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Committee on Civil Liberties, Justice and Home Affairs

2012/0011(COD)

6.3.2013

AMENDMENTS (8) 2351 - 2617

Draft report
Jan Philipp Albrecht
(PE501.927v04-00)

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)

Proposal for a regulation
(COM(2012)0011 – C7-0025/2012 – 2012/0011(COD))

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United in diversity

EN

Amendment 2351
Alexander Alvaro

Proposal for a regulation
Article 39 – paragraph 1

Text proposed by the Commission

1. The Member States and the Commission shall encourage, in particular at European level, the establishment of data protection certification mechanisms and of data protection seals and marks, allowing data subjects to quickly assess the level of data protection provided by controllers and processors. The data protection certifications mechanisms shall contribute to the proper application of this Regulation, taking account of the specific features of the various sectors *and different* processing operations.

Amendment

1. Any controller or processor may request any supervisory authority in the Union, for a fee fixed by this authority, to certify that the processing of personal data is performed in compliance with this Regulation, taking account of the specific features of the various sectors *as well as the contexts of and risks represented by the data* processing operations.

Or. en

Justification

The European Data Protection Seal should create trust among data subjects, legal certainty for controllers and at the same time export European data protection standards by allowing non-European companies to more easily enter European markets by being certified.

Amendment 2352
Axel Voss

Proposal for a regulation
Article 39 – paragraph 1

Text proposed by the Commission

1. The Member States and the Commission shall encourage, in particular at European level, the establishment of data protection certification mechanisms and of data protection seals and marks, allowing data subjects to quickly assess the level of data

Amendment

1. The Member States and the Commission shall encourage, in particular at European level, the establishment of data protection certification mechanisms and of data protection seals and marks, allowing data subjects to quickly assess the level of data

protection provided by controllers and processors. The data protection certification mechanisms shall contribute to the proper application of this Regulation, taking account of the specific features of the various sectors and different processing operations.

protection provided by controllers and processors. The data protection certification mechanisms shall contribute to the proper application of this Regulation, taking account of the specific features of the various sectors and different processing operations.

The responsibility for a corresponding certification act should be transferred to independent and qualified auditors. Such an auditor shall be:

(a) accredited by a national supervisory authority; and

(b) be responsible for the rewarding process of a corresponding privacy certificate; and

(c) liable for consequences resulting in the inadequate reward of the data protection certificate.

Or. en

Amendment 2353
Monika Hohlmeier

Proposal for a regulation
Article 39 – paragraph 1

Text proposed by the Commission

1. The Member States ***and*** the Commission ***shall encourage***, in particular at European level, the establishment of data protection ***certification mechanisms and of*** data protection seals and marks, allowing data subjects to quickly assess the level of data protection provided by controllers and processors. The data protection ***certification mechanisms shall*** contribute to the proper application of this Regulation, taking account of the specific features of the various sectors and different processing operations.

Amendment

1. ***In order to improve data protection and the security of processing***, the Member States, the Commission ***and the supervisory authorities shall cooperate with controllers, data processors and other stakeholders***, in particular at European level, ***with a view to*** the establishment of data protection ***procedures to devise, implement and further develop data protection strategies and to assess and confirm them by awarding*** data protection seals and marks ***for procedures and products***, allowing data subjects to quickly assess the level of

data protection provided by *manufacturers*, controllers and processors. The data protection *procedures should be voluntary and transparent and should be carried out regularly by expert entities, free of conflicts of interest, and* contribute to the proper application of this Regulation *and other provisions concerning data protection*, taking account of the specific features of the various sectors and different processing operations.

Or. de

Amendment 2354

Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation

Article 39 – paragraph 1

Text proposed by the Commission

1. The Member States and the Commission shall encourage, in particular at European level, the establishment of data protection certification mechanisms and of data protection seals and marks, allowing data subjects to quickly assess the level of data protection provided by controllers and processors. The data protection certifications mechanisms shall contribute to the proper application of this Regulation, taking account of the specific features of the various sectors and different processing operations.

Amendment

1. The Member States and the Commission shall *work with controllers, processors and other stakeholders to* encourage, in particular at European level, the establishment of data protection certification mechanisms and of data protection seals and marks, allowing data subjects to quickly assess the level of data protection provided by controllers and processors. The data protection certifications mechanisms shall contribute to the proper application of this Regulation, taking account of the specific features of the various sectors and different processing operations.

Or. en

Amendment 2355

Agustín Díaz de Mera García Consuegra

Proposal for a regulation
Article 39 – paragraph 1

Text proposed by the Commission

1. The Member States and the Commission shall encourage, in particular at European level, the establishment of data protection certification *mechanisms* and of data protection seals and marks, allowing data subjects to quickly assess the level of data protection provided by controllers and processors. The data protection certifications *mechanisms* shall contribute to the proper application of this Regulation, taking account of the specific features of the various sectors and different processing operations.

Amendment

1. The Member States and the Commission shall encourage, in particular at European level, the establishment of data protection certification *policies* and of data protection seals and marks, allowing data subjects to quickly assess the level of data protection provided by controllers and processors. The data protection certification policies shall contribute to the proper application of this Regulation, ***and to achieving the actions and benefits mentioned therein***, taking account of the specific features of the various sectors and different processing operations.

Certification policies at Union level shall be designed by the European Data Protection Board with the involvement of other stakeholders, and shall be officially approved by the Commission. These policies shall not just be aimed at the institutions but especially at operators in the field.

The certification policies shall address the specific needs of actors in different sectors of activity, with particular regard to the needs of micro, small and medium-sized enterprises, and to the key aspect of cost containment so that they can become an effective instrument. The acquisition, renewal and loss of certificates will involve the consequences laid down throughout this Directive.

Or. es

Amendment 2356
Dimitrios Droutsas

Proposal for a regulation
Article 39 – paragraph 1

Text proposed by the Commission

Amendment

1. The Member States and the Commission shall encourage, in particular at European level, the establishment of data protection certification mechanisms and of data protection seals and marks, allowing data subjects to quickly assess the level of data protection provided by controllers and processors. The data protection certifications mechanisms shall contribute to the proper application of this Regulation, taking account of the specific features of the various sectors *and different* processing operations.

1. Any controller or processor may request any supervisory authority in the Union, for a fixed fee, to certify that the processing of personal data is performed in compliance with this Regulation, taking account of the specific features of the various sectors *as well as the contexts of and risks represented by the data* processing operations.

Or. en

**Amendment 2357
Josef Weidenholzer**

**Proposal for a regulation
Article 39**

Text proposed by the Commission

Amendment

1. The *Member States* and the *Commission* shall *encourage, in particular at European level, the establishment of data protection certification mechanisms and of data protection seals and marks, allowing data subjects to quickly assess the level of data protection provided by controllers and processors. The data protection certifications mechanisms shall contribute to the proper application of this Regulation, taking account of the specific features of the various sectors and* different processing operations.

1. The *controller* and the *processor* shall *enrol in a certification system of an accredited control body in any case where:*

(a) an enterprise processing personal data relating to fewer than 500 data subjects per year, or processing special categories of personal data as referred to in Article 9

(1); or

(b) 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.

Other controllers and processors as well as products and services can equally undergo certification.

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.

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).

2. The controller and the processor must undergo certification before the first processing of personal data, or when it first falls under paragraph 1 and must be subsequently recertified at least every year. They must inform data subjects about the certification.

3. Certificates must be acquired by an accredited control body at the main establishment of the controller, processor, producer or supplier, or in the member state in which the representative is situated.

3a. The control body shall have the investigative power to obtain from the enrolled controller or the processor:

(a) access to all personal data and to all information necessary for the performance of its duties;

(b) full access to any of its premises, including to any data processing equipment and means.

3b. Certificates must reasonably assure that the controller, processor, service or product is in compliance with all aspects of this regulation. A product, service or processor used by the controller or processor must not be taken into account

in the certification process if it is itself holding a valid certificate.

3c. Certificates may be found invalid by the competent authority or the control body if the controller, processor, product or service is found to be non-compliant with this regulation.

3d. The control body must inform the competent supervisory authority about acquired and revoked certificates in an electronic form. It must also inform the supervisory authority about any potential violation of this regulation if it has found during the certification procedure.

3e. The Commission shall be empowered to adopt delegated acts after consulting the European Data Protection Board and in accordance with Article 86, which define the exact frequency, control procedures and content of controls taking into account the different risks of processing operations, controllers, processors, products and services as well as the details of certificates.

Or. en

Amendment 2358
Sarah Ludford

Proposal for a regulation
Article 39 – paragraph 1

Text proposed by the Commission

1. The Member States and the Commission shall encourage, in particular at European level, the establishment of data protection certification mechanisms and of data protection seals and marks, allowing data subjects to quickly assess the level of data protection provided by controllers and processors. The data protection certification mechanisms shall contribute to the proper application of this Regulation,

Amendment

1. The Member States, **professional bodies** and the Commission shall encourage, in particular at European level, the establishment of data protection certification mechanisms and of data protection seals and marks, allowing data subjects to quickly assess the level of data protection provided by controllers and processors. The data protection certification mechanisms shall contribute

taking account of the specific features of the various sectors and different processing operations.

to the proper application of this Regulation, taking account of the specific features of the various sectors and different processing operations.

Or. en

Justification

The development of seals and marks and other certification mechanisms should be industry-led and subject, if necessary, to the supervision of the supervisory authority.

Amendment 2359

Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation

Article 39 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The data protection certifications mechanisms shall be voluntary, affordable, and available via a process that is transparent and not unduly burdensome. These mechanisms shall also be technology neutral and capable of global application and shall contribute to the proper application of this Regulation, taking account of the specific features of the various sectors and different processing operations.

Or. en

Amendment 2360

Alexander Alvaro, Dimitrios Droutsas

Proposal for a regulation

Article 39 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. During this certification procedure,

the supervisory authority may request specialised third parties to carry out the auditing of the controller or the processor on their behalf. The final certification shall be provided by the supervisory authority.

Or. en

Amendment 2361
Dimitrios Droutsas

Proposal for a regulation
Article 39 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The supervisory authorities shall cooperate with each other in accordance with Articles 46 and 57. In this regard, supervisory authorities shall grant controllers and processors which comply with this Regulation the standardised data protection mark, the "European Data Protection Seal".

Or. en

Amendment 2362
Alexander Alvaro

Proposal for a regulation
Article 39 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. The supervisory authorities shall cooperate with each other in accordance with Articles 46 and 57 to guarantee a harmonized level of data protection certification mechanisms within the Union. In this regard, supervisory authorities shall grant controllers and processors which comply with this

Regulation the standardised data protection mark, the "European Data Protection Seal".

Or. en

Amendment 2363
Alexander Alvaro, Dimitrios Droutsas

Proposal for a regulation
Article 39 – paragraph 1 c (new)

Text proposed by the Commission

Amendment

1c. The "European Data Protection Seal" shall be valid for as long as the data protection level of the certified controller or processor fully complies with this Regulation.

Or. en

Amendment 2364
Alexander Alvaro, Dimitrios Droutsas

Proposal for a regulation
Article 39 – paragraph 1 d (new)

Text proposed by the Commission

Amendment

1d. Notwithstanding paragraph 1c, the "European Data Protection Seal" shall be valid for maximum five years.

Or. en

Amendment 2365
Monika Hohlmeier

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. *deleted*

Or. de

Amendment 2366
Sarah Ludford

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. *deleted*

Or. en

Justification

The emphasis needs to be on industry and supervisor-led solutions based on operational expertise.

Amendment 2367

Axel Voss

Proposal for a regulation

Article 39 – 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 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.

Amendment

2. The Commission shall be empowered ***after consultation of the stakeholders (European Data Protection Board, national data protection authorities, industry and non-governmental organisations)*** 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.

The Commission shall also be empowered after consultation of the stakeholders (European Data Protection Board, national data protection authorities, industry and non-governmental organisations) to adopt delegated acts in accordance with Article 86 for the purpose of further defining the accreditation requirements for auditors.

Or. en

Amendment 2368

Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation

Article 39 – 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

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.

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, *provided such measures are technology neutral*.

Or. en

Amendment 2369

Agustín Díaz de Mera García Consuegra

Proposal for a regulation

Article 39 – 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 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.

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, withdrawal *and cancellation* and requirements for recognition within the Union and in third countries.

Or. es

Amendment 2370

Dimitrios Droutsas

Proposal for a regulation

Article 39 – 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 the data protection certification

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.

mechanisms referred to in paragraph 1, including conditions for granting and withdrawal, and requirements for recognition within the Union and in third countries. ***These delegated acts shall confer enforceable rights on data subjects.***

Or. en

Amendment 2371

Timothy Kirkhope

on behalf of the ECR Group

Proposal for a regulation

Article 39 – 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 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.

Amendment

2. The ***Supervisory Authorities and the European Data Protection Board shall lay down and specify*** criteria and requirements for the data protection certification mechanisms, including conditions for granting and withdrawal, and requirements for recognition within the Union and in third countries.

Or. en

Amendment 2372

Marie-Christine Vergiat

Proposal for a regulation

Article 39 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The Article 29 Working Party set up under Directive 95/46/CE shall, before the entry into force of the present regulation, deliver detailed recommendations

regarding the implementation of this article on the basis of experience acquired to date at European and national level, together with a user's guide, covering categories of personal data processing to which a certification mechanism should be applied as a matter of priority.

The European Commission may propose legislation in this area under the ordinary legislative procedure.

Or. fr

Justification

It is urgent that such certification be introduced, for digital applications also, given the large number of data processing operations affecting the everyday life of each individual and in view of the action already taken by many national DPAs to encourage the adoption of certification mechanisms at national level (especially in France, Germany and Spain) and at EU level with EU funding. This approach would be particularly appropriate for the provision of international services.

Amendment 2373
Monika Hohlmeier

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

deleted

procedure set out in Article 87(2).

Or. de

Amendment 2374

Adina-Ioana Vălean, Jens Rohde

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 2375

Sarah Ludford

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

Justification

The emphasis needs to be on industry and supervisor led solutions based on operational expertise.

Amendment 2376

Alexander Alvaro, Dimitrios Droutsas

Proposal for a regulation

Article 39 – paragraph 3

Text proposed by the Commission

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).*

Amendment

3. The Commission *shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of laying down* standards for certification mechanisms and data protection seals and marks and mechanisms to promote and recognize certification mechanisms and data protection seals and marks.

Or. en

Justification

Horizontal amendment replacing all implementing acts with delegated acts in order to guarantee the full involvement of the European Parliament in the decision making process.

Amendment 2377

Timothy Kirkhope

on behalf of the ECR Group

Proposal for a regulation

Article 39 – paragraph 3

Text proposed by the Commission

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

Amendment

3. The *Supervisory Authorities and the European Data Protection Board* may lay down technical standards for certification mechanisms and data protection seals and marks and mechanisms to promote and

data protection seals and marks. *Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).*

recognize certification mechanisms and data protection seals and marks.

Or. en

Amendment 2378
Nathalie Griesbeck

Proposal for a regulation
Article 39 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States and the Commission shall encourage the harmonisation of health data hosting certification and the creation of a European certification mechanism. The European Data Protection Board shall, in accordance with Article 66, establish guidelines and recommendations within a reasonable period with a view to the harmonisation within the Union of health data hosting certificates, promoting a high level of health data protection and ensuring the interoperability of certification mechanisms.

Or. fr

Amendment 2379
Josef Weidenholzer

Proposal for a regulation
Article 39 a (new)

Text proposed by the Commission

Amendment

Article 39a
Accredited Control Body

1. Supervisory authorities shall accredit a control body only if there is proof that the control body:

(a) has a sufficiently qualified and experienced staff;

(b) has sufficient expertise, equipment, infrastructure and financial strength;

(c) is impartial and free from any conflict of interests regarding its duties; and

(d) has its main establishment in the Member State.

2. Supervisory authorities shall revoke accreditation if there are reasons to believe that the control body does not fulfil the criteria referred to in paragraph 1, especially if it has repeatedly violated obligations under this regulation.

3. Supervisory authorities shall permanently monitor accredited control bodies. Section 2 of Chapter IV shall apply correspondingly to control bodies.

4. The Commission shall be empowered to adopt delegated acts after Consulting the European Data Protection Board and in accordance with Article 86, which define the details of the accreditation process and minimal standards for control bodies.

Or. en

Amendment 2380
Josef Weidenholzer

Proposal for a regulation
Article 39 b (new)

Text proposed by the Commission

Amendment

Article 39b

Register

1. Each supervisory authority shall establish a public electronic register in

which all valid and invalid certificates which have been issued in the Member State can be viewed by the public.

2. Control bodies must be enabled to submit the necessary information electronic format.

3. The supervisory authority is responsible for rectifying and monitoring the register.

4. The Commission shall be empowered to adopt delegated acts after consulting the European Data Protection Board and in accordance with Article 86, which define the details of the operation of such registers and electronic formats which shall be used by control bodies.

Or. en

Amendment 2381
Josef Weidenholzer

Proposal for a regulation
Article 39 c (new)

Text proposed by the Commission

Amendment

Article 39c

Standard Filing Systems

1. The controller should be deemed in compliance with this regulation, or certain articles of this regulation, if all processing operations are in line with the definition of a standard filing system.

2. A specific form of processing may be declared a standard filing system, if:

(a) similar systems are used by a large number of controllers or processors within the Union;

(b) such filing systems involve a low risk of infringement on a data subjects' rights given the purpose of the processing and the kind of personal data processed; and

(c) the definition ensures that controllers which adhere to the definition are in full compliance with this regulation or certain articles of this regulation.

3. A declaration in a delegated act shall at least define:

(a) the categories of data subjects;

(b) the categories of personal data processed;

(c) the purpose or purposes for processing each data category;

(d) the basis for making processing lawful;

(e) the categories of recipients;

(f) the necessary information to the data subject;

(g) the necessary additional documentation;

(h) the necessary security measures; and

(i) the maximum retention periods;

(j) the articles of this regulation which a controller should be deemed in compliance with when processing data within the limits of the definition of a standard filing system.

4. The Commission shall be empowered to adopt delegated acts after Consulting the European Data Protection Board and in accordance with Article 86, which define standard filing systems in accordance with this article. The Commission may lay down standard forms which may be used by controllers and processors of standard filing systems to ensure full compliance with this regulation.

Or. en

Amendment 2382
Axel Voss

Proposal for a regulation
Chapter 5 – title

Text proposed by the Commission

TRANSFER OF PERSONAL DATA TO
THIRD COUNTRIES OR
INTERNATIONAL ORGANISATIONS

Amendment

TRANSFER OF PERSONAL DATA TO
THIRD COUNTRIES, **GROUP OF
UNDERTAKINGS** OR
INTERNATIONAL ORGANISATIONS

Or. en

Amendment 2383
Axel Voss

Proposal for a regulation
Article 40 – paragraph 1

Text proposed by the Commission

Any transfer of personal data which are undergoing processing or are intended for processing after transfer to a third country or to an international organisation may only take place if, subject to the other provisions of this Regulation, the conditions laid down in this Chapter are complied with by the controller and processor, including for onward transfers of personal data from the third country or an international organisation to another third country or to another international organisation.

Amendment

Any transfer of personal data which are undergoing processing or are intended for processing after transfer to a third country, **internal of a group of undertakings** or to an international organisation may only take place if, subject to the other provisions of this Regulation, the conditions laid down in this Chapter are complied with by the controller and processor, including for onward transfers of personal data from the third country, **in a group of undertakings** or an international organisation to another third country or to another international organisation.

Or. en

Amendment 2384
Sarah Ludford

Proposal for a regulation
Article 40 – paragraph 1

Text proposed by the Commission

Any transfer of personal data which are undergoing processing or are intended for processing after transfer to a third country or to an international organisation may only take place if, subject to the other provisions of this Regulation, the conditions laid down in this Chapter are complied with by the controller and processor, including for onward transfers of personal data from the third country or an international organisation to another third country or to another international organisation.

Amendment

Any transfer of personal data which are undergoing processing or are intended for processing after transfer to a third country or to an international organisation may only take place if, subject to the other provisions of this Regulation, the conditions laid down in this Chapter are complied with by the controller and processor, including for onward transfers of personal data from the third country or an international organisation to another third country or to another international organisation, ***without prejudice to decisions adopted by the Commission on the basis of Article 25(6) or Article 26(4) of Directive 95/46/EC or authorisations by a supervisory authority on the basis of Article 26(2) of Directive 95/46/EC.***

Or. en

Justification

Previous Commission adequacy decisions already contain rules for conducting onward transfers, and these should continue to apply.

Amendment 2385

Cornelia Ernst

Proposal for a regulation

Article 40 – paragraph 1

Text proposed by the Commission

Any transfer of personal data which are undergoing processing or are intended for processing after transfer to a third country or to an international organisation may only take place if, subject to the other provisions of this Regulation, the conditions laid down in this Chapter are complied with by the controller and

Amendment

Any transfer of personal data which are undergoing processing or are intended for processing after transfer to a third country or to an international organisation may only take place if, subject to the other provisions of this Regulation, the conditions laid down in this Chapter are complied with by the controller and

processor, including for onward transfers of personal data from the third country or an international organisation to another third country or to another international organisation.

processor, including for onward transfers of personal data from the third country or an international organisation to another third country or to another international organisation. ***Transfers are prohibited to third countries whose laws explicitly provide for processing which would be unlawful under this Regulation or which are otherwise incompatible with Fundamental Rights, such as political and foreign policy purposes which are not necessary for law enforcement or national security.***

Or. en

Amendment 2386
Carmen Romero López

Proposal for a regulation
Article 40 – paragraph 1

Text proposed by the Commission

Any transfer of personal data which are undergoing processing or are intended for processing after transfer to a third country or to an international organisation may only take place if, subject to the other provisions of this Regulation, the conditions laid down in this Chapter are complied with by the controller and processor, including for onward transfers of personal data from the third country or an international organisation to another third country or to another international organisation.

Amendment

Any transfer of personal data which are undergoing processing or are intended for processing after transfer to a third country or to an international organisation may only take place if, subject to the other provisions of this Regulation, the conditions laid down in this Chapter are complied with by the controller and processor, including for onward transfers of personal data from the third country or an international organisation to another third country or to another international organisation. ***Transfers to third countries in which the law specifically allows data to be processed in ways which are illegal under the terms of this regulation or are otherwise incompatible with EU fundamental rights, such as processing carried out for national or foreign policy purposes which is not necessary to maintain national security or uphold the***

law, shall be prohibited.

Or. es

Justification

The intention is to prohibit transfers to third countries whose laws permit the personal data of EU citizens to be processed in ways incompatible with this regulation and/or EU fundamental rights.

Amendment 2387

Agustín Díaz de Mera García Consuegra

Proposal for a regulation

Article 41 – paragraph 1

Text proposed by the Commission

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.

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 *specific* authorisation.

Or. es

Amendment 2388

Timothy Kirkhope

on behalf of the ECR Group

Proposal for a regulation

Article 41 – paragraph 1

Text proposed by the Commission

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

Amendment

1. A transfer may take place where the *European Data Protection Board in consultation with the* Commission has decided that the third country, or a territory or a processing sector within that third

ensures an adequate level of protection. Such transfer shall not require any further authorisation.

country, or the international organisation in question ensures an adequate level of protection. Such transfer shall not require any further authorisation.

Or. en

Amendment 2389

Axel Voss

Proposal for a regulation

Article 41 – paragraph 1

Text proposed by the Commission

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.

Amendment

1. A transfer may take place where ***international agreements or arrangements between the EU or a Member State with a third country are in force*** or 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.

Or. en

Amendment 2390

Dimitrios Droutsas

Proposal for a regulation

Article 41 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. All transfers of data from a Cloud in European Union jurisdiction to a Cloud under the jurisdiction of a third country shall be accompanied with a notification to the data subject of such transfer and its legal effects.

Amendment 2391
Alexander Alvaro

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, 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, ***jurisprudential precedents*** 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 2392
Dimitrios Droutsas

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

Amendment

(a) the rule of law, relevant legislation in force, both general and sectoral, including concerning public security, defence, national security and criminal law, ***case law of the Courts***, 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

particular for those data subjects residing in the Union whose personal data are being transferred;

subjects, in particular for those data subjects residing in the Union whose personal data are being transferred;

Or. en

Amendment 2393

Sonia Alfano, Gianni Vattimo

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 ***as well as the implementation of this legislation***, 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 2394

Agustín Díaz de Mera García Consuegra

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

Amendment

(a) ***the level of penetration and consolidation of*** 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

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;

security measures which are complied with *in the field of the protection of personal data* in that country or by that international organisation, as well as *access to justice and the effectiveness and enforceability of* rights, including *the right to action and redress in both* administrative and judicial *matters*, in particular for those data subjects residing in the Union whose personal data are being transferred;

Or. es

Amendment 2395
Sarah Ludford

Proposal for a regulation
Article 41 – paragraph 2 – point c

Text proposed by the Commission

(c) the international commitments the third country or international organisation in question has entered into.

Amendment

(c) the international commitments the third country or international organisation in question has entered into, *in particular any legally binding conventions or instruments under human rights law or international law.*

Or. en

Justification

This would increase the importance of accession by a third country to instruments such as the Council of Europe Convention 108.

Amendment 2396
Alexander Alvaro

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 for the purpose of deciding*** 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.

Or. en

Justification

Horizontal amendment replacing all implementing acts with delegated acts in order to guarantee the full involvement of the European Parliament in the decision making process.

Amendment 2397
Cornelia Ernst

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 may 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. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

Or. en

Amendment 2398
Dimitrios Droutsas

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 for the purpose of deciding* 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

Amendment 2399
Alexander Alvaro

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 geographical and sectoral application, and, where applicable, identify the supervisory authority mentioned in point (b) of paragraph 2.

Or. en

Justification

Horizontal amendment replacing all implementing acts with delegated acts in order to guarantee the full involvement of the European Parliament in the decision making process.

Amendment 2400
Dimitrios Droutsas

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

Amendment 2401
Sarah Ludford

Proposal for a regulation
Article 41 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The Commission shall adopt and make public binding procedures for reaching decisions concerning the adequacy of protection, which shall contain at least the following information:

(a) the procedures by which a third country, territory, a processing sector within that third country (which can be represented by an association or group of data controllers or data processors), or an international or regional organisation may request that an adequacy decision be issued;

(b) the steps of the decision-making procedure, including time limits within which each step must be completed;

(c) the rights of the party or parties that have requested an adequacy decision to present their case in the various steps of the procedure;

(d) how interested parties (including individuals, consumer organisations, academic experts, government entities, data controllers and processors, and others) may express their opinion

concerning the proposed decision.

The Commission shall either approve or refuse an application for a decision regarding the adequacy of protection within one year of its submission.

Or. en

Justification

This is designed to increase the efficiency and transparency of adequacy procedures.

Amendment 2402

Timothy Kirkhope

on behalf of the ECR Group

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

deleted

87(3).

Or. en

Amendment 2403
Alexander Alvaro

Proposal for a regulation
Article 41 – paragraph 5

Text proposed by the Commission

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 87(3).***

Amendment

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

Or. en

Justification

Horizontal amendment replacing all implementing acts with delegated acts in order to guarantee the full involvement of the European Parliament in the decision making process.

Amendment 2404
Dimitrios Droutsas

Proposal for a regulation
Article 41 – paragraph 5

Text proposed by the Commission

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 87(3).*

Amendment

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

Or. en

Amendment 2405
Agustín Díaz de Mera García Consuegra

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,

Amendment

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.

or the international organisation in question shall be *restricted under the terms of* 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. es

Amendment 2406

Cornelia Ernst, Marie-Christine Vergiat

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 or a processing sector within that third country, or the international organisation in question shall be prohibited, without prejudice to *Article 42*. 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 2407

Axel Voss

Proposal for a regulation

Article 41 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. The adequacy decision by the Commission pursuant to this Article may be reconsidered when the level of protection in the third country are not longer exist.

Or. en

Amendment 2408
Alexander Alvaro

Proposal for a regulation
Article 41 – paragraph 7

Text proposed by the Commission

Amendment

7. The Commission shall publish in the Official Journal of the European Union a list of those third countries, territories and processing sectors within a third country and international organisations where it has decided that an adequate level of protection is or is not ensured.

7. The Commission shall publish in the Official Journal of the European Union ***and on its website*** a list of those third countries, territories and processing sectors within a third country and international organisations where it has decided that an adequate level of protection is or is not ensured.

Or. en

Amendment 2409
Dimitrios Droutsas

Proposal for a regulation
Article 41 – paragraph 7

Text proposed by the Commission

Amendment

7. The Commission shall publish in the Official Journal of the European Union a list of those third countries, territories and processing sectors within a third country and international organisations where it has decided that an adequate level of protection

7. The Commission shall publish in the Official Journal of the European Union, ***and on its website***, a list of those third countries, territories and processing sectors within a third country and international organisations where it has decided that an

is or is not ensured.

adequate level of protection is or is not ensured.

Or. en

Amendment 2410

Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation

Article 41 – paragraph 7

Text proposed by the Commission

7. The Commission shall publish in the Official Journal of the European Union a list of those third countries, territories and processing sectors within a third country and international organisations where it has decided that an adequate level of protection is or is not ensured.

Amendment

7. The Commission shall publish in the Official Journal of the European Union ***and on its website*** a list of those third countries, territories and processing sectors within a third country and international organisations where it has decided that an adequate level of protection is or is not ensured.

Or. en

Amendment 2411

Csaba Sógor

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 ***for two years from the entry into force of this Regulation.***

Or. hu

Amendment 2412

Monika Hohlmeier

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 **be reviewed after the entry into force of this regulation. The Commission shall report to the Council and Parliament two years after the entry into force of this regulation on the results of its review and the measures taken. The European Data Protection Committee shall be given the opportunity in advance to adopt a position on the report.**

Or. de

Amendment 2413
Dimitrios Droutsas

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 2414
Axel Voss

Proposal for a regulation
Article 41 – paragraph 8 a (new)

Text proposed by the Commission

Amendment

8a. International agreements or arrangements between the EU or a Member state with a third country are considered as adequate in the sense of this article.

Or. en

Justification

International agreements or arrangements between the EU or a Member state with a third country should be in place especially when established when Directive 95/46/EC was already in force.

Amendment 2415
Alexander Alvaro

Proposal for a regulation
Article 42 – paragraph 1

Text proposed by the Commission

Amendment

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.

1. Where the Commission has taken no decision pursuant to Article 41, ***or decides 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 in accordance with Article 41 (5)***, 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.

Or. en

Amendment 2416
Axel Voss

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 transfer personal data to a third country, ***to a branch abroad of a group of undertakings*** 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.

Or. en

Amendment 2417
Josef Weidenholzer

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 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.

These appropriate safeguards shall:

(a) guarantee the observance of the principles of personal data processing as established in Article 5;

(b) guarantee data subject rights as established in Chapter III.

A consultation of the responsible data protection authority in such cases is mandatory.

Or. en

Amendment 2418

Adina-Ioana Vălean, Jens Rohde

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, ***or decides 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 in accordance with Article 41(5)***, 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.

Or. en

Amendment 2419

Timothy Kirkhope

on behalf of the ECR Group

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

Amendment

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*.

organisation only if the controller or processor has adduced appropriate safeguards.

Or. en

Amendment 2420
Louis Michel

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 transfer personal data to a ***controller or processor in 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.

Or. en

Amendment 2421
Axel Voss

Proposal for a regulation
Article 42 – paragraph 2 – point a

Text proposed by the Commission

(a) binding corporate rules in accordance with **Article 43**; or

Amendment

(a) binding corporate rules in accordance with **Article 38b**; or

Or. en

Amendment 2422
Alexander Alvaro

Proposal for a regulation
Article 42 – paragraph 2 – point a a (new)

Text proposed by the Commission

Amendment

(aa) a valid "European Data Protection Seal" pursuant to Article 39;

Or. en

Justification

The European Data Protection Seal should create trust among data subjects, legal certainty for controllers and at the same time export European data protection standards by allowing non-European companies to more easily enter European markets by being certified.

Amendment 2423
Dimitrios Droutsas

Proposal for a regulation
Article 42 – paragraph 2 – point a a (new)

Text proposed by the Commission

Amendment

(aa) a valid "European Data Protection Seal" pursuant to Article 39;

Or. en

Amendment 2424
Alexander Alvaro

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

deleted

procedure referred to in Article 87(2); or

Or. en

Justification

Horizontal amendment replacing all implementing acts with delegated acts in order to guarantee the full involvement of the European Parliament in the decision making process.

Amendment 2425
Dimitrios Droutsas

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

Amendment 2426
Axel Voss

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

(b) standard data protection clauses, ***between the controller or processor and the recipient, that can be a sub-processor, of the data outside the EEA, which may include standard terms for onward transfers outside the EEA,*** adopted by the Commission. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2); or

Justification

Taken from ITRE-opinion.

Amendment 2427
Monika Hohlmeier

Proposal for a regulation
Article 42 – paragraph 2 – point b

Text proposed by the Commission

(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

Amendment

(b) standard data protection clauses adopted by the Commission ***between the controller or the data processor and the recipient of the data, who may also be a subprocessor, outside the EEA, which may also comprise standard conditions for the forwarding of data outside the EEA.*** Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2); or

Or. de

Amendment 2428
Petru Constantin Luhan

Proposal for a regulation
Article 42 – paragraph 2 – point c

Text proposed by the Commission

(c) standard data protection clauses adopted by a supervisory authority in accordance with the consistency mechanism referred to in Article 57 when declared generally valid by the Commission pursuant to point (b) of Article 62(1); ***or***

Amendment

(c) standard data protection clauses adopted by a supervisory authority in accordance with the consistency mechanism referred to in Article 57 when declared generally valid by the Commission pursuant to point (b) of Article 62(1);

Amendment 2429

Axel Voss

Proposal for a regulation

Article 42 – paragraph 2 – point c

Text proposed by the Commission

(c) standard data protection clauses adopted by a supervisory authority in accordance with the consistency mechanism referred to in Article 57 when declared generally valid by the Commission pursuant to point (b) of Article 62(1); or

Amendment

(c) standard data protection clauses, ***between the controller or processor and the recipient, that can be a sub-processor, of the data outside the Union, which may include standard terms for onward transfers outside the Union***, adopted by a supervisory authority in accordance with the consistency mechanism referred to in Article 57 when declared generally valid by the Commission pursuant to point (b) of Article 62(1); or

Or. en

Justification

With changes taken from ITRE-opinion.

Amendment 2430

Monika Hohlmeier

Proposal for a regulation

Article 42 – paragraph 2 – point c

Text proposed by the Commission

(c) standard data protection clauses adopted by a supervisory authority in accordance with the consistency mechanism referred to in Article 57 when declared generally valid by the Commission ***pursuant to point (b) of Article 62(1)***; or

Amendment

(c) standard data protection clauses adopted by a supervisory authority in accordance with the consistency mechanism referred to in Article 57, ***between the controller or the data processor and the recipient of the data, who may also be a subprocessor, outside the EEA, which may also comprise***

standard conditions for the forwarding of data outside the EEA, when these standard data protection clauses have been declared generally valid by the Commission in accordance with the examination procedure referred to in Article 87(2); or

Or. de

Amendment 2431
Agustín Díaz de Mera García Consuegra

Proposal for a regulation
Article 42 – paragraph 2 – point d

Text proposed by the Commission

(d) contractual clauses between the controller or processor and the recipient of the data *authorised by a supervisory authority* in accordance with paragraph 4.

Amendment

(d) contractual clauses between the controller or processor and the recipient of the data in accordance with paragraph 4.

Or. es

Amendment 2432
Petru Constantin Luhan

Proposal for a regulation
Article 42 – paragraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(da) for historical, statistical or scientific purposes, the measures referred to in Article 83(4);

Or. en

Amendment 2433
Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation
Article 42 – paragraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(da) contractual clauses between the controller or processor and the recipient of the data that supplement standard data protection clauses as referred to in points (b) and (c) of paragraph 2 of this Article, and are authorised by the competent supervisory authority in accordance with paragraph 4;

Or. en

Justification

This amendment would provide an incentive for organisations to go beyond the baseline regulatory requirements comply with regimes such as a "data seal" or "trust mark".

Amendment 2434
Axel Voss

Proposal for a regulation
Article 42 – paragraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(da) contractual clauses between the controller or processor and the recipient of the data that supplement standard data protection clauses as referred to in points (b) and (c) of paragraph 2 of this Article, and are authorised by the competent supervisory authority in accordance with paragraph 4;

Or. en

Justification

Taken from ITRE-opinion.

Amendment 2435
Louis Michel

Proposal for a regulation
Article 42 – paragraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(da) cooperation agreements or unilateral undertaking by public authorities.

Or. en

Amendment 2436
Monika Hohlmeier

Proposal for a regulation
Article 42 – paragraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(da) participation in an international data protection system recognised by the Commission;

Or. de

Justification

The provisions on communication to third countries do not currently provide sufficient incentives for international data protection systems (e.g. of APEC and ECOWAS) to work towards a level of data protection which the EU regards as adequate. The new point (e) is intended at least to make it possible in future to affirm that appropriate guarantees exist on the basis of participation in an international data protection system.

Amendment 2437
Sarah Ludford

Proposal for a regulation
Article 42 – paragraph 2 – point d b (new)

Text proposed by the Commission

Amendment

(db) the measures referred to in Article 81 for health purposes or Article 83 for historical, statistical or scientific research purposes.

Or. en

Justification

This cross-references Art 42 and articles 81 and 83

Amendment 2438

Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation

Article 42 – paragraph 2 – point d b (new)

Text proposed by the Commission

Amendment

(db) for historical, statistical or scientific purposes, the measures referred to in Article 83(4).

Or. en

Amendment 2439

Axel Voss

Proposal for a regulation

Article 42 – paragraph 2 – point d b (new)

Text proposed by the Commission

Amendment

(db) for historical, statistical or scientific purposes, the measures referred to in Article 83(4);

Or. en

Justification

Taken from ITRE-opinion.

Amendment 2440

Louis Michel

Proposal for a regulation

Article 42 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The appropriate safeguards referred to in paragraph 1 may also be provided by a single legally binding instrument between the processor and another processor that impose substantively the same obligations on the subprocessor as the EU standard data protection clauses adopted by the Commission where a processor is engaged by multiple controllers to carry out substantively similar processing operations in relation to their respective personal data and such personal data of multiple controllers are transferred to another processor in a third country by the processor and/or by the controller.

Or. en

Amendment 2441

Josef Weidenholzer

Proposal for a regulation

Article 42 – paragraph 3

Text proposed by the Commission

Amendment

3. A transfer based on standard data protection clauses or binding corporate rules as referred to in points (a), (b) or (c) of paragraph 2 shall not require any further authorisation.

deleted

Amendment 2442
Petru Constantin Luhan

Proposal for a regulation
Article 42 – paragraph 3

Text proposed by the Commission

3. A transfer based on *standard data protection clauses or binding corporate rules as referred to in* points (a), (b) or (c) of paragraph 2 shall not require any further authorisation.

Amendment

3. A transfer based on points (a), (b) or (c) *or (e)* of paragraph 2 shall not require any further authorisation.

Amendment 2443
Alexander Alvaro

Proposal for a regulation
Article 42 – paragraph 3

Text proposed by the Commission

3. A transfer based on standard data protection clauses or binding corporate rules as referred to in points (a), *(b)* or (c) of paragraph 2 shall not require any further authorisation.

Amendment

3. A transfer based on standard data protection clauses or binding corporate rules as referred to in points (a) or (c) of paragraph 2 shall not require any further authorisation.

Justification

Consequence of deletion of point b of paragraph 2.

Amendment 2444
Dimitrios Droutsas

Proposal for a regulation
Article 42 – paragraph 3

Text proposed by the Commission

3. A transfer based on standard data protection clauses or binding corporate rules as referred to in points (a), **(b)** or (c) of paragraph 2 shall not require any further authorisation.

Amendment

3. A transfer based on standard data protection clauses or binding corporate rules as referred to in points (a) or (c) of paragraph 2 shall not require any further authorisation.

Or. en

Amendment 2445
Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation
Article 42 – paragraph 3

Text proposed by the Commission

3. A transfer based on ***standard data protection clauses or binding corporate rules as referred to in*** points (a), (b) ***or (c)*** of paragraph 2 shall not require any further authorisation.

Amendment

3. A transfer based on points (a), (b), ***(c) or (e)*** of paragraph 2 shall not require any further authorisation.

Or. en

Justification

A transfer for research purposes of key-coded data that cannot and will not be re-identified by recipients located in third countries should be permitted without further administrative burdens.

Amendment 2446
Axel Voss

Proposal for a regulation
Article 42 – paragraph 3

Text proposed by the Commission

3. A transfer based on standard data

Amendment

3. A transfer based on standard data

protection clauses or binding corporate rules as referred to in points (a), (b) **or (c)** of paragraph 2 shall not require any further authorisation.

protection clauses or binding corporate rules as referred to in points (a), (b), (c), (d), (da) **or (db)** of paragraph 2 shall not require any further authorisation.

Or. en

Amendment 2447
Louis Michel

Proposal for a regulation
Article 42 – paragraph 3

Text proposed by the Commission

3. A transfer based on standard data protection clauses or binding corporate rules as referred to in points (a), (b) or (c) of paragraph 2 shall not require any **further** authorisation.

Amendment

3. A transfer based on standard data protection clauses or binding corporate rules as referred to in points (a), (b) or (c) of paragraph 2, **a single legally binding document as referred to in paragraph 3 or between groups of undertakings with binding corporate rules shall be deemed to comply with paragraph 1 of this Article and** shall not require any **consultation with, submission to, approval or** authorisation **by supervisory authorities.**

Or. en

Amendment 2448
Sophia in 't Veld

Proposal for a regulation
Article 42 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The appropriate safeguards referred to in paragraph 2 shall include the requirement that litigation on safeguards against third country government surveillance or information requests by third country authorities takes place under the jurisdiction of the Member

State of the main establishment of the controller or processor concerned.

Or. en

Justification

This provision is necessary to avoid immunity of the third country processor for liability in cases of acquiescence to third country surveillance legislation.

Amendment 2449

Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation

Article 42 – paragraph 4

Text proposed by the Commission

4. Where a transfer is based on contractual clauses as referred to in point (d) of paragraph 2 of this Article the controller or processor shall obtain prior authorisation of the contractual clauses according to point (a) of Article 34(1) from the supervisory authority. 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.

Amendment

4. Where a transfer is based on contractual clauses as referred to in point (d) of paragraph 2 of this Article the controller or processor shall obtain prior authorisation of the contractual clauses according to point (a) of Article 34(1) from the ***competent*** supervisory authority. 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 ***competent*** supervisory authority shall apply the consistency mechanism referred to in Article 57.

Or. en

Amendment 2450

Agustín Díaz de Mera García Consuegra

Proposal for a regulation

Article 42 – paragraph 4

Text proposed by the Commission

4. Where a transfer is based on contractual clauses as referred to in point (d) of paragraph 2 of this Article the controller or processor shall obtain prior authorisation of the contractual clauses according to point (a) of Article 34(1) from the supervisory authority. 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.

Amendment

4. Where a transfer is based on contractual clauses as referred to in point (d) of paragraph 2 of this Article ***and no data protection officer has been designated or no sufficient or applicable official certification is available***, the controller or processor shall obtain prior authorisation of the contractual clauses according to point (a) of Article 34(1) from the supervisory authority. 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.

Or. es

Amendment 2451

Axel Voss

Proposal for a regulation

Article 42 – paragraph 4

Text proposed by the Commission

4. Where a transfer is based on contractual clauses as referred to in point (d) of paragraph 2 of this Article the controller or processor shall obtain prior authorisation of the contractual clauses according to point (a) of Article 34(1) from the supervisory authority. 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.

Amendment

4. Where a transfer is based on contractual clauses as referred to in point (d) ***or (da)*** of paragraph 2 of this Article the controller or processor shall obtain prior authorisation of the contractual clauses according to point (a) of Article 34(1) from the ***competent*** supervisory authority. If the transfer is related to processing activities or substantially affect the free movement of personal data within the Union, the ***competent*** supervisory authority shall apply the consistency mechanism referred to in Article 57.

*Justification**Partly taken from ITRE-opinion.***Amendment 2452****Sarah Ludford****Proposal for a regulation****Article 42 – paragraph 4***Text proposed by the Commission*

4. Where ***a transfer is based on*** contractual clauses as referred to in point (d) of paragraph 2 of this Article the controller or processor shall ***obtain prior authorisation*** of the ***contractual clauses according to point (a) of Article 34(1)*** from the supervisory authority. ***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.***

Amendment

4. Where ***the relevant safeguards are provided for on the basis of*** contractual clauses as referred to in point (d) of paragraph 2 of this Article the controller or processor shall ***ensure compliance*** of the ***intended processing with this Regulation and mitigate any risks involved for the data subject.*** The supervisory authority ***shall support the compliance of the Regulation by providing guidance and advice under this provision. If the processing concerns*** data subjects in another Member State or other Member States, or substantially affect the free movement of personal data within the Union, the ***EDPB*** shall ***provide guidance to ensure consistent application of the Regulation, taking into account the specific circumstances of individual Member States.***

Or. en

Justification

Data processed outside the EEA must be afforded appropriate safeguards. The concept of a transfer is outdated because data can be accessed from outside the EEA without the controller transferring it. Prior authorisation of a contractual clause is likely to place disproportionate burdens on supervisory authorities which are better used as a source of advice and guidance. A EDPB co-ordination function would ensure consistency in guidance.

Amendment 2453
Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation
Article 42 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. A controller or processor may choose to base transfers on standard data protection clauses as referred to in points (b) and (c) of paragraph 2 of this Article, and to offer in addition to these standard clauses supplemental, legally binding commitments that apply to transferred data. In such cases, these additional commitments shall be subject to prior consultation with the competent supervisory authority and shall supplement and not contradict, directly or indirectly, the standard clauses. Member States, supervisory authorities and the Commission shall encourage the use of supplemental and legally binding commitments by offering a data protection seal, mark or mechanism, adopted pursuant to Article 39, to controllers and processors who adopt these heightened safeguards.

Or. en

Justification

Controllers and processors will often have direct and practical experience that demonstrates that additional safeguards may be appropriate in relation to the personal data they are transferring. The Regulation should encourage these controllers and processors to offer supplemental safeguards where these are appropriate. These supplemental commitments should not contradict the standard clauses.

Amendment 2454
Axel Voss

Proposal for a regulation
Article 42 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. A controller or processor may choose to base transfers on standard data protection clauses as referred to the relevant provisions in paragraph 2 of this Article, and to offer in addition to these standard clauses supplemental, legally binding commitments that apply to transferred data. In such cases, these additional commitments shall be subject to prior consultation with the competent supervisory authority and shall supplement and not contradict, directly or indirectly, the standard clauses. Member States, supervisory authorities and the Commission shall encourage the use of supplemental and legally binding commitments by offering a data protection seal, mark or mechanism, adopted pursuant to Article 39, to controllers and processors who adopt these heightened safeguards.

Or. en

Justification

Partly taken from ITRE-opinion.

Amendment 2455
Axel Voss

Proposal for a regulation
Article 42 – paragraph 4 b (new)

Text proposed by the Commission

Amendment

4b. To encourage the use of supplemental contractual clauses as referred to the relevant provisions of paragraph 2 of this Article, competent authorities may offer a

data protection seal, mark or mechanism, adopted pursuant to Article 39, to controllers and processors who adopt these safeguards.

Or. en

Justification

Partly taken from ITRE-opinion.

Amendment 2456
Dimitrios Droutsas

Proposal for a regulation
Article 42 – paragraph 5

Text proposed by the Commission

Amendment

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.

deleted

Or. en

Amendment 2457
Timothy Kirkhope
on behalf of the ECR Group

Proposal for a regulation
Article 42 – paragraph 5

Text proposed by the Commission

Amendment

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. *deleted*

Or. en

Amendment 2458
Cornelia Ernst, Marie-Christine Vergiat

Proposal for a regulation
Article 42 – paragraph 5

Text proposed by the Commission

Amendment

5. Where the appropriate safeguards with *deleted*

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.

Or. en

Amendment 2459
Csaba Sógor

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

Amendment

5. Authorisations by a supervisory authority on the basis of Article 26(2) of Directive 95/46/EC shall remain ***in force for no longer than two years from the entry into force of this Regulation*** or until amended, replaced or repealed by the supervisory authority.

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.

Or. hu

Amendment 2460
Sophia in 't Veld

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, until amended, replaced or repealed by that supervisory authority.

Or. en

Amendment 2461
Agustín Díaz de Mera García Consuegra

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. Where the appropriate safeguards with respect to the protection of personal data are not provided for in a legally binding instrument ***and no data protection officer has been designated and no sufficient or applicable official certification is available***, 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.

Or. es

Amendment 2462
Josef Weidenholzer

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, until amended, replaced or repealed by that supervisory authority.

Or. en

Amendment 2463

Louis Michel

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

Amendment

5. Where *public authorities make use of* appropriate safeguards with respect to the protection of personal data *but these* are not provided for in a legally binding instrument, *as mentioned in paragraph 2 sub d a), they* shall obtain prior authorisation for the transfer, or a set of transfers, or for provisions to be inserted into administrative arrangements providing

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.

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.

Or. en

Amendment 2464
Sarah Ludford

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

Amendment

5. Where the appropriate safeguards with respect to the protection of personal data are not provided for in a legally binding instrument, ***for example in a memorandum of understanding, the controller shall ensure compliance of the intended processing with this Regulation and mitigate any risks involved for the data subject.*** The supervisory authority shall ***support the compliance of the Regulation by providing guidance and advice under this provision. If the processing concerns*** data subjects in another Member State or other Member States, or substantially affect the free movement of personal data within the Union, the ***EDPB*** shall ***provide guidance to ensure consistent application of the Regulation, taking into account the specific circumstances of individual***

Article 26(2) of Directive 95/46/EC shall remain valid, until amended, replaced or repealed by that supervisory authority.

Member States.

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.

Or. en

Justification

A prior authorisation requirement would overburden supervisors. AN EDPB role would be helpful.

Amendment 2465

Axel Voss

Proposal for a regulation

Article 43

Text proposed by the Commission

Amendment

Transfers by way of binding corporate rules

deleted

1. A supervisory authority shall in accordance with the consistency mechanism set out in Article 58 approve binding corporate rules, provided that they:

(a) are legally binding and apply to and are enforced by every member within the controller's or processor's group of undertakings, and include their employees

(b) expressly confer enforceable rights on data subjects;

(c) fulfil the requirements laid down in paragraph 2.

2. The binding corporate rules shall at least specify:

(a) the structure and contact details of the

group of undertakings and its members;

(b) the data transfers or set of transfers, including the categories of personal data, the type of processing and its purposes, the type of data subjects affected and the identification of the third country or countries in question;

(c) their legally binding nature, both internally and externally;

(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;

(e) the rights of data subjects and the means to exercise these rights, including the right not to be subject to a measure based on profiling in accordance with Article 20, the right to lodge a complaint before the competent supervisory authority and before the competent courts of the Member States in accordance with Article 75, and to obtain redress and, where appropriate, compensation for a breach of the binding corporate rules;

(f) the acceptance by the controller or processor established on the territory of a Member State of liability for any breaches of the binding corporate rules by any member of the group of undertakings not established in the Union; the controller or the processor may only be exempted from this liability, in whole or in part, if he proves that that member is not responsible for the event giving rise to the damage;

(g) how the information on the binding corporate rules, in particular on the provisions referred to in points (d), (e) and (f) of this paragraph is provided to the data subjects in accordance with Article 11;

(h) the tasks of the data protection officer designated in accordance with Article 35, including monitoring within the group of undertakings the compliance with the binding corporate rules, as well as monitoring the training and complaint handling;

(i) the mechanisms within the group of undertakings aiming at ensuring the verification of compliance with the binding corporate rules;

(j) the mechanisms for reporting and recording changes to the policies and reporting these changes to the supervisory authority;

(k) the co-operation mechanism with the supervisory authority to ensure compliance by any member of the group of undertakings, in particular by making available to the supervisory authority the results of the verifications of the measures referred to in point (i) of this paragraph.

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 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.

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 2466

Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation

Article 43 – paragraph 1 – introductory part

Text proposed by the Commission

1. A supervisory authority shall *in accordance with the consistency mechanism set out in Article 58 approve binding corporate rules*, provided that they:

Amendment

1. A supervisory authority shall ***authorise through a single act of approval binding corporate rules for a group of undertakings***, provided that they:

Or. en

Justification

There is no justification to trigger the consistency mechanism for the approval of BCRs. This is not the case under the current data protection framework.

Amendment 2467

Axel Voss

Proposal for a regulation

Article 43 – paragraph 1 – introductory part

Text proposed by the Commission

1. A supervisory authority shall *in accordance with the consistency mechanism set out in Article 58 approve binding corporate rules*, provided that they:

Amendment

1. ***The competent*** supervisory authority shall ***authorize through a single act of approval binding corporate rules for a group of undertakings. These rules will allow multiple intracompany international transfers in and out of Europe***, provided that they:

Or. en

Justification

Taken from ITRE-opinion.

Amendment 2468

Louis Michel

Proposal for a regulation

Article 43 – paragraph 1 – introductory part

Text proposed by the Commission

1. A supervisory *authority shall in accordance with the consistency mechanism set out in Article 58 approve* binding corporate rules, provided that they:

Amendment

1. *Controllers and/or processors that wish to provide appropriate safeguards by binding corporate rules as referred to in Article 42(2)(a) shall notify the appropriate supervisory authorities of the existence of their binding corporate rules and the supervisory authorities shall be deemed to have approved the* binding corporate rules provided that they:

Or. en

Amendment 2469

Sarah Ludford

Proposal for a regulation

Article 43 – paragraph 1

Text proposed by the Commission

1. A *supervisory authority shall in accordance with the consistency mechanism set out in Article 58 approve binding corporate rules, provided that they:*

- (a) are legally binding and apply to and are enforced by every member within the controller's or processor's group of undertakings, and include their employees
- (b) expressly confer enforceable rights on data subjects;

Amendment

1. *Where appropriate safeguards are provided through binding corporate rules data controllers shall ensure compliance with the Regulation by providing that BCRs:*

- (a) are legally binding and apply to and are enforced by every member within the controller's or processor's group of undertakings, and include their employees;
- (b) expressly confer enforceable rights on data subjects;

(c) fulfil the requirements laid down in paragraph 2.

(c) fulfil the requirements laid down in paragraph 2.

The supervisory authority shall support the compliance of this Regulation by providing guidance and advice under this provision.

Or. en

Justification

It is data controllers who should be responsible for BCR compliance under the Regulation. A requirement for approval of all BCRs would overwhelm supervisors, which are better employed in providing guidance.

Amendment 2470 Alexander Alvaro

Proposal for a regulation Article 43 – paragraph 1 – point a

Text proposed by the Commission

(a) are legally binding and apply to and are enforced by every member within the controller's or processor's group of undertakings, and include their employees;

Amendment

(a) are legally binding and apply to and are enforced by every member within the controller's or processor's group of undertakings ***and their external subcontractors***, and include their employees;

Or. en

Amendment 2471 Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation Article 43 – paragraph 1 – point a

Text proposed by the Commission

(a) are legally binding and apply to and are enforced by every member within the controller's or processor's group of

Amendment

(a) are legally binding and apply to and are enforced by every member within the controller's or processor's group of

undertakings, and include their employees;

undertakings *and their external subcontractors*, and include their employees;

Or. en

Amendment 2472

Axel Voss

Proposal for a regulation

Article 43 – paragraph 1 – point a

Text proposed by the Commission

(a) are legally binding and apply to and are enforced by every member within the controller's or processor's group of undertakings, and include their employees;

Amendment

(a) are legally binding and apply to and are enforced by every member within the controller's or processor's group of undertakings *and their external subcontractors*, and include their employees;

Or. en

Justification

Taken from ITRE-opinion.

Amendment 2473

Louis Michel

Proposal for a regulation

Article 43 – paragraph 1 – point a

Text proposed by the Commission

(a) are legally binding and apply to and are enforced by every member within the controller's or processor's group of undertakings, and include their employees;

Amendment

(a) are legally binding and apply to and are enforced by every member within the controller's or processor's group of undertakings *and their subcontractors that is included in the scope of the binding corporate rules*, and include their employees;

Amendment 2474

Birgit Sippel, Josef Weidenholzer, Evelyn Regner

Proposal for a regulation

Article 43 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) have been drawn up after consent has been given by the representatives of the firm's employees and the data protection officer at the place where the branch of the firm is located;

Or. de

Amendment 2475

Alexander Alvaro

Proposal for a regulation

Article 43 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) the structure and contact details of the group of undertakings and its members;

(a) the structure and contact details of the group of undertakings and its members ***and their external subcontractors;***

Or. en

Amendment 2476

Dimitrios Droutsas

Proposal for a regulation

Article 43 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) the structure and contact details of the group of undertakings and its members;

(a) the structure and contact details of the group of undertakings and its members ***and***

their external subcontractors;

Or. en

Amendment 2477

Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation

Article 43 – paragraph 2 – point a

Text proposed by the Commission

(a) the structure and contact details of the group of undertakings and its members;

Amendment

(a) the structure and contact details of the group of undertakings and its members ***and their external subcontractors;***

Or. en

Amendment 2478

Axel Voss

Proposal for a regulation

Article 43 – paragraph 2 – point a

Text proposed by the Commission

(a) the structure and contact details of the group of undertakings and its members;

Amendment

(a) the structure and contact details of the group of undertakings and its members, ***and their external subcontractors;***

Or. en

Justification

Taken from ITRE-opinion.

Amendment 2479

Louis Michel

Proposal for a regulation

Article 43 – paragraph 2 – point a

Text proposed by the Commission

(a) the structure and contact details of the group of undertakings and its members;

Amendment

(a) the structure and contact details of the group of undertakings and its members ***and their subcontractors***;

Or. en

Amendment 2480

Axel Voss

Proposal for a regulation

Article 43 – paragraph 2 – point b

Text proposed by the Commission

(b) the data transfers or set of transfers, including the categories of personal data, the type of processing and its purposes, the type of data subjects affected and the identification of the third country or countries in question;

Amendment

(b) the data transfers or set of transfers, including the categories of personal data, the type of processing and its purposes, the type of data subjects affected and ***where appropriate*** the identification of the third country or countries in question;

Or. en

Amendment 2481

Timothy Kirkhope

on behalf of the ECR Group

Proposal for a regulation

Article 43 – paragraph 2 – point f

Text proposed by the Commission

(f) the acceptance by the controller or processor ***established on the territory of a Member State*** of liability for any breaches of the binding corporate rules by any member of the group of undertakings not established in the Union; the controller or the processor may only be exempted from this liability, in whole or in part, if he proves that that member is not responsible

Amendment

(f) the acceptance by the controller or processor of liability for any breaches of the binding corporate rules by any member of the group of undertakings not established in the Union; the controller or the processor may only be exempted from this liability, in whole or in part, if he proves that that member is not responsible for the event giving rise to the damage;

for the event giving rise to the damage;

Or. en

Amendment 2482
Louis Michel

Proposal for a regulation
Article 43 – paragraph 2 – point h

Text proposed by the Commission

(h) the tasks of the data protection officer designated in accordance with Article 35, including monitoring within the group of undertakings the compliance with the binding corporate rules, *as well as monitoring the training and complaint handling*;

Amendment

(h) the tasks of the data protection officer designated in accordance with Article 35, including monitoring within the group of undertakings the compliance with the binding corporate rules;

Or. en

Amendment 2483
Louis Michel

Proposal for a regulation
Article 43 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Where a processor wishes to provide appropriate safeguards by binding corporate rules as referred to in Article 42(2)(a), the matters referred to in Article 43(2)(a) to (k):

(a) shall only apply to the extent they are applicable to the processor and are relevant to the data subject; and

(b) can be specified in relation to each controller.

Or. en

Amendment 2484
Louis Michel

Proposal for a regulation
Article 43 – 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 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.

deleted

Or. en

Amendment 2485
Dimitrios Droutsas

Proposal for a regulation
Article 43 – 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 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

3. The *European Data Protection Board shall be entrusted with the task* 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, *in accordance with Article 66.*

concerned.

Or. en

Amendment 2486
Louis Michel

Proposal for a regulation
Article 43 – paragraph 4

Text proposed by the Commission

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 in accordance with the examination procedure set out in Article 87(2).

deleted

Or. en

Amendment 2487
Alexander Alvaro

Proposal for a regulation
Article 43 – paragraph 4

Text proposed by the Commission

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 in accordance with the examination procedure set out in Article 87(2).***

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

Or. en

Justification

Horizontal amendment replacing all implementing acts with delegated acts in order to guarantee the full involvement of the European Parliament in the decision making process.

Amendment 2488

Agustín Díaz de Mera García Consuegra, Teresa Jiménez-Becerril Barrio

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 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).

Or. es

Amendment 2489

Dimitrios Droutsas

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

Amendment 2490
Axel Voss

Proposal for a regulation
Article 43 a (new)

Text proposed by the Commission

Amendment

Article 43a

Transfers by way of binding corporate rules

The provisions of Article 38b shall apply accordingly.

Or. en

Amendment 2491
Cornelia Ernst, Marie-Christine Vergiat

Proposal for a regulation
Article 43 a (new)

Text proposed by the Commission

Amendment

Article 43a

Transfers not authorised by Union Law

1. Any judgment of a court or tribunal and no decision of an administrative authority of a third country requiring a controller or processor to disclose personal data shall only be recognized or be enforceable in any manner, 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 supervisory authority of the request without undue delay and must obtain prior authorisation for the transfer by the supervisory authority in accordance with Article 34.

3. The supervisory authority shall assess the compliance of the requested disclosure with the 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 lay down in an implementing act 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

Amendment 2492
Axel Voss

Proposal for a regulation
Article 44 – title

Text proposed by the Commission

Amendment

Derogations

Other legitimate grounds for international transfers

Or. en

Justification

Taken from ITRE-opinion.

Amendment 2493
Sophia in 't Veld

Proposal for a regulation
Article 44 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. In the absence of an adequacy decision pursuant to Article 41 or of appropriate safeguards pursuant to Article 42, a transfer or a set of transfers of personal data to a third country or an international organisation may take place only on condition that:

1. In the absence of an adequacy decision pursuant to Article 41 or of appropriate safeguards pursuant to Article 42, a transfer or a set of transfers of personal data to a third country or an international organisation may take place, ***to the extent that the processing is not massive, not repetitive and not structural***, only on condition that:

Or. en

Amendment 2494
Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation
Article 44 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. In the absence of an adequacy decision pursuant to Article 41 ***or*** of appropriate safeguards pursuant to Article 42, a transfer or a set of transfers of personal

1. In the absence of an adequacy decision pursuant to Article 41; ***or where the Commission decides that a third country, or a territory or a processing sector within***

data to a third country or an international organisation may take place only on condition that:

that third country, or an international organisation does not ensure an adequate level of protection in accordance with Article 41(5); or in the absence of appropriate safeguards pursuant to Article 42, a transfer or a set of transfers of personal data to a third country or an international organisation may take place only on condition that:

Or. en

Amendment 2495
Axel Voss

Proposal for a regulation
Article 44 – paragraph 1 – introductory part

Text proposed by the Commission

1. In the absence of an adequacy decision pursuant to Article 41 *or* of appropriate safeguards pursuant to Article 42, a transfer or a set of transfers of personal data to a third country or an international organisation may take place only on condition that:

Amendment

1. In the absence of an adequacy decision pursuant to Article 41; *or where the Commission decides 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 in accordance with Article 41(5); or in the absence of appropriate safeguards pursuant to Article 42, a transfer or a set of transfers of personal data to a third country or an international organisation may take place only on condition that:*

Or. en

Justification

Taken from ITRE-opinion.

Amendment 2496
Cornelia Ernst, Marie-Christine Vergiat

Proposal for a regulation
Article 44 – paragraph 1 – introductory part

Text proposed by the Commission

1. In the absence of an adequacy decision pursuant to Article 41 or of appropriate safeguards pursuant to Article 42, a transfer or a set of transfers of personal data to a third country or an international organisation may take place only on condition that:

Amendment

1. In the absence of an adequacy decision pursuant to Article 41 or of appropriate safeguards pursuant to Article 42, **and without prejudice to Articles 6, 14, 15, 16 and 17**, a transfer or a set of transfers of personal data to a third country or an international organisation may take place only on condition that:

Or. en

Amendment 2497
Sophia in 't Veld

Proposal for a regulation
Article 44 – paragraph 1 – point a

Text proposed by the Commission

(a) the data subject has consented to the proposed transfer, after having been informed of the risks of such transfers due to the absence of an adequacy decision and appropriate safeguards; **or**

Amendment

(a) the data subject has consented to the proposed transfer, after having been informed of the risks of such transfers due to the absence of an adequacy decision and appropriate safeguards; **and**

Or. en

Amendment 2498
Sophia in 't Veld

Proposal for a regulation
Article 44 – paragraph 1 – point d

Text proposed by the Commission

(d) the transfer is necessary for important grounds of public interest; or

Amendment

deleted

Or. en

Amendment 2499

Agustín Díaz de Mera García Consuegra, Teresa Jiménez-Becerril Barrio

Proposal for a regulation

Article 44 – paragraph 1 – point e

Text proposed by the Commission

(e) the transfer is necessary for the establishment, exercise or defence of legal claims; o

Amendment

(e) the transfer is necessary for the establishment, exercise or defence of legal *or administrative* claims;

Or. es

Amendment 2500

Dimitrios Droutsas

Proposal for a regulation

Article 44 – paragraph 1 – point h

Text proposed by the Commission

(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.

Amendment

deleted

Or. en

Amendment 2501

Sonia Alfano, Gianni Vattimo

Proposal for a regulation

Article 44 – paragraph 1 – point h

Text proposed by the Commission

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.

deleted

Or. en

Amendment 2502

Cornelia Ernst, Marie-Christine Vergiat

Proposal for a regulation

Article 44 – paragraph 1 – point h

Text proposed by the Commission

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.

deleted

Or. en

Amendment 2503

Judith Sargentini

Proposal for a regulation
Article 44 – paragraph 1 – point h

Text proposed by the Commission

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.

deleted

Or. en

Justification

Legitimate interest alone is insufficient justification for any type of transfer of personal data. A more solid basis in law is required as provided for in other sections of article 44.

Amendment 2504
Axel Voss

Proposal for a regulation
Article 44 – paragraph 1 – point h

Text proposed by the Commission

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.

(h) the transfer is necessary for the purposes of the legitimate interests pursued by the controller or the processor 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.

Justification

Taken from ITRE-opinion.

Amendment 2505

Louis Michel

Proposal for a regulation

Article 44 – paragraph 1 – point h

Text proposed by the Commission

(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.

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 ***authorized by a supervisory authority*** with respect to the protection of personal data, where necessary.

Or. en

Amendment 2506

Sarah Ludford

Proposal for a regulation

Article 44 – paragraph 1 – point h

Text proposed by the Commission

(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***

Amendment

(h) the ***processing*** is necessary for the purposes of the legitimate interests pursued by the controller and where the controller ***has*** adduced appropriate safeguards with respect to the protection of personal data, where necessary.

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

Justification

"Transfer" is an outdated concept. The important issue is the quality of the safeguards.

Amendment 2507
Axel Voss

Proposal for a regulation
Article 44 – paragraph 1 – point h a (new)

Text proposed by the Commission

Amendment

(ha) the transfer is necessary for the purposes of the legitimate interests of the data subject especially when required or necessary for the entry of the third country.

Or. en

Amendment 2508
Sarah Ludford

Proposal for a regulation
Article 44 – paragraph 1 – point h a (new)

Text proposed by the Commission

Amendment

(ha) the personal data has been anonymised;

Or. en

Justification

This is a justified derogation.

Amendment 2509

Ewald Stadler

Proposal for a regulation

Article 44 – paragraph 1 – point h a (new)

Text proposed by the Commission

Amendment

(ha) if an appropriate level of data protection pursuant to Article 41 or 42 does not exist, transfer or a category of transfer of personal data to a third country or to an international organisation or authority is permissible only if the transfer takes place to comply with a statutory obligation or authorisation, a requirement pertaining to supervision or another legislative provision to which the controller is subject.

Or. de

Amendment 2510

Sarah Ludford

Proposal for a regulation

Article 44 – paragraph 1 – point h b (new)

Text proposed by the Commission

Amendment

(hb) the personal data has been pseudonymised, and the key and the data are kept separately, and contractual clauses forbid the controller to access the key.

Or. en

Justification

This is a justified derogation.

Amendment 2511
Dimitrios Droutsas

Proposal for a regulation
Article 44 – paragraph 3

Text proposed by the Commission

Amendment

3. Where the processing is based on point (h) of paragraph 1, the controller or processor shall give particular consideration to the nature of the data, the purpose and duration of the proposed processing operation or operations, as well as the situation in the country of origin, the third country and the country of final destination, and adduced appropriate safeguards with respect to the protection of personal data, where necessary. *deleted*

Or. en

Amendment 2512
Cornelia Ernst, Marie-Christine Vergiat

Proposal for a regulation
Article 44 – paragraph 3

Text proposed by the Commission

Amendment

3. Where the processing is based on point (h) of paragraph 1, the controller or processor shall give particular consideration to the nature of the data, the purpose and duration of the proposed processing operation or operations, as well as the situation in the country of origin, the third country and the country of final destination, and adduced *deleted*

appropriate safeguards with respect to the protection of personal data, where necessary.

Or. en

Amendment 2513

Claude Moraes, Glenis Willmott

Proposal for a regulation

Article 44 – paragraph 4

Text proposed by the Commission

4. Points (b), (c) and (h) of paragraph 1 shall not apply to activities carried out by public authorities in the exercise of their public powers.

Amendment

4. Points (b), (c) and (h) of paragraph 1 shall not apply to activities carried out by public authorities in the exercise of their public powers *or another body which has been entrusted with a mission of public interest.*

Or. en

Justification

The Regulation also needs to make allowances for instances where private organisations have been entrusted with the responsibility to provide public services. There should be one single approach in the delivery of public services regardless of whether the body delivering that service is a public authority or body, or a contracted private organization.

Amendment 2514

Dimitrios Droutsas

Proposal for a regulation

Article 44 – paragraph 4

Text proposed by the Commission

4. Points (b), (c) and (h) of paragraph 1 shall not apply to activities carried out by public authorities in the exercise of their public powers.

Amendment

4. Points (b) and (c) of paragraph 1 shall not apply to activities carried out by public authorities in the exercise of their public powers.

Amendment 2515
Cornelia Ernst, Marie-Christine Vergiat

Proposal for a regulation
Article 44 – paragraph 4

Text proposed by the Commission

4. Points (b), (c) and (h) of paragraph 1 shall not apply to activities carried out by public authorities in the exercise of their public powers.

Amendment

4. Points (b) and (c) of paragraph 1 shall not apply to activities carried out by public authorities in the exercise of their public powers.

Amendment 2516
Sophia in 't Veld

Proposal for a regulation
Article 44 – paragraph 5

Text proposed by the Commission

5. The public interest referred to in point (d) of paragraph 1 must be recognised in Union law or in the law of the Member State to which the controller is subject.

Amendment

deleted

Amendment 2517
Cornelia Ernst

Proposal for a regulation
Article 44 – paragraph 5

Text proposed by the Commission

5. The public interest referred to in point (d) of paragraph 1 must be recognised in

Amendment

5. The public interest referred to in point (d) of paragraph 1 must be recognised in

Union law or in the law of the Member State to which the controller is subject.

Union law or in the law of the Member State to which the controller is subject.
This derogation shall only be used for occasional transfers. In each and every case, a careful assessment of all circumstances of the transfer needs to be carried out.

Or. en

Amendment 2518
Wim van de Camp

Proposal for a regulation
Article 44 – paragraph 5

Text proposed by the Commission

Amendment

5. The public interest referred to in point (d) of paragraph 1 must be recognised in Union law or in the law of the Member State to which the controller is subject.

5. The public interest referred to in point (d) of paragraph 1 must be recognised in ***international conventions***, Union law or in the law of the Member State to which the controller is subject.

Or. en

Justification

A public interest can also be expressed in international conventions, even in the absence of specific national or EU laws. Such conventions would still need to respect the essence of the right to the protection of personal data and be proportionate to the legitimate aim pursued. Moreover, any processing of personal data on this basis would obviously have to comply with all other aspects of the Regulation as well.

Amendment 2519
Axel Voss

Proposal for a regulation
Article 44 – paragraph 5

Text proposed by the Commission

Amendment

5. The public interest referred to in point

5. The public interest referred to in point

(d) of paragraph 1 must be recognised in Union law or in the law of the Member State to which the controller is subject.

(d) of paragraph 1 must be recognised in Union law or in the law of the Member State to which the controller is subject, **or in applicable international agreements or arrangements.**

Or. en

Justification

Clarification reasons: Despite the recognition in Recital 87 that international data transfers between regulatory authorities are justified for the protection of "important grounds of public interest", Article 45(5) would define that term exclusively with reference to EU or Member State law. This has to be clarified that "important grounds of public interest" includes also international agreements on the basis of which foreign regulatory authorities currently pursue such data transfers.

Amendment 2520

Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation

Article 44 – paragraph 5

Text proposed by the Commission

5. The public interest referred to in point (d) of paragraph 1 must be recognised in Union law or in the law of the Member State to which the controller is subject.

Amendment

5. The public interest referred to in point (d) of paragraph 1 must be recognised in **international conventions, in** Union law or in the law of the Member State to which the controller is subject.

Or. en

Amendment 2521

Dimitrios Droutsas

Proposal for a regulation

Article 44 – paragraph 6

Text proposed by the Commission

6. The controller or processor shall document the assessment as well as the

Amendment

deleted

appropriate safeguards adduced referred to in point (h) of paragraph 1 of this Article in the documentation referred to in Article 28 and shall inform the supervisory authority of the transfer.

Or. en

Amendment 2522
Cornelia Ernst, Marie-Christine Vergiat

Proposal for a regulation
Article 44 – paragraph 6

Text proposed by the Commission

Amendment

6. The controller or processor shall document the assessment as well as the appropriate safeguards adduced referred to in point (h) of paragraph 1 of this Article in the documentation referred to in Article 28 and shall inform the supervisory authority of the transfer.

deleted

Or. en

Amendment 2523
Agustín Díaz de Mera García Consuegra, Teresa Jiménez-Becerril Barrio

Proposal for a regulation
Article 44 – paragraph 6

Text proposed by the Commission

Amendment

6. The controller or processor shall document the assessment as well as the appropriate safeguards adduced referred to in point (h) of paragraph 1 of this Article in the documentation referred to in Article 28 and shall inform the supervisory authority of the transfer.

6. The controller or processor shall document the assessment as well as the appropriate safeguards adduced referred to in point (h) of paragraph 1 of this Article in the documentation referred to in Article 28, and ***where appropriate in accordance with that rule, and*** shall inform the supervisory authority of the transfer.

Or. es

Amendment 2524
Sonia Alfano, Gianni Vattimo

Proposal for a regulation
Article 44 – paragraph 6

Text proposed by the Commission

6. The controller or processor shall document the assessment as well as the appropriate safeguards adduced referred to in point (h) of paragraph 1 of this Article in the documentation referred to in Article 28 and shall *inform the supervisory authority* of the transfer.

Amendment

6. The controller or processor shall document the assessment as well as the appropriate safeguards adduced referred to in point (h) of paragraph 1 of this Article in the documentation referred to in Article 28 and shall *obtain prior approval* of the transfer *by the supervisory authority*.

Or. en

Amendment 2525
Agustín Díaz de Mera García Consuegra, Teresa Jiménez-Becerril Barrio

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

deleted

Or. es

Amendment 2526
Axel Voss

Proposal for a regulation
Article 44 – 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 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.

deleted

Or. en

Amendment 2527
Sophia in 't Veld

Proposal for a regulation
Article 44 – 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 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.

deleted

Or. en

Amendment 2528
Dimitrios Droutsas

Proposal for a regulation
Article 44 – 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 further

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.

specifying 'important grounds of public interest' within the meaning of point (d) of paragraph 1.

Or. en

Amendment 2529
Josef Weidenholzer

Proposal for a regulation
Article 44 a (new)

Text proposed by the Commission

Amendment

Article 44a

Disclosures not authorized by Union law

1. No judgment of a court or tribunal and no decision of an administrative authority of a third country requiring a controller or processor to disclose personal data shall be recognized or be enforceable in any manner, without prejudice to 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 supervisory authority of the request without undue delay and must obtain prior authorisation for the transfer by the supervisory authority.

3. The supervisory authority shall assess the compliance of the requested disclosure with the Regulation and in particular whether the disclosure is necessary and legally required in accordance with Article 44(1)(d) and (e) and (5).

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

Or. en

Justification

This proposed amendment reintroduces the provisions of Article 42 of the EC draft as these provisions would provide better protection against the extra-territorial application of third country laws.

**Amendment 2530
Dimitrios Droutsas**

**Proposal for a regulation
Article 44 a (new)**

Text proposed by the Commission

Amendment

Article 44a

Disclosures not authorized by Union law

1. No judgment of a court or tribunal and no decision of an administrative authority of a third country requiring a controller or processor to disclose personal data shall be recognized or be enforceable in any manner, without prejudice to 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 supervisory authority of the request without undue delay and must obtain prior authorisation for the transfer by the supervisory authority.

3. The supervisory authority shall assess the compliance of the requested disclosure with the 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 lay 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 in accordance with the examination procedure referred to in Article 87(2).

Or. en

Amendment 2531
Sophia in 't Veld

Proposal for a regulation
Article 44 a (new)

Text proposed by the Commission

Amendment

Article 44a

Transfers to cloud services under third country jurisdiction

The transfer of personal data to cloud services under the jurisdiction of a third country shall be prohibited, unless:

(a) one of the legal grounds for transfer of personal data to third countries listed in this Chapter is applied; and

(b) the data subject has given consent; and

(c) the consent has been given by the data subject after having been informed in clear, unambiguous and warning language through a separate and prominently visible reference to:

(i) the possibility of the personal data being subject to intelligence gathering or surveillance by third-country authorities; and

(ii) the risk that the protection of personal data and fundamental rights provided by Union and Member State law cannot be guaranteed, despite the legal basis of the transfer.

Or. en

Amendment 2532
Marie-Christine Vergiat

Proposal for a regulation
Article 45 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. In relation to third countries and international organisations, the Commission and supervisory authorities shall take appropriate steps to:

1. In relation to third countries and international organisations ***and in cooperation with the Consultative Committee of Convention 108 of the***

Council of Europe, the Commission and supervisory authorities shall take appropriate steps to:

Or. fr

Amendment 2533
Sophia in 't Veld

Proposal for a regulation
Article 45 – paragraph 1 – point a

Text proposed by the Commission

(a) develop effective international co-operation mechanisms to *facilitate* the enforcement of legislation for the protection of personal data;

Amendment

(a) develop effective international co-operation mechanisms to *ensure* the enforcement of legislation for the protection of personal data;

Or. en

Amendment 2534
Sophia in 't Veld

Proposal for a regulation
Article 45 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) clarify and resolve jurisdictional conflicts with third countries.

Or. en

Amendment 2535
Agustín Díaz de Mera García Consuegra, Teresa Jiménez-Becerril Barrio

Proposal for a regulation
Article 45 – paragraph 2

Text proposed by the Commission

2. For the purposes of paragraph 1, the **Commission** shall **take appropriate steps to advance the relationship with third countries or international organisations, and in particular their supervisory authorities, where the Commission has decided that they ensure an adequate level of protection within the meaning of Article 41(3).**

Amendment

2. For the purposes of paragraph 1 **(a) and (b)**, the **supervisory authorities** shall **be able to exchange information and cooperate in activities related to the exercise of their powers and defence of the rights regulated in this Regulation.**

Or. es

Amendment 2536
Marie-Christine Vergiat

Proposal for a regulation
Article 45 – paragraph 2

Text proposed by the Commission

2. For the purposes of paragraph 1, the Commission shall take appropriate steps to advance the relationship with third countries or international organisations, and in particular their supervisory authorities, where the Commission has decided that they ensure an adequate level of protection within the meaning of Article 41(3).

Amendment

2. For the purposes of paragraph 1, the Commission shall, **in cooperation with the Consultative Committee of Convention 108 of the Council of Europe**, take appropriate steps to advance the relationship with third countries or international organisations, and in particular their supervisory authorities, where the Commission has decided that they ensure an adequate level of protection within the meaning of Article 41(3).

Or. fr

Justification

In line with amendment to previous paragraph.

Amendment 2537
Csaba Sógor

Proposal for a regulation
Article 45 a (new)

Text proposed by the Commission

Amendment

Article 45a

The Commission shall, starting four years from the date referred to in Article 91(1) (the date of entry into force of this Regulation), submit a report on the application of Articles 40 and 45 every two years to the European Parliament and the Council. To this end, the Commission may request information from the Member States and the supervisory authorities; such information must be delivered promptly. The reports will be published.

Or. hu

Justification

Consistent with the other reporting obligations.

Amendment 2538

Agustín Díaz de Mera García Consuegra, Teresa Jiménez-Becerril Barrio

Proposal for a regulation
Article 45 a (new)

Text proposed by the Commission

Amendment

Article 45a

Cooperation may take place provided that:

(a) the competent authorities of third countries have competence for the protection of personal data in the context of matters of which they possess knowledge in accordance with existing legislation;

(b) working arrangements based on reciprocity have been agreed between the

competent authorities concerned;
(c) the transfer of personal data to the third country is in accordance with Chapter V of this Directive.

Or. es

Amendment 2539
Marie-Christine Vergiat

Proposal for a regulation
Article 45 a (new)

Text proposed by the Commission

Amendment

Article 45a

Rapport de la 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, the supervisory authorities and the Consultative Committee of Convention 108 of the Council of Europe, which shall be supplied without undue delay. The report shall be made public.

Or. fr

Justification

This amendment contains an addition to the rapporteur's amendment 263

Amendment 2540
Agustín Díaz de Mera García Consuegra, Teresa Jiménez-Becerril Barrio

Proposal for a regulation
Article 45 b (new)

Text proposed by the Commission

Amendment

Article 45b

The working arrangements referred to in paragraph 3(b) shall ensure that:

(a) justification as to the purpose of the request for cooperation is provided by the competent authorities;

(b) the persons employed or formerly employed by the competent authorities of the third country that receive the information are subject to obligations of professional secrecy;

(c) the competent authorities of the third country may use the results of cooperation only for the exercise of functions relating to the protection of personal data;

(d) in the event of the competent authority of the third country intending to transfer the information received by means of cooperation to a third party, prior, specific and written consent must be obtained from the authority which provided the information, unless such transfer is required by national law or ordered by a court of law and constitutes a necessary measure to safeguard relevant public interests relating to:

(i) the prevention, investigation or prosecution of criminal offences;

(ii) the monitoring, inspection or regulation connected, even occasionally, with the exercise of official authority within the scope of the agreement.

In such cases, prior notice shall be given to the authority that provided the information;

(e) the appropriate technical and organisational security measures are adopted to protect personal data against

accidental or unlawful destruction, accidental loss, alteration, unauthorised disclosure or access, and against all other unlawful forms of processing personal data;

(f) the request for cooperation from the competent authority of the third country should be refused:

(i) where it would adversely affect the sovereignty, security or public order of the Community or of the requested Member State, or

(ii) where judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the requested Member State.

Or. es

Amendment 2541

Agustín Díaz de Mera García Consuegra, Teresa Jiménez-Becerril Barrio

Proposal for a regulation

Article 45 c (new)

Text proposed by the Commission

Amendment

Article 45c

Member States shall communicate to the Commission the working arrangements referred to in paragraphs 3 and 4.

Or. es

Amendment 2542

Agustín Díaz de Mera García Consuegra, Teresa Jiménez-Becerril Barrio

Proposal for a regulation

Article 45 d (new)

Text proposed by the Commission

Amendment

Article 45d

For the purposes of paragraph 1, the Commission shall take appropriate steps to advance the relationship with third countries or international organisations, and in particular their supervisory authorities, where the Commission has decided that they ensure an adequate level of protection within the meaning of Article 41(3).

Or. es

Amendment 2543

Axel Voss

Proposal for a regulation

Article 46 – paragraph 1

Text proposed by the Commission

Amendment

1. Each Member State shall provide ***that one or more public authorities are*** responsible for monitoring the application of this Regulation and for contributing to its consistent application throughout the Union, in order to protect the fundamental rights and freedoms of natural persons in relation to the processing of their personal data and to facilitate the free flow of personal data within the Union. For these purposes, the supervisory authorities shall co-operate with each other and the Commission.

1. Each Member State shall provide ***a lead public supervisory authority*** responsible for monitoring the application of this Regulation and for contributing to its consistent application throughout the Union, in order to protect the fundamental rights and freedoms of natural persons in relation to the processing of their personal data and to facilitate the free flow of personal data within the Union. For these purposes, the supervisory authorities shall co-operate with each other and the Commission.

Or. en

Justification

Taken from ITRE-opinion.

Amendment 2544
Alexander Alvaro

Proposal for a regulation
Article 46 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Each supervisory authority shall have the power to sanction administrative offences. Supervisory authorities may only issue sanctions for controllers or processors with their main establishment within the same Member State or, in coordination with Articles 56 and 57 if the supervisory authority of the main establishment fails to take action.

Or. en

Amendment 2545
Alexander Alvaro

Proposal for a regulation
Article 47 – paragraph 1

Text proposed by the Commission

Amendment

1. The supervisory authority shall act with complete independence in exercising the duties and powers entrusted to it.

1. The supervisory authority shall act with complete independence in exercising the duties and powers entrusted to it, ***notwithstanding co-operative and consistency arrangements related to Chapter VII.***

Or. en

Amendment 2546
Agustín Díaz de Mera García Consuegra, Teresa Jiménez-Becerril Barrio

Proposal for a regulation
Article 47 – paragraph 1

Text proposed by the Commission

1. The supervisory **authority** shall act with complete independence in exercising the duties and powers entrusted to **it**.

Amendment

1. The supervisory **authorities** shall act with complete independence in exercising the duties and powers entrusted to **them**.

Or. es

Amendment 2547

Axel Voss

Proposal for a regulation

Article 47 – paragraph 1

Text proposed by the Commission

1. The supervisory authority shall act with complete independence in exercising the duties and powers entrusted to it.

Amendment

1. The supervisory authority shall act with complete independence in exercising the duties and powers entrusted to it, ***notwithstanding co-operative and consistency arrangements related to Chapter VII of this Regulation and within the legal and administrative limits of the own Member State.***

Or. en

Justification

Partly taken from ITRE-opinion.

Amendment 2548

Agustín Díaz de Mera García Consuegra, Teresa Jiménez-Becerril Barrio

Proposal for a regulation

Article 47 – paragraph 2

Text proposed by the Commission

2. The members of the supervisory **authority** shall, in the performance of their duties, neither seek nor take instructions

Amendment

2. The members of the supervisory **authorities** shall, in the performance of their duties, neither seek nor take

from anybody.

instructions from anybody.

Or. es

Amendment 2549

Timothy Kirkhope

on behalf of the ECR Group

Proposal for a regulation

Article 47 – paragraph 2

Text proposed by the Commission

2. The members of the supervisory authority shall, in the performance of their duties, neither seek nor take instructions from anybody.

Amendment

2. The members of the supervisory authority shall, in the performance of their duties, neither seek nor take instructions from anybody, *and maintain complete independence and impartiality.*

Or. en

Amendment 2550

Agustín Díaz de Mera García Consuegra, Teresa Jiménez-Becerril Barrio

Proposal for a regulation

Article 47 – paragraph 3

Text proposed by the Commission

3. Members of the supervisory *authority* shall refrain from any action incompatible with their duties and shall not, during their term of office, engage in any incompatible occupation, whether gainful or not.

Amendment

3. Members of the supervisory *authorities* shall refrain from any action incompatible with their duties and shall not, during their term of office, engage in any incompatible occupation, whether gainful or not.

Or. es

Amendment 2551

Agustín Díaz de Mera García Consuegra, Teresa Jiménez-Becerril Barrio

Proposal for a regulation

Article 47 – paragraph 4

Text proposed by the Commission

4. Members of the supervisory **authority** shall behave, after their term of office, with integrity and discretion as regards the acceptance of appointments and benefits.

Amendment

4. Members of the supervisory **authorities** shall behave, after their term of office, with integrity and discretion as regards the acceptance of appointments and benefits.

Or. es

Amendment 2552

Agustín Díaz de Mera García Consuegra, Teresa Jiménez-Becerril Barrio

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-operation and participation in the European Data Protection Board.

Amendment

5. Each Member State shall, ***in line with its internal distribution of competencies,*** ensure that the supervisory **authorities are** 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.

Or. es

Amendment 2553

Josef Weidenholzer

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

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.

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.
Member States shall ensure that the supervisory authorities are provided with at least one member for each 200 000 citizens or 100 members, whichever is less. At least one in five members must have a legal degree.

Or. en

Justification

Currently the level of data protection is very different in each Member State not only because of different national laws, but also because of very different resources, capabilities and personal of national DPCs. The current proposal is using the very vague guidelines of the old directive which have proven to be ineffective. The amendment guarantees minimal standards which should lead to faster and high quality procedures.

Amendment 2554

Agustín Díaz de Mera García Consuegra, Teresa Jiménez-Becerril Barrio

Proposal for a regulation

Article 47 – paragraph 6

Text proposed by the Commission

6. Each Member State shall ensure that the supervisory ***authority has its*** own staff which shall be appointed by and be subject to the direction of the head of the supervisory authority.

Amendment

6. Each Member State shall, ***in line with its internal distribution of competencies,*** ensure that the supervisory ***authorities have their*** own staff which shall be appointed by and be subject to the direction of the head of the supervisory authority.

Or. es

Amendment 2555

Agustín Díaz de Mera García Consuegra, Teresa Jiménez-Becerril Barrio

Proposal for a regulation
Article 47 – paragraph 7

Text proposed by the Commission

7. Member States shall ensure that the supervisory **authority is** subject to financial control which shall not affect **its** independence. Member States shall ensure that the supervisory **authority has** separate annual budgets. The budgets shall be made public.

Amendment

7. Member States shall, ***in line with their internal distribution of competencies,*** ensure that the supervisory **authorities are** subject to financial control which shall not affect **their** independence. Member States shall, ***in line with their internal distribution of competencies,*** ensure that the supervisory **authorities have** separate annual budgets. The budgets shall be made public.

Or. es

Amendment 2556
Csaba Sógor

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 – ***following consultation with the parliament*** – the government of the Member State concerned, ***always ensuring that political influence is kept to a minimum; the requisite qualifications, absence of conflicts of interest and positions of the members must also be regulated.***

Or. hu

Justification

Consistent with Recital 95.

Amendment 2557
Cornelia Ernst

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 by the parliament of the Member State concerned.

Or. en

Amendment 2558
Jan Philipp Albrecht

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, or by the highest judicial authority*** of the Member State concerned.

Or. en

Justification

At least in one Member State, members of the data protection commission are appointed by the Supreme Court.

Amendment 2559
Agustín Díaz de Mera García Consuegra, Teresa Jiménez-Becerril Barrio

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 *or authorities* must be appointed either by the *parliaments* or the government *bodies* of the Member State concerned.

Or. es

Amendment 2560

Louis Michel

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 by the parliament of the Member State concerned.

Or. en

Amendment 2561

Agustín Díaz de Mera García Consuegra, Teresa Jiménez-Becerril Barrio

Proposal for a regulation
Article 48 – paragraph 3

Text proposed by the Commission

3. The duties of a member shall end in the event of the expiry of the term of office, resignation or compulsory retirement in accordance with paragraph 5.

Amendment

3. The duties of a member shall end in the event of the expiry of the term of office *or in the event of incapacity to hold office, incompatibility, resignation, dismissal, final conviction of an intentional crime* or compulsory retirement.

Or. es

Amendment 2562

Agustín Díaz de Mera García Consuegra, Teresa Jiménez-Becerril Barrio

Proposal for a regulation

Article 48 – paragraph 4

Text proposed by the Commission

4. A member may be dismissed or *deprived of the right to a pension or other benefits in its stead by the competent national court*, if the member no longer fulfils the conditions required for the performance of the duties or is guilty of serious *misconduct*.

Amendment

4. A member may be dismissed or *his appointment terminated by the body which appointed him*, if the member no longer fulfils the conditions required for the performance of the duties or is guilty of serious *failure to discharge the obligations relating to his office*.

Or. es

Amendment 2563

Louis Michel

Proposal for a regulation

Article 48 – paragraph 4

Text proposed by the Commission

4. A member may be dismissed *or deprived of the right to a pension or other benefits in its stead by the competent national court, if the member* no longer fulfils the conditions required for the performance of *the* duties *or is guilty of serious misconduct*.

Amendment

4. A member may be dismissed *if he* no longer fulfils the conditions required for the performance of *his* duties *as member of the supervisory authority*.

Or. en

Amendment 2564

Agustín Díaz de Mera García Consuegra, Teresa Jiménez-Becerril Barrio

Proposal for a regulation

Article 49 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) the establishment and status of the supervisory authority;

(a) the establishment and status of the supervisory authority *or authorities*;

Or. es

Amendment 2565

Agustín Díaz de Mera García Consuegra, Teresa Jiménez-Becerril Barrio

Proposal for a regulation

Article 49 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) the qualifications, experience and skills required to perform the duties of the members of the supervisory *authority*;

(b) the qualifications, experience and skills required to perform the duties of the members of the supervisory *authorities*;

Or. es

Amendment 2566

Agustín Díaz de Mera García Consuegra, Teresa Jiménez-Becerril Barrio

Proposal for a regulation

Article 49 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) the rules and procedures for the appointment of the members of the supervisory *authority*, as well the rules on actions or occupations incompatible with the duties of the office;

(c) the rules and procedures for the appointment of the members of the supervisory *authorities*, as well as the rules on actions or occupations incompatible with the duties of the office;

Or. es

Amendment 2567

Agustín Díaz de Mera García Consuegra, Teresa Jiménez-Becerril Barrio

Proposal for a regulation
Article 49 – paragraph 1 – point d

Text proposed by the Commission

(d) the duration of the term of the members of the supervisory **authority** which shall be no less than four years, except for the first appointment after entry into force of this Regulation, part of which may take place for a shorter period where this is necessary to protect the independence of the supervisory **authority** by means of a staggered appointment procedure;

Amendment

(d) the duration of the term of the members of the supervisory **authorities** which shall be no less than four years, except for the first appointment after entry into force of this Regulation, part of which may take place for a shorter period where this is necessary to protect the independence of the supervisory **authorities** by means of a staggered appointment procedure;

Or. es

Amendment 2568
Agustín Díaz de Mera García Consuegra, Teresa Jiménez-Becerril Barrio

Proposal for a regulation
Article 49 – paragraph 1 – point e

Text proposed by the Commission

(e) whether the members of the supervisory **authority** shall be eligible for reappointment;

Amendment

(e) whether the members of the supervisory **authorities** shall be eligible for reappointment;

Or. es

Amendment 2569
Agustín Díaz de Mera García Consuegra, Teresa Jiménez-Becerril Barrio

Proposal for a regulation
Article 49 – paragraph 1 – point f

Text proposed by the Commission

(f) the regulations and common conditions governing the duties of the members and staff of the supervisory **authority**;

Amendment

(f) the regulations and common conditions governing the duties of the members and staff of the supervisory **authorities**;

Or. es

Amendment 2570
Alexander Alvaro

Proposal for a regulation
Article 49 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Insofar as competent professional supervisory bodies for persons subject to legal professional privilege or professional secrecy exist at the time of the entry into force of the present Regulation, these bodies may establish the supervisory authority in respect of data processing by those over whom they exercise professional supervision.

Or. en

Justification

Different rules should apply for persons subject to legal professional privilege, professional secrecy regulated by the State, a statutory obligation of secrecy in the exercise of his profession or any like obligation not to reveal personal data.

Amendment 2571
Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation
Article 49 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Insofar as competent professional supervisory bodies for persons subject to legal professional privilege or professional secrecy exist at the time of the entry into force of the present Regulation, these bodies may establish the supervisory authority in respect of data processing by those over whom they exercise professional supervision.

Amendment 2572
Josef Weidenholzer

Proposal for a regulation
Article 49 a (new)

Text proposed by the Commission

Amendment

Article 49a

The rules and procedures under which supervisory authorities are exercising their duties and powers in relation to data subjects, controllers and processors shall be in line with Article 6 ECHR.

Or. en

Justification

Currently many Member States do not have written or sufficiently documented procedures. Some member states have procedures in place which potentially violate Article 6 ECHR (“fair trial”). This produces legal uncertainty and allows for arbitrary decisions which potentially harm data subjects, controllers and processors. Especially independent bodies, which are not politically accountable, are generally subject to strict procedural rules.

Amendment 2573
Axel Voss, Monika Hohlmeier, Seán Kelly, Renate Sommer, Véronique Mathieu Houillon, Lara Comi

Proposal for a regulation
Article 49 a (new)

Text proposed by the Commission

Amendment

Article 49a

Professional supervision of persons subject to an obligation of professional secrecy

Insofar as, when this regulation enters into force, entities exist which are

responsible for the professional supervision of persons subject to an obligation of professional secrecy, these may establish the supervisory authority.

Or. de

Amendment 2574

Agustín Díaz de Mera García Consuegra, Teresa Jiménez-Becerril Barrio

Proposal for a regulation

Article 50

Text proposed by the Commission

The members and the staff of the supervisory **authority** shall be subject, both during and after their term of office, to a duty of professional secrecy with regard to any confidential information which has come to their knowledge in the course of the performance of their official duties.

Amendment

The members and the staff of the supervisory **authorities** shall be subject, both during and after their term of office, to a duty of professional secrecy with regard to any confidential information which has come to their knowledge in the course of the performance of their official duties.

Or. es

Amendment 2575

Frank Engel

Proposal for a regulation

Article 50

Text proposed by the Commission

The members and the staff of the supervisory authority shall be **subject**, both during and after their term of office, **to a duty of** professional secrecy with regard to any confidential information **which** has come to their knowledge in the course of **the** performance of their official duties.

Amendment

The members and the staff of the supervisory authority shall be **bound**, both during and after their term of office, **by the obligation for** professional secrecy with regard to any confidential information **in conformity with national legislation and practice which** has come to their knowledge in the course of **their** performance of their official duties.

Amendment 2576
Timothy Kirkhope
on behalf of the ECR Group

Proposal for a regulation
Article 50

Text proposed by the Commission

The members and the staff of the supervisory authority shall be subject, both during and after their term of office, to a duty of professional secrecy with regard to any confidential information which has come to their knowledge in the course of the performance of their official duties.

Amendment

The members and the staff of the supervisory authority shall be subject, both during and after their term of office, to a duty of professional secrecy with regard to any confidential information which has come to their knowledge in the course of the performance of their official duties, ***whilst conducting their duties with independence and transparency as set out in the Regulation.***

Amendment 2577
Marie-Christine Vergiat

Proposal for a regulation
Article 50 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Any persons who notify the supervisory authority of any facts relating to personal data processing shall be released from their professional secrecy obligations; they shall enjoy immunity from all legal proceedings.

Justification

Professional secrecy requirements must not prevent individuals, particularly those involved in personal data processing, from revealing to the supervisory authorities any wrongdoing in respect of data protection and enjoying immunity from any legal proceedings.

Amendment 2578

Axel Voss

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

1. Each supervisory authority shall exercise, on the territory of its own Member State, the powers conferred on it in accordance with this Regulation. ***Data processing by a public authority are supervised only by the supervisory authority of that Member State.***

Or. en

Amendment 2579

Cornelia Ernst

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

Amendment

deleted

the provisions of Chapter VII of this Regulation.

Or. en

Amendment 2580
Frank Engel

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

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 *has designated a main establishment in accordance with Article 22a*, the supervisory authority of the main establishment of the controller or processor shall be *solely* competent for the supervision of *all* the processing activities of the controller or the processor in all Member States, without prejudice to the provisions of Chapter VII of this Regulation.

Or. en

Amendment 2581
Adina-Ioana Vălean, Jens Rohde

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*

Amendment

2. Where the *Regulation applies by virtue of Article 3(1), the competent supervisory authority will be the supervisory authority of the Member State or territory where the main establishment of the controller or processor subject to the Regulation is*

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.

established. Disputes should be decided upon in accordance with the consistency mechanism set out in Article 58, and this without prejudice to the *other* provisions of Chapter VII of this Regulation.

Or. en

Amendment 2582

Agustín Díaz de Mera García Consuegra, Teresa Jiménez-Becerril Barrio

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

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, *except with regard to decisions in response to the complaints referred to in Article 73, in which case it shall coordinate the actions of the supervisory authorities concerned*, without prejudice to the provisions of Chapter VII of this Regulation.

Or. es

Amendment 2583

Axel Voss

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

2. Where the **Regulation applies by virtue of Article 3(1), the competent supervisory authority will be the supervisory authority of the Member State or territory where the main establishment of the controller or processor subject to the Regulation is established. Disputes should be decided upon in accordance with the consistency mechanism set out in article 58, and this without prejudice to the other provisions of Chapter VII of this Regulation. This provision also apply for legal entities of a group of undertakings, where these undertakings are located in more than one Member State.**

Or. en

Justification

Partly taken from ITRE-opinion.

Amendment 2584

Carmen Romero López

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

Amendment

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, **except with regard to decisions in response to the complaints**

Regulation.

referred to in Article 73, in which case it shall coordinate the actions of the supervisory authorities concerned, without prejudice to the provisions of Chapter VII of this Regulation.

Or. es

Justification

This proposes a decision-making mechanism for use by the supervising authorities in all matters deriving from complaints made by EU citizens. Action can, as appropriate, be coordinated by a main authority, with any discrepancies being resolved by the European Data Protection Council. This will allow a practical application of the system in cases arising from a complaint from the subject.

Amendment 2585

Anna Hedh, Marita Ulvskog

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

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. ***The provisions from labour legislation and collective agreements remain unaffected.***

Or. en

Amendment 2586
Timothy Kirkhope
on behalf of the ECR Group

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

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 *shall decide in consultation with the European Data Protection Board which authority will supervise* the processing activities of the *data controllers and processors* in all Member States, without prejudice to the provisions of Chapter VII of this Regulation.

Or. en

Amendment 2587
Monika Hohlmeier

Proposal for a regulation
Article 51 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

This article shall apply only if and insofar as the processing of personal data takes place in a consistent manner in the Member States.

Or. de

Justification

The concentration of competence provided for by Article 51 requires clarification to indicate that it applies only where data is processed in a consistent manner.

Amendment 2588
Frank Engel

Proposal for a regulation
Article 51 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. In situations referred to in Article 3(2) and where the controller has designated a representative in the Union pursuant to Article 25, the supervisory authority of the establishment of the representative shall be solely competent for the supervision, in all Member States, of all processing activities that are carried out by or on behalf of that controller.

Or. en

Amendment 2589
Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation
Article 51 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Where the Regulation applies by virtue of Article 3(2), the competent supervisory authority will be the supervisory authority of the Member State or territory where the controller has designated a representative in the Union pursuant to Article 25.

Or. en

Amendment 2590
Axel Voss

Proposal for a regulation
Article 51 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Where the Regulation applies by virtue of Article 3(2), the competent supervisory authority will be the supervisory authority of the Member State or territory where the controller has designated a representative in the Union pursuant to Article 25.

Or. en

Justification

Taken from ITRE-opinion.

Amendment 2591
Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation
Article 51 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Where the Regulation applies to several controllers or/and processors within the same group of undertakings by virtue of Article 3(1) and (2), only one supervisory authority will be competent and it will be determined in accordance with Article 51(2).

Or. en

Amendment 2592
Axel Voss

Proposal for a regulation
Article 51 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Where the Regulation applies to several controllers and/ or processors with the same group of undertakings by virtue of Article 3(1) and (2), only one supervisory authority will be competent and it will be determined in accordance with Article 51(2).

Or. en

Justification

Taken from ITRE-opinion.

Amendment 2593

Kinga Gál

Proposal for a regulation

Article 51 – paragraph 3

Text proposed by the Commission

Amendment

3. The supervisory authority shall not be competent to supervise processing operations of courts acting in their judicial capacity.

deleted

Or. hu

Amendment 2594

Monika Hohlmeier

Proposal for a regulation

Article 51 – paragraph 3

Text proposed by the Commission

Amendment

3. The supervisory authority shall not be competent to supervise **processing operations of** courts **acting in their judicial capacity.**

3. The supervisory authority shall not be competent to supervise **activities assigned to** courts **for independent performance. The same shall apply insofar as judicially independent processing has been ordered,**

approved or authorised.

Or. de

Justification

The exception provided for in Article 51(3) of the proposal for a regulation should take account of the independence of the courts. For this reason, it must apply wherever courts work in a substantively independent manner. That is the case not only in the core field of judicial activity but also in the fields in which the courts have been assigned duties with the emphasis on their independent performance.

Amendment 2595
Dimitrios Droutsas

Proposal for a regulation
Article 51 – paragraph 3

Text proposed by the Commission

3. The supervisory authority ***shall not*** be competent to supervise processing operations of courts acting in their judicial capacity.

Amendment

3. The supervisory authority ***may*** be competent to supervise processing operations of courts acting in their judicial capacity.

Or. en

Justification

According to Convention 108 and its Additional Protocol with regard to requirement of independent supervision, supervisory authorities may be competent to supervise the processing operations of courts. Also, not allowing the supervisory authorities to do so, is against the tradition of several Member States where court activities, with some adjustments, are subject to independent supervision.

Amendment 2596
Axel Voss, Monika Hohlmeier, Seán Kelly, Renate Sommer, Véronique Mathieu Houillon, Lara Comi

Proposal for a regulation
Article 51 – paragraph 3

Text proposed by the Commission

3. The supervisory authority shall not be competent to supervise processing operations of courts acting in their judicial capacity.

Amendment

3. The supervisory authority shall not be competent to supervise processing operations of courts acting in their judicial capacity ***and not competent to supervise processing operations of controllers bound by obligations of professional secrecy.***

Or. en

Amendment 2597

Alexandra Thein

Proposal for a regulation

Article 51 – paragraph 3

Text proposed by the Commission

3. The supervisory authority shall not be competent to supervise processing operations of courts acting in their judicial capacity.

Amendment

3. The supervisory authority shall not be competent to supervise processing operations of courts acting in their judicial capacity ***or of notaries acting in their official capacity.***

Or. en

Justification

As set out above in Recital 99, the independence of the judge extends to the area of preventive justice. Most Member States have transferred part of the competences of preventive justice from judges to notaries as independent holders of official authority. Consequently, the processing of personal data by notaries in their capacity as holders of official authority must also be exempt from the competence of the supervisory authority in order to safeguard the independence of the notary.

Amendment 2598

Sarah Ludford

Proposal for a regulation

Article 51 – paragraph 3

Text proposed by the Commission

3. The supervisory authority shall not be competent to supervise processing operations *of courts acting in their* judicial capacity.

Amendment

3. The supervisory authority shall not be competent to supervise processing operations:

(a) by a judge; or

(b) by a person acting on the instructions or on behalf of a judge; or

(c) for the purpose of exercising judicial functions including functions of appointment, discipline, administration or leadership of judges.

Or. en

Amendment 2599
Frank Engel

Proposal for a regulation
Article 51 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Subject to paragraph 5, each supervisory authority shall receive and transmit to the competent supervisory authority as defined in paragraph 2 any request sent to it by a data subject resident of that Member State and whose data are processed or likely to be processed by a controller or a processor established in another Member State. The competent supervisory authority shall inform and cooperate with the supervisory authority of the data subject in accordance with Articles 55.

Or. en

Amendment 2600
Timothy Kirkhope

on behalf of the ECR Group

Proposal for a regulation
Article 52 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) monitor and ensure the application of this Regulation;

deleted

Or. en

Amendment 2601
Axel Voss

Proposal for a regulation
Article 52 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(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;

(b) hear complaints lodged by any data subject, 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;

Or. en

Justification

Data protection is a personal fundamental right and cannot be transferred.

Amendment 2602
Judith Sargentini

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 concerned, if the data subject has addressed a complaint to this supervisory authority, of the outcome of the investigations within a reasonable period;

Amendment

(d) conduct investigations either on its own initiative or on the basis of a complaint or ***of specific and documented information received alleging unlawful processing or*** on request of another supervisory authority, and inform 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

Explicitly mandates supervisory bodies to conduct investigations on the basis of reports from whistle-blowers (rather than complaints from data subjects).

Amendment 2603

Agustín Díaz de Mera García Consuegra, Teresa Jiménez-Becerril Barrio

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 concerned, if the data subject has addressed a complaint to this supervisory authority, of the outcome of the investigations within a reasonable period;

Amendment

(d) conduct investigations either on its own initiative, on the basis of a complaint, on request of another supervisory authority ***or following a police complaint***, and inform 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. es

Amendment 2604

Carmen Romero López

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 concerned, if the data subject has addressed a complaint to this supervisory authority, of the outcome of the investigations within a reasonable period;

Amendment

(d) conduct investigations either on its own initiative or on the basis of a complaint, ***on receipt of information about illegal processing of personal data***, or on request of another supervisory authority, and inform 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. es

Justification

The duties of the supervisory authority specifically include investigation on the basis of complaints received from informants as well as from the data subjects themselves.

Amendment 2605
Timothy Kirkhope
on behalf of the ECR Group

Proposal for a regulation
Article 52 – paragraph 1 – point f

Text proposed by the Commission

(f) be consulted by Member State institutions and bodies on legislative and administrative measures ***relating to*** the protection of individuals' rights and freedoms with regard to the processing of personal data;

Amendment

(f) be consulted by Member State institutions and bodies on legislative and administrative measures ***regarding*** the protection of individuals' rights and freedoms with regard to the processing of personal data;

Or. en

Amendment 2606
Louis Michel

Proposal for a regulation
Article 52 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) decide in which cases a Privacy Impact Assessment referred to in Article 33 needs to be carried out, in particular when it is consulted by Member State institutions and bodies on legislative and administrative measures relating to the protection of individuals' rights and freedoms with regard to the processing of personal data;

Or. en

Amendment 2607
Cornelia Ernst, Marie-Christine Vergiat

Proposal for a regulation
Article 52 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) keep a public register of all prior notifications received by data controllers or processors on intended processing activities in accordance with Article 6(1c).

Or. en

Amendment 2608
Sarah Ludford

Proposal for a regulation
Article 52 – paragraph 1 – point j a (new)

Text proposed by the Commission

Amendment

(ja) provide micro, small and medium

sized enterprise processors and controllers with a comprehensive list of their responsibilities and obligations in accordance with this Regulation.

Or. en

Justification

SMEs do not have the resources to familiarise themselves with all the relevant provisions of the new legislation. In order to prevent unintentional non-compliance, Data Protection Authority (DPA) should provide compliance checklists.

Amendment 2609

Agustín Díaz de Mera García Consuegra, Teresa Jiménez-Becerril Barrio

Proposal for a regulation

Article 52 – paragraph 1 – point j a (new)

Text proposed by the Commission

Amendment

(ja) coordinate certification policies in the territory for which it is responsible, in accordance with the provisions of Article 39.

Or. es

Amendment 2610

Alexander Alvaro

Proposal for a regulation

Article 52 – paragraph 2

Text proposed by the Commission

Amendment

2. Each supervisory authority shall promote the awareness of the public on risks, rules, safeguards and rights in relation to the processing of personal data. Activities addressed specifically to children shall receive specific attention.

2. Each supervisory authority shall promote the awareness of the public on risks, rules, safeguards and rights in relation to the processing of personal data **and on appropriate measures for personal protection**. Activities addressed specifically to children shall receive specific attention.

Justification

As data security is an essential part of data protection it is reasonable to add this part to the Article.

Amendment 2611
Jan Philipp Albrecht

Proposal for a regulation
Article 52 – paragraph 2

Text proposed by the Commission

2. Each supervisory authority shall promote the awareness of the public on risks, rules, safeguards and rights in relation to the processing of personal data. Activities addressed specifically to children shall receive specific attention.

Amendment

2. Each supervisory authority shall promote the awareness of the public on risks, rules, safeguards and rights in relation to the processing of personal data ***and about appropriate means of protecting oneself***. Activities addressed specifically to children shall receive specific attention.

Justification

As suggested by a resolution of the conference of German Data Protection Authorities in 2012.

Amendment 2612
Axel Voss

Proposal for a regulation
Article 52 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Each supervisory authority shall together with the European Data Protection Board promote the awareness for controllers and processors on risks,

rules, safeguards and rights in relation to the processing of personal data. This includes a register of sanctions and breaches. The register should enrol both all warnings and sanctions as detailed as possible and the resolving of breaches.

Or. en

Justification

This assures awareness for controllers and processors and assures uniform application in the EU.

Amendment 2613
Jan Mulder

Proposal for a regulation
Article 52 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The supervisory authority shall not disclose information provided to it, where such disclosure could adversely affect the rights and freedoms of others, including the controller or processor. This shall apply particularly to:

(a) information related to the economic interests and trade secrets of the controller or processor;

(b) the security measures taken in accordance with Article 30; and

(c) information which Union or Member State law has designated as confidential.

Or. en

Justification

This amendment seeks to ensure that the information disclosed to the supervisory authority is kept confidential.

Amendment 2614
Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation
Article 52 – paragraph 3

Text proposed by the Commission

3. The supervisory authority shall, upon request, advise any data subject in exercising the rights under this Regulation and, if appropriate, co-operate with the supervisory authorities in other Member States to this end.

Amendment

3. The **competent** supervisory authority shall, upon request, advise any data subject in exercising the rights under this Regulation and, if appropriate, co-operate with the supervisory authorities in other Member States to this end.

Or. en

Amendment 2615
Axel Voss

Proposal for a regulation
Article 52 – paragraph 3

Text proposed by the Commission

3. The supervisory authority shall, upon request, advise any data subject in exercising the rights under this Regulation and, if appropriate, co-operate with the supervisory authorities in other Member States to this end.

Amendment

3. The **competent** supervisory authority shall, upon request, advise any data subject in exercising the rights under this Regulation and, if appropriate, co-operate with the supervisory authorities in other Member States to this end.

Or. en

Justification

Taken from ITRE-opinion.

Amendment 2616
Cornelia Ernst, Marie-Christine Vergiat

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 requests are manifestly excessive, in particular due to their repetitive character, the supervisory authority may charge a fee *to* take the action requested by the data subject. ***The level of such a fee shall not exceed the costs of taking the action requested.*** The supervisory authority shall bear the burden of proving the manifestly excessive character of the request.

Or. en

Amendment 2617
Timothy Kirkhope
on behalf of the ECR Group

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 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, ***if requested, prove*** the manifestly excessive character of the request.

Or. en