding instrument.

*Amendment*

1. Where the Commission has taken no decision pursuant to Article 41, a controller or processor may ***not*** transfer personal data to a third country, ***territory*** or an international organisation ***unless*** the controller or processor has adduced appropriate safeguards with respect to the protection of personal data in a legally binding instrument.

Or. en

## Amendment 252

### Proposal for a regulation

#### Article 42 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. Those appropriate safeguards shall, at least:***

***(a) guarantee the observance of the principles of personal data processing as established in Article 5;***

***(b) safeguard data subject rights as established in Chapter III and provide for effective redress mechanisms;***

***(c) ensure the observance of the principles of privacy by design and by default as established in Article 23;***

***(d) guarantee the existence of a data protection officer pursuant to Section 4 of Chapter IV.***

Or. en

## Amendment 253

### Proposal for a regulation

#### Article 42 – paragraph 2 – point b)

*Text proposed by the Commission*

*Amendment*

***(b) standard data protection clauses adopted by the Commission. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2); or***

***deleted***

Or. en

*Justification*

*Standard data protection clauses should always be approved by the European Data Protection Board before being declared generally valid by the Commission, as foreseen in paragraph 2(c).*

## Amendment 254

### Proposal for a regulation Article 42 – paragraph 5

*Text proposed by the Commission*

***5. Where the appropriate safeguards with respect to the protection of personal data are not provided for in a legally binding instrument, the controller or processor shall obtain prior authorisation for the transfer, or a set of transfers, or for provisions to be inserted into administrative arrangements providing the basis for such transfer. Such authorisation by the supervisory authority shall be in accordance with point (a) of Article 34(1). If the transfer is related to processing activities which concern data subjects in another Member State or other Member States, or substantially affect the free movement of personal data within the Union, the supervisory authority shall apply the consistency mechanism referred to in Article 57. Authorisations by a supervisory authority on the basis of Article 26(2) of Directive 95/46/EC shall remain valid, until amended, replaced or repealed by that supervisory authority.***

*Amendment*

5. Authorisations by a supervisory authority on the basis of Article 26(2) of Directive 95/46/EC shall remain valid ***for two years after the entry into force of this Regulation***, or until amended, replaced or repealed by that supervisory authority.

Or. en

*Justification*

*Transfers without a legally binding instrument should not be possible. The new text of the paragraph provides for a transition period of two years.*

## Amendment 255

### Proposal for a regulation

#### Article 43 – paragraph 1 – point b)

*Text proposed by the Commission*

(b) expressly confer enforceable rights on data subjects;

*Amendment*

(b) expressly confer enforceable rights on data subjects ***and are transparent for data subjects***;

Or. en

## Amendment 256

### Proposal for a regulation

#### Article 43 – paragraph 2– point d)

*Text proposed by the Commission*

(d) the general data protection principles, in particular purpose limitation, data quality, legal basis for the processing, processing of sensitive personal data; measures to ensure data security; and the requirements for onward transfers to organisations which are not bound by the policies;

*Amendment*

(d) the general data protection principles, in particular purpose limitation, ***data minimisation, limited retention periods***, data quality, ***privacy by design and by default***, legal basis for the processing, processing of sensitive personal data; measures to ensure data security; and the requirements for onward transfers to organisations which are not bound by the policies;

Or. en

### *Justification*

*Consequential amendment to reflect changes in Article 5.*

## Amendment 257

### Proposal for a regulation

#### Article 43 – paragraph 3

*Text proposed by the Commission*

3. The ***Commission shall be empowered to adopt delegated acts in accordance with***

*Amendment*

3. The ***European Data Protection Board shall be entrusted with the task*** of further



**Article 86 for the purpose** of further specifying the criteria and requirements for binding corporate rules within the meaning of this Article, in particular as regards the criteria for their approval, the application of points (b), (d), (e) and (f) of paragraph 2 to binding corporate rules adhered to by processors and on further necessary requirements to ensure the protection of personal data of the data subjects concerned.

specifying the criteria and requirements for binding corporate rules within the meaning of this Article, in particular as regards the criteria for their approval, the application of points (b), (d), (e) and (f) of paragraph 2 to binding corporate rules adhered to by processors and on further necessary requirements to ensure the protection of personal data of the data subjects concerned, **in accordance with Article 66.**

Or. en

## Amendment 258

### Proposal for a regulation Article 43 – paragraph 4

#### *Text proposed by the Commission*

4. The Commission may specify the format and procedures for the exchange of information by electronic means between controllers, processors and supervisory authorities for binding corporate rules within the meaning of this Article. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).

#### *Amendment*

4. The Commission may specify the format and procedures for the exchange of information by electronic means between controllers, processors and supervisory authorities for binding corporate rules within the meaning of this Article. Those implementing acts shall be adopted, **after requesting an opinion of the European Data Protection Board**, in accordance with the examination procedure set out in Article 87(2).

Or. en

## Amendment 259

### Proposal for a regulation Article 43 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

#### **Article 43a**

*Transfers not authorised by Union law*

*1. Any judgments of a court or tribunal or any decision of an administrative authority of a third country requiring a controller or processor to transfer personal data shall only be recognised or be enforceable on the basis of, and in accordance with, a mutual assistance treaty or an international agreement in force between the requesting third country and the Union or a Member State.*

*2. Where a judgment of a court or tribunal or a decision of an administrative authority of a third country requests a controller or processor to disclose personal data, the controller or processor and, if any, the controller's representative, shall notify the competent supervisory authority of the request without undue delay and shall obtain prior authorisation for the transfer by the supervisory authority in accordance with Article 34(1).*

*3. The supervisory authority shall assess the compliance of the requested disclosure with this Regulation and in particular whether the disclosure is necessary and legally required in accordance with points (d) and (e) of paragraph 1 and paragraph 5 of Article 44.*

*4. The supervisory authority shall inform the competent national authority of the request. The controller or processor shall also inform the data subject of the request and of the authorisation by the supervisory authority.*

*5. The Commission may adopt an implementing act laying down the standard format of the notifications to the supervisory authority referred to in paragraph 2 and the information of the data subject referred to in paragraph 4 as well as the procedures applicable to the notification and information. Those implementing acts shall be adopted, after requesting an opinion of the European*

*Data Protection Board, in accordance with the examination procedure referred to in Article 87(2).*

Or. en

*Justification*

*A new Article 43a is proposed to address the issue raised by access requests by public authorities or courts in third countries to personal data stored and processed in the EU. The transfer should only be granted by the data protection authority after verifying that the transfer complies with the Regulation and in particular with Article 44(1)(d) or (e).*

**Amendment 260**

**Proposal for a regulation  
Article 44 – paragraph 1 – point g)**

*Text proposed by the Commission*

(g) the transfer is made from a register which according to Union or Member State law is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can demonstrate legitimate interest, to the extent that the conditions laid down in Union or Member State law for consultation are fulfilled in the particular case; or

*Amendment*

(g) the transfer is made from a register which according to Union or Member State law is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can demonstrate legitimate interest, to the extent that the conditions laid down in Union or Member State law for consultation are fulfilled in the particular case ***and the controller or processor as the case may be has obtained prior authorisation for the transfer or set of transfers by the supervisory authority in accordance with Article 34;*** or

Or. en

**Amendment 261**

**Proposal for a regulation  
Article 44 – paragraph 1 – point h)**

*Text proposed by the Commission*

(h) the transfer is necessary for the

*Amendment*

(h) the transfer is necessary for the

purposes of the legitimate interests pursued by the controller or the processor, which cannot be qualified as frequent or massive, and where the controller or processor has assessed all the circumstances surrounding the data transfer operation or the set of data transfer operations and based on this assessment adduced appropriate safeguards with respect to the protection of personal data, where necessary.

purposes of the legitimate interests *laid down in paragraphs 1a to 1c of Article 6*, pursued by the controller or the processor, which cannot be qualified as frequent or massive, and where the controller or processor has assessed all the circumstances surrounding the data transfer operation or the set of data transfer operations and based on this assessment adduced appropriate safeguards with respect to the protection of personal data, where necessary.

Or. en

## **Amendment 262**

### **Proposal for a regulation Article 44 – paragraph 7**

*Text proposed by the Commission*

7. The *Commission* shall be *empowered to adopt delegated acts in accordance with Article 86 for the purpose* of further specifying *'important grounds of public interest' within the meaning of point (d) of paragraph 1 as well as* the criteria and requirements for appropriate safeguards referred to in point (h) of paragraph 1.

*Amendment*

7. The *European Data Protection Board* shall be entrusted with the task of further specifying the criteria and requirements for appropriate safeguards referred to in point (h) of paragraph 1, *in accordance with Article 66*.

Or. en

## **Amendment 263**

### **Proposal for a regulation Article 45 a (new)**

*Text proposed by the Commission*

*Amendment*

*Article 45a*

*Report by the Commission*

*The Commission shall submit to the*

*European Parliament and the Council at regular intervals, starting not later than four years after the date referred to in Article 91(1), [entry into force of this Regulation] a report on the application of Articles 40 to 45. For that purpose, the Commission may request information from the Member States and supervisory authorities, which shall be supplied without undue delay. The report shall be made public.*

Or. en

## **Amendment 264**

### **Proposal for a regulation Article 47 – paragraph 5**

#### *Text proposed by the Commission*

5. Each Member State shall ensure that the supervisory authority is provided with the adequate human, technical and financial resources, premises and infrastructure necessary for the effective performance of its duties and powers, including those to be carried out in the context of mutual assistance, co

#### *Amendment*

5. Each Member State shall ensure that the supervisory authority is provided with the adequate human, technical and financial resources, premises and infrastructure necessary for the effective performance of its duties and powers, including those to be carried out in the context of mutual assistance, co-operation and participation in the European Data Protection Board.  
***The adequacy of the resources shall be determined in the light of the size of the population and the volume of processing of personal data.***

Or. en

#### *Justification*

*Supervisory authorities, who must be completely independent, need to be sufficiently resourced for the effective performance of their tasks. The amendment gives clearer guidance on how to establish the adequacy of resources. See related amendment to Recital 95.*

## **Amendment 265**

### **Proposal for a regulation Article 47 – paragraph 7 a (new)**

*Text proposed by the Commission*

*Amendment*

***7a. Each Member State shall ensure that the supervisory authority shall only be accountable to the national parliament for reasons of budgetary control.***

Or. en

*Justification*

*Independence is a crucial prerequisite for an effective functioning supervisory authority. Full independence in carrying out supervisory duties can only be guaranteed if there is no bias present in the body to which a data protection authority is accountable in the end. By reason of its representativeness such a body can only be a Member States concerned.*

## **Amendment 266**

### **Proposal for a regulation Article 47 – paragraph 7 b**

*Text proposed by the Commission*

*Amendment*

***7b. Each Member State shall ensure that the supervisory authority shall only be accountable to the national parliament for reasons of budgetary control in accordance with Article 66.***

Or. en

*Justification*

*The amendment gives procedural guidance on how to establish the adequacy of resources. See related amendment to Article 47(5).*

## Amendment 267

### Proposal for a regulation Article 48 – paragraph 1

*Text proposed by the Commission*

1. Member States shall provide that the members of the supervisory authority must be appointed either by the parliament or the government of the Member State concerned.

*Amendment*

1. Member States shall provide that the members of the supervisory authority must be appointed either by the parliament, or the government ***after consultation of the parliament***, of the Member State concerned.

Or. en

*Justification*

*Members of the supervisory authority must be appointed either by the parliament, or, if this is done by the government, after consultation of the parliament.*

## Amendment 268

### Proposal for a regulation Article 51 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1. Each supervisory authority shall be competent to supervise all data processing operations on the territory of its own Member State, or where the personal data of residents of that Member State are processed, without prejudice to Article 54a.***

Or. en

*Justification*

*An alternative consistency mechanism is proposed which maintains the idea of a lead authority, but also relies on close cooperation between authorities to ensure consistency. Authorities should always be co-competent for supervision in case residents in its Member State are affected. See related paragraph 1 and Article 54a (new).*

## Amendment 269

### Proposal for a regulation Article 51 – paragraph 1

*Text proposed by the Commission*

*1. Each supervisory authority shall exercise, on the territory of its own Member State, the powers conferred on it in accordance with this Regulation.*

*Amendment*

*2. Each supervisory authority shall exercise, on the territory of its own Member State, the powers conferred on it in accordance with this Regulation, **without prejudice to Article 74.***

Or. en

#### *Justification*

*An alternative consistency mechanism is proposed which maintains the idea of a lead authority, but also relies on close cooperation between authorities to ensure consistency. While co-competent for supervision (see amendment to paragraph 1a (new), authorities should only be competent to exercise their powers in their member state. A clarification is proposed that according to Article 74, supervisory authorities can go to court in another Member State. See related paragraph 1a and Article 54a (new).*

## Amendment 270

### Proposal for a regulation Article 51 – paragraph 2

*Text proposed by the Commission*

*2. Where the processing of personal data takes place in the context of the activities of an establishment of a controller or a processor in the Union, and the controller or processor is established in more than one Member State, the supervisory authority of the main establishment of the controller or processor shall be competent for the supervision of the processing activities of the controller or the processor in all Member States, without prejudice to the provisions of Chapter VII of this Regulation.*

*Amendment*

*deleted*



*Justification*

*An alternative consistency mechanism is proposed which maintains the idea of a lead authority, but also relies on close cooperation between authorities to ensure consistency. Authorities should always be co-competent for supervision in case residents in its Member State are affected. See related paragraphs 1 and 1a, and Article 54a (new).*

**Amendment 271**

**Proposal for a regulation**  
**Article 52 - paragraph 1 - point b)**

*Text proposed by the Commission*

(b) hear complaints lodged by any data subject, or by an association **representing that data subject** in accordance with Article 73, investigate, to the extent appropriate, the matter and inform the data subject or the association of the progress and the outcome of the complaint within a reasonable period, in particular if further investigation or coordination with another supervisory authority is necessary;

*Amendment*

(b) hear complaints lodged by any data subject, or by an association in accordance with Article 73, investigate, to the extent appropriate, the matter and inform the data subject or the association of the progress and the outcome of the complaint within a reasonable period, in particular if further investigation or coordination with another supervisory authority is necessary;

*Justification*

*There is a need to provide for better possibilities for effective redress, including by associations acting in the public interest. See related amendment to Article 73(2), Recital 112.*

**Amendment 272**

**Proposal for a regulation**  
**Article 52 – paragraph 1 – point d)**

*Text proposed by the Commission*

(d) conduct investigations either on its own initiative or on the basis of a complaint or on request of another supervisory authority, and inform the data subject

*Amendment*

(d) conduct investigations, **inspections, and audits**, either on its own initiative or on the basis of a complaint or on request of another supervisory authority, and inform

concerned, if the data subject has addressed a complaint to this supervisory authority, of the outcome of the investigations within a reasonable period;

the data subject concerned, if the data subject has addressed a complaint to this supervisory authority, of the outcome of the investigations within a reasonable period;

Or. en

#### *Justification*

*Addition of inspections and audits to the powers of the authorities.*

### **Amendment 273**

#### **Proposal for a regulation Article 52 – paragraph 6**

##### *Text proposed by the Commission*

6. Where **requests** are manifestly excessive, in particular due to their repetitive character, the supervisory authority may charge a fee **or not take the action requested by the data subject**. The supervisory authority shall bear the burden of proving the manifestly excessive character of the **request**.

##### *Amendment*

6. Where **complaints** are manifestly excessive, in particular due to their repetitive character, the supervisory authority may charge a **reasonable** fee. The supervisory authority shall bear the burden of proving the manifestly excessive character of the **complaint**.

Or. en

#### *Justification*

*The supervisory authority should always address complaints but may charge a reasonable fee if they are manifestly excessive.*

### **Amendment 274**

#### **Proposal for a regulation Article 53 – paragraph 4**

##### *Text proposed by the Commission*

4. Each supervisory authority shall have the power to sanction administrative offences, in **particular those referred to in**

##### *Amendment*

4. Each supervisory authority shall have the power to sanction administrative

Article 79(4), (5) and (6).

offences, in *accordance with* Article 79.

Or. en

*Justification*

*Consequential amendment based on changes in Article 79. The system of sanctions is clarified by including objective criteria that must be taken into account in order to determine the level of the fine that a DPA may impose. See related amendments to Article 79.*

**Amendment 275**

**Proposal for a regulation**

**Article 53 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. Those powers shall be exercised in an effective, proportionate and dissuasive manner.***

Or. en

*Justification*

*Clarification that, in line with general rules for administrative sanctions, supervisory authorities should use their powers in an effective, proportionate and dissuasive manner.*

**Amendment 276**

**Proposal for a regulation**

**Article 54**

*Text proposed by the Commission*

*Amendment*

Each supervisory authority must draw up ***an annual*** report on its activities. The report shall be presented to the national parliament and shall be made available to the public, the Commission and the European Data Protection Board.

Each supervisory authority must draw up ***a*** report on its activities ***at least every two years***. The report shall be presented to the national parliament and shall be made available to the public, the Commission and the European Data Protection Board.

Or. en

## *Justification*

*Each supervisory authority must draw up a report on its activities at least every two years. This is more feasible and a more efficient use of resources than the annual report proposed by the Commission. Authorities that publish annual reports can still do this*

### **Amendment 277**

#### **Proposal for a regulation Article 54 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 54a**

##### **Lead Authority**

***1. Where the processing of personal data takes place in the context of the activities of an establishment of a controller or a processor in the Union, and the controller or processor is established in more than one Member State, or where personal data of the residents in several Member States are processed, the supervisory authority of the main establishment of the controller or processor shall act as a single contact point for the controller or processor.***

***2. The lead authority shall ensure coordination with the authorities involved at any stage of supervisory proceedings against a controller or a processor within the meaning of paragraph 1. For that purpose it shall in particular submit any relevant information and consult the other authorities before it adopts a measure intended to produce legal effects vis-à-vis a controller or a processor within the meaning of paragraph 1. The lead authority shall take the utmost account of the opinions of the authorities involved.***

***3. The European Data Protection Board shall at the request of a competent authority designate a single contact for the controller or processor and ensure coordination with the other supervisory authorities involved, in case where***

*(a) it is unclear from the facts of the case or where the competent authorities do not agree on which supervisory authority shall act as single contact point*

*(b) the controller is not established in the Union, but residents of different Member States are affected by processing operations within the scope of this Regulation.*

*4. The lead authority shall not adopt a measure under paragraph 2 if an involved authority within the meaning of paragraph 1 objects to the measure within a period of three weeks after submission of the draft measure by the lead authority. In that case, the issue shall be dealt with by the European Data Protection Board in accordance with the procedure set out in Article 58.*

Or. en

#### *Justification*

*Each authority is competent to supervise processing operations within its territory or affecting data subjects resident in its territory. In the case of processing activities of a controller or processor established on more than one Member State or affecting data subjects in several Member States, the authority of the Member State of the main establishment of the data controller will be the lead authority acting as single contact point for the controller or the processor (one-stop shop). The lead authority shall ensure coordination with involved authorities and consult the other authorities before adopting a measure. In the event of disagreement among the involved authorities, the matter shall be dealt with by the European Data Protection Board under the new consistency mechanism. See related Articles 51(1) and 58.*

#### **Amendment 278**

##### **Proposal for a regulation Article 55 - paragraph 1**

*Text proposed by the Commission*

1. Supervisory authorities shall provide each other relevant information and mutual

*Amendment*

1. Supervisory authorities shall provide each other relevant information and mutual

assistance in order to implement and apply this Regulation in a consistent manner, and shall put in place measures for effective co-operation with one another. Mutual assistance shall cover, in particular, information requests and supervisory measures, such as requests to carry out prior authorisations and consultations, inspections and prompt information on the opening of cases and ensuing developments where data subjects in several Member States are likely to be affected by processing operations.

assistance in order to implement and apply this Regulation in a consistent manner, and shall put in place measures for effective co-operation with one another. Mutual assistance shall cover, in particular, information requests and supervisory measures, such as requests to carry out prior authorisations and consultations, inspections and prompt information on the opening of cases and ensuing developments ***where the controller or processor has establishments in several Member States or*** where data subjects in several Member States are likely to be affected by processing operations. ***The lead authority as defined in Article 54a shall ensure the coordination with involved supervisory authorities and shall act as the single contact point for the controller or processor.***

Or. en

#### *Justification*

*In case of mutual assistance involving several authorities, the lead authority shall ensure the coordination between the involved supervisory authorities and shall act as the single contact point for the controller or processor.*

#### **Amendment 279**

##### **Proposal for a regulation Article 55 –paragraph 4 - point a)**

*Text proposed by the Commission*

(a) it is not competent for the request; or

*Amendment*

(a) it is not competent for the request ***or for the activities it is requested to undertake;***  
or

Or. en

#### *Justification*

*A supervisory authority to which a request for assistance is addressed may not refuse to*

*comply with it unless it is not competent for the request or for the activities it is requested to undertake.*

## **Amendment 280**

### **Proposal for a regulation Article 55 –paragraph 10**

*Text proposed by the Commission*

10. The *Commission* may specify the format and procedures for mutual assistance referred to in this article and the arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the European Data Protection Board, in particular the standardised format referred to in paragraph 6. *Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).*

*Amendment*

10. The *European Data Protection Board* may specify the format and procedures for mutual assistance referred to in this article and the arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the European Data Protection Board, in particular the standardised format referred to in paragraph 6.

Or. en

*Justification*

*It can be left up to the European Data Protection Board instead of the Commission to specify the format and procedures for mutual assistance.*

## **Amendment 281**

### **Proposal for a regulation Article 56 –paragraph 2**

*Text proposed by the Commission*

2. In cases where data subjects in several Member States are likely to be affected by processing operations, a supervisory authority of each of those Member States shall have the right to participate in the joint investigative tasks or joint operations,

*Amendment*

2. In cases *where the controller or processor has establishments in several Member States or* where data subjects in several Member States are likely to be affected by processing operations, a supervisory authority of each of those

as appropriate. The **competent supervisory authority** shall invite the supervisory authority of each of those Member States to take part in the respective joint investigative tasks or joint operations and respond to the request of a supervisory authority to participate in the operations without delay.

Member States shall have the right to participate in the joint investigative tasks or joint operations, as appropriate. The **lead authority as defined in Article 54a** shall invite the supervisory authority of each of those Member States to take part in the respective joint investigative tasks or joint operations and respond to the request of a supervisory authority to participate in the operations without delay. **The lead authority shall act as the single contact point for the controller or processor.**

Or. en

#### *Justification*

*The lead authority as defined in Article 54a shall ensure the coordination of joint operations between the involved supervisory authorities and shall act as the single contact point for the controller or processor.*

#### **Amendment 282**

##### **Proposal for a regulation Article 56 –paragraph 5**

###### *Text proposed by the Commission*

5. Where a supervisory authority does not comply within one month with the obligation laid down in paragraph 2, the other supervisory authorities shall be competent to take a provisional measure on the territory of its Member State in accordance with Article 51(1).

###### *Amendment*

5. Where a supervisory authority does not comply within one month with the obligation laid down in paragraph 2, the other supervisory authorities shall be competent to take a provisional measure on the territory of its Member State in accordance with Article 51(2).

Or. en

#### *Justification*

*Consequential amendment based on the new consistency mechanism which maintains the idea of a lead authority, but also relies on close cooperation between authorities to ensure consistency. See related amendments to Articles 51(1), 51(1a) and 51(2).*



## Amendment 283

### Proposal for a regulation

#### Article 58 - paragraph 2 - point a)

*Text proposed by the Commission*

(a) relates to processing activities which are related to the offering of goods or services to data subjects in several Member States, or to the monitoring of *their behaviour*; or

*Amendment*

(a) relates to processing activities which are related to the offering of goods or services to data subjects in several Member States, or to the monitoring of *data subjects in several Member States*; or

Or. en

#### *Justification*

*Consequential amendment based on the new consistency mechanism which maintains the idea of a lead authority, but also relies on close cooperation between authorities to ensure consistency. See related amendments to Articles 51(1), 51(1a) and 51(2).*

## Amendment 284

### Proposal for a regulation

#### Article 58 - paragraph 2 - point c)

*Text proposed by the Commission*

*(c) aims at adopting a list of the processing operations subject to prior consultation pursuant to Article 34(5); or*

*Amendment*

*deleted*

Or. en

#### *Justification*

*Consequential amendment based on new Article 34, according to which this list is now always drawn up by the EDPB in order to ensure consistency.*

## Amendment 285

### Proposal for a regulation Article 58 - paragraph 3

*Text proposed by the Commission*

3. Any supervisory authority or the European Data Protection Board may request that any matter shall be dealt with in the consistency mechanism, in particular where a supervisory authority does not submit a draft measure referred to in paragraph 2 or does not comply with the obligations for mutual assistance in accordance with Article 55 or for joint operations in accordance with Article 56.

*Amendment*

3. Any supervisory authority or the European Data Protection Board may request that any matter shall be dealt with in the consistency mechanism, in particular where a supervisory authority does not submit a draft measure referred to in paragraph 2 or does not comply with the obligations for mutual assistance in accordance with Article 55 or for joint operations in accordance with Article 56, ***or where a competent supervisory authority does not agree with the draft measure proposed by the lead authority, pursuant Article 54a(5).***

Or. en

*Justification*

*Consequential amendment based on new Article 54a (lead authority). Any supervisory authority or the European Data Protection Board may also request that a matter shall be dealt with in the consistency mechanism, including where a competent supervisory authority does not agree with the draft measure proposed by the lead authority. See related amendment to paragraph 3 of Article 54a.*

## Amendment 286

### Proposal for a regulation Article 58 - paragraph 7

*Text proposed by the Commission*

7. The European Data Protection Board shall issue an opinion on the matter, if the European Data Protection Board so decides by simple majority of its members or any supervisory authority or the Commission so requests within ***one week*** after the relevant information has been provided according to paragraph 5. The opinion shall

*Amendment*

7. The European Data Protection Board shall issue an opinion on the matter, if the European Data Protection Board so decides by simple majority of its members or any supervisory authority or the Commission so requests within ***two weeks*** after the relevant information has been provided according to paragraph 5. The opinion shall

be adopted within **one** month by simple majority of the members of the European Data Protection Board. The chair of the European Data Protection Board shall inform, without undue delay, the supervisory authority referred to, as the case may be, in paragraphs 1 and 3, the Commission and the supervisory **authority** competent under Article 51 of the opinion and make it public.

be adopted within **two months** by simple majority of the members of the European Data Protection Board. The chair of the European Data Protection Board shall inform, without undue delay, the supervisory authority referred to, as the case may be, in paragraphs 1 and 3, the Commission and the supervisory **authorities** competent under Article 51(I) of the opinion and make it public.

Or. en

### *Justification*

*The proposed new deadlines for opinions of the European Data Protection Board are deemed more realistic. The last part is a consequential amendment based on the structure of article 51.*

### **Amendment 287**

#### **Proposal for a regulation Article 58 - paragraph 8**

##### *Text proposed by the Commission*

8. The supervisory authority referred to in paragraph 1 and the supervisory **authority** competent under Article 51 shall take account of the opinion of the European Data Protection Board and shall within two weeks after the information on the opinion by the chair of the European Data Protection Board, electronically communicate to the chair of the European Data Protection Board and to the Commission whether it maintains or amends its draft measure and, if any, the amended draft measure, using a standardised format.

##### *Amendment*

8. The supervisory authority referred to in paragraph 1 and the supervisory **authorities** competent under Article 51(I) shall take **the utmost** account of the opinions of the European Data Protection Board and shall within two weeks after the information on the opinion by the chair of the European Data Protection Board, electronically communicate to the chair of the European Data Protection Board and to the Commission whether it maintains or amends its draft measure and, if any, the amended draft measure, using a standardised format.

Or. en

## **Amendment 288**

### **Proposal for a regulation Article 58 - paragraph 8 a (new)**

*Text proposed by the Commission*

*Amendment*

***8a. Where the lead authority pursuant to Article 54a intends not to follow the opinion of the European Data Protection Board, it shall inform the European Data Protection Board and the Commission thereof within one month and provide a reasoned justification.***

Or. en

*Justification*

*If the lead authority does not intend to follow its opinion, it shall inform the European Data Protection Board and the Commission provide a reasoned opinion. This ensures on procedural grounds that the opinions of the Board are taken into utmost account.*

## **Amendment 289**

### **Proposal for a regulation Article 58 - paragraph 8 b) (new)**

*Text proposed by the Commission*

*Amendment*

***8b. In a case where the European Data Protection Board still objects to the measure of the supervisory authority as referred to in paragraph 9, it may adopt by a two thirds majority a measure which shall be binding upon the supervisory authority.***

Or. en

*Justification*

*The European Data Protection Board may adopt a final decision, by a qualified majority, legally binding upon the supervisory authority. This decision can be subject to judicial review*

(Articles 45a, 55, 58). The Commission may also challenge this decision before the Court of Justice of the EU and request the suspension of the measure (Article 61a). The independence of supervisory authorities is not affected by this, because it relates to independence from interference by governments or other entities. Independent authorities can also collectively take an independent decision as a body which is then binding upon themselves.

## **Amendment 290**

### **Proposal for a regulation Article 59**

*Text proposed by the Commission*

*Amendment*

*Opinion by the Commission*

*deleted*

***1. Within ten weeks after a matter has been raised under Article 58, or at the latest within six weeks in the case of Article 61, the Commission may adopt, in order to ensure correct and consistent application of this Regulation, an opinion in relation to matters raised pursuant to Articles 58 or 61.***

***2. Where the Commission has adopted an opinion in accordance with paragraph 1, the supervisory authority concerned shall take utmost account of the Commission's opinion and inform the Commission and the European Data Protection Board whether it intends to maintain or amend its draft measure.***

***3. During the period referred to in paragraph 1, the draft measure shall not be adopted by the supervisory authority.***

***4. Where the supervisory authority concerned intends not to follow the opinion of the Commission, it shall inform the Commission and the European Data Protection Board thereof within the period referred to in paragraph 1 and provide a justification. In this case the draft measure shall not be adopted for one further month.***

Or. en

## *Justification*

*This article is deleted as a consequence of the new consistency mechanism proposed by the rapporteur. The new options for the Commission to intervene and challenge decisions in Court are now specified in Article 61a (new).*

### **Amendment 291**

#### **Proposal for a regulation Article 60**

*Text proposed by the Commission*

*Amendment*

***Suspension of a draft measure***

***deleted***

***1. Within one month after the communication referred to in Article 59(4), and where the Commission has serious doubts as to whether the draft measure would ensure the correct application of this Regulation or would otherwise result in its inconsistent application, the Commission may adopt a reasoned decision requiring the supervisory authority to suspend the adoption of the draft measure, taking into account the opinion issued by the European Data Protection Board pursuant to Article 58(7) or Article 61(2), where it appears necessary in order to:***

***(a) reconcile the diverging positions of the supervisory authority and the European Data Protection Board, if this still appears to be possible; or***

***(b) adopt a measure pursuant to point (a) of Article 62(1).***

***2. The Commission shall specify the duration of the suspension which shall not exceed 12 months.***

***3. During the period referred to in paragraph 2, the supervisory authority may not adopt the draft measure.***

Or. en

## *Justification*

*This article is deleted as a consequence of the new consistency mechanism proposed by the rapporteur. The new options for the Commission to intervene and challenge decisions in Court are now specified in Article 61a (new).*

## **Amendment 292**

### **Proposal for a regulation Article 61 a (new)**

*Text proposed by the Commission*

*Amendment*

#### ***Article 61a***

##### ***Intervention by the Commission***

- 1. Within ten weeks after a matter has been raised under Article 58, or at the latest within six weeks in the case of Article 61, the Commission may adopt, in order to ensure correct and consistent application of this Regulation, an opinion in relation to matters raised pursuant to Articles 58 or 61.***
- 2. Where the Commission has adopted an opinion in accordance with paragraph 1, the supervisory authority concerned shall take the utmost account of the Commission's opinion and inform the Commission and the European Data Protection Board whether it intends to maintain or amend its draft measure***
- 3. Where the supervisory authority concerned intends not to follow the opinion of the Commission, it shall inform the Commission and the European Data Protection Board thereof within one month and provide a reasoned justification. This reasoned justification shall be made publicly available.***
- .4. Where the Commission has adopted an opinion in accordance with paragraph 1, the supervisory authority concerned shall take the utmost account of the Commission's opinion and inform the Commission and the European Data***

***Protection Board whether it intends to maintain or amend its draft measure.***

Or. en

*Justification*

*The Commission may adopt a decision on a matter dealt with in the new consistency mechanism, which has to be taken into utmost account by the concerned supervisory authority. In case it does not follow the Commission, it has to provide a reasoned opinion. As last resort, the Commission can challenge a binding decision of the European Data Protection Board before the Court of Justice of the European Union and request the suspension of the measure.*

**Amendment 293**

**Proposal for a regulation  
Article 62 -paragraph 1**

*Text proposed by the Commission*

1. The Commission may adopt implementing acts for:

*Amendment*

1. The Commission may adopt implementing acts, ***after requesting an opinion of the European Data Protection Board,*** for:

Or. en

**Amendment 294**

**Proposal for a regulation  
Article 62 -paragraph 1 - point a)**

*Text proposed by the Commission*

***(a) deciding on the correct application of this Regulation in accordance with its objectives and requirements in relation to matters communicated by supervisory authorities pursuant to Article 58 or 61, concerning a matter in relation to which a reasoned decision has been adopted pursuant to Article 60(1), or concerning a matter in relation to which a supervisory authority does not submit a draft measure***

*Amendment*

***deleted***





*procedure referred to in Article 87(3).  
Those acts shall remain in force for a  
period not exceeding 12 months.*

Or. en

*Justification*

*This deletion is a consequence of the new consistency mechanism proposed by the rapporteur. The new options for the Commission to intervene and challenge decisions in Court are now specified in Article 61a (new).*

**Amendment 297**

**Proposal for a regulation  
Article 66 – paragraph 1**

*Text proposed by the Commission*

1. The European Data Protection Board shall ensure the consistent application of this Regulation. To this effect, the European Data Protection Board shall, on its own initiative or at the request of the Commission, in particular:

*Amendment*

1. The European Data Protection Board shall ensure the consistent application of this Regulation. To this effect, the European Data Protection Board shall, on its own initiative or at the request of the ***European Parliament, Council and the Commission***, in particular:

Or. en

*Justification*

*The EDPB should also be able to act on the request of the European Parliament or the Council.*

**Amendment 298**

**Proposal for a regulation  
Article 66 – paragraph 1 - point a)**

*Text proposed by the Commission*

(a) advise the Commission on any issue related to the protection of personal data in the Union, including on any proposed

*Amendment*

(a) advise the ***European Institutions*** on any issue related to the protection of personal data in the Union, including on any proposed amendment of this

amendment of this Regulation;

Regulation;

Or. en

*Justification*

*The EDPB should be able to advise all Union Institutions.*

**Amendment 299**

**Proposal for a regulation  
Article 66 – paragraph 1– point b)**

*Text proposed by the Commission*

(b) examine, on its own initiative or on request of one of its members or on request of the Commission, any question covering the application of this Regulation and issue guidelines, recommendations and best practices addressed to the supervisory authorities in order to encourage consistent application of this Regulation;

*Amendment*

(b) examine, on its own initiative or on request of one of its members or on request of the ***European Parliament, the Council or the*** Commission, any question covering the application of this Regulation and issue guidelines, recommendations and best practices addressed to the supervisory authorities in order to encourage consistent application of this Regulation, ***including on the use of enforcement powers;***

Or. en

*Justification*

*The EDPB should also be able to act on the request of the European Parliament or the Council.*

**Amendment 300**

**Proposal for a regulation  
Article 66 – paragraph 1 - point d) a (new)**

*Text proposed by the Commission*

*Amendment*

***(da) take decisions on draft measures of a supervisory authority pursuant to Article 58 (8b);***

*Justification*

*Consequential amendment based on the new consistency mechanism. See related amendment to Article 58(8b)*

.

**Amendment 301**

**Proposal for a regulation**

**Article 66 – paragraph 1 - point e**

*Text proposed by the Commission*

(e) promote the co-operation and the effective bilateral and multilateral exchange of information and practices between the supervisory authorities;

*Amendment*

(e) promote the co-operation and the effective bilateral and multilateral exchange of information and practices between the supervisory authorities, ***including the coordination of joint operations and other joint activities, where it so decides at the request of one or several supervisory authorities;***

*Justification*

*The role of the EDPB in coordinating joint operations and other common activities should be strengthened. This could also help to ease the strain on small supervisory authorities when dealing with major cross-border cases.*

**Amendment 302**

**Proposal for a regulation**

**Article 66 – paragraph 1 – point g a (new)**

*Text proposed by the Commission*

*Amendment*

***(ga) give its opinion to the Commission in the preparation of delegated and implementing acts based on this Regulation;***

*Justification*

*The expertise of the European Data Protection Board should be taken into account by the Commission when preparing delegated and implementing acts.*

**Amendment 303**

**Proposal for a regulation**

**Article 66 – paragraph 1 – point g b (new)**

*Text proposed by the Commission*

*Amendment*

***(gb) give an opinion on codes of conduct drawn up at Union level.***

Or. en

*Justification*

*In the Commission proposal, the tasks of the EDPB are partly reduced compared with those of the Article 29 Working Party under Article 30 of Directive 95/46/EC. Its task on codes of conduct, as in 95/46/EC Article 30, 1(d)), is hereby reinserted.*

**Amendment 304**

**Proposal for a regulation**

**Article 66 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. Where the Commission requests advice from the European Data Protection Board, it may lay out a time limit within which the European Data Protection Board shall provide such advice, taking into account the urgency of the matter.

2. Where the ***European Parliament, the Council or the*** Commission request advice from the European Data Protection Board, it may lay out a time limit within which the European Data Protection Board shall provide such advice, taking into account the urgency of the matter.

Or. en

*Justification*

*Consequential amendment based on amendments to paragraph 1. If the EDPB acts on the request of the European Parliament or the Council, these should also be able to lay down time limits.*

## Amendment 305

### Proposal for a regulation Article 67 – paragraph 1

*Text proposed by the Commission*

1. The European Data Protection Board shall regularly and timely inform the Commission about the outcome of its activities. It shall draw up ***an annual report*** on the situation regarding the protection of natural persons with regard to the processing of personal data in the Union and in third countries. The report shall include the review of the practical application of the guidelines, recommendations and best practices referred to in point (c) of Article 66(1).

*Amendment*

1. The European Data Protection Board shall regularly and timely inform the Commission about the outcome of its activities. It shall draw up ***a report at least every two years*** on the situation regarding the protection of natural persons with regard to the processing of personal data in the Union and in third countries. The report shall include the review of the practical application of the guidelines, recommendations and best practices referred to in point (c) of Article 66(1).

Or. en

*Justification*

*Biannual reporting on the situation of data protection in the Union and third countries by the EDPB seems more feasible if it is to be done properly.*

## Amendment 306

### Proposal for a regulation Article 68– paragraph 1

*Text proposed by the Commission*

1. The European Data Protection Board shall take decisions by a simple majority of its members.

*Amendment*

1. The European Data Protection Board shall take decisions by a simple majority of its members, ***unless otherwise provided in its rules of procedure, and notwithstanding the procedure pursuant to paragraph 8b of Article 58.***

Or. en

### *Justification*

*Consequential amendment based on new paragraph 8b of Article 58. A qualified majority of 2/3 of its members is needed for binding decisions in the consistency mechanism. Additionally, the Board can also adopt other decision-making provisions in its Rules of Procedure.*

### **Amendment 307**

#### **Proposal for a regulation Article 69 – paragraph 1**

##### *Text proposed by the Commission*

1. The European Data Protection Board shall elect a chair and two deputy chairpersons from amongst its members. ***One deputy chairperson shall be the European Data Protection Supervisor, unless he or she has been elected chair.***

##### *Amendment*

1. The European Data Protection Board shall elect a chair and ***at least*** two deputy chairpersons from amongst its members.

Or. en

### *Justification*

*It is not necessary that one of the two deputy chairpersons should always be the EDPS, as the Regulation does not even apply to EU institutions and agencies. The board should be free to decide about its own offices*

### **Amendment 308**

#### **Proposal for a regulation Article 69 – paragraph 2**

##### *Text proposed by the Commission*

2. The term of office of the chair and of the deputy chairpersons shall be five years and be renewable.

##### *Amendment*

2. The term of office of the chair and of the deputy chairpersons shall be ***four*** years and be renewable.

Or. en

### *Justification*

*The term length is aligned with the term length of the national DPAs.*

## **Amendment 309**

### **Proposal for a regulation**

#### **Article 72 – paragraph 1**

##### *Text proposed by the Commission*

1. The discussions of the European Data Protection Board shall be confidential.

##### *Amendment*

1. The discussions of the European Data Protection Board shall be confidential, ***unless otherwise provided in the rules of procedure. The agendas of the meetings of the Board shall be made public.***

Or. en

### *Justification*

*Proposal aimed at providing more transparency.*

## **Amendment 310**

### **Proposal for a regulation**

#### **Article 73 – paragraph 2**

##### *Text proposed by the Commission*

2. Any body, organisation or association ***which aims to protect data subjects' rights and interests concerning the protection of their personal data and*** has been properly constituted according to the law of a Member State shall have the right to lodge a complaint with a supervisory authority in any Member State on behalf of one or more data subjects if it considers that a data subject's rights under this Regulation have been infringed as a result of the processing of personal data.

##### *Amendment*

2. Any body, organisation or association ***acting in the public interest which*** has been properly constituted according to the law of a Member State shall have the right to lodge a complaint with a supervisory authority in any Member State on behalf of one or more data subjects if it considers that a data subject's rights under this Regulation have been infringed as a result of the processing of personal data.

Or. en



### *Justification*

*There is a need to provide for better possibilities for effective redress, including by associations acting in the public interest, not only specialised data protection associations. See related amendment to Recital 112*

## **Amendment 311**

### **Proposal for a regulation Article 75 – paragraph 2**

#### *Text proposed by the Commission*

2. Proceedings against a controller or a processor shall be brought before the courts of the Member State where the controller or processor has an establishment. Alternatively, such proceedings may be brought before the courts of the Member State where the data subject has its habitual residence, unless the controller is a public authority acting in the exercise of its public powers.

#### *Amendment*

2. Proceedings against a controller or a processor shall be brought before the courts of the Member State where the controller or processor has an establishment. Alternatively, such proceedings may be brought before the courts of the Member State where the data subject has its habitual residence, unless the controller is a public authority *of a Member State* acting in the exercise of its public powers.

Or. en

### *Justification*

*This amendment clarifies that this exception shall not apply to public authorities of third countries, as this would effectively deprive data subjects of appropriate redress mechanisms.*

## **Amendment 312**

### **Proposal for a regulation Article 76 – paragraph 1**

#### *Text proposed by the Commission*

1. Any body, organisation or association referred to in Article 73(2) shall have the right to exercise the rights referred to in Articles 74 and 75 on behalf of one or more data subjects.

#### *Amendment*

1. Any body, organisation or association referred to in Article 73(2) shall have the right to exercise the rights referred to in Articles 74, **75 and 77** on behalf of one or more data subjects.

*Justification*

*Clarification that associations acting in the public interest can go to court on behalf of data subjects in order to ensure compliance with this Regulation. See related amendment to Article 73(2), Recital 112*

**Amendment 313**

**Proposal for a regulation  
Article 77 – paragraph 1**

*Text proposed by the Commission*

1. Any person who has suffered damage as a result of an unlawful processing operation or of an action incompatible with this Regulation shall have the right to receive compensation from the controller or the processor for the damage suffered.

*Amendment*

1. Any person who has suffered damage, ***including non-pecuniary loss***, as a result of an unlawful processing operation or of an action incompatible with this Regulation shall have the right to receive compensation from the controller or the processor for the damage suffered.

*Justification*

*Compensation should also be awarded for non-monetary damages such as distress or time loss, as these can be more important for the data subject.*

**Amendment 314**

**Proposal for a regulation  
Article 77 – paragraph 2**

*Text proposed by the Commission*

2. Where more than one controller or processor is involved in the processing, ***each*** controller or processor shall be jointly and severally liable for the entire amount of the damage.

*Amendment*

2. Where more than one controller or processor is involved in the processing, ***those*** controllers or processors shall be jointly and severally liable for the entire amount of the damage.

## Amendment 315

### Proposal for a regulation Article 78– paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***2a. In applying the penalties referred to in paragraph 1 Member States shall show full respect for the principle of ne bis in idem, meaning that penalties may not be imposed twice regarding the same infringement of this Regulation.***

Or. en

*Justification*

*The principle of ne bis in idem needs to be respected to prevent penalties being imposed twice for the same act.*

## Amendment 316

### Proposal for a regulation Article 79– paragraph 2

*Text proposed by the Commission*

*Amendment*

2. The administrative sanction shall be in each individual case effective, proportionate and dissuasive. ***The amount of the administrative fine shall be fixed with due regard to the nature, gravity and duration of the breach, the intentional or negligent character of the infringement, the degree of responsibility of the natural or legal person and of previous breaches by this person, the technical and organisational measures and procedures implemented pursuant to Article 23 and the degree of cooperation with the supervisory authority in order to remedy the breach.***

2. The administrative sanction shall be in each individual case effective, proportionate and dissuasive. ***In order to determine the type, the level and the amount of the administrative sanction, the supervisory authority shall take into account all relevant circumstances,*** with due regard to ***the following criteria:***

### *Justification*

*The rapporteur supports the strengthening of the supervisory authorities as regards investigative powers and sanctions. The Commission's proposal was, however, too prescriptive. The new system of sanctions proposed relies on a number of criteria that must be taken into account in order to determine the administrative sanction, including the amount of administrative fines that a supervisory authority may impose.*

### **Amendment 317**

#### **Proposal for a regulation**

#### **Article 79 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. In order to determine the type, the level and the amount of the administrative sanction, the supervisory authority shall take into account all relevant circumstances, with due regard to the following criteria:***

***(a) the nature, gravity and duration of the infringement,***

***(b) the intentional or negligent character of the infringement,***

***(c) the degree of responsibility of the natural or legal person and of previous infringements by this person,***

***(d) the technical and organisational measures and procedures implemented pursuant to Articles 23 and 30,***

***(e) the specific categories of personal data affected by the infringement***

***(f) the repetitive nature of the infringement***

***(g) the degree of harm suffered by data subjects,***

***(h) the pecuniary interest leading to the infringement by the person responsible and the level of the profits gained or losses avoided by the person responsible,***

*insofar as they can be determined,*  
*(i) the degree of cooperation with the supervisory authority in order to remedy the infringement and mitigate the possible adverse effects of the infringement, and*  
*(j) the refusal to cooperate with or obstruction of inspections, audits and controls carried out by the supervisory authority pursuant to Article 53.*

Or. en

#### *Justification*

*The rapporteur supports the strengthening of the supervisory authorities as regards investigative powers and sanctions. The Commission's proposal was, however, too prescriptive. The new system of sanctions proposed relies on a number of criteria that must be taken into account in order to determine the administrative sanction, including the amount of administrative fines that a supervisory authority may impose.*

#### **Amendment 318**

##### **Proposal for a regulation Article 79 – paragraph 3**

###### *Text proposed by the Commission*

3. In case of a first and non-intentional **non-compliance** with this Regulation, a warning in writing may be given and no sanction imposed, **where:**

**(a) a natural person is processing personal data without a commercial interest; or**

**(b) an enterprise or an organisation employing fewer than 250 persons is processing personal data only as an activity ancillary to its main activities.**

###### *Amendment*

3. In case of a first and non-intentional **breach of** this Regulation, a warning in writing may be given and no sanction imposed.

Or. en

#### *Justification*

*The rapporteur supports the strengthening of the supervisory authorities as regards*

*investigative powers and sanctions. The Commission's proposal was, however, too prescriptive. The new system of sanctions proposed relies on a number of criteria that must be taken into account in order to determine the administrative sanction, if any.*

## **Amendment 319**

### **Proposal for a regulation Article 79 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

4. The supervisory authority shall impose a fine **up to** 250 000 EUR, or in case of **an enterprise** up to 0,5 % of its annual worldwide turnover, to anyone who, intentionally or negligently:

4. The supervisory authority shall impose a fine **that shall not exceed** 250 000 EUR, or in case of an enterprise 0,5 % of its annual worldwide turnover, to anyone who intentionally or negligently **infringes** Article 12(1) and (2).

***(a) does not provide the mechanisms for requests by data subjects or does not respond promptly or not in the required format to data subjects pursuant to Articles 12(1) and (2);***

***(b) charges a fee for the information or for responses to the requests of data subjects in violation of Article 12(4).***

Or. en

### *Justification*

*Breaches of Article 12(4) are moved to paragraph 5, because charging an unlawful fee for data subject access requests has a chilling effect on data subjects, and it is acting in a gainful interest. It should therefore be an aggravating circumstance. Such fees are currently abused by some data controllers in order to deter data subjects from exercising their rights. See related amendment to paragraph 5.*

## **Amendment 320**

### **Proposal for a regulation Article 79 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

5. The supervisory authority shall impose a fine **up to** 500 000 EUR, or in case of an

5. The supervisory authority shall impose a fine **that shall not exceed 500 000 EUR**, or

enterprise up to 1 % of its annual worldwide turnover, *to anyone who, intentionally or negligently:*

*(a) does not provide the information, or does provide incomplete information, or does not provide the information in a sufficiently transparent manner, to the data subject pursuant to Article 11, Article 12(3) and Article 14;*

*(b) does not provide access for the data subject or does not rectify personal data pursuant to Articles 15 and 16 or does not communicate the relevant information to a recipient pursuant to Article 13;*

*(c) does not comply with the right to be forgotten or to erasure, or fails to put mechanisms in place to ensure that the time limits are observed or does not take all necessary steps to inform third parties that a data subjects requests to erase any links to, or copy or replication of the personal data pursuant Article 17;*

*(d) does not provide a copy of the personal data in electronic format or hinders the data subject to transmit the personal data to another application in violation of Article 18;*

*(e) does not or not sufficiently determine the respective responsibilities with cocontrollers pursuant to Article 24;*

*(f) does not or not sufficiently maintain the documentation pursuant to Article 28, Article 31(4), and Article 44(3);*

*(g) does not comply, in cases where special categories of data are not involved, pursuant to Articles 80, 82 and 83 with rules in relation to freedom of expression or with rules on the processing in the employment context or with the conditions for processing for historical, statistical and scientific research purposes.*

in case of an enterprise 1 % of its annual worldwide turnover to anyone who intentionally or negligently *infringes Articles 11, 12(3) and (4), 13, 14, 15, 16, 17, 18, 24, 28, 31(4), 44(3), 80, 82, 83.*

*Justification*

*Breaches of Article 12(4) are moved from paragraph 4 to paragraph 5, because charging an unlawful fee for data subject access requests has a chilling effect on data subjects and it is acting in a gainful interest. It should therefore be an aggravating circumstance. Such fees are currently abused by some data controllers in order to deter data subjects from exercising their rights. See related amendment to paragraph 4.*

**Amendment 321****Proposal for a regulation  
Article 79 – paragraph 6***Text proposed by the Commission*

6. The supervisory authority shall impose a fine **up to** 1 000 000 EUR or, in case of an enterprise up to 2 % of its annual worldwide turnover, **to anyone who, intentionally or negligently:**

**(a) processes personal data without any or sufficient legal basis for the processing or does not comply with the conditions for consent pursuant to Articles 6, 7 and 8;**

**(b) processes special categories of data in violation of Articles 9 and 81;**

**(c) does not comply with an objection or the requirement pursuant to Article 19;**

**(d) does not comply with the conditions in relation to measures based on profiling pursuant to Article 20;**

**(e) does not adopt internal policies or does not implement appropriate measures for ensuring and demonstrating compliance pursuant to Articles 22, 23 and 30;**

**(f) does not designate a representative pursuant to Article 25;**

**(g) processes or instructs the processing of personal data in violation of the obligations in relation to processing on**

*Amendment*

6. The supervisory authority shall impose a fine **that shall not exceed** 1 000 000 EUR or, in case of an enterprise 2 % of its annual worldwide turnover, to anyone who intentionally or negligently **infringes the provisions of this Regulation other than those referred to in paragraphs 4 and 5.**



*behalf of a controller pursuant to Articles 26 and 27;*

*(i) does not alert on or notify a personal data breach or does not timely or completely notify the data breach to the supervisory authority or to the data subject pursuant to Articles 31 and 32;es not carry out a data protection impact assessment pursuant or processes personal data without prior authorisation or prior consultation of the supervisory authority pursuant to Articles 33 and 34;*

*(j) does not designate a data protection officer or does not ensure the conditions for fulfilling the tasks pursuant to Articles 35, 36 and 37;*

*(k) misuses a data protection seal or mark in the meaning of Article 39;*

*(l) carries out or instructs a data transfer to a third country or an international organisation that is not allowed by an adequacy decision or by appropriate safeguards or by a derogation pursuant to Articles 40 to 44;*

*(m) does not comply with an order or a temporary or definite ban on processing or the suspension of data flows by the supervisory authority pursuant to Article 53(1);*

*(n) does not comply with the obligations to assist or respond or provide relevant information to, or access to premises by, the supervisory authority pursuant to Article 28(3), Article 29, Article 34(6) and Article 53(2);*

*(o) does not comply with the rules for safeguarding professional secrecy pursuant to Article 84.*

Or. en

#### *Justification*

*The proposed wording ensures that any infringements of the Regulation not listed in*

*paragraphs 4 or 5 can be sanctioned with administrative fines.*

## **Amendment 322**

### **Proposal for a regulation**

#### **Article 79 – paragraph 6 a (new)**

*Text proposed by the Commission*

*Amendment*

***6a. The European Data Protection Board shall regularly assess and ensure the consistency in sanctioning among the supervisory authorities, in accordance with Article 66.***

Or. en

#### *Justification*

*The EDPB is best placed to ensure consistency in sanctioning among authorities.*

## **Amendment 323**

### **Proposal for a regulation**

#### **Article 79 – paragraph 7**

*Text proposed by the Commission*

*Amendment*

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of updating the amounts of the administrative fines referred to in paragraphs 4, 5 and 6, taking into account the criteria referred to in paragraph 2.

7. The Commission shall be empowered to adopt, ***after requesting an opinion of the European Data Protection Board,*** delegated acts in accordance with Article 86 for the purpose of updating the ***absolute*** amounts of the administrative fines referred to in paragraphs 4, 5 and 6, taking into account the criteria referred to in paragraph 2 ***and the development of standard costs of living.***

Or. en

#### *Justification*

*The regular updating of absolute amounts of fines is needed for a regulation that should be in force for a certain time. The percentage amounts cannot be changed through such a delegated*

act, however.

## Amendment 324

### Proposal for a regulation Article 80– paragraph 1

#### *Text proposed by the Commission*

1. Member States shall provide for exemptions or derogations from the provisions on the general principles in Chapter II, the rights of the data subject in Chapter III, on controller and processor in Chapter IV, on the transfer of personal data to third countries and international organisations in Chapter V, the independent supervisory authorities in Chapter VI and on co-operation and consistency in Chapter VII ***for the processing of personal data carried out solely for journalistic purposes or the purpose of artistic or literary expression*** in order to reconcile the right to the protection of personal data with the rules governing freedom of expression.

#### *Amendment*

1. Member States shall provide for exemptions or derogations from the provisions on the general principles in Chapter II, the rights of the data subject in Chapter III, on controller and processor in Chapter IV, on the transfer of personal data to third countries and international organisations in Chapter V, the independent supervisory authorities in Chapter VI and on co-operation and consistency in Chapter VII ***whenever this is necessary*** in order to reconcile the right to the protection of personal data with the rules governing freedom of expression ***in accordance with the Charter of Fundamental Rights of the European Union and its referral to the ECHR.***

Or. en

#### *Justification*

*The regular updating of absolute amounts of fines is needed for a regulation that should be in force for a certain time. The percentage amounts cannot be changed through such a delegated act, however.*

## Amendment 325

### Proposal for a regulation Article 81 – paragraph 1

#### *Text proposed by the Commission*

1. ***Within the limits of*** this Regulation and in ***accordance*** with point (h) of Article 9(2), processing of personal data concerning health must be on the basis of

#### *Amendment*

1. ***In accordance with the rules set out in*** this Regulation, ***in particular*** with point (h) of Article 9(2), processing of personal data concerning health must be on the basis

Union law or Member State law which shall provide for suitable and specific measures to safeguard the data subject's *legitimate* interests, and be necessary for:

of Union law or Member State law which shall provide for suitable and specific measures to safeguard the data subject's interests *and fundamental rights*, and be necessary for:

Or. en

*Justification*

*Clarification, as "legitimate interest" normally refers to the data controller and not the data subject, see Article 6 (1a).*

**Amendment 326**

**Proposal for a regulation  
Article 81– paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. When the purposes referred to in points (a) to (c) of paragraph 1 can be achieved without the use of personal data, such data shall not be used for those purposes.***

Or. en

*Justification*

*Clarification that the principle of minimisation of the processing of personal data also applies in case it is regulated by Member State law. Health data is extremely sensitive and deserves utmost protection.*

**Amendment 327**

**Proposal for a regulation  
Article 81 - paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. Processing of personal data concerning health which is necessary for historical, statistical or scientific research purposes,

2. Processing of personal data concerning health which is necessary for historical, statistical or scientific research purposes,

such as patient registries set up for improving diagnoses and differentiating between similar types of diseases and preparing studies for therapies, is subject to the conditions and safeguards referred to in Article 83.

***shall be permitted only with the consent of the data subject, and shall be*** subject to the conditions and safeguards referred to in Article 83.

Or. en

#### *Justification*

*Clarification that the principle of minimisation of the processing of personal data also applies in case it is regulated by Member State law. Health data is extremely sensitive and deserves utmost protection.*

### **Amendment 328**

#### **Proposal for a regulation Article 81 - paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Member States law may provide for exceptions to the requirement of consent for research, as referred to in paragraph 2, with regard to research that serves an exceptionally high public interests, if that research cannot possibly be carried out otherwise. The data in question shall be anonymised, or if that is not possible for the research purposes, pseudonymised under the highest technical standards, and all necessary measures shall be taken to prevent re-identification of the data subjects. Such processing shall be subject to prior authorisation of the competent supervisory authority, in accordance with Article 34(1).***

Or. en

#### *Justification*

*The amendments to paragraphs 2 and 2a ensure that health data, which is extremely*

*sensitive, may only be used without the consent of the data subject if it serves an exceptionally high public interest and in this case must be anonymised or at least pseudonymised using the highest technical standards. See Council of Europe Recommendation R(97)5 on the protection of medical data, paragraph 9.*

## **Amendment 329**

### **Proposal for a regulation Article 81 - paragraph 3**

*Text proposed by the Commission*

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying other reasons of public interest in the area of public health as referred to in point (b) of paragraph 1, as well as criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1.

*Amendment*

3. The Commission shall be empowered to adopt, ***after requesting an opinion of the European Data Protection Board,*** delegated acts in accordance with Article 86 for the purpose of further specifying other reasons of public interest in the area of public health as referred to in point (b) of paragraph 1, as well as criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1.

Or. en

## **Amendment 330**

### **Proposal for a regulation Article 81 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

***4. Each Member State shall notify to the Commission those provisions of its law which it adopts pursuant to paragraph 1, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.***

Or. en

*Justification*

*A notification obligation as in Articles 80, 82, 84, is inserted.*

## Amendment 331

### Proposal for a regulation Article 82– paragraph 1

*Text proposed by the Commission*

1. ***Within the limits of*** this Regulation, Member States may adopt by law specific rules regulating the processing of employees' personal data in the employment context, in particular for the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organisation of work, health and safety at work, and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship.

*Amendment*

1. ***In accordance with the rules set out in*** this Regulation, Member States may adopt by law specific rules regulating the processing of employees' personal data in the employment context, in particular for the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organisation of work, health and safety at work, and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship.

Or. en

## Amendment 332

### Proposal for a regulation Article 82– paragraph 3

*Text proposed by the Commission*

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1.

*Amendment*

3. The Commission shall be empowered, ***after requesting an opinion from the European Data Protection Board,*** to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1

Or. en

## Amendment 333

### Proposal for a regulation Article 82 a (new)

*Text proposed by the Commission*

*Amendment*

#### *Article 82a*

##### *Processing in the social security context*

***1. Member States may, in accordance with the rules set out in this Regulation, adopt specific legislative rules particularising the conditions for the processing of personal data by their public institutions and departments in the social security context if carried out in the public interest.***

***2. Each Member State shall notify to the Commission those provisions which it adopts pursuant to paragraph 1, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.***

Or. en

#### *Justification*

*Similar to the employment context, social security is a highly complex area regulated in many details on the national level. Therefore, Member States should be allowed to adopt or keep specific laws regulating the details of data protection for public institutions in this area.*

## Amendment 334

### Proposal for a regulation Article 83 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. Within the limits of this Regulation, personal data may be processed for historical, statistical or scientific research

1. Within the limits of this Regulation, personal data ***not falling within the categories of data covered by Articles 8***



purposes only if:

**and 9** may be processed for historical, statistical or scientific research purposes only if:

Or. en

#### *Justification*

*Data about children and sensitive data can only be used for research under the conditions in the new paragraphs 1a and 1b. It may only be used without the consent of the data subject if it serves an exceptionally high public interest, and in this case must be anonymised or at least pseudonymised using the highest technical standards.*

#### **Amendment 335**

##### **Proposal for a regulation Article 83 – paragraph 1 - point b)**

###### *Text proposed by the Commission*

(b) data enabling the attribution of information to an identified or identifiable data subject is kept separately from the other information ***as long as these purposes can be fulfilled in this manner.***

###### *Amendment*

(b) data enabling the attribution of information to an identified or identifiable data subject is kept separately from the other information.

Or. en

#### **Amendment 336**

##### **Proposal for a regulation Article 83 – paragraph 1 a (new)**

###### *Text proposed by the Commission*

###### *Amendment*

***1a. Subject to the exception in paragraph 1b, data falling within the categories of data covered by Articles 8 and 9 may be processed for historical, statistical or scientific research only with the consent of the data subjects.***

*Justification*

*Data about children and sensitive data can, as a rule, only be used for research with the consent of the data subject.*

**Amendment 337****Proposal for a regulation****Article 83 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***1b. Member States law may provide for exceptions to the requirement of consent for research, as referred to in paragraph 1a, with regard to research that serves an exceptionally high public interests, if that research cannot possibly be carried out otherwise. The data in question shall be anonymised, or if that is not possible for the research purposes, pseudonymised under the highest technical standards, and all necessary measures shall be taken to prevent re-identification of the data subjects. Such processing shall be subject to prior authorisation of the competent supervisory authority, in accordance with Article 34(1).***

Or. en

*Justification*

*In cases where the data subject has not given consent, sensitive data and data about children should only be used for research purposes if based on law and serving exceptionally high public interest. Otherwise, any "research", no matter if academic or corporate and including e.g. market research, could be used as an excuse to override all protections provided for in the other parts of this Regulation, such as in Article 6 on legal grounds etc. The wording is identical to the proposed provisions in Article 81.*

## Amendment 338

### Proposal for a regulation Article 83 – paragraph 2

*Text proposed by the Commission*

2. Bodies conducting historical, statistical or scientific research may publish or otherwise publicly disclose personal data only if:

(a) the data subject has given consent, subject to the conditions laid down in Article 7;

*Amendment*

2. Bodies conducting historical, statistical or scientific research may publish or otherwise publicly disclose personal data only if:

(a) the data subject has given consent, subject to the conditions laid down in Article 7; **or**

Or. en

## Amendment 339

### Proposal for a regulation Article 83 – paragraph 2 - point b)

*Text proposed by the Commission*

***(b) the publication of personal data is necessary to present research findings or to facilitate research insofar as the interests or the fundamental rights or freedoms of the data subject do not override these interests; or***

*Amendment*

***deleted***

Or. en

*Justification* Research purposes should not override the interest of the data subject in not having his or her personal data published. See related Article 17(2).

## Amendment 340

### Proposal for a regulation Article 83 – paragraph 2 – point c)

*Text proposed by the Commission*

(c) the data subject has made the data public.

*Amendment*

(b) the data subject has made the data public.

Or. en

## Amendment 341

### Proposal for a regulation Article 83 – paragraph 3

*Text proposed by the Commission*

***3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the processing of personal data for the purposes referred to in paragraph 1 and 2 as well as any necessary limitations on the rights of information to and access by the data subject and detailing the conditions and safeguards for the rights of the data subject under these circumstances.***

*Amendment*

***deleted***

Or. en

### *Justification*

*Deletion of the delegated act, because it might touch on essential elements of the law. Additional requirements should be provided in the text of the regulation (as done with new paragraphs 1a and 1b).*

## Amendment 342

### Proposal for a regulation Article 83 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

***3a. Each Member State shall notify to the Commission those provisions which it adopts pursuant to paragraph 1b, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.***

Or. en

*Justification Notification obligation as in Articles 80, 82, 84.*

## Amendment 343

### Proposal for a regulation Article 84 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. ***Within the limits of*** this Regulation, Member States may adopt specific rules ***to set out the investigative powers by the supervisory authorities laid down in Article 53(2)*** in relation to controllers or processors that are subjects under national law or rules established by national competent bodies to an obligation of professional secrecy or other equivalent obligations of secrecy, where this is necessary and proportionate to reconcile the right of the protection of personal data with the obligation of secrecy.

1. ***In accordance with the rules set out in*** this Regulation, Member States, may adopt specific rules in relation to controllers or processors that are subjects under national law or rules established by national competent bodies to an obligation of professional secrecy or other equivalent obligations of secrecy, where this is necessary and proportionate to reconcile the right of the protection of personal data with the obligation of secrecy, ***to set out***

***(a) the rights of data subjects laid down in Articles 11 to 20, in line with Article 21;***

***(b) the investigative powers by the supervisory authorities laid down in Article 53(2).***

***These rules*** shall only apply with regard to

***The specific rules referred to in***

personal data which the controller or processor has received from or has obtained in an activity covered by this obligation of secrecy.

**paragraph 1** shall only apply with regard to personal data which the controller or processor has received from or has obtained in an activity covered by this obligation of secrecy.

Or. en

*Justification*

*Clarification that in case of professions with secrecy obligations, the data subject right to have her data accessed, erased or otherwise dealt with may be limited, in order to protect the secrecy obligation.*

**Amendment 344**

**Proposal for a regulation  
Article 85 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 85a**

***Respect of human rights***

***This Regulation shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the TEU, and any obligations incumbent on judicial authorities in this respect shall remain unaffected.***

Or. en

*Justification*

*Fundamental rights safeguard clause to ensure that national levels of data protection and other fundamental rights are not undermined when applying this Regulation.*

## Amendment 345

### Proposal for a regulation Article 86 - paragraph 2

#### *Text proposed by the Commission*

2. The delegation of power referred to in **Article 6(5)**, **Article 8(3)**, **Article 9(3)**, Article 12(5), Article 14(7), **Article 15(3)**, Article 17(9), **Article 20(6)**, Article 22(4), **Article 23(3)**, **Article 26(5)**, **Article 28(5)**, **Article 30(3)**, Article 31(5), Article 32(5), Article 33(6), **Article 34(8)**, **Article 35(11)**, **Article 37(2)**, Article 39(2), **Article 43(3)**, Article 44(7), Article 79, Article 81(3), Article 82(3) and **Article 83(3)** shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

#### *Amendment*

2. The delegation of power referred to in **Article 7(4c)**, **Article 11(2b)**, Article 12(5), Article 14(7), Article 17(9), Article 22(4), Article 31(5), Article 32(5), Article 33(6), **Article 38(4)**, Article 39(2), **Article 41(3)**, **Article 41(5)**, **Article 79(7)**, Article 81(3) and Article 82(3) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

Or. en

## Amendment 346

### Proposal for a regulation Article 86 – paragraph 3

#### *Text proposed by the Commission*

3. The delegation of power referred to in **Article 6(5)**, **Article 8(3)**, **Article 9(3)**, Article 12(5), Article 14(7), **Article 15(3)**, Article 17(9), **Article 20(6)**, Article 22(4), **Article 23(3)**, **Article 26(5)**, **Article 28(5)**, **Article 30(3)**, Article 31(5), Article 32(5), Article 33(6), **Article 34(8)**, **Article 35(11)**, **Article 37(2)**, Article 39(2), **Article 43(3)**, Article 44(7), Article 79, Article 81(3), Article 82(3) and **Article 83(3)** may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in

#### *Amendment*

3. The delegation of power referred to in **Article 7(4c)**, **Article 11(2b)**, Article 12(5), Article 14(7), Article 17(9), Article 22(4), Article 31(5), Article 32(5), Article 33(6), **Article 38(4)**, Article 39(2), **Article 41(3)**, **Article 41(5)**, **Article 79(7)**, Article 81(3) and Article 82(3) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Or. en

## Amendment 347

### Proposal for a regulation Article 86 – paragraph 5

#### *Text proposed by the Commission*

5. A delegated act adopted pursuant to **Article 6(5), Article 8(3), Article 9(3), Article 12(5), Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 22(4), Article 23(3), Article 26(5), Article 28(5), Article 30(3), Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11), Article 37(2), Article 39(2), Article 43(3), Article 44(7), Article 79, Article 81(3), Article 82(3) and Article 83(3)** shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of **two** months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

#### *Amendment*

5. A delegated act adopted pursuant to **Article 7(4c), Article 11(2b)**, Article 12(5), Article 14(7), Article 17(9), Article 22(4), Article 31(5), Article 32(5), Article 33(6), **Article 38(4)**, Article 39(2), **Article 41(3), Article 41(5), Article 79(7)**, Article 81(3) and Article 82(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of **four** months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

Or. en



## Amendment 348

### Proposal for a regulation Article 86 – paragraph 5 a (new)

*Text proposed by the Commission*

*Amendment*

**5a. The Commission shall adopt the delegated acts under Articles 17(9), 31(5), 32(5) and 33(6) by [six month prior to the date referred to in Article 91(2)]. The Commission may extend the deadline by 6 months.**

Or. en

#### *Justification*

*In order to ensure legal certainty, the delegated acts further specifying requirements and conditions for the right to erasure and to be forgotten, data breach notifications to the supervisory authorities and to data subjects, and data protection impact assessments shall be adopted in due time before the application of this Regulation.*

## Amendment 349

### Proposal for a regulation Article 87 – paragraph 3

*Text proposed by the Commission*

*Amendment*

**3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.** **deleted**

Or. en

#### *Justification*

*Consequential amendment. Because of the change of the adequacy rating for third countries from an implementing act to a delegated act, and urgency procedure is no longer possible. See related amendment to Article 41(5), which contained the only reference to Article 87(3).*

## **Amendment 350**

### **Proposal for a regulation Article 89 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 89a**

#### ***Data processing by EU Institutions, bodies, offices and agencies***

***The Commission shall present by the date specified in Article 91(2) at the latest and, without delay a proposal for the revision of the legal framework applicable to the processing of personal data by the Union institutions, bodies, offices and agencies, to bring them in line with this Regulation with a view to ensuring consistent and homogeneous legal rules relating to the fundamental right to the protection of personal data in the European Union.***

Or. en

#### *Justification*

*This amendment seeks to ensure consistency between the Regulation and the laws regulating EU institutions, bodies and agencies, such as Regulation (EC) No 45/2001, but equally of all the EU agencies that currently have their own data protection regulations, leading to a patchwork of rules that makes it very hard for the data subject to exercise its rights.*

## EXPLANATORY STATEMENT

### Introduction

In accordance with Article 8 of the EU Charter the right to personal data protection:

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified
3. Compliance with these rules shall be subject to control by an independent authority.

Since the adoption of Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data a lot has changed in the area of data protection, notably technological developments, increased collection and processing of personal data, including for law enforcement purposes, with a patchwork of applicable data protection rules and globalization of markets and cooperation.

Furthermore the Directive has failed to achieve a proper harmonisation due to the different implementation of its provisions in the Member States. In this context it has become increasingly difficult for individuals ('data subjects') to exercise their right to data protection.

Finally it has hampered the development of the single market with companies (controlling or processing personal data, 'data controllers') and individuals facing differences in data protection requirements.

Since the entry into force of the Lisbon Treaty, the Union has an explicit legal basis for data protection covering processing of personal data in the public and private sector but also in the context of law enforcement (resulting from the collapse of the pre Lisbon "pillar structure") (Article 16(2) TFEU) The Commission has now used Article 16(2) TFEU as legal basis to present proposals for a revision of the Union's data protection framework. It proposes a Regulation (COM (2012)11) that will replace Directive 95/46/EC (rapporteur: Jan Philipp Albrecht, Greens/EFA) and a Directive (COM(2012)10) that will replace Framework Decision 2008/977/JHA on the protection of personal data processed for the purpose of prevention, detection, investigation or prosecution of criminal offences (rapporteur: Dimitrios Droutsas, S&D). Both rapporteurs support the objective of establishing a fully coherent, harmonious and robust framework with a high level of protection for all data processing activities in the EU.<sup>1</sup> In order to achieve this objective the Commission proposals must be considered a single package requiring coordinated legislative approaches for both texts.

Extensive discussions have taken place on the data protection reform between the rapporteurs

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<sup>1</sup> DT/905569EN.doc

and the shadow rapporteurs, the draftspersons and shadows of the Committees for opinion (ITRE, IMCO, JURI, EMPL), the Council Presidency, the Commission and stakeholders (data protection authorities, national authorities, industry, civil rights and consumer organisations, academic experts) in order to ensure broad support for the Parliament's approach.

A stakeholder workshop was organised by the LIBE committee on 29 May 2012. The LIBE committee also held its annual Inter- Parliamentary Committee Meeting (IPCM) together with national parliaments in the area of freedom, security and justice on the data protection reform package on 9 and 10 October 2012. Four Working Documents were produced on the data protection reform package.

### **Position on the draft Data Protection Regulation**

The Commission's proposal is based on the following aims:

- A comprehensive approach to data protection;
- Strengthening individual's rights;
- Further advancing the internal market dimension and ensuring better enforcement of data protection rules; and
- Strengthening the global dimension

The rapporteur supports these ambitions. His approach is presented accordingly

### **A comprehensive approach to data protection**

As indicated in the Working Document of 6 July 2012<sup>1</sup>, the rapporteur welcomes the fact that the Commission has chosen to replace Directive 95/46 with a (directly applicable) Regulation; since this should reduce the fragmented approach to data protection among Member States.

He also agrees with the pragmatic approach chosen by the Commission in leaving room, in accordance with the Regulation, to the Member States to maintain or adopt specific rules regarding issues such as freedom of expression, professional secrecy, health and employment (articles 81-85). Particular reference is made to work of the Employment and Social Affairs Committee, which is to deliver an opinion on Article 82.<sup>2</sup>

EU institutions are not within the scope of the new Regulation. However, they should be covered to ensure a consistent and uniform framework throughout the Union. This will require an adjustment of EU legal instruments, particularly Regulation (EC) No 45/2001, to bring them fully in line with the general Data Protection Regulation before the latter will be applied. The rapporteur also sees a need for a more horizontal debate on how to address the current patchwork of data protection rules for different EU Agencies (such as Europol and Eurojust) and ensure consistency with the data protection package (Article 2(b), Article 89a)).

The rapporteur strongly regrets that the Commission's proposal does not cover law

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<sup>1</sup> DT/905569EN.doc

<sup>2</sup> PA/918358EN.doc

enforcement cooperation (on which the separate Directive is proposed). This leaves legal uncertainty as regards rights and obligation in borderline issues, for instance where commercial data is accessed by law enforcement authorities for law enforcement purposes and transfers between authorities that are responsible for law enforcement and those that are not. The report on the proposed Directive addresses these issues and proposes amendments. The Regulation specifies that the exclusion from the scope of the Regulation only covers competent public authorities for law enforcement activities (not private entities) and that the applicable legislation should provide adequate safeguards based on the principles of necessity and proportionality (Articles 2(e), 21).

The territorial scope of the Regulation is an important issue for the consistent application of EU data protection law. The rapporteur wishes to clarify that the Regulation should also be applicable to a controller not established in the Union when processing activities are aimed at the offering of goods or services to data subjects in the Union, irrespective of whether payment for these goods or services is required, or the monitoring of such data subjects (Article 3(2)).

The Regulation needs to be comprehensive also in terms of providing legal certainty. The extensive use of delegated and implementing acts runs counter to this goal. Therefore the rapporteur proposes the deletion of a number of provisions conferring on the Commission the power to adopt delegated acts. However, in order to provide legal certainty where possible, the rapporteur has replaced several acts with more detailed wording in the Regulation (eg.: Articles 6(1b); 15; 35(10)). In other instances, the rapporteur proposes to entrust the European Data Protection Board (EDPB) with the task of further specifying the criteria and requirements of a particular provision instead granting the Commission the power to adopt a delegated act. The reason is that in those cases the matter relates to cooperation between national supervisors and they are better placed to determine the principles and practices to be applied (e.g.: Articles 23(3); 30(3); 42(3); 44(7); 55(10)).

### **Strengthening individuals' rights**

As the Regulation implements a fundamental right, a limitation of the material scope, particularly as regards the definition of “personal data”, by for instance introducing subjective elements relating to the efforts the data controller should make to identify personal data is rejected. The concept of personal data is further clarified with objective criteria (Article 4(1); Recitals 23 24) . Legitimate concerns regarding specific business models can be addressed without denying individuals their fundamental rights. In this context the rapporteur encourages the pseudonymous and anonymous use of services. For the use of pseudonymous data, there could be alleviations with regard to obligations for the data controller (Articles 4(2)(a), 10), Recital 23).

Consent should remain a cornerstone of the EU approach to data protection, since this is the best way for individuals to control data processing activities. Information to data subjects should be presented in easily comprehensible form, such as by standardised logos or icons (Article 11(2a),(2b)). Technical standards that express a subject’s clear wishes may be seen as a valid form of providing explicit consent (Articles 7(2a), 23).

In order to ensure an informed consent to profiling activities, these need to be defined and

regulated (Articles 4(3b), 14(1)(g), (ga) and (g) b; 15 (1), 20). Other legal grounds for processing than consent, particularly the “legitimate interests” of the data controller, should be clearly defined (amendment replacing article 6(1)(f) by a new Article 6(1a), (1b), (1c)).

Purpose limitation is a core element of data protection, as it protects the data subjects from an unforeseeable extension of data processing. A change of purpose of personal data after its collection should not be possible only on the basis of a legitimate interest of the data controller. The rapporteur therefore proposes to delete Article 6(4) instead of widening it.

The rapporteur supports the strengthening of the right of access, with a right to data portability - being able to move one’s data from one platform to another. In the digital age, data subjects, also in their role as consumers, can legitimately expect to receive their personal information in a commonly used electronic format (Article 15(2)(a)). Therefore he proposes to merge Articles 15 and 18.

The right to erasure and the right to rectification remain important for data subjects, as more and more information are disclosed which can have significant impacts. The “right to be forgotten” should be seen in this light; the amendments proposed clarify these rights for the digital environment, while maintaining the general exception for freedom of expression. In case of data transferred to third parties or published without a proper legal basis, the original data controller should be obliged to inform those third parties and ensure the erasure of the data. Where the individual has agreed to a publication of his or her data, however, a "right to be forgotten" is neither legitimate nor realistic (Article 17, Recital 54).

The right to object to further data processing should always be free of charge and it should be explicitly offered to the data subject by using a clear, plain and adapted language (Article 19(2)). There is also need to provide for better possibilities for effective redress, including by associations acting in the public interest (Articles 73, 76).

### **Further advancing the internal market dimension and ensuring better enforcement of data protection rules**

The rapporteur welcomes the proposed shift from notification requirements to the Data Protection Authorities (DPAs) to practical accountability and corporate Data Protection Officers (DPOs). The proposed regulation can be simplified by merging information rights and documentation requirements essentially being two sides of the same coin. This will reduce administrative burdens for data controllers and make it easier for individuals to understand and exercise their rights (articles 14, 28). In the age of cloud computing, the threshold for the mandatory designation of a data protection officer should not be based on the size of the enterprise, but rather on the relevance of data processing (category of personal data, type of processing activity, and the number of individuals whose data are processed) (Article 35). It is clarified that the DPO can be a part-time function, depending on the size of the enterprise and the amount of data processing (Recital 75).

Data protection by design and by default is applauded as a core innovation of the reform. This would ensure that only data that are necessary for a specific purpose will actually be processed. Producers and service providers are called to implement appropriate measures. The European Data Protection Board should be entrusted to provide further guidance (Article 23).

The amendments on Privacy Impact Assessments aim at further determining the situations where this assessment should be conducted (Article 33(2)) and the elements to assess (Article 33(3)).

The rapporteur proposes to extend the period within which to notify a personal data breach to the supervisory authority from 24 to 72 hours. Furthermore, to prevent notification fatigue to data subjects, only cases where a data breach is likely to adversely affect the protection of the personal data or privacy of the data subject, for example in cases of identity theft or fraud, financial loss, physical harm, significant humiliation or damage to reputation, the data subject should be notified. The notification should also comprise a description of the nature of the personal data breach, and information regarding the rights, including possibilities regarding redress (Article 31, 32). For breach notifications, impact assessments, and the right to erasure and to be forgotten, it is proposed that the Commission adopts delegated acts prior to the date of application of the Regulation in order to ensure legal certainty (Article 86(5a)).

Codes of conduct as well as certification and seals are supported, but there is also need to provide for incentives for the establishment and use and clearer rules on the principles that they must contain and consequences with regard to lawfulness of data processing, liabilities, and related issues. Codes of Conduct declared by the Commission to be in line with the Regulation shall confer enforceable rights to data subjects. The certification seals must set out the formal procedure for the issuance and withdrawal of the seal and they must ensure compliance with data protection principles and data subject rights (Articles 38, 39).

The Regulation should also ensure a unified working framework for all Data Protection Authorities (DPAs). In order to function, a crucial element is that DPAs, who must be completely independent, need to be sufficiently resourced for the effective performance of their tasks (Article 47). Cooperation between DPAs will also be strengthened in the context of a European Data Protection Board (EDPB, which will replace the current "Article 29 Working Party"). The rapporteur views the foreseen cooperation and consistency mechanism among national DPAs as a huge step towards a coherent application of data protection legislation across the EU. The model proposed by the Commission however does not ensure the necessary independence of DPAs. After having assessed different options, an alternative mechanism is proposed which maintains the idea of a lead DPA, but also relies on close cooperation between DPAs to ensure consistency (Articles 51, 55a). In substance, a DPA is competent to supervise processing operations within its territory or affecting data subjects resident in its territory. In the case of processing activities of a controller or processor established on more than one Member State or affecting data subjects in several Member States, the DPA of the main establishment will be the lead authority acting as single contact point for the controller or the processor (one-stop shop). The lead authority shall ensure coordination with involved authorities and consult the other authorities before adopting a measure. The EDPB shall designate the lead authority in cases it is unclear or the DPAs do not agree. Where a DPA involved in a case does not agree with the draft measure proposed by the lead authority, the EDPB shall issue an opinion. If the lead authority does not intend to follow this opinion, it shall inform the EDPB and provide a reasoned opinion. The EDPB may adopt a final decision, by a qualified majority, legally binding upon the supervisory authority. This decision can be subject to judicial review (Articles 45a, 55, 58). The Commission may also challenge this decision before the EU Court of Justice and request the suspension of the measure (Article 61a).

The rapporteur supports the strengthening of the DPAs as regards investigative powers and sanctions. The Commission's proposal was however too prescriptive. He proposes a simplified regime which allows DPAs more discretion whilst at the same time entrusting the EDPD with the role of ensuring consistency in enforcement (Article 52, 53, 78, 79). The system of sanctions is also clarified by including several criteria that must be taken into account in order to determine the level of the fine that a DPA may impose.

### **Strengthening the global dimension**

As hitherto, the Commission's power to adopt decisions recognising the adequacy or the non-adequacy of a third country, a territory of a third country, and international organisations is maintained. The proposed new option of recognising sectors in third countries as adequate is rejected by the rapporteur, however, as it would increase legal uncertainty and undermine the Union's goal of a harmonised and coherent international data protection framework. The criteria for assessing the adequacy of a third country are strengthened (Article 41(2)). It is also proposed that the adequacy finding declared by the Commission is made by means of a delegated act instead of an implementing act, so as to enable the Council and the Parliament to make use of their right of control (Article 41(3) and (5)).

In the absence of an adequacy decision, to provide adequate protections and safeguards, the controller or processor should take appropriate safeguards measures such as binding corporate rules, standard data protection clauses adopted by the Commission or by a supervisory authority. Amendment in Articles 41(1a) and 42 clarify and detail the essential safeguards that these instruments should contain.

A new article 43a is proposed to address the issue raised by access requests by public authorities or courts in third countries to personal data stored and processed in the EU. The transfer should only be granted by the data protection authority after verifying that the transfer complies with the Regulation and in particular with Article 44(1)(d) or (e). This situation will become even more important with the growth of cloud computing and needs to be addressed here.

### **Summary**

The rapporteur supports the aim of strengthening the right to the protection of personal data, while ensuring a unified legal framework and reducing administrative burdens for data controllers. He proposes to limit the role of the Commission in the implementation to the minimum necessary, by clarifying essential elements in the text of the regulation itself and leaving practical implementation to the cooperation mechanism of data protection authorities. He proposes to emphasise further the use of technological measures for protecting personal data and ensuring compliance, combined with incentives for data controllers when using such measures. In line with the accountability approach, the role of corporate data protection officers is strengthened, while the need for prior consultation of the supervisory authorities is reduced. Union Institutions, bodies and agencies should be brought under the same regulatory framework in the mid-term. If these elements can be supported by Parliament, Council and Commission, the new legal framework for data protection will provide an improvement both for individuals and for data controllers, and will be future-proof for the coming years.



In the course of the extensive work together with the shadows of all political groups and the opinion draftpersons the rapporteur has worked out a large amount of amendments which reflect discussions between the involved colleagues. Especially on the principles, the legal grounds for processing personal data, the data subject rights, the provisions for controller and processor, the consistency mechanism and the sanctions several compromises are integrated in this report. The rapporteur expects his proposals to form a good basis for swift agreement in the European Parliament and negotiations with the Council during the Irish presidency.