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*****I**
REPORT

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

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Jan Philipp Albrecht

Symbols for procedures

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

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

Amendments to a draft act

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

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

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0011),
- having regard to Article 294(2) and Articles 16(2) and 114(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0025/2012),
- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Belgian Chamber of Representatives, the German Bundesrat, the French Senate, the Italian Chamber of Deputies and the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
- having regard to the opinion of the European Economic and Social Committee of 23 May 2012¹,
- after consulting the Committee of the Regions,
- having regard to the opinion of the European Data Protection Supervisor of 7 March 2012,
- having regard to the opinion of the European Union Agency for Fundamental Rights of 1 October 2012,
- having regard to Rule 55 of its Rules of Procedure,
- having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Employment and Social Affairs, the Committee on Industry, Research and Energy, the Committee on the Internal Market and Consumer Protection and the Committee on Legal Affairs (A7-0402/2013),

1. Adopts its position at first reading hereinafter set out;

¹ OJ C 229, 31.7.2012, p. 90.

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation
Recital 14

Text proposed by the Commission

(14) This Regulation does not address issues of protection of fundamental rights and freedoms or the free flow of data related to activities which fall outside the scope of Union law, ***nor does it cover the processing of personal data by the Union institutions, bodies, offices and agencies, which are subject to Regulation (EC) No 45/2001⁴⁴, or the processing of personal data by the Member States when carrying out activities in relation to the common foreign and security policy of the Union.***

⁴⁴ OJ L 8, 12.1.2001, p. 1.

Amendment

(14) This Regulation does not address issues of protection of fundamental rights and freedoms or the free flow of data related to activities which fall outside the scope of Union law. Regulation (EC) No 45/2001 ***of the European Parliament and of the Council¹ should be brought in line with this Regulation and applied in accordance with this Regulation.***

¹ ***Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data*** (OJ L 8, 12.1.2001, p. 1).

Amendment 2

Proposal for a regulation
Recital 15

Text proposed by the Commission

(15) This Regulation should not apply to processing of personal data by a natural person, which are exclusively personal or

Amendment

(15) This Regulation should not apply to processing of personal data by a natural person, which are exclusively personal,

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

family-related, or domestic, such as correspondence and the holding of addresses *or a private sale* and without any connection with a professional or commercial activity. *However, this Regulation should apply to controllers and processors which provide the means for processing personal data for such personal or domestic activities.*

Amendment 3

Proposal for a regulation Recital 18

Text proposed by the Commission

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

Amendment

(18) This Regulation allows the principle of public access to official documents to be taken into account when applying the provisions set out in this Regulation. *Personal data in documents held by a public authority or public body may be disclosed by that authority or body in accordance with Union or Member State law regarding public access to official documents, which reconciles the right to data protection with the right of public access to official documents and constitutes a fair balance of the various interests involved.*

Amendment 4

Proposal for a regulation Recital 20

Text proposed by the Commission

(20) In order to ensure that individuals are not deprived of the protection to which they are entitled under this Regulation, the processing of personal data of data subjects residing in the Union by a controller not established in the Union should be subject to this Regulation where the processing

Amendment

(20) In order to ensure that individuals are not deprived of the protection to which they are entitled under this Regulation, the processing of personal data of data subjects residing in the Union by a controller not established in the Union should be subject to this Regulation where the processing

activities are related to the offering of goods or services to such data subjects, or to the monitoring *of the behaviour* of such data subjects.

activities are related to the offering of goods or services, *irrespective of whether connected to a payment or not*, to such data subjects, or to the monitoring of such data subjects. *In order to determine whether such a controller is offering goods or services to such data subjects in the Union, it should be ascertained whether it is apparent that the controller is envisaging the offering of services to data subjects residing in one or more Member States in the Union.*

Amendment 5

Proposal for a regulation

Recital 21

Text proposed by the Commission

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

Amendment

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

Amendment 6

Proposal for a regulation

Recital 23

Text proposed by the Commission

(23) The principles of protection should apply to any information concerning an

Amendment

(23) The principles of *data* protection should apply to any information

identified or identifiable person. To determine whether a person is identifiable, account should be taken of all the means **likely reasonably** to be used either by the controller or by any other person to identify the individual. The principles of data protection should not apply to data **rendered anonymous in such a way that the data subject is no longer identifiable.**

concerning an identified or identifiable **natural** person. To determine whether a person is identifiable, account should be taken of all the means **reasonably likely** to be used either by the controller or by any other person to identify **or single out** the individual **directly or indirectly. To ascertain whether means are reasonably likely to be used to identify the individual, account should be taken of all objective factors, such as the costs of and the amount of time required for identification, taking into consideration both available technology at the time of the processing and technological development.** The principles of data protection should **therefore** not apply to **anonymous data, which is information that does not relate to an identified or identifiable natural person. This Regulation does therefore not concern the processing of such anonymous data, including for statistical and research purposes.**

Amendment 7

Proposal for a regulation Recital 24

Text proposed by the Commission

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

Amendment

(24) **This Regulation should be applicable to processing involving identifiers provided by devices, applications, tools and protocols, such as Internet Protocol addresses, cookie identifiers *and Radio Frequency Identification tags, unless those identifiers do not relate to an identified or identifiable natural person.***

circumstances.

Amendment 8

Proposal for a regulation

Recital 25

Text proposed by the Commission

(25) Consent should be given explicitly by any appropriate method enabling a freely given specific and informed indication of the data subject's wishes, either by a statement or by a clear affirmative action by the data subject, ensuring that individuals are aware that they give their consent to the processing of personal data, **including by** ticking a box when visiting an Internet website or **by** any other statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of their personal data. Silence or inactivity should therefore not constitute consent. Consent should cover all processing activities carried out for the same purpose or purposes. If the data subject's consent is to be given following an electronic request, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided.

Amendment

(25) Consent should be given explicitly by any appropriate method enabling a freely given specific and informed indication of the data subject's wishes, either by a statement or by a clear affirmative action **that is the result of choice** by the data subject, ensuring that individuals are aware that they give their consent to the processing of personal data. **Clear affirmative action could include** ticking a box when visiting an Internet website or any other statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of their personal data. Silence, **mere use of a service** or inactivity should therefore not constitute consent. Consent should cover all processing activities carried out for the same purpose or purposes. If the data subject's consent is to be given following an electronic request, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided.

Amendment 9

Proposal for a regulation

Recital 29

Text proposed by the Commission

(29) Children deserve specific protection of their personal data, as they may be less aware of risks, consequences, safeguards and their rights in relation to the processing of personal data. **To determine when an**

Amendment

(29) Children deserve specific protection of their personal data, as they may be less aware of risks, consequences, safeguards and their rights in relation to the processing of personal data. **Where data processing is**

individual is a child, this Regulation should take over the definition laid down by the UN Convention on the Rights of the Child.

based on the data subject's consent in relation to the offering of goods or services directly to a child, consent should be given or authorised by the child's parent or legal guardian in cases where the child is below the age of 13. Age-appropriate language should be used where the intended audience is children. Other grounds of lawful processing such as grounds of public interest should remain applicable, such as for processing in the context of preventive or counselling services offered directly to a child.

Amendment 10

Proposal for a regulation Recital 31

Text proposed by the Commission

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

Amendment

(31) In order for processing to be lawful, personal data should be processed on the basis of the consent of the person concerned or some other legitimate basis, laid down by law, either in this Regulation or in other Union or Member State law as referred to in this Regulation. ***In case of a child or a person lacking legal capacity, relevant Union or Member State law should determine the conditions under which consent is given or authorised by that person.***

Amendment 11

Proposal for a regulation Recital 32

Text proposed by the Commission

(32) Where processing is based on the data subject's consent, the controller should have the burden of proving that the data subject has given the consent to the processing operation. In particular in the

Amendment

(32) Where processing is based on the data subject's consent, the controller should have the burden of proving that the data subject has given the consent to the processing operation. In particular in the

context of a written declaration on another matter, safeguards should ensure that the data subject is aware that and to what extent consent is given.

context of a written declaration on another matter, safeguards should ensure that the data subject is aware that and to what extent consent is given. ***To comply with the principle of data minimisation, the burden of proof should not be understood as requiring the positive identification of data subjects unless necessary. Similar to civil law terms (e.g. Council Directive 93/13/EEC¹), data protection policies should be as clear and transparent as possible. They should not contain hidden or disadvantageous clauses. Consent can not be given for the processing of personal data of third persons.***

¹ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).

Amendment 12

Proposal for a regulation Recital 33

Text proposed by the Commission

(33) In order to ensure free consent, it should be clarified that consent does not provide a valid legal ground where the individual has no genuine and free choice and is subsequently not able to refuse or withdraw consent without detriment.

Amendment

(33) In order to ensure free consent, it should be clarified that consent does not provide a valid legal ground where the individual has no genuine and free choice and is subsequently not able to refuse or withdraw consent without detriment. ***This is especially the case if the controller is a public authority that can impose an obligation by virtue of its relevant public powers and the consent cannot be deemed as freely given. The use of default options which the data subject is required to modify to object to the processing, such as pre-ticked boxes, does not express free consent. Consent for the processing of additional personal data that are not necessary for the provision of a service should not be required for using the service. When consent is withdrawn, this may allow the termination or non-***

execution of a service which is dependent on the data. Where the conclusion of the intended purpose is unclear, the controller should in regular intervals provide the data subject with information about the processing and request a re-affirmation of their consent.

Amendment 13

Proposal for a regulation

Recital 34

Text proposed by the Commission

Amendment

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

deleted

Amendment 14

Proposal for a regulation

Recital 36

Text proposed by the Commission

Amendment

(36) Where processing is carried out in compliance with a legal obligation to which the controller is subject or where processing is necessary for the performance of a task carried out in the

(36) Where processing is carried out in compliance with a legal obligation to which the controller is subject or where processing is necessary for the performance of a task carried out in the

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

public interest or in the exercise of an official authority, the processing should have a legal basis in Union law, or in a Member State law which meets the requirements of the Charter of Fundamental Rights of the European Union for any limitation of the rights and freedoms. ***This should include also collective agreements that could be recognised under national law as having general validity.*** It is also for Union or national law to determine whether the controller performing a task carried out in the public interest or in the exercise of official authority should be a public administration or another natural or legal person governed by public law, or by private law such as a professional association.

Amendment 15

Proposal for a regulation Recital 38

Text proposed by the Commission

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

Amendment

(38) The legitimate interests of ***the*** controller, ***or in case of disclosure, of the third party to whom the data is disclosed,*** may provide a legal basis for processing, provided ***that they meet the reasonable expectations of the data subject based on his or her relationship with the controller*** ***and*** that the interests or the fundamental rights and freedoms of the data subject are not overriding. This would need careful assessment in particular where the data subject is a child, given that children deserve specific protection. ***Provided that the interests or the fundamental rights and freedoms of the data subject are not overriding, processing limited to pseudonymous data should be presumed to meet the reasonable expectations of the data subject based on his or her relationship with the controller.*** The data

processing by public authorities in the performance of their tasks.

subject should have the right to object the processing free of charge. To ensure transparency, the controller should be obliged to explicitly inform the data subject on the legitimate interests pursued and on the right to object, and also be obliged to document these legitimate interests. ***The interests and fundamental rights of the data subject could in particular override the interest of the data controller where personal data are processed in circumstances where data subjects do not reasonably expect further processing.*** Given that it is for the legislator to provide by law the legal basis for public authorities to process data, this legal ground should not apply for the processing by public authorities in the performance of their tasks.

Amendment 16

Proposal for a regulation

Recital 39

Text proposed by the Commission

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

Amendment

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

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

electronic communications networks and malicious code distribution and stopping ‘denial of service’ attacks and damage to computer and electronic communication systems. ***This principle also applies to processing of personal data to restrict abusive access to and use of publicly available network or information systems, such as the blacklisting of electronic identifiers.***

Amendment 17

Proposal for a regulation Recital 39 a (new)

Text proposed by the Commission

Amendment

(39a) Provided that the interests or the fundamental rights and freedoms of the data subject are not overriding, the prevention or limitation of damages on the side of the data controller should be presumed as carried out for the legitimate interest of the data controller or, in case of disclosure, of the third party to whom the data is disclosed, and as meeting the reasonable expectations of the data subject based on his or her relationship with the controller. The same principle also applies to the enforcement of legal claims against a data subject, such as debt collection or civil damages and remedies.

Amendment 18

Proposal for a regulation Recital 39 b (new)

Text proposed by the Commission

Amendment

(39b) Provided that the interests or the fundamental rights and freedoms of the data subject are not overriding, the processing of personal data for the purpose of direct marketing for own or

similar products and services or for the purpose of postal direct marketing should be presumed as carried out for the legitimate interest of the controller, or in case of disclosure, of the third party to whom the data is disclosed, and as meeting the reasonable expectations of the data subject based on his or her relationship with the controller if highly visible information on the right to object and on the source of the personal data is given. The processing of business contact details should be generally regarded as carried out for the legitimate interest of the controller, or in case of disclosure, of the third party to whom the data is disclosed, and as meeting the reasonable expectations of the data subject based on his or her relationship with the controller. The same should apply to the processing of personal data made manifestly public by the data subject.

Amendment 19

Proposal for a regulation Recital 40

Text proposed by the Commission

Amendment

(40) The processing of personal data for other purposes should be only allowed where the processing is compatible with those purposes for which the data have been initially collected, in particular where the processing is necessary for historical, statistical or scientific research purposes. Where the other purpose is not compatible with the initial one for which the data are collected, the controller should obtain the consent of the data subject for this other purpose or should base the processing on another legitimate ground for lawful processing, in particular where provided by Union law or the law of the Member State to which the controller is subject. In any case, the

deleted

application of the principles set out by this Regulation and in particular the information of the data subject on those other purposes should be ensured.

Amendment 20

Proposal for a regulation

Recital 41

Text proposed by the Commission

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

Amendment

deleted

Amendment 21

Proposal for a regulation

Recital 42

Text proposed by the Commission

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

Amendment

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

of the procedures used for settling claims for benefits and services in the health insurance system, **or** for historical, statistical and scientific research purposes.

of the procedures used for settling claims for benefits and services in the health insurance system, for historical, statistical and scientific research purposes, **or for archive services**.

Amendment 22

Proposal for a regulation Recital 45

Text proposed by the Commission

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

Amendment

(45) If the data processed by a controller do not permit the controller to identify a natural person, the data controller should not be obliged to acquire additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation. In case of a request for access, the controller should be entitled to ask the data subject for further information to enable the data controller to locate the personal data which that person seeks. ***If it is possible for the data subject to provide such data, controllers should not be able to invoke a lack of information to refuse an access request.***

Amendment 23

Proposal for a regulation Recital 47

Text proposed by the Commission

(47) Modalities should be provided for facilitating the data subject's exercise of their rights provided by this Regulation, including mechanisms to **request**, free of charge, in particular access to data, rectification, erasure and to exercise the right to object. The controller should be obliged to respond to requests of the data subject within a **fixed** deadline and give

Amendment

(47) Modalities should be provided for facilitating the data subject's exercise of their rights provided by this Regulation, including mechanisms to **obtain**, free of charge, in particular access to data, rectification, erasure and to exercise the right to object. The controller should be obliged to respond to requests of the data subject within a **reasonable** deadline and

reasons, in case he does not comply with the data subject's request.

give reasons, in case he does not comply with the data subject's request.

Amendment 24

Proposal for a regulation

Recital 48

Text proposed by the Commission

(48) The principles of fair and transparent processing require that the data subject should be informed in particular of the existence of the processing operation and its purposes, how long the data will be stored, on the existence of the right of access, rectification or erasure and on the right to lodge a complaint. Where the data are collected from the data subject, the data subject should also be informed whether they are obliged to provide the data and of the consequences, in cases they do not provide such data.

Amendment

(48) The principles of fair and transparent processing require that the data subject should be informed in particular of the existence of the processing operation and its purposes, how long the data will be ***likely stored for each purpose, if the data are to be transferred to third parties or third countries***, on the existence of ***measures to object and*** of the right of access, rectification or erasure and on the right to lodge a complaint. Where the data are collected from the data subject, the data subject should also be informed whether they are obliged to provide the data and of the consequences, in cases they do not provide such data. ***This information should be provided, which can also mean made readily available, to the data subject after the provision of simplified information in the form of standardised icons. This should also mean that personal data are processed in a way that effectively allows the data subject to exercise his or her rights.***

Amendment 25

Proposal for a regulation

Recital 50

Text proposed by the Commission

(50) However, it is not necessary to impose this obligation where the data subject already ***disposes of*** this information, or where the recording or disclosure of the

Amendment

(50) However, it is not necessary to impose this obligation where the data subject already ***knows*** this information, or where the recording or disclosure of the data is

data is expressly laid down by law, or where the provision of information to the data subject proves impossible or would involve disproportionate efforts. ***The latter could be particularly the case where processing is for historical, statistical or scientific research purposes; in this regard, the number of data subjects, the age of the data, and any compensatory measures adopted may be taken into consideration.***

expressly laid down by law, or where the provision of information to the data subject proves impossible or would involve disproportionate efforts.

Amendment 26

Proposal for a regulation

Recital 51

Text proposed by the Commission

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

Amendment

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

Amendment 27

Proposal for a regulation Recital 53

Text proposed by the Commission

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

Amendment

(53) Any person should have the right to have personal data concerning them rectified and a 'right to *erasure*' where the retention of such data is not in compliance with this Regulation. In particular, data subjects should have the right that their personal data are erased and no longer processed, where the data are no longer necessary in relation to the purposes for which the data are collected or otherwise processed, where data subjects have withdrawn their consent for processing or where they object to the processing of personal data concerning them or where the processing of their personal data otherwise does not comply with this Regulation. However, the further retention of the data should be allowed where it is necessary for historical, statistical and scientific research purposes, for reasons of public interest in the area of public health, for exercising the right of freedom of expression, when required by law or where there is a reason to restrict the processing of the data instead of erasing them. ***Also, the right to erasure should not apply when the retention of personal data is necessary for the performance of a contract with the data subject, or when there is a legal obligation to retain this data.***

Amendment 28

Proposal for a regulation Recital 54

Text proposed by the Commission

(54) To strengthen the 'right to *be forgotten*' in the online environment, the right to erasure should also be extended in such a way that a controller who has made the personal data public should be obliged to *inform third parties which are processing such data that a data subject requests them to erase any links to, or copies or replications of that personal data. To ensure this information, the controller should take all reasonable steps, including technical measures, in relation to data for the publication of which the controller is responsible. In relation to a third party publication of personal data, the controller should be considered responsible for the publication, where the controller has authorised the publication by the third party.*

Amendment 29

Proposal for a regulation Recital 54 a (new)

Text proposed by the Commission

Amendment

(54) To strengthen the 'right to *erasure*' in the online environment, the right to erasure should also be extended in such a way that a controller who has made the personal data public *without legal justification* should be obliged to *take all necessary steps to have the data erased, including by third parties, without prejudice to the right of the data subject to claim compensation.*

(54a) Data which are contested by the data subject and whose accuracy or inaccuracy cannot be determined should be blocked until the issue is cleared.

Amendment 30

Proposal for a regulation Recital 55

Text proposed by the Commission

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

Amendment

(55) To further strengthen the control over their own data and their right of access, data subjects should have the right, where personal data are processed by electronic means and in a structured and commonly used format, to obtain a copy of the data concerning them also in commonly used electronic format. The data subject should also be allowed to transmit those data, which they have provided, from one automated application, such as a social network, into another one. ***Data controllers should be encouraged to develop interoperable formats that enable data portability.*** This should apply where the data subject provided the data to the automated processing system, based on their consent or in the performance of a contract. ***Providers of information society services should not make the transfer of those data mandatory for the provision of their services.***

Amendment 31

Proposal for a regulation Recital 56

Text proposed by the Commission

(56) In cases where personal data might lawfully be processed to protect the vital interests of the data subject, or on grounds of public interest, official authority or the legitimate interests of a controller, any data subject should nevertheless be entitled to object to the processing of any data relating to them. The burden of proof should be on the controller to demonstrate that their legitimate interests may override the interests or the fundamental rights and

Amendment

(56) In cases where personal data might lawfully be processed to protect the vital interests of the data subject, or on grounds of public interest, official authority or the legitimate interests of a controller, any data subject should nevertheless be entitled to object to the processing of any data relating to them, ***free of charge and in a manner that can be easily and effectively invoked.*** The burden of proof should be on the controller to demonstrate that their

freedoms of the data subject.

legitimate interests may override the interests or the fundamental rights and freedoms of the data subject.

Amendment 32

Proposal for a regulation Recital 57

Text proposed by the Commission

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

Amendment

(57) Where the data subject ***has*** the right to object to ***the processing, the controller should explicitly offer it to the data subject in an intelligible manner and form, using clear and plain language and should clearly distinguish it from other information.***

Amendment 33

Proposal for a regulation Recital 58

Text proposed by the Commission

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

Amendment

(58) ***Without prejudice to the lawfulness of the data processing***, every natural person should have the right ***to object*** to profiling. ***Profiling which leads to measures producing legal effects concerning the data subject or does similarly significantly affect the interests, rights or freedoms of the concerned data subject*** should ***only*** be allowed when expressly authorised by law, carried out in the course of entering or performance of a contract, or when the data subject has given his consent. The In any case, such processing should be subject to suitable safeguards, including specific information of the data subject and the right to obtain human ***assessment*** and that such measure should not concern a child. ***Such measures should not lead to discrimination against individuals on the basis of race or ethnic***

origin, political opinions, religion or beliefs, trade union membership, sexual orientation or gender identity.

Amendment 34

Proposal for a regulation Recital 58 a (new)

Text proposed by the Commission

Amendment

(58a) Profiling based solely on the processing of pseudonymous data should be presumed not to significantly affect the interests, rights or freedoms of the data subject. Where profiling, whether based on a single source of pseudonymous data or on the aggregation of pseudonymous data from different sources, permits the controller to attribute pseudonymous data to a specific data subject, the processed data should no longer be considered to be pseudonymous.

Amendment 35

Proposal for a regulation Recital 59

Text proposed by the Commission

Amendment

(59) Restrictions on specific principles and on the rights of information, **access**, rectification and erasure or on the right to data **portability**, the right to object, **measures based on** profiling, as well as on the communication of a personal data breach to a data subject and on certain related obligations of the controllers may be imposed by Union or Member State law, as far as necessary and proportionate in a democratic society to safeguard public security, including the protection of human life especially in response to natural or man made disasters, the prevention, investigation and prosecution of criminal

(59) Restrictions on specific principles and on the rights of information, rectification and erasure or on the right of **access and to obtain** data, the right to object, profiling, as well as on the communication of a personal data breach to a data subject and on certain related obligations of the controllers may be imposed by Union or Member State law, as far as necessary and proportionate in a democratic society to safeguard public security, including the protection of human life especially in response to natural or man made disasters, the prevention, investigation and prosecution of criminal offences or of breaches of ethics for

offences or of breaches of ethics for regulated professions, other public interests of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, or the protection of the data subject or the rights and freedoms of others. Those restrictions should be in compliance with requirements set out by the Charter of Fundamental Rights of the European Union and by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

regulated professions, other *specific and well-defined* public interests of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, or the protection of the data subject or the rights and freedoms of others. Those restrictions should be in compliance with requirements set out by the Charter of Fundamental Rights of the European Union and by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Amendment 36

Proposal for a regulation Recital 60

Text proposed by the Commission

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

Amendment

(60) Comprehensive responsibility and liability of the controller for any processing of personal data carried out by the controller or on the controller's behalf should be established, ***in particular with regard to documentation, data security, impact assessments, the data protection officer and oversight by data protection authorities***. In particular, the controller should ensure and be **able** to demonstrate the compliance of each processing operation with this Regulation. ***This should be verified by independent internal or external auditors.***

Amendment 37

Proposal for a regulation Recital 61

Text proposed by the Commission

(61) The protection of the rights and freedoms of data subjects with regard to the processing of personal data require that

Amendment

(61) The protection of the rights and freedoms of data subjects with regard to the processing of personal data require that

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

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

Amendment 38
Proposal for a regulation
Recital 62

Text proposed by the Commission

(62) The protection of the rights and freedoms of data subjects as well as the responsibility and liability of controllers and processor, also in relation to the monitoring by and measures of supervisory authorities, requires a clear attribution of the responsibilities under this Regulation, including where a controller determines the purposes, conditions and means of the processing jointly with other controllers or where a processing operation is carried out on behalf of a controller.

Amendment

(62) The protection of the rights and freedoms of data subjects as well as the responsibility and liability of controllers and processor, also in relation to the monitoring by and measures of supervisory authorities, requires a clear attribution of the responsibilities under this Regulation, including where a controller determines the purposes of the processing jointly with other controllers or where a processing operation is carried out on behalf of a controller. ***The arrangement between the joint controllers should reflect the joint controllers' effective roles and***

relationships. The processing of personal data under this Regulation should include the permission for a controller to transmit the data to a joint controller or to a processor for the processing of the data on their behalf.

Amendment 39

Proposal for a regulation Recital 63

Text proposed by the Commission

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

Amendment

(63) Where a controller not established in the Union is processing personal data of data subjects in the Union, the controller should designate a representative, unless the controller is established in a third country ensuring an adequate level of protection, or the *processing relates to fewer than 5000 data subjects during any consecutive 12-month period and is not carried out on special categories of personal data, or is a public authority or body or where the controller is only occasionally offering goods or services to such data subjects*. The representative should act on behalf of the controller and may be addressed by any supervisory authority.

Amendment 40

Proposal for a regulation Recital 64

Text proposed by the Commission

(64) In order to determine whether a controller is only occasionally offering goods and services to data subjects *residing* in the Union, it should be ascertained whether it is apparent from the controller's overall activities that the offering of goods and services to such data

Amendment

(64) In order to determine whether a controller is only occasionally offering goods and services to data subjects in the Union, it should be ascertained whether it is apparent from the controller's overall activities that the offering of goods and services to such data subjects is ancillary to

subjects is ancillary to those main activities.

those main activities.

Amendment 41

Proposal for a regulation

Recital 65

Text proposed by the Commission

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

Amendment

(65) In order to **be able to** demonstrate compliance with this Regulation, the controller or processor should **maintain the documentation necessary in order to fulfill the requirements laid down in this Regulation**. Each controller and processor should be obliged to co-operate with the supervisory authority and make this documentation, on request, available to it, so that it might serve for **evaluating the compliance with this Regulation**. **However, equal emphasis and significance should be placed on good practice and compliance and not just the completion of documentation.**

Amendment 42

Proposal for a regulation

Recital 66

Text proposed by the Commission

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

Amendment

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

of processing, *the Commission should promote* technological neutrality, interoperability and innovation, and, where appropriate, *cooperate* with third countries.

of processing, technological neutrality, interoperability and innovation *should be promoted*, and, where appropriate, *cooperation* with third countries *should be encouraged*.

Amendment 43

Proposal for a regulation Recital 67

Text proposed by the Commission

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

Amendment

(67) A personal data breach may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud, to the individual concerned. Therefore, the controller should notify the breach to the supervisory authority without undue delay, *which should be presumed to be not later than 72 hours*. *If applicable*, an explanation of the reasons for the delay should accompany the notification. The individuals whose personal data could be adversely affected by the breach should be notified without undue delay in order to allow them to take the necessary precautions. A breach should be considered as adversely affecting the personal data or privacy of a data subject where it could result in, for example, identity theft or fraud, physical harm, significant humiliation or damage to reputation. The notification should describe the nature of the personal data breach as well as recommendations as well as recommendations for the individual concerned to mitigate potential adverse effects. Notifications to data subjects should be made as soon as reasonably feasible, and in close cooperation with the supervisory authority and respecting guidance provided by it or other relevant authorities (e.g. law enforcement authorities). For example, the chance for data subjects to mitigate an immediate risk

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

of harm would call for a prompt notification of data subjects whereas the need to implement appropriate measures against continuing or similar data breaches may justify a longer delay.

Amendment 44

Proposal for a regulation

Recital 71 a (new)

Text proposed by the Commission

Amendment

(71a) Impact assessments are the essential core of any sustainable data protection framework, making sure that businesses are aware from the outset of all possible consequences of their data processing operations. If impact assessments are thorough, the likelihood of any data breach or privacy-intrusive operation can be fundamentally limited. Data protection impact assessments should consequently have regard to the entire lifecycle management of personal data from collection to processing to deletion, describing in detail the envisaged processing operations, the risks to the rights and freedoms of data subjects, the measures envisaged to address the risks, safeguards, security measures and mechanisms to ensure compliance with the regulation.

Amendment 45

Proposal for a regulation

Recital 71 b (new)

Text proposed by the Commission

Amendment

(71b) Controllers should focus on the protection of personal data throughout the entire data lifecycle from collection to

processing to deletion by investing from the outset in a sustainable data management framework and by following it up with a comprehensive compliance mechanism.

Amendment 46

Proposal for a regulation Recital 73

Text proposed by the Commission

Amendment

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

deleted

Amendment 47

Proposal for a regulation Recital 74

Text proposed by the Commission

Amendment

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

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

on such legislative measure which defines the nature of the processing and lays down appropriate safeguards.

either of a measure by the national parliament or of a measure based on such legislative measure which defines the nature of the processing and lays down appropriate safeguards.

Amendment 48

Proposal for a regulation Recital 74 a (new)

Text proposed by the Commission

Amendment

(74a) Impact assessments can only be of help if controllers make sure that they comply with the promises originally laid down in them. Data controllers should therefore conduct periodic data protection compliance reviews demonstrating that the data processing mechanisms in place comply with assurances made in the data protection impact assessment. It should further demonstrate the ability of the data controller to comply with the autonomous choices of data subjects. In addition, in case the review finds compliance inconsistencies, it should highlight these and present recommendations on how to achieve full compliance.

Amendment 49

Proposal for a regulation Recital 75

Text proposed by the Commission

Amendment

(75) Where the processing is carried out in the public sector or where, in the private sector, processing ***is carried out by a large enterprise***, or where its core activities, regardless of the size of the enterprise, involve processing operations which require regular and systematic monitoring, a person should assist the controller or processor to monitor internal compliance

(75) Where the processing is carried out in the public sector or where, in the private sector, processing ***relates to more than 5000 data subjects within 12 months***, or where its core activities, regardless of the size of the enterprise, involve processing operations ***on sensitive data, or processing operations*** which require regular and systematic monitoring, a person should

with this Regulation. Such data protection officers, whether or not an employee of the controller, should be in a position to perform their duties and tasks independently.

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

Amendment 50

Proposal for a regulation Recital 75 a (new)

Text proposed by the Commission

Amendment

(75a) The data protection officer should have at least the following qualifications: extensive knowledge of the substance and application of data protection law, including technical and organisational measures and procedures; mastery of technical requirements for privacy by design, privacy by default and data security; industry-specific knowledge in accordance with the size of the controller or processor and the sensitivity of the data to be processed; the ability to carry out inspections, consultation, documentation, and log file analysis; and the ability to work with employee representation. The

controller should enable the data protection officer to take part in advanced training measures to maintain the specialized knowledge required to perform his or her duties. The designation as a data protection officer does not necessarily require fulltime occupation of the respective employee.

Amendment 51

Proposal for a regulation Recital 76

Text proposed by the Commission

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

Amendment

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

Amendment 52

Proposal for a regulation Recital 77

Text proposed by the Commission

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

Amendment

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

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 53

Proposal for a regulation Recital 79

Text proposed by the Commission

(79) This Regulation is without prejudice to international agreements concluded between the Union and third countries regulating the transfer of personal data including appropriate safeguards for the data subjects.

Amendment

(79) This Regulation is without prejudice to international agreements concluded between the Union and third countries regulating the transfer of personal data including appropriate safeguards for the data subjects *ensuring an adequate level of protection for the fundamental rights of citizens.*

Amendment 54

Proposal for a regulation Recital 80

Text proposed by the Commission

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

Amendment

(80) The Commission may decide with effect for the entire Union that certain third countries, or a territory or a processing sector within a third country, or an international organisation, offer an adequate level of data protection, thus providing legal certainty and uniformity throughout the Union as regards the third countries or international organisations which are considered to provide such level of protection. *The Commission may also decide, having given notice and a complete justification to the third country, to revoke such a decision.*

Amendment 55

Proposal for a regulation Recital 82

Text proposed by the Commission

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

Amendment

(82) The Commission may equally recognise that a third country, or a territory or a processing sector within a third country, or an international organisation offers no adequate level of data protection. ***Any legislation which provides for extra-territorial access to personal data processed in the Union without authorisation under Union or Member State law should be considered as an indication of a lack of adequacy.*** Consequently the transfer of personal data to that third country should be prohibited. In that case, provision should be made for consultations between the Commission and such third countries or international organisations.

Amendment 56

Proposal for a regulation Recital 83

Text proposed by the Commission

(83) In the absence of an adequacy decision, the controller or processor should take measures to compensate for the lack of data protection in a third country by way of appropriate safeguards for the data subject. Such appropriate safeguards may consist of making use of binding corporate rules, standard data protection clauses adopted by the Commission, standard data protection clauses adopted by a supervisory authority or contractual clauses authorised by a supervisory authority, ***or other suitable and proportionate measures justified in the light of all the circumstances surrounding a data***

Amendment

(83) In the absence of an adequacy decision, the controller or processor should take measures to compensate for the lack of data protection in a third country by way of appropriate safeguards for the data subject. Such appropriate safeguards may consist of making use of binding corporate rules, standard data protection clauses adopted by the Commission, standard data protection clauses adopted by a supervisory authority or contractual clauses authorised by a supervisory authority. ***Those appropriate safeguards should uphold a respect of the data subject rights adequate to intra-EU processing, in particular***

transfer operation or set of data transfer operations and where authorised by a supervisory authority.

relating to purpose limitation, right to access, rectification, erasure and to claim compensation. Those safeguards should in particular guarantee the observance of the principles of personal data processing, safeguard data subject rights and provide for effective redress mechanisms, ensure the observance of the principles of data protection by design and by default, guarantee the existence of a data protection officer.

Amendment 57

Proposal for a regulation Recital 84

Text proposed by the Commission

(84) The possibility for the controller or processor to use standard data protection clauses adopted by the Commission or by a supervisory authority should neither prevent the possibility for controllers or processors to include the standard data protection clauses in a wider contract nor to add other clauses as long as they do not contradict, directly or indirectly, the standard contractual clauses adopted **by the Commission or** by a supervisory authority or prejudice the fundamental rights or freedoms of the data subjects.

Amendment

(84) The possibility for the controller or processor to use standard data protection clauses adopted by the Commission or by a supervisory authority should neither prevent the possibility for controllers or processors to include the standard data protection clauses in a wider contract nor to add other clauses **or supplementary safeguards** as long as they do not contradict, directly or indirectly, the standard contractual clauses adopted by a supervisory authority or prejudice the fundamental rights or freedoms of the data subjects. ***The standard data protection clauses adopted by the Commission could cover different situations, namely transfers from controllers established in the European Union to controllers established outside the European Union and from controllers established in the European Union to processors, including sub-processors, established outside the European Union. Controllers and processors should be encouraged to provide even more robust safeguards via additional contractual commitments that supplement standard protection clauses.***

Amendment 58

Proposal for a regulation Recital 85

Text proposed by the Commission

(85) A corporate group should be able to make use of approved binding corporate rules for its international transfers from the Union to organisations within the same corporate group of undertakings, as long as such corporate rules include essential principles and enforceable rights to ensure appropriate safeguards for transfers or categories of transfers of personal data.

Amendment

(85) A corporate group should be able to make use of approved binding corporate rules for its international transfers from the Union to organisations within the same corporate group of undertakings, as long as such corporate rules include ***all*** essential principles and enforceable rights to ensure appropriate safeguards for transfers or categories of transfers of personal data.

Amendment 59

Proposal for a regulation Recital 86

Text proposed by the Commission

(86) Provisions should be made for the possibility for transfers in certain circumstances where the data subject has given his consent, where the transfer is necessary in relation to a contract or a legal claim, where important grounds of public interest laid down by Union or Member State law so require or where the transfer is made from a register established by law and intended for consultation by the public or persons having a legitimate interest. In this latter case such a transfer should not involve the entirety of the data or entire categories of the data contained in the register and, when the register is intended for consultation by persons having a legitimate interest, the transfer should be made only at the request of those persons or if they are to be the recipients.

Amendment

(86) Provisions should be made for the possibility for transfers in certain circumstances where the data subject has given his consent, where the transfer is necessary in relation to a contract or a legal claim, where important grounds of public interest laid down by Union or Member State law so require or where the transfer is made from a register established by law and intended for consultation by the public or persons having a legitimate interest. In this latter case such a transfer should not involve the entirety of the data or entire categories of the data contained in the register and, when the register is intended for consultation by persons having a legitimate interest, the transfer should be made only at the request of those persons or if they are to be the recipients, ***taking into full account the interests and fundamental rights of the data subject.***

Amendment 60

Proposal for a regulation Recital 87

Text proposed by the Commission

(87) These derogations should in particular apply to data transfers required and necessary for the protection of important grounds of public interest, for example in cases of international data transfers between competition authorities, tax or customs administrations, financial supervisory authorities, between services competent for social security matters, or to competent authorities for the prevention, investigation, detection and prosecution of criminal offences.

Amendment

(87) These derogations should in particular apply to data transfers required and necessary for the protection of important grounds of public interest, for example in cases of international data transfers between competition authorities, tax or customs administrations, financial supervisory authorities, between services competent for social security matters **or for public health**, or to competent **public** authorities for the prevention, investigation, detection and prosecution of criminal offences, **including for the prevention of money laundering and the fight against terrorist financing. A transfer of personal data should equally be regarded as lawful where it is necessary to protect an interest which is essential for the data subject's or another person's life, if the data subject is incapable of giving consent. Transferring personal data for such important grounds of public interest should only be used for occasional transfers. In each and every case, a careful assessment of all circumstances of the transfer should be carried out.**

Amendment 61

Proposal for a regulation Recital 88

Text proposed by the Commission

(88) Transfers which cannot be qualified as frequent or massive, could also be possible for the purposes of the legitimate

Amendment

For the purposes of processing for historical, statistical and scientific research purposes, the legitimate expectations of

interests pursued by the controller or the processor, when they have assessed all the circumstances surrounding the data transfer. For the purposes of processing for historical, statistical and scientific research purposes, the legitimate expectations of society for an increase of knowledge should be taken into consideration.

society for an increase of knowledge should be taken into consideration.

Amendment 62

Proposal for a regulation Recital 89

Text proposed by the Commission

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

Amendment

(89) In any case, where the Commission has taken no decision on the adequate level of data protection in a third country, the controller or processor should make use of solutions that provide data subjects with a ***legally binding*** guarantee that they will continue to benefit from the fundamental rights and safeguards as regards processing of their data in the Union once this data has been transferred, ***to the extent that the processing is not massive, not repetitive and not structural. That guarantee should include financial indemnification in cases of loss or unauthorised access or processing of the data and an obligation, regardless of national legislation, to provide full details of all access to the data by public authorities in the third country.***

Amendment 63

Proposal for a regulation Recital 90

Text proposed by the Commission

(90) Some third countries enact laws, regulations and other legislative instruments which purport to directly

Amendment

(90) Some third countries enact laws, regulations and other legislative instruments which purport to directly

regulate data processing activities of natural and legal persons under the jurisdiction of the Member States. The extraterritorial application of these laws, regulations and other legislative instruments may be in breach of international law and may impede the attainment of the protection of individuals guaranteed in the Union by this Regulation. . Transfers should only be allowed where the conditions of this Regulation for a transfer to third countries are met. This may inter alia be the case where the disclosure is necessary for an important ground of public interest recognised in Union law or in a Member State law to which the controller is subject. The conditions under which an important ground of public interest exists should be further specified by the Commission in a delegated act.

regulate data processing activities of natural and legal persons under the jurisdiction of the Member States. The extraterritorial application of these laws, regulations and other legislative instruments may be in breach of international law and may impede the attainment of the protection of individuals guaranteed in the Union by this Regulation. Transfers should only be allowed where the conditions of this Regulation for a transfer to third countries are met. This may inter alia be the case where the disclosure is necessary for an important ground of public interest recognised in Union law or in a Member State law to which the controller is subject. The conditions under which an important ground of public interest exists should be further specified by the Commission in a delegated act. ***In cases where controllers or processors are confronted with conflicting compliance requirements between the jurisdiction of the Union on the one hand, and that of a third country on the other, the Commission should ensure that Union law takes precedence at all times. The Commission should provide guidance and assistance to the controller and processor, and it should seek to resolve the jurisdictional conflict with the third country in question.***

Amendment 64

Proposal for a regulation Recital 92

Text proposed by the Commission

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

Amendment

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

one supervisory authority, to reflect their constitutional, organisational and administrative structure.

one supervisory authority, to reflect their constitutional, organisational and administrative structure. ***An authority shall have adequate financial and personal resources to fully carry out its role, taking into account the size of the population and the amount of personal data processing.***

Amendment 65

Proposal for a regulation Recital 94

Text proposed by the Commission

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

Amendment

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

Amendment 66

Proposal for a regulation Recital 95

Text proposed by the Commission

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

Amendment

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

the position of those members.

Amendment 67

Proposal for a regulation

Recital 97

Text proposed by the Commission

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

Amendment

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

Amendment 68

Proposal for a regulation

Recital 98

Text proposed by the Commission

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

Amendment

(98) The ***lead*** authority, providing such one-stop shop, should be the supervisory authority of the Member State in which the controller or processor has its main establishment ***or its representative. The European Data Protection Board may designate the lead authority through the consistency mechanism in certain cases on the request of a competent authority.***

Amendment 69

Proposal for a regulation Recital 98 a (new)

Text proposed by the Commission

Amendment

(98a) Data subjects whose personal data is processed by a data controller or processor in another Member State should be able to complain to the supervisory authority of their choice. The lead data protection authority should coordinate its work with that of the other authorities involved.

Amendment 70

Proposal for a regulation Recital 101

Text proposed by the Commission

Amendment

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

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

Amendment 71

Proposal for a regulation Recital 105

Text proposed by the Commission

(105) In order to ensure the consistent application of this Regulation throughout the Union, a consistency mechanism for co-operation between the supervisory authorities themselves and the Commission should be established. This mechanism should in particular apply where a supervisory authority intends to take a measure as regards processing operations that are related to the offering of goods or services to data subjects in several Member States, , or to the monitoring such data subjects, or that might substantially affect the free flow of personal data. It should also apply where any supervisory authority or the Commission requests that the matter should be dealt with in the consistency mechanism. This mechanism should be without prejudice to any measures that the Commission may take in the exercise of its powers under the Treaties.

Amendment

72

Proposal for a regulation
Recital 106 a (new)

Text proposed by the Commission

Amendment

(105) In order to ensure the consistent application of this Regulation throughout the Union, a consistency mechanism for co-operation between the supervisory authorities themselves and the Commission should be established. This mechanism should in particular apply where a supervisory authority intends to take a measure as regards processing operations that are related to the offering of goods or services to data subjects in several Member States, or to the monitoring *of* such data subjects, or that might substantially affect the free flow of personal data. It should also apply where any supervisory authority or the Commission requests that the matter should be dealt with in the consistency mechanism. ***Furthermore, the data subjects should have the right to obtain consistency, if they deem a measure by a Data Protection Authority of a Member State has not fulfilled this criterion.*** This mechanism should be without prejudice to any measures that the Commission may take in the exercise of its powers under the Treaties.

Amendment

(106a) In order to ensure the consistent application of this Regulation, the European Data Protection Board may in individual cases adopt a decision which is binding on the competent supervisory authorities.

Amendment 73

Proposal for a regulation Recital 107

Text proposed by the Commission

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

Amendment

deleted

Amendment 74

Proposal for a regulation Recital 110

Text proposed by the Commission

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

Amendment

(110) At Union level, a European Data Protection Board should be set up. It should replace the Working Party on the Protection of Individuals with Regard to the Processing of Personal Data established by Directive 95/46/EC. It should consist of a head of a supervisory authority of each Member State and of the European Data Protection Supervisor. The European Data Protection Board should contribute to the consistent application of this Regulation throughout the Union, including by advising the ***institutions of the Union*** and promoting cooperation of the supervisory authorities throughout the Union, ***including the coordination of joint operations.*** The European Data Protection Board should act independently when exercising its tasks. ***The European Data Protection Board should strengthen the dialogue with concerned stakeholders such as data subjects' associations, consumer organisations, data controllers and other relevant stakeholders and experts.***

Amendment 75
Proposal for a regulation
Recital 111

Text proposed by the Commission

(111) **Every** data subject should have the right to lodge a complaint with a supervisory authority in any Member State and have the right to **a** judicial remedy if they consider that their rights under this Regulation are infringed or where the supervisory authority does not react on a complaint or does not act where such action is necessary to protect the rights of the data subject.

Amendment

(111) Data **subjects** should have the right to lodge a complaint with a supervisory authority in any Member State and have the right to **an effective** judicial remedy **in accordance with Article 47 of the Charter of Fundamental Rights** if they consider that their rights under this Regulation are infringed or where the supervisory authority does not react on a complaint or does not act where such action is necessary to protect the rights of the data subject.

Amendment 76

Proposal for a regulation
Recital 112

Text proposed by the Commission

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

Amendment

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

Amendment 77

Proposal for a regulation
Recital 114

Text proposed by the Commission

(114) In order to strengthen the judicial protection of the data subject in situations

Amendment

(114) In order to strengthen the judicial protection of the data subject in situations

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

where the competent supervisory authority is established in another Member State than the one where the data subject is residing, the data subject may *mandate* any body, organisation or association *acting in the public interest* to bring proceedings against that supervisory authority to the competent court in the other Member State.

Amendment 78

Proposal for a regulation Recital 115

Text proposed by the Commission

(115) In situations where the competent supervisory authority established in another Member State does not act or has taken insufficient measures in relation to a complaint, the data subject may request the supervisory authority in the Member State of his or her habitual residence to bring proceedings against that supervisory authority to the competent court in the other Member State. The requested supervisory authority may decide, subject to judicial review, whether it is appropriate to follow the request or not.

Amendment 79

Proposal for a regulation Recital 116

Text proposed by the Commission

(116) For proceedings against a controller or processor, the plaintiff should have the choice to bring the action before the courts of the Member States where the controller or processor has an establishment or where

Amendment

(115) In situations where the competent supervisory authority established in another Member State does not act or has taken insufficient measures in relation to a complaint, the data subject may request the supervisory authority in the Member State of his or her habitual residence to bring proceedings against that supervisory authority to the competent court in the other Member State. ***This does not apply to non-EU-residents.*** The requested supervisory authority may decide, subject to judicial review, whether it is appropriate to follow the request or not.

Amendment

(116) For proceedings against a controller or processor, the plaintiff should have the choice to bring the action before the courts of the Member States where the controller or processor has an establishment or, ***in***

the data subject resides, unless the controller is a public authority acting in the exercise of its public powers.

case of EU residence, where the data subject resides, unless the controller is a public authority *of the Union or a Member State* acting in the exercise of its public powers.

Amendment 80

Proposal for a regulation Recital 118

Text proposed by the Commission

(118) Any damage which a person may suffer as a result of unlawful processing should be compensated by the controller or processor, who may be exempted from liability if *they prove* that *they are* not responsible for the damage, in particular where he establishes fault on the part of the data subject or in case of force majeure.

Amendment

(118) Any damage, *whether pecuniary or not*, which a person may suffer as a result of unlawful processing should be compensated by the controller or processor, who may be exempted from liability *only* if *he proves* that *he is* not responsible for the damage, in particular where he establishes fault on the part of the data subject or in case of force majeure.

Amendment 81

Proposal for a regulation Recital 119

Text proposed by the Commission

(119) Penalties should be imposed to any person, whether governed by private or public law, who fails to comply with this Regulation. Member States should ensure that the penalties should be effective, proportionate and dissuasive and should take all measures to implement the penalties.

Amendment

(119) Penalties should be imposed to any person, whether governed by private or public law, who fails to comply with this Regulation. Member States should ensure that the penalties should be effective, proportionate and dissuasive and should take all measures to implement the penalties. *The rules on penalties should be subject to appropriate procedural safeguards in conformity with the general principles of Union law and the Charter of Fundamental Rights, including those concerning the right to an effective judicial remedy, due process and the principle of ne bis in idem.*

Amendment 82

Proposal for a regulation Recital 119 a (new)

Text proposed by the Commission

Amendment

(119a) In applying penalties, Member States should show full respect for appropriate procedural safeguards, including the right to an effective judicial remedy, due process, and the principle of ne bis in idem.

Amendment 83

Proposal for a regulation Recital 121

Text proposed by the Commission

Amendment

(121) ***The processing of personal data solely for journalistic purposes, or for the purposes of artistic or literary expression should qualify for exemption*** from the requirements of certain provisions of this Regulation in order to reconcile the right to the protection of personal data with the right to freedom of expression, and notably the right to receive and impart information, as guaranteed in particular by Article 11 of the Charter of Fundamental Rights of the European Union. ***This should apply in particular to processing of personal data in the audiovisual field and in news archives and press libraries.*** Therefore, Member States should adopt legislative measures, which should lay down exemptions and derogations which are necessary for the purpose of balancing these fundamental rights. Such exemptions and derogations should be adopted by the Member States on general principles, on the rights of the data subject, on controller and processor, on the transfer of data to

(121) ***Whenever necessary, exemptions or derogations*** from the requirements of certain provisions of this Regulation ***for the processing of personal data should be provided for*** in order to reconcile the right to the protection of personal data with the right to freedom of expression, and notably the right to receive and impart information, as guaranteed in particular by Article 11 of the Charter of Fundamental Rights of the European Union. Therefore, Member States should adopt legislative measures, which should lay down exemptions and derogations which are necessary for the purpose of balancing these fundamental rights. Such exemptions and derogations should be adopted by the Member States on general principles, on the rights of the data subject, on controller and processor, on the transfer of data to third countries or international organisations, on the independent supervisory authorities, on co-operation and consistency ***and on specific data processing situations.*** This should

third countries or international organisations, on the independent supervisory authorities *and* on co-operation and consistency. This should not, however, lead Member States to lay down exemptions from the other provisions of this Regulation. In order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary to interpret notions relating to that freedom, *such as journalism*, broadly. ***Therefore, Member States should classify activities as "journalistic" for the purpose of the exemptions and derogations to be laid down under this Regulation if the object of these activities is the disclosure to the public of information, opinions or ideas, irrespective of the medium which is used to transmit them. They should not be limited to media undertakings and may be undertaken for profit-making or for non-profit making purposes.***

not, however, lead Member States to lay down exemptions from the other provisions of this Regulation. In order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary to interpret notions relating to that freedom broadly ***to cover all activities which aim at the disclosure to the public of information, opinions or ideas, irrespective of the medium which is used to transmit them, also taking into account technological development.*** They should not be limited to media undertakings and may be undertaken for profit-making or for non-profit making purposes.

Amendment 84

Proposal for a regulation Recital 122 a (new)

Text proposed by the Commission

Amendment

(122a) A professional who processes personal data concerning health should receive, if possible, anonymised or pseudonymised data, leaving the knowledge of the identity only to the General Practitioner or to the Specialist who has requested such data processing.

Amendment 85

Proposal for a regulation Recital 123

Text proposed by the Commission

Amendment

(123) The processing of personal data

(123) The processing of personal data

concerning health may be necessary for reasons of public interest in the areas of public health, without consent of the data subject. In that context, ‘public health’ should be interpreted as defined in Regulation (EC) No 1338/2008 of the European Parliament and of the Council of **16 December 2008 on Community statistics on public health and health and safety at work**, meaning all elements related to health, namely health status, including morbidity and disability, the determinants having an effect on that health status, health care needs, resources allocated to health care, the provision of, and universal access to, health care as well as health care expenditure and financing, and the causes of mortality. **Such processing of personal data concerning health for reasons of public interest should not result in personal data being processed for other purposes by third parties such as employers, insurance and banking companies.**

concerning health may be necessary for reasons of public interest in the areas of public health, without consent of the data subject. In that context, ‘public health’ should be interpreted as defined in Regulation (EC) No 1338/2008 of the European Parliament and of the Council¹, meaning all elements related to health, namely health status, including morbidity and disability, the determinants having an effect on that health status, health care needs, resources allocated to health care, the provision of, and universal access to, health care as well as health care expenditure and financing, and the causes of mortality.

¹ **Regulation (EC) No 1338/2008 of the European Parliament and of the Council of 16 December 2008 on Community statistics on public health and health and safety at work (OJ L 354, 31.12.2008, p. 70).**

Amendment 86

Proposal for a regulation Recital 123 a (new)

Text proposed by the Commission

Amendment

(123a) The processing of personal data concerning health, as a special category of data, may be necessary for reasons of historical, statistical or scientific research. Therefore this Regulation foresees an exemption from the requirement of consent in cases of research that serves a high public interest.

Amendment 87

Proposal for a regulation Recital 124

Text proposed by the Commission

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

Amendment

(124) The general principles on the protection of individuals with regard to the processing of personal data should also be applicable to the employment **and the social security** context. Member States **should be able** to regulate the processing of employees' personal data in the employment **and the processing of personal data in the social security** context, **in accordance with the rules and minimum standards set out in** this Regulation. **Where a statutory basis is provided in the Member State in question for the regulation of employment matters by agreement between employee representatives and the management of the undertaking or the controlling undertaking of a group of undertakings (collective agreement) or under Directive 2009/38/EC of the European Parliament and of the Council¹, the processing of personal data in an employment context may also be regulated by such an agreement.**

¹ *Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (OJ L 122, 16.5.2009, p. 28).*

Amendment 88

Proposal for a regulation Recital 125 a (new)

Text proposed by the Commission

Amendment

(125a) Personal data may also be processed subsequently by archive services whose main or mandatory task is to collect, conserve, provide information about, exploit and disseminate archives in the public interest. Member State legislation should reconcile the right to the protection of personal data with the rules on archives and on public access to administrative information. Member States should encourage the drafting, in particular by the European Archives Group, of rules to guarantee the confidentiality of data vis-à-vis third parties and the authenticity, integrity and proper conservation of data.

Amendment 89

**Proposal for a regulation
Recital 126**

Text proposed by the Commission

Amendment

(126) Scientific research for the purposes of this Regulation should include fundamental research, applied research, and privately funded research and in addition should take into account the Union's objective under Article 179(1) of the Treaty on the Functioning of the European Union of achieving a European Research Area.

(126) Scientific research for the purposes of this Regulation should include fundamental research, applied research, and privately funded research and in addition should take into account the Union's objective under Article 179(1) of the Treaty on the Functioning of the European Union of achieving a European Research Area. ***The processing of personal data for historical, statistical and scientific research purposes should not result in personal data being processed for other purposes, unless with the consent of the data subject or on the basis of Union or Member State law.***

Amendment 90

**Proposal for a regulation
Recital 128**

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Text proposed by the Commission

(128) This Regulation respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States, as recognised in Article 17 of the Treaty on the Functioning of the European Union. As a consequence, where a church in a Member State applies, at the time of entry into force of this Regulation, ***comprehensive*** rules relating to the protection of individuals with regard to the processing of personal data, these existing rules should continue to apply if they are brought in line with this Regulation. ***Such churches and religious associations should be required to provide for the establishment of a completely independent supervisory authority.***

Amendment 91

Proposal for a regulation
Recital 129

Text proposed by the Commission

(129) In order to fulfil the objectives of this Regulation, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. In particular, delegated acts should be adopted in respect of ***lawfulness of processing; specifying the criteria and conditions in relation to the consent of a child; processing of special categories of data; specifying the criteria and conditions for manifestly excessive requests and fees for exercising the rights***

Amendment

(128) This Regulation respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States, as recognised in Article 17 of the Treaty on the Functioning of the European Union. As a consequence, where a church in a Member State applies, at the time of entry into force of this Regulation, ***adequate*** rules relating to the protection of individuals with regard to the processing of personal data, these existing rules should continue to apply if they are brought in line with this Regulation ***and recognised as compliant.***

Amendment

(129) In order to fulfil the objectives of this Regulation, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. In particular, delegated acts should be adopted in respect of specifying ***conditions of icon-based mode for provision of information; the right to erasure; declaring that codes of conduct are in line with the Regulation; criteria and requirements for certification mechanisms; the adequate level of protection afforded by a third***

of the data subject; criteria and requirements for the information to the data subject and in relation to the right of access; the right to be forgotten and to erasure; measures based on profiling; criteria and requirements in relation to the responsibility of the controller and to data protection by design and by default; a processor; criteria and requirements for the documentation and the security of processing; criteria and requirements for establishing a personal data breach and for its notification to the supervisory authority, and on the circumstances where a personal data breach is likely to adversely affect the data subject; the criteria and conditions for processing operations requiring a data protection impact assessment; the criteria and requirements for determining a high degree of specific risks which require prior consultation; designation and tasks of the data protection officer; codes of conduct; criteria and requirements for certification mechanisms; criteria and requirements for transfers by way of binding corporate rules; transfer derogations; administrative sanctions; processing for health purposes; processing in the employment context and processing for historical, statistical and scientific research purposes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

country or an international organisation; criteria and requirements for transfers by way of binding corporate rules; administrative sanctions; processing for health purposes and processing in the employment context. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level *in particular with the European Data Protection Board.* The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

Amendment 92

Proposal for a regulation Recital 130

Text proposed by the Commission

(130) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission for: specifying standard forms in relation to the processing of personal data of a child; standard ***procedures and forms for exercising the rights of*** data subjects; standard forms for the ***information*** to the data subject; standard forms ***and procedures*** in relation to the right of access; ***the right to data portability***; standard forms in relation to ***the responsibility of the controller to data protection by design and by default and to the documentation; specific requirements for the security of*** processing; the standard ***format and the procedures*** for the notification of a personal data breach to the supervisory authority and ***the communication of a personal data breach to the data subject; standards and procedures for a data protection impact assessment; forms and procedures*** for prior ***authorisation and prior*** consultation; ***technical standards and mechanisms for certification; the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an international organisation; disclosures not authorized by Union law; mutual assistance; joint operations; decisions under the consistency mechanism.*** Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of ***16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers.*** In this context, the

Amendment

(130) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission for: specifying standard forms ***for specific methods to obtain verifiable consent*** in relation to the processing of personal data of a child; standard forms for ***the communication to the*** data subjects ***on the exercise of their*** rights; standard forms for the information to the data subject; standard forms in relation to the right of access ***including for communicating the personal data to the data subject***; standard forms in relation to the documentation ***to be kept by the controller and the processor***; the standard ***form*** for the notification of a personal data breach to the supervisory authority and ***for documenting a personal data breach***; forms for prior consultation ***and information to the supervisory authority..*** Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹ In this context, the Commission should consider specific measures for micro, small and medium-sized enterprises.

Commission should consider specific measures for micro, small and medium-sized enterprises.

¹ *Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers. In this context, the Commission should consider specific measures for micro, small and medium-sized enterprises*

Amendment 93

Proposal for a regulation Recital 131

Text proposed by the Commission

(131) The examination procedure should be used for the adoption of specifying standard forms *in relation to the* consent of a child; standard *procedures and* forms for *exercising the rights of data subjects*; standard forms for the information to the data subject; standard forms *and procedures* in relation to the right of access *the right to data portability*; standard forms in relation to the *responsibility of the controller to data protection by design and by default and to the documentation; specific requirements for the security of processing*; the standard *format and the procedures* for the notification of a personal data breach to the supervisory authority and *the communication of a personal data breach to the data subject; standards and procedures for a data protection impact assessment*; forms *and procedures* for prior *authorisation and prior* consultation; *technical standards and mechanisms for certification; the adequate level of protection afforded by a third country or a territory or a processing*

Amendment

(131) The examination procedure should be used for the adoption of specifying standard forms: *specifying standard forms for specific methods to obtain verifiable* consent *in relation to the processing of personal data* of a child; standard forms for *the communication to the data subjects on the exercise of their* rights; standard forms for the information to the data subject; standard forms in relation to the right of access *including for communicating the personal data to the data subject*; standard forms in relation to the *documentation to be kept by the controller and the processor*; the standard *form* for the notification of a personal data breach to the supervisory authority and *for documenting* a personal data breach; forms for prior consultation *and information to the supervisory authority*, given that those acts are of general scope.

sector within that third country or an international organisation; disclosures not authorized by Union law; mutual assistance; joint operations; decisions under the consistency mechanism, given that those acts are of general scope.

Amendment 94

Proposal for a regulation Recital 132

Text proposed by the Commission

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

Amendment 95

Amendment

deleted

Proposal for a regulation Recital 134

Text proposed by the Commission

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

Amendment

(134) Directive 95/46/EC should be repealed by this Regulation. However, Commission decisions adopted and authorisations by supervisory authorities based on Directive 95/46/EC should remain in force. ***Commission decisions and authorisations by supervisory authorities relating to transfers of personal data to third countries pursuant to Article 41(8) should remain in force for a transition period of five years after the entry into force of this Regulation unless amended, replaced or repealed by the Commission before the end of this period.***

Amendment 96

Proposal for a regulation Article 2

Text proposed by the Commission

Material scope

1. This Regulation applies to the processing of personal data wholly or partly by automated means, and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.

2. This Regulation does not apply to the processing of personal data:

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

(b) by the Union institutions, bodies, offices and agencies;

(c) by the Member States when carrying out activities which fall within the scope of Chapter 2 of the Treaty on European Union;

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

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

3. This Regulation shall be without prejudice to the application of Directive 2000/31/EC, in particular of the liability rules of intermediary service providers in

Amendment

Material scope

1. This Regulation applies to the processing of personal data wholly or partly by automated means, ***irrespective of the method of processing,*** and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.

2. This Regulation does not apply to the processing of personal data:

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

(c) by the Member States when carrying out activities which fall within the scope of Chapter 2 ***of Title V*** of the Treaty on European Union;

(d) by a natural person in the course of ***an*** exclusively personal or household activity. ***This exemption also shall apply to a publication of personal data where it can be reasonably expected that it will be only accessed by a limited number of persons;***

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

3. This Regulation shall be without prejudice to the application of Directive 2000/31/EC, in particular of the liability rules of intermediary service providers in

Articles 12 to 15 of that Directive.

Articles 12 to 15 of that Directive.

Amendment 97

Proposal for a regulation

Article 3

Text proposed by the Commission

Territorial scope

1. This Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union.
2. This Regulation applies to the processing of personal data of data subjects **residing** in the Union by a controller not established in the Union, where the processing activities are related to:
 - (a) the offering of goods or services to such data subjects in the Union; or
 - (b) the monitoring of **their behaviour**.
3. This Regulation applies to the processing of personal data by a controller not established in the Union, but in a place where the national law of a Member State applies by virtue of public international law.

Amendment 98

Proposal for a regulation

Article 4

Text proposed by the Commission

Definitions

For the purposes of this Regulation:

Amendment

Territorial scope

1. This Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union, **whether the processing takes place in the Union or not**.
2. This Regulation applies to the processing of personal data of data subjects in the Union by a controller **or processor** not established in the Union, where the processing activities are related to:
 - (a) the offering of goods or services, **irrespective of whether a payment of the data subject is required**, to such data subjects in the Union; or
 - (b) the monitoring of **such data subjects**.
3. This Regulation applies to the processing of personal data by a controller not established in the Union, but in a place where the national law of a Member State applies by virtue of public international law.

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

(2) 'personal data' means any information relating to *a* data subject;

(2) 'personal data' means any information relating to ***an identified or identifiable natural person ('data subject');*** ***an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, unique identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social or gender identity of that person;***

(2a) 'pseudonymous data' means personal data that cannot be attributed to a specific data subject without the use of additional information, as long as such additional information is kept separately and subject to technical and organisational measures to ensure non-attribution;

(2b) 'encrypted data' means personal data, which through technological protection measures is rendered unintelligible to any person who is not authorised to access it;

(3) 'processing' means any operation or set of operations which is performed upon personal data or sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, erasure or destruction;

(3) 'processing' means any operation or set of operations which is performed upon personal data or sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, erasure or destruction;

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

(4) 'filing system' means any structured set of personal data which are accessible according to specific criteria, whether centralized, decentralized or dispersed on a functional or geographical basis;

(5) 'controller' means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes, ***conditions*** and means of the processing of personal data; where the purposes, ***conditions*** and means of processing are determined by Union law or Member State law, the controller or the specific criteria for his nomination may be designated by Union law or by Member State law;

(6) 'processor' means a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller;

(7) 'recipient' means a natural or legal person, public authority, agency or any other body to which the personal data are disclosed;

(8) 'the data subject's consent' means any freely given specific, informed and explicit indication of his or her wishes by which the data subject, either by a statement or by

(4) 'filing system' means any structured set of personal data which are accessible according to specific criteria, whether centralized, decentralized or dispersed on a functional or geographical basis;

(5) 'controller' means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the processing of personal data; where the purposes and means of processing are determined by Union law or Member State law, the controller or the specific criteria for his nomination may be designated by Union law or by Member State law;

(6) 'processor' means a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller;

(7) 'recipient' means a natural or legal person, public authority, agency or any other body to which the personal data are disclosed;

(7a) 'third party' means any natural or legal person, public authority, agency or any other body other than the data subject, the controller, the processor and the persons who, under the direct authority of the controller or the processor, are authorized to process the data;

(8) 'the data subject's consent' means any freely given specific, informed and explicit indication of his or her wishes by which the data subject, either by a statement or by

a clear affirmative action, signifies agreement to personal data relating to them being processed;

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

(10) 'genetic data' means all data, ***of whatever type, concerning*** the characteristics of an individual which ***are*** inherited or acquired ***during early prenatal development***;

(11) 'biometric data' means any data relating to the physical, physiological or behavioural characteristics of an individual which allow their unique identification, such as facial images, or dactyloscopic data;

(12) 'data concerning health' means any ***information*** which relates to the physical or mental health of an individual, or to the provision of health services to the individual;

(13) 'main establishment' means ***as regards the controller, the place of its establishment*** in the Union where the main decisions as to the purposes, conditions and means of the processing of personal data are taken; ***if no decisions as to the purposes, conditions and means of the processing of personal data are taken in the Union, the main establishment is the place where the main processing activities in the context of the activities of an establishment of a controller in the Union take place. As regards the processor, 'main establishment' means the place of its central administration in the Union***;

a clear affirmative action, signifies agreement to personal data relating to them being processed;

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

(10) 'genetic data' means all ***personal*** data ***relating to*** the ***genetic*** characteristics of an individual which ***have been*** inherited or acquired ***as they result from an analysis of a biological sample from the individual in question, in particular by chromosomal, desoxyribonucleic acid (DNA) or ribonucleic acid (RNA) analysis or analysis of any other element enabling equivalent information to be obtained***;

(11) 'biometric data' means any ***personal*** data relating to the physical, physiological or behavioural characteristics of an individual which allow their unique identification, such as facial images, or dactyloscopic data;

(12) 'data concerning health' means any ***personal data*** which relates to the physical or mental health of an individual, or to the provision of health services to the individual;

(13) 'main establishment' means the ***place of establishment of the undertaking or group of undertakings*** in the Union, ***whether controller or processor***, where the main decisions as to the purposes, conditions and means of the processing of personal data are taken. ***The following objective criteria may be considered among others: the location of the controller or processor's headquarters; the location of the entity within a group of undertakings which is best placed in terms of management functions and administrative responsibilities to deal with and enforce the rules as set out in this Regulation; the location where effective***

(14) 'representative' means any natural or legal person established in the Union who, explicitly designated by the controller, ***acts and may be addressed by any supervisory authority and other bodies in the Union instead of*** the controller, with regard to the obligations of the controller under this Regulation;

(15) 'enterprise' means any entity engaged in an economic activity, irrespective of its legal form, thus including, in particular, natural and legal persons, partnerships or associations regularly engaged in an economic activity;

(16) 'group of undertakings' means a controlling undertaking and its controlled undertakings;

(17) 'binding corporate rules' means personal data protection policies which are adhered to by a controller or processor established on the territory of a Member State of the Union for transfers or a set of transfers of personal data to a controller or processor in one or more third countries within a group of undertakings;

(18) 'child' means any person below the age of 18 years;

(19) 'supervisory authority' means a public authority which is established by a Member State in accordance with Article 46.

and real management activities are exercised determining the data processing through stable arrangements;

(14) 'representative' means any natural or legal person established in the Union who, explicitly designated by the controller, ***represents*** the controller, with regard to the obligations of the controller under this Regulation;

(15) 'enterprise' means any entity engaged in an economic activity, irrespective of its legal form, thus including, in particular, natural and legal persons, partnerships or associations regularly engaged in an economic activity;

(16) 'group of undertakings' means a controlling undertaking and its controlled undertakings;

(17) 'binding corporate rules' means personal data protection policies which are adhered to by a controller or processor established on the territory of a Member State of the Union for transfers or a set of transfers of personal data to a controller or processor in one or more third countries within a group of undertakings;

(18) 'child' means any person below the age of 18 years;

(19) 'supervisory authority' means a public authority which is established by a Member State in accordance with Article 46.

Amendment 99

Proposal for a regulation Article 5

Text proposed by the Commission

Principles relating to personal data processing

Amendment

Principles relating to personal data processing

1. Personal data **must** be:

- (a) processed lawfully, fairly and in a transparent manner in relation to the data subject;
- (b) collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes;
- (c) adequate, relevant, and limited to the minimum necessary in relation to the purposes for which they are processed; they shall only be processed if, and as long as, the purposes could not be fulfilled by processing information that does not involve personal data;
- (d) accurate and kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay;
- (e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the data will be processed solely for historical, statistical or scientific research purposes in accordance with the rules and conditions of Article 83 and if a periodic review is carried out to assess the necessity to continue the storage;

1. Personal data **shall** be:

- (a) processed lawfully, fairly and in a transparent manner in relation to the data subject (**lawfulness, fairness and transparency**);
- (b) collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes (**purpose limitation**);
- (c) adequate, relevant, and limited to the minimum necessary in relation to the purposes for which they are processed; they shall only be processed if, and as long as, the purposes could not be fulfilled by processing information that does not involve personal data (**data minimisation**);
- (d) accurate and, **where necessary**, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay (**accuracy**).
- (e) kept in a form which permits **direct or indirect** identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the data will be processed solely for historical, statistical or scientific research **or for archive** purposes in accordance with the rules and conditions of Articles 83 **and 83a** and if a periodic review is carried out to assess the necessity to continue the storage, **and if appropriate technical and organizational measures are put in place to limit access to the data only for these purposes (storage minimisation)**;
 - (ea) **processed in a way that effectively allows the data subject to exercise his or her rights (effectiveness)**;
 - (eb) **processed in a way that protects against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate**

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

—Amendment 100

Proposal for a regulation

Article 6

Text proposed by the Commission

Lawfulness of processing

1. Processing of personal data shall be lawful only if and to the extent that at least one of the following applies:

(a) the data subject has given consent to the processing of their personal data for one or more specific purposes;

(b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;

(c) processing is necessary for compliance with a legal obligation to which the controller is subject;

(d) processing is necessary in order to protect the vital interests of the data subject;

(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;

(f) processing is necessary for the purposes of the legitimate interests pursued by **a** controller, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, **in particular where the data subject is a**

technical or organisational measures (integrity);

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

Amendment

Lawfulness of processing

1. Processing of personal data shall be lawful only if and to the extent that at least one of the following applies:

(a) the data subject has given consent to the processing of their personal data for one or more specific purposes;

(b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;

(c) processing is necessary for compliance with a legal obligation to which the controller is subject;

(d) processing is necessary in order to protect the vital interests of the data subject;

(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;

(f) processing is necessary for the purposes of the legitimate interests pursued by **the controller or, in case of disclosure, by the third party to whom the data is disclosed, and which meet the reasonable expectations of the data subject based on his or her relationship with the controller,**

child. This shall not apply to processing carried out by public authorities in the performance of their tasks.

2. Processing of personal data which is necessary for the purposes of historical, statistical or scientific research shall be lawful subject to the conditions and safeguards referred to in Article 83.

3. The basis of the processing referred to in points (c) and (e) of paragraph 1 must be provided for in:

(a) Union law, or

(b) the law of the Member State to which the controller is subject.

The law of the Member State must meet an objective of public interest or must be necessary to protect the rights and freedoms of others, respect the essence of the right to the protection of personal data and be proportionate to the legitimate aim pursued.

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

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

except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data. This shall not apply to processing carried out by public authorities in the performance of their tasks.

2. Processing of personal data which is necessary for the purposes of historical, statistical or scientific research shall be lawful subject to the conditions and safeguards referred to in Article 83.

3. The basis of the processing referred to in points (c) and (e) of paragraph 1 must be provided for in:

(a) Union law, or

(b) the law of the Member State to which the controller is subject.

The law of the Member State must meet an objective of public interest or must be necessary to protect the rights and freedoms of others, respect the essence of the right to the protection of personal data and be proportionate to the legitimate aim pursued. ***Within the limits of this Regulation, the law of the Member State may provide details of the lawfulness of processing, particularly as regards data controllers, the purpose of processing and purpose limitation, the nature of the data and the data subjects, processing measures and procedures, recipients, and the duration of storage.***

specifying the conditions referred to in point (f) of paragraph 1 for various sectors and data processing situations, including as regards the processing of personal data related to a child.

Amendment 101

Proposal for a regulation Article 7

Text proposed by the Commission

Conditions for consent

1. The controller shall bear the burden of proof for the data subject's consent to the processing of their personal data for specified purposes.
2. If the data subject's consent is to be given in the context of a written declaration which also concerns another matter, the requirement to give consent must be presented distinguishable in its appearance from this other matter.
3. The data subject shall have the right to withdraw his or her consent at any time. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal.
4. Consent shall *not provide a legal basis for the processing, where there is a significant imbalance between the position of the data subject and the controller.*

Amendment

Conditions for consent

1. ***Where processing is based on consent,*** the controller shall bear the burden of proof for the data subject's consent to the processing of their personal data for specified purposes.
2. If the data subject's consent is given in the context of a written declaration which also concerns another matter, the requirement to give consent must be presented ***clearly*** distinguishable in its appearance from this other matter.
Provisions on the data subject's consent which are partly in violation of this Regulation are fully void.
3. ***Notwithstanding other legal grounds for processing,*** the data subject shall have the right to withdraw his or her consent at any time. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal. ***It shall be as easy to withdraw consent as to give it. The data subject shall be informed by the controller if withdrawal of consent may result in the termination of the services provided or of the relationship with the controller.***
4. Consent shall ***be purpose-limited and shall lose its validity when the purpose ceases to exist or as soon as the processing of personal data is no longer necessary for carrying out the purpose for***

which they were originally collected. The execution of a contract or the provision of a service shall not be made conditional on the consent to the processing of data that is not necessary for the execution of the contract or the provision of the service pursuant to Article 6(1), point (b).

–Amendment 102

Proposal for a regulation **Article 8**

Text proposed by the Commission

Processing of personal data of a child

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

2. Paragraph 1 shall not affect the general contract law of Member States such as the rules on the validity, formation or effect of a contract in relation to a child.

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

Amendment

Processing of personal data of a child

1. For the purposes of this Regulation, in relation to the offering of **goods or** services directly to a child, the processing of personal data of a child below the age of 13 years shall only be lawful if and to the extent that consent is given or authorised by the child's parent or **legal guardian**. The controller shall make reasonable efforts to **verify such** consent, taking into consideration available technology **without causing otherwise unnecessary processing of personal data**.

1a. Information provided to children, parents and legal guardians in order to express consent, including about the controller's collection and use of personal data, should be given in a clear language appropriate to the intended audience.

2. Paragraph 1 shall not affect the general contract law of Member States such as the rules on the validity, formation or effect of a contract in relation to a child.

3. The **European Data Protection Board** shall be **entrusted with the task of issuing guidelines, recommendations and best practices** for the methods of **verifying** consent referred to in paragraph 1, **in accordance with Article 66**.

medium-sized enterprises.

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

Amendment 103

Proposal for a regulation Article 9

Text proposed by the Commission

Processing of special categories of personal data

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

2. Paragraph 1 shall not apply **where**:

(a) the data subject has given consent to the processing of those personal data, subject to the conditions laid down in Articles 7 and 8, except where Union law or Member State law provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject; or

Amendment

Special categories of data

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

2. Paragraph 1 shall not apply **if one of the following applies**:

(a) the data subject has given consent to the processing of those personal data **for one or more specified purposes**, subject to the conditions laid down in Articles 7 and 8, except where Union law or Member State law provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject, or

(aa) processing is necessary for the performance or execution of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;

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

(c) processing is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving consent; or

(d) processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other non-profit-seeking body with a political, philosophical, religious or trade-union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the data are not disclosed outside that body without the consent of the data subjects; or

(e) the processing relates to personal data which are manifestly made public by the data subject; or

(f) processing is necessary for the establishment, exercise or defence of legal claims; or

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

(b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller in the field of employment law in so far as it is authorised by Union law or Member State law *or collective agreements* providing for adequate safeguards *for the fundamental rights and the interests of the data subject such as right to non-discrimination, subject to the conditions and safeguards referred to in Article 82*; or

(c) processing is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving consent; or

(d) processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other non-profit-seeking body with a political, philosophical, religious or trade-union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the data are not disclosed outside that body without the consent of the data subjects; or

(e) the processing relates to personal data which are manifestly made public by the data subject; or

(f) processing is necessary for the establishment, exercise or defence of legal claims; or

(g) processing is necessary for the performance of a task carried out *for reasons of high* public interest, on the basis of Union law, or Member State law which shall *be proportionate to the aim pursued, respect the essence of the right to data protection and* provide for suitable measures to safeguard the *fundamental rights and the interests of the data subject*; or

(h) processing of data concerning health is necessary for health purposes and subject to the conditions and safeguards referred to in Article 81; or

(i) processing is necessary for historical, statistical or scientific research purposes subject to the conditions and safeguards referred to in Article 83; or

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

3. The **Commission** shall be **empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria, conditions and appropriate safeguards** for the processing of the special categories of personal data referred to in paragraph 1 and the exemptions laid down in paragraph 2.

—Amendment

104

Proposal for a regulation Article 10

Text proposed by the Commission

If the data processed by a controller do not permit the controller to identify a natural

(h) processing of data concerning health is necessary for health purposes and subject to the conditions and safeguards referred to in Article 81; or

(i) processing is necessary for historical, statistical or scientific research purposes subject to the conditions and safeguards referred to in Article 83; or

(ia) processing is necessary for archive services subject to the conditions and safeguards referred to in Article 83a; or

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

3. The **European Data Protection Board** shall be **entrusted with the task of issuing guidelines, recommendations and best practices** for the processing of the special categories of personal data referred to in paragraph 1 and the exemptions laid down in paragraph 2, ***in accordance with Article 66***.

Amendment

1. If the data processed by a controller do not permit the controller ***or processor*** to

person, the controller shall not ***be obliged to*** acquire additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation.

directly or indirectly identify a natural person, ***or consist only of pseudonymous data***, the controller shall not ***process or*** acquire additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation.

2. Where the data controller is unable to comply with a provision of this Regulation because of paragraph 1, the controller shall not be obliged to comply with that particular provision of this Regulation. Where as a consequence the data controller is unable to comply with a request of the data subject, it shall inform the data subject accordingly.

Amendment 105

Proposal for a regulation Article 10 a (new)

Text proposed by the Commission

Amendment

Article 10a

General principles for data subject rights

1. The basis of data protection is clear and unambiguous rights for the data subject which shall be respected by the data controller. The provisions of this Regulation aim to strengthen, clarify, guarantee and where appropriate, codify these rights.

2. Such rights include, inter alia, the provision of clear and easily understandable information regarding the processing of his or her personal data, the right of access, rectification and erasure of their data, the right to obtain data, the right to object to profiling, the right to lodge a complaint with the competent data protection authority and to bring legal proceedings as well as the right to compensation and damages resulting from an unlawful processing operation.

Such rights shall in general be exercised free of charge. The data controller shall respond to requests from the data subject within a reasonable period of time.

Amendment 106

Proposal for a regulation Article 11

Text proposed by the Commission

1. The controller shall have transparent and easily accessible policies with regard to the processing of personal data and for the exercise of data subjects' rights.
2. The controller shall provide any information and any communication relating to the processing of personal data to the data subject in an intelligible form, using clear and plain language, *adapted to the data subject*, in particular for any information addressed specifically to a child.

Amendment

1. The controller shall have **concise**, transparent, **clear** and easily accessible policies with regard to the processing of personal data and for the exercise of data subjects' rights.
2. The controller shall provide any information and any communication relating to the processing of personal data to the data subject in an intelligible form, using clear and plain language, in particular for any information addressed specifically to a child.

Amendment 107

Proposal for a regulation Article 12

Text proposed by the Commission

1. ***The controller shall establish procedures for providing the information referred to in Article 14 and for the exercise of the rights of data subjects referred to in Article 13 and Articles 15 to 19. The controller shall provide in particular mechanisms for facilitating the request for the actions referred to in Article 13 and Articles 15 to 19.*** Where personal data are processed by automated means, the controller shall also provide means for requests to be made

Amendment

1. Where personal data are processed by automated means, the controller shall also provide means for requests to be made electronically ***where possible***.

electronically.

2. The controller shall inform the data subject without delay and, at the latest within **one month** of receipt of the request, whether or not any action has been taken pursuant to Article 13 and Articles 15 to 19 and shall provide the requested information. This period may be prolonged for a further month, if several data subjects exercise their rights and their cooperation is necessary to a reasonable extent to prevent an unnecessary and disproportionate effort on the part of the controller. The information shall be given in writing. Where the data subject makes the request in electronic form, the information shall be provided in electronic form, unless otherwise requested by the data subject.

3. If the controller **refuses to** take action on the request of the data subject, the controller shall inform the data subject of the reasons for the **refusal** and on the possibilities of lodging a complaint to the supervisory authority and seeking a judicial remedy.

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

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for

2. The controller shall inform the data subject without **undue** delay and, at the latest within **40 calendar days** of receipt of the request, whether or not any action has been taken pursuant to Article 13 and Articles 15 to 19 and shall provide the requested information. This period may be prolonged for a further month, if several data subjects exercise their rights and their cooperation is necessary to a reasonable extent to prevent an unnecessary and disproportionate effort on the part of the controller. The information shall be given in writing **and, where possible, the controller may provide remote access to a secure system which would provide the data subject with direct access to their personal data**. Where the data subject makes the request in electronic form, the information shall be provided in electronic form **where possible**, unless otherwise requested by the data subject.

3. If the controller **does not** take action on the request of the data subject, the controller shall inform the data subject of the reasons for the **inaction** and on the possibilities of lodging a complaint to the supervisory authority and seeking a judicial remedy.

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

the manifestly excessive requests and the fees referred to in paragraph 4.

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

—Amendment 108

**Proposal for a regulation
Article 13**

Text proposed by the Commission

Rights in relation to recipients

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

Amendment 109

**Proposal for a regulation
Article 13 a (new)**

Text proposed by the Commission

Amendment

Notification requirement in the event of rectification and erasure

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

Amendment

Article 13a

Standardised information policies

1. Where personal data relating to a data subject are collected, the controller shall provide the data subject with the following

particulars before providing information pursuant to Article 14:

(a) whether personal data are collected beyond the minimum necessary for each specific purpose of the processing;

(b) whether personal data are retained beyond the minimum necessary for each specific purpose of the processing;

(c) whether personal data are processed for purposes other than the purposes for which they were collected;

(d) whether personal data are disseminated to commercial third parties;

(e) whether personal data are sold or rented out;

(f) whether personal data are retained in encrypted form.

2. The particulars referred to in paragraph 1 shall be presented pursuant to Annex X in an aligned tabular format, using text and symbols, in the following three columns:

(a) the first column depicts graphical forms symbolising those particulars;

(b) the second column contains essential information describing those particulars;

(c) the third column depicts graphical forms indicating whether a specific particular is met.

3. The information referred to in paragraphs 1 and 2 shall be presented in an easily visible and clearly legible way and shall appear in a language easily understood by the consumers of the Member States to whom the information is provided. Where the particulars are presented electronically, they shall be machine readable.

4. Additional particulars shall not be provided. Detailed explanations or further remarks regarding the particulars referred to in paragraph 1 may be provided together with the other

information requirements pursuant to Article 14.

5. The Commission shall be empowered to adopt, after requesting an opinion of the European Data Protection Board, delegated acts in accordance with Article 86 for the purpose of further specifying the particulars referred to in paragraph 1 and their presentation as referred to in paragraph 2 and in Annex 1.

Amendment 110

Proposal for a regulation Article 14

Text proposed by the Commission

Information to the data subject

1. Where personal data relating to a data subject are collected, the controller shall provide the data subject with at least the following information:

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

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

(c) the period for which the personal data will be stored;

(d) the existence of the right to request from the controller access to and

Amendment

Information to the data subject

1. Where personal data relating to a data subject are collected, the controller shall provide the data subject with at least the following information, *after the particulars pursuant to Article 13a have been provided:*

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

(b) the purposes of the processing for which the personal data are intended, *as well as information regarding the security of the processing of personal data,* including the contract terms and general conditions where the processing is based on point (b) of Article 6(1) and, *where applicable, information on how they implement and meet the requirements of* point (f) of Article 6(1);

(c) the period for which the personal data will be stored, *or if this is not possible, the criteria used to determine this period;*

(d) the existence of the right to request from the controller access to and

rectification or erasure of the personal data concerning the data subject *or* to object to the processing of such personal data;

(e) the right to lodge a complaint to the supervisory authority and the contact details of the supervisory authority;

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

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

(h) any further information necessary to guarantee fair processing in respect of the data subject, having regard to the specific circumstances in which the personal data are collected.

2. Where the personal data are collected from the data subject, the controller shall inform the data subject, in addition to the information referred to in paragraph 1, whether the provision of personal data is

rectification or erasure of the personal data concerning the data subject, to object to the processing of such personal data, *or to obtain data*;

(e) the right to lodge a complaint to the supervisory authority and the contact details of the supervisory authority;

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

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

(ga) where applicable, information about the existence of profiling, of measures based on profiling, and the envisaged effects of profiling on the data subject;

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

(h) any further information *which is* necessary to guarantee fair processing in respect of the data subject, having regard to the specific circumstances in which the personal data are collected *or processed, in particular the existence of certain processing activities and operations for which a personal data impact assessment has indicated that there may be a high risk*;

(ha) where applicable, information whether personal data was provided to public authorities during the last consecutive 12-month period.

2. Where the personal data are collected from the data subject, the controller shall inform the data subject, in addition to the information referred to in paragraph 1, whether the provision of personal data is

obligatory or *voluntary*, as well as the possible consequences of failure to provide such data.

3. Where the personal data are not collected from the data subject, the controller shall inform the data subject, in addition to the information referred to in paragraph 1, from which source the personal data originate.

4. The controller shall provide the information referred to in paragraphs 1, 2 and 3:

(a) at the time when the personal data are obtained from the data subject; or

(b) where the personal data are not collected from the data subject, at the time of the recording or within a reasonable period after the collection, having regard to the specific circumstances in which the data are collected or otherwise processed, or, if a *disclosure* to another recipient is envisaged, and at the latest *when the data are first disclosed*.

5. Paragraphs 1 to 4 shall not apply, where:

mandatory or *optional*, as well as the possible consequences of failure to provide such data.

2a. In deciding on further information which is necessary to make the processing fair under point (h) of paragraph 1, controllers shall have regard to any relevant guidance under Article 38.

3. Where the personal data are not collected from the data subject, the controller shall inform the data subject, in addition to the information referred to in paragraph 1, from which source the *specific* personal data originate. ***If personal data originate from publicly available sources, a general indication may be given.***

4. The controller shall provide the information referred to in paragraphs 1, 2 and 3:

(a) at the time when the personal data are obtained from the data subject ***or without undue delay where the above is not feasible***; or

(aa) on request by a body, organization or association referred to in Article 73;

(b) where the personal data are not collected from the data subject, at the time of the recording or within a reasonable period after the collection, having regard to the specific circumstances in which the data are collected or otherwise processed, or, if a *transfer* to another recipient is envisaged, and at the latest ***at the time of the first transfer, or, if the data are to be used for communication with the data subject concerned, at the latest at the time of the first communication to that data subject***; or

(ba) only on request where the data are processed by a small or micro enterprise which processes personal data only as an ancillary activity.

5. Paragraphs 1 to 4 shall not apply, where:

(a) the data subject has already the information referred to in paragraphs 1, 2 and 3; or

(b) the data are not collected from the data subject and the provision of such information proves impossible or would involve a disproportionate effort; or

(c) the data are not collected from the data subject and recording or disclosure is expressly laid down by law; or

(d) the data are not collected from the data subject and the provision of such information will impair the rights and freedoms of *others*, as defined in Union law or Member State law in accordance with Article 21.

6. In the case referred to in point (b) of paragraph 5, the controller shall provide appropriate measures to protect the data subject's legitimate interests.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria for categories of recipients referred to in point (f) of paragraph 1, the requirements for the

(a) the data subject has already the information referred to in paragraphs 1, 2 and 3; or

(b) the data ***are processed for historical, statistical or scientific research purposes subject to the conditions and safeguards referred to in Articles 81 and 83***, are not collected from the data subject and the provision of such information proves impossible or would involve a disproportionate effort ***and the controller has published the information for anyone to retrieve***; or

(c) the data are not collected from the data subject and recording or disclosure is expressly laid down by law ***to which the controller is subject, which provides appropriate measures to protect the data subject's legitimate interests, considering the risks represented by the processing and the nature of the personal data***; or

(d) the data are not collected from the data subject and the provision of such information will impair the rights and freedoms of ***other natural persons***, as defined in Union law or Member State law in accordance with Article 21;

(da) the data are processed in the exercise of his profession by, or are entrusted or become known to, a person who is subject to an obligation of professional secrecy regulated by Union or Member State law or to a statutory obligation of secrecy, unless the data is collected directly from the data subject.

6. In the case referred to in point (b) of paragraph 5, the controller shall provide appropriate measures to protect the data subject's ***rights or*** legitimate interests.

notice of potential access referred to in point (g) of paragraph 1, the criteria for the further information necessary referred to in point (h) of paragraph 1 for specific sectors and situations, and the conditions and appropriate safeguards for the exceptions laid down in point (b) of paragraph 5. In doing so, the Commission shall take the appropriate measures for micro, small and medium-sized-enterprises.

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

Amendment 111

Proposal for a regulation Article 15

Text proposed by the Commission

Amendment

Right *of* access for the data subject

Right *to* access *and to obtain data* for the data subject

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

1. *Subject to Article 12(4)*, the data subject shall have the right to obtain from the controller at any time, on request, confirmation as to whether or not personal data relating to the data subject are being processed, *and in clear and plain language*, the following information:

- (a) the purposes of the processing;
- (b) the categories of personal data concerned;
- (c) the recipients *or categories of recipients* to whom the personal data are to be or have been disclosed, *in particular* to

- (a) the purposes of the processing *for each category of personal data*;
- (b) the categories of personal data concerned;
- (c) the recipients to whom the personal data are to be or have been disclosed,

recipients in third countries;

(d) the period for which the personal data will be stored;

(e) the existence of the right to request from the controller rectification or erasure of personal data concerning the data subject or to object to the processing of such personal data;

(f) the right to lodge a complaint to the supervisory authority and the contact details of the supervisory authority;

(g) communication of the personal data undergoing processing and of any available information as to their source;

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

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

including to recipients in third countries;

(d) the period for which the personal data will be stored, **or if this is not possible, the criteria used to determine this period;**

(e) the existence of the right to request from the controller rectification or erasure of personal data concerning the data subject or to object to the processing of such personal data;

(f) the right to lodge a complaint to the supervisory authority and the contact details of the supervisory authority;

(h) the significance and envisaged consequences of such processing.

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

(hb) without prejudice to Article 21, in the event of disclosure of personal data to a public authority as a result of a public authority request, confirmation of the fact that such a request has been made.

2. The data subject shall have the right to obtain from the controller communication of the personal data undergoing processing. Where the data subject makes the request in electronic form, the information shall be provided in **an** electronic **and structured format**, unless otherwise requested by the data subject. **Without prejudice to Article 10, the controller shall take all reasonable steps to verify that the person requesting access to the data is the data subject.**

2a. Where the data subject has provided the personal data where the personal data are processed by electronic means, the data subject shall have the right to obtain from the controller a copy of the provided personal data in an electronic and

interoperable format which is commonly used and allows for further use by the data subject without hindrance from the controller from whom the personal data are withdrawn. Where technically feasible and available, the data shall be transferred directly from controller to controller at the request of the data subject.

2b. This Article shall be without prejudice to the obligation to delete data when no longer necessary under point (e) of Article 5(1).

2c. There shall be no right of access in accordance with paragraphs 1 and 2 when data within the meaning of point (da) of Article 14(5) are concerned, except if the data subject is empowered to lift the secrecy in question and acts accordingly.

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

4. The Commission may specify standard forms and procedures for requesting and granting access to the information referred to in paragraph 1, including for verification of the identity of the data subject and communicating the personal data to the data subject, taking into account the specific features and necessities of various sectors and data processing situations. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

Amendment 112

**Proposal for a regulation
Article 17**

Right to *be forgotten and to* erasure

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

- (a) the data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;
- (b) the data subject withdraws consent on which the processing is based according to point (a) of Article 6(1), or when the storage period consented to has expired, and where there is no other legal ground for the processing of the data;
- (c) the data subject objects to the processing of personal data pursuant to Article 19;

- (d) the *processing of the data does not comply with this Regulation for other reasons*.

2. Where the controller referred to in paragraph 1 has made the personal data public, it shall take all reasonable steps, *including technical measures, in relation to data for the publication of which the controller is responsible, to inform third parties which are processing such data, that a data subject requests them to erase*

Right to erasure

1. The data subject shall have the right to obtain from the controller the erasure of personal data relating to them and the abstention from further dissemination of such data, *and to obtain from third parties the erasure of any links to, or copy or replication of, that data* where one of the following grounds applies:

- (a) the data are no longer necessary in relation to the purposes for which they were collected or otherwise processed
- (b) the data subject withdraws consent on which the processing is based according to point (a) of Article 6(1), or when the storage period consented to has expired, and where there is no other legal ground for the processing of the data;
- (c) the data subject objects to the processing of personal data pursuant to Article 19;

- (ca) a court or regulatory authority based in the Union has ruled as final and absolute that the data concerned must be erased;*
- (d) the data *has been unlawfully processed*.

1a. The application of paragraph 1 shall be dependent upon the ability of the controller to verify that the person requesting the erasure is the data subject.

2. Where the controller referred to in paragraph 1 has made the personal data public *without a justification based on Article 6(1)*, it shall take all reasonable steps *to have the data erased, including by third parties, without prejudice to Article 77. The controller shall inform the data subject, where possible, of the action*

any links to, or copy or replication of that personal data. Where the controller has authorised a third party publication of personal data, the controller shall be considered responsible for that publication.

3. The controller shall carry out the erasure without delay, except to the extent that the retention of the personal data is necessary:

- (a) for exercising the right of freedom of expression in accordance with Article 80;
- (b) for reasons of public interest in the area of public health in accordance with Article 81;
- (c) for historical, statistical and scientific research purposes in accordance with Article 83;
- (d) for compliance with a legal obligation to retain the personal data by Union or Member State law to which the controller is subject; Member State laws shall meet an objective of public interest, respect ***the essence of*** the right to the protection of personal data and be proportionate to the legitimate aim pursued;
- (e) in the cases referred to in paragraph 4.

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

- (a) their accuracy is contested by the data subject, for a period enabling the controller to verify the accuracy of the data;
- (b) the controller no longer needs the personal data for the accomplishment of its task but they have to be maintained for purposes of proof;
- (c) the processing is unlawful and the data subject opposes their erasure and requests the restriction of their use instead;

taken by the relevant third parties.

3. The controller ***and, where applicable, the third party*** shall carry out the erasure without delay, except to the extent that the retention of the personal data is necessary:

- (a) for exercising the right of freedom of expression in accordance with Article 80;
- (b) for reasons of public interest in the area of public health in accordance with Article 81;
- (c) for historical, statistical and scientific research purposes in accordance with Article 83;
- (d) for compliance with a legal obligation to retain the personal data by Union or Member State law to which the controller is subject; Member State laws shall meet an objective of public interest, respect the right to the protection of personal data and be proportionate to the legitimate aim pursued;
- (e) in the cases referred to in paragraph 4.

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

- (a) their accuracy is contested by the data subject, for a period enabling the controller to verify the accuracy of the data;
- (b) the controller no longer needs the personal data for the accomplishment of its task but they have to be maintained for purposes of proof;
- (c) the processing is unlawful and the data subject opposes their erasure and requests the restriction of their use instead;

(ca) a court or regulatory authority based

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

5. Personal data referred to in paragraph 4 may, with the exception of storage, only be processed for purposes of proof, or with the data subject's consent, or for the protection of the rights of another natural or legal person or for an objective of public interest.

6. Where processing of personal data is restricted pursuant to paragraph 4, the controller shall inform the data subject before lifting the restriction on processing.

7. The controller shall implement mechanisms to ensure that the time limits established for the erasure of personal data and/or for a periodic review of the need for the storage of the data are observed.

8. Where the erasure is carried out, the controller shall not otherwise process such personal data.

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

(a) the criteria and requirements for the application of paragraph 1 for specific

in the Union has ruled as final and absolute that the data concerned must be restricted;

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

(da) the particular type of storage technology does not allow for erasure and has been installed before the entry into force of this Regulation.

5. Personal data referred to in paragraph 4 may, with the exception of storage, only be processed for purposes of proof, or with the data subject's consent, or for the protection of the rights of another natural or legal person or for an objective of public interest.

6. Where processing of personal data is restricted pursuant to paragraph 4, the controller shall inform the data subject before lifting the restriction on processing.

8. Where the erasure is carried out, the controller shall not otherwise process such personal data.

8a. The controller shall implement mechanisms to ensure that the time limits established for the erasure of personal data and/or for a periodic review of the need for the storage of the data are observed.

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

(a) the criteria and requirements for the application of paragraph 1 for specific

sectors and in specific data processing situations;

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

(c) the criteria and conditions for restricting the processing of personal data referred to in paragraph 4.

sectors and in specific data processing situations;

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

(c) the criteria and conditions for restricting the processing of personal data referred to in paragraph 4.

Amendment 113

Proposal for a regulation Article 18

Text proposed by the Commission

Amendment

Right to Data Portability

deleted

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

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

3. The Commission may specify the electronic format referred to in paragraph 1 and the technical standards, modalities and procedures for the transmission of personal data pursuant to paragraph 2. Those implementing acts shall be adopted in accordance with the examination

procedure referred to in Article 87(2).

Amendment 114

Proposal for a regulation Article 19

Text proposed by the Commission

Right to object

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

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

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

Amendment

Right to object

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

2. Where ***the processing of*** personal data ***is based on point (f) of Article 6(1)***, the data subject shall have ***at any time and without any further justification***, the right to object free of charge ***in general or for any particular purpose*** to the processing of their personal data.

2a. The right referred to in paragraph 2 shall be explicitly offered to the data subject in an intelligible manner and form, using clear and plain language, in particular if addressed specifically to a child, and shall be clearly distinguishable from other information.

2b. In the context of the use of information society services, and notwithstanding Directive 2002/58/EC, the right to object may be exercised by automated means using a technical standard which allows the data subject to clearly express his or her wishes.

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

personal data concerned.

personal data concerned *for the purposes determined in the objection.*

(The last sentence of paragraph 2 in the Commission text has become paragraph 2a in Parliament's amendment).

Amendment 115

Proposal for a regulation Article 20

Text proposed by the Commission

Amendment

Measures based on profiling

Profiling

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

1. *Without prejudice to the provisions in Article 6* every natural person shall have the right *to object to profiling in accordance with Article 19. The data subject shall be informed about the right to object to profiling in a highly visible manner.*

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

2. Subject to the other provisions of this Regulation, a person may be subjected to *profiling which leads to measures producing legal effects concerning the data subject or does similarly significantly affect the interests, rights or freedoms of the concerned data subject* only if the processing:

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

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

(b) is expressly authorized by a Union or Member State law which also lays down suitable measures to safeguard the data

(b) is expressly authorized by a Union or Member State law which also lays down suitable measures to safeguard the data

subject's legitimate interests; or

(c) is based on the data subject's consent, subject to the conditions laid down in Article 7 and to suitable safeguards.

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

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

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

subject's legitimate interests;

(c) is based on the data subject's consent, subject to the conditions laid down in Article 7 and to suitable safeguards.

3. Profiling that has the effect of discriminating against individuals on the basis of race or ethnic origin, political opinions, religion or beliefs, trade union membership, sexual orientation or gender identity, or that results in measures which have such effect, shall be prohibited. The controller shall implement effective protection against possible discrimination resulting from profiling. Profiling shall not be based solely on the special categories of personal data referred to in Article 9.

5. Profiling which leads to measures producing legal effects concerning the data subject or does similarly significantly affect the interests, rights or freedoms of the concerned data subject shall not be based solely or predominantly on automated processing and shall include human assessment, including an explanation of the decision reached after such an assessment. The suitable measures to safeguard the data subject's legitimate interests referred to in paragraph 2 shall include the right to obtain human assessment and an explanation of the decision reached after such assessment.

5a. The European Data Protection Board shall be entrusted with the task of issuing guidelines, recommendations and best practices in accordance with point (b) of Article 66 (1) for further specifying the criteria and conditions for profiling

pursuant to paragraph 2.

Amendment 116

Proposal for a regulation

Article 21

Text proposed by the Commission

Restrictions

1. Union or Member State law may restrict by way of a legislative measure the scope of the obligations and rights *provided for in points (a) to (e) of Article 5 and Articles 11 to 20 and Article 32*, when such a restriction *constitutes* a necessary and proportionate measure in a democratic society to safeguard:

- (a) public security;
- (b) the prevention, investigation, detection and prosecution of criminal offences;
- (c) *other public interests of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, including monetary, budgetary and taxation matters and the protection of market stability and integrity*;
- (d) the prevention, investigation, detection and prosecution of breaches of ethics for regulated professions;
- (e) a monitoring, inspection or regulatory function *connected, even occasionally, with the exercise of official authority in cases referred to in (a), (b), (c) and (d)*;
- (f) the protection of the data subject or the rights and freedoms of others.

2. In particular, any legislative measure

Amendment

Restrictions

1. Union or Member State law may restrict by way of a legislative measure the scope of the obligations and rights in *Articles 11 to 19 and Article 32*, when such a restriction *meets a clearly defined objective of public interest, respects the essence of the right to protection of personal data, is proportionate to the legitimate aim pursued and respects the fundamental rights and interests of the data subject and is* a necessary and proportionate measure in a democratic society to safeguard:

- (a) public security;
- (b) the prevention, investigation, detection and prosecution of criminal offences;
- (c) taxation matters;
- (d) the prevention, investigation, detection and prosecution of breaches of ethics for regulated professions;
- (e) a monitoring, inspection or regulatory function *in the framework of the exercise of a competent public authority in cases referred to in (a), (b), (c) and (d)*;
- (f) the protection of the data subject or the rights and freedoms of others.

2. In particular, any legislative measure

referred to in paragraph 1 shall contain specific provisions at least as to *the objectives to be pursued by the processing and the determination of the controller.*

referred to in paragraph 1 *must be necessary and proportionate in a democratic society and* shall contain specific provisions at least as to:

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

(b) the determination of the controller;

(c) the specific purposes and means of processing;

(d) the safeguards to prevent abuse or unlawful access or transfer;

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

2a. Legislative measures referred to in paragraph 1 shall neither permit nor oblige private controllers to retain data additional to those strictly necessary for the original purpose.

(The last words of paragraph 2 in the Commission text have become point (a) and (b) in Parliament's amendment).

Amendment 117

Proposal for a regulation

Article 22

Text proposed by the Commission

Amendment

Responsibility of the controller

Responsibility *and accountability* of the controller

1. The controller shall adopt policies and implement appropriate measures to ensure and be able to demonstrate that the processing of personal data is performed in compliance with this Regulation.

1. The controller shall adopt *appropriate* policies and implement appropriate *and demonstrable technical and organisational* measures to ensure and be able to demonstrate *in a transparent manner* that the processing of personal data is performed in compliance with this Regulation, *having regard to the state of the art, the nature of personal data processing, the context, scope and purposes of the processing, the risks for the rights and freedoms of the data subjects and the type of the organization,*

both at the time of the determination of the means for processing and at the time of the processing itself.

1a. Having regard to the state of the art and the cost of implementation, the controller shall take all reasonable steps to implement compliance policies and procedures that persistently respect the autonomous choices of data subjects. These compliance policies shall be reviewed at least every two years and updated where necessary.

2. The measures provided for in paragraph 1 shall in particular include:

(a) keeping the documentation pursuant to Article 28;

(b) implementing the data security requirements laid down in Article 30;

(c) performing a data protection impact assessment pursuant to Article 33;

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

(e) designating a data protection officer pursuant to Article 35(1).

3. The controller shall implement mechanisms to ensure the verification of the effectiveness of the measures referred to in paragraphs 1 and 2. If proportionate, this verification shall be carried out by independent internal or external auditors.

3. The controller shall be able to demonstrate the adequacy and effectiveness of the measures referred to in paragraphs 1 and 2. Any regular general reports of the activities of the controller, such as the obligatory reports by publicly traded companies, shall contain a summary description of the policies and measures referred to in paragraph 1.

3a. The controller shall have the right to transmit personal data inside the Union within the group of undertakings the controller is part of, where such processing is necessary for legitimate internal administrative purposes between connected business areas of the group of undertakings and an adequate level of data protection as well as the interests of

the data subjects are safeguarded by internal data protection provisions or equivalent codes of conduct as referred to in Article 38.

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

Amendment 118

Proposal for a regulation Article 23

Text proposed by the Commission

Data protection by design and by default

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

Amendment

Data protection by design and by default

1. Having regard to the state of the art, **current technical knowledge, international best practices and the risks represented by the data processing**, the controller **and the processor, if any**, shall, both at the time of the determination of the **purposes and** means for processing and at the time of the processing itself, implement appropriate **and proportionate** technical and organisational measures and procedures in such a way that the processing will meet the requirements of this Regulation and ensure the protection of the rights of the data subject, **in particular with regard to the principles laid out in Article 5. Data protection by design shall have particular regard to the entire lifecycle management of personal data from collection to processing to deletion, systematically focusing on**

comprehensive procedural safeguards regarding the accuracy, confidentiality, integrity, physical security and deletion of personal data. Where the controller has carried out a data protection impact assessment pursuant to Article 33, the results shall be taken into account when developing those measures and procedures.

1a. In order to foster its widespread implementation in different economic sectors, data protection by design shall be a prerequisite for public procurement tenders according to Directive 2004/18/EC of the European Parliament and of the Council¹ as well as according to Directive 2004/17/EC of the European Parliament and of the Council² (Utilities Directive).

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

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

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

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

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

¹ *Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114).*

² *Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sector (OJ L 134, 30.4.2004, p. 1).*

Amendment 119

Proposal for a regulation Article 24

Text proposed by the Commission

Joint controllers

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

Amendment

Joint controllers

Where *several controllers jointly determine* the purposes and means of the processing of personal data, the joint controllers shall determine their respective responsibilities for compliance with the obligations under this Regulation, in particular as regards the procedures and mechanisms for exercising the rights of the data subject, by means of an arrangement between them. *The arrangement shall duly reflect the joint controllers' respective effective roles and relationships vis-à-vis data subjects, and the essence of the arrangement shall be made available for the data subject. In case of unclarity of the responsibility, the controllers shall be jointly and severally liable.*

Amendment 120

Proposal for a regulation Article 25

Text proposed by the Commission

Representatives of controllers not established in the Union

1. In the situation referred to in Article 3(2), the controller shall designate a representative in the Union.
2. This obligation shall not apply to:
 - (a) a controller established in a third country where the Commission has decided that the third country ensures an adequate level of protection in accordance with Article 41; or
 - (b) *an enterprise employing fewer than 250 persons*; or
 - (c) a public authority or body; or
 - (d) a controller *offering* only occasionally goods or services to data subjects *residing* in the Union.
3. The representative shall be established in one of those Member States where *the data subjects whose personal data are processed in relation to* the offering of goods or services to *them*, or *whose behaviour is monitored, reside*.
4. The designation of a representative by the controller shall be without prejudice to legal actions which could be initiated against the controller itself.

Amendment

Representatives of controllers not established in the Union

1. In the situation referred to in Article 3(2), the controller shall designate a representative in the Union.
2. This obligation shall not apply to:
 - (a) a controller established in a third country where the Commission has decided that the third country ensures an adequate level of protection in accordance with Article 41; or
 - (b) *a controller processing personal data which relates to less than 5000 data subjects during any consecutive 12-month period and not processing special categories of personal data as referred to in Article 9(1), location data or data on children or employees in large-scale filing systems*; or
 - (c) a public authority or body; or
 - (d) a controller only occasionally *offering* goods or services to data subjects in the Union, *unless the processing of personal data concerns special categories of personal data as referred to in Article 9(1), location data or data on children or employees in large-scale filing systems*.
3. The representative shall be established in one of those Member States where the offering of goods or services to *the data subjects*, or *the monitoring of them, take place*.
4. The designation of a representative by the controller shall be without prejudice to legal actions which could be initiated against the controller itself.

Amendment 121

Proposal for a regulation Article 26

Text proposed by the Commission

Processor

1. Where **a** processing **operation** is to be carried out on behalf of a controller, the controller shall choose a processor providing sufficient guarantees to implement appropriate technical and organisational measures and procedures in such a way that the processing will meet the requirements of this Regulation and ensure the protection of the rights of the data subject, in particular in respect of the technical security measures and organizational measures governing the processing to be carried out and shall ensure compliance with those measures.

2. The carrying out of processing by a processor shall be governed by a contract or other legal act binding the processor to the controller **and stipulating in particular that** the processor shall:

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

(b) employ only staff who have committed themselves to confidentiality or are under a statutory obligation of confidentiality;

(c) take all required measures pursuant to Article 30;

(d) **enlist** another processor only with the prior permission of the controller;

Amendment

Processor

1. Where processing is to be carried out on behalf of a controller, the controller shall choose a processor providing sufficient guarantees to implement appropriate technical and organisational measures and procedures in such a way that the processing will meet the requirements of this Regulation and ensure the protection of the rights of the data subject, in particular in respect of the technical security measures and organizational measures governing the processing to be carried out and shall ensure compliance with those measures.

2. The carrying out of processing by a processor shall be governed by a contract or other legal act binding the processor to the controller. **The controller and the processor shall be free to determine respective roles and tasks with respect to the requirements of this Regulation, and shall provide that** the processor shall:

(a) **process personal data** only on instructions from the controller, **unless otherwise required by Union law or Member State law**;

(b) employ only staff who have committed themselves to confidentiality or are under a statutory obligation of confidentiality;

(c) take all required measures pursuant to Article 30;

(d) **determine the conditions for enlisting** another processor only with the prior permission of the controller, **unless otherwise determined**;

(e) insofar as this is possible given the nature of the processing, create in agreement with the controller the **necessary** technical and organisational requirements for the fulfilment of the controller's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III;

(f) assist the controller in ensuring compliance with the obligations pursuant to Articles 30 to 34;

(g) **hand over** all results to the controller after the end of the processing **and** not process the personal data otherwise;

(h) make available to the controller **and the supervisory authority** all information necessary to **control** compliance with the obligations laid down in this Article.

3. The controller and the processor shall document in writing the controller's instructions and the processor's obligations referred to in paragraph 2.

4. If a processor processes personal data other than as instructed by the controller, the processor shall be considered to be a controller in respect of that processing and shall be subject to the rules on joint controllers laid down in Article 24.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements

(e) insofar as this is possible given the nature of the processing, create in agreement with the controller the **appropriate and relevant** technical and organisational requirements for the fulfilment of the controller's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III;

(f) assist the controller in ensuring compliance with the obligations pursuant to Articles 30 to 34, **taking into account the nature of processing and the information available to the processor**;

(g) **return** all results to the controller after the end of the processing, not process the personal data otherwise **and delete existing copies unless Union or Member State law requires storage of the data**;

(h) make available to the controller all information necessary to **demonstrate** compliance with the obligations laid down in this Article **and allow on-site inspections**;

3. The controller and the processor shall document in writing the controller's instructions and the processor's obligations referred to in paragraph 2.

3a. The sufficient guarantees referred to in paragraph 1 may be demonstrated by adherence to codes of conduct or certification mechanisms pursuant to Articles 38 or 39 of this Regulation.

4. If a processor processes personal data other than as instructed by the controller **or becomes the determining party in relation to the purposes and means of data processing**, the processor shall be considered to be a controller in respect of that processing and shall be subject to the rules on joint controllers laid down in Article 24.

for the responsibilities, duties and tasks in relation to a processor in line with paragraph 1, and conditions which allow facilitating the processing of personal data within a group of undertakings, in particular for the purposes of control and reporting.

—Amendment

122

Proposal for a regulation Article 28

Text proposed by the Commission

Documentation

1. Each controller and processor ***and, if any, the controller's representative***, shall maintain documentation ***of all processing operations under its responsibility***.

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

(a) the name and contact details of the controller, or any joint controller or processor, and of the representative, if any;

(b) the name and contact details of the data protection officer, if any;

(c) the purposes of the processing, including the legitimate interests pursued by the controller where the processing is based on point (f) of Article 6(1);

(d) a description of categories of data subjects and of the categories of personal data relating to them;

(e) the recipients or categories of recipients of the personal data, including the controllers to whom personal data are disclosed for the legitimate interest pursued by them;

(f) where applicable, transfers of data to a third country or an international organisation, including the identification of that third country or international

Amendment

Documentation

1. Each controller and processor shall maintain ***regularly updated*** documentation ***necessary to fulfill the requirements laid down in this Regulation***.

2. ***In addition, each controller and processor shall maintain*** documentation ***of*** the following information:

(a) the name and contact details of the controller, or any joint controller or processor, and of the representative, if any;

(b) the name and contact details of the data protection officer, if any;

(e) the name and contact details of the controllers to whom personal data are disclosed, ***if any***;

organisation and, in case of transfers referred to in point (h) of Article 44(1), the documentation of appropriate safeguards;

(g) a general indication of the time limits for erasure of the different categories of data;

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

3. The controller and the processor and, if any, the controller's representative, shall make the documentation available, on request, to the supervisory authority.

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

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

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

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

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

Amendment 123

Proposal for a regulation Article 29 – paragraph 1

Text proposed by the Commission

1. The controller and the processor and, **if any**, the representative of the controller, shall co-operate, on request, with the supervisory authority in the performance of its duties, in particular by providing the information referred to in point (a) of Article 53(2) and by granting access as provided in point (b) of that paragraph.

Amendment

1. The controller and, **if any**, the processor and the representative of the controller, shall co-operate, on request, with the supervisory authority in the performance of its duties, in particular by providing the information referred to in point (a) of Article 53(2) and by granting access as provided in point (b) of that paragraph.

Amendment 124

Proposal for a regulation Article 30

Text proposed by the Commission

Security of processing

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

Amendment

Security of processing

1. The controller and the processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing, **taking into account the results of a data protection impact assessment pursuant to Article 33**, having regard to the state of the art and the costs of their implementation.

1a. Having regard to the state of the art and the cost of implementation, such a security policy shall include:

(a) the ability to ensure that the integrity of the personal data is validated;

(b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of systems and services processing personal data;

(c) the ability to restore the availability and access to data in a timely manner in the event of a physical or technical

incident that impacts the availability, integrity and confidentiality of information systems and services;

(d) in the case of sensitive personal data processing according to Articles 8 and 9, additional security measures to ensure situational awareness of risks and the ability to take preventive, corrective and mitigating action in near real time against vulnerabilities or incidents detected that could pose a risk to the data;

(e) a process for regularly testing, assessing and evaluating the effectiveness of security policies, procedures and plans put in place to ensure ongoing effectiveness.

2. The *controller and the processor* shall, *following an evaluation of the risks, take the measures referred to in paragraph 1 to protect personal data against accidental or unlawful destruction or accidental loss and to prevent any unlawful forms of processing, in particular any unauthorised disclosure, dissemination or access, or alteration of personal data.*

2. The measures referred to in paragraph 1 shall at least:

(a) ensure that personal data can be accessed only by authorised personnel for legally authorised purposes;

(b) protect personal data stored or transmitted against accidental or unlawful destruction, accidental loss or alteration, and unauthorised or unlawful storage, processing, access or disclosure; and

(c) ensure the implementation of a security policy with respect to the processing of personal data.

3. The *Commission* shall be *empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions* for the technical and organisational measures referred to in paragraphs 1 and 2, including the determinations of what constitutes the state of the art, for specific sectors and in

3. The *European Data Protection Board* shall be *entrusted with the task of issuing guidelines, recommendations and best practices in accordance with point (b) of Article 66 (1)* for the technical and organisational measures referred to in paragraphs 1 and 2, including the determinations of what constitutes the state

specific data processing situations, in particular taking account of developments in technology and solutions for privacy by design and data protection by default, **unless paragraph 4 applies.**

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

(a) prevent any unauthorised access to personal data;

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

(c) ensure the verification of the lawfulness of processing operations.

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

(Paragraph 2 in the Commission text has partly become point (b) in Parliament's amendment).

Amendment 125

Proposal for a regulation Article 31

Text proposed by the Commission

Notification of a personal data breach to the supervisory authority

1. In the case of a personal data breach, the controller shall without undue delay **and, where feasible, not later than 24 hours after having become aware of it**, notify the personal data breach to the supervisory authority. **The notification to the supervisory authority shall be accompanied by a reasoned justification in cases where it is not made within 24 hours.**

Amendment

Notification of a personal data breach to the supervisory authority

1. In the case of a personal data breach, the controller shall without undue delay notify the personal data breach to the supervisory authority.

2. Pursuant to point (f) of Article 26(2), the processor shall alert and inform the controller *immediately* after the establishment of a personal data breach.

3. The notification referred to in paragraph 1 must at least:

(a) describe the nature of the personal data breach including the categories and number of data subjects concerned and the categories and number of data records concerned;

(b) communicate the identity and contact details of the data protection officer or other contact point where more information can be obtained;

(c) recommend measures to mitigate the possible adverse effects of the personal data breach;

(d) describe the consequences of the personal data breach;

(e) describe the measures proposed or taken by the controller to address the personal data breach.

4. The controller shall document any personal data breaches, comprising the facts surrounding the breach, its effects and the remedial action taken. This documentation must enable the supervisory authority to verify compliance with this Article. The documentation shall only include the information necessary for that purpose.

5. The *Commission* shall be *empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements*

2. The processor shall alert and inform the controller *without undue delay* after the establishment of a personal data breach.

3. The notification referred to in paragraph 1 must at least:

(a) describe the nature of the personal data breach including the categories and number of data subjects concerned and the categories and number of data records concerned;

(b) communicate the identity and contact details of the data protection officer or other contact point where more information can be obtained;

(c) recommend measures to mitigate the possible adverse effects of the personal data breach;

(d) describe the consequences of the personal data breach;

(e) describe the measures proposed or taken by the controller to address the personal data breach. *and mitigate its effects.*

The information may if necessary be provided in phases.

4. The controller shall document any personal data breaches, comprising the facts surrounding the breach, its effects and the remedial action taken. This documentation must *be sufficient to* enable the supervisory authority to verify compliance with this Article *and with Article 30*. The documentation shall only include the information necessary for that purpose.

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

5. The *European Data Protection Board* shall be *entrusted with the task of issuing guidelines, recommendations and best practices in accordance with point (b) of*

for establishing the data breach referred to in paragraphs 1 and 2 and for the particular circumstances in which a controller and a processor *is* required to notify the personal data breach.

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

Article 66 (1) for establishing the data breach ***and determining the undue delay*** referred to in paragraphs 1 and 2 and for the particular circumstances in which a controller and a processor ***are*** required to notify the personal data breach.

Amendment 126

Proposal for a regulation Article 32

Text proposed by the Commission

Communication of a personal data breach to the data subject

1. When the personal data breach is likely to adversely affect the protection of the personal data *or* privacy of the data subject, the controller shall, after the notification referred to in Article 31, communicate the personal data breach to the data subject without undue delay.
2. The communication to the data subject referred to in paragraph 1 shall describe the nature of the personal data breach and contain at least the information and the recommendations provided for in points (b) *and* (c) of Article 31(3).

Amendment

Communication of a personal data breach to the data subject

1. When the personal data breach is likely to adversely affect the protection of the personal data, ***the*** privacy, ***the rights or the legitimate interests*** of the data subject, the controller shall, after the notification referred to in Article 31, communicate the personal data breach to the data subject without undue delay.
- The communication to the data subject referred to in paragraph 1 shall ***be comprehensive and use clear and plain language. It shall*** describe the nature of the personal data breach and contain at least the information and the recommendations provided for in points (b), (c) ***and (d)*** of Article 31(3) ***and information about the rights of the data***

3. The communication of a personal data breach to the data subject shall not be required if the controller demonstrates to the satisfaction of the supervisory authority that it has implemented appropriate technological protection measures, and that those measures were applied to the data concerned by the personal data breach. Such technological protection measures shall render the data unintelligible to any person who is not authorised to access it.

4. Without prejudice to the controller's obligation to communicate the personal data breach to the data subject, if the controller has not already communicated the personal data breach to the data subject of the personal data breach, the supervisory authority, having considered the likely adverse effects of the breach, may require it to do so.

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

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

subject, including redress.

3. The communication of a personal data breach to the data subject shall not be required if the controller demonstrates to the satisfaction of the supervisory authority that it has implemented appropriate technological protection measures, and that those measures were applied to the data concerned by the personal data breach. Such technological protection measures shall render the data unintelligible to any person who is not authorised to access it.

4. Without prejudice to the controller's obligation to communicate the personal data breach to the data subject, if the controller has not already communicated the personal data breach to the data subject of the personal data breach, the supervisory authority, having considered the likely adverse effects of the breach, may require it to do so.

The *European Data Protection Board* shall be *entrusted with the task of issuing guidelines, recommendations and best practices in accordance with point (b) of Article 66 (1)* as to the circumstances in which a personal data breach is likely to adversely affect the personal data, *the privacy, the rights or the legitimate interests of the data subject* referred to in paragraph 1.

Amendment 127

Proposal for a regulation Article 32 a (new)

Text proposed by the Commission

Amendment

Article 32a

Respect to Risk

1. The controller, or where applicable the processor, shall carry out a risk analysis of the potential impact of the intended data processing on the rights and freedoms of the data subjects, assessing whether its processing operations are likely to present specific risks.

2. The following processing operations are likely to present specific risks:

(a) processing of personal data relating to more than 5000 data subjects during any consecutive 12-month period;

(b) processing of special categories of personal data as referred to in Article 9(1), location data or data on children or employees in large scale filing systems;

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

(d) processing of personal data for the provision of health care, epidemiological researches, or surveys of mental or infectious diseases, where the data are processed for taking measures or decisions regarding specific individuals on a large scale;

(e) automated monitoring of publicly accessible areas on a large scale;

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

(g) where a personal data breach would likely adversely affect the protection of the personal data, the privacy, the rights or the legitimate interests of the data subject;

(h) 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;

(i) where personal data are made accessible to a number of persons which cannot reasonably be expected to be limited.

3. According to the result of the risk analysis:

(a) where any of the processing operations referred to in points (a) or (b) of paragraph 2 exist, controllers not established in the Union shall designate a representative in the Union in line with the requirements and exemptions laid down in Article 25;

(b) where any of the processing operations referred to in points (a), (b) or (h) of paragraph 2 exist, the controller shall designate a data protection officer in line with the requirements and exemptions laid down in Article 35;

(c) where any of the processing operations referred to in points (a), (b), (c), (d), (e), (f), (g) or (h) of paragraph 2 exist, the controller or the processor acting on the controller's behalf shall carry out a data protection impact assessment pursuant to Article 33;

(d) where processing operations referred to in point (f) of paragraph 2 exist, the controller shall consult the data protection officer, or in case a data protection officer has not been appointed, the supervisory authority pursuant to Article 34.

4. The risk analysis shall be reviewed at

the latest after one year, or immediately, if the nature, the scope or the purposes of the data processing operations change significantly. Where pursuant to point (c) of paragraph 3 the controller is not obliged to carry out a data protection impact assessment, the risk analysis shall be documented.

Amendment 128

Proposal for a regulation Chapter 4 – section 3 – title

Text proposed by the Commission

**DATA PROTECTION *IMPACT*
ASSESSMENT AND PRIOR
AUTHORISATION**

Amendment

**LIFECYCLE DATA PROTECTION
MANAGEMENT**

Amendment 129

Proposal for a regulation Article 33

Text proposed by the Commission

Data protection impact assessment

1. Where *processing operations present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes*, the controller or the processor acting on the controller's behalf shall carry out an assessment of the impact of the envisaged processing operations on the protection of personal data.

2. *The following processing operations in particular present specific risks referred to in paragraph 1:*

(a) a systematic and extensive evaluation of personal aspects relating to a natural

Amendment

Data protection impact assessment

1. Where *required pursuant to point (c) of Article 32a(3)* the controller or the processor acting on the controller's behalf shall carry out an assessment of the impact of the envisaged processing operations on *the rights and freedoms of the data subjects, especially their right to protection of personal data. A single assessment shall be sufficient to address a set of similar processing operations that present similar risks.*

person or for analysing or predicting in particular the natural person's economic situation, location, health, personal preferences, reliability or behaviour, which is based on automated processing and on which measures are based that produce legal effects concerning the individual or significantly affect the individual;

(b) information on sex life, health, race and ethnic origin or for the provision of health care, epidemiological researches, or surveys of mental or infectious diseases, where the data are processed for taking measures or decisions regarding specific individuals on a large scale;

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

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

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

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

3. The assessment shall *have regard to the entire lifecycle management of personal data from collection to processing to deletion. It shall* contain at least:

(a) a systematic description of the envisaged processing operations, the purposes of the processing and, if applicable, the legitimate interests pursued by the controller;

- (b) an assessment of the necessity and proportionality of the processing operations in relation to the purposes;*
- (c) an assessment of the risks to the rights and freedoms of data subjects, including the risk of discrimination being embedded in or reinforced by the operation;*
- (d) a description of the measures envisaged to address the risks and minimise the volume of personal data which is processed;*
- (e) a list of safeguards, security measures and mechanisms to ensure the protection of personal data, such as pseudonymisation, and to demonstrate compliance with this Regulation, taking into account the rights and legitimate interests of data subjects and other persons concerned;*
- (f) a general indication of the time limits for erasure of the different categories of data;*
- (h) an explanation which data protection by design and default practices pursuant to Article 23 have been implemented;*
- (i) a list of the recipients or categories of recipients of the personal data;*
- (j) where applicable, a list of the intended transfers of data to a third country or an international organisation, including the identification of that third country or international organisation and, in case of transfers referred to in point (h) of Article 44(1), the documentation of appropriate safeguards;*
- (k) an assessment of the context of the data processing.*

3a. If the controller or the processor has designated a data protection officer, he or she shall be involved in the impact assessment proceeding.

3b. The assessment shall be documented and lay down a schedule for regular

periodic data protection compliance reviews pursuant to Article 33a(1). The assessment shall be updated without undue delay, if the results of the data protection compliance review referred to in Article 33a show compliance inconsistencies. The controller and the processor and, if any, the controller's representative shall make the assessment available, on request, to the supervisory authority.

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

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

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for the processing operations likely to present specific risks referred to in paragraphs 1 and 2 and the requirements for the assessment referred to in paragraph 3, including conditions for scalability, verification and auditability. In doing so, the Commission shall consider specific measures for micro, small and medium-sized enterprises.

7. The Commission may specify standards and procedures for carrying out and verifying and auditing the assessment referred to in paragraph 3. Those implementing acts shall be adopted in

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

(Paragraph 3 in the Commission text has partly become points (a), (c), (d) and (e) in Parliament's amendment).

Amendment 130

Proposal for a regulation Article 33 a (new)

Text proposed by the Commission

Amendment

Article 33a

Data protection compliance review

- 1. At the latest two years after the carrying out of an impact assessment pursuant to Article 33(1), the controller or the processor acting on the controller's behalf shall carry out a compliance review. This compliance review shall demonstrate that the processing of personal data is performed in compliance with the data protection impact assessment.***
- 2. The compliance review shall be carried out periodically at least once every two years, or immediately when there is a change in the specific risks presented by the processing operations.***
- 3. Where the compliance review results show compliance inconsistencies, the compliance review shall include recommendations on how to achieve full compliance.***
- 4. The compliance review and its recommendations shall be documented. The controller and the processor and, if any, the controller's representative shall make the compliance review available, on request, to the supervisory authority.***
- 5. If the controller or the processor has designated a data protection officer, he or she shall be involved in the compliance review proceeding.***

Amendment 131

Proposal for a regulation Article 34

Text proposed by the Commission

Prior *authorisation and prior* consultation

1. The controller or the processor as the case may be shall obtain an authorisation from the supervisory authority prior to the processing of personal data, in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where a controller or processor adopts contractual clauses as provided for in point (d) of Article 42(2) or does not provide for the appropriate safeguards in a legally binding instrument as referred to in Article 42(5) for the transfer of personal data to a third country or an international organisation.

2. The controller or processor acting on the controller's behalf shall consult the supervisory authority prior to the processing of personal data in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where:

(a) a data protection impact assessment as provided for in Article 33 indicates that processing operations are by virtue of their nature, their scope or their purposes, likely to present a high degree of specific risks;
or

(b) the supervisory authority deems it necessary to carry out a prior consultation on processing operations that are likely to present specific risks to the rights and freedoms of data subjects by virtue of their

Amendment

Prior consultation

2. The controller or processor acting on the controller's behalf shall consult the ***data protection officer, or in case a data protection officer has not been appointed, the*** supervisory authority prior to the processing of personal data in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where:

(a) a data protection impact assessment as provided for in Article 33 indicates that processing operations are by virtue of their nature, their scope or their purposes, likely to present a high degree of specific risks;
or

(b) ***the data protection officer or*** the supervisory authority deems it necessary to carry out a prior consultation on processing operations that are likely to present specific risks to the rights and freedoms of data

nature, their scope and/or their purposes, and specified according to paragraph 4.

3. Where the supervisory authority *is of the opinion* that the intended processing does not comply with this Regulation, in particular where risks are insufficiently identified or mitigated, it shall prohibit the intended processing and make appropriate proposals to remedy such non-compliance.

4. The *supervisory authority* shall establish and make public a list of the processing operations which are subject to prior consultation pursuant to *point (b) of paragraph 2*. *The supervisory authority shall communicate those lists to the European Data Protection Board.*

5. Where the list provided for in paragraph 4 involves processing activities which are related to the offering of goods or services to data subjects in several Member States, or to the monitoring of their behaviour, or may substantially affect the free movement of personal data within the Union, the supervisory authority shall apply the consistency mechanism referred to in Article 57 prior to the adoption of the list.

6. The controller or processor shall provide the supervisory authority with the data protection impact assessment *provided for in* Article 33 and, on request, with any other information to allow the supervisory authority to make an assessment of the compliance of the processing and in particular of the risks for the protection of personal data of the data subject and of the related safeguards.

7. Member States shall consult the supervisory authority in the preparation of a legislative measure to be adopted by the national parliament or of a measure based on such a legislative measure, which defines the nature of the processing, in order to ensure the compliance of the

subjects by virtue of their nature, their scope and/or their purposes, and specified according to paragraph 4.

3. Where the *competent* supervisory authority *determines in accordance with its power* that the intended processing does not comply with this Regulation, in particular where risks are insufficiently identified or mitigated, it shall prohibit the intended processing and make appropriate proposals to remedy such non-compliance.

4. The *European Data Protection Board* shall establish and make public a list of the processing operations which are subject to prior consultation pursuant to paragraph 2.

6. The controller or processor shall provide the supervisory authority, *on request*, with the data protection impact assessment *pursuant to* Article 33 and, on request, with any other information to allow the supervisory authority to make an assessment of the compliance of the processing and in particular of the risks for the protection of personal data of the data subject and of the related safeguards.

7. Member States shall consult the supervisory authority in the preparation of a legislative measure to be adopted by the national parliament or of a measure based on such a legislative measure, which defines the nature of the processing, in order to ensure the compliance of the

intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects.

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for determining the high degree of specific risk referred to in point (a) of paragraph 2.

9. The Commission may set out standard forms and procedures for prior authorisations and consultations referred to in paragraphs 1 and 2, and standard forms and procedures for informing the supervisory authorities pursuant to paragraph 6. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

— Amendment

132

Proposal for a regulation Article 35

Text proposed by the Commission

Designation of the data protection officer

1. The controller and the processor shall designate a data protection officer in any case where:

(a) the processing is carried out by a public authority or body; or

(b) the processing is carried out by ***an enterprise employing 250 persons or more***; or

(c) the core activities of the controller or the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects.

Amendment

Designation of the data protection officer

1. The controller and the processor shall designate a data protection officer in any case where:

(a) the processing is carried out by a public authority or body; or

(b) the processing is carried out by ***a legal person and relates to more than 5000 data subjects in any consecutive 12-month period***; or

(c) the core activities of the controller or the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects; ***or***

(d) the core activities of the controller or the processor consist of processing special categories of data pursuant to Article 9(1), location data or data on children or employees in large scale filing systems.

2. *In the case referred to in point (b) of paragraph 1*, a group of undertakings may appoint a *single* data protection officer.

3. Where the controller or the processor is a public authority or body, the data protection officer may be designated for several of its entities, taking account of the organisational structure of the public authority or body.

4. In cases other than those referred to in paragraph 1, the controller or processor or associations and other bodies representing categories of controllers or processors may designate a data protection officer.

5. The controller or processor shall designate the data protection officer on the basis of professional qualities and, in particular, expert knowledge of data protection law and practices and ability to fulfil the tasks referred to in Article 37. The necessary level of expert knowledge shall be determined in particular according to the data processing carried out and the protection required for the personal data processed by the controller or the processor.

6. The controller or the processor shall ensure that any other professional duties of the data protection officer are compatible with the person's tasks and duties as data protection officer and do not result in a conflict of interests.

7. The controller or the processor shall designate a data protection officer for a period of at least *two* years. The data protection officer may be reappointed for further terms. During *their* term of office, the data protection officer may only be

2. A group of undertakings may appoint a *main responsible* data protection officer, *provided it is ensured that a data protection officer is easily accessible from each establishment.*

3. Where the controller or the processor is a public authority or body, the data protection officer may be designated for several of its entities, taking account of the organisational structure of the public authority or body.

4. In cases other than those referred to in paragraph 1, the controller or processor or associations and other bodies representing categories of controllers or processors may designate a data protection officer.

5. The controller or processor shall designate the data protection officer on the basis of professional qualities and, in particular, expert knowledge of data protection law and practices and ability to fulfil the tasks referred to in Article 37. The necessary level of expert knowledge shall be determined in particular according to the data processing carried out and the protection required for the personal data processed by the controller or the processor.

6. The controller or the processor shall ensure that any other professional duties of the data protection officer are compatible with the person's tasks and duties as data protection officer and do not result in a conflict of interests.

7. The controller or the processor shall designate a data protection officer for a period of at least *four* years *in case of an employee or two years in case of an external service contractor.* The data protection officer may be reappointed for

dismissed, if *the data protection officer* no longer fulfils the conditions required for the performance of *their* duties.

8. The data protection officer may be employed by the controller or processor, or fulfil his or her tasks on the basis of a service contract.

9. The controller or the processor shall communicate the name and contact details of the data protection officer to the supervisory authority and to the public.

10. Data subjects shall have the right to contact the data protection officer on all issues related to the processing of the data subject's data and to request exercising the rights under this Regulation.

11. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the core activities of the controller or the processor referred to in point (c) of paragraph 1 and the criteria for the professional qualities of the data protection officer referred to in paragraph 5.

Amendment 133

Proposal for a regulation Article 36

Text proposed by the Commission

Position of the data protection officer

1. The controller or the processor shall ensure that the data protection officer is properly and in a timely manner involved in all issues which relate to the protection of personal data.
2. The controller or processor shall ensure that the data protection officer performs the

further terms. During *his or her* term of office, the data protection officer may only be dismissed if *he or she* no longer fulfils the conditions required for the performance of his or her duties.

8. The data protection officer may be employed by the controller or processor, or fulfil his or her tasks on the basis of a service contract.

9. The controller or the processor shall communicate the name and contact details of the data protection officer to the supervisory authority and to the public.

10. Data subjects shall have the right to contact the data protection officer on all issues related to the processing of the data subject's data and to request exercising the rights under this Regulation.

Amendment

Position of the data protection officer

1. The controller or the processor shall ensure that the data protection officer is properly and in a timely manner involved in all issues which relate to the protection of personal data.
2. The controller or processor shall ensure that the data protection officer performs the

duties and tasks independently and does not receive any instructions as regards the exercise of the function. The data protection officer shall directly report to the management of the controller or the processor.

3. The controller or the processor shall support the data protection officer in performing the tasks and shall provide staff, premises, equipment and any other resources necessary to carry out the duties and tasks referred to in Article 37.

duties and tasks independently and does not receive any instructions as regards the exercise of the function. The data protection officer shall directly report to the *executive* management of the controller or the processor. ***The controller or processor shall for this purpose designate an executive management member who shall be responsible for the compliance with the provisions of this Regulation.***

3. The controller or the processor shall support the data protection officer in performing the tasks and shall provide ***all means, including*** staff, premises, equipment and any other resources necessary to carry out the duties and tasks referred to in Article 37, ***and to maintain his or her professional knowledge.***

4. Data protection officers shall be bound by secrecy concerning the identity of data subjects and concerning circumstances enabling data subjects to be identified, unless they are released from that obligation by the data subject.

Amendment 134

Proposal for a regulation Article 37

Text proposed by the Commission

Tasks of the data protection officer

1. The controller or the processor shall entrust the data protection officer at least with the following tasks:

(a) to inform and advise the controller or the processor of their obligations pursuant to this Regulation and to document this activity and the responses received;

(b) to monitor the implementation and application of the policies of the controller

Amendment

Tasks of the data protection officer

The controller or the processor shall entrust the data protection officer at least with the following tasks:

(a) ***to raise awareness***, to inform and advise the controller or the processor of their obligations pursuant to this Regulation, ***in particular with regard to technical and organisational measures and procedures***, and to document this activity and the responses received;

(b) to monitor the implementation and application of the policies of the controller

or processor in relation to the protection of personal data, including the assignment of responsibilities, the training of staff involved in the processing operations, and the related audits;

(c) to monitor the implementation and application of this Regulation, in particular as to the requirements related to data protection by design, data protection by default and data security and to the information of data subjects and their requests in exercising their rights under this Regulation;

(d) to ensure that the documentation referred to in Article 28 is maintained;

(e) to monitor the documentation, notification and communication of personal data breaches pursuant to Articles 31 and 32;

(f) to monitor the performance of the data protection impact assessment by the controller or processor and the application for prior *authorisation or prior* consultation, if required pursuant Articles 33 and 34;

(g) to monitor the response to requests from the supervisory authority, and, within the sphere of the data protection officer's competence, co-operating with the supervisory authority at the latter's request or on the data protection officer's own initiative;

(h) to act as the contact point for the supervisory authority on issues related to the processing and consult with the supervisory authority, if appropriate, on his/her own initiative.

2. The Commission shall be empowered to adopt delegated acts in accordance with

or processor in relation to the protection of personal data, including the assignment of responsibilities, the training of staff involved in the processing operations, and the related audits;

(c) to monitor the implementation and application of this Regulation, in particular as to the requirements related to data protection by design, data protection by default and data security and to the information of data subjects and their requests in exercising their rights under this Regulation;

(d) to ensure that the documentation referred to in Article 28 is maintained;

(e) to monitor the documentation, notification and communication of personal data breaches pursuant to Articles 31 and 32;

(f) to monitor the performance of the data protection impact assessment by the controller or processor and the application for prior consultation, if required pursuant *to* Articles **32a**, 33 and 34;

(g) to monitor the response to requests from the supervisory authority, and, within the sphere of the data protection officer's competence, co-operating with the supervisory authority at the latter's request or on the data protection officer's own initiative;

(h) to act as the contact point for the supervisory authority on issues related to the processing and consult with the supervisory authority, if appropriate, on his/her own initiative.

(i) to verify the compliance with this Regulation under the prior consultation mechanism laid out in Article 34;

(j) to inform the employee representatives on data processing of the employees.

Article 86 for the purpose of further specifying the criteria and requirements for tasks, certification, status, powers and resources of the data protection officer referred to in paragraph 1.

Amendment 135

Proposal for a regulation Article 38

Text proposed by the Commission

Codes of conduct

1. The Member States, the supervisory authorities and the Commission shall encourage the drawing up of codes of conduct intended to contribute to the proper application of this Regulation, taking account of the specific features of the various data processing sectors, in particular in relation to:

- (a) fair and transparent data processing;
- (b) the collection of data;
- (c) the information of the public and of data subjects;
- (d) requests of data subjects in exercise of their rights;
- (e) information and protection of children;
- (f) transfer of data to third countries or international organisations;
- (g) mechanisms for monitoring and ensuring compliance with the code by the controllers adherent to it;
- (h) out-of-court proceedings and other dispute resolution procedures for resolving disputes between controllers and data subjects with respect to the processing of personal data, without prejudice to the

Amendment

Codes of conduct

1. The Member States, the supervisory authorities and the Commission shall encourage the drawing up of codes of conduct ***or the adoption of codes of conduct drawn up by a supervisory authority*** intended to contribute to the proper application of this Regulation, taking account of the specific features of the various data processing sectors, in particular in relation to:

- (a) fair and transparent data processing;
- (aa) respect for consumer rights;***
- (b) the collection of data;
- (c) the information of the public and of data subjects;
- (d) requests of data subjects in exercise of their rights;
- (e) information and protection of children;
- (f) transfer of data to third countries or international organisations;
- (g) mechanisms for monitoring and ensuring compliance with the code by the controllers adherent to it;
- (h) out-of-court proceedings and other dispute resolution procedures for resolving disputes between controllers and data subjects with respect to the processing of personal data, without prejudice to the

rights of the data subjects pursuant to Articles 73 and 75.

2. Associations and other bodies representing categories of controllers or processors in one Member State which intend to draw up codes of conduct or to amend or extend existing codes of conduct may submit them to an opinion of the supervisory authority in that Member State. The supervisory authority *may* give an opinion whether the draft code of conduct or the amendment is in compliance with this Regulation. The supervisory authority shall seek the views of data subjects or their representatives on these drafts.

3. Associations and other bodies representing categories of controllers in several Member States may submit draft codes of conduct and amendments or extensions to existing codes of conduct to the Commission.

4. The Commission *may adopt implementing acts* for deciding that the codes of conduct and amendments or extensions to existing codes of conduct submitted to it pursuant to paragraph 3 have general validity within the Union. *Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).*

5. The Commission shall ensure appropriate publicity for the codes which have been decided as having general validity in accordance with paragraph 4.

rights of the data subjects pursuant to Articles 73 and 75.

2. Associations and other bodies representing categories of controllers or processors in one Member State which intend to draw up codes of conduct or to amend or extend existing codes of conduct may submit them to an opinion of the supervisory authority in that Member State. The supervisory authority *shall without undue delay* give an opinion *on* whether *the processing under* the draft code of conduct or the amendment is in compliance with this Regulation. The supervisory authority shall seek the views of data subjects or their representatives on these drafts.

3. Associations and other bodies representing categories of controllers *or processors* in several Member States may submit draft codes of conduct and amendments or extensions to existing codes of conduct to the Commission.

4. The Commission *shall be empowered to adopt, after requesting an opinion of the European Data Protection Board, delegated acts in accordance with Article 86* for deciding that the codes of conduct and amendments or extensions to existing codes of conduct submitted to it pursuant to paragraph 3 *are in line with this Regulation and* have general validity within the Union. *Those delegated acts shall confer enforceable rights on data subjects.*

5. The Commission shall ensure appropriate publicity for the codes which have been decided as having general validity in accordance with paragraph 4.

Amendment 136

Proposal for a regulation Article 39

Text proposed by the Commission

Amendment

Certification

Certification

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.

1a. Any controller or processor may request any supervisory authority in the Union, for a reasonable fee taking into account the administrative costs, to certify that the processing of personal data is performed in compliance with this Regulation, in particular with the principles set out in Article 5, 23 and 30, the obligations of the controller and the processor, and the data subject's rights.

1b. The certification shall be voluntary, affordable, and available via a process that is transparent and not unduly burdensome.

1c. The supervisory authorities and the European Data Protection Board shall cooperate under the consistency mechanism pursuant to Article 57 to guarantee a harmonised data protection certification mechanism including harmonised fees within the Union.

1d. During the certification procedure, the supervisory authority may accredit specialised third party auditors to carry

out the auditing of the controller or the processor on their behalf. Third party auditors shall have sufficiently qualified staff, be impartial and free from any conflict of interests regarding their duties. Supervisory authorities shall revoke accreditation, if there are reasons to believe that the auditor does not fulfil its duties correctly. The final certification shall be provided by the supervisory authority.

1e. Supervisory authorities shall grant controllers and processors, who pursuant to the auditing have been certified that they process personal data in compliance with this Regulation, the standardised data protection mark named "European Data Protection Seal".

1f. The "European Data Protection Seal" shall be valid for as long as the data processing operations of the certified controller or processor continue to fully comply with this Regulation.

1g. Notwithstanding paragraph 1f, the certification shall be valid for maximum five years.

1h. The European Data Protection Board shall establish a public electronic register in which all valid and invalid certificates which have been issued in the Member States can be viewed by the public.

1i. The European Data Protection Board may on its own initiative certify that a data protection-enhancing technical standard is compliant with this Regulation.

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

2. The Commission shall be empowered to adopt, *after requesting an opinion of the European Data Protection Board and consulting with stakeholders, in particular industry and non-governmental organisations*, delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the data protection

countries.

certification mechanisms referred to in *paragraphs 1a to 1h*, including *requirements for accreditation of auditors*, conditions for granting and withdrawal, and requirements for recognition within the Union and in third countries. *Those delegated acts shall confer enforceable rights on data subjects.*

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 137

Proposal for a regulation Article 41

Text proposed by the Commission

Transfers with an adequacy decision

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.

2. When assessing the adequacy of the level of protection, the Commission shall give consideration to the following elements:

(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

Transfers with an adequacy decision

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.

2. When assessing the adequacy of the level of protection, the Commission shall give consideration to the following elements:

(a) the rule of law, relevant legislation in force, both general and sectoral, including concerning public security, defence, national security and criminal law *as well as the implementation of this legislation*, the professional rules and security

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;

(b) the existence and effective functioning of one or more independent supervisory authorities in the third country or international organisation in question responsible for ensuring compliance with the data protection rules, for assisting and advising the data subjects in exercising their rights and for co-operation with the supervisory authorities of the Union and of Member States; and

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

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).***

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.

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;

(b) the existence and effective functioning of one or more independent supervisory authorities in the third country or international organisation in question responsible for ensuring compliance with the data protection rules, ***including sufficient sanctioning powers***, for assisting and advising the data subjects in exercising their rights and for co-operation with the supervisory authorities of the Union and of Member States; and

(c) the international commitments the third country or international organisation in question has entered into, ***in particular any legally binding conventions or instruments with respect to the protection of personal data.***

3. The Commission ***shall be empowered to adopt delegated acts in accordance with Article 86 to*** 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. ***Such delegated acts shall provide for a sunset clause if they concern a processing sector and shall be revoked according to paragraph 5 as soon as an adequate level of protection according to this Regulation is no longer ensured.***

4. The ***delegated*** act shall specify its ***territorial*** and sectoral application, and, where applicable, identify the supervisory authority mentioned in point (b) of paragraph 2.

4a. The Commission shall, on an on-going basis, monitor developments in

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).***

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.

third countries and international organisations that could affect the elements listed in paragraph 2 where a delegated act pursuant to paragraph 3 has been adopted.

5. The Commission ***shall be empowered to adopt delegated acts in accordance with Article 86 to*** decide that a third country, or a territory or a processing sector within that third country, or an international organisation does not ensure ***or no longer ensures*** 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.

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.

6a. Prior to adopting a delegated act pursuant to paragraphs 3 and 5, the Commission shall request the European Data Protection Board to provide an opinion on the adequacy of the level of protection. To that end, the Commission

shall provide the European Data Protection Board with all necessary documentation, including correspondence with the government of the third country, territory or processing sector within that third country or the international organisation.

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.

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.

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 **five years after the entry into force of this Regulation unless** amended, replaced or repealed by the Commission **before the end of this period.**

Amendment 138

Proposal for a regulation Article 42

Text proposed by the Commission

Transfers by way of appropriate safeguards

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

Transfers by way of appropriate safeguards

1. Where the Commission has taken no decision pursuant to Article 41, **or decides that a third country, or a territory or 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 **not** transfer personal data to a third country, territory or an international organisation **unless** the controller or processor has adduced appropriate safeguards with respect to the protection of personal data in

2. The appropriate safeguards referred to in paragraph 1 shall be provided for, in particular, by:

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

(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

(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

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

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.

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

a legally binding instrument.

2. The appropriate safeguards referred to in paragraph 1 shall be provided for, in particular, by:

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

(aa) a valid “European Data Protection Seal” for the controller and the recipient in accordance with paragraph 1e of Article 39; or

(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

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

3. A transfer based on standard data protection clauses, ***a “European Data Protection Seal”*** or binding corporate rules as referred to in points (a), ***(aa)*** or (c) of paragraph 2 shall not require any *specific* authorisation.

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 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

apply the consistency mechanism referred to in Article 57.

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.

consistency mechanism referred to in Article 57.

5. Authorisations by a supervisory authority on the basis of Article 26(2) of Directive 95/46/EC shall remain valid until ***two years after the entry into force of this Regulation unless*** amended, replaced or repealed by that supervisory authority ***before the end of this period.***

Amendment 139

Proposal for a regulation Article 43

Text proposed by the Commission

Transfers by way of binding corporate rules

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;

Amendment

Transfers by way of binding corporate rules

1. ***The*** 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 group of undertakings ***and those external subcontractors that are covered by the scope of the binding corporate rules,*** 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

(b) expressly confer enforceable rights on data subjects;

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

1a. With regard to employment data, the representatives of the employees shall be informed about and, in accordance with Union or Member State law and practice, be involved in the drawing-up of binding corporate rules pursuant to Article 43.

2. The binding corporate rules shall at least specify:

(a) the structure and contact details of the group of undertakings and its members ***and those external subcontractors that are covered by the scope of the binding corporate rules;***

(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 minimisation, limited retention periods,*** data quality, ***data protection by design and by default,*** legal basis for the processing, processing of sensitive personal data; measures to ensure data security; and the requirements for onward transfers to organisations which are not bound by the policies;

(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

appropriate, compensation for a breach of the binding corporate rules;

(f) the acceptance by the controller 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 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 *format, procedures*, criteria and requirements for binding corporate rules within the meaning of this Article, in

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).

particular as regards the criteria for their approval, ***including transparency for data subjects***, 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.

Amendment 140

Proposal for a regulation Article 43 a (new)

Text proposed by the Commission

Amendment

Article 43a

***Transfers or disclosures not authorised 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 legal 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 or disclosure 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 Article 44(1) and Article 44(5). Where data subjects from other Member States are affected, the supervisory authority shall apply the consistency mechanism referred to in Article 57.

4. The supervisory authority shall inform the competent national authority of the request. Without prejudice to Article 21, the controller or processor shall also inform the data subjects of the request and of the authorisation by the supervisory authority and where applicable inform the data subject whether personal data was provided to public authorities during the last consecutive 12-month period, pursuant to point (ha) of Article 14(1).

Amendment 141

Proposal for a regulation Article 44

Text proposed by the Commission

Amendment

Derogations

Derogations

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:

(a) the data subject has consented to the proposed transfer, after having been

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:

(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

(b) the transfer is necessary for the performance of a contract between the data subject and the controller or the implementation of pre-contractual measures taken at the data subject's request; or

(c) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the data subject between the controller and another natural or legal person; or

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

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

(f) the transfer is necessary in order to protect the vital interests of the data subject or of another person, where the data subject is physically or legally incapable of giving consent; or

(g) the transfer is made from a register which according to Union or Member State law is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can demonstrate legitimate interest, to the extent that the conditions laid down in Union or Member State law for consultation are fulfilled in the particular case; or

(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

informed of the risks of such transfers due to the absence of an adequacy decision and appropriate safeguards; or

(b) the transfer is necessary for the performance of a contract between the data subject and the controller or the implementation of pre-contractual measures taken at the data subject's request; or

(c) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the data subject between the controller and another natural or legal person; or

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

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

(f) the transfer is necessary in order to protect the vital interests of the data subject or of another person, where the data subject is physically or legally incapable of giving consent; or

(g) the transfer is made from a register which according to Union or Member State law is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can demonstrate legitimate interest, to the extent that the conditions laid down in Union or Member State law for consultation are fulfilled in the particular case.

of personal data, where necessary.

2. A transfer pursuant to point (g) of paragraph 1 shall not involve the entirety of the personal data or entire categories of the personal data contained in the register. When the register is intended for consultation by persons having a legitimate interest, the transfer shall be made only at the request of those persons or if they are to be the recipients.

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.

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.

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.

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.

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.*

2. A transfer pursuant to point (g) of paragraph 1 shall not involve the entirety of the personal data or entire categories of the personal data contained in the register. When the register is intended for consultation by persons having a legitimate interest, the transfer shall be made only at the request of those persons or if they are to be the recipients.

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.

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.

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.

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.

7. The *European Data Protection Board* shall be *entrusted with the task of issuing guidelines, recommendations and best practices in accordance with point (b) of Article 66 (1)* for the purpose of further specifying the criteria and requirements for *data transfers on the basis of paragraph 1.*

Amendment 142

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;

Amendment 143

Proposal for a regulation

Article 45 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) clarify and consult on jurisdictional conflicts with third countries.

Amendment 144

Proposal for a regulation

Article 45 a (new)

Text proposed by the Commission

Amendment

Article 45a

Report by the Commission

The Commission shall submit to the European Parliament and the Council at regular intervals, starting not later than four years after the date referred to in Article 91(1), a report on the application of Articles 40 to 45. For that purpose, the Commission may request information from the Member States and supervisory authorities, which shall be supplied

without undue delay. The report shall be made public.

Amendment 145

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 ***and impartiality*** in exercising the duties and powers entrusted to it, ***notwithstanding co-operation and consistency arrangements pursuant to Chapter VII of this Regulation.***

Amendment 146

Proposal for a regulation Article 47 – paragraph 7 a (new)

Text proposed by the Commission

Amendment

7a. Each Member State shall ensure that the supervisory authority shall be accountable to the national parliament for reasons of budgetary control.

Amendment 147

Proposal for a regulation Article 50

Text proposed by the Commission

Professional secrecy

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

Amendment

Professional secrecy

The members and the staff of the supervisory authority shall be subject, both during and after their term of office ***and in conformity with national legislation and practice***, to a duty of professional secrecy

come to their knowledge in the course of the performance of their official duties.

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 148

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 ***be competent to perform the duties and to*** exercise the powers conferred on it in accordance with this Regulation ***on the territory of its own Member State, without prejudice to Articles 73 and 74. Data processing by a public authority shall be supervised only by the supervisory authority of that Member State.***

Amendment 149

Proposal for a regulation
Article 51 – paragraph 2

Text proposed by the Commission

2. Where the processing of personal data takes place in the context of the activities of an establishment of a controller or a processor in the Union, and the controller or processor is established in more than one Member State, the supervisory authority of the main establishment of the controller or processor shall be competent for the supervision of the processing activities of the controller or the processor in all Member States, without prejudice to the provisions of Chapter VII of this Regulation.

Amendment

deleted

Amendment 150

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

Text proposed by the Commission

(b) hear complaints lodged by any data subject, or by an association **representing that data subject** in accordance with Article 73, investigate, to the extent appropriate, the matter and inform the data subject or the association of the progress and the outcome of the complaint within a reasonable period, in particular if further investigation or coordination with another supervisory authority is necessary;

Amendment

(b) hear complaints lodged by any data subject, or by an association in accordance with Article 73, investigate, to the extent appropriate, the matter and inform the data subject or the association of the progress and the outcome of the complaint within a reasonable period, in particular if further investigation or coordination with another supervisory authority is necessary;

Amendment 151

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;

Amendment 152

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

Text proposed by the Commission

Amendment

(ja) certify controllers and processors pursuant to Article 39.

Amendment 153

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 on appropriate measures for personal data protection***. Activities addressed specifically to children shall receive specific attention.

Amendment 154

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 keeping a register of sanctions and breaches. The register should enrol both all warnings and sanctions as detailed as possible and the resolving of breaches. Each supervisory authority shall provide micro, small and medium sized enterprise controllers and processors on request with general information on their responsibilities and obligations in accordance with this Regulation.

Amendment 155

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 **reasonable** fee or not take the action requested by the data subject. ***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.

Amendment 156

Proposal for a regulation Article 53

Text proposed by the Commission

Powers

1. Each supervisory authority shall have the power:

(a) to notify the controller or the processor of an alleged breach of the provisions governing the processing of personal data, and, where appropriate, order the controller or the processor to remedy that breach, in a specific manner, in order to improve the protection of the data subject;

(b) to order the controller or the processor to comply with the data subject's requests to exercise the rights provided by this Regulation;

(c) to order the controller and the processor, and, where applicable, the representative to provide any information relevant for the performance of its duties;

Amendment

Powers

1. Each supervisory authority shall, ***in line with this Regulation,*** have the power:

(a) to notify the controller or the processor of an alleged breach of the provisions governing the processing of personal data, and, where appropriate, order the controller or the processor to remedy that breach, in a specific manner, in order to improve the protection of the data subject, ***or to order the controller to communicate a personal data breach to the data subject;***

(b) to order the controller or the processor to comply with the data subject's requests to exercise the rights provided by this Regulation;

(c) to order the controller and the processor, and, where applicable, the representative to provide any information relevant for the performance of its duties;

- (d) to ensure the compliance with prior authorisations and prior consultations referred to in Article 34;
- (e) to warn or admonish the controller or the processor;
- (f) to order the rectification, erasure or destruction of all data when they have been processed in breach of the provisions of this Regulation and the notification of such actions to third parties to whom the data have been disclosed;
- (g) to impose a temporary or definitive ban on processing;
- (h) to suspend data flows to a recipient in a third country or to an international organisation;
- (i) to issue opinions on any issue related to the protection of personal data;

- (j) to inform the national parliament, the government or other political institutions as well as the public on any issue related to the protection of personal data.

2. Each supervisory authority shall have the investigative power to obtain from the controller or the processor;

- (a) access to all personal data and to all information necessary for the performance of its duties;
- (b) access to any of its premises, including to any data processing equipment and means, *where there are reasonable grounds for presuming that an activity in violation of this Regulation is being carried out there.*

- (d) to ensure the compliance with prior authorisations and prior consultations referred to in Article 34;
- (e) to warn or admonish the controller or the processor;
- (f) to order the rectification, erasure or destruction of all data when they have been processed in breach of the provisions of this Regulation and the notification of such actions to third parties to whom the data have been disclosed;
- (g) to impose a temporary or definitive ban on processing;
- (h) to suspend data flows to a recipient in a third country or to an international organisation;
- (i) to issue opinions on any issue related to the protection of personal data;

- (ia) to certify controllers and processors pursuant to Article 39;*
- (j) to inform the national parliament, the government or other political institutions as well as the public on any issue related to the protection of personal data;

(ja) to put in place effective mechanisms to encourage confidential reporting of breaches of this Regulation, taking into account guidance issued by the European Data Protection Board pursuant to Article 66(4b).

2. Each supervisory authority shall have the investigative power to obtain from the controller or the processor *without prior notice*:

- (a) access to all personal data and to all *documents and* information necessary for the performance of its duties;
- (b) access to any of its premises, including to any data processing equipment and means.

The powers referred to in point (b) shall be exercised in conformity with Union law and Member State law.

3. Each supervisory authority shall have the power to bring violations of this Regulation to the attention of the judicial authorities and to engage in legal proceedings, in particular pursuant to Article 74(4) and Article 75(2).

4. Each supervisory authority shall have the power to sanction administrative offences, in *particular those referred to in Article 79(4), (5) and (6)*.

The powers referred to in point (b) shall be exercised in conformity with Union law and Member State law.

3. Each supervisory authority shall have the power to bring violations of this Regulation to the attention of the judicial authorities and to engage in legal proceedings, in particular pursuant to Article 74(4) and Article 75(2).

4. Each supervisory authority shall have the power to sanction administrative offences, in *accordance with Article 79. This power shall be exercised in an effective, proportionate and dissuasive manner.*

Amendment 157

Proposal for a regulation Article 54

Text proposed by the Commission

Each supervisory authority must draw up *an annual* report on its activities. The report shall be presented to the *national* parliament and shall be made *be* available to the public, the Commission and the European Data Protection Board.

Amendment

Each supervisory authority must draw up *a* report on its activities *at least every two years*. The report shall be presented to the *respective* parliament and shall be made available to the public, the Commission and the European Data Protection Board.

Amendment 158

Proposal for a regulation Article 54 a (new)

Text proposed by the Commission

Amendment

Article 54a

Lead Authority

1. Where the processing of personal data takes place in the context of the activities of an establishment of a controller or a processor in the Union, and the controller or processor is established in more than

one Member State, or where personal data of the residents of several Member States are processed, the supervisory authority of the main establishment of the controller or processor shall act as the lead authority responsible for the supervision of the processing activities of the controller or the processor in all Member States, in accordance with the provisions of Chapter VII of this Regulation.

2. The lead supervisory authority shall take appropriate measures for the supervision of the processing activities of the controller or processor for which it is responsible only after consulting all other competent supervisory authorities within the meaning of paragraph 1 of Article 51 in an endeavour to reach a consensus. For that purpose it shall in particular submit any relevant information and consult the other authorities before it adopts a measure intended to produce legal effects vis-à-vis a controller or a processor within the meaning of paragraph 1 of Article 51. The lead authority shall take the utmost account of the opinions of the authorities involved. The lead authority shall be the sole authority empowered to decide on measures intended to produce legal effects as regards the processing activities of the controller or processor for which it is responsible.

3. The European Data Protection Board shall, at the request of a competent supervisory authority, issue an opinion on the identification of the lead authority responsible for a controller or processor, in cases where:

(a) it is unclear from the facts of the case where the main establishment of the controller or processor is located; or

(b) the competent authorities do not agree on which supervisory authority shall act as lead authority; or

(c) the controller is not established in the Union, and residents of different Member States are affected by processing operations within the scope of this Regulation.

3a. Where the controller exercises also activities as a processor, the supervisory authority of the main establishment of the controller shall act as lead authority for the supervision of processing activities.

4. The European Data Protection Board may decide on the identification of the lead authority.

(Paragraph 1 in Parliament's amendment is based on Article 51(2) of the Commission proposal).

Amendment 159

Proposal for a regulation Article 55 – paragraph 1

Text proposed by the Commission

1. Supervisory authorities shall provide each other relevant information and mutual assistance in order to implement and apply this Regulation in a consistent manner, and shall put in place measures for effective co-operation with one another. Mutual assistance shall cover, in particular, information requests and supervisory measures, such as requests to carry out prior authorisations and consultations, inspections and prompt information on the opening of cases and ensuing developments where data subjects in several Member States are likely to be affected by processing operations.

Amendment

1. Supervisory authorities shall provide each other relevant information and mutual assistance in order to implement and apply this Regulation in a consistent manner, and shall put in place measures for effective co-operation with one another. Mutual assistance shall cover, in particular, information requests and supervisory measures, such as requests to carry out prior authorisations and consultations, inspections **and investigations** and prompt information on the opening of cases and ensuing developments **where the controller or processor has establishments in several Member States or** where data subjects in several Member States are likely to be affected by processing operations. **The lead authority as defined in Article 54a shall ensure the coordination with involved supervisory authorities and shall act as the single contact point for the controller or**

processor.

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Amendment 160

Proposal for a regulation Article 55 – paragraph 7

Text proposed by the Commission

7. No fee shall be charged for any action taken following a request for mutual assistance.

Amendment

7. No fee shall be charged *to the requesting supervisory authority* for any action taken following a request for mutual assistance.

Amendment 161

Proposal for a regulation Article 55 – paragraph 8

Text proposed by the Commission

8. Where a supervisory authority does not act within one month on request of another supervisory authority, the requesting supervisory authorities shall be competent to take a provisional measure on the territory of its Member State in accordance with Article 51(1) and shall submit the matter to the European Data Protection Board in accordance with the procedure referred to in Article 57.

Amendment

8. Where a supervisory authority does not act within one month on request of another supervisory authority, the requesting supervisory authorities shall be competent to take a provisional measure on the territory of its Member State in accordance with Article 51(1) and shall submit the matter to the European Data Protection Board in accordance with the procedure referred to in Article 57. *Where no definitive measure is yet possible because the assistance is not yet completed, the requesting supervisory authority may take interim measures under Article 53 in the territory of its Member State.*

Amendment 162

Proposal for a regulation Article 55 – paragraph 9

Text proposed by the Commission

9. The supervisory authority shall specify

Amendment

9. The supervisory authority shall specify

the period of validity of such provisional measure. This period shall not exceed three months. The supervisory authority shall, without delay, communicate those measures, with full reasons, to the European Data Protection Board and to the Commission.

the period of validity of such provisional measure. This period shall not exceed three months. The supervisory authority shall, without delay, communicate those measures, with full reasons, to the European Data Protection Board and to the Commission *in accordance with the procedure referred to in Article 57.*

Amendment 163

Proposal for a regulation

Article 55 –paragraph 10

Text proposed by the Commission

10. The **Commission** may specify the format and procedures for mutual assistance referred to in this article and the arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the European Data Protection Board, in particular the standardised format referred to in paragraph 6. *Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).*

Amendment

10. The **European Data Protection Board** may specify the format and procedures for mutual assistance referred to in this article and the arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the European Data Protection Board, in particular the standardised format referred to in paragraph 6.

Amendment 164

Proposal for a regulation

Article 56 –paragraph 2

Text proposed by the Commission

2. In cases where data subjects in several Member States are likely to be affected by processing operations, a supervisory authority of each of those Member States shall have the right to participate in the joint investigative tasks or joint operations, as appropriate. The **competent supervisory authority** shall *invite* the supervisory authority of each of those Member States *to take part* in the respective joint

Amendment

2. In cases *where the controller or processor has establishments in several Member States or* where data subjects in several Member States are likely to be affected by processing operations, a supervisory authority of each of those Member States shall have the right to participate in the joint investigative tasks or joint operations, as appropriate. The **lead authority as defined in Article 54a**

investigative tasks or joint operations and respond to the request of a supervisory authority to participate in the operations without delay.

shall *involve* the supervisory authority of each of those Member States in the respective joint investigative tasks or joint operations and respond to the request of a supervisory authority to participate in the operations without delay. ***The lead authority shall act as the single contact point for the controller or processor.***

Amendment 165

Proposal for a regulation Article 57

Text proposed by the Commission

Consistency mechanism

For the purposes set out in Article 46(1), the supervisory authorities shall co-operate with each other and the Commission through the consistency mechanism *as set out* in this section.

Amendment

Consistency mechanism

For the purposes set out in Article 46(1), the supervisory authorities shall co-operate with each other and the Commission through the consistency mechanism ***both on matters of general scope and in individual cases in accordance with the provisions of*** this section.

Amendment 166

Proposal for a regulation Article 58

Text proposed by the Commission

Opinion by the European Data Protection Board

1. Before a supervisory authority adopts a measure referred to in paragraph 2, this supervisory authority shall communicate the draft measure to the European Data Protection Board and the Commission.
2. The obligation set out in paragraph 1 shall apply to a measure intended to produce legal effects and which:

(a) relates to processing activities which are related to the offering of goods or

Amendment

Consistency on matters of general application

1. Before a supervisory authority adopts a measure referred to in paragraph 2, this supervisory authority shall communicate the draft measure to the European Data Protection Board and the Commission.
2. The obligation set out in paragraph 1 shall apply to a measure intended to produce legal effects and which:

services to data subjects in several Member States, or to the monitoring of their behaviour; or

(b) may substantially affect the free movement of personal data within the Union; or

(c) aims at adopting a list of the processing operations subject to prior consultation pursuant to Article 34(5); or

(d) aims to determine standard data protection clauses referred to in point (c) of Article 42(2); or

(e) aims to authorise contractual clauses referred to in point (d) of Article 42(2); or

(f) aims to approve binding corporate rules within the meaning of Article 43.

3. Any supervisory authority or the European Data Protection Board may request that any matter shall be dealt with in the consistency mechanism, in particular where a supervisory authority does not submit a draft measure referred to in paragraph 2 or does not comply with the obligations for mutual assistance in accordance with Article 55 or for joint operations in accordance with Article 56.

4. In order to ensure correct and consistent application of this Regulation, the Commission may request that any matter shall be dealt with in the consistency mechanism.

5. Supervisory authorities and the Commission shall electronically communicate any relevant information, including as the case may be a summary of the facts, the draft measure, and the grounds which make the enactment of such measure necessary, using a standardised format.

6. The chair of the European Data Protection Board shall *immediately* electronically inform the members of the European Data Protection Board and the

(d) aims to determine standard data protection clauses referred to in point (c) of Article 42(2); or

(e) aims to authorise contractual clauses referred to in point (d) of Article 42(2); or

(f) aims to approve binding corporate rules within the meaning of Article 43.

3. Any supervisory authority or the European Data Protection Board may request that any matter *of general application* shall be dealt with in the consistency mechanism, in particular where a supervisory authority does not submit a draft measure referred to in paragraph 2 or does not comply with the obligations for mutual assistance in accordance with Article 55 or for joint operations in accordance with Article 56.

4. In order to ensure correct and consistent application of this Regulation, the Commission may request that any matter *of general application* shall be dealt with in the consistency mechanism.

5. Supervisory authorities and the Commission shall *without undue delay* electronically communicate any relevant information, including as the case may be a summary of the facts, the draft measure, and the grounds which make the enactment of such measure necessary, using a standardised format.

6. The chair of the European Data Protection Board shall *without undue delay* electronically inform the members of the European Data Protection Board and

Commission of any relevant information which has been communicated to it, using a standardised format. The *chair* of the European Data Protection Board shall provide translations of relevant information, where necessary.

7. The European Data Protection Board *shall issue* an opinion on *the* matter, *if the European Data Protection Board so decides by simple majority of its members or any supervisory authority or the Commission so requests within one week after the relevant information has been provided according to paragraph 5. The opinion shall be adopted within one month by simple majority of the members of the European Data Protection Board. The chair of the European Data Protection Board shall inform, without undue delay, the supervisory authority referred to, as the case may be, in paragraphs 1 and 3, the Commission and the supervisory authority competent under Article 51 of the opinion and make it public.*

8. *The supervisory authority referred to in paragraph 1 and the supervisory authority competent under Article 51 shall take account of the opinion of the European Data Protection Board and shall within two weeks after the information on the opinion by the chair of the European Data Protection Board, electronically communicate to the chair of the*

the Commission of any relevant information which has been communicated to it, using a standardised format. The *secretariat* of the European Data Protection Board shall provide translations of relevant information, where necessary.

6a. The European Data Protection Board shall adopt an opinion on matters referred to it under paragraph 2.

7. The European Data Protection Board *may decide by simple majority whether to adopt* an opinion on *any* matter *submitted under paragraphs 3 and 4 taking into account :*

(a) whether the matter presents elements of novelty, taking account of legal or factual developments, in particular in information technology and in the light of the state of progress in the information society; and

(b) whether the European Data Protection Board has already issued an opinion on the same matter.

8. *The European Data Protection Board shall adopt opinions pursuant to paragraphs 6a and 7 by a simple majority of its members. These opinions shall be made public.*

European Data Protection Board and to the Commission whether it maintains or amends its draft measure and, if any, the amended draft measure, using a standardised format.

—————Amendement 167

**Proposition de règlement
Article 58 a (new)**

Texte proposé par la Commission

Amendement

Article 58a

Consistency in individual cases

1. Before taking a measure intended to produce legal effects within the meaning of Article 54a, the lead authority shall share all relevant information and submit the draft measure to all other competent authorities. The lead authority shall not adopt the measure if a competent authority has, within a period of three weeks, indicated it has serious objections to the measure.

2. Where a competent authority has indicated that it has serious objections to a draft measure of the lead authority, or where the lead authority does not submit a draft measure referred to in paragraph 1 or does not comply with the obligations for mutual assistance in accordance with Article 55 or for joint operations in accordance with Article 56, the issue shall be considered by the European Data Protection Board.

3. The lead authority and/or other competent authorities involved and the Commission shall without undue delay electronically communicate to the European Data Protection Board using a standardised format any relevant information, including as the case may be a summary of the facts, the draft measure,

the grounds which make the enactment of such measure necessary, the objections raised against it and the views of other supervisory authorities concerned.

4. The European Data Protection Board shall consider the issue, taking into account the impact of the draft measure of the lead authority on the fundamental rights and freedoms of data subjects, and shall decide by simple majority of its members whether to issue an opinion on the matter within two weeks after the relevant information has been provided pursuant to paragraph 3.

5. In case the European Data Protection Board decides to issue an opinion, it shall do so within six weeks and make the opinion public.

6. The lead authority shall take utmost account of the opinion of the European Data Protection Board and shall within two weeks after the information on the opinion by the chair of the European Data Protection Board, electronically communicate to the chair of the European Data Protection Board and to the Commission whether it maintains or amends its draft measure and, if any, the amended draft measure, using a standardised format. Where the lead authority intends not to follow the opinion of the European Data Protection Board, it shall provide a reasoned justification.

7. In case the European Data Protection Board still objects to the measure of the supervisory authority as referred to in paragraph 5, it may within one month adopt by a two thirds majority a measure which shall be binding upon the supervisory authority

Amendment 168

Proposal for a regulation Article 59

Text proposed by the Commission

Amendment

Article 59

deleted

Opinion by the Commission

- 1. Within ten weeks after a matter has been raised under Article 58, or at the latest within six weeks in the case of Article 61, the Commission may adopt, in order to ensure correct and consistent application of this Regulation, an opinion in relation to matters raised pursuant to Articles 58 or 61.*
- 2. Where the Commission has adopted an opinion in accordance with paragraph 1, the supervisory authority concerned shall take utmost account of the Commission's opinion and inform the Commission and the European Data Protection Board whether it intends to maintain or amend its draft measure.*
- 3. During the period referred to in paragraph 1, the draft measure shall not be adopted by the supervisory authority.*
- 4. Where the supervisory authority concerned intends not to follow the opinion of the Commission, it shall inform the Commission and the European Data Protection Board thereof within the period referred to in paragraph 1 and provide a justification. In this case the draft measure shall not be adopted for one further month.*

Amendment 169

Proposal for a regulation Article 60

Text proposed by the Commission

Amendment

Article 60

deleted

Suspension of a draft measure

1. Within one month after the communication referred to in Article 59(4), and where the Commission has serious doubts as to whether the draft measure would ensure the correct application of this Regulation or would otherwise result in its inconsistent application, the Commission may adopt a reasoned decision requiring the supervisory authority to suspend the adoption of the draft measure, taking into account the opinion issued by the European Data Protection Board pursuant to Article 58(7) or Article 61(2), where it appears necessary in order to:

(a) reconcile the diverging positions of the supervisory authority and the European Data Protection Board, if this still appears to be possible; or

(b) adopt a measure pursuant to point (a) of Article 62(1).

2. The Commission shall specify the duration of the suspension which shall not exceed 12 months.

3. During the period referred to in paragraph 2, the supervisory authority may not adopt the draft measure.

Amendment 170

Proposal for a regulation Article 60 a (new)

Text proposed by the Commission

Amendment

Article 60a

Notification of the European Parliament and the Council

The Commission shall notify the European Parliament and the Council at regular intervals, at least every six months, on the basis of a report from the Chair of the European Data Protection Board, of the matters dealt with under the consistency mechanism, setting out the conclusions drawn by the Commission and the European Data Protection Board with a view to ensuring the consistent implementation and application of this Regulation.

Amendment 171

**Proposal for a regulation
Article 61 – paragraph 1**

Text proposed by the Commission

Amendment

1. In exceptional circumstances, where a supervisory authority considers that there is an urgent need to act in order to protect the interests of data subjects, in particular when the danger exists that the enforcement of a right of a data subject could be considerably impeded by means of an alteration of the existing state or for averting major disadvantages or for other reasons, by way of derogation from the procedure referred to in Article 58, it may immediately adopt provisional measures with a specified period of validity. The supervisory authority shall, without delay, communicate those measures, with full reasons, to the European Data Protection Board and to the Commission.

1. In exceptional circumstances, where a supervisory authority considers that there is an urgent need to act in order to protect the interests of data subjects, in particular when the danger exists that the enforcement of a right of a data subject could be considerably impeded by means of an alteration of the existing state or for averting major disadvantages or for other reasons, by way of derogation from the procedure referred to in Article 58a, it may immediately adopt provisional measures with a specified period of validity. The supervisory authority shall, without delay, communicate those measures, with full reasons, to the European Data Protection Board and to the Commission.

Amendment 172

Proposal for a regulation Article 61 – paragraph 4

Text proposed by the Commission

4. **By derogation from Article 58(7)**, an urgent opinion referred to in paragraphs 2 and 3 of this Article shall be adopted within two weeks by simple majority of the members of the European Data Protection Board.

Amendment

4. An urgent opinion referred to in paragraphs 2 and 3 of this Article shall be adopted within two weeks by simple majority of the members of the European Data Protection Board.

Amendment 173

Proposal for a regulation Article 62

Text proposed by the Commission

Implementing acts

1. The Commission may adopt implementing acts for:

(a) deciding on the correct application of this Regulation in accordance with its objectives and requirements in relation to matters communicated by supervisory authorities pursuant to Article 58 or 61, concerning a matter in relation to which a reasoned decision has been adopted pursuant to Article 60(1), or concerning a matter in relation to which a supervisory authority does not submit a draft measure and that supervisory authority has indicated that it does not intend to follow the opinion of the Commission adopted pursuant to Article 59;

(b) deciding, within the period referred to in Article 59(1), whether it declares draft standard data protection clauses referred to in point (d) of Article 58(2), as having general validity;

Amendment

Implementing acts

1. The Commission may adopt implementing acts *of general application, after requesting an opinion of the European Data Protection Board*, for:

(b) deciding whether it declares draft standard data protection clauses referred to in point (d) of Article 42 (2), as having general validity;

(c) specifying the format and procedures for the application of the consistency mechanism referred to in this section;

(d) specifying the arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the European Data Protection Board, in particular the standardised format referred to in Article 58(5), (6) and (8).

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

2. On duly justified imperative grounds of urgency relating to the interests of data subjects in the cases referred to in point (a) of paragraph 1, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 87(3). Those acts shall remain in force for a period not exceeding 12 months.

3. The absence or adoption of a measure under this Section does not prejudice any other measure by the Commission under the Treaties.

(d) specifying the arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the European Data Protection Board, in particular the standardised format referred to in Article 58(5), (6) and (8).

3. The absence or adoption of a measure under this Section does not prejudice any other measure by the Commission under the Treaties.

Amendment 174

Proposal for a regulation Article 63 – paragraph 2

Text proposed by the Commission

2. Where a supervisory authority does not submit a draft measure to the consistency mechanism in breach of Article 58(1) *to* (5), the measure of the supervisory authority shall not be legally valid and enforceable.

Amendment

2. Where a supervisory authority does not submit a draft measure to the consistency mechanism in breach of Article 58(1) *and* (2) *or adopts a measure despite an indication of serious objection pursuant to Article 58a(1)*, the measure of the supervisory authority shall not be legally valid and enforceable.

Amendment 175

Proposal for a regulation Article 66

Text proposed by the Commission

Tasks of the European Data Protection Board

1. The European Data Protection Board shall ensure the consistent application of this Regulation. To this effect, the European Data Protection Board shall, on its own initiative or at the request of the Commission, in particular:

(a) advise the *Commission* on any issue related to the protection of personal data in the Union, including on any proposed amendment of this Regulation;

(b) examine, on its own initiative or on request of one of its members or on request of the Commission, any question covering the application of this Regulation and issue guidelines, recommendations and best practices addressed to the supervisory authorities in order to encourage consistent application of this Regulation;

(c) review the practical application of the guidelines, recommendations and best practices referred to in point (b) and report regularly to the Commission on these;

(d) issue opinions on draft decisions of supervisory authorities pursuant to the consistency mechanism referred to in Article 57;

(e) promote the co-operation and the effective bilateral and multilateral exchange of information and practices

Amendment

Tasks of the European Data Protection Board

1. The European Data Protection Board shall ensure the consistent application of this Regulation. To this effect, the European Data Protection Board shall, on its own initiative or at the request of the ***European Parliament, Council or Commission***, in particular:

(a) advise the ***European institutions*** on any issue related to the protection of personal data in the Union, including on any proposed amendment of this Regulation;

(b) examine, on its own initiative or on request of one of its members or on request of the ***European Parliament, Council or Commission***, any question covering the application of this Regulation and issue guidelines, recommendations and best practices addressed to the supervisory authorities in order to encourage consistent application of this Regulation, ***including on the use of enforcement powers***;

(c) review the practical application of the guidelines, recommendations and best practices referred to in point (b) and report regularly to the Commission on these;

(d) issue opinions on draft decisions of supervisory authorities pursuant to the consistency mechanism referred to in Article 57;

(da) provide an opinion on which authority should be the lead authority pursuant to Article 54a(3);

(e) promote the co-operation and the effective bilateral and multilateral exchange of information and practices

between the supervisory authorities;

(f) promote common training programmes and facilitate personnel exchanges between the supervisory authorities, as well as, where appropriate, with the supervisory authorities of third countries or of international organisations;

(g) promote the exchange of knowledge and documentation on data protection legislation and practice with data protection supervisory authorities worldwide.

2. Where the Commission requests advice from the European Data Protection Board, it may lay out a time limit within which the European Data Protection Board shall provide such advice, taking into account

between the supervisory authorities, ***including the coordination of joint operations and other joint activities, where it so decides at the request of one or several supervisory authorities;***

(f) promote common training programmes and facilitate personnel exchanges between the supervisory authorities, as well as, where appropriate, with the supervisory authorities of third countries or of international organisations;

(g) promote the exchange of knowledge and documentation on data protection legislation and practice with data protection supervisory authorities worldwide.

(ga) give its opinion to the Commission in the preparation of delegated and implementing acts based on this Regulation;

(gb) give its opinion on codes of conduct drawn up at Union level pursuant to Article 38(4);

(gc) give its opinion on criteria and requirements for the data protection certification mechanisms pursuant to Article 39(3).

(gd) maintain a public electronic register on valid and invalid certificates pursuant to Article 39(1h);

(ge) provide assistance to national supervisory authorities, at their request;

(gf) establish and make public a list of the processing operations which are subject to prior consultation pursuant to Article 34;

(gg) maintain a registry of sanctions imposed on controllers or processors by the competent supervisory authorities.

2. Where the ***European Parliament, Council or*** Commission requests advice from the European Data Protection Board, it may lay out a time limit within which the European Data Protection Board shall

the urgency of the matter.

3. The European Data Protection Board shall forward its opinions, guidelines, recommendations, and best practices to the Commission and to the committee referred to in Article 87 and make them public.

4. The Commission shall inform the European Data Protection Board of the action it has taken following the opinions, guidelines, recommendations and best practices issued by the European Data Protection Board.

provide such advice, taking into account the urgency of the matter.

3. The European Data Protection Board shall forward its opinions, guidelines, recommendations, and best practices to the ***European Parliament, Council and*** Commission and to the committee referred to in Article 87 and make them public.

4. The Commission shall inform the European Data Protection Board of the action it has taken following the opinions, guidelines, recommendations and best practices issued by the European Data Protection Board.

4a. The European Data Protection Board shall, where appropriate, consult interested parties and give them the opportunity to comment within a reasonable period. The European Data Protection Board shall, without prejudice to Article 72, make the results of the consultation procedure publicly available.

4b. The European Data Protection Board shall be entrusted with the task of issuing guidelines, recommendations and best practices in accordance with point (b) of paragraph 1 for establishing common procedures for receiving and investigating information concerning allegations of unlawful processing and for safeguarding confidentiality and sources of information received.

—Amendment 176

Proposal for a regulation Article 67 – paragraph 1

Text proposed by the Commission

1. The European Data Protection Board shall regularly and timely inform the Commission about the outcome of its activities. It shall draw up ***an annual*** report on the

Amendment

1. The European Data Protection Board shall regularly and timely inform the ***European Parliament, Council and the*** Commission about the outcome of its activities. It shall

situation regarding the protection of natural persons with regard to the processing of personal data in the Union and in third countries.

The report shall include the review of the practical application of the guidelines, recommendations and best practices referred to in point (c) of Article 66(1).

draw up *a* report *at least every two years* on the situation regarding the protection of natural persons with regard to the processing of personal data in the Union and in third countries.

The report shall include the review of the practical application of the guidelines, recommendations and best practices referred to in point (c) of Article 66(1).

Amendment 177

Proposal for a regulation Article 68 – paragraph 1

Text proposed by the Commission

1. The European Data Protection Board shall take decisions by a simple majority of its members.

Amendment

1. The European Data Protection Board shall take decisions by a simple majority of its members, *unless otherwise provided in its rules of procedure*.

Amendment 178

Proposal for a regulation Article 69 – paragraph 1

Text proposed by the Commission

1. The European Data Protection Board shall elect a chair and two deputy chairpersons from amongst its members. *One deputy chairperson shall be the European Data Protection Supervisor, unless he or she has been elected chair.*

Amendment

1. The European Data Protection Board shall elect a chair and *at least* two deputy chairpersons from amongst its members.

Amendment 179

Proposal for a regulation Article 69 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The position of the chair shall be a full-time position.

Amendment 180

Proposal for a regulation Article 71 – paragraph 2

Text proposed by the Commission

Amendment

2. The secretariat shall provide analytical, administrative and logistical support to the European Data Protection Board under the direction of the chair.

2. The secretariat shall provide analytical, ***legal***, administrative and logistical support to the European Data Protection Board under the direction of the chair.

Amendment 181

Proposal for a regulation Article 72 – paragraph 1

Text proposed by the Commission

Amendment

1. The discussions of the European Data Protection Board ***shall*** be confidential.

1. The discussions of the European Data Protection Board ***may*** be confidential ***where necessary, unless otherwise provided in its rules of procedure. The agendas of the meetings of the European Protection Board shall be made public.***

Amendment 182

Proposal for a regulation Article 73

Text proposed by the Commission

Right to lodge a complaint with a supervisory authority

1. Without prejudice to any other administrative or judicial remedy, every data subject shall have the right to lodge a complaint with a supervisory authority in any Member State if they consider that the processing of personal data relating to them does not comply with this Regulation.

2. Any body, organisation or association which *aims to protect data subjects' rights and interests concerning the protection of their personal data* and has been properly constituted according to the law of a Member State shall have the right to lodge a complaint with a supervisory authority in any Member State on behalf of one or more data subjects if it considers that a data subject's rights under this Regulation have been infringed as a result of the processing of personal data.

3. Independently of a data subject's complaint, any body, organisation or association referred to in paragraph 2 shall have the right to lodge a complaint with a supervisory authority in any Member State, if it considers that *a personal data* breach has occurred.

Amendment

Right to lodge a complaint with a supervisory authority

1. Without prejudice to any other administrative or judicial remedy *and the consistency mechanism*, every data subject shall have the right to lodge a complaint with a supervisory authority in any Member State if they consider that the processing of personal data relating to them does not comply with this Regulation.

2. Any body, organisation or association which *acts in the public interest* and has been properly constituted according to the law of a Member State shall have the right to lodge a complaint with a supervisory authority in any Member State on behalf of one or more data subjects if it considers that a data subject's rights under this Regulation have been infringed as a result of the processing of personal data.

3. Independently of a data subject's complaint, any body, organisation or association referred to in paragraph 2 shall have the right to lodge a complaint with a supervisory authority in any Member State, if it considers that breach *of this Regulation* has occurred.

Amendment 183

Proposal for a regulation Article 74

Text proposed by the Commission

Right to a judicial remedy against a

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Amendment

Right to a judicial remedy against a

169/624

PE501.927v05-00

supervisory authority

1. Each natural or legal person shall have the right to a judicial remedy against decisions of a supervisory authority concerning them.
2. Each data subject shall have the right to a judicial remedy obliging the supervisory authority to act on a complaint in the absence of a decision necessary to protect their rights, or where the supervisory authority does not inform the data subject within three months on the progress or outcome of the complaint pursuant to point (b) of Article 52(1).
3. Proceedings against a supervisory authority shall be brought before the courts of the Member State where the supervisory authority is established.
4. A data subject which is concerned by a decision of a supervisory authority in another Member State than where the data subject has its habitual residence, may request the supervisory authority of the Member State where it has its habitual residence to bring proceedings on its behalf against the competent supervisory authority in the other Member State.
5. The Member States shall enforce final decisions by the courts referred to in this Article.

Amendment 184

Proposal for a regulation Article 75 – paragraph 2

Text proposed by the Commission

2. Proceedings against a controller or a

PE501.927v05-00

supervisory authority

1. ***Without prejudice to any other administrative or non-judicial remedy***, each natural or legal person shall have the right to a judicial remedy against decisions of a supervisory authority concerning them.
2. ***Without prejudice to any other administrative or non-judicial remedy***, each data subject shall have the right to a judicial remedy obliging the supervisory authority to act on a complaint in the absence of a decision necessary to protect their rights, or where the supervisory authority does not inform the data subject within three months on the progress or outcome of the complaint pursuant to point (b) of Article 52(1).
3. Proceedings against a supervisory authority shall be brought before the courts of the Member State where the supervisory authority is established.
4. ***Without prejudice to the consistency mechanism*** a data subject which is concerned by a decision of a supervisory authority in another Member State than where the data subject has its habitual residence, may request the supervisory authority of the Member State where it has its habitual residence to bring proceedings on its behalf against the competent supervisory authority in the other Member State.
5. The Member States shall enforce final decisions by the courts referred to in this Article.

Amendment

2. Proceedings against a controller or a

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processor shall be brought before the courts of the Member State where the controller or processor has an establishment. Alternatively, such proceedings may be brought before the courts of the Member State where the data subject has its habitual residence, unless the controller is a public authority acting in the exercise of its public powers.

processor shall be brought before the courts of the Member State where the controller or processor has an establishment. Alternatively, such proceedings may be brought before the courts of the Member State where the data subject has its habitual residence, unless the controller is a public authority *of the Union or a Member State* acting in the exercise of its public powers.

Amendment 185

Proposal for a regulation Article 76 – paragraph 1

Text proposed by the Commission

1. Any body, organisation or association referred to in Article 73(2) shall have the right to exercise the rights referred to in Articles 74 *and 75 on behalf of* one or more data subjects.

Amendment

1. Any body, organisation or association referred to in Article 73(2) shall have the right to exercise the rights referred to in Articles 74, 75 *and 77 if mandated by* one or more data subjects.

Amendment 186

Proposal for a regulation Article 77 – paragraph 1

Text proposed by the Commission

1. Any person who has suffered damage as a result of an unlawful processing operation or of an action incompatible with this Regulation shall have the right to *receive* compensation from the controller or the processor for the damage suffered.

Amendment

1. Any person who has suffered damage, *including non-pecuniary damage*, as a result of an unlawful processing operation or of an action incompatible with this Regulation shall have the right to *claim* compensation from the controller or the processor for the damage suffered.

Amendment 187

Proposal for a regulation Article 77 – paragraph 2

Text proposed by the Commission

2. Where more than one controller or processor is involved in the processing, each **controller** or **processor** shall be jointly and severally liable for the entire amount of the damage.

Amendment

2. Where more than one controller or processor is involved in the processing, each **of those controllers** or **processors** shall be jointly and severally liable for the entire amount of the damage, **unless they have an appropriate written agreement determining the responsibilities pursuant to Article 24.**

Amendment 188

Proposal for a regulation Article 79

Text proposed by the Commission

Administrative sanctions

1. Each supervisory authority shall be empowered to impose administrative sanctions in accordance with this Article.

2. The administrative sanction shall be in each individual case effective, proportionate and dissuasive. ***The amount of the administrative fine shall be fixed with due regard to the nature, gravity and duration of the breach, the intentional or negligent character of the infringement, the degree of responsibility of the natural or legal person and of previous breaches by this person, the technical and organisational measures and procedures implemented pursuant to Article 23 and the degree of co-operation with the***

Amendment

Administrative sanctions

1. Each supervisory authority shall be empowered to impose administrative sanctions in accordance with this Article. ***The supervisory authorities shall co-operate with each other in accordance with Articles 46 and 57 to guarantee a harmonized level of sanctions within the Union.***

2. The administrative sanction shall be in each individual case effective, proportionate and dissuasive.

supervisory authority in order to remedy the breach.

2a. To anyone who does not comply with the obligations laid down in this Regulation, the supervisory authority shall impose at least one of the following sanctions:

- a) a warning in writing in cases of first and non-intentional non-compliance;*
- b) regular periodic data protection audits;*
- c) a fine up to 100 000 000 EUR or up to 5% of the annual worldwide turnover in case of an enterprise, whichever is higher.*

2b. If the controller or the processor is in possession of a valid "European Data Protection Seal" pursuant to Article 39, a fine pursuant to point (c) of paragraph 2a shall only be imposed in cases of intentional or negligent non-compliance.

2c. The administrative sanction shall take into account the following factors:

- a) the nature, gravity and duration of the non-compliance,*
- b) the intentional or negligent character of the infringement,*
- c) the degree of responsibility of the natural or legal person and of previous breaches by this person,*
- d) the repetitive nature of the infringement,*
- e) the degree of co-operation with the supervisory authority, in order to remedy the infringement and mitigate the possible adverse effects of the infringement,*
- f) the specific categories of personal data affected by the infringement,*
- (g) the level of damage, including non-pecuniary damage, suffered by the data subjects,*
- (h) the action taken by the controller or processor to mitigate the damage suffered*

by data subjects,

(i) any financial benefits intended or gained, or losses avoided, directly or indirectly from the infringement,

(j) the degree of technical and organisational measures and procedures implemented pursuant to:

(i) Article 23 - Data protection by design and by default

(ii) Article 30 - Security of processing

(iii) Article 33 - Data protection impact assessment

(iv) Article 33 a - Data protection compliance review

(v) Article 35 - Designation of the data protection officer

(k) the refusal to cooperate with or obstruction of inspections, audits and controls carried out by the supervisory authority pursuant to Article 53,

(l) other aggravating or mitigating factors applicable to the circumstance of the case.

3. In case of a first and non-intentional non-compliance with this Regulation, a warning in writing may be given and no sanction imposed, where:

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

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

4. The supervisory authority shall impose a fine up to 250 000 EUR, or in case of an enterprise up to 0,5 % of its annual worldwide turnover, to anyone who, intentionally or negligently:

(a) does not provide the mechanisms for requests by data subjects or does not respond promptly or not in the required format to data subjects pursuant to

Articles 12(1) and (2);

(b) charges a fee for the information or for responses to the requests of data subjects in violation of Article 12(4).

5. The supervisory authority shall impose a fine up to 500 000 EUR, or in case of an enterprise up to 1 % of its annual worldwide turnover, to anyone who, intentionally or negligently:

(a) does not provide the information, or does provide incomplete information, or does not provide the information in a sufficiently transparent manner, to the data subject pursuant to Article 11, Article 12(3) and Article 14;

(b) does not provide access for the data subject or does not rectify personal data pursuant to Articles 15 and 16 or does not communicate the relevant information to a recipient pursuant to Article 13;

(c) does not comply with the right to be forgotten or to erasure, or fails to put mechanisms in place to ensure that the time limits are observed or does not take all necessary steps to inform third parties that a data subjects requests to erase any links to, or copy or replication of the personal data pursuant Article 17;

(d) does not provide a copy of the personal data in electronic format or hinders the data subject to transmit the personal data to another application in violation of Article 18;

(e) does not or not sufficiently determine the respective responsibilities with co-controllers pursuant to Article 24;

(f) does not or not sufficiently maintain the documentation pursuant to Article 28, Article 31(4), and Article 44(3);

(g) does not comply, in cases where special categories of data are not involved, pursuant to Articles 80, 82 and 83 with rules in relation to freedom of expression or with rules on the processing in the

employment context or with the conditions for processing for historical, statistical and scientific research purposes.

6. The supervisory authority shall impose a fine up to 1 000 000 EUR or, in case of an enterprise up to 2 % of its annual worldwide turnover, to anyone who, intentionally or negligently:

(a) processes personal data without any or sufficient legal basis for the processing or does not comply with the conditions for consent pursuant to Articles 6, 7 and 8;

(b) processes special categories of data in violation of Articles 9 and 81;

(c) does not comply with an objection or the requirement pursuant to Article 19;

(d) does not comply with the conditions in relation to measures based on profiling pursuant to Article 20;

(e) does not adopt internal policies or does not implement appropriate measures for ensuring and demonstrating compliance pursuant to Articles 22, 23 and 30;

(f) does not designate a representative pursuant to Article 25;

(g) processes or instructs the processing of personal data in violation of the obligations in relation to processing on behalf of a controller pursuant to Articles 26 and 27;

(h) does not alert on or notify a personal data breach or does not timely or completely notify the data breach to the supervisory authority or to the data subject pursuant to Articles 31 and 32;

(i) does not carry out a data protection impact assessment pursuant or processes personal data without prior authorisation or prior consultation of the supervisory authority pursuant to Articles 33 and 34;

(j) does not designate a data protection officer or does not ensure the conditions for fulfilling the tasks pursuant to Articles

35, 36 and 37;

(k) misuses a data protection seal or mark in the meaning of Article 39;

(l) carries out or instructs a data transfer to a third country or an international organisation that is not allowed by an adequacy decision or by appropriate safeguards or by a derogation pursuant to Articles 40 to 44;

(m) does not comply with an order or a temporary or definite ban on processing or the suspension of data flows by the supervisory authority pursuant to Article 53(1);

(n) does not comply with the obligations to assist or respond or provide relevant information to, or access to premises by, the supervisory authority pursuant to Article 28(3), Article 29, Article 34(6) and Article 53(2);

(o) does not comply with the rules for safeguarding professional secrecy pursuant to Article 84.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of updating the amounts of the administrative fines referred to in *paragraphs 4, 5 and 6*, taking into account the criteria referred to in *paragraph 2*.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of updating the ***absolute*** amounts of the administrative fines referred to in *paragraph 2a*, taking into account the criteria ***and factors*** referred to in *paragraphs 2 and 2c*.

Amendment 189

Proposal for a regulation Article 80 – paragraph 1

Text proposed by the Commission

1. Member States shall provide for exemptions or derogations from the provisions on the general principles in Chapter II, the rights of the data subject in Chapter III, on controller and processor in Chapter IV, on the transfer of personal data

Amendment

1. Member States shall provide for exemptions or derogations from the provisions on the general principles in Chapter II, the rights of the data subject in Chapter III, on controller and processor in Chapter IV, on the transfer of personal data

to third countries and international organisations in Chapter V, the independent supervisory authorities in Chapter VI *and* on co-operation and consistency in Chapter VII *for the processing of personal data carried out solely for journalistic purposes or the purpose of artistic or literary expression* in order to reconcile the right to the protection of personal data with the rules governing freedom of expression.

to third countries and international organisations in Chapter V, the independent supervisory authorities in Chapter VI, on co-operation and consistency in Chapter VII *and specific data processing situations in Chapter IX whenever this is necessary* in order to reconcile the right to the protection of personal data with the rules governing freedom of expression *in accordance with the Charter of Fundamental Rights of the European Union*.

Amendment 190

Proposal for a regulation Article 80 a (new)

Text proposed by the Commission

Amendment

Article 80a

Access to documents

1. Personal data in documents held by a public authority or a public body may be disclosed by this authority or body in accordance with Union or Member State legislation regarding public access to official documents, which reconciles the right to the protection of personal data with the principle of public access to official documents.

2. Each Member State shall notify to the Commission provisions of its law which it adopts pursuant to paragraph 1 by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.

Amendment 191

Proposal for a regulation Article 81

Text proposed by the Commission

Processing of personal data concerning health

1. ***Within the limits of*** this Regulation ***and in accordance*** with point (h) of Article 9(2), processing of personal data concerning health must be on the basis of Union law or Member State law which shall provide for suitable and specific measures to safeguard the data subject's ***legitimate*** interests, and be necessary for:

(a) the purposes of preventive or occupational medicine, medical diagnosis, the provision of care or treatment or the management of health-care services, and where those data are processed by a health professional subject to the obligation of professional secrecy or another person also subject to an equivalent obligation of confidentiality under Member State law or rules established by national competent bodies; or

(b) reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety, inter alia for medicinal products or medical devices; or

(c) other reasons of public interest in areas such as social protection, especially in order to ensure the quality and cost-effectiveness of the procedures used for settling claims for benefits and services in the health insurance system.

Amendment

Processing of personal data concerning health

1. ***In accordance with the rules set out in*** this Regulation, ***in particular*** with point (h) of Article 9(2), processing of personal data concerning health must be on the basis of Union law or Member State law which shall provide for suitable, ***consistent***, and specific measures to safeguard the data subject's interests ***and fundamental rights, to the extent that these are necessary and proportionate, and of which the effects shall be foreseeable by the data subject,*** for:

(a) the purposes of preventive or occupational medicine, medical diagnosis, the provision of care or treatment or the management of health-care services, and where those data are processed by a health professional subject to the obligation of professional secrecy or another person also subject to an equivalent obligation of confidentiality under Member State law or rules established by national competent bodies; or

(b) reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety, inter alia for medicinal products or medical devices, ***and if the processing is carried out by a person bound by a confidentiality obligation;*** or

(c) other reasons of public interest in areas such as social protection, especially in order to ensure the quality and cost-effectiveness of the procedures used for settling claims for benefits and services in the health insurance system ***and the***

provision of health services. Such processing of personal data concerning health for reasons of public interest shall not result in data being processed for other purposes, unless with the consent of the data subject or on the basis of Union or Member State law.

Ia. When the purposes referred to in points (a) to (c) of paragraph 1 can be achieved without the use of personal data, such data shall not be used for those purposes, unless based on the consent of the data subject or Member State law.

Ib. Where the data subject's consent is required for the processing of medical data exclusively for public health purposes of scientific research, the consent may be given for one or more specific and similar researches. However, the data subject may withdraw the consent at any time.

Ic. For the purpose of consenting to the participation in scientific research activities in clinical trials, the relevant provisions of Directive 2001/20/EC of the European Parliament and of the Council¹ shall apply.

2. Processing of personal data concerning health which is necessary for historical, statistical or scientific research purposes, *such as patient registries set up for improving diagnoses and differentiating between similar types of diseases and preparing studies for therapies*, is subject to the conditions and safeguards referred to in Article 83.

2. Processing of personal data concerning health which is necessary for historical, statistical or scientific research purposes *shall be permitted only with the consent of the data subject, and shall be* subject to the conditions and safeguards referred to in Article 83.

2a. Member States law may provide for exceptions to the requirement of consent for research, as referred to in paragraph 2, with regard to research that serves a high public interest, if that research cannot possibly be carried out otherwise. The data in question shall be anonymised, or if that is not possible for the research purposes, pseudonymised under the highest technical standards, and all

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying *other reasons of* public interest in the area of public health as referred to in point (b) of paragraph 1, *as well as criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1.*

necessary measures shall be taken to prevent unwarranted re-identification of the data subjects. However, the data subject shall have the right to object at any time in accordance with Article 19.

3. The Commission shall be empowered to adopt, *after requesting an opinion of the European Data Protection Board,* delegated acts in accordance with Article 86 for the purpose of further specifying public interest in the area of public health as referred to in point (b) of paragraph 1 *and high public interest in the area of research as referred to in paragraph 2a.*

3a. Each Member State shall notify to the Commission those provisions of its law which it adopts pursuant to paragraph 1, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.

¹ *Directive 2001/20/EC of the European Parliament and of the Council of 4 April 2001 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the implementation of good clinical practices in the conduct of clinical trials on medicinal products for human use (OJ L 121, 1.5.2001, p. 34).*

Amendment 192

Proposal for a regulation Article 82

Text proposed by the Commission

Processing in the employment context

1. *Within the limits of this Regulation,* Member States may adopt by *law* specific rules regulating the processing of employees' personal data in the employment context, in particular *for* the

Amendment

Minimum standards for processing *data* in the employment context

1. Member States may, *in accordance with the rules set out in this Regulation, and taking into account the principle of proportionality,* adopt by *legal provisions* specific rules regulating the processing of

purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law *or* by collective agreements, management, planning and organisation of work, health and safety at work, and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship.

employees' personal data in the employment context, in particular *but not limited to* the purposes of the recruitment *and job applications within the group of undertakings*, the performance of the contract of employment, including discharge of obligations, laid down by law *and* by collective agreements, *in accordance with national law and practice*, management, planning and organisation of work, health and safety at work, and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship. *Member States may allow for collective agreements to further specify the provisions set out in this Article.*

1a. The purpose of processing such data must be linked to the reason it was collected for and stay within the context of employment. Profiling or use for secondary purposes shall not be allowed.

1b. Consent of an employee shall not provide a legal basis for the processing of data by the employer when the consent has not been given freely.

1c. Notwithstanding the other provisions of this Regulation, the legal provisions of Member States referred to in paragraph 1 shall include at least the following minimum standards:

(a) the processing of employee data without the employees' knowledge shall not be permitted. Notwithstanding the first sentence, Member States may, by law, provide for the admissibility of this practice, by setting appropriate deadlines for the deletion of data, providing there exists a suspicion based on factual indications that must be documented that the employee has committed a crime or serious dereliction of duty in the employment context, providing also the collection of data is necessary to clarify

the matter and providing finally the nature and extent of this data collection are necessary and proportionate to the purpose for which it is intended. The privacy and private lives of employees shall be protected at all times. The investigation shall be carried out by the competent authority;

(b) the open optical-electronic and/or open acoustic-electronic monitoring of parts of an undertaking which are not accessible to the public and are used primarily by employees for private activities, especially in bathrooms, changing rooms, rest areas, and bedrooms, shall be prohibited. Clandestine surveillance shall be inadmissible under all circumstances;

(c) where undertakings or authorities collect and process personal data in the context of medical examinations and/or aptitude tests, they must explain to the applicant or employee beforehand the purpose for which these data are being used, and ensure that afterwards they are provided with these data together with the results, and that they receive an explanation of their significance on request. Data collection for the purpose of genetic testing and analyses shall be prohibited as a matter of principle;

(d) whether and to what extent the use of telephone, e-mail, internet and other telecommunications services shall also be permitted for private use may be regulated by collective agreement. Where there is no regulation by collective agreement, the employer shall reach an agreement on this matter directly with the employee. In so far as private use is permitted, the processing of accumulated traffic data shall be permitted in particular to ensure data security, to ensure the proper operation of telecommunications networks and telecommunications services and for billing purposes.

Notwithstanding the third sentence, Member States may, by law, provide for the admissibility of this practice, by setting appropriate deadlines for the deletion of data, providing there exists a suspicion based on factual indications that must be documented that the employee has committed a crime or serious dereliction of duty in the employment context, providing also the collection of data is necessary to clarify the matter and providing finally the nature and extent of this data collection are necessary and proportionate to the purpose for which it is intended. The privacy and private lives of employees shall be protected at all times. The investigation shall be carried out by the competent authority;

(e) workers' personal data, especially sensitive data such as political orientation and membership of and activities in trade unions, may under no circumstances be used to put workers on so-called 'blacklists', and to vet or bar them from future employment. The processing, the use in the employment context, the drawing-up and passing-on of blacklists of employees or other forms of discrimination shall be prohibited. Member States shall conduct checks and adopt adequate sanctions in accordance with Article 79(6) to ensure effective implementation of this point.

Id. Transmission and processing of personal employee data between legally independent undertakings within a group of undertakings and with professionals providing legal and tax advice shall be permitted, providing it is relevant to the operation of the business and is used for the conduct of specific operations or administrative procedures and is not contrary to the interests and fundamental rights of the person concerned which are worthy of protection. Where employee data are transmitted to a third country and/or to an international organization,

2. Each Member State shall notify to the Commission those provisions of its law which it adopts pursuant to **paragraph 1**, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1.

Amendment 193

Proposal for a regulation Article 82 a (new)

Text proposed by the Commission

Chapter V shall apply.

2. Each Member State shall notify to the Commission those provisions of its law which it adopts pursuant to **paragraphs 1 and 1b**, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.
3. The Commission shall be empowered, ***after requesting an opinion from the European Data Protection Board***, to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1.

Amendment

Article 82a

Processing in the social security context

1. ***Member States may, in accordance with the rules set out in this Regulation, adopt specific legislative rules particularising the conditions for the processing of personal data by their public institutions and departments in the social security context if carried out in the public interest.***
2. ***Each Member State shall notify to the Commission those provisions which it adopts pursuant to paragraph 1, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.***

Amendment 194

Proposal for a regulation Article 83

Text proposed by the Commission

Processing for historical, statistical and scientific research purposes

1. ***Within the limits of*** this Regulation, personal data may be processed for historical, statistical or scientific research purposes only if:

(a) these purposes cannot be otherwise fulfilled by processing data which does not permit or not any longer permit the identification of the data subject;

(b) data enabling the attribution of information to an identified or identifiable data subject is kept separately from the other information ***as long as these purposes can be fulfilled in this manner.***

2. ***Bodies conducting historical, statistical or scientific research may publish or otherwise publicly disclose personal data only if:***

(a) ***the data subject has given consent, subject to the conditions laid down in Article 7;***

(b) ***the publication of personal data is necessary to present research findings or to facilitate research insofar as the interests or the fundamental rights or freedoms of the data subject do not override these interests; or***

(c) ***the data subject has made the data public.***

3. ***The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the processing of personal data for the***

Amendment

Processing for historical, statistical and scientific research purposes

1. ***In accordance with the rules set out in*** this Regulation, personal data may be processed for historical, statistical or scientific research purposes only if:

(a) these purposes cannot be otherwise fulfilled by processing data which does not permit or not any longer permit the identification of the data subject;

(b) data enabling the attribution of information to an identified or identifiable data subject is kept separately from the other information ***under the highest technical standards, and all necessary measures are taken to prevent unwarranted re-identification of the data subjects.***

purposes referred to in paragraph 1 and 2 as well as any necessary limitations on the rights of information to and access by the data subject and detailing the conditions and safeguards for the rights of the data subject under these circumstances.

Amendment 195

Proposal for a regulation

Article 83 a (new)

Text proposed by the Commission

Amendment

Article 83a

Processing of personal data by archive services

1. Once the initial processing for which they were collected has been completed, personal data may be processed by archive services whose main or mandatory task is to collect, conserve, provide information about, exploit and disseminate archives in the public interest, in particular in order to substantiate individuals' rights or for historical, statistical or scientific research purposes. These tasks shall be carried out in accordance with the rules laid down by Member States concerning access to and the release and dissemination of administrative or archive documents and in accordance with the rules set out in this Regulation, specifically with regard to consent and the right to object.

2. Each Member State shall notify to the Commission provisions of its law which it adopts pursuant to paragraph 1 by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.

Amendment 196

Proposal for a regulation Article 84 – paragraph 1

Text proposed by the Commission

1. *Within the limits of* this Regulation, Member States *may adopt* specific rules *to set out the investigative* powers by the supervisory authorities laid down in Article 53(2) in relation to controllers or processors that are subjects under national law or rules established by national competent bodies to an obligation of professional secrecy or other equivalent obligations of secrecy, where this is necessary and proportionate to reconcile the right of the protection of personal data with the obligation of secrecy. These rules shall only apply with regard to personal data which the controller or processor has received from or has obtained in an activity covered by this obligation of secrecy.

Amendment

1. *In accordance with the rules set out in* this Regulation, Member States, *shall ensure that* specific rules *are in place setting* out the powers by the supervisory authorities laid down in Article 53 in relation to controllers or processors that are subjects under national law or rules established by national competent bodies to an obligation of professional secrecy or other equivalent obligations of secrecy, where this is necessary and proportionate to reconcile the right of the protection of personal data with the obligation of secrecy. These rules shall only apply with regard to personal data which the controller or processor has received from or has obtained in an activity covered by this obligation of secrecy.

Amendment 197

Proposal for a regulation Article 85

Text proposed by the Commission

Existing data protection rules of churches and religious associations

1. Where in a Member State, churches and religious associations or communities apply, at the time of entry into force of this Regulation, *comprehensive* rules relating to the protection of individuals with regard to the processing of personal data, such rules may continue to apply, provided that they are brought in line with the provisions of this Regulation.

2. Churches and religious associations

Amendment

Existing data protection rules of churches and religious associations

1. Where in a Member State, churches and religious associations or communities apply, at the time of entry into force of this Regulation, *adequate* rules relating to the protection of individuals with regard to the processing of personal data, such rules may continue to apply, provided that they are brought in line with the provisions of this Regulation.

2. Churches and religious associations

which apply *comprehensive* rules in accordance with paragraph 1 shall *provide for the establishment of an independent supervisory authority in accordance with Chapter VI of this Regulation*.

which apply *adequate* rules in accordance with paragraph 1 shall *obtain a compliance opinion pursuant to Article 38*.

Amendment 198

Proposal for a regulation Article 85 a (new)

Text proposed by the Commission

Amendment

Article 85a

Respect of fundamental rights

This Regulation shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the TEU.

Amendment 199

Proposal for a regulation Article 85 b (new)

Text proposed by the Commission

Amendment

Article 85b

Standard Forms

1. The Commission may, taking into account the specific features and necessities of various sectors and data processing situations, lay down standard forms for:

(a) specific methods to obtain verifiable consent referred to in Article 8(1),

(b) the communication referred to in Article 12(2), including the electronic format,

(c) providing the information referred to

- in paragraphs 1 to 3 of Article 14,*
- (d) requesting and granting access to the information referred to in Article 15(1), including for communicating the personal data to the data subject,*
- (e) documentation referred to in paragraph 1 of Article 28,*
- (f) breach notifications pursuant to Article 31 to the supervisory authority and the documentation referred to in Article 31(4),*
- (g) prior consultations referred to in Article 34, and for informing the supervisory authorities pursuant to Article 34(6).*
- 2. In doing so, the Commission shall take the appropriate measures for micro, small and medium-sized enterprises.*
- 3. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).*

Amendment 200

Proposal for a regulation Article 86 – paragraph 2

Text proposed by the Commission

2. The *delegation of power* referred to in *Article 6(5), Article 8(3), Article 9(3), Article 12(5), Article 14(7), Article 15(3), Article 17(9), Article 20(5), Article 22(4), Article 23(3), Article 26(5), Article 28(5), Article 30(3), Article 31(5), Article 32(5), Article 33(5), Article 34(8), Article 35(11), Article 37(2), Article 39(2), Article 43(3), Article 44(7), Article 79(7), Article 81(3), Article 82(3) and Article 83(3)* shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

Amendment

2. The *power to adopt delegated acts* referred to in *Article 13a(5), Article 17(9), Article 38(4), Article 39(2), Article 41(3), Article 41(5), Article 43(3), Article 79(7), Article 81(3) and Article 82(3)* shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

Amendment 201

Proposal for a regulation Article 86 – paragraph 3

Text proposed by the Commission

3. The delegation of power referred to in **Article 6(5), Article 8(3), Article 9(3), Article 12(5), Article 14(7), Article 15(3), Article 17(9), Article 20(5), Article 22(4), Article 23(3), Article 26(5), Article 28(5), Article 30(3), Article 31(5), Article 32(5), Article 33(5), Article 34(8), Article 35(11), Article 37(2), Article 39(2), Article 43(3), Article 44(7), Article 79(7), Article 81(3), Article 82(3) and Article 83(3)** may be revoked at any time by the European Parliament or by the Council. A decision **of revocation** shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Amendment 202

Proposal for a regulation Article 86 – paragraph 5

Text proposed by the Commission

5. **The delegation of power referred to in Article 6(5), Article 8(3), Article 9(3), Article 12(5), Article 14(7), Article 15(3), Article 17(9), Article 20(5), Article 22(4), Article 23(3), Article 26(5), Article 28(5), Article 30(3), Article 31(5), Article 32(5), Article 33(5), Article 34(8), Article 35(11), Article 37(2), Article 39(2), Article 43(3), Article 44(7), Article 79(7), Article 81(3), Article 82(3) and Article 83(3)** shall enter into force only if no objection has been expressed either by the European

Amendment

3. The delegation of power referred to in **Article 13a(5), Article 17(9), Article 38(4), Article 39(2), Article 41(3), Article 41(5), Article 43(3), Article 79(7), Article 81(3) and Article 82(3)** may be revoked at any time by the European Parliament or by the Council. A decision **to revoke** shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Amendment

5. **A delegated act adopted pursuant to Article 13a(5), Article 17(9), Article 38(4), Article 39(2), Article 41(3), Article 41(5), Article 43(3), Article 79(7), Article 81(3) and Article 82(3)** shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of **six** months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both

Parliament or the Council within a period of *two* months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

informed the Commission that they will not object. That period shall be extended by *six* months at the initiative of the European Parliament or *of* the Council.

Amendment 203

Proposal for a regulation Article 87 – paragraph 3

Text proposed by the Commission

3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

Amendment

deleted

Amendment 204

Proposal for a regulation Article 89 – paragraph 2

Text proposed by the Commission

2. Article 1(2) of Directive 2002/58/EC shall be deleted.

Amendment

2. Articles 1(2), 4 and 15 of Directive 2002/58/EC shall be deleted.

Amendment 205

Proposal for a regulation Article 89 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The Commission shall present, without delay and by the date referred to in Article 91(2) at the latest, a proposal for the revision of the legal framework for the processing of personal data and the

protection of privacy in electronic communications, in order to align the law with this Regulation and ensure consistent and uniform legal provisions on the fundamental right to protection of personal data in the European Union.

Amendment 206

**Proposal for a regulation
Article 89 a (new)**

Text proposed by the Commission

Amendment

Article 89a







***Relationship to and amendment of
Regulation (EC) No 45/2001***

1. The rules set out in this Regulation shall apply to the processing of personal data by Union institutions, bodies, offices and agencies in relation to matters for which they are not subject to additional rules set out in Regulation (EC) No 45/2001.

2. The Commission shall present, without delay and by the date specified in Article 91(2) at the latest, a proposal for the revision of the legal framework applicable to the processing of personal data by the Union institutions, bodies, offices and agencies.

Annex 1 - Presentation of the particulars referred to in Article 13a (new)

1) Having regard to the proportions referred to in point 6, particulars shall be provided as follows:

ICON	ESSENTIAL INFORMATION	FULFILLED
	No personal data are collected beyond the minimum necessary for each specific purpose of the processing	
	No personal data are retained beyond the minimum necessary for each specific purpose of the processing	
	No personal data are processed for purposes other than the purposes for which they were collected	
	No personal data are disseminated to commercial third parties	
	No personal data are sold or rented out	
	No personal data are retained in unencrypted form	

2) The following words in the rows in the second column of the table in point 1, entitled "ESSENTIAL INFORMATION", shall be formatted as bold:

a) the word "collected" in the first row of the second column;

b) the word "retained" in the second row of the second column;

c) the word "processed" in the third row of the second column;

d) the word "disseminated" in the fourth row of the second column;

e) the word "sold and rented out" in the fifth row of the second column;

f) the word "unencrypted" in the sixth row of the second column.

3) Having regard to the proportions referred to in point 6, the rows in the third column of the table in point 1, entitled "FULFILLED", shall be completed with one of the following two graphical forms in accordance with the conditions laid down under point 4:

a)



b)



4)

a) If no personal data are collected beyond the minimum necessary for each specific purpose of the processing, the first row of the third column of the table in point 1 shall entail the graphical form referred to in point 3a.

b) If personal data are collected beyond the minimum necessary for each specific purpose of the processing, the first row of the third column of the table in point 1 shall entail the graphical form referred to in point 3b.

c) If no personal data are retained beyond the minimum necessary for each specific purpose of the processing, the second row of the third column of the table in point 1 shall entail the graphical form referred to in point 3a.

d) If personal data are retained beyond the minimum necessary for each specific purpose of the processing, the second row of the third column of the table in point 1 shall entail the graphical form referred to in point 3b.

e) If no personal data are processed for purposes other than the purposes for which they were collected, the third row of the third column of the table in point 1 shall entail the graphical form referred to in point 3a.

f) If personal data are processed for purposes other than the purposes for which they were collected, the third row of the third column of the table in point 1 shall entail the graphical form referred to in point 3b.

g) If no personal data are disseminated to commercial third parties, the fourth row of the third column of the table in point 1 shall entail the graphical form referred to in point 3a.

h) If personal data are disseminated to commercial third parties, the fourth row of the third column of the table in point 1 shall entail the graphical form referred to in point 3b.

i) If no personal data are sold or rented out, the fifth row of the third column of the table in point 1 shall entail the graphical form referred to in point 3a.

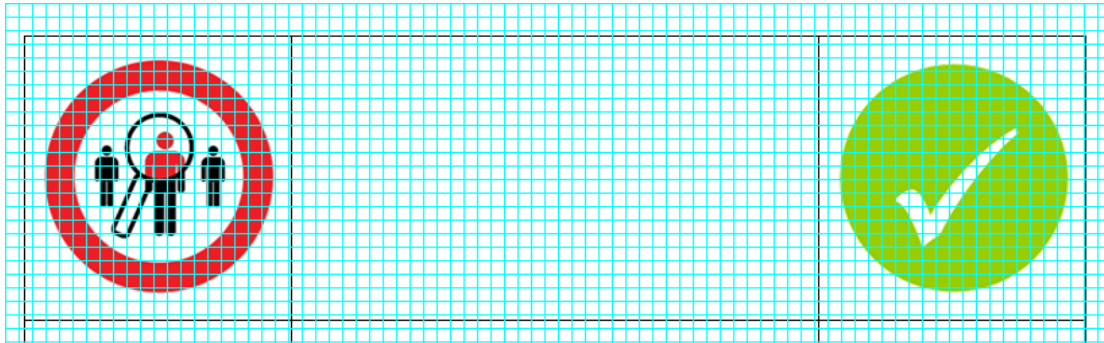
j) If personal data are sold or rented out, the fifth row of the third column of the table in point 1 shall entail the graphical form referred to in point 3b.

k) If no personal data are retained in unencrypted form, the sixth row of the third column of the table in point 1 shall entail the graphical form referred to in point 3a.

l) If personal data are retained in unencrypted form, the sixth row of the third column of the table in point 1 shall entail the graphical form referred to in point 3b.

5) The reference colours of the graphical forms in point 1 in Pantone are Black Pantone No 7547 and Red Pantone No 485. The reference colour of the graphical form in point 3a in Pantone is Green Pantone No 370. The reference colour of the graphical form in point 3b in Pantone is Red Pantone No 485.

6) *The proportions given in the following graduated drawing shall be respected, even where the table is reduced or enlarged:*



EXPLANATORY STATEMENT

Introduction

In accordance with Article 8 of the EU Charter the right to personal data protection:

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified
3. Compliance with these rules shall be subject to control by an independent authority.

Since the adoption of Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data a lot has changed in the area of data protection, notably technological developments, increased collection and processing of personal data, including for law enforcement purposes, with a patchwork of applicable data protection rules and globalization of markets and cooperation.

Furthermore the Directive has failed to achieve a proper harmonisation due to the different implementation of its provisions in the Member States. In this context it has become increasingly difficult for individuals ('data subjects') to exercise their right to data protection.

Finally it has hampered the development of the single market with companies (controlling or processing personal data, 'data controllers') and individuals facing differences in data protection requirements.

Since the entry into force of the Lisbon Treaty, the Union has an explicit legal basis for data protection covering processing of personal data in the public and private sector but also in the context of law enforcement (resulting from the collapse of the pre Lisbon "pillar structure") (Article 16(2) TFEU) The Commission has now used Article 16(2) TFEU as legal basis to present proposals for a revision of the Union's data protection framework. It proposes a Regulation (COM (2012)11) that will replace Directive 95/46/EC (rapporteur: Jan Philipp Albrecht, Greens/EFA) and a Directive (COM(2012)10) that will replace Framework Decision 2008/977/JHA on the protection of personal data processed for the purpose of prevention, detection, investigation or prosecution of criminal offences (rapporteur: Dimitrios Droutsas, S_D). Both rapporteurs support the objective of establishing a fully coherent, harmonious and robust framework with a high level of protection for all data processing activities in the EU.¹ In order to achieve this objective the Commission proposals must be considered a single package requiring coordinated legislative approaches for both texts.

¹ DT/905569EN.doc

Extensive discussions have taken place on the data protection reform between the rapporteurs and the shadow rapporteurs, the draftspersons and shadows of the Committees for opinion (ITRE, IMCO, JURI, EMPL), the Council Presidency, the Commission and stakeholders (data protection authorities, national authorities, industry, civil rights and consumer organisations, academic experts) in order to ensure broad support for the Parliament's approach.

A stakeholder workshop was organised by the LIBE committee on 29 May 2012. The LIBE committee also held its annual Inter-Parliamentary Committee Meeting (IPCM) together with national parliaments in the area of freedom, security and justice on the data protection reform package on 9 and 10 October 2012. Four Working Documents were produced on the data protection reform package.

Position on the draft Data Protection Regulation

The Commission's proposal is based on the following aims:

- A comprehensive approach to data protection;
- Strengthening individual's rights;
- Further advancing the internal market dimension and ensuring better enforcement of data protection rules; and
- Strengthening the global dimension

The rapporteur supports these ambitions. His approach is presented accordingly

A comprehensive approach to data protection

As indicated in the Working Document of 6 July 2012¹, the rapporteur welcomes the fact that the Commission has chosen to replace Directive 95/46 with a (directly applicable) Regulation; since this should reduce the fragmented approach to data protection among Member States.

He also agrees with the pragmatic approach chosen by the Commission in leaving room, in accordance with the Regulation, to the Member States to maintain or adopt specific rules regarding issues such as freedom of expression, professional secrecy, health and employment (Articles 81-85). Particular reference is made to work of the Employment and Social Affairs Committee, which is to deliver an opinion on Article 82.²

EU institutions are not within the scope of the new Regulation. However, they should be covered to ensure a consistent and uniform framework throughout the Union. This will require an adjustment of EU legal instruments, particularly Regulation (EC) No 45/2001, to bring them fully in line with the general Data Protection Regulation before the latter will be applied. The rapporteur also sees a need for a more horizontal debate on how to address the current patchwork of data protection rules for different EU Agencies (such as Europol and Eurojust) and ensure consistency with the data protection package (Article 2(b), Article 89a).

¹ DT/905569EN.doc

² PA/918358EN.doc

The rapporteur strongly regrets that the Commission's proposal does not cover law enforcement cooperation (on which the separate Directive is proposed). This leaves legal uncertainty as regards rights and obligation in borderline issues, for instance where commercial data is accessed by law enforcement authorities for law enforcement purposes and transfers between authorities that are responsible for law enforcement and those that are not. The report on the proposed Directive addresses these issues and proposes amendments. The Regulation specifies that the exclusion from the scope of the Regulation only covers competent public authorities for law enforcement activities (not private entities) and that the applicable legislation should provide adequate safeguards based on the principles of necessity and proportionality (Articles 2(e), 21).

The territorial scope of the Regulation is an important issue for the consistent application of EU data protection law. The rapporteur wishes to clarify that the Regulation should also be applicable to a controller not established in the Union when processing activities are aimed at the offering of goods or services to data subjects in the Union, irrespective of whether payment for these goods or services is required, or the monitoring of such data subjects (Article 3(2)).

The Regulation needs to be comprehensive also in terms of providing legal certainty. The extensive use of delegated and implementing acts runs counter to this goal. Therefore the rapporteur proposes the deletion of a number of provisions conferring on the Commission the power to adopt delegated acts. However, in order to provide legal certainty where possible, the rapporteur has replaced several acts with more detailed wording in the Regulation (e.g.: Articles 6(1b), 15, 35(10)). In other instances, the rapporteur proposes to entrust the European Data Protection Board (EDPB) with the task of further specifying the criteria and requirements of a particular provision instead granting the Commission the power to adopt a delegated act. The reason is that in those cases the matter relates to cooperation between national supervisors and they are better placed to determine the principles and practices to be applied (e.g.: Articles 23(3), 30(3), 42(3), 44(7), 55(10)).

Strengthening individuals' rights

As the Regulation implements a fundamental right, a limitation of the material scope, particularly as regards the definition of "personal data", by for instance introducing subjective elements relating to the efforts the data controller should make to identify personal data is rejected. The concept of personal data is further clarified with objective criteria (Article 4(1); Recitals 23 and 24). Legitimate concerns regarding specific business models can be addressed without denying individuals their fundamental rights. In this context the rapporteur encourages the pseudonymous and anonymous use of services. For the use of pseudonymous data, there could be alleviations with regard to obligations for the data controller (Articles 4(2)(a), 10), Recital 23).

Consent should remain a cornerstone of the EU approach to data protection, since this is the best way for individuals to control data processing activities. Information to data subjects should be presented in easily comprehensible form, such as by standardised logos or icons (Article 11(2a),(2b)). Technical standards that express a subject's clear wishes may be seen as a valid form of providing explicit consent (Articles 7(2a), 23).

In order to ensure an informed consent to profiling activities, these need to be defined and regulated (Articles 4(3b), 14(1)(g), (ga) and (gb), 15(1), 20). Other legal grounds for processing than consent, particularly the “legitimate interests” of the data controller, should be clearly defined (amendment replacing Article 6(1)(f) by a new Article 6(1a), (1b), (1c)).

Purpose limitation is a core element of data protection, as it protects the data subjects from an unforeseeable extension of data processing. A change of purpose of personal data after its collection should not be possible only on the basis of a legitimate interest of the data controller. The rapporteur therefore proposes to delete Article 6(4) instead of widening it.

The rapporteur supports the strengthening of the right of access, with a right to data portability - being able to move one’s data from one platform to another. In the digital age, data subjects, also in their role as consumers, can legitimately expect to receive their personal information in a commonly used electronic format (Article 15(2a)). Therefore he proposes to merge Articles 15 and 18.

The right to erasure and the right to rectification remain important for data subjects, as more and more information are disclosed which can have significant impacts. The “right to be forgotten” should be seen in this light; the amendments proposed clarify these rights for the digital environment, while maintaining the general exception for freedom of expression. In case of data transferred to third parties or published without a proper legal basis, the original data controller should be obliged to inform those third parties and ensure the erasure of the data. Where the individual has agreed to a publication of his or her data, however, a “right to be forgotten” is neither legitimate nor realistic (Article 17, Recital 54).

The right to object to further data processing should always be free of charge and it should be explicitly offered to the data subject by using a clear, plain and adapted language (Article 19(2)). There is also need to provide for better possibilities for effective redress, including by associations acting in the public interest (Articles 73, 76).

Further advancing the internal market dimension and ensuring better enforcement of data protection rules

The rapporteur welcomes the proposed shift from notification requirements to the Data Protection Authorities (DPAs) to practical accountability and corporate Data Protection Officers (DPOs). The proposed regulation can be simplified by merging information rights and documentation requirements essentially being two sides of the same coin. This will reduce administrative burdens for data controllers and make it easier for individuals to understand and exercise their rights (Articles 14, 28). In the age of cloud computing, the threshold for the mandatory designation of a data protection officer should not be based on the size of the enterprise, but rather on the relevance of data processing (category of personal data, type of processing activity, and the number of individuals whose data are processed) (Article 35). It is clarified that the DPO can be a part-time function, depending on the size of the enterprise and the amount of data processing (Recital 75).

Data protection by design and by default is applauded as a core innovation of the reform. This would ensure that only data that are necessary for a specific purpose will actually be processed. Producers and service providers are called to implement appropriate measures. The

European Data Protection Board should be entrusted to provide further guidance (Article 23). The amendments on Privacy Impact Assessments aim at further determining the situations where this assessment should be conducted (Article 33(2)) and the elements to assess (Article 33(3)).

The rapporteur proposes to extend the period within which to notify a personal data breach to the supervisory authority from 24 to 72 hours. Furthermore, to prevent notification fatigue to data subjects, only cases where a data breach is likely to adversely affect the protection of the personal data or privacy of the data subject, for example in cases of identity theft or fraud, financial loss, physical harm, significant humiliation or damage to reputation, the data subject should be notified. The notification should also comprise a description of the nature of the personal data breach, and information regarding the rights, including possibilities regarding redress (Articles 31 and 32). For breach notifications, impact assessments, and the right to erasure and to be forgotten, it is proposed that the Commission adopts delegated acts prior to the date of application of the Regulation in order to ensure legal certainty (Article 86(5a)).

Codes of conduct as well as certification and seals are supported, but there is also need to provide for incentives for the establishment and use and clearer rules on the principles that they must contain and consequences with regard to lawfulness of data processing, liabilities, and related issues. Codes of Conduct declared by the Commission to be in line with the Regulation shall confer enforceable rights to data subjects. The certification seals must set out the formal procedure for the issuance and withdrawal of the seal and they must ensure compliance with data protection principles and data subject rights (Articles 38 and 39).

The Regulation should also ensure a unified working framework for all Data Protection Authorities (DPAs). In order to function, a crucial element is that DPAs, who must be completely independent, need to be sufficiently resourced for the effective performance of their tasks (Article 47). Cooperation between DPAs will also be strengthened in the context of a European Data Protection Board (EDPB, which will replace the current "Article 29 Working Party"). The rapporteur views the foreseen cooperation and consistency mechanism among national DPAs as a huge step towards a coherent application of data protection legislation across the EU. The model proposed by the Commission however does not ensure the necessary independence of DPAs. After having assessed different options, an alternative mechanism is proposed which maintains the idea of a lead DPA, but also relies on close cooperation between DPAs to ensure consistency (Articles 51, 55a). In substance, a DPA is competent to supervise processing operations within its territory or affecting data subjects resident in its territory. In the case of processing activities of a controller or processor established on more than one Member State or affecting data subjects in several Member States, the DPA of the main establishment will be the lead authority acting as single contact point for the controller or the processor (one-stop shop). The lead authority shall ensure coordination with involved authorities and consult the other authorities before adopting a measure. The EDPB shall designate the lead authority in cases it is unclear or the DPAs do not agree. Where a DPA involved in a case does not agree with the draft measure proposed by the lead authority, the EDPB shall issue an opinion. If the lead authority does not intend to follow this opinion, it shall inform the EDPB and provide a reasoned opinion. The EDPB may adopt a final decision, by a qualified majority, legally binding upon the supervisory authority. This decision can be subject to judicial review (Articles 45a, 55, 58). The Commission may also challenge this decision before the EU Court of Justice and request the suspension of the

measure (Article 61a).

The rapporteur supports the strengthening of the DPAs as regards investigative powers and sanctions. The Commission's proposal was however too prescriptive. He proposes a simplified regime which allows DPAs more discretion whilst at the same time entrusting the EDPD with the role of ensuring consistency in enforcement (Article 52, 53, 78, 79). The system of sanctions is also clarified by including several criteria that must be taking into account in order to determine the level of the fine that a DPA may impose.

Strengthening the global dimension

As hitherto, the Commission's power to adopt decisions recognising the adequacy or the non-adequacy of a third country, a territory of a third country, and international organisations is maintained. The proposed new option of recognising sectors in third countries as adequate is rejected by the rapporteur, however, as it would increase legal uncertainty and undermine the Union's goal of a harmonised and coherent international data protection framework. The criteria for assessing the adequacy of a third country are strengthened (Article 41(2)). It is also proposed that the adequacy finding declared by the Commission is made by means of a delegated act instead an implementing act, so as to enable the Council and the Parliament to make use of their right of control (Article 41(3) and (5)).

In the absence of an adequacy decision, to provide adequate protections and safeguards, the controller or processor should take appropriate safeguards measures such as binding corporate rules, standard data protection clauses adopted by the Commission or by a supervisory authority. Amendment in Articles 41(1a) and 42 clarify and detail the essential safeguards that these instruments should contain.

A new article 43a is proposed to address the issue raised by access requests by public authorities or courts in third countries to personal data stored and processed in the EU. The transfer should only be granted by the data protection authority after verifying that the transfer complies with the Regulation and in particular with Article 44(1)(d) or (e). This situation will become even more important with the growth of cloud computing and needs to be addressed here.

Summary

The rapporteur supports the aim of strengthening the right to the protection of personal data, while ensuring a unified legal framework and reducing administrative burdens for data controllers. He proposes to limit the role of the Commission in the implementation to the minimum necessary, by clarifying essential elements in the text of the regulation itself and leaving practical implementation to the cooperation mechanism of data protection authorities. He proposes to emphasise further the use of technological measures for protecting personal data and ensuring compliance, combined with incentives for data controllers when using such measures. In line with the accountability approach, the role of corporate data protection officers is strengthened, while the need for prior consultation of the supervisory authorities is reduced. Union Institutions, bodies and agencies should be brought under the same regulatory framework in the mid-term. If these elements can be supported by Parliament, Council and Commission, the new legal framework for data protection will provide an improvement both

for individuals and for data controllers, and will be future-proof for the coming years.

In the course of the extensive work together with the shadows of all political groups and the opinion draftpersons the rapporteur has worked out a large amount of amendments which reflect discussions between the involved colleagues. Especially on the principles, the legal grounds for processing personal data, the data subject rights, the provisions for controller and processor, the consistency mechanism and the sanctions several compromises are integrated in this report. The rapporteur expects his proposals to form a good basis for swift agreement in the European Parliament and negotiations with the Council during the Irish presidency.

4.3.2013

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

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

Rapporteur: Nadja Hirsch

SHORT JUSTIFICATION

Your rapporteur specifically welcomes the present Regulation and its purpose which is to further harmonise data protection in the European Union (EU).

This aim of this opinion is as follows: it quite obvious that European employee data protection cannot be comprehensively regulated in one article. Your rapporteur's purpose is rather to lay down a number of markers. In the context of realising a genuine European labour and the single market, further consideration may subsequently be given to regulating employment data protection at European level. This would be possible on the basis of Article 288 TFEU.

Although a large volume of data processing in the EU relates to employment, little space in the Regulation is specifically devoted to employee data protection. Furthermore the level of abstraction of the Regulation often makes it difficult to interpret the rules in an employment context.

Your rapporteur takes the view that the best way of addressing the issues facing employee data protection in this Regulation is mainly to restrict the scope of the opinion to Article 82. This will allow an in-depth analysis of the content, besides grouping together the various articles in the Regulation which have a bearing on employee data protection.

Re 82 (1) and Recital 124

In its present stage, the present Regulation can only provide a minimum level of protection, particularly as regards employee data. Each Member State must continue to be able to set standards more favourable for workers than those provided for in the Regulation. Moreover, it must be possible to set such standards in collective agreements. The phrase 'within the limits of this Regulation' should be rejected for a number of reasons. Firstly, it is incompatible with

the general tenor of Article 82 - which deals with exceptions - and could, in connection with the delegated acts proposed by the Commission in Article 82, result in an extremely complex situation. Secondly, as a worst case scenario, this could mean that Member States were unable to adopt more far-reaching rules. Finally, this formulation seems to have been arbitrarily chosen here, since other opening clauses, e.g. concerning the media, do not contain this restriction.

Re 82 (1b)

Since the Commission has not so far made any specific proposal relating to employee data protection, and bearing in mind the few substantive points relating to employee data protection in the regulation, a number of Europe-wide minimum protection standards must be established. The four sub-points should not be seen as an exhaustive list, but rather as the cornerstone of comprehensive European data protection legislation.

Re 82 (1c)

The data protection officer plays a role of paramount importance. It must therefore be made absolutely clear that he or she should be able to perform his or her duties without fear of pressure or external influence and for the benefit of employees. Special protection from dismissal and the prohibition of discrimination against his or her person are therefore appropriate.

Re 82 (1e) and Recital 124 a

The Commission proposal does not sufficiently specify the rules governing the transmission of data within a group of undertakings in the EU. This amendment is intended to rectify this omission, while protecting the interests of employees.

Re 82 (1f) and Recital 34

The complete exclusion of consent as a valid legal reason for the processing of personal data will not have the desired result in an employment context. Your rapporteur therefore proposes that even in situations where there is an imbalance between the parties, consent should be possible as a valid legal reason, where it is intended to have legally and financially advantageous effects for the employee.

Re 82 (3)

Delegated acts should, in your rapporteur's view, only be used where non-material elements of the existing Regulation need to be adapted rapidly and flexibly to technical and security innovations. Hitherto the Commission proposal's wording was too broad-based. Moreover, alongside paragraph 1, it should also be possible to continue to regulate the new paragraph 1c by legal acts.

Re 82 (3a)

This review clause allows a fresh evaluation.

AMENDMENTS

The Committee on Employment and Social Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a regulation Recital 34

Text proposed by the Commission

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

Amendment

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

Amendment 2

Proposal for a regulation Recital 75

Text proposed by the Commission

(75) Where the processing is carried out in the public sector or where, in the private sector, processing is carried out by **a large** enterprise, or where its core activities, regardless of the size of the enterprise, involve processing operations which require regular and systematic monitoring, a person should assist the controller or processor to monitor internal compliance with this Regulation. Such data protection officers, whether or not an employee of the controller, should be in a position to perform their duties and tasks independently.

Amendment

(75) Where the processing is carried out in the public sector or where, in the private sector, processing is carried out by **an** enterprise, or where its core activities, regardless of the size of the enterprise, involve processing operations which require regular and systematic monitoring, a person should assist the controller or processor to monitor internal compliance with this Regulation. Such data protection officers, whether or not an employee of the controller, should be in a position to perform their duties and tasks independently. ***Processing should be carried out by a legal person and relate to more than 250 data subjects per year.***

Amendment 3
Proposal for a regulation
Recital 124

Text proposed by the Commission

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

Amendment

(124) The general principles on the protection of individuals with regard to the processing of personal data should also be applicable to the employment context. ***Member States should be able*** to regulate the processing of employees' personal data in the employment context ***in accordance with the rules and minimum standards set out in*** this Regulation. ***Where a statutory basis is provided in the Member State in question for the regulation of employment matters by agreement between employee representatives and the management of the undertaking or the controlling undertaking of a group of undertakings (collective agreement) or under Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale***

groups of undertakings for the purposes of informing and consulting employees¹, the processing of personal data in an employment context may also be regulated by such an agreement; in this particular case there is the possibility for derogations and exceptions in accordance with national law and practices.

¹ OJ L 122, 16.5.2009, p. 28.

Amendment 4

Proposal for a regulation Recital 124 a (new)

Text proposed by the Commission

Amendment

(124a) In order to safeguard business interests which are directly related to employment, the transmission and processing of employee data within groups of undertakings is permitted. This should not be affected by interests of the person concerned which are worthy of protection. Employee data includes all types of personal data of the person concerned which are directly related to employment. The rules laid down in Article 82(1e) take into account the widespread practice of processing employee data in groups of undertakings.

Amendment 5

Proposal for a regulation Article 3 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. This Regulation applies to the processing of personal data of data subjects not residing in the Union by a controller or processor established in the Union, through their economic activities

in a third country(ies).

Amendment 6

Proposal for a regulation

Article 6 – paragraph 1 – point f

Text proposed by the Commission

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

Amendment

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

Justification

In order for the collective bargaining system to function properly the unions must have the possibility to monitor the observance of collective agreements. Today this is carried out within the framework of Article 7 (f) of directive 95/46/EC. Article 7 (f) recognizes the legitimate interest of a third party to process personal data. The employer is mostly regarded as the controller and the labour union as the third party.

Amendment 7

Proposal for a regulation

Article 6 – paragraph 5

Text proposed by the Commission

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

Amendment

deleted

Justification

Provisions on lawfulness of processing form the core of the rules on data protection. As provisions on delegated acts must be limited only to non-essential elements of the Regulation paragraph 5 should be deleted.

Amendment 8

Proposal for a regulation Article 9 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 9

Proposal for a regulation Article 14 – paragraph 3

Text proposed by the Commission

3. Where the personal data are not collected from the data subject, the controller shall inform the data subject, in addition to the information referred to in paragraph 1, from which source the personal data originate.

Amendment

3. Where the personal data are not collected from the data subject, the controller shall inform the data subject, in addition to the information referred to in paragraph 1, from which source the personal data originate. ***This would include data sourced from a third party illegally and passed on to the controller.***

Amendment 10

Proposal for a regulation Article 17 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6 a. While complying with the data requirements of this Regulation, especially privacy by design, the provisions in paragraph 4 and 6 of this Article do not change the right of public authorities to store data for documentary evidence of a given case history.

Amendment 11

Proposal for a regulation

Article 28 – paragraph 4 – point b

Text proposed by the Commission

Amendment

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

(b) an enterprise or an organisation that is processing personal data only as an activity ancillary to its main activities.

Justification

The limit of 250 employee's places employers in an unequal position, is discriminatory against larger enter-prises and is by no means necessary for reaching the aim. The number of employees doesn't correlate with the amount or type of personal data kept by the organization. A small organization with just a few employees can control a huge amount of delegate personal data and vice versa. Furthermore, the limit is not in all aspects easily interpreted.

Amendment 12

Proposal for a regulation

Article 35 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. The controller and the processor shall designate a data protection officer in any case where:

1. The controller and the processor, **after obtaining the consent of the workplace representation**, shall designate a data protection officer in any case where:

Amendment 13

Proposal for a regulation
Article 35 – paragraph 1 – point a

Text proposed by the Commission

(a) the processing is carried out by a public authority or body; or

Amendment

(a) the processing is carried out by a public authority or body ***or on their behalf***; or

Amendment 14

Proposal for a regulation
Article 35 – paragraph 1 – point b

Text proposed by the Commission

(b) the processing is carried out by ***an enterprise employing 250 persons or more***; or

Amendment

(b) the processing is carried out by ***a legal person and relates to more than 250 data subjects per year***; or

Amendment 15

Proposal for a regulation
Article 35 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(b a) the data processed is of particularly sensitive nature e.g. medical; or

Amendment 16

Proposal for a regulation
Article 35 – paragraph 2

Text proposed by the Commission

Amendment

2. ***In the case*** referred to in point (b) of paragraph 1, ***a group of undertakings*** may appoint a single data protection officer.

2. ***A group of organizations*** referred to in point (a) ***and*** (b) of paragraph 1 may appoint a single data protection officer ***where this applies to a single jurisdiction.***

Justification

Public authorities today act in the form of quasi-enterprises in many fields. The regulation should not prohibit the possibility to appoint a single data protection officer for a group

consisting of both public and private sector entities.

Amendment 17

Proposal for a regulation

Article 82 – title

Text proposed by the Commission

Processing in the employment context

Amendment

Minimum standards for processing ***data*** in the employment context

Amendment 18

Proposal for a regulation

Article 82 – paragraph 1

Text proposed by the Commission

1. ***Within the limits of this Regulation,*** Member States may adopt by ***law*** specific rules regulating the processing of employees' personal data in the employment context, in particular ***for*** the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law ***or*** by collective agreements, management, planning and organisation of work, health and safety at work, and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship.

Amendment

1. Member States may, ***in accordance with the rules set out in this Regulation, and taking into account the principle of proportionality,*** adopt by ***legal provisions*** specific rules regulating the processing of employees' personal data in the employment context, in particular ***but not limited to*** the purposes of the recruitment ***and job applications within the group of undertakings,*** the performance of the contract of employment, including discharge of obligations laid down by law ***and*** by collective agreements, ***company agreements and collective agreements in accordance with national law and practice,*** management, planning and organisation of work, health and safety at work, and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship.

The level of protection afforded by this Regulation may not be undercut. Notwithstanding the previous sentence, where arrangements are made by

agreement between employee representatives and the management of the undertaking or of the controlling undertaking of a group of undertakings the level of protection afforded by this Regulation may not be significantly undercut.

The right of Member States, or the social partners via collective agreements, to provide employees with more favourable protection provisions in respect of the processing of personal data in the employment context shall remain unaffected.

Amendment 19

Proposal for a regulation Article 82 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. The purpose of processing such data must be directly linked to the reason it was collected for and stay within the context of employment. Profiling or use for secondary purposes shall not be allowed.

Amendment 20

Proposal for a regulation Article 82 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Notwithstanding the other provisions of this Regulation, the legal provisions of Member States referred to in paragraph 1 shall include at least the following minimum standards:

(a) the processing of employee data without the employees' knowledge shall not be permitted. Notwithstanding sentence 1, Member States may, by law,

provide for the admissibility of this practice, by setting appropriate deadlines for the deletion of data, providing there exists a suspicion based on factual indications that must be documented that the employee has committed a crime or serious dereliction of duty in the employment context, providing also the collection of data is necessary to clarify the matter and providing finally the nature and extent of this data collection are not disproportionate to the purpose for which it is intended. The privacy and private lives of employees shall be protected at all times. The investigation shall be carried out by the competent authority;

(b) the open optical-electronic and/or open acoustic-electronic monitoring of parts of an undertaking which are not accessible to the public and are used primarily by employees for private activities, especially in bathrooms, changing rooms, rest areas, and bedrooms, shall be prohibited. Clandestine surveillance shall be inadmissible under all circumstances;

(c) where undertakings or authorities collect and process personal data in the context of medical examinations and/or aptitude tests, they must explain to the applicant or employee beforehand the purpose for which these data are being used, and ensure that afterwards they are provided with these data together with the results, and that they receive an explanation of their significance on request. Data collection for the purpose of genetic testing and analyses shall be prohibited as a matter of principle;

(d) whether and to what extent the use of telephone, e-mail, internet and other telecommunications services shall also be permitted for private use may be regulated by collective agreement. Where there is no possibility of regulation by collective agreement, the employer shall reach an

agreement on this matter directly with the employee. In so far as private use is permitted, the processing of this accumulated traffic data shall be permitted in particular to ensure data security, to ensure the proper operation of telecommunications networks and telecommunications services and for billing purposes. Notwithstanding sentence 3, Member States may, by law, provide for the admissibility of this practice, by setting appropriate deadlines for the deletion of data, providing there exists a suspicion based on factual indications that must be documented that the employee has committed a crime or serious dereliction of duty in the employment context, providing also the collection of data is necessary to clarify the matter and providing finally the nature and extent of this data collection are not disproportionate to the purpose for which it is intended. The privacy and private lives of employees shall be protected at all times. The investigation shall be carried out by the competent authority;

(e) workers' personal data, especially sensitive data such as political orientation and membership of and activities in trade unions, may under no circumstances be used to put workers on so-called 'blacklists', and to vet or bar them from future employment. The processing, the use in the employment context, the drawing-up and passing-on of blacklists of employees shall be prohibited. Member States shall conduct checks and adopt adequate sanctions to ensure effective implementation of this point.

Amendment 21
Proposal for a regulation
Article 82 – paragraph 1 c (new)

Text proposed by the Commission

Amendment

1c. In addition to the provisions of Chapter IV, Section 4, the data protection officer shall enjoy special protection from dismissal in the performance of his/her duties and may not be the subject of discrimination. Authorities and companies shall also ensure that the data protection officer can carry out all activities independently in accordance with Article 36(2) and has access to training, whereby the corresponding costs will be borne by the controller and/or processor. If undertakings are located in more than one Member State, a data protection officer shall be easily accessible for all its workers in each of these Member States.

In addition to the provisions of Chapter IV, Section 4, the data protection officer shall be afforded due time to fulfil relevant duties, where they are in addition to their general tasks. National and European Works Councils shall be consulted in the appointment of the data protection officer and shall be afforded the continuous right of consultation with them.

Amendment 22

Proposal for a regulation Article 82 – paragraph 1 d (new)

Text proposed by the Commission

Amendment

1d. Without prejudice to the information and codetermination rights guaranteed by national labour law, the workplace representation and the European Works Council shall enjoy the following rights:

(a) right to codetermination with regard to the appointment of the workplace data protection officer (Article 35 et seq.);

(b) right to be consulted and receive information from the workplace data protection officer on a regular basis;

(c) right to represent affected employees in a normal national court (Article 73) and possibility of bringing class actions (Article 75);

(d) right to codetermination with regard to the drawing-up of binding corporate rules (Article 43).

Amendment 23

Proposal for a regulation

Article 82 – paragraph 1 e (new)

Text proposed by the Commission

Amendment

1e. The transmission and processing of personal employee data between legally independent undertakings within a group of undertakings and with professionals providing legal and tax advice shall be permitted, providing it is relevant to the operation of the business and is used for the conduct of specific operations or administrative procedures and is not contrary to the interests of the person concerned which are worthy of protection. Where employee data are transmitted to a third country and/or to an international organization, Chapter V shall apply.

Amendment 24

Proposal for a regulation

Article 82 – paragraph 1 f (new)

Text proposed by the Commission

Amendment

1f. Article 7, paragraph 4, shall not apply where the data processing is intended to have legally or economically advantageous consequences for the employee.

Amendment 25

Proposal for a regulation Article 82 – paragraph 2

Text proposed by the Commission

2. Each Member State shall notify to the Commission those **provisions of its law** which it adopts pursuant to **paragraph 1**, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.

Amendment

2. Each Member State shall notify to the Commission those **legal provisions** which it adopts pursuant to **paragraphs 1 and 1b**, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.

Amendment 26

Proposal for a regulation Article 82 – paragraph 3

Text proposed by the Commission

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the **safeguards** for the processing of personal data for the purposes referred to in **paragraph 1**.

Amendment

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 **exclusively** for the purpose of further specifying the criteria and requirements for **ensuring the latest technical and security standards** for the processing of personal data **with respect to** the purposes referred to in **paragraphs 1 and 1e**. **Account shall be taken of the costs and benefits of implementation, the risks represented by the processing and the corresponding need to protect the data.**

Amendment 27

Proposal for a regulation Article 82 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. On a proposal from the Commission, the European Parliament and the Council shall review Article 82 no later than 2

years after the date referred to in Article 91, paragraph 2. They shall reach a decision on this proposal under the procedure laid down in Article 294 of the Treaty on the Functioning of the European Union.

PROCEDURE

Title	Protection of individuals with regard to the processing of personal data, and the free movement of such data (General Data Protection Regulation)		
References	COM(2012)0011 – C7-0025/2012 – 2012/0011(COD)		
Committee responsible Date announced in plenary	LIBE 16.2.2012		
Opinion by Date announced in plenary	EMPL 24.5.2012		
Rapporteur Date appointed	Nadja Hirsch 20.4.2012		
Discussed in committee	28.11.2012	23.1.2013	20.2.2013
Date adopted	21.2.2013		
Result of final vote	+: 35	–: 3	0: 6
Members present for the final vote	Regina Bastos, Edit Bauer, Heinz K. Becker, Jean-Luc Bennahmias, Phil Bennion, Pervenche Berès, Philippe Boulland, Alejandro Cercas, Ole Christensen, Derek Roland Clark, Minodora Cliveti, Emer Costello, Frédéric Daerden, Sari Essayah, Richard Falbr, Thomas Händel, Marian Harkin, Nadja Hirsch, Stephen Hughes, Danuta Jazłowiecka, Jean Lambert, Patrick Le Hyaric, Verónica Lope Fontagné, Olle Ludvigsson, Thomas Mann, Elisabeth Morin-Chartier, Csaba Óry, Konstantinos Poupakis, Sylvana Rapti, Licia Ronzulli, Elisabeth Schroedter, Nicole Sinclair, Joanna Katarzyna Skrzydlewska, Jutta Steinruck, Traian Ungureanu, Inês Cristina Zuber		
Substitute(s) present for the final vote	Georges Bach, Sergio Gutiérrez Prieto, Ria Oomen-Ruijten, Antigoni Papadopoulou, Csaba Sógor		
Substitute(s) under Rule 187(2) present for the final vote	Alexander Alvaro, Nirj Deva, Pat the Cope Gallagher		

26.2.2013

OPINION OF THE COMMITTEE ON INDUSTRY, RESEARCH AND ENERGY

for the Committee on Civil Liberties, Justice and Home Affairs

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

Rapporteur: Seán Kelly

SHORT JUSTIFICATION

On 25 January 2012 the European Commission presented a comprehensive reform of the EU's data protection rules. The proposed regulation aims to harmonise online privacy rights and guarantee the free movement of such data within the European Union.

The proposed regulation also aims to:

- adapt data protection to the changed demand of the digital world, knowing that the current provisions have been adopted 17 years ago when less than 1% of the Europeans used the internet;
- prevent the current divergences in enforcement of the 1995 rules by the different member States and ensure that the fundamental rights to personal data protection is applied in a uniform way in all areas of the Union's activities;
- reinforce consumer confidence in online services with a better information about the rights and data protection with the introduction of the right to rectification, to be forgotten and to erasure, to data portability and the right to object;
- boost the Digital Single Market reducing the current fragmentation and the administrative burdens and, more generally, play an important role in the Europe 2020 Strategy.

Compared to the existing Directive 95/46/EC, the proposed regulation introduces a mandatory data protection officer for the public sector, and, in the private sector, for large enterprises with more than 250 persons and for those enterprises whose core activity concerns the

processing of personal data.

Improvements have also been made concerning the transfer of personal data to third countries or international organisations.

The current proposal establishes the European data Protection Board and provides sanctions, penalties and rights to compensation in case of infringement of the Regulation.

Your rapporteur substantially supports the main aims of the Commission proposal.

The proposed changes should help avoid excessive administrative burdens for enterprises, especially for those enterprises that have embedded privacy accountability, and guarantee a certain level of flexibility concerning some provisions of the Regulation, in particular those regarding the accountability mechanism and the notification to the supervisory authority. Some definitions and aspects of the original text need also to be clarified, contextualised and simplified.

Your rapporteur has prioritised a qualitative rather than a quantitative approach to data protection which focuses on corporate governance, based on the aforementioned accountability principle, as opposed to the over-reliance on consent or bureaucratic documentation procedures, which nevertheless also play a role in data protection.

It is important to also place emphasis on the role of technical solutions such as privacy by design, pseudonymisation and anonymisation of data, prioritising the protection of sensitive data and targeted compliance measures.

Your rapporteur wishes to highlight the importance of avoiding unintended consequences which may have negative consequences in the areas of freedom of the press, health research, the fight against financial crime, the fight against fraud in sport and innovation in the delivery of energy smart grids and intelligent transport systems.

Another aspect of the proposal concerns the important number of delegated acts. Your rapporteur considers that the use of the delegated acts is too extensive and proposes to delete the majority of them.

AMENDMENTS

The Committee on Industry, Research and Energy calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a regulation
Citation 1 a (new)

Text proposed by the Commission

Amendment

Having regard to the Charter of Fundamental rights of the European Union, and in particular Articles 7 and 8 thereof,

Amendment 2

**Proposal for a regulation
Citation 1 b (new)**

Text proposed by the Commission

Amendment

Having regard to the European Convention of Human Rights and in particular Article 8 thereof,

Amendment 3

**Proposal for a regulation
Recital 1 a (new)**

Text proposed by the Commission

Amendment

(1a) Freedom of expression and information is a fundamental right in accordance with Article 11 of the Charter of Fundamental Rights of the European Union. This right includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The freedom and pluralism of the media should be respected.

Justification

Explicit reference should be made to the freedom of information and the right to free expression which are fundamental rights in the European Union, pursuant to Article 11 of the European Charter of Fundamental Rights.

Amendment 4

Proposal for a regulation
Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) The protection of individual privacy should be the point of departure for how to deal with personal data in public registers.

Amendment 5

Proposal for a regulation
Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) The principles of free access to information that characterise the Member States through their constitutional traditions should not be undermined, while freedom of expression and freedom of the press as expressed in Member State constitutions should be safeguarded.

Amendment 6

Proposal for a regulation
Recital 5

Text proposed by the Commission

Amendment

(5) Rapid technological developments and globalisation have brought new challenges for the protection of personal data. The scale of data sharing and ***collecting*** has increased spectacularly. Technology allows both private companies and public authorities to make use of personal data on an unprecedented scale in order to pursue their activities. Individuals increasingly make personal information available publicly and globally. Technology has transformed both the economy and social life, and requires ***to further*** facilitate the free flow of data within the Union and the

(5) Rapid technological developments and globalisation have brought new challenges for the protection of personal data. The scale of data sharing and ***collection*** has increased spectacularly. Technology allows both private companies and public authorities to make use of personal data on an unprecedented scale in order to pursue their activities. Individuals increasingly make personal information available publicly and globally. Technology has transformed both the economy and social life, and requires ***improved legal safeguards which will*** facilitate the free

transfer to third countries and international organisations, *while* ensuring *an* high level of *the* protection of personal data.

flow of data within the Union and the transfer to third countries and international organisations, ensuring *a* high level of protection of personal data.

Justification

While the Regulation has two aims – protecting personal data and allowing their free flow within the Union -, the first objective should be stressed more as it is a fundamental right

Amendment 7

Proposal for a regulation Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) Amongst other technologies, cloud computing has the potential to transform the European economy, provided, that appropriate data safety and data protection measures are put in place. In order to ensure the highest level of safety of personal data, it is essential to understand rights and obligations of data controllers and data processors within this Regulation.

Amendment 8

Proposal for a regulation Recital 8

Text proposed by the Commission

Amendment

(8) In order to ensure consistent and high level of protection of individuals and to remove the obstacles to flows of personal data, the level of protection of the rights and freedoms of individuals with regard to the processing of such data should be equivalent in all Member States. Consistent and homogenous application of the rules for the protection of the fundamental rights and freedoms of natural persons with regard to the processing of personal data

(8) In order to ensure consistent and high level of protection of individuals and to remove the obstacles to flows of personal data, the level of protection of the rights and freedoms of individuals with regard to the processing of such data should be equivalent in all Member States ***and identical where possible***. Consistent and homogenous application of the rules for the protection of the fundamental rights and freedoms of natural persons with regard to

should be ensured throughout the Union.

the processing of personal data should be ensured throughout the Union.

Justification

Rules for processing of data are already theoretically “equivalent” in all Member States. The failure of this approach is the logic behind this proposal being a Regulation. This recital should adequately reflect this thinking.

Amendment 9

Proposal for a regulation

Recital 10

Text proposed by the Commission

(10) Article 16(2) of the Treaty mandates the European Parliament and the Council to lay down the rules relating to the protection of individuals with regard to the processing of personal data and the rules relating to the free movement of personal data.

Amendment

(10) Article 16(2) of the Treaty mandates the European Parliament and the Council to lay down the rules relating to the protection of individuals with regard to the processing of personal data ***by the Union institutions, bodies, offices and agencies, and by Member States when carrying out activities which fall within the scope of Union law, and*** the rules relating to the free movement of personal data.

Amendment 10

Proposal for a regulation

Recital 11

Text proposed by the Commission

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

Amendment

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

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

equivalent sanctions in all Member States as well as effective co-operation by the supervisory authorities of different Member States. ***Where demonstrably necessary and without undermining either protection of personal data or internal market principles in order*** to take account of the specific situation of micro, small and medium-sized enterprises, this Regulation includes a number of derogations. In addition, the Union institutions and bodies, Member States and their supervisory authorities are encouraged to take account of the specific needs of micro, small and medium-sized enterprises in the application of this Regulation ***in consultation with the parties concerned, and also take into account the 'Think Small First' principle, so that the interests of micro, small and medium-sized enterprises are taken into account at the very early stages of policy making.*** The notion of micro, small and medium-sized enterprises should draw upon Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

Amendment 11

Proposal for a regulation Recital 12

Text proposed by the Commission

(12) The protection afforded by this Regulation concerns natural persons, whatever their nationality or place of residence, in relation to the processing of personal data. With regard to the processing of data which concern legal persons and in particular undertakings established as legal persons, including the name and the form of the legal person and the contact details of the legal person, the protection of this Regulation should ***not*** be claimed by any person. ***This should also***

Amendment

(12) The protection afforded by this Regulation concerns natural persons, whatever their nationality or place of residence, in relation to the processing of personal data. With regard to the processing of data which concern legal persons and in particular undertakings established as legal persons, including the name and the form of the legal person and the contact details of the legal person, the protection of this Regulation should ***also***

apply where the name of the legal person contains the names of one or more natural persons.

be claimed by any person.

Amendment 12
Proposal for a regulation
Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) This Regulation does not sit in isolation from other legal acts of the Union. The liability limitations of the e-commerce directive have a horizontal structure and therefore apply to all information. This Regulation determines what constitutes a data protection infringement while the e-commerce directive sets the conditions by which the information service provider is liable for third party infringements of the law.

Justification

It is necessary to further explain in a recital the reasons for a reference to the liability limitations of the e-commerce directive.

Amendment 13
Proposal for a regulation
Recital 23

Text proposed by the Commission

Amendment

(23) The principles of protection should apply to **any** information concerning an identified or identifiable person. To determine whether a person is identifiable, account should be taken of **all the** means likely **reasonably** to be used either by the controller or by any other person to identify the individual. The principles of data protection should not apply to data rendered anonymous in such a way that the data subject is no longer identifiable.

(23) The principles of protection should apply **only** to **specific** information concerning an identified or identifiable person. To determine whether a person is identifiable, account should be taken: **(i) only of those** means likely to be used by the controller or by any other **natural or legal** person to identify the individual, **and (ii) of the likeliness of a person being identified**. The principles of data protection should not apply to data rendered anonymous in such a way that the data subject is no longer identifiable **from the**

data, taking full account of the technological "state of the art" and technological trends.

Amendment 14

Proposal for a regulation Recital 23 a (new)

Text proposed by the Commission

Amendment

(23a) This regulation recognises that pseudonymisation is in the benefit of all data subjects as, by definition, personal data is altered so that it of itself cannot be attributed to a data subject without the use of additional data. By this, controllers shall be encouraged to the practice of pseudonymising data.

Amendment 15

Proposal for a regulation Recital 24

Text proposed by the Commission

Amendment

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

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

Amendment 16

Proposal for a regulation
Recital 25

Text proposed by the Commission

(25) Consent should be given ***explicitly*** by any appropriate method enabling a freely given specific and informed indication of the data subject's wishes, either by a statement or by a clear affirmative action by the data subject, ensuring that individuals are aware that they give their consent to the processing of personal data, including by ticking a box when visiting an Internet website or by any other statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of their personal data. Silence or inactivity should therefore not constitute consent. Consent should cover all processing activities carried out for the same purpose or purposes. If the data subject's consent is to be given following an electronic request, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided.

Amendment 17

Proposal for a regulation
Recital 25 a (new)

Text proposed by the Commission

Amendment

(25) Consent should be given ***unambiguously*** by any appropriate method ***within the context of the product or service being offered*** enabling a freely given specific and informed indication of the data subject's wishes, either by a statement or by a clear affirmative action by the data subject, ensuring that individuals are aware that they give their consent to the processing of personal data, including by ticking a box when visiting an Internet website or by any other statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of their personal data. Silence or inactivity should therefore not constitute consent. Consent should cover all processing activities carried out for the same purpose or purposes. If the data subject's consent is to be given following an electronic request, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided.

(25a) This regulation recognises that the pseudonymisation of data can help minimise the risks to privacy of data subjects. To the extent that a controller pseudonymises data such processing shall be considered justified as a legitimate interest of the controller according to point (f) of Article 6(1).

Amendment 18
Proposal for a regulation
Recital 26

Text proposed by the Commission

(26) Personal data relating to health should include in particular all data pertaining to the health status of a data subject; information about the registration of the individual for the provision of health services; information about payments or eligibility for healthcare with respect to the individual; a number, symbol or particular assigned to an individual to uniquely identify the individual for health purposes; any information about the individual collected in the course of the provision of health services to the individual; **information** derived from the testing or examination of a body part or bodily substance, **including** biological **samples**; identification of a person as provider of healthcare to the individual; or any information on e.g. a disease, disability, disease risk, medical history, clinical treatment, or the actual physiological or biomedical state of the data subject independent of its source, such as e.g. from a physician or other health professional, a hospital, a medical device, or an in vitro diagnostic test.

Amendment 19
Proposal for a regulation
Recital 27

Text proposed by the Commission

(27) The main establishment of a controller in the Union should be determined according to objective criteria and should imply the effective and real exercise of management activities determining the main decisions as to the purposes, conditions and means of processing

Amendment

(26) Personal data relating to health should include in particular all **personal** data pertaining to the health status of a data subject **including genetic information**; information about the registration of the individual for the provision of health services; information about payments or eligibility for healthcare with respect to the individual; a number, symbol or particular assigned to an individual to uniquely identify the individual for health purposes; any information about the individual collected in the course of the provision of health services to the individual; **personal data** derived from the testing or examination of a body part, bodily substance **or** biological **sample**; identification of a person as provider of healthcare to the individual; or any information on e.g. a disease, disability, disease risk, medical history, clinical treatment, or the actual physiological or biomedical state of the data subject independent of its source, such as e.g. from a physician or other health professional, a hospital, a medical device, or an in vitro diagnostic test.

Amendment

(27) **Where a controller or a processor has multiple establishments in the Union, including but not limited to cases where the controller or the processor is a group of undertakings, the main establishment of a controller in the Union for the purposes of this Regulation** should be determined

through stable arrangements. This criterion should not depend whether the processing of personal data is actually carried out at that location; the presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute such main establishment and are therefore **no** determining criteria for a main establishment. ***The main establishment of the processor should be the place of its central administration in the Union.***

according to objective criteria and should imply the effective and real exercise of management activities determining the main decisions as to the purposes, conditions and means of processing through stable arrangements. This criterion should not depend whether the processing of personal data is actually carried out at that location; the presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute such main establishment and are therefore **not** determining criteria for a main establishment.

Amendment 20

Proposal for a regulation Recital 28

Text proposed by the Commission

(28) A group of undertakings should cover a controlling undertaking and its controlled undertakings, whereby the controlling undertaking should be the undertaking which can exercise a dominant influence over the other undertakings by virtue, for example, of ownership, financial participation or the rules which govern it or the power to have personal data protection rules implemented.

Amendment

(28) A group of undertakings should cover a controlling undertaking and its controlled undertakings, whereby the controlling undertaking should be the undertaking which can exercise a dominant influence over the other undertakings by virtue, for example, of ownership, financial participation or the rules which govern it or the power to have personal data protection rules implemented. ***A group of undertakings may nominate a single main establishment in the Union.***

Amendment 21

Proposal for a regulation Recital 29

Text proposed by the Commission

(29) Children deserve specific protection of their personal data, as they may be less aware of risks, consequences, safeguards and their rights in relation to the processing

Amendment

(29) Children deserve specific protection of their personal data, as they may be less aware of risks, consequences, safeguards and their rights in relation to the processing

of personal data. To determine when an individual is a child, this Regulation should take over the definition laid down by the UN Convention on the Rights of the Child.

of personal data. ***Such protection is particularly important in the context of social networks, where children should be aware of the identities of those with whom they are communicating.*** To determine when an individual is a child, this Regulation should take over the definition laid down by the UN Convention on the Rights of the Child. ***No reference to child protection in this Regulation should be understood as an implicit instruction that protection of personal data of adults should be treated with less care than would have been the case if the reference was not included.***

Amendment 22

Proposal for a regulation Recital 30

Text proposed by the Commission

(30) Any processing of personal data should be lawful, fair and transparent in relation to the individuals concerned. In particular, the specific purposes for which the data are processed should be explicit and legitimate and determined at the time of the collection of the data. The data should be adequate, relevant and ***limited to the minimum necessary for*** the purposes for which the data are processed; this requires in particular ensuring that the data collected are not excessive and that the period for which the data are stored is limited to a strict minimum. Personal data should only be processed if the purpose of the processing could not be fulfilled by other means. Every reasonable step should be taken to ensure that personal data which are inaccurate are rectified or deleted. In order to ensure that the data are not kept longer than necessary, time limits should be established by the controller for erasure or for a periodic review.

Amendment

(30) Any processing of personal data should be lawful, fair and transparent in relation to the individuals concerned. In particular, the specific purposes for which the data are processed should be explicit and legitimate and determined at the time of the collection of the data. The data should be adequate, relevant and ***not excessive in relation*** to the purposes for which the data are processed; this requires in particular ensuring that the data collected are not excessive and that the period for which the data are stored is limited to a strict minimum. Personal data should only be processed if the purpose of the processing could not be fulfilled by other means. Every reasonable step should be taken to ensure that personal data which are inaccurate are rectified or deleted. In order to ensure that the data are not kept longer than necessary, time limits should be established by the controller for erasure or for a periodic review.

Amendment 23
Proposal for a regulation
Recital 31

Text proposed by the Commission

(31) In order for processing to be lawful, personal data should be processed on ***the basis*** of the ***consent of the person concerned or some other*** legitimate ***basis***, laid down by law, either in this Regulation or in other Union or Member State law as referred to in this Regulation.

Amendment

(31) In order for processing to be lawful, personal data should be processed on ***one*** of the legitimate ***bases*** laid down by law, either in this Regulation or in other Union or Member State law as referred to in this Regulation.

Justification

This amendment encourages an appropriate use of consent, as equal among the other grounds for lawful processing set out in Article 6.

Amendment 24
Proposal for a regulation
Recital 32

Text proposed by the Commission

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

Amendment

(32) Where processing is based on the data subject's consent, the controller should have the burden of proving that the data subject has given the consent to the processing operation. In particular in the context of a written declaration on another matter, safeguards should ensure that the data subject is aware that and to what extent consent is given. ***To comply with the principle of data minimisation, this burden of proof should not be understood neither as requiring positive identification of data subjects unless necessary nor as causing more data to be processed than otherwise have been the case.***

Amendment 25
Proposal for a regulation
Recital 33 a (new)

Text proposed by the Commission

Amendment

(33a) Consent may not be the primary or the most desirable means of legitimising the processing of personal data. The use of consent in the right context is crucial, but it should be relied on as the legitimate basis for processing only when data subjects can meaningfully and easily provide and revoke their consent. When used in inappropriate contexts, consent loses its value and places an unnecessary burden on the data subject. For example, consent is not an appropriate justification when the processing is necessary for a service the user has requested or when subjects cannot refuse consent without impacting the underlying service. In these and other contexts, data controllers should aim to ensure the lawfulness of the processing on another legitimate ground.

Justification

This amendment aligns the text with the Article 29 Working Party Opinion 15/2011 on the definition of consent (p. 10) by reinforcing the point that consent may be unhelpful or outright harmful to privacy protection when overused, particularly in information services.

Amendment 26

Proposal for a regulation

Recital 34

Text proposed by the Commission

Amendment

(34) Consent should not provide a valid legal ground for the processing of personal data, where there is a clear imbalance between the data subject and the controller. This is especially the case where the data subject is in a situation of dependence from the controller, ***among others, where personal data are processed by the employer of employees' personal data in the employment context.*** Where the controller is a public authority, there would

(34) Consent should not provide a valid legal ground for the processing of personal data, where there is a clear imbalance between the data subject and the controller. This is especially the case where the data subject is in a situation of dependence from the controller. Where the controller is a public authority, there would be an imbalance only in the specific data processing operations where the public authority can impose an obligation by

be an imbalance only in the specific data processing operations where the public authority can impose an obligation by virtue of its relevant public powers and the consent cannot be deemed as freely given, taking into account the interest of the data subject.

virtue of its relevant public powers and the consent cannot be deemed as freely given, taking into account the interest of the data subject.

Justification

Consent to data processing in an employment context should not be called into question across the board, as it is often given when it comes to matters in which it is in the interest of the employees concerned themselves to allow the processing of their personal data.

Amendment 27

Proposal for a regulation Recital 36 a (new)

Text proposed by the Commission

Amendment

(36a) Tasks carried out in the public interest or in the exercise of official authority include the processing of personal data necessary for the management and functioning of those authorities.

Justification

A further indication is needed of what exactly can be covered by the legal obligation or the tasks carried out in the public interest or in the exercise of public authority.

Amendment 28

Proposal for a regulation Recital 38

Text proposed by the Commission

Amendment

(38) The legitimate interests of a controller may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding. ***This*** would need careful assessment in particular where the data subject is a child, given that

(38) The legitimate interests of a controller, ***or of the third party or parties in whose interest the data is processed,*** may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding. ***To ensure clarity, the***

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

European Data Protection Board should set out comprehensive guidelines on what can be defined as "legitimate interest".

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

Amendment 29
Proposal for a regulation
Recital 40

Text proposed by the Commission

(40) The processing of personal data for other purposes should be only allowed where the processing is compatible with those purposes for which the data have been initially collected, ***in particular*** where the processing is necessary for historical, statistical or scientific research purposes. Where the other purpose is not compatible with the initial one for which the data are collected, the controller should obtain the consent of the data subject for this other purpose ***or should base the processing on another legitimate ground for lawful processing, in particular where provided by Union law or the law of the Member State to which the controller is subject.*** In any case, the application of the principles set out by this Regulation and in particular the information of the data subject on those other purposes should be

Amendment

(40) The processing of personal data for other purposes should be only allowed where the processing is compatible with those purposes for which the data have been initially collected, ***such as*** where the processing is necessary for historical, statistical or scientific purposes. Where the other purpose is not compatible with the initial one for which the data are collected, the controller should obtain the consent of the data subject for this other purpose. In any case, the application of the principles set out by this Regulation and in particular the information of the data subject on those other purposes should be ensured.

ensured.

Amendment 30

Proposal for a regulation Recital 40 a (new)

Text proposed by the Commission

Amendment

(40a) The processing of data to the extent strictly necessary for the purposes of ensuring that electricity or gas undertakings or distribution system operators as defined in Directive 2009/72/EC and Directive 2009/73/EC can meet system, grid or operational needs, or the implementation of demand response, energy management, or energy efficiency programmes should be allowed provided that the electricity or gas undertaking or the distribution system operator has required by contract that the processor fulfils the requirements outlined in this Regulation.

Amendment 31

Proposal for a regulation Recital 41

Text proposed by the Commission

Amendment

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

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

subjects in question.

Amendment 32
Proposal for a regulation
Recital 45

Text proposed by the Commission

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

Amendment

(45) If the data processed by a controller do not permit the controller to identify a natural person, the data controller should not be obliged to acquire additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation. In case of a request for access, the controller should be entitled to ask the data subject for further information to enable the data controller to locate the personal data which that person seeks. ***The data controller should not invoke a possible lack of information to refuse a request of access, when this information can be provided by the data subject to enable such access.***

Amendment 33
Proposal for a regulation
Recital 48

Text proposed by the Commission

(48) The principles of fair and transparent processing require that the data subject should be informed in particular of the existence of the processing operation and its purposes, how long the data will be stored, on the existence of the right of access, rectification or erasure and on the right to lodge a complaint. Where the data are collected from the data subject, the data subject should also be informed whether they are obliged to provide the data and of the consequences, in cases they do not provide such data.

Amendment

(48) The principles of fair and transparent processing require that the data subject should be informed in particular of the existence of the processing operation and its purposes, how long the data will be stored ***and the criteria which may be used as the basis for determining how long the data will be stored***, on the existence of the right of access, rectification or erasure and on the right to lodge a complaint. Where the data are collected from the data subject, the data subject should also be informed whether they are obliged to provide the data and of the consequences, in cases they

do not provide such data.

Amendment 34
Proposal for a regulation
Recital 49

Text proposed by the Commission

(49) The information in relation to the processing of personal data relating to the data subject should be given to them at the time of collection, or, where the data are not collected from the data subject, within a reasonable period, depending on the circumstances of the case. Where data can be legitimately disclosed to another recipient, the data subject should be informed when the data are first disclosed to the recipient.

Amendment

(49) The information in relation to the processing of personal data relating to the data subject should be given to them at the time of collection, or, where the data are not collected from the data subject, within a reasonable period, depending on the circumstances of the case. Where data can be legitimately disclosed to another recipient ***without the data subject's consent or renewed consent***, the data subject should be informed when the data are first disclosed to the recipient, ***should the data subject request this information***.

Justification

If data are legitimately disclosed to another recipient, there should be no need for a constant, iterative process of informing the data subject. This may lead to unintended consequences such as the data subject removing their consent to legitimate processing, or even worse, the data subject becoming desensitised to information pertaining to the status of their personal data.

Amendment 35
Proposal for a regulation
Recital 51

Text proposed by the Commission

(51) Any person should have the right of access to data which has been collected concerning them, and to exercise this right easily, in order to be aware and verify the lawfulness of the processing. Every data subject should therefore have the right to know and obtain communication in particular for what purposes the data are processed, for what period, which recipients receive the data, what is the

Amendment

(51) Any person should have the right of access to ***personal*** data which has been collected concerning them, and to exercise this right easily, in order to be aware and verify the lawfulness of the processing. Every data subject should therefore have the right to know and obtain communication in particular for what purposes the ***personal*** data are processed, for what period, which recipients receive

logic of the data that are undergoing the processing and what might be, **at least when based on profiling**, the consequences of such processing. This right should not adversely affect the rights and freedoms of others, including trade secrets or intellectual property and in particular **the** copyright protecting the software. However, the result of these considerations should not be that all information is refused to the data subject.

the **personal** data, what is the logic of the **personal** data that are undergoing the processing and what might be, the consequences of such processing. This right should not adversely affect the rights and freedoms of others, including trade secrets or intellectual property, **such as in relation to** copyright protecting the software. However, the result of these considerations should not be that all information is refused to the data subject.

Amendment 36
Proposal for a regulation
Recital 52

Text proposed by the Commission

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

Amendment

(52) The controller should use all reasonable measures **within the context of the product or service being provided, or otherwise within the context of the relationship between the controller and the data subject, and the sensitivity of the personal data being processed** to verify the **authenticity of a** subject access **request**, in particular in the context of online services and online identifiers. A controller should not retain **nor be forced to gather** personal data for the unique purpose of being able to react to potential requests.

Amendment 37
Proposal for a regulation
Recital 53 a (new)

Text proposed by the Commission

Amendment

(53a) A data subject should always have the option to give broad consent for his or her data to be used for historical, statistical or scientific research purposes, and to withdraw consent at any time.

Justification

Broad consent is a necessity for conducting research in fields of medicine that rely on biobanks and tissue banks among other forms. Biobanks are collections of biological samples and data, accumulated over a period of time, used for medical research and diagnostic purposes. These repositories store data from millions of data subjects, which is used by scientists to perform research. The option of broad consent given to a data subject at their first encounter with a doctor allows the researchers to use this data without having to go back to the data subject for every minor research they are conducting and is thus a necessary and practical solution for protecting and fostering public health research.

Amendment 38 **Proposal for a regulation** **Recital 58**

Text proposed by the Commission

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

Amendment

(58) Every natural person should have the right not to be subject to a measure which is based on profiling by means of automated processing ***and which produces legal effects concerning that natural person or significantly affects that natural person. Actual effects should be comparable in their intensity to legal effects to fall under the scope of this Regulation. This is not the case for measures relating to commercial communication, like for example in the field of customer relationship management or customer acquisition.*** However, *a measure based on profiling by automated data processing and which produces legal effects concerning a natural person or significantly affects a natural person* should be allowed when expressly authorised by law, carried out in the course of entering or performance of a contract, or when the data subject has given his consent. In any case, such processing should be subject to suitable safeguards, including specific information of the data subject and the right to obtain human intervention and that such measure should not concern a child.

Justification

The amendment clarifies that commercial communication, like for example in the field of customer relationship management or customer acquisition does not significantly affect a natural person in the sense of Article 20 paragraph 1. Actual effects must be comparable in their intensity to legal effects to fall under this provision.

Amendment 39 Proposal for a regulation Recital 60

Text proposed by the Commission

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

Amendment

(60) **Overall** responsibility and liability of the controller for any processing of personal data carried out by the controller or on the controller's behalf should be established **in order to ensure accountability**. In particular, the controller should ensure and be obliged to demonstrate the compliance of each processing operation with this Regulation. **Otherwise unnecessary data processing may not be justified on the basis of the need to respect this obligation.**

Amendment 40 Proposal for a regulation Recital 61

Text proposed by the Commission

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

Amendment

(61) **To meet consumer and business expectations around the** protection of the rights and freedoms of data subjects with regard to the processing of personal data, appropriate organisational measures **should be** taken, both at the time of the design of the processing and **its underlying technologies as well as** at the time of the processing itself, to ensure that the requirements of this Regulation are met. **Measures having as an objective to increase consumer information and ease of choice should be encouraged, based on industry cooperation and favouring**

by design and data protection by default.

innovative solutions, products and services. Data protection by design is the process by which data protection and privacy are integrated in the development of products and services through both technical and organisational measures. Data protection by default means that products and services are by default configured in a way that limits the processing and especially the disclosure of personal data. In particular, personal data should not be disclosed to an unlimited number of persons by default.

Amendment 41
Proposal for a regulation
Recital 61 a (new)

Text proposed by the Commission

Amendment

(61a) This Regulation should encourage enterprises to develop internal programmes that will identify the processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, and to put in place appropriate data protection safeguards and develop innovative data protection-by-design solutions and data protection enhancing techniques. Enterprises would then demonstrate publicly and pro-actively their compliance with the provisions and spirit of this Regulation and thus increase the trust of the European citizens. Corporate accountability on personal data protection cannot however exempt an enterprise from any obligation laid down in this Regulation.

Amendment 42
Proposal for a regulation
Recital 62

Text proposed by the Commission

(62) The protection of the rights and freedoms of data subjects as well as the responsibility and liability of controllers and processor, also in relation to the monitoring by and measures of supervisory authorities, requires a clear attribution of the responsibilities under this Regulation, including where a controller determines the purposes, ***conditions and means*** of the processing jointly with other controllers or where a processing operation is carried out on behalf of a controller.

Amendment

(62) The protection of the rights and freedoms of data subjects as well as the responsibility and liability of controllers and processor, also in relation to the monitoring by and measures of supervisory authorities, requires a clear attribution of the responsibilities under this Regulation, including where a controller determines the purposes of the processing jointly with other controllers or where a processing operation is carried out on behalf of a controller.

Amendment 43
Proposal for a regulation
Recital 65

Text proposed by the Commission

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

Amendment

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

Amendment 44
Proposal for a regulation
Recital 66

Text proposed by the Commission

(66) In order to maintain security and to prevent processing in breach of this Regulation, the controller or processor should evaluate the risks inherent to the processing and implement measures to mitigate those risks. These measures should ensure an appropriate level of security, taking into account the state of the

Amendment

(66) In order to maintain security and to prevent processing in breach of this Regulation, the controller or processor should evaluate the risks inherent to the processing and implement measures to mitigate those risks. ***In particular, the controller or processor should duly take into account the greater risks arising from***

art and the costs of their implementation in relation to the risks and the nature of the personal data to be protected. When establishing technical standards and organisational measures to ensure security of processing, *the Commission should promote* technological neutrality, interoperability and innovation, and, where appropriate, cooperate with third countries.

the processing of personal data of the data subject, due to the sensitive nature of the data. These measures should ensure an appropriate level of security, taking into account the state of the art and the costs of their implementation in relation to the risks and the nature of the personal data to be protected. When establishing technical standards and organisational measures to ensure security of processing, technological neutrality, interoperability and innovation *should be promoted*, and, where appropriate, cooperate with third countries *should be encouraged*.

Amendment 45
Proposal for a regulation
Recital 67

Text proposed by the Commission

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

Amendment

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

recommendations for the individual concerned to mitigate potential adverse effects. Notifications to data subjects should be made as soon as reasonably feasible, and in close cooperation with the supervisory authority and respecting guidance provided by it or other relevant authorities (e.g. law enforcement authorities). For example, the chance for data subjects to mitigate an immediate risk of harm would call for a prompt notification of data subjects whereas the need to implement appropriate measures against continuing or similar data breaches may justify a longer delay.

concerned to mitigate potential adverse effects. Notifications to data subjects should be made as soon as reasonably feasible, and in close cooperation with the supervisory authority and respecting guidance provided by it or other relevant authorities (e.g. law enforcement authorities). For example, the chance for data subjects to mitigate an immediate risk of harm would call for a prompt notification of data subjects whereas the need to implement appropriate measures against continuing or similar data breaches may justify a longer delay.

Amendment 46

Proposal for a regulation Recital 70

Text proposed by the Commission

(70) Directive 95/46/EC provided for a general obligation to notify processing of personal data to the supervisory authorities. While this obligation produces administrative and financial burdens, it did not in all cases contribute to improving the protection of personal data. Therefore such indiscriminate general notification obligation should be abolished, and replaced by effective procedures and mechanism which focus instead on those processing operations which are likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes. In such cases, a data protection impact assessment should be carried out by the controller *or processor* prior to the processing, which should include in particular the envisaged measures, safeguards and mechanisms for ensuring the protection of personal data and for demonstrating the compliance with this

Amendment

(70) Directive 95/46/EC provided for a general obligation to notify processing of personal data to the supervisory authorities. While this obligation produces administrative and financial burdens, it did not in all cases contribute to improving the protection of personal data. Therefore such indiscriminate general notification obligation should be abolished, and replaced by effective procedures and mechanism which focus instead on those processing operations which are likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes. In such cases, a data protection impact assessment should be carried out by the controller prior to the processing, which should include in particular the envisaged measures, safeguards and mechanisms for ensuring the protection of personal data and for demonstrating the compliance with this Regulation.

Regulation.

Justification

It should be up to the data controllers to assess the impact to privacy as they will determine the purposes of the processing.

Amendment 47
Proposal for a regulation
Recital 70 a (new)

Text proposed by the Commission

Amendment

(70a) Directive 2002/58/EC sets out personal data breach notification obligations for the processing of personal data in connection with the provision of publicly available electronic communications services in public communications networks in the Union. Where providers of publicly available electronic communications services also provide other services, they continue to be subject to the breach notification obligations of Directive 2002/58/EC, not this Regulation. Such providers should be subject to a single personal data breach notification regime for both personal data processed in connection with the provision of a publicly available electronic communications service and for any other personal data for which they are a controller.

Justification

Electronic communications service providers should be subject to a single notification regime for any breaches relating to the data they process, not multiple regimes depending on the service offered. This ensures a level playing field among industry players.

Amendment 48
Proposal for a regulation
Recital 76

Text proposed by the Commission

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

Amendment

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

Justification

It should be made clear that such codes of conduct are beneficial for industry and not a gesture which needs to be reciprocated with less oversight by DPAs.

Amendment 49

Proposal for a regulation
Recital 77

Text proposed by the Commission

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

Amendment

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

Justification

Such tools must be rigorously tested, learning from successes and failures experienced with this approach.

Amendment 50

Proposal for a regulation
Recital 80

Text proposed by the Commission

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

Amendment

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

Justification

It would be illogical to imagine that the data protection situation in such a third country could not subsequently deteriorate.

Amendment 51

**Proposal for a regulation
Recital 84**

Text proposed by the Commission

(84) The possibility for the controller or processor to use standard data protection clauses adopted by the Commission or by a supervisory authority should neither prevent the possibility for controllers or processors to include the standard data protection clauses in a wider contract nor to add other clauses as long as they do not contradict, directly or indirectly, the standard contractual clauses adopted by the Commission or by a supervisory authority or prejudice the fundamental rights or freedoms of the data subjects.

Amendment

(84) The possibility for the controller or processor to use standard data protection clauses adopted by the Commission or by a supervisory authority should neither prevent the possibility for controllers or processors to include the standard data protection clauses in a wider contract nor to add other clauses as long as they do not contradict, directly or indirectly, the standard contractual clauses adopted by the Commission or by a supervisory authority or prejudice the fundamental rights or freedoms of the data subjects. ***In some scenarios, it may be appropriate to***

encourage controllers and processors to provide even more robust safeguards via additional contractual commitments that supplement standard data protection clauses.

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 52
Proposal for a regulation
Recital 85 a (new)

Text proposed by the Commission

Amendment

(85a) A group of companies planning to submit for approval binding corporate rules may propose a supervisory authority as the lead authority. This should be the supervisory authority of the Member State in which the main establishment of the controller or processor is situated.

Justification

The Article 29 Working Party established a system for mutual recognition of binding corporate rules (WP 107, 14 April 2005). This system should be incorporated into this Regulation. The criterion for designating the competent authority should be the place of the main establishment, as set out in Article 51(2) of the Regulation.

Amendment 53
Proposal for a regulation
Recital 87

Text proposed by the Commission

Amendment

(87) These derogations should in particular apply to data transfers required and necessary for the protection of important grounds of public interest, for example in cases of international data transfers between competition authorities, tax or customs administrations, financial supervisory authorities, between services

(87) These derogations should in particular apply to data transfers required and necessary for the protection of important grounds of public interest, for example in cases of international data transfers between competition authorities, tax or customs administrations, financial supervisory authorities, between services

competent for social security matters, or to competent authorities for the prevention, investigation, detection and prosecution of criminal offences.

competent for social security matters, ***between bodies responsible for fighting fraud in sports***, or to competent authorities for the prevention, investigation, detection and prosecution of criminal offences. ***Transferring personal data for such important grounds of public interest should 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.***

Amendment 54

Proposal for a regulation Recital 94

Text proposed by the Commission

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

Amendment

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

Justification

Strong, independent supervisory authorities are one of the necessary conditions for effective data protection. They should be free from external influence, as confirmed by the ECJ (C-518/07 and C-614/10), and should have the necessary resources – financial and human – to ensure enforcement of data protection legislation. These changes aim to provide supervisory authorities with the independence and resources they need to effectively protect the fundamental right to data protection. Supervisory authorities are needed to ensure enforcement of data protection legislation. As Article 16(2) TFEU states, they shall be independent in the exercise of their duties. Experience with the current framework has shown that this level of independence is not always provided in practice. It should be noted that this should not only be seen as referring to interference by Member States, but also by the Commission. Independence on paper alone is not enough, supervisory authorities also need the means to put their powers into action. This implies a need for appropriate resources and skilled staff, including staff with technical expertise. The increasing technical challenges facing supervisory authority staff must be recognised and addressed.

Amendment 55

Proposal for a regulation Recital 95

Text proposed by the Commission

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

Amendment

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

Justification

Strong, independent supervisory authorities are one of the necessary conditions for effective data protection. They should be free from external influence, as confirmed by the ECJ (C-518/07 and C-614/10), and should have the necessary resources – financial and human – to ensure enforcement of data protection legislation. These changes aim to provide supervisory authorities with the independence and resources they need to effectively protect the fundamental right to data protection. Supervisory authorities are needed to ensure enforcement of data protection legislation. As Article 16(2) TFEU states, they shall be independent in the exercise of their duties. Experience with the current framework has shown that this level of independence is not always provided in practice. It should be noted that this should not only be seen as referring to interference by Member States, but also by the Commission. Independence on paper alone is not enough, supervisory authorities also need the means to put their powers into action. This implies a need for appropriate resources and skilled staff, including staff with technical expertise.

Amendment 56

Proposal for a regulation Recital 97

Text proposed by the Commission

(97) Where the processing of personal data ***in the context of the activities of an establishment of a controller or a processor in the Union*** takes place in more

Amendment

(97) Where the processing of personal data takes place in more than one Member State, one single supervisory authority should be competent for monitoring the

than one Member State, one single supervisory authority should be competent for monitoring the activities of the controller or processor throughout the Union and taking the related decisions, in order to increase the consistent application, provide legal certainty and reduce administrative burden for such controllers and processors.

activities of the controller or processor throughout the Union and taking the related decisions, in order to increase the consistent application, provide legal certainty and reduce administrative burden for such controllers and processors.

Justification

The one-stop shop principle should apply consistently to both EU and non-EU based controllers subject to the law.

Amendment 57

Proposal for a regulation

Recital 98 a (new)

Text proposed by the Commission

Amendment

(98a) Where the processing of personal data is the subject of a complaint lodged by a data subject, the competent authority, providing the one-stop shop, should be the supervisory authority of the Member State in which the data subject has its main residence. Where data subjects lodge similar complaints against such processing with supervisory authorities in different Member States, the competent authority should be the first seized.

Justification

It is appropriate to enable the data subject to exercise its administrative action towards the supervisory authority closest to its main residence, and in the same Member State where he/she can take legal action if needed, in order to enhance the accessibility and coherence of the recourse of the data subject and also to avoid administrative burden.

Amendment 58

Proposal for a regulation

Recital 105

Text proposed by the Commission

(105) In order to ensure the consistent application of this Regulation throughout the Union, a consistency mechanism for co-operation between the supervisory authorities themselves and the Commission should be established. This mechanism should in particular apply where **a** supervisory authority intends to take a measure as regards processing operations that are related to the offering of goods or services to data subjects in several Member States, , or to the monitoring such data subjects, or that might substantially affect the free flow of personal data. It should also apply where any supervisory authority or the Commission requests that the matter should be dealt with in the consistency mechanism. This mechanism should be without prejudice to any measures that the Commission may take in the exercise of its powers under the Treaties.

Amendment

(105) In order to ensure the consistent application of this Regulation throughout the Union, a consistency mechanism for co-operation between the supervisory authorities themselves and the Commission should be established. This mechanism should in particular apply where **the competent** supervisory authority intends to take a measure as regards processing operations that are related to the offering of goods or services to data subjects in several Member States, or to the monitoring such data subjects, or that might substantially affect the free flow of personal data. It should also apply where any supervisory authority or the Commission requests that the matter should be dealt with in the consistency mechanism. This mechanism should be without prejudice to any measures that the Commission may take in the exercise of its powers under the Treaties.

Amendment 59
Proposal for a regulation
Recital 121

Text proposed by the Commission

(121) The processing of personal data **solely** for journalistic purposes, or for the purposes of artistic or literary expression should qualify for exemption from the requirements of certain provisions of this Regulation in order to reconcile the right to the protection of personal data with the right to freedom of expression, and notably the right to receive and impart information, as guaranteed in particular by Article 11 of the Charter of Fundamental Rights of the European Union. This should apply in particular to processing of personal data in the audiovisual field and in news archives and press libraries. **Therefore, Member**

Amendment

(121) The processing of personal data for journalistic purposes, or for the purposes of artistic or literary expression should qualify for exemption from the requirements of certain provisions of this Regulation in order to reconcile the right to the protection of personal data with the right to freedom of expression, and notably the right to receive and impart information, as guaranteed in particular by Article 11 of the Charter of Fundamental Rights of the European Union. This should apply in particular to processing of personal data in the audiovisual field and in news archives and press libraries. In order to take account

States should adopt legislative measures, which should lay down exemptions and derogations which are necessary for the purpose of balancing these fundamental rights. Such exemptions and derogations should be adopted by the Member States on general principles, on the rights of the data subject, on controller and processor, on the transfer of data to third countries or international organisations, on the independent supervisory authorities and on co-operation and consistency. This should not, however, lead Member States to lay down exemptions from the other provisions of this Regulation. In order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary to interpret notions relating to that freedom, such as journalism, broadly. *Therefore, Member States should classify activities as ‘journalistic’ for the purpose of the exemptions and derogations to be laid down under this Regulation if the object of these activities is the disclosure to the public of information, opinions or ideas, irrespective of the medium which is used to transmit them. They should not be limited to media undertakings and may be undertaken for profit-making or for non-profit making purposes.*

of the importance of the right to freedom of expression in every democratic society, it is necessary to interpret notions relating to that freedom, such as journalism, broadly *and* irrespective of the medium which is used to transmit them.

Amendment 60

Proposal for a regulation Recital 121 a (new)

Text proposed by the Commission

Amendment

(121a) This Regulation allows the principle of public access to official documents to be taken into account when applying the provisions set out in this Regulation. Personal data in documents held by a public authority or a public body may be disclosed by this authority or body in accordance with Member State

legislation to which the public authority or public body is subject. Such legislation should reconcile the right to the protection of personal data with the principle of public access to official documents.

Justification

It is essential to ensure that public oversight of public affairs is not unduly hampered by data protection rules. As expressed in opinions by the EDPS, the Article 29 Working Party and the FRA, the principle of public access to official documents should therefore be guaranteed.

Amendment 61
Proposal for a regulation
Recital 123 a (new)

Text proposed by the Commission

Amendment

(123a) The processing of personal data concerning health, as a special category of data, may be necessary for reasons of historical, statistical or scientific research. Therefore this Regulation should ensure that the harmonisation of conditions provided for the processing of personal data concerning health, subject to specific and suitable safeguards so as to protect the fundamental rights and the personal data of individuals, do not act as a barrier to translational, clinical and public health research.

Justification

Ensuring seamless access to medical data is crucial for public health research. This Regulation makes it essential to find a balance between protecting individual data and respecting public health researchers enough to provide them with the means to conduct medical research. One of the aims of this Regulation is to harmonize data protection across different sectors. It is thus important to note that any harmonization of data protection across countries or sectors must protect public health research sector and not constitute a barrier to crucial research addressing the great societal challenges.

Amendment 62
Proposal for a regulation
Recital 129

Text proposed by the Commission

(129) In order to fulfil the objectives of this Regulation, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. ***In particular, delegated acts should be adopted in respect of lawfulness of processing; specifying the criteria and conditions in relation to the consent of a child; processing of special categories of data; specifying the criteria and conditions for manifestly excessive requests and fees for exercising the rights of the data subject; criteria and requirements for the information to the data subject and in relation to the right of access; the right to be forgotten and to erasure; measures based on profiling; criteria and requirements in relation to the responsibility of the controller and to data protection by design and by default; a processor; criteria and requirements for the documentation and the security of processing; criteria and requirements for establishing a personal data breach and for its notification to the supervisory authority, and on the circumstances where a personal data breach is likely to adversely affect the data subject; the criteria and conditions for processing operations requiring a data protection impact assessment; the criteria and requirements for determining a high degree of specific risks which require prior consultation; designation and tasks of the data protection officer; codes of conduct; criteria and requirements for certification mechanisms; criteria and requirements for transfers by way of binding corporate rules; transfer***

Amendment

(129) In order to fulfil the objectives of this Regulation, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission, ***in certain limited circumstances***. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

derogations; administrative sanctions; processing for health purposes; processing in the employment context and processing for historical, statistical and scientific research purposes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

Amendment 63
Proposal for a regulation
Recital 130

Text proposed by the Commission

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

Amendment

(130) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. *In implementing the provisions of this Regulation, it should be ensured that no mandatory requirements for specific technical features are imposed on products and services, including terminal or other electronic communications equipment, which could impede the placing of equipment on the market and the free circulation of such equipment in and between Member States.* In this context, the Commission should consider specific measures for micro, small and medium-sized enterprises *in consultation with the parties concerned, as these measures should not overly burden those enterprises.*

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

Amendment 64

Proposal for a regulation Recital 139

Text proposed by the Commission

(139) In view of the fact that, as underlined by the Court of Justice of the European Union, the right to the protection of personal data is not an absolute right, but must be considered in relation to its function in society and be balanced with other fundamental rights, in accordance with the principle of proportionality, this Regulation respects all fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union as enshrined in the Treaties, notably the right to respect for private and family life, home and communications, the right to the protection of personal data, the freedom of thought, conscience and religion, the freedom of expression and information, the freedom to conduct a business, the right to an effective remedy and to a fair trial as well as

Amendment

(139) In view of the fact that, as underlined by the Court of Justice of the European Union, the right to the protection of personal data is not an absolute right, but must be considered in relation to its function in society and ***the actual and potential advances in science, health and technology and*** be balanced with other fundamental rights, in accordance with the principle of proportionality, this Regulation respects all fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union as enshrined in the Treaties, notably the right to respect for private and family life, home and communications, the right to the protection of personal data, the freedom of thought, conscience and religion, the freedom of expression and information, the freedom to

cultural, religious and linguistic diversity.

conduct a business, *the right to property and in particular the protection of intellectual property* the right to an effective remedy and to a fair trial as well as cultural, religious and linguistic diversity.

Justification

The processing of IP addresses is often a critical component of investigations into IPR abuses under Directive 2004/48/EC and should not be prevented by the Regulation.

Amendment 65

Proposal for a regulation Article 1 – paragraph 1

Text proposed by the Commission

1. This Regulation lays down rules relating to the protection of *individuals* with regard to the processing of personal data and rules relating to the free movement of personal data.

Amendment

1. This Regulation lays down rules relating to the protection of *natural and legal persons* with regard to the processing of personal data and rules relating to the free movement of personal data.

Amendment 66

Proposal for a regulation Article 1 – paragraph 2

Text proposed by the Commission

2. This Regulation protects the fundamental rights and freedoms of natural persons, and in particular their right to the protection of personal data.

Amendment

2. This Regulation protects the fundamental rights and freedoms of natural *and legal* persons, and in particular their right to the protection of personal data.

Amendment 67

Proposal for a regulation Article 1 – paragraph 3

Text proposed by the Commission

3. The free movement of personal data

Amendment

3. The free movement of personal data

within the Union shall neither be restricted nor prohibited for reasons connected with the protection of *individuals* with regard to the processing of personal data.

within the Union shall neither be restricted nor prohibited for reasons connected with the protection of *natural and legal persons* with regard to the processing of personal data.

Amendment 68

Proposal for a regulation

Article 1 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. This Regulation shall not influence or restrict the freedom of the press and the freedom of expression that are enshrined in the constitutions of the Member States and are derived from the tradition of freedom of the press and freedom of expression that characterises free and open societies. Nor shall citizens' rights and access to information from the public authorities be affected or impaired. The Member States' right and responsibility to protect individual privacy with respect to dealing with public registers through special legislation shall also not be affected by this Regulation.

Amendment 69

Proposal for a regulation

Article 2 – paragraph 1

Text proposed by the Commission

Amendment

1. This Regulation applies to the processing of personal data wholly or partly by automated means, and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.

1. This Regulation applies to the processing of personal data wholly or partly by automated means, ***without discrimination between such processing means and the technology used***, and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.

Amendment 70
Proposal for a regulation
Article 2 – paragraph 2 – point b

Text proposed by the Commission

Amendment

*(b) by the Union institutions, bodies,
offices and agencies;*

deleted

Amendment 71

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

Text proposed by the Commission

Amendment

*(ea) for historical, statistical and scientific
research purposes*

Amendment 72

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

Text proposed by the Commission

Amendment

*(eb) in the course of an activity which can
be attributed to the professional or a
commercial activity of a data subject*

Amendment 73

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

Text proposed by the Commission

Amendment

*(ec) carried out by an employer as part of
the treatment of employee personal data
in an employment context*

Justification

*It is important that an employer can continue to process data about the employee – for
example with regards to wage, vacation, benefits, anniversary, education, health, criminal*

convictions, etc. Currently the employee can consent that the employer processes these data. However, the wording in the regulation could be interpreted as if in the future an imbalance between employer and employee is introduced.

Amendment 74

Proposal for a regulation

Article 2 – paragraph 2 – point e d (new)

Text proposed by the Commission

Amendment

(ed) anonymous data within the meaning of Article 4(2b)

Amendment 75

Proposal for a regulation

Article 3 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

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

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

Justification

Clarification of the concept of ‘residence’.

Amendment 76

Proposal for a regulation

Article 4 –point 1

Text proposed by the Commission

Amendment

(1) 'data subject' means an identified natural person or a natural person who can be identified, directly or indirectly, by means reasonably likely to be used by the controller or by any other natural or legal person, in particular by reference to an identification number, location data, online identifier or to one or more factors specific

(1) 'data subject' means an identified natural person or a natural person who can be identified, directly or indirectly, by means reasonably likely to be used by the controller or by any other natural or legal person, **working together with the controller**, in particular by reference to an identification number **or other unique**

to the physical, physiological, genetic, mental, economic, cultural or social identity of that person;

identifier, location data, online identifier or to one or more factors specific to the *gender*, physical, physiological, genetic, mental, economic, cultural or social identity *or sexual orientation* of that person *and who is not acting in his/her professional capacity*;

Amendment 77
Proposal for a regulation
Article 4 – point 2 a (new)

Text proposed by the Commission

Amendment

(2a) 'pseudonymous data' means any personal data that has been collected, altered or otherwise processed so that it of itself cannot be attributed to a data subject without the use of additional data which is subject to separate and distinct technical and organisational controls to ensure such non attribution;

Amendment 78
Proposal for a regulation
Article 4 – point 2 b (new)

Text proposed by the Commission

Amendment

(2b) 'identification number' means any numeric, alphanumeric or similar code typically used in the online space, excluding codes assigned by a public or state controlled authority to identify a natural person as an individual;

Amendment 79
Proposal for a regulation
Article 4 – point 2 c (new)

Text proposed by the Commission

Amendment

(2c) 'anonymous data' means any

personal data that has been collected, altered or otherwise processed in such a way that it can no longer be attributed to a data subject; anonymous data shall not be considered personal data;

Amendment 80

Proposal for a regulation Article 4 – point 5

Text proposed by the Commission

(5) ‘controller’ means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes, ***conditions and means*** of the processing of personal data; where the purposes, ***conditions and means*** of processing are determined by Union law or Member State law, the controller or the specific criteria for his nomination may be designated by Union law or by Member State law;

Amendment

(5) ‘controller’ means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes of the processing of personal data; where the purposes of processing are determined by Union law or Member State law, the controller or the specific criteria for his nomination may be designated by Union law or by Member State law;

Amendment 81

Proposal for a regulation Article 4 – point 6

Text proposed by the Commission

(6) ‘processor’ means a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller;

Amendment

(6) ‘processor’ means a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller; ***is able to access personal data in a technically feasible way, without disproportionate effort, and is reasonably likely to gain knowledge of its content;***

Justification

This amendment is consistent with the amendment to Recital 24a (new).

Amendment 82
Proposal for a regulation
Article 4 – point 8

Text proposed by the Commission

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

Amendment

(8) 'the data subject's consent' means any freely given specific, informed and **unambiguous** indication of his or her wishes by which the data subject signifies agreement to personal data relating to them being processed. **Silence or inactivity does not in itself indicate consent**;

Amendment 83
Proposal for a regulation
Article 4 – point 9 a (new)

Text proposed by the Commission

Amendment

(9a) 'Special categories of personal data' means information which shows the racial or ethnic origin, political beliefs, religion or belief or membership of a trade union as well as genetic data, data concerning health or sex life and data relating to criminal convictions or related security measures;

Justification

The processing of "special categories of personal data" is already subject to specific requirements (see Article 9). This group of sensitive data should, for reasons of proportionality, also be taken into account when determining other obligations of the controller (see amendment to Article 31). The addition of this definition creates more legal certainty.

Amendment 84
Proposal for a regulation
Article 4 – point 10

Text proposed by the Commission

Amendment

(10) 'genetic data' means **all data, of whatever type, concerning the**

(10) 'genetic data' means **information on the hereditary characteristics, or**

characteristics of an individual which are inherited or acquired during early prenatal development;

alteration thereof, of an identified or identifiable person, obtained through nucleic acid analysis;

Justification

The proposed definition should be in line with definitions used elsewhere, such as the definition of “human genetic data” used in the United Nations International Declaration on Human Genetic Data.

Amendment 85

**Proposal for a regulation
Article 4 – point 12**

Text proposed by the Commission

(12) ‘data concerning health’ means **any information** which relates to the physical or mental health of an individual, or to the provision of health services to the individual;

Amendment

(12) ‘data concerning health’ means **personal data** which relates to the physical or mental health of an individual, or to the provision of health services to the individual;

Amendment 86

**Proposal for a regulation
Article 4 – point 13**

Text proposed by the Commission

(13) ‘main establishment’ means *as regards the controller, the place of its establishment in the Union where the main decisions as to the purposes, conditions and means of the processing of personal data are taken; if no decisions as to the purposes, conditions and means of the processing of personal data are taken in the Union, the main establishment is the place where the main processing activities in the context of the activities of an establishment of a controller in the Union take place. As regards the processor, ‘main establishment’ means the place of its central administration in the Union;*

Amendment

(13) ‘main establishment’ means **the location as determined by the data controller or data processor on the basis of the following transparent and objective criteria: the location of the group’s European headquarters, or, the location of the company within the group with delegated data protection responsibilities, or, the location of the company which is best placed (in terms of management function, administrative capability etc) to address and enforce the rules as set out in this Regulation, or, the place where the main decisions as to the purposes of processing are taken for the regional group;**

Justification

This amendment seeks to provide clarity reflecting the real situation of companies acting across a number of different jurisdictions. This should not be interpreted as a charter for "forum shopping", as the company must provide transparent, objective criteria to justify the location of its main establishment for the purposes of the regulation.

Amendment 87

Proposal for a regulation Article 4 – point 13 a (new)

Text proposed by the Commission

Amendment

(13a) 'competent supervisory authority' means the supervisory authority which shall be solely competent for the supervision of a controller in accordance with Articles 51(2),(3) and (4);

Amendment 88

Proposal for a regulation Article 4 – point 14

Text proposed by the Commission

Amendment

(14) 'representative' means any natural or legal person established in the Union who, explicitly designated by the controller, acts and *may* be addressed by *any* supervisory authority ***and other bodies in the Union instead of the controller***, with regard to the obligations of the controller under this Regulation;

(14) 'representative' means any natural or legal person established in the Union who, explicitly designated by the controller, acts and ***shall*** be addressed by ***the competent*** supervisory authority, with regard to the obligations of the controller under this Regulation;

Amendment 89

Proposal for a regulation Article 4 – point 19 a (new)

Text proposed by the Commission

Amendment

(19a) 'financial crime' means criminal offences in connection with organised crime, racketeering, terrorism, terrorist financing, trafficking in human beings,

migrant smuggling, sexual exploitation, trafficking in narcotic drugs and psychotropic substances, illegal arms trafficking, trafficking in stolen goods, corruption, bribery, fraud, counterfeiting currency, counterfeiting and piracy of products, environmental offences, kidnapping, illegal restraint and hostage-taking, robbery, theft, smuggling, offences related to taxation, extortion, forgery, piracy, insider trading and market manipulation.

Justification

It is necessary to add a definition of ‘financial crime’, derived from the recommendations of the Financial Action Task Force, as the processing of personal data will be allowed in order to prevent, investigate or detect financial crime.

Amendment 90

Proposal for a regulation Article 5 – point b

Text proposed by the Commission

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

Amendment

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

Amendment 91

Proposal for a regulation Article 5 – point c

Text proposed by the Commission

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

Amendment

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

Amendment 92

Proposal for a regulation Article 5 – point d

Text proposed by the Commission

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

Amendment

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

Amendment 93

Proposal for a regulation Article 5 – point e

Text proposed by the Commission

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

Amendment

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

Amendment 94

Proposal for a regulation Article 5 – point f

Text proposed by the Commission

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

Amendment

(f) processed under the responsibility and liability of the controller, who shall ensure and, **if required to do so, demonstrate compliance of the controller's processing** with the provisions of this Regulation **to the supervisory authority having**

competence under Article 51(2).

Amendment 95

Proposal for a regulation

Article 6 – paragraph 1 – point a

Text proposed by the Commission

(a) the data subject has given consent to the processing of their personal data ***for one or more specific purposes***;

Amendment

(a) the data subject has given consent to the processing of their personal data;

Amendment 96

Proposal for a regulation

Article 6 – paragraph 1 – point b

Text proposed by the Commission

(b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;

Amendment

(b) processing is necessary for the performance of a contract ***or of collective agreements and company-level agreements***, to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract.

Justification

Collective agreements in Germany are equivalent to state law contracts and can thus also be the basis for legitimate data processing.

Amendment 97

Proposal for a regulation

Article 6 – paragraph 1 – point c

Text proposed by the Commission

(c) processing is necessary for compliance with a legal obligation to which the controller is subject;

Amendment

(c) processing is necessary for compliance with a legal obligation, ***regulatory rule, guidance, industry code of practice, either domestically or internationally*** to which the controller is subject ***including the***

requirements of supervisory authorities;

Justification

The provision should ensure that domestic financial regulation or codes of conduct are included.

Amendment 98

Proposal for a regulation

Article 6 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) processing is necessary to ensure network and information security;

Justification

This amendment incorporates into the text the safeguards established in Recital 39 by clarifying in a legally binding article that processing of data for network and information security purposes is considered lawful processing.

Amendment 99

Proposal for a regulation

Article 6 – paragraph 1 – point e

Text proposed by the Commission

Amendment

(e) processing is necessary for the performance of a task carried out in the ***public interest or in the*** exercise of official authority vested in the controller;

(e) processing is necessary for the performance of a task carried out in the exercise of official authority vested in the controller; ***or in the public interest,***

Amendment 100

Proposal for a regulation

Article 6 – paragraph 1 – point f

Text proposed by the Commission

Amendment

(f) processing is necessary for the purposes of the legitimate interests pursued by a controller, except where such interests are overridden by the interests or fundamental

(f) processing is necessary for the purposes of the legitimate interests pursued by, ***or on behalf of*** a controller ***or a processor, or by a third party or parties in whose***

rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. ***This*** shall not ***apply to*** processing carried out by public authorities in the performance of their tasks.

interest the data is processed, including for the security of processing, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. ***The interest or fundamental rights and freedoms of the data subject*** shall not ***over-ride*** processing carried out by public authorities in the performance of their tasks ***or enterprises in the exercise of their legal obligations, and in order to safeguard against fraudulent behaviour.***

Amendment 101
Proposal for a regulation
Article 6 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) processing is limited to pseudonymised data, where the data subject is adequately protected and the recipient of the service is given a right to object pursuant to Article 19 (3a).

Amendment 102
Proposal for a regulation
Article 6 – paragraph 1 – point f b (new)

Text proposed by the Commission

Amendment

(fb) the data are collected from public registers, lists or documents accessible by everyone;

Amendment 103
Proposal for a regulation
Article 6 – paragraph 1 – point f c (new)

Text proposed by the Commission

Amendment

(fc) where the controller has entrusted personal data to a third party, the third party is jointly responsible for compliance with this Regulation;

Amendment 104

Proposal for a regulation

Article 6 – paragraph 1 – point f d (new)

Text proposed by the Commission

Amendment

(fd) processing is strictly necessary for the proper response to detected network and/or information security incidents, breaches or attacks;

Amendment 105

Proposal for a regulation

Article 6 – paragraph 1 – point f e (new)

Text proposed by the Commission

Amendment

(fe) processing is necessary for the purpose of anonymisation or pseudonymisation of personal data;

Amendment 106

Proposal for a regulation

Article 6 – paragraph 2

Text proposed by the Commission

Amendment

2. Processing of personal data which is necessary for the purposes of historical, statistical or scientific research shall be lawful subject to the conditions and safeguards referred to in Article 83.

2. ***Subsequent*** processing of personal data which is necessary for the purposes of historical, statistical or scientific research shall be lawful subject to the conditions and safeguards referred to in Article 83.

Justification

It is important to specify and allow for subsequent processing (e.g. linkage, correction and addition of data concerning a data subject) since modern and innovative public health research will be build on multiple data sets and historical series.

Amendment 107

Proposal for a regulation

Article 6 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Processing of pseudonymised data to safeguard the legitimate interests pursued by a controller shall be lawful, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. This shall not apply to processing carried out by public authorities in the performance of their tasks.

Justification

The regulation does not yet currently recognise different categories of data and their different treatment.

Amendment 108

Proposal for a regulation

Article 6 – paragraph 3 – subparagraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) international conventions to which the Union or a Member State is a party.

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 109

Proposal for a regulation

Article 6 – paragraph 3 – subparagraph 2

Text proposed by the Commission

The law of the Member State must meet an objective of public interest or must be necessary to protect the rights and freedoms of others, respect the essence of the right to the protection of personal data **and be** proportionate to the legitimate aim pursued.

Amendment

The law of the Member State must meet an objective of public interest or must be necessary to protect the rights and freedoms of others. ***The law of the Member State must also*** respect the essence of the right to the protection of personal data ***in this Regulation and in international treaties to which the Member State is party. Finally the Member State shall evaluate and decide if national legislation is*** proportionate to the legitimate aim pursued ***or if a legitimate aim could be achieved using less privacy invasive solutions.***

Justification

Article 6, paragraph 1, indent e states that processing is lawful if the following applies: “processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller”. Seen in connection with the above mentioned paragraph 3 this leaves Member States a very wide room for eroding citizens’ protection of data mentioned in this regulation using national legislation. The harmonisation among Member States will come under pressure because national interests will result in many different examples of legislation. Citizens’ data will be processed differently in the different countries. This is not satisfying. Similar arguments can be found in relation to article 21.

Amendment 110

Proposal for a regulation

Article 6 – paragraph 4

Text proposed by the Commission

4. Where the purpose of further processing is not compatible with the one for which the personal data have been collected, the processing must have a legal basis at least in one of the grounds referred to in points (a) to (e) of paragraph 1. This shall in

Amendment

4. Where the purpose of further processing is not compatible with the one for which the personal data have been collected, the processing must have a legal basis at least in one of the grounds referred to in points (a) to (f) of paragraph 1. This shall in

particular apply to any change of terms and general conditions of a contract.

particular apply to any change of terms and general conditions of a contract.

Justification

It is important to also include legitimate interests, such as the sector-specific example of providing a more efficient energy supply chain through the provision of smart grids. Whereas a data subject's energy consumption may not have explicitly been collected for the purpose of providing a more efficient overall supply, if it is in the legitimate interest of the service provider to use this information to achieve this goal, flexibility should be provided to ensure this is possible.

Amendment 111
Proposal for a regulation
Article 6 – paragraph 5

Text proposed by the Commission

Amendment

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

Amendment 112
Proposal for a regulation
Article 7 – paragraph 1

Text proposed by the Commission

Amendment

1. The controller shall bear the burden of proof for the data subject's consent to the processing of their personal data for specified purposes. ***deleted***

Justification

Superfluous as the burden of proof under normal procedural law applies currently.

Amendment 113
Proposal for a regulation
Article 7 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The form of consent captured for the processing of a data subject's personal data shall be proportionate to the type of data processed and the purpose of the processing, as determined through a properly conducted data protection impact assessment as described in Article 33.

Justification

This amendment ties the identification of proportionate consent to the results of impact assessments, which will encourage their use. Where no data protection impact assessment has been conducted, a default requirement of explicit consent would continue to apply.

Amendment 114
Proposal for a regulation
Article 7 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Unless another form of consent is determined to be proportionate by such an impact assessment, consent shall be captured in a specific, informed and explicit statement or other clear affirmative action.

Justification

This amendment ties the identification of proportionate consent to the results of impact assessments, which will encourage their use. Where no data protection impact assessment has been conducted, a default requirement of explicit consent would continue to apply.

Amendment 115
Proposal for a regulation
Article 7 – paragraph 2

Text proposed by the Commission

Amendment

2. If the data subject's consent is to be given in the context of a written declaration which also concerns another matter, the requirement to give consent must be

2. If the data subject's consent is to be given in the context of a written declaration which also concerns another matter, the requirement to give consent must be

presented *distinguishable* in its appearance from this other matter.

presented *conspicuously* in its appearance.

Justification

Data subjects should be given clear and unambiguous conditions for offering their consent. If the intention is to ensure that consent language does not get lost amidst other technical jargon, perhaps the term “distinguishable” should not be used but the term “conspicuous” should be used instead. It should be highlighted, not distinguished.

Amendment 116 Proposal for a regulation Article 7 – paragraph 3

Text proposed by the Commission

3. The data subject shall have the right to withdraw his or her consent at any time. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal.

Amendment

3. The data subject shall have the right to withdraw his or her consent at any time. ***If the consent is part of a contractual or statutory relationship the withdrawal shall depend on the contractual or legal conditions.*** The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal.

Amendment 117

Proposal for a regulation Article 7 – paragraph 4

Text proposed by the Commission

4. Consent shall not provide a legal basis for the processing, ***where there is a significant imbalance between the position of the data subject and the controller.***

Amendment

4. Consent ***of an employee*** shall not provide a legal basis for the processing ***of data by the employer when the consent has not been given freely. The lawfulness of the processing shall be assessed in accordance with points (a) to (f) of Article 6(1) and with Article 6 (2) to (5). The individual consent according to point (a) of Article 6(1) can be replaced by collective agreements as legal basis, in particular by collective bargaining agreements or works council agreements.***

Amendment 118

Proposal for a regulation

Article 8 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Where an information society service makes social networking facilities available to children it shall take explicit measures to protect their welfare, including by ensuring, in so far as possible, that they are aware of the identities of those with whom they are communicating.

Amendment 119

Proposal for a regulation

Article 8 – paragraph 3

Text proposed by the Commission

Amendment

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

deleted

Amendment 120

Proposal for a regulation

Article 9 – paragraph 1

Text proposed by the Commission

Amendment

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

1. The processing of personal data, revealing race or ethnic origin, political opinions, religion or beliefs, trade-union membership, and the processing of genetic data or data concerning health or sex life or criminal convictions, ***criminal offences***,

measures shall be prohibited.

including offences and matters which have not lead to conviction, significant social problems, or related security measures shall be prohibited.

Amendment 121
Proposal for a regulation
Article 9 – paragraph 2 – point b

Text proposed by the Commission

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

Amendment

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

Amendment 122
Proposal for a regulation
Article 9 – paragraph 2 – point d

Text proposed by the Commission

(d) processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other non-profit-seeking body with a political, philosophical, religious or trade-union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the data are not disclosed outside that body without the consent of the data subjects; or

Amendment

(d) processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association, *organizations on the labour market* or any other non-profit-seeking body with a political, philosophical, religious or trade-union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the data are not disclosed outside that body without the consent of the data subjects; or

Justification

It is important that organisations on the labour market can continue to process and exchange personal information about their members.

Amendment 123

Proposal for a regulation

Article 9 – paragraph 2 – point g

Text proposed by the Commission

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

Amendment

(g) processing ***and sharing*** is necessary for the performance of a task carried out in the public interest, on the basis of Union law, Member State law, ***international conventions to which the Union or a Member State is a party***, which shall provide for suitable measures to safeguard the data subject's fundamental rights and legitimate interests; or

Amendment 124

Proposal for a regulation

Article 9 – paragraph 2 – point h

Text proposed by the Commission

(h) processing of data concerning health is necessary for health purposes and subject to the conditions and safeguards referred to in Article 81; or

Amendment

(h) processing ***and sharing*** of data concerning health is necessary for health purposes, ***including for historical, statistical or scientific research*** and subject to the conditions and safeguards referred to in Article 81; or

Justification

This clarification is necessary in order to safeguard the processing of medical data used for historical, statistical or scientific research purposes. Scientists heavily rely on patient registries and biobanks to conduct epidemiological, clinical and translational research, thus making it necessary to ensure the processing of personal data for health purposes.

Amendment 125

Proposal for a regulation

Article 9 – paragraph 2 – point i

Text proposed by the Commission

(i) processing is necessary for historical, statistical or scientific research purposes subject to the conditions and safeguards referred to in Article 83; or

Amendment 126

Proposal for a regulation

Article 9 – paragraph 2 – point j

Text proposed by the Commission

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

Amendment 127

Proposal for a regulation

Article 9 – paragraph 2 – point j a (new)

Text proposed by the Commission

Amendment

(i) processing **and sharing** is necessary for historical, statistical or scientific research purposes subject to the conditions and safeguards referred to in Article 83; or

Amendment

(j) processing of data relating to criminal convictions or related security measures is carried out either **subject to the conditions and safeguards referred to in Article 83a** or under the **supervision of a supervisory** authority or when the processing is necessary for compliance with **or to avoid a breach of** a legal or regulatory obligation **or collective agreements on the labour market** to which a controller is subject, or for the performance of a task carried out for important public interest reasons, and in so far as authorised by Union law or Member State law providing for adequate safeguards **for the fundamental rights of the data subject**. A complete register of criminal convictions shall be kept only under the control of official authority.

Amendment

(ja) processing of data concerning health is necessary for private social protection, especially by providing income security or tools to manage risks that are in the interests of the data subject and his or her dependants and assets, or by enhancing inter-generational equity by means of

distribution.

Amendment 128

Proposal for a regulation

Article 9 – paragraph 3

Text proposed by the Commission

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria, conditions and appropriate safeguards for the processing of the special categories of personal data referred to in paragraph 1 and the exemptions laid down in paragraph 2.

Amendment

3. The European Data Protection Board shall be entrusted with the task of issuing the recommendations regarding criteria, conditions and appropriate safeguards for the protection of special categories of personal data in accordance with paragraph 2.

Amendment 129

Proposal for a regulation

Article 10

Text proposed by the Commission

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

Amendment

If the data processed by a controller do not permit the controller, **through means used by the controller to identify a data subject, in particular when rendered anonymous or pseudonymous**, the controller shall not acquire additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation.

The controller of research databases shall provide general information on the original data sources of the research database.

Amendment 130

Proposal for a regulation

Article 11 – paragraph 1

Text proposed by the Commission

1. The controller shall have transparent ***and easily accessible*** policies with regard to the processing of personal data and for the exercise of data subjects' rights.

Amendment

1. The controller shall have transparent policies with regard to the processing of personal data and for the exercise of data subjects' rights ***and on request for this purpose shall provide to everybody the information set out in points (a) through (g) of Article 28(2) in an appropriate manner.***

Amendment 131

Proposal for a regulation Article 11 a (new)

Text proposed by the Commission

Amendment

Article 11a

Article 12 of Directive 2002/58/EC and Articles 20 and 21(3)(e) of 2002/22/EC are an application of the data subjects' right to transparent information and communication which requires that the controller informs data subjects of their rights with respect to the use of their personal information and draws attention to the presence of systems which have been developed in accordance with the principles of privacy by design.

Justification

Article 12 of the e-Privacy Directive and Articles 20 and 21 of the Universal Service Directive cover directory services, as part of the scope of universal services. The databases of directory service providers are required to be "comprehensive" and the inclusion of subscriber data is therefore important, as is the need for subscriber to be clearly informed of all their options, regardless of the model adopted by a Member State (opt-in, opt-out or hybrid).

Amendment 132

Proposal for a regulation Article 12 – paragraph 1

Text proposed by the Commission

1. The controller shall establish procedures for providing the information referred to in Article 14 and for the exercise of the rights of data subjects referred to in Article 13 and Articles 15 to 19. The controller shall provide in particular mechanisms for facilitating the request for the actions referred to in Article 13 and Articles 15 to 19. Where personal data are processed by automated means, the controller **shall** also provide means for requests to be made electronically.

Amendment 133

**Proposal for a regulation
Article 12 – paragraph 2**

Text proposed by the Commission

2. The controller shall inform the data subject without delay and, at the latest within one month of receipt of the request, whether or not any action has been taken pursuant to Article 13 and Articles 15 to 19 and shall provide the requested information. This period may be prolonged for a further month, if several data subjects exercise their rights and their cooperation is necessary to a reasonable extent to prevent an unnecessary and disproportionate effort on the part of the controller. The information shall be given in writing. ***Where the data subject makes the request in electronic form, the information shall be provided in electronic form, unless otherwise requested by the data subject.***

Justification

An enormous amount of red tape could be involved, particularly for SMEs, if electronic arrangements had to be made to ensure that the procedure was conducted electronically.

Amendment

1. The controller shall establish procedures for providing the information referred to in Article 14 and for the exercise of the rights of data subjects referred to in Article 13 and Articles 15 to 19. The controller shall provide in particular mechanisms for facilitating the request for the actions referred to in Article 13 and Articles 15 to 19. Where personal data are processed by automated means, the controller **may** also provide means for requests to be made electronically.

Amendment

2. The controller shall inform the data subject without delay and, at the latest within one month of receipt of the request, whether or not any action has been taken pursuant to Article 13 and Articles 15 to 19 and shall provide the requested information. This period may be prolonged for a further month, if several data subjects exercise their rights and their cooperation is necessary to a reasonable extent to prevent an unnecessary and disproportionate effort on the part of the controller. The information shall be given in writing.

Amendment 134

Proposal for a regulation Article 12 – paragraph 4

Text proposed by the Commission

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

Amendment

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

Justification

The provision of data held within a database has a cost. Requesting an appropriate, not for profit, contribution from data subjects for data access would help to limit frivolous requests and is critical in deterring fraudsters from obtaining high volumes of consumers' credit data which could be used for fraudulent purposes.

Amendment 135

Proposal for a regulation Article 12 – paragraph 5

Text proposed by the Commission

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

Amendment

deleted

Amendment 136

Proposal for a regulation Article 12 – paragraph 6

Text proposed by the Commission

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

Amendment

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

Justification

Standard forms and procedures need to be laid down in order to guarantee that this measure is properly implemented, in particular by micro, small and medium-sized enterprises.

Amendment 137

Proposal for a regulation

Article 14 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Justification

The requirement to communicate contract terms and general conditions is an issue adequately regulated under civil law. From a data protection perspective there is therefore only the need to provide information regarding the purposes or the legitimate interests of processing.

Amendment 138

Proposal for a regulation

Article 14 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) the period for which the personal data will be stored;

c) the ***expected*** period for which the personal data will be stored;

Amendment 139
Proposal for a regulation
Article 14 – paragraph 1 – point e

Text proposed by the Commission

Amendment

(e) the right to lodge a complaint to the supervisory authority ***and the contact details of the supervisory authority***;

(e) the right to lodge a complaint to the supervisory authority;

Justification

A duty to specify the contact details of the supervisory authority associated with liability in respect of any misinformation would necessitate a continuous review of the relevant information, which would be disproportionate for small and medium-sized enterprises in particular.

Amendment 140

Proposal for a regulation
Article 14 – paragraph 1 – point g a (new)

Text proposed by the Commission

Amendment

(ga) information regarding specific security measures taken to protect personal data;

Amendment 141
Proposal for a regulation
Article 14 – paragraph 1 – point h

Text proposed by the Commission

Amendment

(h) any further information necessary to guarantee fair processing in respect of the data subject, having regard to the specific circumstances in which the personal data

deleted

are collected.

Justification

The blanket clause-like extension of the already substantial information obligations is likely to result in considerable legal uncertainty. Neither the company concerned, nor the consumer can from this formulation assess with legal certainty what information in each individual case must be made available.

Amendment 142 **Proposal for a regulation** **Article 14 – paragraph 2**

Text proposed by the Commission

2. Where the personal data are collected from the data subject, the controller shall inform the data subject, in addition to the information referred to in paragraph 1, whether the provision of personal data is obligatory *or voluntary, as well as the possible consequences of failure to provide such data.*

Amendment

2. Where the personal data are collected from the data subject, the controller shall inform the data subject, in addition to the information referred to in paragraph 1, whether the provision of personal data is obligatory.

Justification

The information needs of data subjects are adequately taken into account, if they are informed whether the data provision is obligatory. Where this is not indicated, the provision of the data is consequently optional. The consumer is already accustomed to this practice. There is no reason to change this effective and functioning system. Information about whether the provision of information is mandatory or optional and the possible consequences of the refusal of the data would unnecessarily expand the information requirements. It is also unnecessary in many cases because it is already obvious from the context. In the course of ordering a product it is for example necessary to specify a shipping address, so that the product can actually be delivered.

Amendment 143 **Proposal for a regulation** **Article 14 – paragraph 3**

Text proposed by the Commission

3. Where the personal data are not collected from the data subject, the controller shall inform the data subject, in addition to the information referred to in

Amendment

3. Where the personal data are not collected from the data subject, the controller shall inform the data subject, *as far as possible*, in addition to the

paragraph 1, from which source the personal data originate.

information referred to in paragraph 1, from which source the personal data originate, *except where the data originate from a publicly available source or where the transfer is provided by law or the processing is used for purposes relating to the professional activities of the person concerned.*

Amendment 144
Proposal for a regulation
Article 14 – paragraph 4 – point b

Text proposed by the Commission

(b) where the personal data are not collected from the data subject, at the time of the recording or within a reasonable period after the collection, having regard to the specific circumstances in which the data are collected or otherwise processed, or, if a disclosure to another recipient is envisaged, and at the latest when the data are first disclosed.

Amendment

(b) where the personal data are not collected from the data subject, at the time of the recording or within a reasonable period after the collection, having regard to the specific circumstances in which the data are collected or otherwise processed, or, if a disclosure to another recipient is envisaged, and at the latest when the data are first disclosed, *or, if the data are to be used for communication with the person concerned, at the latest at the time of the first communication to that person.*

Justification

The data subject's right to informational self-determination is adequately taken into account if the relevant information is provided at this time.

Amendment 145
Proposal for a regulation
Article 14 – paragraph 5 – point b

Text proposed by the Commission

(b) the data are not collected from the data subject and the provision of such information proves impossible or would involve a disproportionate effort; or

Amendment

(b) the data are not collected from the data subject *or the data processes do not allow the verification of identity* and the provision of such information proves impossible or would involve a disproportionate effort *such as by generating excessive administrative*

burden, especially when the processing is carried out by a SME; or

Amendment 146

Proposal for a regulation

Article 14 – paragraph 5 – point d a (new)

Text proposed by the Commission

Amendment

(da) the data originates from publicly available sources

Amendment 147

Proposal for a regulation

Article 14 – 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 the criteria for categories of recipients referred to in point (f) of paragraph 1, the requirements for the notice of potential access referred to in point (g) of paragraph 1, the criteria for the further information necessary referred to in point (h) of paragraph 1 for specific sectors and situations, and the conditions and appropriate safeguards for the exceptions laid down in point (b) of paragraph 5. In doing so, the Commission shall take the appropriate measures for micro, small and medium-sized-enterprises.

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

Justification

The potential lack of transparency associated with delegated acts should be avoided by ensuring that they are drafted in close cooperation with the stakeholders affected.

Amendment 148
Proposal for a regulation
Article 15 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

1. The data subject shall have the right to obtain from the controller at any time, on request, ***in clear and plain language***, confirmation as to whether or not personal data relating to the data subject are being processed. ***With the exception of data being used for historical, statistical or scientific research purposes***, the controller shall provide the following information ***when personal data are being processed***:

Amendment 149

Proposal for a regulation
Article 15 – paragraph 1 – point d

Text proposed by the Commission

(d) the period for which the personal data will be stored;

Amendment

(d) the ***maximum*** period for which the personal data will be stored.

Justification

The storage period varies considerably for all sorts of data and can often not be determined precisely from the outset. The maximum storage period for personal data should, however, be stated.

Amendment 150
Proposal for a regulation
Article 15 – paragraph 1 – point e

Text proposed by the Commission

(e) the existence of the right to request from the controller rectification or erasure of personal data concerning the data subject or to object to the processing of such personal data;

Amendment

(e) the existence of the right to request from the controller rectification ***in accordance with Article 16*** or erasure of personal data concerning the data subject or to object to the processing of such personal data;

Amendment 151
Proposal for a regulation
Article 15 – paragraph 1 – point f

Text proposed by the Commission

(f) the right to lodge a complaint to the supervisory authority ***and the contact details of the supervisory authority;***

Amendment

(f) the right to lodge a complaint to the supervisory authority;

Justification

A duty to specify the contact details of the supervisory authority associated with liability in respect of any misinformation would make a continuous review of the relevant information necessary, thus leading to disproportionate efforts especially for small and medium-sized enterprises.

Amendment 152

Proposal for a regulation
Article 15 – paragraph 1 – point h

Text proposed by the Commission

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

Amendment

(h) the significance and envisaged consequences of such processing.

Amendment 153

Proposal for a regulation
Article 15 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The data subject shall have the right to obtain from the controller of the data source at any time, on request, confirmation as to whether or not personal data relating to the data subject are being processed to a research data base, in accordance with the Article 10.

Justification

Data in research databases will most often be considered personal data according to a high threshold of the definition of data considered personal. For linked research databases it would involve a disproportionate effort for the controller of the linked data to back track data on individual data subjects, since information on the single data subject may be build on data from different data sources, and data may not directly identifiable when the Key ID is kept with the controller of the original data source. Article 10 solves the paradox that in order to notify data subjects on data about him or her in the database, the controller should do what he is not allowed to, namely to identify that data subject.

Amendment 154 **Proposal for a regulation** **Article 15 – paragraph 3**

Text proposed by the Commission

Amendment

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

deleted

Amendment 155

Proposal for a regulation **Article 16**

Text proposed by the Commission

Amendment

The data subject **shall have** the right to obtain from the controller the rectification of personal data relating to them which are inaccurate. The data subject **shall have** the right to obtain completion of incomplete personal data, including by way of supplementing a corrective statement.

The data subject **has** the right to obtain from the controller the rectification of personal data relating to them which are inaccurate. The data subject **has** the right to obtain completion of incomplete personal data, including by way of supplementing a corrective statement.

Amendment 156

Proposal for a regulation **Article 17 – title**

Text proposed by the Commission

Amendment

Right to *be forgotten and to* erasure

Right to erasure

Amendment 157

Proposal for a regulation

Article 17 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

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

1. The data subject *has* the right to obtain from the controller the erasure of personal data relating to them and the abstention from further *processing* of such data, *unless the data controller is a public authority or an entity commissioned by a public authority or otherwise acting on the behalf of the public authority, including* in relation to personal data which are made available by the data subject while he or she was a child, where one of the following grounds applies:

Amendment 158

Proposal for a regulation

Article 17 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) the data are no longer necessary in relation to the purposes for which they were collected or *otherwise* processed;

(a) the data are no longer necessary in relation to the purposes for which they were collected or *further* processed *and the legally mandatory minimum retention period has expired*;

Amendment 159

Proposal for a regulation

Article 17 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) the data subject withdraws consent on which the processing is based according to

(b) the data subject withdraws consent on which the processing is based according to

point (a) of Article 6(1), or when the *storage* period consented to has expired, and where there is no other legal ground for the processing of the data;

point (a) of Article 6(1), or when the *retention* period consented to has expired, and where there is no other legal ground for the processing *or storage* of the data;

Amendment 160

Proposal for a regulation Article 17 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The controller shall take all reasonable steps to communicate any erasure to each legal entity to whom the data have been disclosed.

Amendment 161

Proposal for a regulation Article 17 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Paragraph 1 shall only apply where the data controller is able to confirm the identity of the data subject making the erasure request.

Amendment 162

Proposal for a regulation Article 17 – paragraph 2

Text proposed by the Commission

Amendment

2. Where the controller referred to in paragraph 1 has made the personal data public, it shall take all reasonable steps, including technical measures, in relation to data for the publication of which the controller is responsible, to inform third parties which are processing such data, that a data subject requests them to erase any links to, or copy or replication of that personal data. Where the controller has

deleted

authorised a third party publication of personal data, the controller shall be considered responsible for that publication.

Justification

Given the nature of the internet and the possibilities to post information on various sites globally this provision is unworkable.

Amendment 163
Proposal for a regulation
Article 17 – paragraph 3 – introductory part

Text proposed by the Commission

3. The controller shall carry out the erasure without delay, except to the extent that the retention of the personal data is necessary:

Amendment

3. The controller shall carry out the erasure without *undue* delay, except to the extent that the retention *and dissemination* of the personal data is necessary:

Amendment 164
Proposal for a regulation
Article 17 – paragraph 3 – point b

Text proposed by the Commission

(b) for reasons of public interest in the area of public health in accordance with Article 81;

Amendment

(b) for reasons of public interest in the area of public health *and health purposes* in accordance with Article 81;

Amendment 165
Proposal for a regulation
Article 17 – paragraph 3 – point d

Text proposed by the Commission

(d) for compliance with a legal obligation to retain the personal data by Union or Member State law to which the controller is subject; *Member State laws shall meet an objective of public interest, respect the essence of the right to the protection of personal data and be proportionate to the*

Amendment

(d) for compliance with a legal obligation to retain the personal data by Union or Member State law to which the controller is subject;

legitimate aim pursued;

Justification

There may be laws of other member states that require a controller to refuse the right to be forgotten. Data may need to be held for accounting reasons under financial reporting rules for example.

Amendment 166

Proposal for a regulation

Article 17 – paragraph 3 – point e a (new)

Text proposed by the Commission

Amendment

(ea) for prevention or detection of fraud, confirming identity, and/or determining creditworthiness, or ability to pay.

Amendment 167

Proposal for a regulation

Article 17 – paragraph 4 – point d a (new)

Text proposed by the Commission

Amendment

(da) the controller has to store the personal data in order to ensure that based on an objection pursuant to Article 19, further processing of the respective data is excluded.

Justification

An objection to the processing of personal data pursuant to Article 19 regularly excludes the processing of the respective data for the future. To ensure that the respective data is not actually used for future data processing measures, it must not be deleted but blocked or otherwise marked.

Amendment 168

Proposal for a regulation

Article 17 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. Requests for the rectification, erasure or blocking of personal data shall not prejudice processing that is necessary to secure, protect and maintain the resiliency of one or more information systems. In addition, the right of rectification and/or erasure of personal data shall not apply to any personal data that is required to be maintained by legal obligation or to protect the rights of the controller, processor or third parties.

Justification

There are circumstances where the right of the data subject to rectify or erase personal data should not apply – for example, in compliance with EU Member States laws and other jurisdictions requiring maintenance of certain types of personal data for national security reasons or for investigations of potential wrongdoing.

Amendment 169
Proposal for a regulation
Article 17 – paragraph 9

Text proposed by the Commission

Amendment

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

deleted

(a) the criteria and requirements for the application of paragraph 1 for specific sectors and in specific data processing situations;

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

(c) the criteria and conditions for restricting the processing of personal data referred to in paragraph 4.

Amendment 170
Proposal for a regulation
Article 18 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 171
Proposal for a regulation
Article 18 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Where the data subject has provided the personal data and the processing is based on consent or on a contract, the data subject shall have the right to transmit those personal data and any other information provided by the data subject, ***where technically feasible*** and retained by an automated processing system.

Amendment 172
Proposal for a regulation
Article 18 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The rights referred to in paragraphs 1 and 2 shall not adversely affect the rights and freedoms of others, including trade secrets or intellectual property rights. The result of such considerations shall not be

that all information is refused to the data subject.

Justification

Use of language from Recital 51 in relation to access to data. Due regard must be given to the limits to data portability, especially in relation to the legitimate interests of businesses to protect trade secrets and intellectual property rights, within reason.

Amendment 173

**Proposal for a regulation
Article 18 – paragraph 2 b (new)**

Text proposed by the Commission

Amendment

2b. The rights referred to in paragraphs 1 and 2 shall be without prejudice to the obligation to delete data when they are no longer necessary under Article 5(e).

Amendment 174

**Proposal for a regulation
Article 18 – paragraph 2 c (new)**

Text proposed by the Commission

Amendment

2c. Paragraphs 1 and 2 shall not apply to the processing of anonymised and pseudonymised data, insofar as the data subject is not sufficiently identifiable on the basis of such data, or identification would require the controller to undo the process of pseudonymisation.

Amendment 175

**Proposal for a regulation
Article 18 – paragraph 2 d (new)**

Text proposed by the Commission

Amendment

2d. Paragraphs 1 and 2 shall not apply where a controller can reasonably

demonstrate that it is not possible to separate the data subject's data from data of other data subjects.

Amendment 176
Proposal for a regulation
Article 18 – paragraph 3

Text proposed by the Commission

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

Amendment

3. The electronic format, related functionalities and procedures for the transmission of personal data pursuant to paragraph 2, shall be determined by the controller by reference to the most appropriate industry standards available or as defined by industry stakeholders or standardisation bodies. The Commission shall promote and assist industry, stakeholders and standardisation bodies in the mapping and adoption of technical standards, modalities and procedures for the transmission of personal data pursuant to paragraph 2.

Amendment 177

Proposal for a regulation
Article 18 a (new)

Text proposed by the Commission

Amendment

Article 18a

Controllers shall ensure that sufficient documentation for a data subject's identity has been received, when the data subject enforces the rights referred to in Articles 14 to 19 of this Regulation.

Justification

Citizens have to document their identities to enforce the rights in order to make sure that no form of identity theft can occur.

Amendment 178
Proposal for a regulation
Article 19 – paragraph 1

Text proposed by the Commission

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

Amendment

1. The data subject shall have the right to object *in the cases of points (d), (e) and (f) of Article 6(1) on predominant, and protection-worthy* grounds relating to their particular situation, at any time to the processing of *their* personal data. *In the case of a justified objection the processing by the controller may no longer refer to this data*

Justification

The changes reflect the effective and proven provision on objection of Article 14a) of Directive 95/46/EC. There is no reason to change the current system. There are no known practical problems in this area, which would justify a legislative change. This applies even more so as the Regulation will now apply directly and thus without the flexibility of the Directive.

Amendment 179

Proposal for a regulation
Article 19 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Where personal data are processed for direct marketing purposes *or where processing is based on point (f) of Article 6(1)*, the data subject shall have the right to object free of charge to the processing of their personal data for such marketing. This right shall be explicitly offered to the data subject in an intelligible manner, *using clear and plain language, adapted to the data subject, in particular for any information addressed specifically to a child*, and shall be clearly distinguishable from other information.

Amendment 180

Proposal for a regulation Article 19 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Where pseudonymous data are processed based on point (g) of Article 6(1), the data subject shall have the right to object free of charge to the processing. This right shall be explicitly offered to the data subject in an intelligible manner and shall be clearly distinguishable from other information.

Amendment 181

Proposal for a regulation Article 20 – paragraph 1

Text proposed by the Commission

Amendment

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

1. A ***data subject*** shall have the right not to be subject to a measure which ***adversely*** affects this ***data subject, both offline*** and ***online*** which is based solely on automated processing ***of data*** intended to evaluate certain personal aspects relating to ***a data subject*** or to analyse or predict in particular the ***data subject's*** performance at work, economic situation, location, health, personal preferences, reliability or behaviour.

Amendment 182

Proposal for a regulation Article 20 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. For the purposes of advertising, market research or tailoring telemedia, user profiles may be created using pseudonymised data, provided that the

person concerned does not object. The person concerned must be informed of his/her right to object. User profiles may not be combined with data about the bearer of the pseudonym.

Justification

The original wording of Article 20 could lead to companies having to obtain consent for any form of processing personal data. In order, however, not to destroy the business models of countless small and medium-sized European companies in particular, and thus give priority to large US firms, certain forms of data processing should be allowed with due respect to the protection of personal data.

Amendment 183

**Proposal for a regulation
Article 20 – paragraph 1 b (new)**

Text proposed by the Commission

Amendment

1b. Data controllers shall notify the data subject where processing as referred to in paragraph 1 takes place and give the individual the right to have any such decision reviewed.

Justification

Profiling for the purposes of credit scoring should be clearly distinguished from other purposes, not least in that this profiling is clearly notified to the individual in advance.

Amendment 184

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

Text proposed by the Commission

Amendment

(aa) is based on pseudonymous data;

Amendment 185

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

Text proposed by the Commission

Amendment

(ab) is based on the legitimate interests pursued by the data controller;

Amendment 186

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

Text proposed by the Commission

Amendment

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

deleted

Amendment 187

Proposal for a regulation Article 20 – paragraph 2 – point b

Text proposed by the Commission

Amendment

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

deleted

Amendment 188

Proposal for a regulation Article 20 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) is based on the data subject's consent, subject to the conditions laid down in

deleted

Article 7 and to suitable safeguards.

Amendment 189

Proposal for a regulation

Article 20 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(ca) is necessary to protect the vital interests of the data subject or in the public interest as provided by points (d) and (e) of Article 5;

Amendment 190

Proposal for a regulation

Article 20 – paragraph 2 – point c b (new)

Text proposed by the Commission

Amendment

(cb) is limited to pseudonymised data. Such pseudonymised data must not be collated with data on the bearer of the pseudonym. Article 19 (3a) shall apply correspondingly;

Justification

In line with Article 15, paragraph 3 of the German Telemedia Act which encourages the pseudonymisation of data and provides a clear legislative framework for profiling in the areas of, inter alia, advertising and market research.

Amendment 191

Proposal for a regulation

Article 20 – paragraph 2 – point c c (new)

Text proposed by the Commission

Amendment

(cc) is necessary to protect the rights available to other data subjects, for example for the purposes of detecting fraud, or for the purposes of detecting irregularities or other illegal activity according to Union law or Member State

law;

Amendment 192
Proposal for a regulation
Article 20 – paragraph 2 – point c d (new)

Text proposed by the Commission

Amendment

(cd) concerns data which have been made anonymous.

Justification

Data that are rendered permanently anonymous as per the definition in Article 4, paragraph 1, point 2 b (new).

Amendment 193

Proposal for a regulation
Article 20 – paragraph 3

Text proposed by the Commission

Amendment

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

Amendment 194

Proposal for a regulation
Article 20 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Automated processing of personal data intended to evaluate certain personal aspects relating to a natural person shall not be used to identify or individualise children.

Amendment 195

Proposal for a regulation
Article 20 – paragraph 4

Text proposed by the Commission

Amendment

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

Amendment 196
Proposal for a regulation
Article 20 – paragraph 5

Text proposed by the Commission

Amendment

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

Amendment 197

Proposal for a regulation
Article 21 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Parties on the labour market may restrict by way of a legislative measure the scope of the obligations and rights provided for in points (a) to (e) of Article 5 and Articles 11 to 20 and Article 32, when such a restriction have been agreed by national collective agreements to constitute a necessary and proportionate measure.

Justification

The labour market is regulated very differently in the different Member States. Some Member States have a tradition with legislation and other Member States have a high degree of regulation that stems from collective agreements on the labour market.

Amendment 198

Proposal for a regulation Article 22 – paragraph 1

Text proposed by the Commission

1. *The controller shall adopt policies and implement appropriate measures to ensure and be able to demonstrate that the processing of personal data is performed in compliance with this Regulation.*

Amendment

1. *Having regard to the state of the art, the nature of personal data processing and the type of the organisation, both at the time of the determination of the means for processing and at the time of the processing itself, appropriate and demonstrable technical and organisational measures shall be implemented in such a way that the processing will meet the requirements of this Regulation and ensures the protection of the rights of the data subject by design.*

Justification

The Regulation should provide enough flexibility to allow different organizations to implement the most effective technical and organizational measures, fit for the nature and structure of each respective organization.

Amendment 199

Proposal for a regulation Article 22 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. *Upon request by the competent data protection authority, the controller or processor shall demonstrate the existence of technical and organisational measures.*

Amendment 200

Proposal for a regulation
Article 22 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. A group of undertakings may apply joint technical and organisational measures to meet its obligations arising from this Regulation.

Amendment 201

Proposal for a regulation
Article 22 – paragraph 1 c (new)

Text proposed by the Commission

Amendment

1c. This article shall not apply to a natural person processing personal data without commercial interest.

Amendment 202

Proposal for a regulation
Article 22 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. The measures provided for in paragraph 1 shall in particular include:

2. Such measures include, without limitation:

Amendment 203

Proposal for a regulation
Article 22 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) keeping the documentation pursuant to Article 28;

(a) independent management oversight of processing of personal data to ensure the existence and effectiveness of the technical and organisational measures;

Amendment 204

Proposal for a regulation
Article 22 – paragraph 2 – point a a (new)

Text proposed by the Commission

Amendment

(aa) implementing a control management system, including the assignment of responsibilities, training of staff and adequate instructions;

Amendment 205

Proposal for a regulation
Article 22 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) implementing the data security requirements laid down in Article 30;

(b) existence of proper policies, instructions or other guidelines to guide data processing needed to comply with the Regulation as well as procedures and enforcement to make such guidelines effective;

Amendment 206

Proposal for a regulation
Article 22 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) performing a data protection impact assessment pursuant to Article 33;

(c) existence of proper planning procedures to ensure compliance and to address potentially risky processing of personal data prior to the commencement of the processing;

Amendment 207

Proposal for a regulation
Article 22 – paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) complying with the requirements for

(d) existence of appropriate

prior authorisation or prior consultation of the supervisory authority pursuant to Article 34(1) and (2);

documentation of data processing to enable compliance with the obligations arising from this Regulation;

Amendment 208

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(ea) clear and accessible data governance policies that are proportionate to the amount and type of personal data processed by the controller and the risk of harm to data protection involved in the processing of the data;

Justification

The additional sections are intended to provide the basis for a true, enforceable accountability mechanism that can be flexible enough to accommodate both large enterprises and smaller organizations. Such a concept is in line with best practices already in place in other compliance regimes, such as anti-bribery provisions.

Amendment 209

Proposal for a regulation

Article 22 – paragraph 2 – point e b (new)

Text proposed by the Commission

Amendment

(eb) existence of proper awareness and training of the staff participating in data processing and decisions thereto of the obligations arising from this Regulation;

Amendment 210

Proposal for a regulation

Article 22 – paragraph 2 – point e c (new)

Text proposed by the Commission

Amendment

(ec) establishing and documenting the

measures referred to in Article 11;

Amendment 211
Proposal for a regulation
Article 22 – paragraph 2 – point e d (new)

Text proposed by the Commission

Amendment

(ed) evidence of top-level management commitment to implementing the data governance policies throughout the enterprise so as to ensure compliance with this Regulation.

Justification

The additional sections are intended to provide the basis for a true, enforceable accountability mechanism that can be flexible enough to accommodate both large enterprises and smaller organizations. Such a concept is in line with best practices already in place in other compliance regimes, such as anti-bribery provisions.

Amendment 212

Proposal for a regulation
Article 22 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Any regular report of the activities of the controller shall contain a description of the policies and measures referred to in paragraph 1.

Amendment 213
Proposal for a regulation
Article 22 – paragraph 4

Text proposed by the Commission

Amendment

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of specifying any further criteria and requirements for appropriate measures referred to in paragraph 1 other than those already

deleted

referred to in paragraph 2, the conditions for the verification and auditing mechanisms referred to in paragraph 3 and as regards the criteria for proportionality under paragraph 3, and considering specific measures for micro, small and medium-sized-enterprises.

Amendment 214
Proposal for a regulation
Article 23 – title

Text proposed by the Commission

Data protection by design *and by default*

Amendment

Data protection by design

Amendment 215
Proposal for a regulation
Article 23 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Notwithstanding the first subparagraph, the controller shall only be burdened with measures that are proportionate to the risk of data processing reflected by the nature of the personal data to be processed.

Amendment 216
Proposal for a regulation
Article 23 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The measures and procedures referred to in paragraph 1 shall:

- (a) take due account of existing technical standards and regulations in the area of public safety and security;**
- (b) follow the principle of technology, service and business model neutrality;**
- (c) be based on global industry-led efforts and standards;**
- (d) take due account of international developments.**

Amendment 217

Proposal for a regulation

Article 23 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. In implementing the provisions of this Regulation, it shall be ensured that no mandatory requirements for specific technical features are imposed on products and services, including terminal or other electronic communications equipment, which could impede the placing of equipment on the market and the free circulation of such equipment in and between Member States.

Amendment 218
Proposal for a regulation
Article 23 – 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 specifying any further criteria and requirements for appropriate measures and mechanisms referred to in paragraph 1 and 2, in particular for data protection by design requirements applicable across sectors, products and services.

deleted

Amendment 219
Proposal for a regulation
Article 23 – paragraph 4

Text proposed by the Commission

Amendment

4. The Commission may lay down technical standards for the requirements laid down in paragraph 1 and 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

deleted

Amendment 220

Proposal for a regulation
Article 24

Text proposed by the Commission

Amendment

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

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

ensure compliance with those measures.

technical security measures and organizational measures governing the processing to be carried out and shall ensure compliance with those measures.

Amendment 223
Proposal for a regulation
Article 26 – paragraph 2 – introductory part

Text proposed by the Commission

2. The carrying out of processing by a processor shall be governed by a contract or other legal act binding the processor to the controller *and stipulating in particular that the processor shall:*

Amendment

2. The carrying out of processing by a processor shall be governed by a contract or other legal act binding the processor to the controller. *The controller and the processor shall be free to determine their respective roles and responsibilities with respect to the requirements of this Regulation, and shall provide for the following:*

Amendment 224
Proposal for a regulation
Article 26 – paragraph 2 – point a

Text proposed by the Commission

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

Amendment

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

Amendment 225
Proposal for a regulation
Article 26 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) take account of the principle of data protection by design;

Amendment 226

Proposal for a regulation
Article 26 – paragraph 2 – point d

Text proposed by the Commission

(d) enlist another processor only with the prior permission of the controller;

Amendment

deleted

Amendment 227
Proposal for a regulation
Article 26 – paragraph 2 – point e

Text proposed by the Commission

(e) insofar as this is possible given the nature of the processing, ***create in*** agreement with the controller the ***necessary*** technical and organisational requirements ***for the fulfilment of the controller's obligation*** to respond to requests for exercising the ***data*** subject's rights laid down in Chapter III;

Amendment

(e) insofar as this is possible given the nature of the processing ***and the processor's ability to assist with reasonable effort, an*** agreement as to the ***appropriate and relevant*** technical and organisational requirements ***which support the ability of the controller*** to respond to requests for exercising the subject's rights laid down in Chapter III;

Amendment 228
Proposal for a regulation
Article 26 – paragraph 2 – point f

Text proposed by the Commission

(f) assist ***the controller in ensuring*** compliance with the obligations pursuant to Articles 30 to 34;

Amendment

(f) ***insofar as this is possible given the nature of processing, the information available to the processor and his ability to assist with reasonable effort, an agreement on how*** compliance ***will be ensured*** with the obligations pursuant to Articles 30 to 34;

Amendment 229
Proposal for a regulation
Article 26 – paragraph 2 – point g

Text proposed by the Commission

Amendment

(g) hand over all results to the controller after the end of the processing and ***not process the personal data otherwise;***

(g) hand over all results to the controller after the end of the processing ***or destroy them in a commercially accepted manner;***

Amendment 230

Proposal for a regulation Article 26 – paragraph 4

Text proposed by the Commission

Amendment

4. If a processor processes personal data other than as instructed by the controller, the processor shall be considered to be a controller in respect of that processing and shall be subject to the rules on joint controllers laid down in Article 24.

deleted

Amendment 231

Proposal for a regulation Article 26 – paragraph 5

Text proposed by the Commission

Amendment

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

deleted

Justification

Accountability principle should leave details to controller and processor

Amendment 232
Proposal for a regulation
Article 28 – paragraph 1

Text proposed by the Commission

1. Each controller and **processor and**, if any, the controller's representative, shall maintain documentation of all processing operations under its responsibility.

Amendment

1. Each controller and, if any, the controller's representative, shall maintain **appropriate** documentation of **the measures taken to ensure that the processing of personal data** under its responsibility **is in compliance with this Regulation**.

Amendment 233
Proposal for a regulation
Article 28 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The documentation shall contain the information necessary for the supervisory authority to ascertain that the controller or processor has complied with this Regulation, including a description of any of the applicable internal measures and mechanisms intended to comply with Article 22.

Justification

A prescriptive documentation requirement for each data processing activity is unachievable both for multinational enterprises and for smaller enterprises and would not lead to greater privacy protection for customers. The proposed amendment avoids legalistic, onerous compliance programmes for data protection that create paperwork but do not result in better operational practices on the ground.

Amendment 234
Proposal for a regulation
Article 28 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. The obligation referred to in paragraphs 1 and 1a shall not apply to

SMEs processing data only as an activity ancillary to the sale of goods or services. Ancillary activity shall be defined as business or non-trade activity that is not associated with the core activities of a firm. In relation to data protection, data processing activities which represent less than 50% of company's turnover shall be considered ancillary.

Amendment 235
Proposal for a regulation
Article 28 – paragraph 2

Text proposed by the Commission

Amendment

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

deleted

(a) the name and contact details of the controller, or any joint controller or processor, and of the representative, if any;

(b) the name and contact details of the data protection officer, if any;

(c) the purposes of the processing, including the legitimate interests pursued by the controller where the processing is based on point (f) of Article 6(1);

(d) a description of categories of data subjects and of the categories of personal data relating to them;

(e) the recipients or categories of recipients of the personal data, including the controllers to whom personal data are disclosed for the legitimate interest pursued by them;

(f) where applicable, transfers of data to a third country or an international organisation, including the identification of that third country or international organisation and, in case of transfers referred to in point (h) of Article 44(1), the documentation of appropriate safeguards;

(g) a general indication of the time limits for erasure of the different categories of data;

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

Amendment 236

Proposal for a regulation Article 28 – paragraph 3

Text proposed by the Commission

3. The controller **and the processor** and, if any, the controller's representative, shall make the documentation available, on request, to the supervisory authority.

Amendment

3. The controller and, if any, the controller's representative, shall make the documentation available, on request, to the supervisory authority.

Amendment 237

Proposal for a regulation Article 28 – paragraph 5

Text proposed by the Commission

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

Amendment

deleted

Amendment 238

Proposal for a regulation Article 28 – paragraph 6

Text proposed by the Commission

6. The Commission may lay down standard forms for the documentation referred to in paragraph 1. Those implementing acts shall

Amendment

6. The Commission, **after consulting the European Data Protection Board**, may lay down standard forms for the

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

documentation referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

Amendment 239

Proposal for a regulation Article 29 – paragraph 1

Text proposed by the Commission

1. The controller and the processor and, if any, the representative of the controller, shall co-operate, on request, with the supervisory authority in the performance of its duties, in particular by providing the information referred to in point (a) of Article 53(2) and by granting access as provided in point (b) of that paragraph.

Amendment

1. The controller and the processor and, if any, the representative of the controller, shall co-operate, on request, with the supervisory authority in the performance of its duties, in particular by providing the information referred to in point (a) of Article 53(2) and by granting access as provided in point (b) of that paragraph. ***The controller and the processor and, if any, the representative of the controller, shall make the documentation available, on the basis of a request outlining the reasons for requiring access to the documents, to the supervisory authority.***

Amendment 240

Proposal for a regulation Article 29 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Where the controller and the processor are established in several Member States for the purposes of the full or partial management of data, they shall be given the opportunity to designate their main establishment.

Amendment 241

Proposal for a regulation Article 30 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Notwithstanding the first subparagraph, the controller and the processor shall only be burdened with measures that are proportionate to the risk of data processing reflected by the nature of the personal data to be processed.

Amendment 242
Proposal for a regulation
Article 30 – paragraph 2 a (new)

Text proposed by the Commission

Amendment 243
Proposal for a regulation
Article 30 – paragraph 3

Text proposed by the Commission

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

Amendment

2a. The legal obligations referred to in paragraphs 1 and 2, which would require processing of personal data to the extent strictly necessary for the purposes of ensuring network and information security, constitute a legitimate interest pursued by or on behalf of a data controller or processor, as referred to in point (f) of Article 6 (1).

Amendment

deleted

the technical and organisational measures referred to in paragraphs 1 and 2, including the determinations of what constitutes the state of the art, for specific sectors and in specific data processing situations, in particular taking account of developments in technology and solutions for privacy by design and data protection by default, unless paragraph 4 applies.

Amendment 244

Proposal for a regulation Article 30 – paragraph 4

Text proposed by the Commission

Amendment

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

deleted

(a) prevent any unauthorised access to personal data;

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

(c) ensure the verification of the lawfulness of processing operations.

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

Amendment 245

Proposal for a regulation Article 31 – paragraph 1

Text proposed by the Commission

Amendment

1. In the case of a personal data breach, *the controller shall without undue delay and, where feasible, not later than 24 hours after having become aware of it, notify the* personal data breach to the supervisory

1. In the case of a personal data breach *relating to special categories of personal date, personal data which are subject to professional secrecy, personal data relating to criminal offences or to the*

authority. *The notification to the supervisory authority shall be accompanied by a reasoned justification in cases where it is not made within 24 hours.*

suspicion of a criminal act or personal data relating to bank or credit card accounts, which seriously threaten the rights or legitimate interests of the data subject, the controller shall without undue delay notify the personal data breach to the supervisory authority.

Amendment 246

Proposal for a regulation

Article 31 – paragraph 2

Text proposed by the Commission

2. Pursuant to point (f) of Article 26(2), the processor shall alert and inform the controller *immediately* after the *establishment of a* personal data breach.

Amendment

2. Pursuant to point (f) of Article 26(2), the processor shall alert and inform the controller *without undue delay* after the *identification of a* personal data breach *that is likely to produce legal effects to the detriment of the data subject's privacy.*

Amendment 247

Proposal for a regulation

Article 31 – paragraph 3 – point e

Text proposed by the Commission

(e) describe the measures proposed or taken by the controller to address the personal data breach.

Amendment

(e) describe the measures proposed or taken by the controller to address the personal data breach *and/or mitigate its effects.*

Amendment 248

Proposal for a regulation

Article 31 – paragraph 4

Text proposed by the Commission

4. The controller shall document any personal data breaches, comprising the facts surrounding the breach, its effects and the remedial action taken. This

Amendment

4. The controller shall document any personal data breaches, comprising the facts surrounding the breach, its effects and the remedial action taken. This

documentation must enable the supervisory authority to verify compliance with this Article. The documentation shall only include the information necessary for that purpose.

documentation must **be sufficient to** enable the supervisory authority to verify compliance with this Article. The documentation shall only include the information necessary for that purpose.

Amendment 249
Proposal for a regulation
Article 31 – paragraph 5

Text proposed by the Commission

Amendment

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

deleted

Amendment 250

Proposal for a regulation
Article 31 – paragraph 6

Text proposed by the Commission

Amendment

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

6. The Commission may lay down the standard format of such notification to the supervisory authority *and* the procedures applicable to the *filing of reports.*

Amendment 251
Proposal for a regulation
Article 32 – paragraph 1

Text proposed by the Commission

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

Amendment

1. When the personal data breach is likely to adversely affect the protection of the personal data, ***the*** privacy, ***the right*** or ***the legitimate interests*** of the data subject, the controller shall, after the notification referred to in Article 31, communicate the personal data breach to the data subject without undue delay. ***A breach shall be considered as adversely affecting the personal data or privacy of a data subject where it could result in, for example, identity theft or fraud, physical harm, significant humiliation or damage to reputation.***

Amendment 252

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

Text proposed by the Commission

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

Amendment

2. The communication to the data subject referred to in paragraph 1 shall ***be comprehensive, clear and understandable by any individual and shall*** describe the nature of the personal data breach and contain at least the information and the recommendations provided for in points (b), (c) ***and (d)*** of Article 31(3).

Amendment 253

**Proposal for a regulation
Article 32 – paragraph 3**

Text proposed by the Commission

3. The communication of a personal data breach to the data subject shall not be required if the controller ***demonstrates to the satisfaction of the supervisory authority that it*** has implemented appropriate technological protection

Amendment

3. The communication of a personal data breach to the data subject shall not be required if ***the data breach has not produced significant harm and*** the controller has implemented appropriate technological protection measures, and that

measures, and that those measures were applied to the data concerned by the personal data breach. Such technological protection measures shall render the data unintelligible to any person who is not authorised to access it.

those measures were applied to the data concerned by the personal data breach. Such technological protection measures shall render the data unintelligible, ***unusable or anonymised*** to any person who is not authorised access to it.

Amendment 254
Proposal for a regulation
Article 32 – paragraph 5

Text proposed by the Commission

Amendment

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

deleted

Amendment 255

Proposal for a regulation
Article 32 a (new)

Text proposed by the Commission

Amendment

Article 32a

Communication of a personal data breach to other organisations

A controller that communicates a personal data breach to a data subject pursuant to Article 32 may notify another organisation, a government institution or a part of a government institution of the personal data breach if that organisation, government institution or part of a government institution may be able to reduce the risk of harm that could result from it or mitigate that harm. Such notifications may be done without informing the data subject if the disclosure is made solely for the purposes

of reducing the risk of harm to the data subject that could result from the breach or mitigating that harm.

Justification

In many cases other organisations or government institutions are in a position to be able to assist in mitigating harm that may result to a data subject following a personal data breach if they are made aware of the breach and the circumstances surrounding the breach.

Amendment 256

**Proposal for a regulation
Chapter 4 – section 3 – title**

Text proposed by the Commission

Amendment

DATA PROTECTION IMPACT
ASSESSMENT AND PRIOR
AUTHORISATION

DATA PROTECTION IMPACT
ASSESSMENT AND PRIOR
NOTIFICATION

Justification

Procedures requiring prior authorisation are costly and time-consuming for the controller, and their added value compared to a system of prior notification can be questioned from the point of view of data protection. Prior notifications, which would give the supervising authority the possibility to react and act, is sufficient and also provides for a user-friendly data protection procedure.

Amendment 257

**Proposal for a regulation
Article 33 – paragraph 1**

Text proposed by the Commission

Amendment

1. Where processing operations present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, the controller *or the processor acting on the controller's behalf* shall carry out an assessment of the impact of the envisaged processing operations on the protection of personal data.

1. Where processing operations present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, the controller shall carry out an assessment of the impact of the envisaged processing operations on the protection of personal data. **A single assessment shall be sufficient to address a set of processing operations that present similar risks. SMEs shall only be required to perform an impact assessment after**

their third year of incorporation where data processing is deemed as a core activity of their business.

Amendment 258

Proposal for a regulation

Article 33 – paragraph 2 – introductory part

Text proposed by the Commission

2. The following processing operations *in particular* present specific risks referred to in paragraph 1:

Amendment

2. The following processing operations present specific risks referred to in paragraph 1:

Justification

In the interests of legal certainty it is necessary to clearly stipulate which specific risks pertain, in an exhaustive manner.

Amendment 259

Proposal for a regulation

Article 33 – paragraph 2 – point a

Text proposed by the Commission

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

Amendment

(a) a systematic and extensive evaluation of personal aspects relating to a natural person or for analysing or predicting in particular the natural person's economic situation, location, health, personal preferences, reliability or behaviour, which is based on automated processing and on which measures are based that produce legal effects *to the detriment of* the individual, *including any further processing operation of the kind referred to in Article 20(1) of this Regulation*;

Amendment 260

Proposal for a regulation

Article 33 – paragraph 2 – point b

Text proposed by the Commission

(b) information on sex life, health, race and ethnic origin or for the provision of health care, epidemiological researches, or surveys of mental or infectious diseases, where the data are processed for taking measures or decisions regarding specific individuals on a large scale;

Amendment

(b) information on sex life, health, ***political opinions, religious beliefs, criminal convictions***, race and ethnic origin or for the provision of health care, epidemiological researches, or surveys of mental or infectious diseases, where the data are processed for taking measures or decisions regarding specific individuals on a large scale;

Amendment 261
Proposal for a regulation
Article 33 – paragraph 3

Text proposed by the Commission

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

Amendment

3. The assessment shall contain at least a general description of the envisaged processing operations, an assessment of the risks to the rights and freedoms of data subjects, ***including the risk of discrimination being embedded in or reinforced by the operation***, the measures envisaged to address the risks, safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Regulation, taking into account the rights and legitimate interests of data subjects and other persons concerned ***and also taking into account modern technologies and methods that can improve citizens' privacy. Where European guidelines exist, such guidelines shall be taken into account for the impact assessment.***

Amendment 262
Proposal for a regulation
Article 33 – paragraph 4

Text proposed by the Commission

Amendment

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

deleted

Justification

To actively seek the views of data subjects represents a disproportionate burden on data controllers.

Amendment 263

Proposal for a regulation Article 33 – paragraph 5

Text proposed by the Commission

Amendment

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

5. Where the controller is a public authority or body **or where the data is processed by another body which has been entrusted with the responsibility of delivering public service tasks**, and where the processing results from a legal obligation pursuant to point (c) of Article 6(1) providing for rules and procedures pertaining to the processing operations and regulated by Union law, paragraphs 1 to 4 shall not apply, unless Member States deem it necessary to carry out such assessment prior to the processing activities.

Justification

It should be the nature of the service provided, not the nature of the body providing that service which determines whether data impact assessment rules apply. For example private organisations are often 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 organisation.

Amendment 264

Proposal for a regulation Article 33 – paragraph 6

Text proposed by the Commission

Amendment

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for the processing operations likely to present specific risks referred to in paragraphs 1 and 2 and the requirements for the assessment referred to in paragraph 3, including conditions for scalability, verification and auditability. In doing so, the Commission shall consider specific measures for micro, small and medium-sized enterprises. *deleted*

Amendment 265

Proposal for a regulation Article 33 – paragraph 7

Text proposed by the Commission

Amendment

7. The Commission may specify standards and procedures for carrying out and verifying and auditing the assessment referred to in paragraph 3. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2). *deleted*

Amendment 266

Proposal for a regulation Article 33 – paragraph 7 a (new)

Text proposed by the Commission

Amendment

7a. Data protection impact assessments shall be deemed as privileged communications.

Justification

Important to stipulate this to allay the fears of companies that innovative new processes subject to commercial secrecy may be released into the public domain.

Amendment 267
Proposal for a regulation
Article 34 – title

Text proposed by the Commission

Amendment

Prior authorisation and prior consultation

Prior consultation

Justification

Internal consistency with objectives set out in Recital 70.

Amendment 268
Proposal for a regulation
Article 34 – paragraph 1

Text proposed by the Commission

Amendment

1. The controller or the processor as the case may be shall obtain an authorisation from the supervisory authority prior to the processing of personal data, in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where a controller or processor adopts contractual clauses as provided for in point (d) of Article 42(2) or does not provide for the appropriate safeguards in a legally binding instrument as referred to in Article 42(5) for the transfer of personal data to a third country or an international organisation.

deleted

Justification

Prior authorization or consultation with supervisory authorities will lead to a misallocation of privacy resources and place a significant burden on already overextended supervisory authorities, create significant, inevitable delays in the rollout of new products and services, and generally disincentivise the creation of effective corporate privacy programmes. Requiring enterprises that have invested in these internal programmes to submit to

compulsory consultation with the supervisory authority will have an adverse impact on their ability to develop and release to the market new products and services which benefit consumers and the economy.

Amendment 269

Proposal for a regulation

Article 34 – paragraph 2 – introductory part

Text proposed by the Commission

2. The controller or processor acting on the controller's behalf **shall** consult the supervisory authority prior to the processing of personal data in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where:

Amendment

2. The controller or processor acting on the controller's behalf **may** consult the supervisory authority prior to the processing of **special categories of** personal data in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where:

Amendment 270

Proposal for a regulation

Article 34 – paragraph 2 – point b

Text proposed by the Commission

(b) the supervisory authority deems it necessary to carry out a prior consultation on processing operations that are likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope and/or their purposes, **and specified according to paragraph 4.**

Amendment

(b) the supervisory authority deems it necessary to carry out a prior consultation on processing operations that are likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope and/or their purposes.

Justification

See justification of deletion of paragraph 4.

Amendment 271

Proposal for a regulation

Article 34 – paragraph 3

Text proposed by the Commission

Amendment

3. Where the supervisory authority ***is of the opinion*** that the intended processing does not comply with this Regulation, in particular where risks are insufficiently identified or mitigated, it shall prohibit the intended processing and make appropriate proposals to remedy such incompliance.

3. Where the ***competent*** supervisory authority ***determines in accordance with its power*** that the intended processing does not comply with this Regulation, in particular where risks are insufficiently identified or mitigated, it shall prohibit the intended processing and make appropriate proposals to remedy such incompliance. ***Such a decision shall be subject to appeal in a competent court and it may not be enforceable while being appealed unless the processing results in immediate serious harm suffered by data subjects.***

Amendment 272

**Proposal for a regulation
Article 34 – paragraph 4**

Text proposed by the Commission

Amendment

4. The supervisory authority shall establish and make public a list of the processing operations which are subject to prior consultation pursuant to point (b) of paragraph 2. The supervisory authority shall communicate those lists to the European Data Protection Board.

deleted

Justification

Too administratively complex to implement effectively, especially in light of the need to have a non-sector specific, future-proof Regulation.

Amendment 273

**Proposal for a regulation
Article 34 – paragraph 5**

Text proposed by the Commission

Amendment

5. Where ***the list provided for in paragraph 4 involves*** processing activities

5. Where processing activities ***relate*** to the offering of goods or services to data

which are related to the offering of goods or services to data subjects in several Member States, or to the monitoring of their behaviour, or may substantially affect the free movement of personal data within the Union, the supervisory authority shall apply the consistency mechanism referred to in Article 57 ***prior to the adoption of the list.***

subjects in several Member States, or to the monitoring of their behaviour, or may substantially affect the free movement of personal data within the Union, the supervisory authority shall apply the consistency mechanism referred to in Article 57.

Justification

Focuses the consistency mechanism at where it is most appropriate, in line with amendments to Article 58, paragraph 2.

Amendment 274

Proposal for a regulation Article 34 – paragraph 6

Text proposed by the Commission

6. The controller ***or processor*** shall provide the supervisory authority with the data protection impact assessment provided for in Article 33 and, on request, with any other information to allow the supervisory authority to make an assessment of the compliance of the processing and in particular of the risks for the protection of personal data of the data subject and of the related safeguards.

Amendment

6. The controller shall provide the supervisory authority with the data protection impact assessment provided for in Article 33 and, on request, with any other information to allow the supervisory authority to make an assessment of the compliance of the processing and in particular of the risks for the protection of personal data of the data subject and of the related safeguards.

Justification

With the view to ensure legal certainty and enable better enforcement by supervisory authorities and in accordance with Recital 62 which requires “a clear attribution of the responsibilities under this Regulation”, prior authorisation from and consultation with the supervisory authority should rest solely with the controller. This establishes a much clearer framework both for business and supervisory authorities.

Amendment 275

Proposal for a regulation Article 34 – paragraph 8

Text proposed by the Commission

Amendment

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for determining the high degree of specific risk referred to in point (a) of paragraph 2.

deleted

Amendment 276

Proposal for a regulation Article 34 – paragraph 9

Text proposed by the Commission

Amendment

9. The Commission may set out standard forms and procedures for prior **authorisations and** consultations referred to in **paragraphs 1 and 2**, and standard forms and procedures for informing the supervisory authorities pursuant to paragraph 6. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

9. The Commission may set out standard forms and procedures for prior consultations referred to in **paragraph 2** and standard forms and procedures for informing the supervisory authorities pursuant to paragraph 6. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

Amendment 277

Proposal for a regulation Article 35 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. The controller and the processor shall designate a data protection officer in any case where:

1. The controller and the processor shall designate a data **protection organisation or data** protection officer in any case where:

Amendment 278

Proposal for a regulation Article 35 – paragraph 1 – point c

Text proposed by the Commission

(c) the core activities of the controller or the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects.

Amendment

(c) the core activities of the controller or the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects. ***Core activities shall be defined as activities where 50% of the annual turnover resulting from the sale of data or revenue is gained from this data. In relation to data protection, data processing activities which represent less than 50% of company's turnover shall be considered ancillary.***

Justification

Designating data protection officers should only be deemed necessary when the core activities of an enterprise concern the processing of personal data.

Amendment 279

**Proposal for a regulation
Article 35 – paragraph 3**

Text proposed by the Commission

3. Where the controller or the processor is a public authority or body, the data protection officer may be designated for several of its entities, taking account of the organisational structure of the public authority or body.

Amendment

3. Where the controller or the processor is a public authority or body, the data protection ***organisation or data protection*** officer may be designated for several of its entities, taking account of the organisational structure of the public authority or body.

Amendment 280

**Proposal for a regulation
Article 35 – paragraph 5**

Text proposed by the Commission

5. The controller or processor ***shall*** designate the data protection officer on the

Amendment

5. The controller or processor ***may*** designate the data protection officer on the

basis of professional qualities and, in particular, expert knowledge of data protection law and practices and ability to fulfil the tasks referred to in Article 37. The necessary level of expert knowledge shall be determined in particular according to the data processing carried out and the protection required for the personal data processed by the controller or the processor.

basis of professional qualities and, in particular, expert knowledge of data protection law and practices and ability to fulfil the tasks referred to in Article 37. The necessary level of expert knowledge shall be determined in particular according to the data processing carried out and the protection required for the personal data processed by the controller or the processor.

Amendment 281

Proposal for a regulation Article 35 – paragraph 6

Text proposed by the Commission

6. The controller or the processor shall ensure that any other professional duties of the data protection officer are compatible with the person's tasks and duties as data protection officer and do not result in a conflict of interests.

Amendment

6. The controller or the processor shall ensure that any other professional duties of the data protection ***organisation or data protection*** officer are compatible with the person's tasks and duties as data protection officer and do not result in a conflict of interests.

Amendment 282

Proposal for a regulation Article 35 – paragraph 7

Text proposed by the Commission

7. The controller or the processor shall designate a data protection officer for a period of at least two years. The data protection officer may be reappointed for further terms. ***During their term of office, the data protection officer may only be dismissed, if the data protection officer no longer fulfils the conditions required for the performance of their duties.***

Amendment

7. The controller or the processor shall designate a data protection officer for a period of at least two years. The data protection officer may be reappointed for further terms.

Justification

Like all other personnel it should be possible to dismiss the DPO if he does not perform the

tasks set up by management. It is management who decides if they are satisfied with the person they hired or not.

Amendment 283

Proposal for a regulation Article 35 – paragraph 10

Text proposed by the Commission

10. Data subjects shall have the right to contact the data protection officer on all issues related to the processing of the data subject's data and to request exercising the rights under this Regulation.

Amendment

10. Data subjects shall have the right to contact the data protection **organisation or data protection** officer on all issues related to the processing of the data subject's data and to request exercising the rights under this Regulation.

Amendment 284

Proposal for a regulation Article 35 – paragraph 11

Text proposed by the Commission

11. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the core activities of the controller or the processor referred to in point (c) of paragraph 1 and the criteria for the professional qualities of the data protection officer referred to in paragraph 5.

Amendment

deleted

Amendment 285

Proposal for a regulation Article 36 – paragraph 1

Text proposed by the Commission

1. The controller or the processor shall **ensure that** the data protection officer is properly and in a timely manner involved in all issues which relate to the protection

Amendment

1. The **executive management of the** controller or the processor shall **support** the data protection **organisation or data protection** officer **in performing their**

of personal data.

duties and shall provide staff, premises, equipment and any other resources necessary to carry out the roles and duties referred to in Article 37.

Amendment 286
Proposal for a regulation
Article 36 – paragraph 2

Text proposed by the Commission

2. The **controller** or **processor** shall **ensure that the** data protection officer **performs the** duties and tasks independently and **does not receive any instructions as regards the exercise of the function. The data protection officer** shall directly report to the management of the controller or the processor.

Amendment

2. The data protection organisation or data protection officer shall **perform his or her** duties and tasks independently and shall directly report to the management of the controller or the processor.

Amendment 287

Proposal for a regulation
Article 36 – paragraph 3

Text proposed by the Commission

3. The controller or the processor shall support the data protection officer in performing the tasks and shall provide staff, premises, equipment and any other resources necessary to carry out the duties and tasks referred to in Article 37.

Amendment

3. The controller or the processor shall support the data protection **organisation or data protection** officer in performing the tasks and shall provide staff, premises, equipment and any other resources necessary to carry out the duties and tasks referred to in Article 37.

Amendment 288

Proposal for a regulation
Article 37 – paragraph 1 – introductory part

Text proposed by the Commission

1. The controller or the processor shall entrust the data protection officer at least

Amendment

1. The controller or the processor shall entrust the data protection **organisation or the data protection** officer at least with the

with the following tasks:

following tasks:

Amendment 289

Proposal for a regulation

Article 37 – paragraph 1 – point a

Text proposed by the Commission

(a) to inform and advise the controller or the processor of their obligations pursuant to this Regulation and to document this activity and the responses received;

Amendment

(a) **to raise awareness**, to inform and advise the controller or the processor of their obligations pursuant to this Regulation and to document this activity and the responses received;

Amendment 290

Proposal for a regulation

Article 37 – paragraph 1 – point c

Text proposed by the Commission

(c) to monitor ***the implementation and application of this Regulation, in particular as to the requirements related to data protection by design, data protection by default and data security and to the information of data subjects and their requests in exercising their rights under this Regulation***;

Amendment

(c) to monitor ***compliance with this Regulation***;

Amendment 291

Proposal for a regulation

Article 37 – paragraph 1 – point e

Text proposed by the Commission

(e) to monitor ***the documentation, notification and communication of*** personal data breaches pursuant to Articles 31 and 32;

Amendment

(e) ***to develop processes to monitor, document, notify and communicate*** personal data breaches pursuant to Articles 31 and 32;

Amendment 292
Proposal for a regulation
Article 37 – paragraph 1 – point f

Text proposed by the Commission

(f) to monitor the performance of the data protection impact assessment by the controller or processor and the application for prior authorisation or prior consultation, if required pursuant Articles 33 and 34;

Amendment

(f) to ***develop processes that*** monitor the performance of the data protection impact assessment by the controller or processor and the application for prior authorisation or prior consultation, if required pursuant Articles 33 and 34;

Amendment 293
Proposal for a regulation
Article 37 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) to ensure that accountability measures exist as defined in points (c) to (ed) of Article 22(2);

Justification

Clarifying the central role of the Data Protection Officer in the chain of accountability to top-level management.

Amendment 294
Proposal for a regulation
Article 37 – paragraph 1 – point g

Text proposed by the Commission

(g) to ***monitor the response*** to requests from the supervisory authority, and, within the sphere of the data protection officer's competence, co-operating with the supervisory authority at the latter's request or on the data protection officer's own initiative;

Amendment

(g) to ***assist in responding*** to requests from the supervisory authority, and, within the sphere of the data protection officer's competence, co-operating with the supervisory authority at the latter's request or on the data protection officer's own initiative;

Amendment 295
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 ***and Member State authorities*** 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.

Justification

This amendment encourages and enables the creation of a system in which regulators accredit independent assessors, for both whole-enterprise assessments and product- or technology-specific assessments.

Amendment 296

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.

Justification

Certification mechanisms should be designed to be effective without being overly bureaucratic or burdensome.

Amendment 297

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 and withdrawal, and requirements for recognition within the Union and in third countries, ***provided such measures are technology neutral.***

Amendment 298

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

deleted

Amendment 299

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, ***as well as the implementation of that 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;

Amendment 300

Proposal for a regulation

Article 41 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. If the Commission has grounds to believe, because of the monitoring of any other source, that a country or international organisation concerning which a decision pursuant to paragraph 3 has been adopted no longer provides an adequate level of protection within the meaning of paragraph 2, it shall review that decision.

Amendment 301

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

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***

processor has adduced appropriate safeguards with respect to the protection of personal data in a legally binding instrument.

does not ensure an adequate level of protection in accordance with paragraph 5 of this Article, a controller or processor may transfer personal data to a third country or an international organisation transferring data on an international basis only if the controller or processor has adduced appropriate safeguards with respect to the protection of personal data in a legally binding instrument, and where appropriate pursuant to an impact assessment, where the controller or processor has ensured that the recipient of data in a third country maintains high standards of data protection.

These safeguards shall, at least, guarantee the observance of the principles of personal data processing as established in Article 5 and guarantee data subject rights as established in Chapter III.

Amendment 302

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, ***between the controller or processor and the recipient, that can be a sub-processor, of the data outside the European Economic Area (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

This is an important addition to clarify the relationship between controllers, processors and sub-processors in the context of international data transfers.

Amendment 303

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 EEA, which may include standard terms for onward transfers outside the EEA,*** 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

Justification

This is an important addition to clarify the relationship between controllers, processors and sub-processors in the context of international data transfers.

Amendment 304

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 authorised by a supervisory authority in accordance with paragraph 4;
or

Amendment 305

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 this paragraph, and are authorised by the competent supervisory authority in accordance with paragraph 4;

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 306

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);

Amendment 307

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.

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

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 308

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 309

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

Text proposed by the Commission

Amendment

4. 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 **for transfers according to this Article**. If the transfer is related to processing activities which 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.

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, 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.

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 310

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 in point (e) 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.

Justification

Amendment to encourage the use of supplemental data protection seals or trust marks.

Amendment 311

Proposal for a regulation

Article 43 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

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

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:

Amendment 312

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;

Justification

In the Cloud Computing services, cloud providers often use the external subcontractors to perform a specific task to deliver 24/7 service and maintenance. Therefore, this should be recognised in the Binding Corporate Rules by the supervising authority.

Amendment 313

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

Text proposed by the Commission

(b) expressly confer enforceable rights on data subjects;

Amendment

(b) expressly confer enforceable rights on data subjects **and are transparent for data subjects**;

Amendment 314

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**;

Amendment 315

Proposal for a regulation
Article 43 – paragraph 3

Text proposed by the Commission

3. The Commission shall be empowered to adopt delegated acts in accordance with 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.

Amendment 316
Proposal for a regulation
Article 44 – title

Text proposed by the Commission

Derogations

Amendment 317

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

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, ***including transparency for data subjects***, 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.

Amendment

Other legitimate grounds for international transfers

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:

Amendment 318
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, 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

In today's data driven society, there is no justification to single out massive or frequent transfers as this does not meet the realities of data flows and therefore would be at odds with the objective of ensuring free flow of data.

Amendment 319
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. ***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.***

Amendment 320

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

Amendment 321
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

Amendment 322
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

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.

Commission.

Justification

A lead supervisory authority should be clearly assigned in order to streamline the implementation of a true one-stop shop.

Amendment 323

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, in particular those referred to in Article 79(4), (5) and (6). 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.

Justification

Clarifies and underlines the role of supervisory authorities in relation to sanctions.

Amendment 324

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.***

Justification

Due regard must be given to the supervisory authorities' obligations to each other under the consistency mechanism.

Amendment 325

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.

Amendment 326

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 ***this Regulation applies by virtue of Article 3(1), the competent supervisory authority shall be the supervisory authority of the Member State or territory where the main establishment of the controller or processor subject to this Regulation is established. Disputes shall be decided upon in accordance with the consistency mechanism set out in article 58***, without prejudice to the ***other*** provisions of Chapter VII of this Regulation.

Amendment 327

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

Text proposed by the Commission

Amendment

2a. Where this Regulation applies by virtue of Article 3(2), the competent supervisory authority shall be the supervisory authority of the Member State or territory where the controller has

designated a representative in the Union pursuant to Article 25.

Amendment 328

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

Text proposed by the Commission

Amendment

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

Amendment 329

Proposal for a regulation Article 52 – paragraph 3

Text proposed by the Commission

Amendment

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.

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.

Amendment 330

Proposal for a regulation Article 53 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. ***Each*** supervisory authority shall have the power:

1. ***The competent*** supervisory authority shall have the power:

Amendment 331
Proposal for a regulation
Article 53 – paragraph 1 – point d

Text proposed by the Commission

(d) to ensure the compliance with prior **authorisations and prior** consultations referred to in Article 34;

Amendment

(d) to ensure the compliance with prior consultations referred to in Article 34;

Amendment 332
Proposal for a regulation
Article 53 – paragraph 1 – point j a (new)

Text proposed by the Commission

Amendment

(ja) to inform the controller and/or the processor of the judicial remedies available against its decision.

Justification

The provisions on supervisory authority powers against the controller and/or the processor should be complemented with explicit legal safeguards for controllers and/or processors.

Amendment 333

Proposal for a regulation
Article 53 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

2. **Each** supervisory authority shall have the investigative power to obtain from the controller or the processor:

2. **The competent** supervisory authority shall have the investigative power to obtain from the controller or the processor:

Amendment 334

Proposal for a regulation
Article 53 – paragraph 3

Text proposed by the Commission

Amendment

3. **Each** supervisory authority shall have the power to bring violations of this

3. **The competent** supervisory authority shall have the power to bring violations of

Regulation to the attention of the judicial authorities and to engage in legal proceedings, in particular pursuant to Article 74(4) and Article 75(2).

this Regulation to the attention of the judicial authorities and to engage in legal proceedings, in particular pursuant to Article 74(4) and Article 75(2).

Amendment 335

Proposal for a regulation Article 53 – paragraph 4

Text proposed by the Commission

4. **Each** supervisory authority shall have the power to sanction administrative offences, in particular those referred to in Article 79(4), (5) and (6).

Amendment

4. **The competent** supervisory authority shall have the power to sanction administrative offences, in particular those referred to in Article 79(4), (5) and (6).

Amendment 336

Proposal for a regulation Article 55 – paragraph 1

Text proposed by the Commission

1. Supervisory authorities shall provide each other relevant information and mutual assistance in order to implement and apply this Regulation in a consistent manner, and shall put in place measures for effective co-operation with one another. Mutual assistance shall cover, in particular, information requests and supervisory measures, such as requests to carry out prior **authorisations and** consultations, inspections and prompt information on the opening of cases and ensuing developments where data subjects in several Member States are likely to **be affected by processing operations**.

Amendment

1. Supervisory authorities shall provide each other relevant information and mutual assistance in order to implement and apply this Regulation in a consistent manner, and shall put in place measures for effective co-operation with one another. Mutual assistance shall cover, in particular, information requests and supervisory measures, such as requests to carry out prior consultations, inspections and prompt information on the opening of cases and ensuing developments where data subjects in several Member States are likely to **cause legal effects to the detriment of the data subjects**.

Amendment 337

Proposal for a regulation Article 55 – paragraph 2

Text proposed by the Commission

2. Each supervisory authority shall take all appropriate measures required to reply to the request of another supervisory authority without delay and no later than one month after having received the request. Such measures may include, in particular, the transmission of relevant information on the course of an investigation or enforcement measures to bring about the cessation or prohibition of processing operations contrary to this Regulation.

Amendment 338
Proposal for a regulation
Article 56 – paragraph 4

Text proposed by the Commission

4. Supervisory authorities shall lay down the practical aspects of specific co-operation actions.

Amendment 339
Proposal for a regulation
Article 58 – paragraph 1

Text proposed by the Commission

1. Before *a* supervisory authority adopts a measure referred to in paragraph 2, this supervisory authority shall communicate the draft measure to the European Data Protection Board and the Commission.

Amendment 340

Amendment

2. Each supervisory authority shall take all appropriate measures required to reply to the request of another supervisory authority without delay and no later than one month after having received the request. Such measures may include, in particular, the transmission of relevant information on the course of an investigation or enforcement measures to bring about the cessation or prohibition of processing operations ***that have been proven*** contrary to this Regulation.

Amendment

4. Supervisory authorities shall lay down the practical aspects of specific co-operation actions ***in their rules of procedure. The rules of procedures shall be made public in the Official Journal of the European Union.***

Amendment

1. Before ***the competent*** supervisory authority adopts a measure referred to in paragraph 2, this supervisory authority shall communicate the draft measure to the European Data Protection Board and the Commission.

Proposal for a regulation
Article 58 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) relates to processing activities which are related to the offering of goods or services to data subjects in several Member States, ***or to the monitoring of their behaviour***; or

(a) relates to processing activities ***of personal data*** which are related to the offering of goods or services to data subjects in several Member States ***when the non-EEA controller or processor does not name a representative in the territory of the EEA***; or it

Justification

This should incentivise non-EU companies to name a representative in the territory of the EU. There should be no discrimination against non-EU companies who are established in the EU.

Amendment 341

Proposal for a regulation
Article 58 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) ***may substantially affect the free movement of personal data within the Union***; or

deleted

Amendment 342

Proposal for a regulation
Article 58 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) ***aims at adopting a list of the processing operations subject to prior consultation pursuant to Article 34(5)***; or

deleted

Justification

See amendments to Article 34 on prior consultation - the requirement to draft up lists and submit them to the consistency mechanism is overly bureaucratic and anti-innovation.

Amendment 343

Proposal for a regulation Article 58 – paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) aims to determine standard data protection clauses referred to in point (c) of Article 42(2); or **deleted**

Amendment 344

Proposal for a regulation Article 58 – paragraph 2 – point e

Text proposed by the Commission

Amendment

(e) aims to authorise contractual clauses referred to in point (d) of Article 42(2); or **deleted**

Amendment 345

Proposal for a regulation Article 58 – paragraph 2 – point f

Text proposed by the Commission

Amendment

(f) aims to approve binding corporate rules within the meaning of Article 43. **deleted**

Justification

DPA's should be competent under the direct effect of the Regulation to draw up BCRs without having to submit it to the consistency mechanism.

Amendment 346

Proposal for a regulation Article 58 – paragraph 2 – point f a (new)

Text proposed by the Commission

Amendment

(fa) permits processing for research purposes in accordance with Article 81(3)

and/or Article 83(3).

Amendment 347

Proposal for a regulation Article 58 – paragraph 3

Text proposed by the Commission

3. Any supervisory authority or the European Data Protection Board may request that any matter shall be dealt with in the consistency mechanism, in particular where *a supervisory* authority does not submit a draft measure referred to in paragraph 2 or does not comply with the obligations for mutual assistance in accordance with Article 55 or for joint operations in accordance with Article 56.

Amendment

3. Any supervisory authority or the European Data Protection Board may request that any matter shall be dealt with in the consistency mechanism, in particular where *the competent* authority does not submit a draft measure referred to in paragraph 2 or does not comply with the obligations for mutual assistance in accordance with Article 55 or for joint operations in accordance with Article 56.

Amendment 348

Proposal for a regulation Article 58 – paragraph 4

Text proposed by the Commission

4. In order to ensure correct and consistent application of this Regulation, the Commission may request that any matter shall be dealt with in the consistency mechanism.

Amendment

4. In order to ensure correct and consistent application of this Regulation, the Commission may, *acting on its own behalf, and shall at the request of a stakeholder*, request that any matter shall be dealt with in the consistency mechanism.

Justification

When there are inconsistencies with regards to the application of the Regulation which threaten the harmonized implementation and affect specific stakeholders, the affected stakeholders should be given the right to bring their concerns into the consistency mechanism.

Amendment 349

Proposal for a regulation
Article 58 – paragraph 6

Text proposed by the Commission

6. The chair of the European Data Protection Board shall ***immediately*** electronically inform the members of the European Data Protection Board and the Commission of any relevant information which has been communicated to it, using a standardised format. The chair of the European Data Protection Board shall provide translations of relevant information, where necessary.

Amendment

6. The chair of the European Data Protection Board shall ***without undue delay*** electronically inform the members of the European Data Protection Board and the Commission of any relevant information which has been communicated to it, using a standardised format. The chair of the European Data Protection Board shall provide translations of relevant information, where necessary.

Amendment 350

Proposal for a regulation
Article 58 – paragraph 8

Text proposed by the Commission

8. The supervisory authority referred to in paragraph 1 ***and the supervisory authority competent under Article 51*** shall take account of the opinion of the European Data Protection Board and shall within two weeks after the information on the opinion by the chair of the European Data Protection Board, electronically communicate to the chair of the European Data Protection Board and to the Commission whether it maintains or amends its draft measure and, if any, the amended draft measure, using a standardised format.

Amendment

8. The ***competent*** supervisory authority referred to in paragraph 1 shall take account of the opinion of the European Data Protection Board and shall within two weeks after the information on the opinion by the chair of the European Data Protection Board, electronically communicate to the chair of the European Data Protection Board and to the Commission whether it maintains or amends its draft measure and, if any, the amended draft measure, using a standardised format.

Amendment 351

Proposal for a regulation
Article 61 – paragraph 1

Text proposed by the Commission

1. In exceptional circumstances, where a supervisory authority considers that there is

Amendment

1. In exceptional circumstances, where a supervisory authority considers that there is

an urgent need to act in order to protect the interests of data subjects, ***in particular*** when the danger exists that the enforcement of a right of a data subject could be considerably impeded by means of an alteration of the existing state or for averting major disadvantages ***or for other reasons***, by way of derogation from the procedure referred to in Article 58, it may immediately adopt provisional measures with a specified period of validity. ***The*** supervisory authority shall, without delay, communicate those measures, with full reasons, to the European Data Protection Board ***and to the Commission***.

an urgent need to act in order to protect the interests of data subjects, when the danger exists that the enforcement of a right of a data subject could be considerably impeded by means of an alteration of the existing state or for averting major disadvantages, by way of derogation from the procedure referred to in Article 58, it may immediately adopt provisional measures with a specified period of validity. ***This*** supervisory authority shall, without delay, communicate those measures, with full reasons, ***to the competent supervisory authority***, the European Data Protection Board, ***the Commission and the controller or processor concerned***.

Amendment 352

Proposal for a regulation Article 61 – paragraph 2

Text proposed by the Commission

2. Where a supervisory authority has taken a measure pursuant to paragraph 1 ***and considers that final measures need urgently be adopted, it may*** request an urgent opinion of the European Data Protection Board, giving reasons for ***requesting such opinion***, including for the urgency of final measures.

Amendment

2. Where a supervisory authority has taken a measure pursuant to paragraph 1, ***it shall*** request an urgent opinion of the European Data Protection Board, giving reasons for ***the request***, including for the urgency of final measures.

Amendment 353

Proposal for a regulation Article 62 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

(a) deciding on the correct application of this Regulation in accordance with its objectives and requirements in relation to matters communicated by supervisory authorities pursuant to Article 58 or 61, concerning a matter in relation to which a

Amendment

deleted

reasoned decision has been adopted pursuant to Article 60(1), or concerning a matter in relation to which a supervisory authority does not submit a draft measure and that supervisory authority has indicated that it does not intend to follow the opinion of the Commission adopted pursuant to Article 59;

Amendment 354

Proposal for a regulation

Article 66 – paragraph 1 – introductory part

Text proposed by the Commission

1. The European Data Protection Board shall ensure the consistent application of this Regulation. To this effect, the European Data Protection Board shall, on its own initiative *or* at the request of the Commission, in particular:

Amendment

1. The European Data Protection Board shall ensure the consistent application of this Regulation. To this effect, the European Data Protection Board shall, on its own initiative, at the request of the Commission *or other stakeholders*, in particular:

Amendment 355

Proposal for a regulation

Article 66 – paragraph 1 – point a

Text proposed by the Commission

(a) advise the *Commission* on any issue related to the protection of personal data in the Union, including on any proposed amendment of this Regulation;

Amendment

(a) advise the *European Institutions* on any issue related to the protection of personal data in the Union, including on any proposed amendment of this Regulation;

Amendment 356

Proposal for a regulation

Article 66 – paragraph 1 – point b

Text proposed by the Commission

(b) examine, on its own initiative or on

Amendment

(b) examine, on its own initiative or on

request of one of its members *or on request of the Commission*, any question covering the application of this Regulation and issue guidelines, recommendations and best practices addressed to the supervisory authorities in order to encourage consistent application of this Regulation;

request of one of its members, *the Commission or other stakeholders* any question covering the application of this Regulation and issue guidelines, recommendations and best practices addressed to the supervisory authorities in order to encourage consistent application of this Regulation;

Amendment 357

Proposal for a regulation

Article 66 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Where appropriate, the European Data Protection Board shall, in its execution of the tasks set out in this Article, consult interested parties and give them the opportunity to comment within a reasonable period. The European Data Protection Board shall, without prejudice to Article 72, make the results of the consultation procedure publicly available.

Justification

Before the Board adopts opinions and reports, they should consult interested parties and give them the opportunity to comment within a reasonable period as possible for other regulatory domains.

Amendment 358

Proposal for a regulation

Article 68 – paragraph 2

Text proposed by the Commission

Amendment

2. The European Data Protection Board shall adopt its own rules of procedure and organise its own operational arrangements. In particular, it shall provide for the continuation of exercising duties when a member's term of office expires or a member resigns, for the establishment of subgroups for specific issues or sectors and

2. The European Data Protection Board shall adopt its own rules of procedure and organise its own operational arrangements. In particular, it shall provide for the continuation of exercising duties when a member's term of office expires or a member resigns, for the establishment of subgroups for specific issues or sectors and

for its procedures in relation to the consistency mechanism referred to in Article 57.

for its procedures in relation to the consistency mechanism referred to in Article 57 **and the legal safeguards applicable to controllers or processors concerned.**

Justification

There are no explicit legal safeguards for controllers or processors concerned.

Amendment 359

**Proposal for a regulation
Article 69 – paragraph 2**

Text proposed by the Commission

2. The term of office of the chair and of the deputy chairpersons shall be five years and be renewable.

Amendment

2. The term of office of the chair and of the deputy chairpersons shall be five years and be renewable. ***Their appointment may be revoked by a decision of the European Parliament adopted by a two-thirds majority of the votes cast, representing a majority of its component Members.***

Amendment 360

**Proposal for a regulation
Article 73 – paragraph 2**

Text proposed by the Commission

2. Any body, organisation or association which aims to protect data subjects' rights and interests concerning the protection of their personal data and has been properly constituted according to the law of a Member State shall have the right to lodge a complaint with a supervisory authority in any Member State on behalf of one or more data subjects if it considers that a data subject's rights under this Regulation have been infringed as a result of the processing of personal data.

Amendment

2. Any body, organisation or association which aims to protect data subjects' rights and interests concerning the protection of their personal data and has been properly constituted according to the law of a Member State shall have the right to lodge a complaint with a supervisory authority in any Member State on behalf of one or more data subjects ***from among its membership*** if it considers that a data subject's rights under this Regulation have been infringed as a result of the processing of personal data ***and it has minimum funding of EUR 80 000 and***

representative membership with a corresponding membership structure.

Justification

Minimum funding and a representative membership structure are necessary in order to guarantee that collective actions are not misused and avoid a situation where associations are set up specifically for this purpose, as well as to ensure minimum cover for lawyers' fees and court costs.

Amendment 361

**Proposal for a regulation
Article 75 – paragraph 2**

Text proposed by the Commission

2. Proceedings against a controller or a processor shall be brought before the courts of the Member State where the controller or processor has an establishment. Alternatively, such proceedings may be brought before the courts of the Member State where the data subject has its habitual residence, unless the controller is a public authority acting in the exercise of its public powers.

Amendment

2. Proceedings against a controller or a processor shall be brought before the courts of the Member State where the controller or processor has an establishment. Alternatively, such proceedings may be brought before the courts of the Member State where the data subject has its habitual residence, unless the controller is a public authority acting in the exercise of its public powers. ***The derogation in the second sentence shall not apply to a public authority of a third country.***

Amendment 362

**Proposal for a regulation
Article 76 – paragraph 1**

Text proposed by the Commission

1. Any body, organisation or association referred to in Article 73(2) shall have the right to exercise the rights referred to in Articles 74 ***and 75*** on behalf of one or more data subjects.

Amendment

1. Any body, organisation or association referred to in Article 73(2) shall have the right to exercise the rights referred to in Articles 74 on behalf of one or more data subjects. ***Claims according to Article 77 may not be exercised by bodies, organisations or associations within the meaning of Article 73(2).***

Amendment 363
Proposal for a regulation
Article 77 – paragraph 1

Text proposed by the Commission

1. Any person who has suffered damage as a result of an unlawful processing operation or of an action incompatible with this Regulation shall have the right to receive compensation from the controller **or the processor** for the damage suffered.

Amendment

1. Any person who has suffered damage as a result of an unlawful processing operation or of an action incompatible with this Regulation shall have the right to receive compensation from the controller for the damage suffered.

Amendment 364
Proposal for a regulation
Article 77 – paragraph 2

Text proposed by the Commission

2. Where more than one controller **or processor** is involved in the processing, each controller **or processor** shall be jointly and severally liable for the entire amount of the damage.

Amendment

2. Where more than one controller is involved in the processing, each controller shall be jointly and severally liable for the entire amount of the damage **to the extent that the joint controllers' respective liability has not been determined in the legal arrangement referred to in Article 24. In the case of a group of undertakings, the entire group shall be liable as a single economic entity.**

Amendment 365
Proposal for a regulation
Article 77 – paragraph 3

Text proposed by the Commission

3. The controller **or the processor** may be exempted from this liability, in whole or in part, if the **controller or the processor** proves that **they are** not responsible for the event giving rise to the damage.

Amendment

3. The controller may be exempted from this liability, in whole or in part, if the proves that **it is** not responsible for the event giving rise to the damage.

Amendment 366

Proposal for a regulation Article 79 – paragraph 1

Text proposed by the Commission

1. **Each** supervisory authority shall be empowered to impose administrative sanctions in accordance with this Article.

Amendment

1. **The competent** supervisory authority shall be empowered to impose administrative sanctions in accordance with this Article.

Amendment 367

Proposal for a regulation Article 79 – paragraph 2

Text proposed by the Commission

2. The administrative sanction shall be in each individual case effective, proportionate and dissuasive. The amount of the administrative fine shall be fixed with due regard to the nature, gravity and duration of the breach, the intentional or negligent character of the infringement, the degree of responsibility of the natural or legal person and of previous breaches by this person, the technical and organisational measures and procedures implemented pursuant to Article 23 and the degree of co-operation with the supervisory authority in order to remedy the breach.

Amendment

2. The administrative sanction shall be in each individual case effective, proportionate and dissuasive. The amount of the administrative fine shall be fixed with due regard to the nature, gravity and duration of the breach, the ***sensitivity of the data in issue, the*** intentional or negligent character of the infringement, the degree of ***harm created by the violation, the degree of*** responsibility of the natural or legal person and of previous breaches by this person, the technical and organisational measures and procedures implemented pursuant to Article 23 and the degree of co-operation with the supervisory authority in order to remedy the breach. ***While some discretion is granted in the imposition of such sanctions to take into account the circumstances outlined above and other facts specific to the situation, divergences in the application of administrative sanctions may be subject to review pursuant to the consistency mechanism. Where appropriate, the data protection authority shall also be empowered to require that a data protection officer is appointed if the body, organisation or association has opted not to do so.***

Amendment 368

Proposal for a regulation

Article 79 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Aggravating factors that support administrative fines at the upper limits established in paragraphs 4 to 6 shall include in particular:

- (i) repeated violations committed in reckless disregard of applicable law;***
- (ii) refusal to co-operate with or obstruction of an enforcement process;***
- (iii) violations that are deliberate, serious and likely to cause substantial damage;***
- (iv) a data protection impact assessment has not been undertaken;***
- (v) a data protection officer has not been appointed.***

Amendment 369

Proposal for a regulation

Article 79 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Mitigating factors which support administrative fines at the lower limits established in paragraphs 4 to 6 shall include:

- (i) measures having been taken by the natural or legal person to ensure compliance with relevant obligations;***
- (ii) genuine uncertainty as to whether the activity constituted a violation of the relevant obligations;***
- (iii) immediate termination of the violation upon knowledge;***

(iv) co-operation with any enforcement processes;

(v) a data protection impact assessment has been undertaken;

(vi) a data protection officer has been appointed.

Amendment 370
Proposal for a regulation
Article 79 – paragraph 3

Text proposed by the Commission

3. In case of a first and non-intentional non-compliance with this Regulation, a warning in writing may be given and no sanction imposed, where:

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

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

Amendment

3. The supervisory authority may give a written warning without imposing a sanction. The supervisory authority may impose a fine of up to EUR 1 000 000 for repeated, deliberate breaches or, in the case of a company, of up to 1% of its annual worldwide turnover.

Justification

The maximum amount of the fine which can be imposed by a supervisory authority, which may be as much as EUR 1 million and, for companies, 1% of their annual worldwide turnover, must be retained. However, the independence of supervisory authorities established by Article 8(3) of the Charter of Fundamental Rights of the European Union must be maintained. In addition, the consistency mechanism, and in particular Article 58(3) and (4), could contribute to a harmonised policy in the EU for administrative sanctions.

Amendment 371
Proposal for a regulation
Article 79 – paragraph 4 – introductory part

Text proposed by the Commission

4. The supervisory authority shall impose

Amendment

deleted

a fine up to 250 000 EUR, or in case of an enterprise up to 0,5 % of its annual worldwide turnover, to anyone who, intentionally or negligently:

Amendment 372
Proposal for a regulation
Article 79 – paragraph 4 – point a

Text proposed by the Commission

Amendment

(a) does not provide the mechanisms for requests by data subjects or does not respond promptly or not in the required format to data subjects pursuant to Articles 12(1) and (2); **deleted**

Amendment 373
Proposal for a regulation
Article 79 – paragraph 4 – point b

Text proposed by the Commission

Amendment

(b) charges a fee for the information or for responses to the requests of data subjects in violation of Article 12(4). **deleted**

Amendment 374
Proposal for a regulation
Article 79 – paragraph 5 – introductory part

Text proposed by the Commission

Amendment

5. The supervisory authority shall impose a fine up to 500 000 EUR, or in case of an enterprise up to 1 % of its annual worldwide turnover, to anyone who, intentionally or negligently: **deleted**

Amendment 375
Proposal for a regulation
Article 79 – paragraph 5 – point a

Text proposed by the Commission

Amendment

(a) does not provide the information, or does provide incomplete information, or does not provide the information in a sufficiently transparent manner, to the data subject pursuant to Article 11, Article 12(3) and Article 14;

deleted

Amendment 376
Proposal for a regulation
Article 79 – paragraph 5 – point b

Text proposed by the Commission

Amendment

(b) does not provide access for the data subject or does not rectify personal data pursuant to Articles 15 and 16 or does not communicate the relevant information to a recipient pursuant to Article 13;

deleted

Amendment 377
Proposal for a regulation
Article 79 – paragraph 5 – point c

Text proposed by the Commission

Amendment

(c) does not comply with the right to be forgotten or to erasure, or fails to put mechanisms in place to ensure that the time limits are observed or does not take all necessary steps to inform third parties that a data subjects requests to erase any links to, or copy or replication of the personal data pursuant Article 17;

deleted

Amendment 378
Proposal for a regulation
Article 79 – paragraph 5 – point d

Text proposed by the Commission

Amendment

(d) does not provide a copy of the personal

deleted

data in electronic format or hinders the data subject to transmit the personal data to another application in violation of Article 18;

Amendment 379
Proposal for a regulation
Article 79 – paragraph 5 – point e

Text proposed by the Commission

Amendment

(e) does not or not sufficiently determine the respective responsibilities with co-controllers pursuant to Article 24; **deleted**

Amendment 380
Proposal for a regulation
Article 79 – paragraph 5 – point f

Text proposed by the Commission

Amendment

(f) does not or not sufficiently maintain the documentation pursuant to Article 28, Article 31(4), and Article 44(3); **deleted**

Amendment 381
Proposal for a regulation
Article 79 – paragraph 5 – point g

Text proposed by the Commission

Amendment

(g) does not comply, in cases where special categories of data are not involved, pursuant to Articles 80, 82 and 83 with rules in relation to freedom of expression or with rules on the processing in the employment context or with the conditions for processing for historical, statistical and scientific research purposes. **deleted**

Amendment 382
Proposal for a regulation
Article 79 – paragraph 6 – introductory part

Text proposed by the Commission

Amendment

6. The supervisory authority shall impose a fine up to 1 000 000 EUR or, in case of an enterprise up to 2 % of its annual worldwide turnover, to anyone who, intentionally or negligently: *deleted*

**Amendment 383
Proposal for a regulation
Article 79 – paragraph 6 – point a**

Text proposed by the Commission

Amendment

(a) processes personal data without any or sufficient legal basis for the processing or does not comply with the conditions for consent pursuant to Articles 6, 7 and 8; *deleted*

**Amendment 384
Proposal for a regulation
Article 79 – paragraph 6 – point b**

Text proposed by the Commission

Amendment

(b) processes special categories of data in violation of Articles 9 and 81; *deleted*

**Amendment 385
Proposal for a regulation
Article 79 – paragraph 6 – point c**

Text proposed by the Commission

Amendment

(c) does not comply with an objection or the requirement pursuant to Article 19; *deleted*

**Amendment 386
Proposal for a regulation
Article 79 – paragraph 6 – point d**

Text proposed by the Commission

Amendment

(d) does not comply with the conditions in relation to measures based on profiling pursuant to Article 20; ***deleted***

Amendment 387
Proposal for a regulation
Article 79 – paragraph 6 – point e

Text proposed by the Commission

Amendment

(e) does not adopt internal policies or does not implement appropriate measures for ensuring and demonstrating compliance pursuant to Articles 22, 23 and 30; ***deleted***

Amendment 388
Proposal for a regulation
Article 79 – paragraph 6 – point f

Text proposed by the Commission

Amendment

(f) does not designate a representative pursuant to Article 25; ***deleted***

Amendment 389
Proposal for a regulation
Article 79 – paragraph 6 – point g

Text proposed by the Commission

Amendment

(g) processes or instructs the processing of personal data in violation of the obligations in relation to processing on behalf of a controller pursuant to Articles 26 and 27; ***deleted***

Amendment 390
Proposal for a regulation
Article 79 – paragraph 6 – point h

Text proposed by the Commission

Amendment

(h) does not alert on or notify a personal data breach or does not timely or completely notify the data breach to the supervisory authority or to the data subject pursuant to Articles 31 and 32; *deleted*

**Amendment 391
Proposal for a regulation
Article 79 – paragraph 6 – point i**

Text proposed by the Commission

Amendment

(i) does not carry out a data protection impact assessment pursuant or processes personal data without prior authorisation or prior consultation of the supervisory authority pursuant to Articles 33 and 34; *deleted*

**Amendment 392
Proposal for a regulation
Article 79 – paragraph 6 – point j**

Text proposed by the Commission

Amendment

(j) does not designate a data protection officer or does not ensure the conditions for fulfilling the tasks pursuant to Articles 35, 36 and 37; *deleted*

**Amendment 393
Proposal for a regulation
Article 79 – paragraph 6 – point k**

Text proposed by the Commission

Amendment

(k) misuses a data protection seal or mark in the meaning of Article 39; *deleted*

Amendment 394
Proposal for a regulation
Article 79 – paragraph 6 – point l

Text proposed by the Commission

Amendment

(l) carries out or instructs a data transfer to a third country or an international organisation that is not allowed by an adequacy decision or by appropriate safeguards or by a derogation pursuant to Articles 40 to 44; *deleted*

Amendment 395
Proposal for a regulation
Article 79 – paragraph 6 – point m

Text proposed by the Commission

Amendment

(m) does not comply with an order or a temporary or definite ban on processing or the suspension of data flows by the supervisory authority pursuant to Article 53(1); *deleted*

Amendment 396
Proposal for a regulation
Article 79 – paragraph 6 – point n

Text proposed by the Commission

Amendment

(n) does not comply with the obligations to assist or respond or provide relevant information to, or access to premises by, the supervisory authority pursuant to Article 28(3), Article 29, Article 34(6) and Article 53(2); *deleted*

Amendment 397
Proposal for a regulation
Article 79 – paragraph 6 – point o

Text proposed by the Commission

Amendment

(o) does not comply with the rules for safeguarding professional secrecy pursuant to Article 84.

deleted

Amendment 398
Proposal for a regulation
Article 79 – paragraph 7

Text proposed by the Commission

Amendment

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of updating the amounts of the administrative fines referred to in paragraphs 4, 5 and 6, taking into account the criteria referred to in paragraph 2.

deleted

Amendment 399
Proposal for a regulation
Article 80 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall provide for exemptions or derogations from the provisions on the general principles in Chapter II, the rights of the data subject in Chapter III, on controller and processor in Chapter IV, on the transfer of personal data to third countries and international organisations in Chapter V, the independent supervisory authorities in Chapter VI and on co-operation and consistency in Chapter VII for the processing of personal data carried out solely for journalistic purposes or the purpose of artistic or literary expression in order to reconcile the right to the protection of personal data with the rules governing freedom of expression.

1. Chapter II (General principles), Chapter III (Rights of the data subject), Chapter IV (Controller and processor), Chapter V (Transfer of personal data to third countries and international organisations), Chapter VI (Independent supervisory authorities), Chapter VII (Co-operation and consistency) as well as Articles 73, 74, 76 and 79 of Chapter VIII (Remedies, liability and sanctions) shall not apply to the processing of personal data carried out solely for journalistic purposes or the purpose of artistic or literary expression in order to reconcile the right to the protection of personal data with the rules governing freedom of expression.

Justification

The new draft legislation on data protection takes the form of a regulation and thus is directly applicable. If data protection law applies directly, the freedom of the press exception must also be directly applicable. An implementation by Member States should not lower down the current level of protection. Furthermore, the exemption should be extended to Articles 73, 74, 76 and 79 of Chapter VIII (on Remedies, Liabilities and Sanctions) because these Articles include new elements which go far beyond what is foreseen in the current directive and are not suitable for journalistic activities or pose a serious threat to press freedom.

Amendment 400

Proposal for a regulation

Article 80 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The European Data Protection Board shall issue guidance on when such exemptions or derogations may be necessary, after consultation with representatives of the press, authors and artists, data subjects and relevant civil society organisations.

Amendment 401

Proposal for a regulation

Article 80 a (new)

Text proposed by the Commission

Amendment

Article 80a

Processing of personal data and the principle of public access to official documents

Personal data in documents held by a public authority or a public body may be disclosed by this authority or body in accordance with Member State legislation regarding public access to official documents, which reconciles the right to the protection of personal data with the principle of public access to official documents.

Justification

It is essential to ensure that public oversight of public affairs is not unduly hampered by data protection rules. As expressed in opinions by the EDPS, the Article 29 Working Party and the FRA, the principle of public access to official documents should therefore be guaranteed.

Amendment 402

Proposal for a regulation

Article 81 – 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 other reasons of public interest in the area of public health as referred to in point (b) of paragraph 1, as well as criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1.

deleted

Amendment 403

Proposal for a regulation

Article 82 – paragraph 1

Text proposed by the Commission

Amendment

1. Within the limits of this Regulation, Member States may adopt by law specific rules regulating the processing of employees' personal data in the employment context, in particular for the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organisation of work, health and safety at work, and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the

1. Without prejudice to this Regulation, Member States *or collective agreement among employers and employees* may adopt by law specific rules regulating the processing of employees' personal data in the employment context, in particular for the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organisation of work, *criminal conviction*, health and safety at work, and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits

employment relationship.

related to employment, and for the purpose of the termination of the employment relationship.

Amendment 404
Proposal for a regulation
Article 82 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1.

deleted

Amendment 405
Proposal for a regulation
Article 83 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. Within the limits of this Regulation, personal data may be processed for historical, statistical or scientific research purposes only if:

1. Without prejudice to this Regulation, personal data *not falling within the categories of data covered by Article 8 of this Regulation* may be processed for historical, statistical or scientific purposes under paragraph 2 of Article 6 and point (i) of Article 9(2) only if:

Amendment 406
Proposal for a regulation
Article 83 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) these purposes cannot be **otherwise** fulfilled by processing data which does not permit or not any longer permit the identification of the data subject;

(a) these purposes cannot be **reasonably** fulfilled by processing data which does not permit or not any longer permit the identification of the data subject;

Amendment 407

Proposal for a regulation

Article 83 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Further processing of data for historical, statistical or scientific purposes shall not be considered as incompatible under point (b) of Article 5(1) provided that the processing:

(a) is subject to the conditions and safeguards of this Article; and

(b) complies with all other relevant legislation.

Amendment 408

Proposal for a regulation

Article 83 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Within the limits of this Regulation, especially this article, Member States may adopt specific regulations concerning the processing of personal data for scientific research purposes, in particular public health research.

Justification

Data protection rules at Member State-level are complex and nuanced also with regard to public health research. Member States legislators should be empowered to maintain or adopt concrete measures on ethical review of public health research, carried out without the need for the data subject's consent. Ethical review at Member State level offers data subjects a guarantee that the use and reuse of their personal data for research purposes is in line with societal values at the given point in time.

Amendment 409

Proposal for a regulation

Article 83 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(ca) the personal data is processed for the purpose of generating aggregate data reports, wholly composed of either anonymous data, pseudonymous data or both.

Justification

The purpose of such reports is not to identify or go back to individuals. To create such reports, individual data sets are pooled together in an anonymous way and have no privacy impact. Web Analytics are an example of Aggregate Data Reports.

Amendment 410
Proposal for a regulation
Article 83 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Where personal data is collected for statistical and public health purposes, such data shall be made anonymous immediately after the end of data collection, checking or matching operations, except if the identification data remain necessary for statistical¹, and public health purposes such as epidemiological, translational and clinical research.

¹ Paragraph 8 of the Appendix to the Council Recommendation No. R (97) concerning protection of personal data collected and processed for statistical purposes – Adopted by the Committee of Ministers on 30 September 1997 at the 602nd meeting of the Ministers' Deputies

Justification

Epidemiological research relies heavily on using “linked data” and cannot be done with completely anonymised or pseudonymised data. Linked research has been a luxury for certain

countries in the European Union, whereas with the measures suggested in this binding Regulation, there is a possibility of this kind of crucial research to come to a halt.

Amendment 411

Proposal for a regulation

Article 83 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. A controller or processor may transfer personal data to a third country or an international organisation for historical, statistical or scientific purposes if:

(a) these purposes cannot be otherwise fulfilled by processing data which does not permit or not any longer permit the identification of the data subject;

(b) the recipient does not reasonably have access to data enabling the attribution of information to an identified or identifiable data subject; and

(c) contractual clauses between the controller or processor and the recipient of the data prohibit re-identification of the data subject and limit processing in accordance with the conditions and safeguards laid down in this Article.

Justification

A recipient of key-coded data, transferred for scientific research purposes has no means to re-identify subjects, and under this amendment, does not have access to the key and is contractually precluded from re-identifying data subjects. This amendment would formalize a process for reasonably ensuring that key-coded data cannot and will not be re-identified by recipients located in third countries, allowing for the transfer of such data without further burdens.

Amendment 412

Proposal for a regulation

Article 83 – paragraph 2 c (new)

Text proposed by the Commission

Amendment

2c. Where the data subject is required to

give his/her consent for the processing of medical data exclusively for public health research purposes, the option of broad consent may be available to the data subject for the purposes of epidemiological, translational and clinical research.

Justification

In many fields of medicine and science, it is crucial for researchers to be able to follow the data of a certain patient they have been monitoring. This enables the researchers to understand and constantly improve their search for new treatments and cures. Importantly, epidemiological research involves monitoring populations to decipher trends in lifestyle, genetics, diseases among others, and is crucial for furthering public health research, an example of which is patient registries. Thus record linkage should remain possible, when it comes to the case of using medical data solely for the furthering of public health research, specifically epidemiological, translational and clinical research. With respect to the point on broad consent, the current Directive on Data Protection (95/46/EC) allows for exceptions for the processing of data for public health research and the general aim of the proposed Regulation is to apply the principle of explicit consent for the processing of personal data. For public health research purposes, such as epidemiological, clinical and translational research it becomes virtually impossible to acquire the consent of every single data subject required for research. Public health researchers need to have access to the past, current and future medical records of patients in order to conduct their research. The option of broad consent gives the data subject a measure of control over their data and the option for their data being used for furthering public health research.

Amendment 413
Proposal for a regulation
Article 83 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the processing of personal data for the purposes referred to in paragraph 1 and 2 as well as any necessary limitations on the rights of information to and access by the data subject and detailing the conditions and safeguards for the rights of the data subject under these circumstances.

deleted

Amendment 414
Proposal for a regulation
Article 83 a (new)

Text proposed by the Commission

Amendment

Article 83a

***Processing of criminal convictions data
for the purpose of the prevention of
financial crime***

***Within the limits of this Regulation and in
accordance with point (j) of Article 9(2),
processing of personal data concerning
criminal convictions or related security
measures shall be permitted if it provides
for appropriate measures to protect the
data subject's fundamental rights and
freedoms and is for:***

***(a) the purposes of the prevention,
investigation or detection of financial
crime, or***

***(a) reasons of public interest such as
protecting against cross-border threats of
financial crime,***

***and in either case, must necessarily be
carried out without the consent of the data
subject being sought so as not to prejudice
those purposes.***

Justification

The amendment adds a provision in order to allow the processing of criminal convictions data for the purpose of the prevention of financial crime. The EU has demonstrated its commitment to fight against financial crime with recent initiatives such as the review of the Anti-Money laundering Directive, the anti-corruption package, the anti-fraud strategy, and the establishment of the European Parliament special committee on organised crime, corruption and money laundering. This provision is therefore a needed complementary measure that will allow an effective fight against financial crime. Finally, no consent should be asked in this scenario as this would not be forthcoming. Actors of financial crime would not be keen in providing consent and this would therefore defeat the purpose of processing the data.

Amendment 415
Proposal for a regulation
Article 86 – paragraph 2

Text proposed by the Commission

2. The delegation of power referred to in **Article 6(5), Article 8(3), Article 9(3), Article 12(5), Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 22(4), Article 23(3), Article 26(5), Article 28(5), Article 30(3), Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11), Article 37(2), Article 39(2), Article 43(3), Article 44(7), Article 79(6), Article 81(3), Article 82(3) and Article 83(3)** shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

Amendment 416

Proposal for a regulation

Article 89 – paragraph 2

Text proposed by the Commission

2. Article 1(2) of Directive 2002/58/EC shall be deleted.

Amendment 417

Proposal for a regulation

Article 90 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

2. The delegation of power referred to in Article 14(7), Article 26(5), Article 33(6), Article 35(11), Article 37(2), Article 39(2) **and** Article 43(3) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

Amendment

2. Article 1(2), **points (b) and (c) of Article 2, Article 4(3), (4) and (5) and Articles 6 and 9** of Directive 2002/58/EC shall be deleted.

Amendment

1a. Delegated acts and Implementing acts adopted by the Commission should be evaluated by the Parliament and the Council every second year.

PROCEDURE

Title	Protection of individuals with regard to the processing of personal data, and the free movement of such data (General Data Protection Regulation)		
References	COM(2012)0011 – C7-0025/2012 – 2012/0011(COD)		
Committee responsible Date announced in plenary	LIBE 16.2.2012		
Opinion by Date announced in plenary	ITRE 16.2.2012		
Rapporteur Date appointed	Seán Kelly 14.3.2012		
Discussed in committee	31.5.2012	28.11.2012	23.1.2013
Date adopted	20.2.2013		
Result of final vote	+: -: 0:	33 24 1	
Members present for the final vote	Amelia Andersdotter, Josefa Andrés Barea, Zigmantas Balčytis, Bendt Bendtsen, Jan Březina, Reinhard Bütikofer, Maria Da Graça Carvalho, Giles Chichester, Jürgen Creutzmann, Pilar del Castillo Vera, Dimitrios Droutsas, Christian Ehler, Vicky Ford, Gaston Franco, Adam Gierek, Norbert Glante, Fiona Hall, Jacky Hélin, Kent Johansson, Romana Jordan, Krišjānis Kariņš, Lena Kolarska-Bobińska, Béla Kovács, Philippe Lamberts, Marisa Matias, Angelika Niebler, Jaroslav Paška, Herbert Reul, Teresa Riera Madurell, Michèle Rivasi, Paul Rübig, Amalia Sartori, Salvador Sedó i Alabart, Francisco Sosa Wagner, Konrad Szymański, Britta Thomsen, Patrizia Toia, Evžen Tošenovský, Catherine Trautmann, Marita Ulvskog, Vladimir Urutchev, Adina-Ioana Vălean		
Substitute(s) present for the final vote	Lara Comi, Ioan Enciu, Satu Hassi, Roger Helmer, Jolanta Emilia Hibner, Seán Kelly, Holger Krahmer, Bernd Lange, Werner Langen, Zofija Mazej Kukovič, Vladko Todorov Panayotov, Pavel Poc, Vladimír Remek, Algirdas Saudargas, Silvia-Adriana Țicău		
Substitute(s) under Rule 187(2) present for the final vote	Axel Voss		

28.1.2013

OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION

for the Committee on Civil Liberties, Justice and Home Affairs

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

Rapporteur: Lara Comi

SHORT JUSTIFICATION

Data protection is a fundamental right and citizens' trust needs to be ensured to enable them to benefit better of the on-line environment. The approach needs to be updated for the new technologic tools and the data flows stemming from them, so that the current provisions of Directive 95/46/EC are not fully addressing the needs of the Digital Single Market.

The variety of the available business models, technologies and services – including those of great importance in the context of e-commerce and Internal Market – have resulted in a vast spectrum of data protection issues. Companies and governments are using these technologies often without the individuals being aware of the impact they may have.

On 25 January 2012, the European Commission presented proposals of a new regulation¹ and directive² on the protection of individuals with regard to the processing of personal data and on the free movement of such data. The proposed regulation aims to complement the provisions of the e-Privacy Directive (2002/58/EC) and ensure that legal certainty and consistency are paramount for effective work across the EU in this area.

¹ Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation), COM(2012) 11 final; hereinafter referred to also as “General Regulation”.

² Directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data, COM(2012) 10 final.

The proposed regulation aims to harmonise rights, ensuring the free flow of information, cut red tape and improve enforcement. More transparency will increase trust, and new provisions will make the EU more attractive as a business destination. The proposed regulation also aims to:

- modernise the EU legal system for the protection of personal data, in particular to meet the challenges resulting from globalisation and the use of new technologies;
- strengthen individuals' rights, and at the same time reduce administrative formalities to ensure a unhindered flow of personal data within the EU;
- improve the clarity and coherence of the EU rules for personal data protection and achieve a consistent and effective implementation and application of this fundamental right in all areas of the Union's activities.

The internal market dimension

The proposal has a high potential for enhancing the internal market and creating a level-playing field for all businesses active in the EU. Key elements include:

- the shift of the legislative instrument (from directive to regulation);
- the 'one-stop shop' principle regarding the competent supervisory authority in cross-border cases;
- the marketplace principle (which makes EU data protection standards also applicable to businesses based outside the EU, if they are active within the EU);
- the general principle of accountability (which replaces the obligation of data controllers or processors to make a general notification about their processing to their national regulator);
- the strengthening of the existing tools and the introduction of new ones for a consistent implementation and enforcement in all Member States.

Strengthening the rights of the consumer

As for strengthening the rights of consumers, it seems that the balance of competing interests such as consumer awareness, autonomy, protection and the internal market has been struck through the promotion of transparency.

Improvements have been made especially in relation to the notion of consent as one of the legitimating factors for processing personal data, to the data subject rights as powerful tools of consumer protection and to the conditions for lawfulness of data transfers outside the EU. Nonetheless, there remain many areas of the Proposal which require further refinement and clarification. This is particularly the case with the practicalities of implementation particularly in relation to some rights. This ambiguity must be resolved and in particular the following elements require attention:

- clarify in Article 17 to what extent, once informed by a data controller that a data subject has exercised the right of erasure, the data held by the third party data controller must also be deleted;
- the specific protection required for minors up to the age of 14 as they are still children;

- the proposed definition of “personal data”;
- the role that anonymisation and pseudonimisation can play to protect the data subject;
- the Proposal should be refined as regards precise division and determination of the obligations and responsibilities of the data controller and data processor;
- profiling operations and the differences in “profiling” in the different sectors of the economy or legal relations need to be considered thoroughly as well as taking the consequences of overly restrictive regulation in this area.

With this in mind the Rapporteur would like to focus especially on the:

- definitions;
- rights of the data subject;
- obligations of data controller and processor with reference to consumer rights;
- consistency.

The Rapporteur would also like to embrace a wider view of technological neutrality; as well as address the:

- purpose limitation principle;
- use of Delegated and Implementing Acts in association to the proposed package; and,
- practical implementation of the provisions.

AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a regulation

Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) A proper balance between protection of privacy and respect of the single market has to be ensured. Data protection rules should not undermine competitiveness, innovation and new technology.

Amendment 2
Proposal for a regulation
Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) Technological neutrality should also mean that similar acts, in similar conditions and with similar consequences should be legally equivalent, with no regard of their happening online or offline, unless the diverse dynamics of data processing in such environments does not make a substantial difference among them.

Justification

A recital to better assess the difference between online and offline was necessary. Without it, some economic actors could perceive this regulation as specifically meant to address online and, in particular, social networking issues.

Amendment 3

Proposal for a regulation
Recital 15

Text proposed by the Commission

Amendment

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

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

Justification

The scope of this exemption should be clarified, particularly in view of the development of

social networks which make it possible to share information with hundreds of people. In its judgments in Cases C-101/01 and C-73/07, the CJEU advocates accessibility 'by an indefinite number of people' as a criterion for application of this exemption. The EDPS shares this view.

Amendment 4
Proposal for a regulation
Recital 23

Text proposed by the Commission

(23) The principles of protection should apply to any information concerning an identified or identifiable person. To determine whether a person is identifiable, account should be taken of all the means likely reasonably to be used either by the controller or by any other person to identify the individual. The principles of data protection should not apply to data rendered anonymous in such a way that the data subject is no longer identifiable.

Amendment

(23) The principles of protection should apply to any information concerning an identified or identifiable person. To determine whether a person is identifiable, account should be taken of all the means likely reasonably to be used either by the controller or by any other person to identify the individual. The principles of data protection should not apply to data rendered anonymous in such a way that the data subject is no longer ***directly*** identifiable, ***including, where possible, a separation of processed data from identity-revealing data. In the latter case, also pseudonymised data are useful if the key to link the pseudonymous with the identity is safe according to the state of the art.***

Justification

The definition of "personal data" needs clarifications to make it useful in both consumer experience and business running. The introduction of pseudonymous and anonymous data is helpful in this domain.

Amendment 5
Proposal for a regulation
Recital 23 a (new)

Text proposed by the Commission

Amendment

(23a) A large amount of personal data might be processed for purposes of fraud detection and prevention. The pursuit of such claims, regulated by Member States'

or Union law, should be taken into account when the data minimization principle and the lawfulness of processing are assessed.

Justification

This Amendment wants to underline a principle that is not in contrast with the present Regulation, but at the same time is not clearly stated.

Amendment 6

Proposal for a regulation Recital 23 b (new)

Text proposed by the Commission

Amendment

(23b) Following the principle of data protection by default, online services and products must initially be set on maximum protection of personal information and data without demanding any action from the data subject.

Amendment 7

Proposal for a regulation Recital 24

Text proposed by the Commission

Amendment

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

(24) When using online services, individuals may be associated with online identifiers provided by their devices, applications, tools and protocols, such as Internet Protocol addresses or cookie identifiers. This may leave traces which, combined with unique identifiers and other information received by the servers, may be used to create profiles of the individuals and identify them. It follows that *a study should be conducted, on a case-by-case basis and in accordance with technological developments, into whether* identification numbers, location data, online identifiers or other specific factors

as such *must* necessarily be considered as personal data *but shall be considered as one, when processed with the intention of targeting particular content at an individual or of singling that individual out for any other purpose;*

Justification

Against a background of an increasing number of new on-line services and constant technological development, a higher level of protection of personal data is required. A case-by-case study would therefore seem indispensable.

Amendment 8 **Proposal for a regulation** **Recital 25**

Text proposed by the Commission

(25) Consent should be given *explicitly* by any *appropriate* method enabling a freely given specific and informed indication of the data subject's wishes, either by a statement or by a clear affirmative action by the data subject, ensuring that individuals are aware that they give their consent to the processing of personal data, including by ticking a box when visiting an Internet website or by any other statement or conduct which *clearly* indicates *in this* context the data subject's acceptance of the proposed processing of their personal data. Silence or inactivity should therefore not constitute consent. Consent should cover all processing activities carried out for the same purpose or purposes. If the data subject's consent is to be given following an electronic request, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided.

Amendment

(25) Consent should be given by any method *appropriate to the media used*, enabling a freely given specific and informed indication of the data subject's wishes, either by a statement or by a clear affirmative action by the data subject, ensuring that individuals are aware that they give their consent to the processing of personal data, including by ticking a box when visiting an Internet website or by any other statement or conduct which indicates, *clearly within the* context, the data subject's acceptance of the proposed processing of their personal data. Silence or inactivity should therefore not constitute consent. Consent should cover all processing activities carried out for the same purpose or purposes. If the data subject's consent is to be given following an electronic request, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided. *The information provided in order for children to express the consent should be given in a clear and age-appropriate language, in a way that would be easy to understand for the child*

above the age of 13.

Justification

In order to smooth some daily life situation, both online and offline, it was necessary to add some specific words for the cases where the consent can be assumed by the context. For instance: asking a doctor for a diagnosis implies the treatment of some personal data, without necessarily an explicit action as defined at the beginning of this recital. In the same instance, the doctor can talk to a specialist, if necessary to deliver the diagnosis, without necessarily asking for permission.

Amendment 9
Proposal for a regulation
Recital 27

Text proposed by the Commission

(27) The main establishment of a controller in the Union should be determined according to objective criteria and should imply the effective and real exercise of management activities determining the main decisions as to the purposes, conditions and means of processing through stable arrangements. This criterion should not depend whether the processing of personal data is actually carried out at that location; the presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute such main establishment and are therefore no determining criteria for a main establishment. ***The main establishment of the processor should be the place of its central administration in the Union.***

Amendment

(27) The main establishment of a controller ***or a processor*** in the Union should be determined according to objective criteria and should imply the effective and real exercise of management activities determining the main decisions as to the purposes, conditions and means of processing through stable arrangements. This criterion should not depend whether the processing of personal data is actually carried out at that location; the presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute such main establishment and are therefore no determining criteria for a main establishment.

Justification

This amendment completes the amendment to Art. 4(13)

Amendment 10
Proposal for a regulation
Recital 27 a (new)

Text proposed by the Commission

Amendment

(27a) The representative is liable, together with the controller, for any behaviour that is contrary to the present Regulation.

Justification

The liability of the representative is not sufficiently clearly stated, and this recital helps to underline it.

Amendment 11

Proposal for a regulation Recital 29

Text proposed by the Commission

Amendment

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

(29) Children deserve specific protection of their personal data, as they may be less aware of risks, consequences, safeguards and their rights in relation to the processing of personal data ***and they are vulnerable consumers***. To determine when an individual is a child, this Regulation should take over the definition laid down by the UN Convention on the Rights of the Child. ***In particular, child-friendly language has to be used to ensure the right of consent for children above the age of 13.***

Amendment 12

Proposal for a regulation Recital 30

Text proposed by the Commission

Amendment

(30) Any processing of personal data should be lawful, fair and transparent in relation to the individuals concerned. In particular, the specific purposes for which the data are processed should be explicit and legitimate and determined at the time of the collection of the data. The data

(30) Any processing of personal data should be lawful, fair and transparent in relation to the individuals concerned. In particular, the specific purposes for which the data are processed should be explicit and legitimate and determined at the time of the collection of the data. The data

should be adequate, relevant and limited to the minimum necessary for the purposes for which the data are processed; this requires *in particular* ensuring that the data collected are not excessive and that the period for which the data are stored is *limited to a strict minimum*. Personal data should only be processed if the purpose of the processing could not be fulfilled by other means. Every reasonable step should be taken to ensure that personal data which are inaccurate are rectified or deleted. In order to ensure that the data are not kept longer than necessary, time limits should be established by the controller for erasure or for a periodic review.

should be adequate, relevant and limited to the minimum necessary for the purposes for which the data are processed; this requires ensuring that the data collected are not excessive and that the period for which the data are stored is *no longer than is necessary for the purposes for which the personal data is processed*. Personal data should only be processed if the purpose of the processing could not be fulfilled by other means. Every reasonable step should be taken to ensure that personal data which are inaccurate are rectified or deleted. In order to ensure that the data are not kept longer than necessary, time limits should be established by the controller for erasure or for a periodic review. *When the assessment is made of the minimum data necessary for the purposes for which the data are processed, consideration should be given of the obligations of other legislation which require comprehensive data to be processed when used for prevention and detection of fraud, confirmation of identity and/or determination of creditworthiness.*

Justification

This amendment is designed to clarify obligation for controllers to monitor the minimum data necessary and storage periods. This amendment in addition seeks to ensure consistency with the language of this recital with that included in Article 5(e). The amendment also seeks to harmonise the Regulation with existing legislation, such as the Consumer Credit Directive and Credit Agreements for Residential Property, and existing good practice, which require a comprehensive assessment of a consumer's financial situation through creditworthiness assessment.

Amendment 13

Proposal for a regulation

Recital 33

Text proposed by the Commission

(33) In order to ensure free consent, it should be clarified that consent does not provide a valid legal ground where the

Amendment

(33) In order to ensure free consent, it should be clarified that consent does not provide a valid legal ground where the

individual has no genuine and free choice and is subsequently not able to refuse or withdraw consent without detriment.

individual has no genuine and free choice and is subsequently not able to refuse or withdraw consent without detriment.

Similarly, consent should not provide a legal basis for data processing when the data subject has no different access to equivalent services.

Amendment 14

Proposal for a regulation

Recital 34

Text proposed by the Commission

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

Amendment

(34) Consent ***shall be freely given and the data subject shall not be forced to consent for*** processing of ***its*** data, ***especially*** where there is a ***significant*** imbalance between data subject and controller. This ***may be*** the case where the data subject is in a situation of dependence from the controller, among others, where personal data are processed by the employer of employees' personal data in the employment context. ***However, when the purpose of data processing is in the interest of the data subject and the data subject is subsequently able to withdraw consent without detriment, the consent should provide a valid legal ground for processing.***

Where the controller is a public authority, there would be an imbalance only in the specific data processing operations where the public authority can impose ***a new and unjustified*** obligation by virtue of its relevant public powers and the consent cannot be deemed as freely given, taking into account the interest of the data subject.

Justification

The provision should assure that data subject has a genuine and free choice and is subsequently able to withdraw consent or object to further processing in any situation. It shall

not deprive natural persons of the possibility of agreeing to the processing of data, especially when it is in the purpose which is to their benefit (e.g. offering an insurance by the employer). The regulation should not presume that it is impossible to freely consent to data processing in employment relation.

Amendment 15

Proposal for a regulation Recital 34 a (new)

Text proposed by the Commission

Amendment

(34a) When personal data, processed on the basis of a data subject's consent are necessary for the provision of a service, the withdrawal of the consent can constitute the ground for the termination of a contract by the service provider. This shall apply in particular to the services which are provided free of charge to the consumers.

Justification

Adding such a recital would have an awareness-raising meaning. Although the possibility to terminate a contract stems from the terms of contract in cases where data processing is necessary for the provision of a service, it is necessary to make users conscious that in some cases data are the currency by which they pay for the service. Auction platforms, for instance, use stored data to examine credibility of those selling with the use of a platform and a mutual evaluation exercised by the users is used by them to attract more potential clients but also to prevent fraud. Withdrawing consent to process such data would run against the whole point of such platforms. Consumers should also be aware that many business models provide access to services "free" of charge in return for the access to some of their personal data. Withdrawing the right to process these data can therefore result in no access to the service.

Amendment 16

Proposal for a regulation Recital 38

Text proposed by the Commission

Amendment

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

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

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

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

Justification

The rapporteur is proposing that the wording of Directive 95/46/EC should be retained. It is worth recalling that the regulation concerns not only the digital world, but will also apply to off-line activities. In order to finance their activities, some sectors, such as newspaper publishing need to use external sources in order to contact possible new subscribers.

Amendment 17

Proposal for a regulation

Recital 40 a (new)

Text proposed by the Commission

Amendment

(40a) In general, harmonisation of the Union law as regards to data protection must not take away the possibility of Member States to practice sector specific legislation, inter alia in the field of register-based research.

Justification

The current legal framework on data protection in the EU, directive 95/46/EC, gives Member States various degrees of freedom to adapt the EU legislation to national circumstances.

Amendment 18

Proposal for a regulation Recital 40 b (new)

Text proposed by the Commission

Amendment

(40b) Processing of personal data collected to another purpose can be made available for public scientific research when a scientific relevance of the processing of the collected data can be documented. Privacy by design must be taken into account when making data available for public scientific research.

Amendment 19

Proposal for a regulation Recital 42

Text proposed by the Commission

Amendment

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

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

Amendment 20

Proposal for a regulation
Recital 48

Text proposed by the Commission

(48) The principles of fair and transparent processing require that the data subject should be informed in particular of the existence of the processing operation and its purposes, how long the data will be stored, on the existence of the right of access, rectification or erasure and on the right to lodge a complaint. Where the data are collected from the data subject, the data subject should also be informed whether they are obliged to provide the data and of the consequences, in cases they do not provide such data.

Amendment

(48) The principles of fair and transparent processing require that the data subject should be informed in particular of the existence of the processing operation and its purposes, ***the criteria and/or legal obligations which may be used as the basis for determining*** how long the data will be stored, on the existence of the right of access, rectification or erasure and on the right to lodge a complaint. Where the data are collected from the data subject, the data subject should also be informed whether they are obliged to provide the data and of the consequences, in cases they do not provide such data.

Justification

It is not possible to know in advance for how long personal data will be stored, particularly as this may be linked to specific legal obligations.

Amendment 21
Proposal for a regulation
Recital 49

Text proposed by the Commission

(49) The information in relation to the processing of personal data relating to the data subject should be given to them at the time of collection, or, where the data are not collected from the data subject, within a reasonable period, depending on the circumstances of the case. Where data can be legitimately disclosed to another recipient, the data subject should be informed when the data are first disclosed to the recipient.

Amendment

(49) The information in relation to the processing of personal data relating to the data subject should be given to them at the time of collection, or, where the data are not collected from the data subject, within a reasonable period, depending on the circumstances of the case. Where data can be legitimately disclosed to another recipient, the data subject should be informed when the data are first disclosed to the recipient. ***At the same time, no processing other than storing should be allowed before the data subject is fully aware of the information referred to here.***

Justification

This amendment matches the amendment to Art. 14(4b).

Amendment 22

Proposal for a regulation

Recital 51

Text proposed by the Commission

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

Amendment

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

Justification

It is not always possible to determine for precisely how long personal data will be stored, particularly in the case of storage for different purposes.

Amendment 23

Proposal for a regulation

Recital 53

Text proposed by the Commission

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

Amendment

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

Justification

This amendment matches the amendment to the title of Art. 17.

Amendment 24
Proposal for a regulation
Recital 54

Text proposed by the Commission

(54) To strengthen the ‘right to *be forgotten*’ in the online environment, *the* right to *erasure* should also be extended in such a way that a controller who has *made* the personal data public should be obliged to inform third parties which are processing such data that a data subject requests them to erase any links to, or copies or replications of that personal data. To ensure this information, the controller should take all reasonable steps, including technical measures, in relation to data for the publication of which the controller is responsible. In relation to a third party publication of personal data, the controller should be considered responsible for the publication, where the controller has authorised the publication by the third party.

Amendment

(54) To strengthen the right to *erasure* in the online environment, *such* right should also be extended in such a way that a controller who has *transferred* the personal data *or made them* public *without being instructed to do so by the data subject* should be obliged to inform third parties which are processing such data that a data subject requests them to erase any links to, or copies or replications of that personal data. To ensure this information, the controller should take all reasonable steps, including technical measures, in relation to data for the publication of which the controller is responsible. In relation to a third party publication of personal data, the controller should be considered responsible for the publication, where the controller has authorised the publication by the third party.

Justification

This amendment accompanies the amendment to Article 17(2).

Amendment 25
Proposal for a regulation
Recital 55 a (new)

Text proposed by the Commission

Amendment

(55a) Some personal data, once processed by the data controller or processor, produce outcomes that are used only internally by the data controller and whose format is meaningless even for the data subject. In this case, the right to data portability should not apply, while the other rights, in particular the right to object and the right of access and the right to rectification, are still valid.

Justification

This amendment is meant to clarify the "meaningfulness" introduced in the previous amendment.

Amendment 26

Proposal for a regulation

Recital 60

Text proposed by the Commission

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

Amendment

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

Justification

Strengthens the protection of personal data. A general principle that responsibility rests with the controller needs to be explicitly laid down.

Amendment 27

Proposal for a regulation

Recital 61 a (new)

Text proposed by the Commission

Amendment

(61a) This Regulation encourages enterprises to develop internal programmes that will identify the processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, and to put in place appropriate privacy safeguards and develop innovative privacy-by-design solutions and privacy enhancing techniques. Enterprises that can publicly demonstrate that they have embedded privacy accountability do not also require the application of the additional oversight

mechanisms of prior consultation and prior authorisation.

Justification

This amendment aligns the text with an approach in which accountability is an alternative process that properly incentivises good organizational practices. Such an alignment also shifts the burden of the costs of compliance and assurance to the marketplace rather than the public purse.

Amendment 28
Proposal for a regulation
Recital 61 b (new)

Text proposed by the Commission

Amendment

(61b) Data protection by design is a very useful tool as it allows the data subject to be fully in control of his own data protection, of the information he shares and with the subject with whom he shares. When considering this principle as well as data protection by default, the context should heavily influence the assessment of lawfulness of processing.

Justification

This Amendment clarifies the Amendment to Art. 23(2). It refers to cases where the data subject has the choice to opt in a data processing system, and in that case the whole range of consequences shall be taken into consideration. For instance, when signing in a social network, the data subjects should accept that some information be public for the other users to connect with him, while the same level of publicity of data should not be accepted by a data subject that asks for a loan.

Amendment 29
Proposal for a regulation
Recital 61 c (new)

Text proposed by the Commission

Amendment

(61c) The principle of data protection by design require data protection to be embedded within the entire life cycle of the technology, from the very early design

stage, right through to their ultimate deployment, use and ultimate disposal. The principle of data protection by default requires privacy settings on services and products should by default comply with the general principles of data protection, such as data minimisation and purpose limitation.

Amendment 30

Proposal for a regulation Recital 62

Text proposed by the Commission

(62) The protection of the rights and freedoms of data subjects as well as the responsibility and liability of controllers and processor, also in relation to the monitoring by and measures of supervisory authorities, requires a clear attribution of the responsibilities under this Regulation, including where a controller determines the purposes, conditions and means of the processing jointly with other controllers or where a processing operation is carried out on behalf of a controller.

Amendment

(62) The protection of the rights and freedoms of data subjects as well as the responsibility and liability of controllers and processor, also in relation to the monitoring by and measures of supervisory authorities, requires a clear attribution of the responsibilities under this Regulation, including where a controller determines the purposes, conditions and means of the processing jointly with other controllers or where a processing operation is carried out on behalf of a controller. ***Where joint and several liability applies, a processor which has made amends for damage done to the data subject concerned may bring an action against the controller for reimbursement if it has acted in conformity with the legal act binding it to the controller.***

Justification

The processor is defined as the organisation acting on behalf of the controller. Therefore, if the processor complies exactly with the instructions it has received, it is the controller and not the processor which should be held responsible for any breach of personal data, without the data subject's right to compensation being affected.

Amendment 31

Proposal for a regulation
Recital 65

Text proposed by the Commission

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

Amendment

(65) In order to demonstrate compliance with this Regulation, the controller or processor should **maintain relevant information on the main categories of processing undertaken**. **The Commission should establish a uniform format for the documentation of this information across the EU**. Each controller and processor should be obliged to co-operate with the supervisory authority and make this documentation, on request, available to it, so that it might **assist the supervisory authority in evaluating the compliance of those main categories of processing with this Regulation**.

Justification

Effective data protection requires organisations to have a sufficiently documented understanding of their data processing activities. However, the maintenance of documentation for all processing operations is disproportionately burdensome. Instead of satisfying bureaucratic needs, the aim of the documentation should be to help controllers and processors meet their obligations.

Amendment 32
Proposal for a regulation
Recital 67

Text proposed by the Commission

(67) A personal data breach may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud, to the individual concerned. Therefore, as soon as the controller becomes aware that **such** a breach has occurred, the controller should notify the breach to the supervisory authority without undue delay **and, where feasible, within 24 hours**. **Where this cannot be achieved within 24 hours, an explanation of the reasons for the delay**

Amendment

(67) A personal data breach may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud, to the individual concerned. Therefore, **addressing such economic loss and social harm should be the first and utmost priority**. **After that**, as soon as the controller becomes aware that a breach, **which would have a significantly adverse impact on the protection of the personal data or the privacy of the data subject**

should accompany the notification. The individuals whose personal data could be adversely affected by the breach should be notified without undue delay in order to allow them to take the necessary precautions. A breach should be considered as adversely affecting the personal data or privacy of a data subject where it could result in, for example, identity theft or fraud, physical harm, significant humiliation ***or*** damage to reputation. The notification should describe the nature of the personal data breach as well as recommendations as well as recommendations for the individual concerned to mitigate potential adverse effects. Notifications to data subjects should be made as soon as reasonably feasible, and in close cooperation with the supervisory authority and respecting guidance provided by it or other relevant authorities (e.g. law enforcement authorities). For example, the chance for data subjects to mitigate an immediate risk of harm would call for a prompt notification of data subjects whereas the need to implement appropriate measures against continuing or similar data breaches may justify a longer delay.

concerned, has occurred, the controller should notify the breach to the supervisory authority without undue delay. The individuals whose personal data could be adversely affected by the breach should be notified without undue delay in order to allow them to take the necessary precautions, ***avoiding information overload for the data subject.*** A breach should be considered as ***significantly*** adversely affecting the personal data or privacy of a data subject where it could result in, for example, identity theft or fraud, physical harm, significant humiliation, damage to reputation. The notification should describe the nature of the personal data breach as well as recommendations for the individual concerned to mitigate potential adverse effects. Notifications to data subjects should be made as soon as reasonably feasible, and in close cooperation with the supervisory authority and respecting guidance provided by it or other relevant authorities (e.g. law enforcement authorities). For example, the chance for data subjects to mitigate an immediate risk of harm would call for a prompt notification of data subjects whereas the need to implement appropriate measures against continuing or similar data breaches may justify a longer delay.

Justification

This Amendment is meant to clarify the actions that are desirable in case of data breach, and the Amendments to Article 31 and to Article 32.

Amendment 33 **Proposal for a regulation** **Recital 69**

Text proposed by the Commission

(69) In ***setting detailed rules concerning the format and procedures applicable to*** the notification of personal data breaches,

Amendment

(69) In ***assessing the level of detail of*** the notification of personal data breaches, due consideration should be given to the

due consideration should be given to the circumstances of the breach, including whether or not personal data had been protected by appropriate technical protection measures, effectively limiting the likelihood of identity fraud or other forms of misuse. Moreover, such rules and procedures should take into account the legitimate interests of law enforcement authorities in cases where early disclosure could unnecessarily hamper the investigation of the circumstances of a breach.

circumstances of the breach, including whether or not personal data had been protected by appropriate technical protection measures, effectively limiting the likelihood of identity fraud or other forms of misuse. Moreover, such rules and procedures should take into account the legitimate interests of law enforcement authorities in cases where early disclosure could unnecessarily hamper the investigation of the circumstances of a breach.

Justification

This Amendment follows the deletion of Article 32(5).

Amendment 34

Proposal for a regulation Recital 70 a (new)

Text proposed by the Commission

Amendment

(70a) Directive 2002/58/EC (as amended by Directive 2009/136/EC) sets out personal data breach notification obligations for the processing of personal data in connection with the provision of publicly available electronic communications services in public communications networks in the Union. Where providers of publicly available electronic communications services also provide other services, they continue to be subject to the breach notification obligations of the ePrivacy Directive, not this Regulation. Such providers should be subject to a single personal data breach notification regime for both personal data processed in connection with the provision of a publicly available electronic communications service and for any other personal data for which they are a controller.

Justification

Electronic communications service providers should be subject to a single notification regime for any breaches relating to the data they process, not multiple regimes depending on the service offered. This ensures a level playing field among industry players.

Amendment 35

Proposal for a regulation Recital 97

Text proposed by the Commission

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

Amendment

(97) Where the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union takes place in more than one Member State, one single supervisory authority should be competent for monitoring the ***processing*** activities of the controller or processor throughout the Union and taking the related decisions, in order to increase the consistent application, provide legal certainty and reduce administrative burden for such controllers and processors. ***By way of derogation from Article 51(2), when the processing of personal data is not mainly carried out by the main establishment, but by one of the other establishments of the controller or processor situated in the European Union, the competent supervisory authority for those processing operations shall be that of the Member State where that other establishment is situated. In keeping with the provisions of Chapter VII, this derogation shall be without prejudice to the right of the supervisory authority of the Member State where the main establishment is situated to require an additional declaration.***

Justification

While processing operations covering more than one country can easily be monitored by the main establishment, and should be the responsibility of a single authority, on the basis of a centralised declaration, national processing activities which are managed on a decentralised

basis by branch establishments, and which are difficult for the main establishment to supervise, should be the responsibility of each national supervisory authority.

Amendment 36
Proposal for a regulation
Recital 105

Text proposed by the Commission

(105) In order to ensure the consistent application of this Regulation throughout the Union, a consistency mechanism for co-operation between the supervisory authorities themselves and the Commission should be established. This mechanism should in particular apply where a supervisory authority intends to take a measure as regards processing operations that are related to the offering of goods or services to data subjects in several Member States, , or to the monitoring such data subjects, or that might substantially affect the free flow of personal data. It should also apply where any supervisory authority or the Commission requests that the matter should be dealt with in the consistency mechanism. This mechanism should be without prejudice to any measures that the Commission may take in the exercise of its powers under the Treaties.

Amendment

(105) In order to ensure the consistent application of this Regulation throughout the Union, a consistency mechanism for co-operation between the supervisory authorities themselves and the Commission should be established. This mechanism should in particular apply where a supervisory authority intends to take a measure as regards processing operations that are related to the offering of goods or services to data subjects in several Member States, or to the monitoring *of* such data subjects, or that might substantially affect the free flow of personal data. It should also apply where any supervisory authority or the Commission requests that the matter should be dealt with in the consistency mechanism. ***Furthermore, the data subjects should have the right to obtain consistency, if they deem a measure by a Data Protection Authority of a Member State has not fulfilled this criterion.*** This mechanism should be without prejudice to any measures that the Commission may take in the exercise of its powers under the Treaties.

Justification

This Amendment introduces the new Article 63a.

Amendment 37
Proposal for a regulation
Recital 111

Text proposed by the Commission

(111) Every data subject should have the right to lodge a complaint with a supervisory authority in any Member State and have the right to a judicial remedy if they consider that their rights under this Regulation are infringed or where the supervisory authority does not react on a complaint or does not act where such action is necessary to protect the rights of the data subject.

Amendment

(111) Every data subject should have the right to lodge a complaint with a supervisory authority in any Member State and have the right to a judicial remedy if they consider that their rights under this Regulation are infringed or where the supervisory authority does not react on a complaint or does not act where such action is necessary to protect the rights of the data subject. ***If the data subject deems consistency is not fulfilled, a complaint to the European Data Protection Board can be filed.***

Amendment 38
Proposal for a regulation
Recital 113

Text proposed by the Commission

(113) Each natural or legal person should have the right to a judicial remedy against decisions of a supervisory authority concerning them. Proceedings against a supervisory authority should be brought before the courts of the Member State, where the supervisory authority is established.

Amendment

(113) Each natural or legal person should have the right to a judicial remedy against decisions of a supervisory authority concerning them. Proceedings against a supervisory authority should be brought before the courts of the Member State, where the supervisory authority is established, ***or before the European Data Protection Board on grounds of inconsistency with the application of the present Regulation in other Member States***

Amendment 39

Proposal for a regulation
Recital 115

Text proposed by the Commission

(115) In situations where the competent supervisory authority established in another Member State does not act or has

Amendment

deleted

taken insufficient measures in relation to a complaint, the data subject may request the supervisory authority in the Member State of his or her habitual residence to bring proceedings against that supervisory authority to the competent court in the other Member State. The requested supervisory authority may decide, subject to judicial review, whether it is appropriate to follow the request or not.

Justification

This possibility would bring no added value for the public and might jeopardise the cooperation of the supervisory authorities under the consistency mechanism.

Amendment 40

Proposal for a regulation
Recital 118

Text proposed by the Commission

(118) Any damage which a person may suffer as a result of unlawful processing should be compensated by the controller or processor, who may be exempted from liability if they prove that they are not responsible for the damage, in particular where he establishes fault on the part of the data subject or in case of force majeure.

Amendment

(118) Any damage which a person may suffer as a result of unlawful processing should be compensated by the controller or processor, who may be exempted from liability if they prove that they are not responsible for the damage, in particular where he establishes fault on the part of the data subject or in case of force majeure. ***Where joint and several liability applies, a processor which has made amends for damage done to the data subject concerned may bring an action against the controller for reimbursement if it has acted in conformity with the legal act binding it to the controller.***

Justification

The proposal for a regulation introduces the overall principle of the responsibility of the controller (Articles 5f and 22), which must be retained and clarified. The processor is defined as the organisation acting on behalf of the controller. If the processor does not follow the instructions it has received, Article 26(4) states that it shall be considered to be a controller.

Amendment 41
Proposal for a regulation
Recital 120

Text proposed by the Commission

(120) In order to strengthen and harmonise administrative sanctions against infringements of this Regulation, each supervisory authority should have the power to sanction administrative offences. This Regulation should indicate these offences and the upper limit for the related administrative fines, which should be fixed in each individual case proportionate to the specific situation, with due regard in particular to the nature, gravity and duration of the breach. The consistency mechanism may also be used to cover divergences in the application of administrative sanctions.

Amendment

(120) In order to strengthen and harmonise administrative sanctions against infringements of this Regulation, each supervisory authority should have the power to sanction administrative offences. This Regulation should indicate these offences and the upper limit for the related administrative fines, which should be fixed in each individual case proportionate to the specific situation, with due regard in particular to the nature, gravity and duration of the breach. ***In order to strengthen the internal market, the administrative sanctions should be consistent across Member States.*** The consistency mechanism may also be used to cover divergences in the application of administrative sanctions.

Justification

This Amendment anticipates the consistency requirement of the administrative sanctions in Article 78 and Article 79.

Amendment 42
Proposal for a regulation
Recital 122

Text proposed by the Commission

(122) The processing of personal data concerning health, as a special category of data which deserves higher protection, may often be justified by a number of legitimate reasons for the benefit of individuals and society as a whole, in particular in the context of ensuring continuity of cross-border healthcare. Therefore this Regulation should provide for harmonised conditions for the processing of personal data concerning health, subject to specific

Amendment

(122) The processing of personal data concerning health, as a special category of data which deserves higher protection, may often be justified by a number of legitimate reasons for the benefit of individuals and society as a whole, in particular in the context of ensuring continuity of cross-border healthcare. Therefore this Regulation should provide for harmonised conditions for the processing of personal data concerning health, subject to specific

and suitable safeguards so as to protect the fundamental rights and the personal data of individuals. This includes the right for individuals to have access to their personal data concerning their health, for example the data in their medical records containing such information as diagnosis, examination results, assessments by treating physicians and any treatment or interventions provided.

and suitable safeguards so as to protect the fundamental rights and the personal data of individuals. This includes the right for individuals to have access, ***directly or through previously delegated persons***, to their personal data concerning their health, for example the data in their medical records containing such information as diagnosis, examination results, assessments by treating physicians and any treatment or interventions provided.

Justification

This Amendment is needed to allow access to information by a patient's relative, over all where the patient is not able to take decisions or to use such information, due to the gravity of the illness.

Amendment 43
Proposal for a regulation
Recital 122 a (new)

Text proposed by the Commission

Amendment

(122a) A professional who process personal data concerning health should receive, if possible, anonymised or pseudonymised data, leaving the knowledge of the identity only to the General Practitioner or to the Specialist who has requested such data processing.

Justification

This Amendment means to suggest a further tool for the protection of citizens whose health data are controlled or processed by a professional who does not need to know the identity of the data subject.

Amendment 44
Proposal for a regulation
Recital 129

Text proposed by the Commission

Amendment

(129) In order to fulfil the objectives of this

(129) In order to fulfil the objectives of this

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

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

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

and appropriate transmission of relevant documents to the European Parliament and Council.

Amendment 45

Proposal for a regulation Recital 130

Text proposed by the Commission

(130) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission for: specifying standard forms in relation to the processing of personal data of a child; ***standard procedures and forms for exercising the rights of data subjects***; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access; ***the right to data portability***; standard forms in relation to the responsibility of the controller ***to data protection by design and by default and to the documentation***; specific requirements for the security of processing; the standard format and the procedures for the notification of a personal data breach to the supervisory authority and the communication of a personal data breach to the data subject; standards and procedures for a data protection impact assessment; forms and procedures for prior authorisation and prior consultation; technical standards and mechanisms for certification; the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an international organisation; disclosures not authorized by Union law; mutual assistance; joint

Amendment

(130) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission for: specifying standard forms in relation to the processing of personal data of a child; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access; standard forms in relation to the responsibility of the controller ***in respect of*** the documentation; specific requirements for the security of processing; the standard format and the procedures for the notification of a personal data breach to the supervisory authority and the communication of a personal data breach to the data subject; standards and procedures for a data protection impact assessment; forms and procedures for prior authorisation and prior consultation; technical standards and mechanisms for certification; the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an international organisation; disclosures not authorized by Union law; mutual assistance; joint operations; decisions under the consistency mechanism. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European

operations; decisions under the consistency mechanism. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers. In this context, the Commission should consider specific measures for micro, small and medium-sized enterprises.

Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers. In this context, the Commission should consider specific measures for micro, small and medium-sized enterprises.

Amendment 46

Proposal for a regulation

Recital 131

Text proposed by the Commission

(131) The examination procedure should be used for the adoption of specifying standard forms in relation to the consent of a child; standard procedures and forms for exercising the rights of data subjects; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access; ***the right to data portability***; standard forms in relation to the responsibility of the controller ***to data protection by design and by default and to the documentation***; specific requirements for the security of processing; the standard format and the procedures for the notification of a personal data breach to the supervisory authority and the communication of a personal data breach to the data subject; standards and procedures for a data protection impact assessment; forms and procedures for prior authorisation and prior consultation; technical standards and mechanisms for certification; ***the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an international***

Amendment

(131) The examination procedure should be used for the adoption of specifying standard forms in relation to the consent of a child; standard procedures and forms for exercising the rights of data subjects; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access; standard forms in relation to the responsibility of the controller ***in respect of the documentation***; specific requirements for the security of processing; the standard format and the procedures for the notification of a personal data breach to the supervisory authority and the communication of a personal data breach to the data subject; standards and procedures for a data protection impact assessment; forms and procedures for prior authorisation and prior consultation; technical standards and mechanisms for certification; disclosures not authorized by Union law; mutual assistance; joint operations; decisions under the consistency mechanism, given that those acts are of general scope.

organisation; disclosures not authorized by Union law; mutual assistance; joint operations; decisions under the consistency mechanism, given that those acts are of general scope.

Amendment 47

Proposal for a regulation Recital 139

Text proposed by the Commission

(139) In view of the fact that, as underlined by the Court of Justice of the European Union, the right to the protection of personal data is not an absolute right, but must be considered in relation to its function in society and be balanced with other **fundamental** rights, in accordance with the principle of proportionality, this Regulation respects all fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union as enshrined in the Treaties, notably the right to respect for private and family life, home and communications, the right to the protection of personal data, the freedom of thought, conscience and religion, the freedom of expression and information, the freedom to conduct a business, the right to an effective remedy and to a fair trial as well as cultural, religious and linguistic diversity.

Amendment

(139) In view of the fact that, as underlined by the Court of Justice of the European Union, the right to the protection of personal data is not an absolute right, but must be considered in relation to its function in society and be balanced with other rights **enshrined in the Charter of Fundamental Rights of the European Union**, in accordance with the principle of proportionality, this Regulation respects all fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union as enshrined in the Treaties, notably the right to respect for private and family life, home and communications, the right to the protection of personal data, the freedom of thought, conscience and religion, the freedom of expression and information, the freedom to conduct a business, the right to an effective remedy and to a fair trial as well as cultural, religious and linguistic diversity.

Amendment 48

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

Text proposed by the Commission

(b) by the Union institutions, bodies,

Amendment

deleted

offices and agencies;

Justification

To ensure citizens' trust, all sectors must protect data equally well. If data breaches in the public sector create mistrust among citizens this will have a negative effect on the private sector's ICT activities and vice versa. This also holds true concerning the Union institutions.

Amendment 49

Proposal for a regulation

Article 2 – paragraph 2 – point d

Text proposed by the Commission

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

Amendment

(d) by a natural person without any gainful interest in the course of its own exclusively personal or household activity ***and on condition that no personal data are made accessible to an indefinite number of people;***

Justification

The scope of this exemption should be clarified, particularly in view of the development of social networks which make it possible to share information with hundreds of people. In its judgments in Cases C-101/01 and C-73/07, the CJEU advocates accessibility 'by an indefinite number of people' as a criterion for application of this exemption. The EDPS shares that view.

Amendment 50

Proposal for a regulation

Article 2 – paragraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(da) which have been rendered anonymous within the meaning of Article 4(2a);

Justification

Clarification in the body of the text of recital 23, which refers to cases where data has been rendered anonymous and to which this Directive need not apply.

Amendment 51

Proposal for a regulation

Article 2 – paragraph 2 – point e a (new)

Text proposed by the Commission

Amendment

(ea) in areas covered by Articles 153, 154 and 155 of the Treaty of the Functioning of the European Union (TFEU) regarding regulation of recruitment and conclusion and compliance of collective agreements.

Amendment 52

Proposal for a regulation

Article 2 – paragraph 2 – point e b (new)

Text proposed by the Commission

Amendment

(eb) of a natural person which are made public in the course of exercising professional duties such as name, contact details and function;

Amendment 53

Proposal for a regulation

Article 2 – paragraph 3

Text proposed by the Commission

Amendment

3. This Regulation shall be without prejudice to the application of Directive 2000/31/EC, in particular of the liability rules of intermediary service providers in Articles 12 to 15 of that Directive.

3. This Regulation shall be without prejudice to the application of Directive 2000/31/EC, in particular of the liability rules of intermediary service providers in Articles 12 to 15 of that Directive, ***as well as to the specific provisions of Union law or law of Member States related to processing of data, especially with regard to legally protected interests, when they provide for a stricter protection than the provisions of this regulation;***

Amendment 54

Proposal for a regulation
Article 3 – paragraph 1

Text proposed by the Commission

1. This Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union.

Amendment

1. This Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union, ***whether the processing takes place in the Union or not.***

Amendment 55
Proposal for a regulation
Article 3 – paragraph 2 – point a

Text proposed by the Commission

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

Amendment

(a) the offering of goods ***and*** services to such data subjects in the Union, ***including services provided without financial costs to the individual, or;***

Justification

This addition helps to clarify that the objective pursued is not relevant to the application of this Regulation, and that no-profit or free services shall have the same obligations of the other actors, if similar conditions apply.

Amendment 56

Proposal for a regulation
Article 3 – paragraph 2 – point b

Text proposed by the Commission

(b) ***the monitoring of their behaviour.***

Amendment

(b) ***monitoring the behaviour of such data subjects with a view to offering goods or services to them.***

Amendment 57

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

Text proposed by the Commission

Amendment

3a. This Regulation applies to the processing of personal data of data subjects not residing in the Union by a controller or processor established in the Union, through their economic activities in a third country(ies).

Justification

EU companies or employers should not be allowed illegally to access employees' personal data to then monitor their behaviour, blacklist them due to trade union affiliation, etc., whether the employee is based in the EU or not.

Amendment 58

Proposal for a regulation

Article 4 – point 1

Text proposed by the Commission

Amendment

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

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

Justification

Adherence to the principle of technological neutrality.

Amendment 59

Proposal for a regulation

Article 4 – point 2 a (new)

Text proposed by the Commission

Amendment

(2a) 'anonymous data' means any personal data that has been collected, altered or otherwise processed in such a way that it can no longer be attributed to a data subject; anonymous data shall not be considered personal data.

Justification

Businesses should be incentivized to anonymise data, which will ultimately strengthen consumers' privacy protection. The changes aim at clarifying the meaning of anonymous data and, in line with recital 23, explicitly excluding such data from the scope of the Regulation. The definition has been taken from Article 3 point 6 of the German Federal Data Protection Act.

Amendment 60

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

Text proposed by the Commission

Amendment

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

Amendment 61

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

Text proposed by the Commission

Amendment

(3b) 'pseudonymous data' means any personal data that has been collected, altered or otherwise processed so that it of itself cannot be attributed to a data subject

without the use of additional data which is subject to separate and distinct technical and organisational controls to ensure such non attribution, or that such attribution would require a disproportionate amount of time, expense and effort

Justification

This is part of a package of amendments enabling the use of pseudonymous and anonymous data and will encourage good business practice safeguarding the interests of data subjects. Ensuring that personal data cannot be attributed to a data subject (since it cannot be related back to a data subject without use of additional data) helps to further promote business use of data while providing a high level of consumer protection.

Amendment 62

Proposal for a regulation Article 4 – point 5

Text proposed by the Commission

(5) ‘controller’ means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes, **conditions and means** of the processing of personal data; where the purposes, **conditions and means** of processing are determined by Union law or Member State law, the controller or the specific criteria for his nomination may be designated by Union law or by Member State law;

Amendment

(5) ‘controller’ means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes of the processing of personal data; where the purposes of processing are determined by Union law or Member State law, the controller or the specific criteria for his nomination may be designated by Union law or by Member State law;

Justification

With new technologies and services available such as cloud computing traditional division of entities involved in the processing of personal data may prove difficult, with the processor having in such cases significant influence over the way in which data are being processed. For this reason it seems reasonable to determine the controller as the entity, which decides over the purpose of processing personal data as determination of finality is the most important decision with the other factors serving as means to achieve it.

Amendment 63

Proposal for a regulation
Article 4 – point 8

Text proposed by the Commission

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

Amendment

(8) ‘the data subject's consent’ means any freely given indication **that must be specific, informed and as explicit as possible according to the context**, of his or her wishes by which the data subject, either by a statement or by a clear affirmative action, **explicitly whenever the data referred to in Article 9(1) are to be processed**, signifies agreement to personal data relating to them being processed;

Amendment 64

Proposal for a regulation
Article 4 – point 9

Text proposed by the Commission

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

Amendment

(9) ‘personal data breach’ means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed; **strongly encrypted data, where there is evidence that the encryption key has not been compromised fall outside this legislation**

Justification

Loss of data that has been encrypted with strong encryption and where the encryption key is not lost does not pose any risk of harm to the individual. The data can simply not be read. When data cannot be read it does not seem reasonable to treat them as stipulated in Articles 31 and 32. The notification does not give any privacy improvements to citizens in this situation.

Amendment 65

Proposal for a regulation
Article 4 – point 13

Text proposed by the Commission

(13) ‘main establishment’ means *as regards the controller, the place of its establishment in the Union where the main decisions as to the purposes, conditions and means of the processing of personal data are taken; if no decisions as to the purposes, conditions and means of the processing of personal data are taken in the Union, the main establishment is the place where the main processing activities in the context of the activities of an establishment of a controller in the Union take place. As regards the processor, ‘main establishment’ means the place of its central administration in the Union;*

Amendment

(13) ‘main establishment’ means *the location as designated by the undertaking or group of undertakings, whether controller or processor, subject to the consistency mechanism set out in Article 57, on the basis of, but not limited to, the following optional objective criteria:*

- (a) the location of the European headquarters of a group of undertakings;*
- (b) the location of the entity within a group of undertakings with delegated data protection responsibilities;*
- (c) the location of the entity within the group which is best placed in terms of management functions and administrative responsibilities to deal with and enforce the rules as set out in this Regulation; or*
- (d) the location where effective and real management activities are exercised determining the data processing through stable arrangements.*

The competent authority shall be informed by the undertaking or group of undertakings of the designation of the main establishment.

Justification

The proposed definition for ‘main establishment’ is too vague and provides too much room for diverging interpretation. It is necessary to have a uniform test for determining an organization’s “main establishment”, which can be applied to “undertakings/groups of undertakings” as the relevant reference point and based on a set of relevant objective criteria. These criteria are used to determine the appropriate DPA for BCRs and therefore are proven to be implementable.

Amendment 66

Proposal for a regulation Article 5 – point c

Text proposed by the Commission

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

Amendment

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

Justification

This change, which permits “not excessive” processing is more appropriate. It consists of a referral back to the wording of the original 95/46/EC Data Protection Directive and aims to avoid inconsistencies with other EU rules, such as the Consumer Credit Directive and the Capital Requirements Package, which also require, for example, lending institutions to process personal data.

Amendment 67

Proposal for a regulation Article 5 – point e

Text proposed by the Commission

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

Amendment

(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the data will be processed solely for historical, statistical or scientific research purposes in accordance with the rules and conditions of **Articles 81 and 83** and if a periodic review is carried out to assess the necessity to continue the storage;

Justification

It should also be possible to store personal data for longer periods for health purposes (Article 81) as well as for historical, statistical and scientific research purposes (Article 83), which is already referenced in the Commission's text. This will ensure that all relevant data is available to deliver the most appropriate care to the data subject.

Amendment 68

Proposal for a regulation

Article 6 – paragraph 1 – point c

Text proposed by the Commission

(c) processing is necessary for compliance with *a* legal obligation to which *the* controller is subject;

Amendment

(c) processing is necessary for compliance with *or to avoid breach of an EU or national* legal obligation *or legal right* to which *a* controller is subject *including the performance of a task carried out for assessing creditworthiness or for fraud prevention and detection purposes.*

Amendment 69

Proposal for a regulation

Article 6 – paragraph 1 – point e

Text proposed by the Commission

(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;

Amendment

(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller *or for the performance of a task carried out for assessing creditworthiness or for fraud prevention and detection purposes;*

Amendment 70

Proposal for a regulation

Article 6 – paragraph 1 – point f

Text proposed by the Commission

(f) processing is necessary for the purposes

Amendment

(f) processing is necessary for the purposes

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

of the legitimate interests pursued by a controller ***or controllers or by the third party or parties to whom the data are disclosed***, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. This shall not apply to processing carried out by public authorities in the performance of their tasks.

Justification

This amendment seeks to regulate the situation when a third party has a legitimate interest to process data, in line with the current Directive 95/46/EC which recognizes the legitimate interest of a third party. This is for example the case in some Member States where the social partners regulate wages and other work conditions through collective agreements. Trade unions negotiate with employers to ensure a common set of rights that apply to all employees at a workplace, regardless of whether or not they are union members. In order for this system to function the unions must have the possibility to monitor the observance of collective agreements.

Amendment 71

Proposal for a regulation

Article 6 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) the data are collected from public registers, lists or documents accessible by everyone;

Amendment 72

Proposal for a regulation

Article 6 – paragraph 1 – point f b (new)

Text proposed by the Commission

Amendment

(fb) the processing of data, inter alia information of members of an organisation, which is done by the organisation in question in compliance with its statutory rules, is of outmost

importance for the data controller in voluntary membership based organisations;

Amendment 73

Proposal for a regulation

Article 6 – paragraph 1 – point f c (new)

Text proposed by the Commission

Amendment

(fc) processing is necessary for fraud detection and prevention purposes according to applicable financial regulation or established industry, or professional body, codes of practice;

Justification

Experience in practice has shown that a "legal obligation" doesn't include the domestic financial regulation or codes of conduct which are fundamental in fraud prevention and detection, of paramount importance for data controllers and to protect data subjects.

Amendment 74

Proposal for a regulation

Article 6 – paragraph 1 – point f d (new)

Text proposed by the Commission

Amendment

(fd) the processing is necessary to defend an interest, collecting evidences as judicial proofs or file an action;

Amendment 75

Proposal for a regulation

Article 6 – paragraph 1 – point f e (new)

Text proposed by the Commission

Amendment

(fe) only pseudonymous data is processed.

Justification

This is part of a package of amendments enabling the use of pseudonymous and anonymous data and will encourage good business practice safeguarding the interests of data subjects. Ensuring that personal data cannot be attributed to a data subject (since it cannot be related back to a data subject without use of additional data) helps to further promote business use of data while providing a high level of consumer protection.

Amendment 76

Proposal for a regulation

Article 6 – paragraph 3 – subparagraph 2

Text proposed by the Commission

The law of the Member State must meet an objective of public interest or must be necessary to protect the rights and freedoms of others, ***respect the essence*** of the ***right to the protection of personal data*** and be proportionate to the legitimate aim pursued.

Amendment

The law of the Member State must meet an objective of public interest or must be necessary to protect the rights and freedoms of others. ***The law*** of the ***Member State must also respect this regulation and international treaties that the Member State has decided to follow. Finally the Member State is obliged to evaluate and decide if national legislation*** is proportionate to the legitimate aim pursued ***or if a legitimate aim could be achieved using less privacy invasive solutions.***

Justification

Article 6, paragraph 1, point e states that processing is lawful if: “processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller”. Seen in connection with paragraph 3, this leaves Member States a very wide margin for eroding citizens’ protection of data mentioned in this regulation using national legislation. The harmonisation among Member States will be under pressure because national interests will result in many different examples of legislation. Citizens’ data will be processed differently in the different countries.

Amendment 77

Proposal for a regulation

Article 6 – paragraph 4

Text proposed by the Commission

4. Where the purpose of further processing

Amendment

4. Where the purpose of further processing

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

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

Justification

Designing for consent in context and to ensure effective privacy experiences is in line with the objectives of proposals to recital 25.

Amendment 78 **Proposal for a regulation** **Article 6 – paragraph 5**

Text proposed by the Commission

Amendment

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

deleted

Justification

There is no need for further specifications.

Amendment 79 **Proposal for a regulation** **Article 7 – paragraph 1**

Text proposed by the Commission

Amendment

1. The controller shall bear the burden of proof for the data subject's consent to the processing of their personal data for specified purposes.

1. Where consent is required, the form of consent captured for the processing of a data subject's personal data shall be proportionate to the type of data processed, the purpose for the processing and any identified risks, as determined through a data protection impact

assessment.

Amendment 80

Proposal for a regulation Article 7 – paragraph 3

Text proposed by the Commission

3. The data subject shall have the right to withdraw his or her consent *at any time*. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal.

Amendment

3. The data subject shall have the right to withdraw his or her consent. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal *or in cases where a minimum mandatory term of storage is provided by a European or national law, or data are processed according to European and national regulatory provisions, or for anti-fraud or legal purposes. The data subject has to communicate his willingness to withdraw his or her consent to the processor.*

Amendment 81

Proposal for a regulation Article 7 – paragraph 4

Text proposed by the Commission

4. Consent shall not provide a legal basis for the processing, where there is a significant imbalance between the position of the data subject and the controller.

Amendment

deleted

Justification

Terminology such as 'significant imbalance' is likely to cause legal uncertainty. Furthermore, it is unnecessary because contract law, including consumer protection law, provides adequate safeguards against fraud, threats, unfair exploitation etc and those should apply also to agreements to process personal data.

Amendment 82

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

Text proposed by the Commission

Amendment

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

Amendment 83

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

Text proposed by the Commission

Amendment

4b. This article shall not apply where the data subject's consent is required by law.

Amendment 84

Proposal for a regulation
Article 7 – paragraph 4 c (new)

Text proposed by the Commission

Amendment

4c. Access to a given consent in regards to Article 6, paragraph 1 (a), as well as Article 9, paragraph 2 (a), can be limited in cases where internal rules of organisations regarding fraud and of crime prevention reasons, in accordance with legislation of the Member State, are enforced.

Amendment 85

Proposal for a regulation
Article 7 – paragraph 4 d (new)

Text proposed by the Commission

Amendment

4d. The legislation of the Member State in which a person lacking the legal capacity to act resides shall apply when determining the conditions under which consent is given or authorised by that person.

Amendment 86

Proposal for a regulation

Article 7 – paragraph 4 e (new)

Text proposed by the Commission

Amendment

4e. This provision shall not apply to the right of the employer to process data on the basis of consent by the employee nor the right of public authorities to process data on the basis of consent by the citizen.

Amendment 87

Proposal for a regulation

Article 8 – paragraph 1

Text proposed by the Commission

Amendment

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

1. For the purposes of this Regulation, in relation to the offering of ***goods and*** services directly to a child, the processing of personal data of a child below the age of 13 years shall only be lawful if and to the extent that consent is given or authorised by the child's parent or custodian. The controller shall make reasonable efforts to obtain verifiable consent, taking into consideration available technology ***without causing unnecessary processing of personal data.***

Amendment 88

Proposal for a regulation
Article 8 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The information provided in order to express the consent should be given in a clear and age-appropriate language, in a way that would be easy to understand for the child above the age of 13;

Amendment 89

Proposal for a regulation
Article 8 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The information referred to in paragraphs 1, 1a, 2, and 3 shall not apply where the processing of personal data of a child concerns health data and where the Member State law in the field of health and social care prioritises the competence of an individual over physical age.

Justification

In the context of health and social care authorisation from a child's parent or guardian should not be necessary where the child has the competence to make a decision for him or herself. In Child Protection Cases, it is not always in the interests of the data subject for their parent or guardian to have access to their data and this needs to be reflected in the legislation.

Amendment 90

Proposal for a regulation
Article 9 – paragraph 1

Text proposed by the Commission

Amendment

1. The processing of personal data, revealing race or ethnic origin, political opinions, religion or beliefs, trade-union membership, and the processing of genetic data or data concerning health or sex life or

1. The processing of personal data, revealing race or ethnic origin, political opinions, religion or beliefs, trade-union membership ***and activities, significant social problems, private information*** and

criminal convictions or related security measures shall be prohibited.

the processing of genetic data or data concerning health or sex life or criminal convictions or related security measures shall be prohibited.

Justification

In Denmark the special categories of data that are demanded to be protected the most are more extensive than the regulation proposes. The result is that the regulation actually makes Danish citizens worse off than the current legislation. For this reason, I suggest that the special categories be expanded to include “significant social problems and private information”.

Amendment 91

Proposal for a regulation

Article 9 – paragraph 2 – point a

Text proposed by the Commission

(a) the data subject has given consent to the processing of those personal data, subject to the conditions laid down in Articles 7 and 8, except where Union law or Member State law provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject; or

Amendment

(a) the data subject has given consent to the processing of those personal data, subject to the conditions laid down in Articles 7 and 8, except where Union law or Member State law provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject. ***In particular, this would include safeguards to prevent the blacklisting of workers, for example in relation to their trade union activities or health and safety representative roles;*** or

Amendment 92

Proposal for a regulation

Article 9 – paragraph 2 – point b

Text proposed by the Commission

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

Amendment

(b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller in the field of employment law in so far as it is authorised by Union law, Member State law, ***or collective agreements on the labour market*** providing for adequate

safeguards; or

Amendment 93

Proposal for a regulation

Article 9 – paragraph 2 – point d

Text proposed by the Commission

(d) processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other non-profit-seeking body with a political, philosophical, religious or trade-union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the data are not disclosed outside that body without the consent of the data subjects; or

Amendment

(d) processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association, ***organizations on the labour market*** or any other non-profit-seeking body with a political, philosophical, religious or trade-union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the data are not disclosed outside that body without the consent of the data subjects; or

Amendment 94

Proposal for a regulation

Article 9 – paragraph 2 – point e

Text proposed by the Commission

(e) the processing relates to personal data which are manifestly made public by the data subject; or

Amendment

(e) the processing relates to personal data which are manifestly made public by the data subject ***or which are freely transferred to the controller on the initiative of data subject and which are processed for the specific purpose determined by data subject and in his interest***; or

Amendment 95

Proposal for a regulation

Article 9 – paragraph 2 – point j

Text proposed by the Commission

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

Amendment

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

Justification

It is important that the employers' organisations and employees' organisations (labour unions) can continue in the future to negotiate with each other and create collective agreements that are in accordance with national culture, tradition, competitiveness and economic situation.

Amendment 96

Proposal for a regulation

Article 9 – paragraph 2 – point j a (new)

Text proposed by the Commission

Amendment

(ja) processing of personal data concerning criminal convictions or related security measures is carried out in the context of databases which contain data on fraud committed against the credit institutions or members of other financial groups regulated by EU or national legislation and set up by financial institutions to prevent fraud; The restrictions on the processing of data relating to criminal convictions should not apply to data relating to criminal

offences.

Amendment 97

Proposal for a regulation

Article 9 – 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, conditions and appropriate safeguards for the processing of the special categories of personal data referred to in paragraph 1 and the exemptions laid down in paragraph 2.

deleted

Amendment 98

Proposal for a regulation

Article –11 (new)

Text proposed by the Commission

Amendment

Article -11

General principles for data subject rights

1. The basis of data protection are clear and unambiguous rights for the data subject with respect to the data controller. The provisions of this Regulation aim to strengthen, clarify, guarantee and where appropriate, codify, these rights.

2. Such rights include, inter alia, the provision of clear, easily understood information regarding the data controller's policies for data subject access, rectification and erasure to their data, the right to data portability and the right to object to profiling; that such rights in general must be exercised free of charge and that the data controller will undertake requests from the data subject within a reasonable period of time.

Amendment 99

Proposal for a regulation Article 11 – paragraph 2

Text proposed by the Commission

2. The controller shall provide any information and any communication relating to the processing of personal data to the data subject in an intelligible form, using clear and plain language, ***adapted to the data subject***, in particular for any information addressed specifically to a child.

Amendment

2. The controller shall provide any information and any communication relating to the processing of personal data to the data subject in an intelligible form, using clear and plain language, in particular for any information addressed specifically to a child.

Justification

Information or communications concerning data processing must be clear and intelligible. Inclusion of ‘adapted to the data subject’ might give rise to legal uncertainty. It would seem proportionate to impose a particular obligation only with regard to children comprising a specific category.

Amendment 100

Proposal for a regulation Article 11 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Information for data subjects shall be provided in a format offering data subjects the information needed to understand their position and make decisions in an appropriate way. Full information shall be available on request. Therefore the controller shall provide transparency in information and communication in his data protection policies through an easily understandable icon-based mode of description for the different steps of data-processing.

Amendment 101

Proposal for a regulation
Article 12 – paragraph 1

Text proposed by the Commission

1. The controller shall establish procedures for providing the information referred to in Article 14 and for the exercise of the rights of data subjects referred to in Article 13 and Articles 15 to 19. The controller shall provide in particular mechanisms for facilitating the request for the actions referred to in Article 13 and Articles 15 to 19. Where personal data are processed by automated means, the controller shall also provide means for requests to be made electronically.

Amendment

1. The controller shall establish procedures for providing the information referred to in Article 14 and for the exercise of the rights of data subjects referred to in Article 13 and Articles 15 to 19. The controller shall provide in particular mechanisms for facilitating the request for the actions referred to in Article 13 and Articles 15 to 19. Where personal data are processed by automated means, the controller shall also provide means for requests to be made electronically. ***The procedures referred to in this Article can be procedures already established by public authorities in the Member States provided that the procedures comply with the provisions of the Regulation.***

Amendment 102

Proposal for a regulation
Article 12 – paragraph 2

Text proposed by the Commission

2. The controller shall inform the data subject without delay and, at the latest within one month of receipt of the request, whether or not any action has been taken pursuant to Article 13 and Articles 15 to 19 and shall provide the requested information. This period may be prolonged for a further month, if several data subjects exercise their rights and their cooperation is necessary to a reasonable extent to prevent an unnecessary and disproportionate effort on the part of the controller. The information shall be given in writing. Where the data subject makes the request in electronic form, the information shall be provided in electronic form, unless otherwise requested by the

Amendment

2. The controller shall inform the data subject without delay and, at the latest within one month of receipt of the request, whether or not any action has been taken pursuant to Article 13 and Articles 15 to 19 and shall provide the requested information. This period may be prolonged for a further month, if several data subjects exercise their rights and their cooperation is necessary to a reasonable extent to prevent an unnecessary and disproportionate effort on the part of the controller. The information shall be given in writing. Where the data subject makes the request in electronic form, the information shall be provided in electronic form, unless otherwise requested by the

data subject.

data subject *or unless the controller has reason to believe that providing the information in electronic form would create a significant risk of fraud.*

Justification

Releasing certain data in electronic form such as credit files could result in modification or identity theft when provided to consumers. Release of data from credit reference agencies should be dependent upon authentication checks which satisfy criteria set out by the agency holding the data to prevent interception, misuse, fraudulent use or modification.

Amendment 103

Proposal for a regulation Article 12 – paragraph 4

Text proposed by the Commission

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

Amendment

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

Amendment 104

Proposal for a regulation Article 12 – paragraph 5

Text proposed by the Commission

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

Amendment

deleted

Justification

There is no need for this provision to be further clarified by means of a delegated act. The Member States' supervisory authorities are better placed to resolve any difficulties which may arise.

Amendment 105

Proposal for a regulation Article 12 – paragraph 6

Text proposed by the Commission

Amendment

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

Justification

The Member States' supervisory authorities are better placed to resolve any difficulties which may arise.

Amendment 106

Proposal for a regulation Article 13

Text proposed by the Commission

Amendment

The controller shall communicate any rectification or erasure carried out in accordance with Articles 16 and 17 to each recipient to whom the data have been disclosed, ***unless this proves impossible or involves a disproportionate effort.*** Any rectification or erasure carried out in accordance with Articles 16 and 17 ***is extended*** to each recipient to whom the data have been disclosed ***without the control of the data subject.***

Justification

Selling a database to a third party does not exempt the data controller from executing her

obligations. If, instead, the data subject has voluntarily or consciously transferred some information through the data controller, the latter does not bear further responsibility.

Amendment 107

Proposal for a regulation

Article 14 a (new)

Text proposed by the Commission

Amendment

Article 14a

Verification of a data subject's identity

The controller must ensure that sufficient documentation for a data subject's identity has been received, when the data subject enforces the rights referred to in articles 14-19 in this regulation.

Justification

New rights for the citizens are introduced in this regulation. However, nowhere is it stated how the citizens should be made document their identities to enforce the rights. It is important that citizen's identity is documented and potentially challenged by the controller to make sure that no form of identity theft can occur.

Amendment 108

Proposal for a regulation

Article 14 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. Where personal data relating to a data subject are collected, the controller shall provide the data subject with ***at least*** the following information:

1. Where personal data relating to a data subject are collected, the controller shall provide the data subject with the following information:

Amendment 109

Proposal for a regulation

Article 14 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) the period for which the personal data

(c) ***the criteria and/or legal requirements***

will be stored;

for determining the period for which the personal data will be stored *for each purpose*;

Justification

It is not always possible to determine for precisely how long personal data will be stored, particularly in the case of storage for different purposes.

Amendment 110

Proposal for a regulation

Article 14 – paragraph 1 – point h

Text proposed by the Commission

(h) any further information necessary to guarantee fair processing in respect of the data subject, having regard to the specific circumstances in which the personal data are collected.

Amendment

(h) any further information ***which the controller considers*** necessary to guarantee fair processing in respect of the data subject, having regard to the specific circumstances in which the personal data are collected.

Justification

The scope of this provision needs to be made clear, and it should be specified that controllers can provide a greater degree of transparency.

Amendment 111

Proposal for a regulation

Article 14 – paragraph 5 – point b

Text proposed by the Commission

(b) the data are not collected from the data subject and the provision of such information proves impossible or would involve a disproportionate effort; or

Amendment

(b) the data are ***meant to serve solely the purposes of art. 83, are*** not collected from the data subject and the provision of such information proves impossible or would involve a disproportionate effort ***and generate excessive administrative burden, especially when the processing is carried out by a SME as defined in EU recommendation 2003/361; or***

Justification

This provision emanates directly from art. 11(2) of the Directive 95/46/EC, but without this specification it would have resulted as a loophole in consumer protection. This amendment restores the match between the original intentions and the wording.

Amendment 112 **Proposal for a regulation** **Article 14 – 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 the criteria for categories of recipients referred to in point (f) of paragraph 1, the requirements for the notice of potential access referred to in point (g) of paragraph 1, the criteria for the further information necessary referred to in point (h) of paragraph 1 for specific sectors and situations, and the conditions and appropriate safeguards for the exceptions laid down in point (b) of paragraph 5. In doing so, the Commission shall take the appropriate measures for micro, small and medium-sized-enterprises. **deleted**

Justification

There is no need for such further specifications.

Amendment 113 **Proposal for a regulation** **Article 15 – paragraph 1 – subparagraph 2 (new)**

Text proposed by the Commission

Amendment

On request, and free of charge, the data controller shall also provide a proof of the lawfulness of processing in a reasonable time.

Justification

If the data controller provides this proof directly to the data subject, the number of lawsuits should be reduced.

Amendment 114

Proposal for a regulation

Article 15 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The data subject shall have the right to obtain from the controller communication of the personal data undergoing processing **and profiling**. Where the data subject makes the request in electronic form, the information shall be provided in electronic form, unless otherwise requested by the data subject. ***The controller shall use all reasonable measures to verify the identity of a data subject requesting access to data.***

Justification

The right of access must never be abused, particularly when a request is made in electronic form. The controller must therefore verify the identity of the person requesting access and be able to prove that it acted with all due care.

Amendment 115

Proposal for a regulation

Article 15 – paragraph 3

Text proposed by the Commission

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

Amendment

deleted

Justification

This addition does not seem necessary.

Amendment 116

Proposal for a regulation

Article 15 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Subject to the necessary legal safeguards, especially in order to ensure that information are not used to take measures or decisions regarding specific persons, Member States can, in cases with no risk of violation of privacy, by law limit the rights following article 15 only if these rights are processed as part of scientific research in compliance with article 83 of this Regulation or only if these personal data are stored in the specific timeframe it takes to make statistics.

Justification

See Article 13, paragraph 2, of Directive 95/46/EC, OJ L 281/95.

Amendment 117

Proposal for a regulation

Article 16 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Paragraph 1 shall not apply to pseudonymous data.

Justification

This is part of a package of amendments enabling the use of pseudonymous and anonymous data and will encourage good business practice safeguarding the interests of data subjects. Ensuring that personal data cannot be attributed to a data subject (since it cannot be related back to a data subject without use of additional data) helps to further promote business use of data while providing a high level of consumer protection.

Amendment 118
Proposal for a regulation
Article 17 – title

Text proposed by the Commission

Amendment

Right to *be forgotten and to* erasure

Right to erasure

Justification

The title proposed by the Commission is misleading.

Amendment 119

Proposal for a regulation
Article 17 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) the data subject objects to the processing of personal data pursuant to Article 19;

(c) the data subject objects to the processing of personal data pursuant to Article 19, **and the objection is upheld**;

Justification

This amendment is designed to ensure that a data subject cannot simply make an objection under Article 19, therefore triggering the principle of the Right to be Forgotten, where the objection would be without merit.

Amendment 120
Proposal for a regulation
Article 17 – paragraph 2

Text proposed by the Commission

Amendment

2. Where the controller referred to in paragraph 1 has **made** the personal data public, it shall take all reasonable steps, including technical measures, in relation to data for the publication of which the controller is responsible, to inform third parties which are processing such data, that a data subject requests them to erase any links to, or copy or replication of that personal data. Where the controller has authorised a third party publication of

2. Where the controller referred to in paragraph 1 has **transferred** the personal data, **or has made such data** public **without the consent of the data subject**, it shall take all reasonable steps, including technical measures, in relation to data for the publication of which the controller is responsible, to inform third parties which are processing such data, that a data subject requests them to erase any links to, or copy or replication of that personal data. **When**

personal data, the controller shall be considered responsible for that publication.

data has been transferred, the transferring controller shall inform these subsequent controllers that the data subject requests the deletion of the personal data, any links to, or copy or replication of that personal data. Where the controller has authorised a third party publication of personal data, the controller shall be considered responsible for that publication.

Justification

This provision targets particularly the transfer of data that are object of an erasure request. It must be clear that, if the data subject made them public, or instructed the controller to do so, or did it through the controller, the responsibility is still borne by the data subject. On the other side, the controller is responsible for applying this provision also to data that have been voluntarily transferred or released to third parties that have no relation with the data subject.

Amendment 121

Proposal for a regulation

Article 17 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The controller referred to in paragraph 1 shall inform the data subject, where possible, of the action taken in response to their request by the third parties referred to in paragraph 2.

Justification

The rights of data subjects must be reinforced. Article 17(2) imposes an obligation of responsibility on the controller. This must be accompanied at the very least by a duty to inform regarding the action taken by third parties processing the personal data in question.

Amendment 122

Proposal for a regulation

Article 17 – paragraph 3 – points e a and e b (new)

Text proposed by the Commission

Amendment

(ea) for prevention or detection of fraud

or other financial crime, confirming identity, and/or determining creditworthiness,

(eb) for keeping documentary evidence of a given case history, when the data controller is a public authority.

Justification

It would not be appropriate for individuals to be able to delete data about themselves which is held for legitimate reasons in line with existing legislation.

Amendment 123

Proposal for a regulation

Article 17 – paragraph 9 – introductory part

Text proposed by the Commission

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

Amendment

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

Amendment 124

Proposal for a regulation

Article 18 – paragraph 3

Text proposed by the Commission

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

Amendment

deleted

Justification

Once the format is portable, the market can provide it without the Commission's intervention

Amendment 125

Proposal for a regulation Article 19 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Justification

This amendment is designed to demonstrate that legitimate grounds should constitute sufficient grounds for processing, as per Article 6.

Amendment 126

Proposal for a regulation Article 19 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 127

Proposal for a regulation Article 19 – paragraph 3

Text proposed by the Commission

Amendment

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

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

Amendment 128

Proposal for a regulation

Article 19 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Where pseudonymous data are processed based on Article 6(1)(g), the data subject shall have the right to object free of charge to the processing. This right shall be explicitly offered to the data subject in an intelligible manner and shall be clearly distinguishable from other information.

Justification

This is part of a package of amendments enabling the use of pseudonymous and anonymous data and will encourage good business practice safeguarding the interests of data subjects. Ensuring that personal data cannot be attributed to a data subject (since it cannot be related back to a data subject without use of additional data) helps to further promote business use of data while providing a high level of consumer protection.

Amendment 129

Proposal for a regulation

Article 20 – title

Text proposed by the Commission

Amendment

Measures based on ***profiling***

Measures based on ***automated processing***

Justification

Article 20 concerns automated processing rather than profiling. The title of this article should therefore be amended to “Measures based on automated processing”.

Amendment 130

Proposal for a regulation Article 20 – paragraph 1

Text proposed by the Commission

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

Amendment

1. **A data subject shall not be subject to a decision which is unfair or discriminatory, and which is based solely on automated processing intended to evaluate certain personal aspects relating to this data subject.**

Justification

Article 20 in its current form does not recognise the positive uses of profiling nor does it take into account the varying levels of risk or impact on the privacy of the individuals associated with profiling. By focusing on techniques which are either "unfair" or "discriminatory" as defined in Directive 2005/29/EC the approach in this proposal is more technologically neutral and focuses on the negative uses of profiling techniques rather than the technology itself.

Amendment 131

Proposal for a regulation Article 20 – paragraph 2

Text proposed by the Commission

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

(a) is carried out in the course of the entering into, or performance of, a contract, where the request for the entering into or the performance of the contract, lodged by the data subject, has

Amendment

deleted

been satisfied or where suitable measures to safeguard the data subject's legitimate interests have been adduced, such as the right to obtain human intervention; or

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

(c) is based on the data subject's consent, subject to the conditions laid down in Article 7 and to suitable safeguards.

Justification

Deletion following proposed amendment to paragraph 1.

Amendment 132

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

Text proposed by the Commission

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

Amendment

3. Automated processing of personal data intended to evaluate certain personal aspects relating to a natural person shall not be based solely on the special categories of personal data referred to in Articles **8 and 9**.

Justification

Deletion following proposed amendment to paragraph 1.

Amendment 133

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

Text proposed by the Commission

4. In the cases referred to in paragraph 2, the information to be provided by the controller under Article 14 shall include information as to the existence of

Amendment

deleted

processing for a measure of the kind referred to in paragraph 1 and the envisaged effects of such processing on the data subject..

Amendment 134

Proposal for a regulation Article 20 – paragraph 5

Text proposed by the Commission

Amendment

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

deleted

Amendment 135

Proposal for a regulation Article 21 – paragraph 2

Text proposed by the Commission

Amendment

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

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

Justification

In order to ensure a higher degree of protection, the legislation should, in the event of limitation, also mention the aims of processing personal data.

Amendment 136

Proposal for a regulation Article 22 – title

Text proposed by the Commission

Amendment

Responsibility of the controller

Overall principle of responsibility of the controller.

Justification

The principle of responsibility which is implicitly introduced by Chapter 4 of the proposal for a regulation must be mentioned explicitly in order to ensure a higher degree of protection.

Amendment 137
Proposal for a regulation
Article 22 – paragraph 4

Text proposed by the Commission

Amendment

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

deleted

Justification

The text is already clear enough, and no further specification seems necessary.

Amendment 138

Proposal for a regulation
Article 23 – paragraph 1

Text proposed by the Commission

Amendment

1. Having regard to the state of the art and the cost of implementation, the controller shall, both at the time of the determination of the means for processing

1. Where required, mandatory measures may be adopted to ensure that categories of goods or services are designed and have default settings meeting the

and at the time of the processing itself, implement appropriate technical and organisational measures and procedures in such a way that the processing will meet the requirements of this Regulation and ensure the protection of the rights of the data subject.

requirements of this Regulation relating to the protection of individuals with regard to the processing of personal data. Such measures shall be based on standardisation pursuant to [Regulation .../2012 of the European Parliament and of the Council on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Decision 87/95/EEC and Decision No 1673/2006/EC].

Justification

This is part of a package of amendments aimed at recognising that, while data protection by design and default is a commendable concept, the Commission's proposal does not achieve sufficient certainty while creating a risk for possible restrictions on free movement. Therefore, the established mechanism of using standardisation, as compiled in the 'Standardisation Package', should be used to harmonise the applicable requirements and enabling free movement instead.

Amendment 139

Proposal for a regulation Article 23 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Ia. Anonymisation or pseudonymisation of personal data should be applied by the data processor where feasible and proportionate according to the purpose of processing.

Amendment 140

Proposal for a regulation Article 23 – paragraph 2

Text proposed by the Commission

Amendment

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

2. Until such time as mandatory measures have been adopted pursuant to paragraph 1, Member States shall ensure that no mandatory design or default requirements are imposed on goods or services relating to the protection of individuals with regard to the processing of personal data which could impede the placing of equipment on the market and the free circulation of such goods and services in and between Member States.

Justification

This is part of a package of amendments aimed at recognising that, while data protection by design and default is a commendable concept, the Commission's proposal does not achieve sufficient certainty while creating a risk for possible restrictions on free movement. Therefore, the established mechanism of using standardisation to harmonise the applicable requirements and enabling free movement should be used instead.

Amendment 141

Proposal for a regulation Article 23 – 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 specifying any further criteria and requirements for appropriate measures and mechanisms referred to in paragraph 1 and 2, in particular for data protection by design requirements applicable across sectors, products and services.

deleted

Justification

The proposal for a regulation applies to all sectors, both online and offline. It is not the Commission's task to adopt delegated acts on data protection from the very beginning and by default which might undermine technological innovation. Member States' supervisory

authorities and the European Data Protection Board are better placed to resolve any difficulties which might arise.

Amendment 142

Proposal for a regulation Article 23 – paragraph 4

Text proposed by the Commission

Amendment

4. The Commission may lay down technical standards for the requirements laid down in paragraph 1 and 2. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2). *deleted*

Justification

The proposal for a regulation applies to all sectors, both online and offline. It is not the Commission's task to establish technical standards which might undermine technological innovation. Member States' supervisory authorities and the European Data Protection Board are better placed to resolve any difficulties which might arise.

Amendment 143

Proposal for a regulation Article 24

Text proposed by the Commission

Amendment

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

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

Justification

This amendment gives the data subject more protection in this specific case.

Amendment 144

Proposal for a regulation Article 26 – paragraph 1

Text proposed by the Commission

1. Where a processing operation is to be carried out on behalf of a controller, the controller shall choose a processor providing sufficient guarantees to implement appropriate technical and organisational measures and procedures in such a way that the processing will meet the requirements of this Regulation and ensure the protection of the rights of the data subject, in particular in respect of the technical security measures and organizational measures governing the processing to be carried out and shall ensure compliance with those measures.

Amendment

1. Where a processing operation is to be carried out on behalf of a controller ***and which involves the processing of data that would permit the processor to reasonably identify the data subject***, the controller shall choose a processor providing sufficient guarantees to implement appropriate technical and organisational measures and procedures in such a way that the processing will meet the requirements of this Regulation and ensure the protection of the rights of the data subject, in particular in respect of the technical security measures and organizational measures governing the processing to be carried out and shall ensure compliance with those measures. ***The controller remains solely responsible for ensuring compliance with the requirements of this Regulation.***

Justification

Where, due to proper anonymisation techniques, it is technically not feasible for the processor to identify a data subject, Article 26 shall not apply. The lessening of administrative burdens will incentivize investment in effective anonymisation technology and use of strong system of restricted access. The basic principle according to which primary and direct responsibility and liability for processing is incumbent upon the controller should be clearly stated in this Article.

Amendment 145

Proposal for a regulation Article 26 – paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) enlist another processor only with the prior permission of the controller; ***deleted***

Justification

The requirement to obtain prior authorization from the controller for the processor to enlist sub-processors imposes burdens with no clear benefit in terms of enhanced data protection. Also, it is not workable particularly in the cloud context and especially if interpreted to require prior authorization to use specific sub-processors. This requirement should be removed.

Amendment 146

Proposal for a regulation
Article 26 – paragraph 2 – point h a (new)

Text proposed by the Commission

Amendment

(ha) When a processor is processing data on behalf of the controller, the processor must implement privacy by design and privacy by default.

Amendment 147

Proposal for a regulation
Article 26 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The controller is deemed to have fulfilled the obligations set out in paragraph 1 when choosing a processor who has voluntarily self-certified or voluntarily obtained a certification, seal or mark pursuant to Articles 38 or 39 of this Regulation showing the implementation of appropriate standard technical and organizational measures in response to the requirements set out in this Regulation.

Justification

The Regulation should offer clear incentives to controllers and processors to invest in security and privacy enhancing measures. Where controllers and processors propose additional safeguards to protect data, which are in line with or go beyond accepted industry standards and who can demonstrate this via conclusive certificates they should benefit from less prescriptive requirements. In particular this would allow for flexibility and a reduced burden for cloud providers and cloud customers,

Amendment 148 **Proposal for a regulation** **Article 26 – paragraph 5**

Text proposed by the Commission

Amendment

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

deleted

Justification

These specifications are not necessary. The intra-group transfers are already considered in another part of the present proposal.

Amendment 149

Proposal for a regulation **Article 28 – paragraph 1**

Text proposed by the Commission

Amendment

1. Each controller and processor and, if any, the controller's representative, shall maintain documentation of ***all processing operations*** under its responsibility.

1. Each controller and processor and, if any, the controller's representative, shall maintain documentation of ***the main categories of processing*** under its responsibility.

Justification

Effective data protection requires organisations to have a sufficiently documented understanding of their data processing activities. However, the maintenance of documentation for all processing operations is disproportionately burdensome. Instead of satisfying bureaucratic needs, the aim of the documentation should be to help controllers and processors meet their obligations.

Amendment 150

Proposal for a regulation

Article 28 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

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

2. The documentation shall contain the following information:

Justification

The list of information contained in the documentation must be exhaustive in order to guarantee legal certainty.

Amendment 151

Proposal for a regulation

Article 28 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) the purposes of **the** processing, **including the legitimate interests pursued by the controller where the processing is based on point (f) of Article 6(1);**

(c) the **generic** purposes of processing.

Justification

This amendment helps to reduce administrative burdens on both data controllers and data processors.

Amendment 152

Proposal for a regulation

Article 28 – paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) a description of categories of data subjects and of the categories of personal data relating to them; ***deleted***

Justification

The regulation has two aims: to ensure a high degree of protection for personal data and to reduce the administrative burden generated by rules on data protection. The obligation imposed on the controller and processor by Article 28(2)(h) is sufficient to achieve these aims.

Amendment 153

Proposal for a regulation Article 28 – paragraph 2 – point e

Text proposed by the Commission

Amendment

(e) the recipients or categories of recipients of the personal data, including the controllers to whom personal data are disclosed for the legitimate interest pursued by them; ***deleted***

Justification

The regulation has two aims: to ensure a high degree of protection for personal data and to reduce the administrative burden generated by rules on data protection. The obligation imposed on the controller and processor by Article 28(2)(h) is sufficient to achieve these aims.

Amendment 154

Proposal for a regulation Article 28 – paragraph 2 – point f

Text proposed by the Commission

Amendment

(f) where applicable, transfers of data to a third country or an international organisation, *including the identification of that third country or international organisation and*, in case of transfers

(f) where applicable, transfers of *personal* data to a third country or an international organisation *and* in case of transfers referred to in point (h) of Article 44(1), *a reference to the* safeguards *employed*;

referred to in point (h) of Article 44(1), **the documentation of appropriate** safeguards;

Justification

This amendment helps to reduce administrative burdens on both data controllers and data processors.

Amendment 155

**Proposal for a regulation
Article 28 – paragraph 2 – point g**

Text proposed by the Commission

Amendment

(g) a general indication of the time limits for erasure of the different categories of data; **deleted**

Justification

The regulation has two aims: to ensure a high degree of protection for personal data and to reduce the administrative burden generated by rules on data protection. The obligation imposed on the controller and processor by Article 28(2)(h) is sufficient to achieve these aims.

Amendment 156

**Proposal for a regulation
Article 28 – paragraph 3**

Text proposed by the Commission

Amendment

3. The controller and the processor and, if any, the controller's representative, shall make the documentation available, on request, to the supervisory authority.

3. The controller and the processor and, if any, the controller's representative, shall make the documentation available, on request, to the supervisory authority **and, in an electronic format, to the data subject.**

Justification

The privacy policy should be made available to the data subject as well as to the supervisory authority.

Amendment 157

Proposal for a regulation
Article 28 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. a public authority when dealing with data other than personal sensitive data as referred to in Article 9, paragraph 1, of this Regulation.

Amendment 158
Proposal for a regulation
Article 28 – paragraph 5

Text proposed by the Commission

Amendment

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

deleted

Justification

There is no need for such further specification.

Amendment 159

Proposal for a regulation
Article 28 – paragraph 6

Text proposed by the Commission

Amendment

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

deleted

Amendment 160

Proposal for a regulation
Article 30 – 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 conditions for the technical and organisational measures referred to in paragraphs 1 and 2, including the determinations of what constitutes the state of the art, for specific sectors and in specific data processing situations, in particular taking account of developments in technology and solutions for privacy by design and data protection by default, unless paragraph 4 applies. *deleted*

Amendment 161

Proposal for a regulation
Article 30 – paragraph 4

Text proposed by the Commission

Amendment

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

(a) prevent any unauthorised access to personal data;

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

(c) ensure the verification of the lawfulness of processing operations.

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

Amendment 162
Proposal for a regulation
Article 31 – paragraph 1

Text proposed by the Commission

1. In the case of a personal data breach, the controller shall without undue delay **and, where feasible, not later than 24 hours after having become aware of it**, notify the personal data breach to the supervisory authority. **The notification to the supervisory authority shall be accompanied by a reasoned justification in cases where it is not made within 24 hours.**

Amendment

1. In the case of a personal data breach, **which would have a significantly adverse impact on the protection of the personal data or privacy of the data subject**, the controller shall without undue delay notify the personal data breach to the supervisory authority.

Justification

After a data breach, the priority should be to take appropriate measures meant to reduce the damages. An explicit deadline shifts the priority to the notification.

Amendment 163

Proposal for a regulation
Article 31 – paragraph 3 – introductory part

Text proposed by the Commission

3. The notification referred to in paragraph 1 must **at least**:

Amendment

3. The notification referred to in paragraph 1 must **if possible**:

Amendment 164
Proposal for a regulation
Article 31 – paragraph 4

Text proposed by the Commission

4. The controller shall document any personal data breaches, comprising the facts surrounding the breach, its effects and the remedial action taken. This documentation must enable the supervisory authority to verify compliance with this Article. The documentation shall only include the information necessary for that

Amendment

4. The controller shall document any personal data breaches, comprising the facts surrounding the breach, its effects and the remedial action taken. This documentation must enable the supervisory authority to verify compliance with this Article **and with Article 30**. The documentation shall only include the

purpose.

information necessary for that purpose.

Justification

The data controller must prove that he has taken any reasonably possible measure to avoid data breaches, besides showing he has managed correctly the breaches occurred.

Amendment 165
Proposal for a regulation
Article 31 – paragraph 5

Text proposed by the Commission

Amendment

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

Justification

There is no need for such further specification.

Amendment 166
Proposal for a regulation
Article 31 – paragraph 6

Text proposed by the Commission

Amendment

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

Amendment 167
Proposal for a regulation
Article 32 – paragraph 1

Text proposed by the Commission

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

Amendment

1. When the personal data breach is likely to **have a significantly adverse impact on** the protection of the personal data or privacy of the data subject, **for example identity theft or fraud, physical harm, significant humiliation or damage to the reputation,** the controller shall, after the notification referred to in Article 31, communicate the personal data breach to the data subject **in a clear and concise manner and** without undue delay.

Justification

There are cases where the cooperation of the data subject is fundamental to reduce the adverse effects of the data breach. For instance, if credit card numbers are stolen, the data subject is the only one empowered to separate due payments from undue ones. Therefore, his cooperation is even more important than the notification to the Authority. Adding such cases, and giving them the priority, becomes then very important.

Amendment 168
Proposal for a regulation
Article 32 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 169
Proposal for a regulation
Article 32 – paragraph 3

Text proposed by the Commission

Amendment

3. The communication of a personal data breach to the data subject shall not be required if the controller demonstrates to the satisfaction of the supervisory authority that it has implemented appropriate technological protection measures, and that those measures were applied to the data concerned by the personal data breach. Such technological protection measures shall render the data unintelligible to any person who is not authorised to access it.

3. The communication of a personal data breach to the data subject shall not be required if the ***data breach does not have significant risk of harm to citizens and the*** controller demonstrates to the satisfaction of the supervisory authority that it has implemented appropriate technological protection measures, and that those measures were applied to the data concerned by the personal data breach. Such technological protection measures shall render the data unintelligible to any person who is not authorised to access it.

Amendment 170

Proposal for a regulation

Article 32 – paragraph 5

Text proposed by the Commission

Amendment

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

deleted

Justification

In the Impact Assessment, the Data Protection Authority has all the information it needs to judge whether the consequences of a data breach are likely to have an adverse effect on the personal data or privacy of the data subject.

Amendment 171

Proposal for a regulation

Article 32 – paragraph 6

Text proposed by the Commission

Amendment

6. The Commission may lay down the

deleted

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

Amendment 172

Proposal for a regulation

Article 33 – paragraph 1

Text proposed by the Commission

1. Where processing operations present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, the controller or the processor acting on the controller's behalf shall carry out an assessment of the impact of the envisaged processing operations on the protection of personal data.

Amendment

1. Where processing operations present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, ***or where processing takes place as a public sector infrastructure project*** the controller or the processor acting on the controller's behalf shall carry out an assessment of the impact of the envisaged processing operations on the protection of personal data.

Amendment 173

Proposal for a regulation

Article 33 – paragraph 2 – introductory part

Text proposed by the Commission

2. The following processing operations ***in particular*** present specific risks referred to in paragraph 1:

Amendment

2. The following processing operations present specific risks referred to in paragraph 1:

Justification

The list of processing operations which must be subjected to an impact assessment, set out in Article 33(2), has been drawn up in a general way. It must be limiting in order to comply with the principle of proportionality and ensure legal certainty.

Amendment 174

Proposal for a regulation
Article 33 – paragraph 2 – point b

Text proposed by the Commission

(b) information on sex life, health, race and ethnic origin or for the provision of health care, epidemiological researches, or surveys of mental or infectious diseases, where the data are processed for taking measures or decisions regarding specific individuals on a large scale;

Amendment

(b) information on sex life, health, ***political opinions, religious beliefs, criminal convictions***, race and ethnic origin or for the provision of health care, epidemiological researches, or surveys of mental or infectious diseases, where the data are processed for taking measures or decisions regarding specific individuals on a large scale;

Amendment 175

Proposal for a regulation
Article 33 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Amendment 176

Proposal for a regulation
Article 33 – paragraph 4

Text proposed by the Commission

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

Amendment

deleted

the intended processing, without prejudice to the protection of commercial or public interests or the security of the processing operations.

Justification

It would seem disproportionate to impose an overall obligation on controllers to seek the views of data subjects, whatever the sector, before any data processing had been done.

Amendment 177

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

Text proposed by the Commission

Amendment

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

deleted

Amendment 178

**Proposal for a regulation
Article 33 – paragraph 7**

Text proposed by the Commission

Amendment

7. The Commission may specify standards and procedures for carrying out and verifying and auditing the assessment referred to in paragraph 3. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

deleted

Amendment 179

Proposal for a regulation
Article 34 – paragraph 8

Text proposed by the Commission

Amendment

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for determining the high degree of specific risk referred to in point (a) of paragraph 2. **deleted**

Amendment 180

Proposal for a regulation
Article 35 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. The controller and the processor **shall** designate a data protection officer in any case where:

1. The controller and the processor **should** designate a data protection officer in any case where:

Justification

The appointment of a DPO should not be encouraged but not mandatory, to ensure this would generate disproportionate financial and administrative obligations on organisations whose activities do not present a substantial risk to the privacy of the data subject. This AM is linked to ECR AMs to Article 79, which ensure DPAs take into consideration the presence, or lack, of a DPO when deciding upon administrative sanctions and empowers DPAs to appoint DPOs as form of administrative sanction.

Amendment 181

Proposal for a regulation
Article 35 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) the processing is carried out by an enterprise employing 250 persons or more; or **deleted**

Amendment 182
Proposal for a regulation
Article 35 – paragraph 2

Text proposed by the Commission

Amendment

2. In the case referred to in point (b) of paragraph 1, a group of undertakings may appoint a single data protection officer. **deleted**

Justification

After deleting point (b) of paragraph (1), this paragraph no longer makes any sense.

Amendment 183

Proposal for a regulation
Article 35 – paragraph 5

Text proposed by the Commission

Amendment

5. The controller or processor shall designate the data protection officer on the basis of professional qualities and, in particular, expert knowledge of data protection law and practices and ability to fulfil the tasks referred to in Article 37. The necessary level of expert knowledge shall be determined in particular according to the data processing carried out and the protection required for the personal data processed by the controller or the processor.

5. The controller or processor shall designate the data protection officer on the basis of professional qualities and, in particular, expert knowledge of data protection law and practices and ability to fulfil the tasks referred to in Article 37. The necessary level of expert knowledge shall be determined in particular according to the data processing carried out and the protection required for the personal data processed by the controller or the processor. ***The data protection officer must be given sufficient time and resources to carry out these tasks.***

Amendment 184

Proposal for a regulation
Article 35 – paragraph 7

Text proposed by the Commission

Amendment

7. The controller or the processor shall designate a data protection officer for a

7. The controller or the processor shall designate a data protection officer for a

period of at least two years. The data protection officer may be reappointed for further terms. ***During their term of office, the data protection officer may only be dismissed, if the data protection officer no longer fulfils the conditions required for the performance of their duties.***

period of at least two years. The data protection officer may be reappointed for further terms.

Justification

Like all other personnel it should be possible to dismiss the DPO if he does not perform the tasks set up by management. It is management who decides if they are satisfied with the person they hired or not.

Amendment 185

Proposal for a regulation Article 35 – paragraph 10

Text proposed by the Commission

10. Data subjects shall have the right to contact the data protection officer on all issues related to ***the processing of the data subject's data and to request*** exercising the rights under this Regulation.

Amendment

10. Data subjects shall have the right to contact the data protection officer on all issues related to exercising the rights under this Regulation.

Amendment 186

Proposal for a regulation Article 35 – paragraph 11

Text proposed by the Commission

11. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the core activities of the controller or the processor referred to in point (c) of paragraph 1 and the criteria for the professional qualities of the data protection officer referred to in paragraph 5.

Amendment

deleted

Justification

Such further specifications are not necessary.

Amendment 187
Proposal for a regulation
Article 37 – 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 tasks, certification, status, powers and resources of the data protection officer referred to in paragraph 1. **deleted**

Justification

There is no need for such further specifications.

Amendment 188
Proposal for a regulation
Article 41 – paragraph 2 – point a

Text proposed by the Commission

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, 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;

(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;

Justification

In some countries, the precedent rulings of the Courts have a high relevance (e.g.: Common Law Countries).

Amendment 189
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.

Justification

The website makes it easier to update and, in many cases, to find.

Amendment 190

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, **and where appropriate pursuant to an impact assessment, where the controller or processor has ensured that the recipient of data in a third country maintains high standards of data protection.**

Justification

In accordance with ECR Amendments aimed at incentivising controllers to have high standards of data protection by encouraging them to undertake an impact assessment, on an

optional basis.

Amendment 191

Proposal for a regulation

Article 42 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(ca) standard data protection clauses, as adopted according to points (a) and (b), between the data controller or data processor and the recipient of data situated in a third country, which may include standard terms for onward transfers to a recipient situated in a third country;

Justification

The Parliament's policy department study on reforming the data protection package points out that under the proposed Regulation, standard clauses do not extend to agreements between processors and sub-processors. This gap could significantly disadvantage EU firms and new technology start-ups. This amendment seeks to close this gap.

Amendment 192

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, which cannot be qualified as frequent or massive ***or where, prior to such transfer, the personal data is already made public in the third country***, 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 193

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*

Amendment 194

Proposal for a regulation Article 62

Text proposed by the Commission

Amendment

Article 62 *deleted*

Implementing acts

1. The Commission may adopt implementing acts for:

(a) deciding on the correct application of this Regulation in accordance with its objectives and requirements in relation to matters communicated by supervisory authorities pursuant to Article 58 or 61, concerning a matter in relation to which a reasoned decision has been adopted pursuant to Article 60(1), or concerning a matter in relation to which a supervisory authority does not submit a draft measure and that supervisory authority has indicated that it does not intend to follow the opinion of the Commission adopted pursuant to Article 59;

(b) deciding, within the period referred to in Article 59(1), whether it declares draft standard data protection clauses referred

to in point (d) of Article 58(2), as having general validity;

(c) specifying the format and procedures for the application of the consistency mechanism referred to in this section;

(d) specifying the arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the European Data Protection Board, in particular the standardised format referred to in Article 58(5), (6) and (8).

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

2. On duly justified imperative grounds of urgency relating to the interests of data subjects in the cases referred to in point (a) of paragraph 1, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 87(3). Those acts shall remain in force for a period not exceeding 12 months.

3. The absence or adoption of a measure under this Section does not prejudice any other measure by the Commission under the Treaties.

Justification

It is not wise to overload the Commission with such tasks, which can be more effectively handled by the European Data Protection Board.

Amendment 195 Proposal for a regulation Article 63 a (new)

Text proposed by the Commission

Amendment

Article 63a

Appealing procedures

(1) Without prejudice to the competences of the European Court of Justice, the

European Data Protection Board can issue binding opinions if:

(a) a data subject or data controller appeals on ground of inconsistent application of the present Regulation across the Member States: or

(b) a draft measure of the competent authority has gone through the whole Consistency Mechanism described in this Section without being yet perceived as consistent with the application of this Regulation in the whole EU.

(2) Before issuing such opinion, the European Data Protection Board shall take into consideration every information the competent Data Protection Authority knows, including the point of view of the interested parties.

Justification

Notwithstanding the competence of the Data Protection Authority of the main establishment Country, an additional measure is needed to ensure consistency in the whole single market for the remote case of a measure so controversial that the whole consistency mechanism has failed to produce a wide consensus.

Amendment 196
Proposal for a regulation
Article 66 – paragraph 1 – point d

Text proposed by the Commission

(d) issue opinions on draft decisions of supervisory authorities pursuant to the consistency mechanism referred to in Article 57;

Amendment

(d) issue opinions on draft decisions of supervisory authorities pursuant to the consistency mechanism referred to in Article 57 **and in Article 63a**;

Justification

This amendment matches the new Article 63a

Amendment 197
Proposal for a regulation
Article 73 – paragraph 1

Text proposed by the Commission

1. Without prejudice to any other administrative or judicial remedy, every data subject shall have the right to lodge a complaint with a supervisory authority in any Member State if they consider that the processing of personal data relating to them does not comply with this Regulation.

Amendment

1. Without prejudice to any other administrative or judicial remedy, every data subject shall have the right to lodge a complaint with a supervisory authority in any Member State if they consider that the processing of personal data relating to them does not comply with this Regulation. ***This complaint must not inflict costs on the data subject.***

Amendment 198

**Proposal for a regulation
Article 73 – paragraph 2**

Text proposed by the Commission

2. Any body, organisation or association which aims to protect data subjects' rights and interests concerning the protection of their personal data and has been properly constituted according to the law of a Member State shall have the right to lodge a complaint with a supervisory authority in any Member State on behalf of one or more data subjects if it considers that a data subject's rights under this Regulation have been infringed as a result of the processing of personal data.

Amendment

deleted

Amendment 199

**Proposal for a regulation
Article 74 – paragraph 1**

Text proposed by the Commission

1. ***Each*** natural or legal person shall have the right to a judicial remedy against decisions of a supervisory authority concerning them.

Amendment

1. ***Without prejudice to the procedure described in Article 63a (new), each*** natural or legal person, ***including each data controller and data processor,*** shall have the right to a judicial remedy against decisions of a supervisory authority

concerning *or affecting* them.

Justification

This amendment is essential to clarify the basic principle that data controllers may seek a judicial remedy when they are affected by decisions, even where they themselves are not the direct subject of the decision by a national authority.

Amendment 200

**Proposal for a regulation
Article 74 – paragraph 4**

Text proposed by the Commission

Amendment

4. A data subject which is concerned by a decision of a supervisory authority in another Member State than where the data subject has its habitual residence, may request the supervisory authority of the Member State where it has its habitual residence to bring proceedings on its behalf against the competent supervisory authority in the other Member State. ***deleted***

Justification

This possibility would bring no added value for the public and might jeopardise the cooperation of the supervisory authorities under the consistency mechanism.

Amendment 201

**Proposal for a regulation
Article 76 – paragraph 1**

Text proposed by the Commission

Amendment

1. Any body, organisation or association referred to in Article 73(2) shall have the right to exercise the rights referred to in Articles 74 and 75 on behalf of one or more data subjects. ***deleted***

Amendment 202

Proposal for a regulation
Article 77 – paragraph 1

Text proposed by the Commission

1. Any person who has suffered damage as a result of an unlawful processing operation or of an action incompatible with this Regulation shall have the right to receive compensation from the controller or the processor for the damage suffered.

Amendment

1. Any person who has suffered **material or immaterial** damage as a result of an unlawful processing operation, **including blacklisting**, or of an action incompatible with this Regulation shall have the right to receive compensation from the controller or the processor for the damage suffered **and for any emotional injury**.

Amendment 203
Proposal for a regulation
Article 78 – paragraph 1

Text proposed by the Commission

1. Member States shall lay down the rules on penalties, applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented, including where the controller did not comply with the obligation to designate a representative. The penalties provided for must be effective, proportionate and dissuasive.

Amendment

1. Member States shall lay down the rules on penalties, applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented, including where the controller did not comply with the obligation to designate a representative. The penalties provided for must be effective, **consistent** proportionate and dissuasive.

Justification

Penalties must be applied consistently throughout the European Union.

Amendment 204

Proposal for a regulation
Article 79 – paragraph 1

Text proposed by the Commission

1. Each supervisory authority shall be empowered to impose administrative sanctions in accordance with this Article.

Amendment

1. Each **competent** supervisory authority, shall be empowered to impose administrative sanctions in accordance with this Article.

Amendment 205

Proposal for a regulation Article 79 – paragraph 2

Text proposed by the Commission

2. The administrative sanction shall be in each individual case effective, proportionate and dissuasive. The amount of the administrative fine shall be fixed with due regard to the nature, gravity and duration of the breach, the intentional or negligent character of the infringement, the degree of responsibility of the natural or legal person and of previous breaches by this person, the technical and organisational measures and procedures implemented pursuant to Article 23 and the degree of co-operation with the supervisory authority in order to remedy the breach.

Amendment

2. The administrative sanction shall be in each individual case effective, proportionate, ***non discriminatory*** and dissuasive. The amount of the administrative fine shall be fixed with due regard to the nature, gravity and duration of the breach, the intentional or negligent character of the infringement, ***the particular category of personal data***, the degree of ***harm or risk of harm created by the violation***, ***the degree of*** responsibility of the natural or legal person and of previous breaches by this person, the technical and organisational measures and procedures implemented pursuant to Article 23 and the degree of co-operation with the supervisory authority in order to remedy the breach. ***Where appropriate, the Data Protection Authority shall also be empowered to require that a data protection officer is appointed if the body, organisation or association has opted not to do so.***

Justification

This AM aims to ensure that deliberate or reckless violations merit more substantial penalties than merely negligent violations. The package of amendments relating to administrative sanctions are aimed at ensuring that the penalty is proportionate to the conduct, and the most punitive sanctions are reserved for the most serious misconduct. The DPA's ability to require the appointment of a DPO is also aimed at ensuring proportionality in terms of sanctions.

Amendment 206

Proposal for a regulation Article 79 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Aggravating factors shall include in particular:

- (a) repeated violations committed in reckless disregard of applicable law;***
- (b) refusal to co-operate with or obstruction of an enforcement process;***
- (c) violations that are deliberate, serious and likely to cause substantial damage;***
- (d) a data protection impact assessment has not been undertaken;***
- (e) a data protection officer has not been appointed.***

Amendment 207

Proposal for a regulation Article 79 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Mitigating factors shall include:

- (a) measures having been taken by the natural or legal person to ensure compliance with relevant obligations;***
- (b) genuine uncertainty as to whether the activity constituted a violation of the relevant obligations;***
- (c) immediate termination of the violation upon knowledge;***
- (d) co-operation with any enforcement processes;***
- (e) a data protection impact assessment has been undertaken;***
- (f) a data protection officer has been appointed.***

Amendment 208

Proposal for a regulation
Article 79 – paragraph 4

Text proposed by the Commission

Amendment

4. The supervisory authority shall impose a fine up to 250 000 EUR, or in case of an enterprise up to 0,5 % of its annual worldwide turnover, to anyone who, intentionally or negligently: **deleted**

(a) does not provide the mechanisms for requests by data subjects or does not respond promptly or not in the required format to data subjects pursuant to Articles 12(1) and (2);

(b) charges a fee for the information or for responses to the requests of data subjects in violation of Article 12(4).

Justification

See Article 79, paragraph 3.

Amendment 209

Proposal for a regulation
Article 79 – paragraph 5

Text proposed by the Commission

Amendment

5. The supervisory authority shall impose a fine up to 500 000 EUR, or in case of an enterprise up to 1 % of its annual worldwide turnover, to anyone who, intentionally or negligently: **deleted**

(a) does not provide the information, or does provide incomplete information, or does not provide the information in a sufficiently transparent manner, to the data subject pursuant to Article 11, Article 12(3) and Article 14;

(b) does not provide access for the data subject or does not rectify personal data pursuant to Articles 15 and 16 or does not communicate the relevant information to

a recipient pursuant to Article 13;

(c) does not comply with the right to be forgotten or to erasure, or fails to put mechanisms in place to ensure that the time limits are observed or does not take all necessary steps to inform third parties that a data subjects requests to erase any links to, or copy or replication of the personal data pursuant Article 17;

(d) does not provide a copy of the personal data in electronic format or hinders the data subject to transmit the personal data to another application in violation of Article 18;

(e) does not or not sufficiently determine the respective responsibilities with co-controllers pursuant to Article 24;

(f) does not or not sufficiently maintain the documentation pursuant to Article 28, Article 31(4), and Article 44(3);

(g) does not comply, in cases where special categories of data are not involved, pursuant to Articles 80, 82 and 83 with rules in relation to freedom of expression or with rules on the processing in the employment context or with the conditions for processing for historical, statistical and scientific research purposes.

Justification

See Article 79, paragraph 3.

Amendment 210

**Proposal for a regulation
Article 79 – paragraph 6**

Text proposed by the Commission

Amendment

6. The supervisory authority shall impose a fine up to 1 000 000 EUR or, in case of an enterprise up to 2 % of its annual worldwide turnover, to anyone who,

deleted

intentionally or negligently:

(a) processes personal data without any or sufficient legal basis for the processing or does not comply with the conditions for consent pursuant to Articles 6, 7 and 8;

(b) processes special categories of data in violation of Articles 9 and 81;

(c) does not comply with an objection or the requirement pursuant to Article 19;

(d) does not comply with the conditions in relation to measures based on profiling pursuant to Article 20;

(e) does not adopt internal policies or does not implement appropriate measures for ensuring and demonstrating compliance pursuant to Articles 22, 23 and 30;

(f) does not designate a representative pursuant to Article 25;

(g) processes or instructs the processing of personal data in violation of the obligations in relation to processing on behalf of a controller pursuant to Articles 26 and 27;

(h) does not alert on or notify a personal data breach or does not timely or completely notify the data breach to the supervisory authority or to the data subject pursuant to Articles 31 and 32;

(i) does not carry out a data protection impact assessment pursuant or processes personal data without prior authorisation or prior consultation of the supervisory authority pursuant to Articles 33 and 34;

(j) does not designate a data protection officer or does not ensure the conditions for fulfilling the tasks pursuant to Articles 35, 36 and 37;

(k) misuses a data protection seal or mark in the meaning of Article 39;

(l) carries out or instructs a data transfer to a third country or an international organisation that is not allowed by an adequacy decision or by appropriate

Text proposed by the Commission

Amendment

1. Within the limits of this Regulation and in accordance with point (h) of Article 9(2), processing of personal data concerning health must be on the basis of Union law or Member State law which shall provide for suitable and specific measures to safeguard the data subject's legitimate interests, and be necessary for:

1. Within the limits of this Regulation and in accordance with point (h) of Article 9(2), processing of personal data concerning health must be on the basis of Union law or Member State law which shall provide for suitable, **consistent** and specific measures to safeguard the data subject's legitimate interests, and be necessary for:

Justification

Adding the consistency requirement allows the Member States' laws to have a lesser degree of freedom, bearing in mind the objective of the Single Market.

Amendment 213
Proposal for a regulation
Article 81 – 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 other reasons of public interest in the area of public health as referred to in point (b) of paragraph 1, as well as criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1.

deleted

Justification

There is no need for such further specifications.

Amendment 214

Proposal for a regulation
Article 82 – paragraph 1

Text proposed by the Commission

1. Within the limits of this Regulation, Member States may adopt by law specific rules regulating the processing of employees' personal data in the employment context, in particular for the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organisation of work, health and safety at work, and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship.

Amendment

1. Within the limits of this Regulation, Member States may adopt by law **or collective agreement among employers and employees** specific rules regulating the processing of employees' personal data in the employment context, in particular for the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organisation of work, health and safety at work, **criminal conviction** and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship. ***This Regulation must, in accordance with the principles of Article 5, respect collective agreements regarding decentralized regulation of the employer's data processing concluded in accordance with this Regulation.***

Amendment 215

**Proposal for a regulation
Article 82 – paragraph 3**

Text proposed by the Commission

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1.

Amendment

3. This regulation recognizes the role of the social partners. In Member States where it has been left to the parties on the labour market to regulate wages and other work conditions through collective agreements, the social partners' obligations and rights under collective agreements should be taken into specific consideration when applying Article 6.1 (f).

Amendment 216
Proposal for a regulation
Article 83 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the processing of personal data for the purposes referred to in paragraph 1 and 2 as well as any necessary limitations on the rights of information to and access by the data subject and detailing the conditions and safeguards for the rights of the data subject under these circumstances.

deleted

Justification

There is no need for such further specifications.

Amendment 217

Proposal for a regulation
Article 83 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States can adopt specific measures to regulate the processing of personal data for historical, statistical or scientific purposes while respecting the provisions of paragraph 1 and 2 of this article as well as respecting the Charter of Fundamental Rights of the European Union.

Amendment 218

Proposal for a regulation
Article 83 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. A Member State adopting specific

measures according to article 83, paragraph 3a, must inform the Commission about the adopted measures prior to the date set in article 91, paragraph 2, and without undue delay inform the Commission about eventual changes at a later stage of the measures.

Amendment 219
Proposal for a regulation
Article 84 – paragraph 2

Text proposed by the Commission

2. Each Member State shall notify to the Commission the rules adopted pursuant to paragraph 1, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.

Amendment

2. Each Member State shall notify to the Commission the rules adopted pursuant to paragraph 1, *in order for the Commission to verify the consistency with the other Member States rules*, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.

Justification

The Single market needs consistent application of the present Regulation.

Amendment 220
Proposal for a regulation
Article 86 – paragraph 2

Text proposed by the Commission

2. The delegation of power referred to in Article **6(5)**, **Article 8(3)**, Article 9(3), Article 12(5), Article **14(7)**, **Article 15(3)**, **Article 17(9)**, **Article 20(6)**, **Article 22(4)**, Article 23(3), Article **26(5)**, **Article 28(5)**, **Article 30(3)**, Article **31(5)**, **Article 32(5)**, **Article 33(6)**, Article 34(8), Article **35(11)**, **Article 37(2)**, **Article 39(2)**, Article 43(3), Article 44(7), Article 79(6), **Article 81(3)**, **Article 82(3)** and Article 83(3) shall be conferred on the Commission for an indeterminate period of time from the date

Amendment

2. The delegation of power referred to in Article 8(3), Article 9(3), Article 12(5), Article **20(5)**, Article 23(3), Article 30(3), Article **33(6)**, Article 34(8), Article 39(2), Article 43(3), Article 44(7), Article 79(7) and Article **82(3)** shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

of entry into force of this Regulation.

Justification

It is necessary to match the amendments that deleted such power. Where there has been a correction of the paragraph referred to, a typing error had been found.

Amendment 221
Proposal for a regulation
Article 86 – paragraph 3

Text proposed by the Commission

3. The delegation of power referred to in Article **6(5)**, **Article** 8(3), Article 9(3), Article 12(5), Article **14(7)**, **Article 15(3)**, **Article 17(9)**, **Article 20(6)**, **Article 22(4)**, Article 23(3), Article **26(5)**, **Article 28(5)**, **Article** 30(3), Article **31(5)**, **Article 32(5)**, **Article** 33(6), Article 34(8), Article **35(11)**, **Article 37(2)**, **Article** 39(2), Article 43(3), Article 44(7), Article 79(6), **Article 81(3)**, Article 82(3) **and Article 83(3)** may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Amendment

3. The delegation of power referred to in Article 8(3), Article 9(3), Article 12(5), Article **20(5)**, Article 23(3), Article 30(3), Article 33(6), Article 34(8), Article 39(2), Article 43(3), Article 44(7), Article 79(7), **and** Article 82(3) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Justification

This amendment completes the ones deleting this power. Where the referred Article has been amended, a typing mistake had been found.

Amendment 222
Proposal for a regulation
Article 86 – paragraph 5

Text proposed by the Commission

5. A delegated act adopted pursuant to

Amendment

5. A delegated act adopted pursuant to

Article **6(5)**, **Article** 8(3), Article 9(3), Article 12(5), Article **14(7)**, **Article** **15(3)**, **Article** **17(9)**, **Article** **20(6)**, **Article** **22(4)**, Article 23(3), Article **26(5)**, **Article** **28(5)**, **Article** 30(3), Article **31(5)**, **Article** **32(5)**, **Article** 33(6), Article 34(8), Article **35(11)**, **Article** **37(2)**, **Article** 39(2), Article 43(3), Article 44(7), Article 79(6), **Article** **81(3)**, Article 82(3) **and Article** 83(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

Article 8(3), Article 9(3), Article 12(5), Article **20(5)**, Article 23(3), Article 30(3), Article 33(6), Article 34(8), Article 39(2), Article 43(3), Article 44(7), Article 79(7), **and** Article 82(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

Justification

This amendment is necessary to make effective those amendments that deleted the power referred to at the beginning of this article.

Amendment 223

Proposal for a regulation

Article 86 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. When adopting the acts referred to in this article, the Commission shall promote technological neutrality.

Amendment 224

Proposal for a regulation

Article 89 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. In relation to natural or legal persons who are under obligations to report

personal data breaches under Directive 2002/58/EC as amended by Directive 2009/136/EC in relation to the processing of personal data in connection with the provision of publicly available electronic communications services, this Regulation shall not impose additional obligations in relation to the process of notifying a personal data breach to the supervisory authority and in relation to the process of communicating a personal data breach to the data subjects. Such a natural or legal person shall notify personal data breaches affecting all personal data for which it is a controller in accordance with the personal data breach notification process set out in Directive 2002/58/EC as amended by Directive 2009/136/EC.

Justification

This new paragraph establishes that electronic communications service providers are subject to a single notification regime for any breaches relating to the data they process, not multiple regimes depending on the service offered or the data held. This ensures a level playing field among industry players.

Amendment 225

Proposal for a regulation Article 89 – paragraph 2

Text proposed by the Commission

2. Article 1(2) of Directive 2002/58/EC shall be deleted.

Amendment

2. Article 1(2), **Article 2(c) and Article 9** of Directive 2002/58/EC shall be deleted.

Justification

This amendment provides an essential alignment of Directive 2002/58/EC with the present Regulation. Furthermore, it avoids double-regulation, which may seriously harm the competitiveness of sectors covered by Directive 2002/58/EC. The general requirements of the present Regulation, including those relating to privacy impact assessments, will ensure that location is treated with the appropriate degree of care regardless of source or the industry of its data controller.

Amendment 226

Proposal for a regulation
Article 90 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

***Delegated acts and implementing acts
adopted by the Commission should be
evaluated by the Parliament and the
Council every second year.***

PROCEDURE

Title	Protection of individuals with regard to the processing of personal data, and the free movement of such data (General Data Protection Regulation)			
References	COM(2012)0011 – C7-0025/2012 – 2012/0011(COD)			
Committee responsible Date announced in plenary	LIBE 16.2.2012			
Opinion by Date announced in plenary	IMCO 16.2.2012			
Rapporteur Date appointed	Lara Comi 29.2.2012			
Discussed in committee	21.6.2012	10.10.2012	28.11.2012	17.12.2012
Date adopted	23.1.2013			
Result of final vote	+: -: 0:	19 16 1		
Members present for the final vote	Preslav Borissov, Cristian Silviu Buşoi, Jorgo Chatzimarkakis, Sergio Gaetano Cofferati, Birgit Collin-Langen, Lara Comi, Anna Maria Corazza Bildt, Cornelis de Jong, Christian Engström, Dolores García-Hierro Caraballo, Evelyne Gebhardt, Małgorzata Handzlik, Malcolm Harbour, Philippe Juvin, Hans-Peter Mayer, Angelika Niebler, Sirpa Pietikäinen, Phil Prendergast, Mitro Repo, Heide Rühle, Christel Schaldemose, Andreas Schwab, Catherine Stihler, Emilie Turunen, Bernadette Vergnaud, Barbara Weiler			
Substitute(s) present for the final vote	Raffaele Baldassarre, Jürgen Creutzmann, Anna Hedh, Constance Le Grip, Morten Løkkegaard, Emma McClarkin, Konstantinos Poupakis, Kyriacos Triantaphyllides, Patricia van der Kammen, Sabine Verheyen			

25.3.2013

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

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

Rapporteur: Marielle Gallo

SHORT JUSTIFICATION

The proposal for a regulation maintains the principles of Directive 95/46/EC and strengthens citizens' rights concerning the protection of personal data. The rapporteur welcomes the Commission's work and would like to make the following comments.

In spite of the hesitation of some parties, the rapporteur would like to retain a broad definition of personal data and the principle of explicit consent as grounds for the lawfulness of processing. These are necessary conditions if this fundamental right is to be effectively protected and if we are to enjoy the trust of our fellow citizens, particularly in the digital world.

The rapporteur then proposes strengthening the protection of children by broadening the scope of Article 8 to include the sale of all goods and services rather than continue its restriction to services of the information society.

She also proposes deleting Article 18 introducing the right to data portability. This new right included in the proposal for a directive brings no added value to citizens concerning right of access, which is dealt with in Article 15 of the proposal and enables an individual to obtain a communication of the data which are being processed.

The rapporteur would like explicitly to introduce the general principle of the responsibility of the controller. The proposal for a regulation reinforces the obligations of controllers, thereby enabling the rights of the individual concerned to be effectively exercised. However, more measures are needed if this general principle of responsibility is to be established explicitly.

The 'right to be forgotten' should also be strengthened. Article 17(2) imposes an obligation of

responsibility on the controller with regard to data processed by a third party. The rapporteur proposes introducing an obligation on the controller to inform the person concerned of the action taken by the third party in response to the request.

The provisions concerning the transfer of data to third countries or international organisations have been significantly developed and clarified. The rapporteur proposes introducing the system of mutual recognition of binding corporate rules already put in place by the Article 29 Working Party. The authority responsible should be that of the place of the main establishment of the controller or processor.

Regarding the competencies of the supervisory authorities, the rapporteur welcomes the adoption of the principle of the one-stop shop, which simplifies the task of economic operators based in more than one Member State. However, we must not lose sight of the fact that citizens generally contact the authority in their Member State of origin and wait for that authority to take the necessary steps to ensure their rights are complied with. Application of the one-stop shop principle must not mean that other supervisory authorities become simply 'letterboxes'. The rapporteur proposes specifying that the lead authority shall be obliged to cooperate with the other supervisory authorities involved and with the European Commission, pursuant to the provisions of Chapter 7 of the regulation.

Regarding administrative sanctions, the rapporteur welcomes the large sums provided for by the proposal for a regulation. However, the supervisory authorities must have considerable scope for manoeuvre when imposing fines. Article 8(3) of the Charter of Fundamental Rights of the European Union establishes the principle of the independence of supervisory authorities. The consistency mechanism might contribute to a harmonised policy within the EU regarding fines.

The proposal for a regulation also contains a large number of delegated and implementing acts. Some of these are necessary, as they add non-essential elements to the regulation. The rapporteur proposes that others simply be deleted. This might be investigated separately by the Committee on Legal Affairs. According to Rule 37(1) of the European Parliament's Rules of Procedure, the Committee on Legal Affairs is responsible for verification of the legal basis of every legislative initiative and can decide, either on its own initiative or at the request of the committee responsible, on what use is made of the delegated and implementing acts.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments into its report:

Amendment 1 **Proposal for a regulation**

Recital 4

Text proposed by the Commission

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

Amendment 2
Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) Rapid technological developments and globalisation have brought new challenges for the protection of personal data. The scale of data sharing and collecting has increased spectacularly. Technology allows both private companies and public authorities to make use of personal data on an unprecedented scale in order to *pursue* their activities. Individuals increasingly make personal information available publicly and globally. Technology has transformed both the economy and social life, *and requires to further* facilitate the free flow of data within the Union and *the* transfer to third countries and international organisations, *while ensuring an high* level of *the protection of* personal data.

Amendment

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

Amendment

(5) Rapid technological developments and globalisation have brought new challenges for the protection of personal data. The scale of data sharing and collecting has increased spectacularly. Technology allows both private companies and public authorities to make use of personal data on an unprecedented scale in order to *carry out* their activities. Individuals increasingly make personal information available publicly and globally. Technology has transformed both the economy and social life, *which led to the need to* facilitate the free flow of data within the Union and *secure* transfer to third countries and international organisations *and ensure the highest* level of personal data *protection*.

Amendment 3

Proposal for a regulation Recital 15

Text proposed by the Commission

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

Amendment

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

Justification

The scope of this exemption should be clarified, particularly in view of the development of social networks enabling information to be shared with hundreds of people. In cases C-101/01 and C-73/07, the ECJ advocates accessibility 'by an indefinite number of people' as a criterion for application of this exception. The EDPS shares this view.

Amendment 4

Proposal for a regulation Recital 24

Text proposed by the Commission

(24) When using online services, individuals may be associated with online identifiers provided by their devices, applications, tools and protocols, such as Internet Protocol addresses or cookie identifiers. This may leave traces which, combined with unique identifiers and other information received by the servers, may be used to create profiles of the individuals and identify them. It follows that identification numbers, location data,

Amendment

(24) When using online services, individuals may be associated with online identifiers provided by their devices, applications, tools and protocols, such as Internet Protocol addresses or cookie identifiers. This may leave traces which, combined with unique identifiers and other information received by the servers, may be used to create profiles of the individuals and identify them. It follows that **a study should be undertaken, on a case-by-case**

online identifiers or other specific factors as such need not necessarily be considered as personal data in all circumstances.

basis and in accordance with technological developments, of whether identification numbers, location data, online identifiers or other specific factors as such need not necessarily be considered as personal data in all circumstances.

Justification

With an increasing number of new on-line services and with constant technological development, there must be a higher level of protection of citizens' personal data. A case-by-case study would therefore seem indispensable.

Amendment 5 Proposal for a regulation

Recital 25

Text proposed by the Commission

(25) Consent should be given explicitly by any appropriate method enabling a freely given specific and informed indication of the data subject's wishes, either by a statement or by a clear affirmative action by the data subject, ensuring that individuals are aware that they give their consent to the processing of personal data, including by ticking a box when visiting an Internet website or by any other statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of their personal data. Silence or inactivity should therefore not constitute consent. Consent should cover all processing activities carried out for the same purpose or purposes. If the data subject's consent is to be given following an electronic request, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided.

Amendment

(25) Consent should be given explicitly by any ***method*** appropriate ***to the media used*** enabling a freely given specific and informed indication of the data subject's wishes, either by a statement or by a clear affirmative action by the data subject, ensuring that individuals are aware that they give their consent to the processing of personal data, including by ticking a box when visiting an Internet website or by any other statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of their personal data. Silence or inactivity should therefore not constitute consent. ***This is notwithstanding the possibility to express consent to processing in accordance with Directive 2002/58/EC by using the appropriate settings of a browser or other application.*** Consent should cover all processing activities carried out for the same purpose or purposes. If the data subject's consent is to be given following an electronic request, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided.

Amendment 6 Proposal for a regulation

Recital 27

Text proposed by the Commission

(27) The main establishment of *a controller in the Union* should be *determined* according to objective criteria and should imply the effective and real exercise of *management* activities determining the main decisions as to the purposes, conditions and means of processing through stable arrangements. This criterion should not depend whether the processing of personal data is actually carried out at that location; the presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute such main establishment and are therefore no determining criteria for a main establishment. *The main establishment of the processor should be the place of its central administration in the Union.*

Amendment

(27) The main establishment of *an undertaking or groups of undertakings, whether controller or processor*, should be *designated* according to objective criteria and should imply the effective and real exercise of *data* activities determining the main decisions as to the purposes, conditions and means of processing through stable arrangements. This criterion should not depend whether the processing of personal data is actually carried out at that location; the presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute such main establishment and are therefore no determining criteria for a main establishment.

Amendment 7 Proposal for a regulation

Recital 34

Text proposed by the Commission

(34) Consent should not provide a valid legal ground for the processing of personal data, where there is a clear imbalance between the data subject and the controller. This is especially the case where the data subject is in a situation of dependence from the controller, among others, where personal data are processed by the employer of employees' personal data in the employment context. Where the

Amendment

(34) Consent should not provide a valid legal ground for the processing of personal data, where there is a clear imbalance between the data subject and the controller. This is especially the case where the data subject is in a situation of dependence from the controller, among others, where personal data are processed by the employer of employees' personal data in the employment context, *or where a*

controller is a public authority, there would be an imbalance only in the specific data processing operations where the public authority can impose an obligation by virtue of its relevant public powers and the consent cannot be deemed as freely given, taking into account the interest of the data subject.

controller has a substantial market power with respect to certain products or services and where these products or services are offered on condition of consent to the processing of personal data, or where a unilateral and non-essential change in terms of service gives a data subject no option other than accept the change or abandon an online resource in which they have invested significant time. Where the controller is a public authority, there would be an imbalance only in the specific data processing operations where the public authority can impose an obligation by virtue of its relevant public powers and the consent cannot be deemed as freely given, taking into account the interest of the data subject.

Justification

Many social media sites lead users to invest significant time and energy in developing online profiles. There would be a clear imbalance, in the sense of the Commission's proposal, in any situation where the user was given the choice between accepting new and unnecessary data processing and abandoning the work they have already put into their profile. Another case of clear imbalance would be if the market for the service in question is monopolistic/oligopolistic, so that the data subject does not in fact have a real possibility to choose a privacy-respecting service provider. Data portability would not fully address this issue, as it does not resolve the loss of the network effects in larger social networks.

Amendment 8

Proposal for a regulation Recital 38

Text proposed by the Commission

(38) The legitimate interests of a ***controller*** may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding. This would need careful assessment in particular where the data subject is a child, given that children deserve specific protection. The data subject should have the right to object

Amendment

(38) The legitimate interests of a ***person*** may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding. This would need careful assessment in particular where the data subject is a child, given that children deserve specific protection. The data subject should have the right to object

the processing, on grounds relating to their particular situation and free of charge. To ensure transparency, the controller should be obliged to explicitly inform the data subject on the legitimate interests pursued and on the right to object, and also be obliged to document these legitimate interests. Given that it is for the legislator to provide by law the legal basis for public authorities to process data, this legal ground should not apply for the processing by public authorities in the performance of their tasks.

the processing, on grounds relating to their particular situation and free of charge. To ensure transparency, the controller *or the third parties to whom the data are sent* should be obliged to explicitly inform the data subject on the legitimate interests pursued and on the right to object, and also be obliged to document these legitimate interests. Given that it is for the legislator to provide by law the legal basis for public authorities to process data, this legal ground should not apply for the processing by public authorities in the performance of their tasks.

Justification

The wording of Directive 95/46/EC should be maintained. It is worth recalling that the Regulation concerns not only the digital world but will also apply to off-line activities. Some sectors such as newspaper publishing need, in order to finance their activities, to use external sources in order to contact possible new subscribers.

Amendment 9 **Proposal for a regulation**

Recital 45

Text proposed by the Commission

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

Amendment

(45) If the data processed by a controller do not permit the controller to identify a natural person, the data controller should not be obliged to **make use of** additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation. In case of a request for access, the controller should be entitled to ask the data subject for further information to enable the data controller to locate the personal data which that person seeks.

Amendment 10

Proposal for a regulation Recital 48

Text proposed by the Commission

(48) The principles of fair and transparent processing require that the data subject should be informed in particular of the existence of the processing operation and its purposes, how long the data will be stored, on the existence of the right of access, rectification or erasure and on the right to lodge a complaint. Where the data are collected from the data subject, the data subject should also be informed whether they are obliged to provide the data and of the consequences, in cases they do not provide such data.

Amendment

(48) The principles of fair and transparent processing require that the data subject should be informed in particular of the existence of the processing operation and its purposes, ***the criteria enabling determination of*** how long the data will be stored ***for each purpose***, on the existence of the right of access, rectification or erasure and on the right to lodge a complaint. Where the data are collected from the data subject, the data subject should also be informed whether they are obliged to provide the data and of the consequences, in cases they do not provide such data.

Justification

It is not always possible to determine precisely how long personal data will be stored, particularly in the case of storage for different purposes.

Amendment 11

Proposal for a regulation Recital 51

Text proposed by the Commission

(51) Any person should have the right of access to data which has been collected concerning them, and to exercise this right easily, in order to be aware and verify the lawfulness of the processing. Every data subject should therefore have the right to know and obtain communication in particular for what purposes the data are processed, for what period, which recipients receive the data, what is the logic of the data that are undergoing the processing and what might be, at least

Amendment

(51) Any person should have the right of access to data which has been collected concerning them, and to exercise this right easily, in order to be aware and verify the lawfulness of the processing. Every data subject should therefore have the right to know and obtain communication in particular for what purposes the data are processed, for what period, which recipients receive the data, what is the logic of the data that are undergoing the processing and what might be, at least

when based on profiling, the consequences of such processing. *This* right should not adversely affect the rights and freedoms of others, including trade secrets or intellectual property and in particular the copyright protecting the software. However, the result of these considerations should not be that all information is refused to the data subject.

when based on profiling, the consequences of such processing. *Every data subject should furthermore have the right to communication of the personal data undergoing processing and, on electronic request, an electronic copy of the non-commercial data undergoing processing in an interoperable and structured format which allows for further use. These rights* should not adversely affect the rights and freedoms of others, including trade secrets or intellectual property and in particular the copyright protecting the software. However, the result of these considerations should not be that all information is refused to the data subject.

Justification

It is not always possible to determine precisely how long personal data will be stored, particularly in the case of storage for different purposes.

Amendment 12 **Proposal for a regulation**

Recital 53

Text proposed by the Commission

(53) Any person should have the right to have personal data concerning them rectified and a ‘right to be forgotten’ where the retention of such data is not in compliance with this Regulation. In particular, data subjects should have the right that their personal data are erased and no longer processed, where the data are no longer necessary in relation to the purposes for which the data are collected or otherwise processed, where data subjects have withdrawn their consent for processing or where they object to the processing of personal data concerning them or where the processing of their personal data otherwise does not comply with this Regulation. This right is

Amendment

(53) Any person should have the right to have personal data concerning them rectified and a ‘right to be forgotten’ where the retention of such data is not in compliance with this Regulation. In particular, data subjects should have the right that their personal data are erased and no longer processed, where the data are no longer necessary in relation to the purposes for which the data are collected or otherwise processed, where data subjects have withdrawn their consent for processing or where they object to the processing of personal data concerning them or where the processing of their personal data otherwise does not comply with this Regulation. This right is

particularly relevant, when the data subject has given their consent as a child, when not being fully aware of the risks involved by the processing, and later wants to remove such personal data especially on the Internet. However, the further retention of the data should be allowed where it is necessary for historical, statistical and scientific research purposes, for reasons of public interest in the area of public health, for exercising the right of freedom of expression, when required by law or where there is a reason to restrict the processing of the data instead of erasing them.

particularly relevant, when the data subject has given their consent as a child, when not being fully aware of the risks involved by the processing, and later wants to remove such personal data especially on the Internet. However, the further retention of the data should be allowed where it is necessary for historical, statistical, **aggregated** and scientific research purposes, for reasons of public interest in the area of public health, **for the purpose of processing health data for healthcare purposes**, for exercising the right of freedom of expression, when required by law or where there is a reason to restrict the processing of the data instead of erasing them.

Justification

It is in the vital interest of the data subject to keep a complete record of their health in order to receive the best care and treatment through their life. The right to be forgotten should not apply where data is processed for healthcare purposes as laid down in Article 81(a).

Amendment 13

Proposal for a regulation Recital 55

Text proposed by the Commission

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

Amendment

deleted

contract.

Justification

Data subjects have right of access, as established by Article 15 of the proposal for a regulation. The right of access gives every data subject the right to know which personal data are being processed. Article 18, which enables data subjects to obtain a copy of their data, brings no added value in terms of the protection of citizens' personal data and creates confusion regarding the exact scope of the right of access, which is a principal right.

Amendment 14 **Proposal for a regulation**

Recital 58

Text proposed by the Commission

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

Amendment

(58) Every **data subject** should have the right not to be subject to a **decision** which is based on profiling by means of automated processing **and which produces adverse legal effects or adversely affects this data subject. This is not the case for measures relating to a commercial communication, for example in the field of customer relationship management or customer acquisition.** However, such **decision** should be allowed when authorised by law, **or when processing is lawful under points (a) to (fa) of Article 6(1).** In any case, such processing should be subject to suitable safeguards, including specific information of the data subject and the right to obtain human intervention and that such measure should not concern a child. **Profiling should not have the effects of discriminating against individuals on the basis, for instance, of race or ethnic origin, religion or sexual orientation, without prejudice to Article 9, paragraph 2.**

Justification

The proposed Commission wording implies that all profiling has negative consequences, when some profiling can have many positive impacts; such as improving or customizing services for similar customers.

Amendment 15

Proposal for a regulation Recital 60

Text proposed by the Commission

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

Amendment

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

Justification

Strengthens the protection of personal data. A general principle of responsibility on the part of the controller needs to be explicitly established.

Amendment 16

Proposal for a regulation Recital 62

Text proposed by the Commission

(62) The protection of the rights and freedoms of data subjects as well as the responsibility and liability of controllers and processor, also in relation to the monitoring by and measures of supervisory authorities, requires a clear attribution of the responsibilities under this Regulation, including where a controller determines the purposes, conditions and means of the processing jointly with other controllers or where a processing operation is carried out on behalf of a controller.

Amendment

(62) The protection of the rights and freedoms of data subjects as well as the responsibility and liability of controllers and processor, also in relation to the monitoring by and measures of supervisory authorities, requires a clear attribution of the responsibilities under this Regulation, including where a controller determines the purposes, conditions and means of the processing jointly with other controllers or where a processing operation is carried out on behalf of a controller. ***In the event of joint and several liability, a processor which has made amends for damage done to the data subject may appeal against the controller for reimbursement if it has acted in conformity with the legal act***

binding it to the controller.

Justification

The processor is defined as the organisation acting on behalf of the controller. Therefore, if the processor complies exactly with the instructions it has received, it is the controller and not the processor which should be held responsible for any breach of personal data, without the remuneration of the data subject being affected.

Amendment 17

Proposal for a regulation

Recital 65

Text proposed by the Commission

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

Amendment

(65) In order to demonstrate compliance with this Regulation, the controller or processor should ***maintain relevant information on the main categories of*** processing ***undertaken***. Each controller and processor should be obliged to co-operate with the supervisory authority and make this documentation, on request, available to it, so that it might ***assist the supervisory authority in evaluating the compliance of those main categories of*** processing ***with this Regulation***.

Amendment 18

Proposal for a regulation

Recital 67

Text proposed by the Commission

(67) A personal data breach may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud, to the individual concerned. Therefore, as soon as the controller becomes aware that ***such*** a breach has occurred, the controller should notify the breach to the supervisory authority without undue delay ***and, where feasible, within 24 hours. Where this***

Amendment

(67) A personal data breach may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud, to the individual concerned. Therefore, as soon as the controller becomes aware that a breach ***which would have a significant impact on the data subject*** has occurred, the controller should notify the breach to the supervisory authority without undue

cannot achieved within 24 hours, an explanation of the reasons for the delay should accompany the notification. The individuals whose personal data could be adversely affected by the breach should be notified without undue delay in order to allow them to take the necessary precautions. A breach should be considered as adversely affecting the personal data or privacy of a data subject where it could result in, for example, identity theft or fraud, physical harm, significant humiliation or damage to reputation. The notification should describe the nature of the personal data breach as well as recommendations as well as recommendations for the individual concerned to mitigate potential adverse effects. Notifications to data subjects should be made as soon as reasonably feasible, and in close cooperation with the supervisory authority and respecting guidance provided by it or other relevant authorities (e.g. law enforcement authorities). For example, the chance for data subjects to mitigate an immediate risk of harm would call for a prompt notification of data subjects whereas the need to implement appropriate measures against continuing or similar data breaches may justify a longer delay.

delay. The individuals whose personal data could be *significantly* adversely affected by the breach should be notified without undue delay in order to allow them to take the necessary precautions. A breach should be considered as *significantly* adversely affecting the personal data or privacy of a data subject where it could result in, for example, identity theft or fraud, physical harm, significant humiliation or damage to reputation. The notification should describe the nature of the personal data breach as well as recommendations as well as recommendations for the individual concerned to mitigate potential adverse effects. Notifications to data subjects should be made as soon as reasonably feasible, and in close cooperation with the supervisory authority and respecting guidance provided by it or other relevant authorities (e.g. law enforcement authorities). For example, the chance for data subjects to mitigate an immediate risk of harm would call for a prompt notification of data subjects whereas the need to implement appropriate measures against continuing or similar data breaches may justify a longer delay.

Justification

In the event of a breach, the controller must initially concentrate on putting into practice all appropriate measures to prevent it from continuing. An obligation to notify the competent supervisory authority within 24 hours together with sanctions for failing to do so might achieve just the opposite. In addition, as the Article 29 Working Party stated in its opinion of 23 March 2012, notification must not concern minor breaches, as otherwise the supervisory authorities would be over-burdened.

Amendment 19

Proposal for a regulation Recital 82

Text proposed by the Commission

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

Amendment

(82) The Commission may equally recognise that a third country, or a territory or a processing sector within a third country, or an international organisation offers no adequate level of data protection. Consequently the transfer of personal data to that third country should be ***authorised subject to appropriate guarantees or under the derogations set out in this Regulation.***

Justification

In line with the recommendation of the EPDS set out in its opinion of 7 March 2012 (point 220).

Amendment 20

Proposal for a regulation Recital 85 a (new)

Text proposed by the Commission

Amendment

(85a) A group of companies planning to submit for approval binding corporate rules may propose a supervisory authority as the lead authority. This should be the supervisory authority of the Member State in which the main establishment of the controller or processor is situated.

Justification

The Article 29 Working Party established a system for mutual recognition of binding corporate rules (WP 107, 14 April 2005). This system should be incorporated into this Regulation. The criterion for designating the competent authority should be the place of the main establishment, as set out in Article 51(2) of the Regulation.

Amendment 21
Proposal for a regulation

Recital 87

Text proposed by the Commission

(87) These derogations should in particular apply to data transfers required and necessary for the protection of important grounds of public interest, for example in cases of international data transfers between competition authorities, tax or customs administrations, financial supervisory authorities, between services competent for social security matters, or to competent authorities for the prevention, investigation, detection and prosecution of criminal offences.

Amendment

(87) These derogations should in particular apply to data transfers required and necessary for the protection of important grounds of public interest, for example in cases of international data transfers between competition authorities, tax or customs administrations, financial supervisory authorities, between services competent for social security matters, ***between bodies responsible for fighting fraud in sports***, or to competent authorities for the prevention, investigation, detection and prosecution of criminal offences.

Amendment 22

Proposal for a regulation

Recital 115

Text proposed by the Commission

(115) In situations where the competent supervisory authority established in another Member State does not act or has taken insufficient measures in relation to a complaint, the data subject may request the supervisory authority in the Member State of his or her habitual residence to bring proceedings against that supervisory authority to the competent court in the other Member State. The requested supervisory authority may decide, subject to judicial review, whether it is appropriate to follow the request or not.

Amendment

deleted

Justification

This opportunity would bring no added value for citizens and might jeopardise the cooperation of the supervisory authorities in the consistency mechanism.

Amendment 23

Proposal for a regulation Recital 118

Text proposed by the Commission

(118) Any damage which a person may suffer as a result of unlawful processing should be compensated by the controller or processor, who may be exempted from liability if they prove that they are not responsible for the damage, in particular where he establishes fault on the part of the data subject or in case of force majeure.

Amendment

(118) Any damage which a person may suffer as a result of unlawful processing should be compensated by the controller or processor, who may be exempted from liability if they prove that they are not responsible for the damage, in particular where he establishes fault on the part of the data subject or in case of force majeure. ***In the event of joint and several liability, a processor which has made amends for damage done to the person concerned may appeal against the controller for reimbursement if it has acted in conformity with the legal act binding it to the controller.***

Justification

The proposal for a regulation introduces the overall principle of the responsibility of the controller (Articles 5f and 22), which must be retained and clarified. The processor is defined as the organisation acting on behalf of the controller. If the processor does not follow the instructions it has received, Article 26(4) states that it shall be considered to be a controller.

Amendment 24 Proposal for a regulation

Recital 121 a (new)

Text proposed by the Commission

Amendment

(121a) This Regulation allows the principle of public access to official documents to be taken into account when applying the provisions set out in this Regulation. Personal data in documents held by a public authority or a public body may be disclosed by this authority or body in accordance with Member State

legislation to which the public authority or public body is subject. Such legislation shall reconcile the right to the protection of personal data with the principle of public access to official documents.

Amendment 25

Proposal for a regulation Recital 129

Text proposed by the Commission

(129) In order to fulfil the objectives of this Regulation, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. In particular, delegated acts should be adopted in respect of ***lawfulness of processing***; specifying the criteria and conditions in relation to the consent of a child; ***processing of special categories of data***; ***specifying the criteria and conditions for manifestly excessive requests and fees for exercising the rights of the data subject***; criteria and requirements for the information to the data subject and in relation to the right of access; ***the right to be forgotten and to erasure***; ***measures based on profiling***; criteria and requirements in relation to the responsibility of the controller ***and to data protection by design and by default***; a processor; criteria and requirements for the documentation ***and the security of processing***; ***criteria and requirements for establishing a personal data breach and for its notification to the supervisory authority, and on the circumstances where a personal data breach is likely to adversely affect the data subject***; the

Amendment

(129) In order to fulfil the objectives of this Regulation, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. In particular, delegated acts should be adopted in respect of specifying the criteria and conditions in relation to the consent of a child; criteria and requirements for the information to the data subject and in relation to the right of access; criteria and requirements in relation to the responsibility of the controller; a processor; criteria and requirements for the documentation; designation and tasks of the data protection officer; codes of conduct; criteria and requirements for certification mechanisms; transfers by way of binding corporate rules; processing in the employment context and processing for historical, statistical and scientific research purposes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and

criteria and conditions for processing operations requiring a data protection impact assessment; the criteria and requirements for determining a high degree of specific risks which require prior consultation; designation and tasks of the data protection officer; codes of conduct; criteria and requirements for certification mechanisms; criteria and requirements for transfers by way of binding corporate rules; *transfer derogations; administrative sanctions; processing for health purposes;* processing in the employment context and processing for historical, statistical and scientific research purposes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

Council.

Amendment 26
Proposal for a regulation

Recital 130

Text proposed by the Commission

(130) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission for: specifying standard forms in relation to the processing of personal data of a child; standard procedures and forms for exercising the rights of data subjects; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access; the right to data portability; standard forms in relation to the responsibility of the controller to data protection by design and by default and to

Amendment

(130) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission for: specifying standard forms in relation to the processing of personal data of a child; standard procedures and forms for exercising the rights of data subjects; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access; the right to data portability; standard forms in relation to the responsibility of the controller to data protection by design and by default and to

the documentation; specific requirements for the security of processing; ***the standard format and the procedures for the notification of a personal data breach to the supervisory authority and the communication of a personal data breach to the data subject; standards and procedures for a data protection impact assessment***; forms and procedures for prior authorisation and prior consultation; technical standards and mechanisms for certification; the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an international organisation; disclosures not authorized by Union law; mutual assistance; joint operations; decisions under the consistency mechanism. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers⁴⁶. In this context, the Commission should consider specific measures for micro, small and medium-sized enterprises.

the documentation; specific requirements for the security of processing; forms and procedures for prior authorisation and prior consultation; technical standards and mechanisms for certification; the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an international organisation; disclosures not authorized by Union law; mutual assistance; joint operations; decisions under the consistency mechanism. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers⁴⁶. In this context, the Commission should consider specific measures for micro, small and medium-sized enterprises.

Amendment 27

Proposal for a regulation Recital 131

Text proposed by the Commission

(131) The examination procedure should be used for the adoption of specifying standard forms in relation to the consent of a child; standard procedures and forms for exercising the rights of data subjects; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access; ***the right to data portability***; standard forms in relation to the

Amendment

(131) The examination procedure should be used for the adoption of specifying standard forms in relation to the consent of a child; standard procedures and forms for exercising the rights of data subjects; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access; standard forms in relation to the responsibility of the controller to the

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

documentation; specific requirements for the security of processing; the standard format and the procedures for the notification of a personal data breach to the supervisory authority and the communication of a personal data breach to the data subject; standards and procedures for a data protection impact assessment; forms and procedures for prior authorisation and prior consultation; technical standards and mechanisms for certification; disclosures not authorized by Union law; mutual assistance; joint operations; decisions under the consistency mechanism, given that those acts are of general scope.

Amendment 28

Proposal for a regulation Recital 139

Text proposed by the Commission

(139) In view of the fact that, as underlined by the Court of Justice of the European Union, the right to the protection of personal data is not an absolute right, but must be considered in relation to its function in society and be balanced with other *fundamental* rights, in accordance with the principle of proportionality, this Regulation respects all fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union as enshrined in the Treaties, notably the right to respect for private and family life, home and communications, the right to the protection of personal data, the freedom of thought, conscience and religion, the freedom of

Amendment

(139) In view of the fact that, as underlined by the Court of Justice of the European Union, the right to the protection of personal data is not an absolute right, but must be considered in relation to its function in society and be balanced with other rights *established by the Charter of Fundamental Rights of the European Union*, in accordance with the principle of proportionality, this Regulation respects all fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union as enshrined in the Treaties, notably the right to respect for private and family life, home and communications, the right to the protection of personal data, the freedom of

expression and information, the freedom to conduct a business, the right to an effective remedy and to a fair trial as well as cultural, religious and linguistic diversity.

thought, conscience and religion, the freedom of expression and information, the freedom to conduct a business, the right to an effective remedy and to a fair trial as well as cultural, religious and linguistic diversity.

Amendment 29
Proposal for a regulation

Article 2 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) by the Union institutions, bodies, offices and agencies;

deleted

Amendment 30

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

Text proposed by the Commission

Amendment

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

(d) by a natural person without any gainful interest in the course of its own exclusively personal or household activity ***and on condition that no personal data are made accessible to an indefinite number of people;***

Justification

The scope of this exemption should be clarified, particularly in view of the development of social networks enabling information to be shared with hundreds of people. In cases C-101/01 and C-73/07, the ECJ advocates accessibility ‘by an indefinite number of people’ as a criterion for application of this exception. The EDPS shares this view.

Amendment 31
Proposal for a regulation

Article 2 – paragraph 2 – point e a (new)

Text proposed by the Commission

Amendment

(ea) by competent authorities for the purposes of producing and disseminating official statistics entrusted to them;

Justification

To reduce the effort involved in responding to surveys, NSIs and the Commission should be allowed free access to, and entitled to use, the appropriate administrative registers belonging to government departments at whatever level, whenever this is necessary in order to develop, produce, and disseminate European statistics.

Amendment 32

Proposal for a regulation

Article 2 – paragraph 2 – point e b (new)

Text proposed by the Commission

Amendment

(eb) that has been rendered anonymous.

Justification

By definition anonymous data does not constitute personal data.

Amendment 33

Proposal for a regulation

Article 2 – paragraph 2 – point e c (new)

Text proposed by the Commission

Amendment

(ec) by competent authorities for the purposes of drawing up electoral rolls.

Justification

To reduce the effort involved in responding to surveys, NSIs and the Commission should be allowed free access to, and entitled to use, the appropriate administrative registers belonging to government departments at whatever level, whenever this is necessary in order to develop, produce, and disseminate European statistics.

Amendment 34
Proposal for a regulation

Article 4 – point 1

Text proposed by the Commission

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

Amendment

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

Amendment 35
Proposal for a regulation

Article 4 – point 2 a (new)

Text proposed by the Commission

Amendment

(2a) 'anonymous data' shall mean information that has never related to a data subject or has been collected, altered or otherwise processed so that it cannot be attributed to a data subject;

Amendment 36
Proposal for a regulation

Article 4 – point 3 a (new)

Text proposed by the Commission

Amendment

(3a) 'pseudonymous data' means any personal data that has been collected, altered or otherwise processed so that it of itself cannot be attributed to a data subject without the use of additional data which is subject to separate and distinct technical and organisational controls to ensure

such non attribution;

Amendment 37
Proposal for a regulation

Article 4 – point 3 b (new)

Text proposed by the Commission

Amendment

(3b) 'profiling' means any form of automated processing intended to evaluate, or generate data about, aspects relating to natural persons or to analyse or predict a natural person's performance at work, economic situation, location, health, preferences, reliability, behaviour or personality;

Justification

Profiling can entail serious risks for data subjects. It is prone to reinforcing discriminations, making decisions less transparent and carries an unavoidable risk of wrong decisions. For these reasons, it should be tightly regulated: its use should be clearly limited, and in those cases where it can be used, there should be safeguards against discrimination and data subjects should be able to receive clear and meaningful information on the logic of the profiling and its consequences. While some circles see profiling as a panacea for many problems, it should be noted that there is a significant body of research addressing its limitations. Notably, profiling tends to be useless for very rare characteristics, due to the risk of false positives. Also, profiles can be hard or impossible to verify. Profiles are based on complex and dynamic algorithms that evolve constantly and that are hard to explain to data subjects. Often, these algorithms qualify as commercial secrets and will not be easily provided to data subjects. However, when natural persons are subject to profiling, they should be entitled to information about the logic used in the measure, as well as an explanation of the final decision if human intervention has been obtained. This helps to reduce intransparency, which could undermine trust in data processing and may lead to loss or trust in especially online services. There is also a serious risk of unreliable and (in effect) discriminatory profiles being widely used, in matters of real importance to individuals and groups, which is the motivation behind several suggested changes in this Article that aim to improve the protection of data subjects against discrimination. In relation to this, the use of sensitive data in generating profiles should also be restricted.

Amendment 38
Proposal for a regulation

Article 4 – point 5

Text proposed by the Commission

(5) 'controller' means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes, **conditions and means** of the processing of personal data; where the purposes, conditions and means of processing are determined by Union law or Member State law, the controller or the specific criteria for his nomination may be designated by Union law or by Member State law;

Amendment

(5) 'controller' means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes of the processing of personal data; where the purposes, conditions and means of processing are determined by Union law or Member State law, the controller or the specific criteria for his nomination may be designated by Union law or by Member State law;

Amendment 39
Proposal for a regulation

Article 4 – point 10

Text proposed by the Commission

(10) 'genetic data' means **all data, of whatever type, concerning the characteristics** of an **individual which are inherited or acquired during early prenatal development**;

Amendment

(10) 'genetic data' means **information on the hereditary characteristics, or alteration thereof**, of an **identified or identifiable person, obtained through nucleid acid analysis**;

Justification

The proposed definition is too broad and would turn inherited characteristics such as hair and eye colour into sensitive data needing higher protection. The proposed change is based on existing international standards.

Amendment 40
Proposal for a regulation

Article 4 – point 13

Text proposed by the Commission

(13) 'main establishment' means **as regards the controller**, the place of **its** establishment in the Union where the main decisions as to the purposes, conditions and means of the processing of personal data

Amendment

(13) 'main establishment' means the place of establishment **of the undertaking or group of undertakings** in the Union, **whether controller or processor**, where the main decisions as to the purposes,

are taken; *if no decisions as to the purposes, conditions and means of the processing of personal data are taken in the Union, the main establishment is the place where the main processing activities in the context of the activities of an establishment of a controller in the Union take place. As regards the processor, ‘main establishment’ means the place of its central administration in the Union;*

conditions and means of the processing of personal data are taken.

The following objective criteria may be considered among others:

(1) The location of the controller or processor's headquarters;

(2) The location of the entity within a group of undertakings which is best placed in terms of management functions and administrative responsibilities to deal with and enforce the rules as set out in this Regulation; or

(3) The location where effective and real management activities are exercised determining the data processing through stable arrangements;

(a) The undertaking or group of undertakings in the Union, whether controller or processor, shall designate the main establishment for the purpose of data protection compliance and shall notify this to the relevant supervisory authority;

(b) The notified supervisory authority can in cases of disagreement on the designation of the main establishment request the opinion of the European Data Protection Board;

Amendment 41
Proposal for a regulation

Article 4 – point 19 a (new)

Text proposed by the Commission

Amendment

(19a) 'competent supervisory authority' means a supervisory authority with exclusive competence to supervise the processing activities of the controller or processor in accordance with Article 51(2);

**Amendment 42
Proposal for a regulation**

Article 4 – point 19 b (new)

Text proposed by the Commission

Amendment

(19b) 'official statistics' means representative aggregate quantitative and qualitative information characterising a collective phenomenon within a given population;

**Amendment 43
Proposal for a regulation**

Article 4 – point 19 c (new)

Text proposed by the Commission

Amendment

(19c) 'electoral rolls' means personal data, and data relating to the place of residence, of persons entitled to vote;

**Amendment 44
Proposal for a regulation**

Article 5 – point c

Text proposed by the Commission

Amendment

(c) adequate, relevant, and **limited to the minimum necessary** in relation to the purposes for which they are processed; they shall only be processed if, and as long

(c) adequate, relevant, and **not excessive** in relation to the purposes for which they are processed; they shall only be processed if, and as long as, the purposes could not be

as, the purposes could not be fulfilled by processing information that does not involve personal data;

fulfilled by processing information that does not involve personal data;

Justification

This change, which permits “not excessive” processing is more appropriate. It consists of a referral back to the wording of the original 95/46/EC Data Protection Directive and aims to avoid inconsistencies with other EU rules, such as the Consumer Credit Directive and the Capital Requirements Package, which also require, for example, lending institutions to process personal data.

Amendment 45 Proposal for a regulation

Article 5 – point d

Text proposed by the Commission

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

Amendment

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

Justification

Clearer, simpler, and more effective.

Amendment 46 Proposal for a regulation

Article 5 – point e

Text proposed by the Commission

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

Amendment

(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the data will be processed solely for historical, statistical, **aggregated** or scientific research purposes in accordance with the rules and conditions

and if a periodic review is carried out to assess the necessity to continue the storage;

of **Articles 81 and 83** and if a periodic review is carried out to assess the necessity to continue the storage;

Amendment 47

Proposal for a regulation

Article 6 – paragraph 1 – point f

Text proposed by the Commission

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

Amendment

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

Justification

The rapporteur proposes maintaining the wording of Directive 95/46/EC. It is worth recalling that the Regulation concerns not only the digital world but will also apply to off-line activities. Some sectors such as newspaper publishing need, in order to finance their activities, to use external sources in order to contact possible new subscribers.

Amendment 48

Proposal for a regulation

Article 6 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) processing is necessary for fraud detection and prevention purposes according to applicable financial regulation or established industry, or professional body, codes of practice.

Justification

Experience in practice has shown that a "legal obligation" doesn't include the domestic financial regulation or codes of conduct which are fundamental in fraud prevention and detection, of paramount importance for data controllers and to protect data subjects.

Amendment 49 **Proposal for a regulation**

Article 6 – paragraph 4

Text proposed by the Commission

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

Amendment

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

Justification

The reference should include point (f) of paragraph 1 because otherwise stricter conditions would apply for subsequent processing than for the collection of personal data.

Amendment 50

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

Text proposed by the Commission

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

Amendment

deleted

Justification

The proposal for a regulation provides for a considerable number of delegated acts, which is

not justified. More precisely, this area is covered in case law, and the matter of consent for the processing of personal data of children is dealt with in Article 8.

Amendment 51
Proposal for a regulation

Article 7 – paragraph 2

Text proposed by the Commission

2. If the data subject's consent is to be given in the context of a written declaration which also concerns another matter, the requirement to give consent must be presented distinguishable in its appearance from this other matter.

Amendment

2. If the data subject's consent is to be given in the context of a written declaration which also concerns another matter, the requirement to give consent must be presented distinguishable in its appearance from this other matter. ***The permission of the data subject may be sought electronically, particularly in the context of information society services.***

Amendment 52
Proposal for a regulation

Article 7 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. In the event that the data subject withdraws his consent, the controller may refuse to provide further services to the data subject if the processing of the data is vital for the provision of the service or for ensuring that the characteristics of the service are maintained.

Amendment 53
Proposal for a regulation

Article 7 – paragraph 4

Text proposed by the Commission

4. Consent shall not provide a legal basis for the processing, where there is a significant imbalance between the position

Amendment

4. Consent shall not provide a legal basis for the processing, where there is a significant, imbalance between the position

of the data subject and the controller.

of the data subject and the controller,
which results in a lack of freedom in the provision of consent.

Justification

Further legal certainty was needed as there are a number of situations where there is a significant imbalance between the data subject and the data controller; for example an employment relationship, a doctor-patient relationship etc. The importance here should focus on the lack of freedom when providing consent.

Amendment 54

Proposal for a regulation

Article 7 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The legislation of the Member State in which a person lacking the legal capacity to act resides shall apply when determining the conditions under which consent is given or authorised by that person.

Amendment 55

Proposal for a regulation

Article 8 – paragraph 1

Text proposed by the Commission

Amendment

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

1. For the purposes of this Regulation, the processing of personal data of a child below the age of 13 years ***would normally require*** that consent is given or authorised by the child's parent or ***legal representative***. ***The appropriate form for obtaining consent should be based on any risk posed to the child by the amount of data, its type and the nature of the processing***. The controller shall make reasonable efforts to obtain verifiable consent, taking into consideration available technology. ***The methods to obtain verifiable consent shall not lead to the***

further processing of personal data which would otherwise not be necessary.

Amendment 56
Proposal for a regulation

Article 8 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Paragraphs 1, 2 and 3 shall not apply where the processing of personal data of a child concerns health data and where the Member State law in the field of health and social care prioritises the competence of an individual over physical age.

Justification

In the context of health and social care authorisation from a child's parent or guardian should not be necessary where the child has the competence to make a decision for him or herself. In Child Protection Cases it is not always in the interests of the data subject for their parent or guardian to have access to their data, and this needs to be reflected in the legislation.

Amendment 57
Proposal for a regulation

Article 9 – paragraph 1

Text proposed by the Commission

Amendment

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

1. The processing of personal data, revealing race or ethnic origin, political opinions, religion or beliefs, trade-union membership ***and activities***, and the processing of genetic data or data concerning health or sex life or criminal convictions or related security measures shall be prohibited. ***In particular, this would include safeguards to prevent the blacklisting of workers, for example in relation to their trade union activities or health and safety representative roles.***

Justification

Further specification is needed that personal data will never be used against the data subject in an employment context. Furthermore, it is important to highlight that accessing workers' personal data should be banned in terms of their trade union membership but also in terms of any union activities in which they may take part.

Amendment 58 **Proposal for a regulation**

Article 9 – paragraph 2 – point f

Text proposed by the Commission

(f) processing is necessary for the establishment, exercise or defence of **legal** claims; or

Amendment

(f) processing is necessary for the establishment, exercise or defence of claims **at issue in legal or administrative proceedings of any kind**; or

Justification

The text should be enlarged upon so as to make it clear that data of the type concerned may be processed when the object is to establish, exercise, or defend claims at issue in legal or administrative proceedings of any kind.

Amendment 59 **Proposal for a regulation**

Article 9 – paragraph 2 – point j

Text proposed by the Commission

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

Amendment

(j) processing of data relating to criminal convictions or related security measures is carried out either under the control of official authority or when the processing is necessary for compliance with a legal or regulatory obligation to which a controller is subject, or for the performance of a task carried out for important public interest reasons, and in so far as authorised by Union law or Member State law providing for adequate safeguards. A register of criminal convictions, **whether complete or not**, shall be kept only under the control of official authority.

Justification

Any register of this kind, complete or otherwise, has to be under the control of the authorities.

Amendment 60
Proposal for a regulation

Article 9 – 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, conditions and appropriate safeguards for the processing of the special categories of personal data referred to in paragraph 1 and the exemptions laid down in paragraph 2. **deleted**

Justification

The delegation of power under paragraph 3 is too sweeping, as it allows the Commission to flesh out essential aspects of the regulation, and the area concerned is a particularly delicate one for the type of data involved. The most appropriate course, therefore, would be to develop these aspects in the regulation proper.

Amendment 61
Proposal for a regulation

Article 10

Text proposed by the Commission

Amendment

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

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

Amendment 62

Proposal for a regulation Article 11 – paragraph 2

Text proposed by the Commission

2. The controller shall provide any information and any communication relating to the processing of personal data to the data subject in an intelligible form, using clear and plain language, ***adapted to the data subject***, in particular for any information addressed specifically to a child.

Amendment

2. The controller shall provide any information and any communication relating to the processing of personal data to the data subject in an intelligible form, using clear and plain language, in particular for any information addressed specifically to a child.

Justification

Information or communications concerning data processing must be clear and intelligible. Inclusion of ‘adapted to the data subject’ might give rise to legal uncertainty. It would seem proportionate to impose a particular obligation only with regard to children comprising a specific category.

Amendment 63 Proposal for a regulation

Article 12 – paragraph 2

Text proposed by the Commission

2. The controller shall inform the data subject without delay and, at the latest within ***one month*** of receipt of the request, whether or not any action has been taken pursuant to Article 13 and Articles 15 to 19 and shall provide the requested information. This period may be prolonged ***for a further month***, if several data subjects exercise their rights and their cooperation is necessary to a reasonable extent to prevent an unnecessary and disproportionate effort on the part of the controller. The information shall be given in writing. Where the data subject makes the request in electronic form, the information shall be provided in electronic form, unless otherwise requested by the

Amendment

2. The controller shall inform the data subject without delay and, at the latest within ***40 calendar days*** of receipt of the request, whether or not any action has been taken pursuant to Article 13 and Articles 15 to 19 and shall provide the requested information. This period may be prolonged further, if several data subjects exercise their rights ***resulting in a large and exceptional number of requests*** and their cooperation is necessary to a reasonable extent to prevent an unnecessary and disproportionate effort on the part of the controller. ***However, the controller must comply with the requests as soon as practicable and, if requested, should justify this extension to the supervisory***

data subject.

authority. The information shall be given in writing *or, where feasible, the data controller may provide access to a secure online platform which would provide the data subject with direct access their personal data.* Where the data subject makes the request in electronic form, the information shall be provided in electronic form, unless otherwise requested by the data subject *or not available in that format.*

Justification

The deletion of the fee could lead to an increase in requests for access to data, which added to a short time limit creates a heavy burden on companies as well as various organisations and public bodies. Data records are also not always available in electronic copy and adding this obligation would add to the administrative burden. Controllers should be allowed and encouraged to provide data on secure online platforms which would provide a direct and easy access for the data subject at very little cost for the controllers.

Amendment 64 Proposal for a regulation

Article 12 – paragraph 4

Text proposed by the Commission

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

Amendment

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

Justification

The provision of data held within a database has a cost. Requesting an appropriate, not for profit, contribution from data subjects for data access would help to limit frivolous requests and is critical in deterring fraudsters from obtaining high volumes of consumers' credit data

which could be used for fraudulent purposes.

Amendment 65

Proposal for a regulation Article 12 – paragraph 5

Text proposed by the Commission

Amendment

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

Justification

There is no need for this provision to be further clarified by means of a delegated act. The Member States' supervisory authorities are better placed to resolve any difficulties which may arise.

Amendment 66

Proposal for a regulation Article 12 – paragraph 6

Text proposed by the Commission

Amendment

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

Justification

The Member States' supervisory authorities are better placed to resolve any difficulties which may arise.

Amendment 67
Proposal for a regulation

Article 14 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

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

Amendment 68
Proposal for a regulation

Article 14 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Amendment 69
Proposal for a regulation

Article 14 – paragraph 1 – point c

Text proposed by the Commission

(c) the period for which the personal data will be stored;

Amendment

(c) the period for which the personal data will be stored, ***or if this is not possible, the criteria used to determine this period;***

Amendment 70
Proposal for a regulation

Article 14 – paragraph 1 – point e

Text proposed by the Commission

Amendment

(e) the right to lodge a complaint to the supervisory authority **and the contact details of the supervisory authority**;

(e) the right to lodge a complaint to the supervisory authority;

Justification

A duty to specify the contact details of the supervisory authority associated with liability in respect of any misinformation would necessitate a continuous review of the relevant information, which would be disproportionate for small and medium-sized enterprises in particular.

Amendment 71

Proposal for a regulation

Article 14 – paragraph 1 – point g

Text proposed by the Commission

Amendment

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

(g) where applicable, that the controller intends to transfer to a third country or international organisation and **the existence or absence of** an adequacy decision by the Commission;

Justification

The provision of information on a decision or the absence of a decision by the Commission ensures that the data subject has sufficient information and clarifies the obligation of the controller.

Amendment 72

Proposal for a regulation

Article 14 – paragraph 1 – point h

Text proposed by the Commission

Amendment

(h) any further information necessary to guarantee fair processing in respect of the data subject, having regard to the specific circumstances in which the personal data

(h) any further information **which the controller considers** necessary to guarantee fair processing in respect of the data subject, having regard to the specific

are collected.

circumstances in which the personal data are collected.

Justification

The scope of this provision needs to be made clear, and it should be specified that controllers can provide a greater degree of transparency.

Amendment 73
Proposal for a regulation

Article 14 – paragraph 4 – point a

Text proposed by the Commission

(a) at the time when the personal data are obtained from the data subject; or

Amendment

(a) ***in general*** at the time when the personal data are obtained from the data subject ***or as soon as possible where the above is not feasible, demands undue effort, or reduces the safeguards enjoyed by the data subject***; or

Justification

Some activities might require at least a degree of flexibility, and supervisory authorities would, moreover, easily be able to ascertain that this was being properly used. In addition, depending on the way in which data are collected, supplying information immediately after the event, in writing or online, might offer greater safeguards to a data subject, who would then be able to take exact note of the situation.

Amendment 74
Proposal for a regulation

Article 14 – paragraph 4 – point b

Text proposed by the Commission

(b) where the personal data are not collected from the data subject, at the time of the recording or within a reasonable period after the collection, having regard to the specific circumstances in which the data are collected or otherwise processed, or, if a disclosure to another recipient is envisaged, and at the latest when the data are first disclosed.

Amendment

(b) where the personal data are not collected from the data subject, at the time of the recording or within a reasonable period after the collection, having regard to the specific circumstances in which the data are collected or otherwise processed, or, if a disclosure to another recipient is envisaged, and at the latest when the data are first disclosed, ***or, if the data shall be***

used for communication with the person concerned, at the latest at the time of the first communication to that person.

Amendment 75
Proposal for a regulation

Article 14 – paragraph 5 – point b

Text proposed by the Commission

(b) the data are not collected from the data subject and the provision of such information proves impossible or would involve a disproportionate effort; or

Amendment

(b) the data are not collected from the data subject and the provision of such information proves impossible or would involve a disproportionate effort **and generate excessive administrative burden, especially when the processing is carried out by a SME as defined in Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises¹**; or

¹ OJ L 124, 20.5.2003, p. 36.

Justification

This amendment is aimed at ensuring that SMEs are not placed under unnecessary administrative strain by the Regulation.

Amendment 76
Proposal for a regulation

Article 14 – 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 the criteria for categories of recipients referred to in point (f) of paragraph 1, the requirements for the notice of potential access referred to in point (g) of paragraph 1, the criteria for the further information necessary

Amendment

deleted

referred to in point (h) of paragraph 1 for specific sectors and situations, and the conditions and appropriate safeguards for the exceptions laid down in point (b) of paragraph 5. In doing so, the Commission shall take the appropriate measures for micro, small and medium-sized-enterprises.

Justification

The delegated acts provided for in paragraph 7 to beyond the limits generally imposed on the use of this arrangement, given that their intended subject matter is such that it should be dealt with in the text of the regulation itself.

Amendment 77
Proposal for a regulation

Article 15 – paragraph 1 – point d

Text proposed by the Commission

(d) the period for which the personal data will be stored;

Amendment

(d) the period for which the personal data will be stored, *or if this is not possible, the criteria used to determine this period;*

Amendment 78
Proposal for a regulation

Article 15 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The data subject shall have the right to obtain from the controller communication of the personal data undergoing processing *and, on electronic request, an electronic copy of the non-commercial data undergoing processing in an interoperable and structured format which allows for further use. The controller shall verify the identity of a data subject requesting access to data within the limits of Articles 5 to 10 of this Regulation.*

Amendment 79
Proposal for a regulation

Article 17 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Credit institutions that retain data for the following grounds shall be exempt from the requirements of this Article:

- risk management purposes;***
- fulfilment of EU and international supervisory and compliance requirements;***
- market abuse purposes.***

Amendment 80
Proposal for a regulation

Article 17 – paragraph 2

Text proposed by the Commission

Amendment

2. Where the controller referred to in paragraph 1 has made the personal data public, it shall take all reasonable steps, including technical measures, in relation to data for the publication of which the controller is responsible, to inform third parties which are processing such data, that a data subject requests them to erase any links to, or copy or replication of that personal data. Where the controller has authorised a third party publication of personal data, the controller shall be considered responsible for that publication.

deleted

Justification

Given the nature of the internet and the possibilities to post information on various sites globally this provision is unworkable.

Amendment 81
Proposal for a regulation

Article 17 – paragraph 3 – point a

Text proposed by the Commission

(a) for exercising the right of freedom of expression in accordance with Article 80;

Amendment

(a) for exercising the right of freedom of expression in accordance with Article 80 ***or when providing an information society service to facilitate the accessing of such expression;***

Justification

The provision proposed by the Commission does provide media with enough to defend the rights of media in a digital age.

Amendment 82
Proposal for a regulation

Article 17 – paragraph 3 – point b

Text proposed by the Commission

(b) for reasons of public interest in the area of public health in accordance with Article 81;

Amendment

(b) ***for healthcare purposes or*** for reasons of public interest in the area of public health in accordance with Article 81;

Justification

It is in the vital interests of the data subject to keep a complete record of their health in order to receive the best care and treatment through their life. The right to be forgotten should not apply where data is processed for healthcare purposes as laid down in Article 81(a).

Amendment 83
Proposal for a regulation

Article 17 – paragraph 3 – point d

Text proposed by the Commission

(d) for compliance with a legal obligation to retain the personal data by Union or Member State law to which the controller is subject; Member State laws shall meet an objective of public interest, respect the

Amendment

(d) for compliance with a legal obligation to retain the personal data by Union or Member State law to which the controller is subject ***under Union law***; Member State laws shall meet an objective of public

essence of the right to the protection of personal data and be proportionate to the legitimate aim pursued;

interest, respect the essence of the right to the protection of personal data and be proportionate to the legitimate aim pursued;

Amendment 84
Proposal for a regulation

Article 17 – paragraph 9

Text proposed by the Commission

Amendment

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

deleted

(a) the criteria and requirements for the application of paragraph 1 for specific sectors and in specific data processing situations;

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

(c) the criteria and conditions for restricting the processing of personal data referred to in paragraph 4.

Justification

With regard to delegated acts, we cannot accept paragraph 9 of this article, since it makes provision for the regulation of aspects which are essential if the legislation is to be correctly understood. If it is held that these aspects must be covered, this should be done in the Regulation itself.

Amendment 85
Proposal for a regulation

Article 19 – paragraph 3

Text proposed by the Commission

Amendment

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

3. Where an objection is upheld pursuant to paragraph 1, the controller shall *inform the data subject of the compelling*

personal data concerned.

legitimate grounds which apply in accordance with paragraph 1 or, if he does not do so, he shall no longer use or otherwise process the personal data concerned; where the objection is upheld pursuant to paragraph 2, the controller shall no longer use or otherwise process the personal data concerned.

Justification

If the controller may adduce compelling legitimate grounds in response to the right to object, there appears to be no reason why merely lodging an objection should have the consequences laid down in paragraph 3.

Amendment 86 Proposal for a regulation

Article 20 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Every ***data subject*** shall have the right not to be subject to a ***decision that*** produces ***adverse*** legal effects ***or adversely*** affects this ***data subject***, and which is based solely ***or predominantly*** on automated processing intended to evaluate certain personal aspects relating to this ***data subject.***

Justification

It is important to consider that some profiling activities have considerable benefits for consumers and can be a good basis for good customer service. The wide definition of profiling does not differentiate routine data processing activities that are positive in nature with more negative profiling. Positive profiling is often used to tailor services to consumers by recording their needs and preferences.

Amendment 87
Proposal for a regulation

Article 20 – paragraph 2

Text proposed by the Commission

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

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

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

(c) is **based on the data subject's consent, subject to the conditions laid down in Article 7 and to suitable safeguards.**

Amendment

2. Subject to the other provisions of this Regulation, a **data subject** may be **subject** to a **decision** of the kind referred to in paragraph 1 if the processing:

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

(b) is **lawful pursuant to points (a) to (fa) of Article 6(1) of this Regulation;**

With due regard to Article 9, paragraph 2, profiling shall not have the effect of discriminating against individuals on the basis, for instance, of race or ethnic origin, religion or sexual orientation.

(Point (b) in the Commission text has become point (a) in Parliament's amendment and is also amended)

Amendment 88
Proposal for a regulation

Article 20 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. Automated processing of personal data intended to evaluate certain personal aspects relating to a natural person shall

not be used to identify or individualise children.

Justification

Profiling can entail serious risks for data subjects. It is prone to reinforcing discriminations, making decisions less transparent and carries an unavoidable risk of wrong decisions. For these reasons, it should be tightly regulated: its use should be clearly limited, and in those cases where it can be used, there should be safeguards against discrimination and data subjects should be able to receive clear and meaningful information on the logic of the profiling and its consequences. While some circles see profiling as a panacea for many problems, it should be noted that there is a significant body of research addressing its limitations. Notably, profiling tends to be useless for very rare characteristics, due to the risk of false positives. Also, profiles can be hard or impossible to verify. Profiles are based on complex and dynamic algorithms that evolve constantly and that are hard to explain to data subjects. Often, these algorithms qualify as commercial secrets and will not be easily provided to data subjects. However, when natural persons are subject to profiling, they should be entitled to information about the logic used in the measure, as well as an explanation of the final decision if human intervention has been obtained. This helps to reduce intransparency, which could undermine trust in data processing and may lead to loss or trust in especially online services. There is also a serious risk of unreliable and (in effect) discriminatory profiles being widely used, in matters of real importance to individuals and groups, which is the motivation behind several suggested changes in this Article that aim to improve the protection of data subjects against discrimination. In relation to this, the use of sensitive data in generating profiles should also be restricted.

Amendment 89

Proposal for a regulation

Article 20 – paragraph 5

Text proposed by the Commission

Amendment

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

deleted

Amendment 90

Proposal for a regulation Article 21 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Justification

In order to ensure a higher degree of protection, the legislation should, in the event of limitation, also mention the aims of processing personal data.

Amendment 91

Proposal for a regulation Article 22 – title

Text proposed by the Commission

Responsibility of the controller

Amendment

Overall principle of responsibility of the controller.

Justification

The principle of responsibility which is implicitly introduced by Chapter 4 of the proposal for a regulation must be mentioned explicitly in order to ensure a higher degree of protection.

Amendment 92

Proposal for a regulation

Article 22 – paragraph 2 – introductory wording

Text proposed by the Commission

2. The measures provided for in paragraph 1 **shall** in particular include:

Amendment

2. The measures provided for in paragraph 1 **could** in particular include:

Justification

It is better to promote these measures as good practice, especially as otherwise this creates an unrealistic obligation from a regulatory perspective.

Amendment 93 **Proposal for a regulation**

Article 22 – paragraph 2 – point e

Text proposed by the Commission

(e) designating a data protection officer pursuant to Article 35(1).

Amendment

(e) designating a data protection officer pursuant to Article 35(1), ***or the obligation and maintenance of certification in accordance with the certification policies defined by the Commission.***

Amendment 94 **Proposal for a regulation**

Article 22 – paragraph 4

Text proposed by the Commission

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

Amendment

deleted

Amendment 95 **Proposal for a regulation**

Article 23 – paragraph 1

Text proposed by the Commission

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

Amendment 96
Proposal for a regulation

Article 23 – paragraph 2

Text proposed by the Commission

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

Amendment 97

Proposal for a regulation
Article 23 – paragraph 3

Text proposed by the Commission

3. The Commission shall be empowered to adopt delegated acts in accordance with

Amendment

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

Amendment

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

Amendment

deleted

Article 86 for the purpose of specifying any further criteria and requirements for appropriate measures and mechanisms referred to in paragraph 1 and 2, in particular for data protection by design requirements applicable across sectors, products and services.

Justification

The proposal for a regulation applies to all sectors, both online and offline. It is not the Commission's task to adopt delegated acts on data protection from the very beginning and by default which might undermine technological innovation. Member States' supervisory authorities and the European Data Protection Board are better placed to resolve any difficulties which might arise.

Amendment 98

**Proposal for a regulation
Article 23 – paragraph 4**

Text proposed by the Commission

Amendment

4. The Commission may lay down technical standards for the requirements laid down in paragraph 1 and 2. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2). *deleted*

Justification

The proposal for a regulation applies to all sectors, both online and offline. It is not the Commission's task to establish technical standards which might undermine technological innovation. Member States' supervisory authorities and the European Data Protection Board are better placed to resolve any difficulties which might arise.

Amendment 99

Proposal for a regulation

Article 24

Text proposed by the Commission

Amendment

Where a controller determines the purposes, **conditions and means** of the

Where a controller determines the purposes of the processing of personal data jointly

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

with others, the joint controllers shall determine their respective responsibilities for compliance with the obligations under this Regulation, in particular as regards the procedures and mechanisms for exercising the rights of the data subject, by means of an arrangement between them.

Amendment 100
Proposal for a regulation

Article 25 – paragraph 2 – point b

Text proposed by the Commission

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

Amendment

(b) an enterprise employing fewer than 250 persons, ***unless the processing carried out by that enterprise is considered high risk by the supervisory authorities, taking account of its characteristics, the type of data or the number of people affected;*** or

Amendment 101
Proposal for a regulation

Article 26 – paragraph 5

Text proposed by the Commission

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

Amendment

deleted

Justification

We consider the powers granted to the Commission here to be excessive. If these aspects are considered essential, they should be covered in the text of the Regulation itself.

Amendment 102
Proposal for a regulation

Article 28 – paragraph 1

Text proposed by the Commission

1. Each controller and processor and, if any, the controller's representative, shall maintain documentation of ***all processing operations*** under its responsibility.

Amendment

1. Each controller and processor and, if any, the controller's representative, shall maintain documentation of ***the main categories of processing*** under its responsibility.

Amendment 103
Proposal for a regulation

Article 28 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The obligation provided for in paragraph 1 shall not apply to SMEs who process data only as an activity ancillary to the sale of goods and services.

Justification

The application of the 'Think Small First' principle needs to apply here and consideration should be taken into account for SMEs on which this obligation would be a heavy burden. SMEs whose data processing activities do not represent more than 50% of the company's turnover is to be considered ancillary.

Amendment 104

Proposal for a regulation
Article 28 – paragraph 2 – points d and e

Text proposed by the Commission

(d) a description of categories of data subjects and of the categories of personal data relating to them;

Amendment

(d) where applicable, transfers of data to a third country or an international organisation, including the identification of that third country or international organisation and, in case of transfers

referred to in point (h) of Article 44(1), the documentation of appropriate safeguards;

(e) recipients or categories of recipients of the personal data, including the controllers to whom personal data are disclosed for the legitimate interest pursued by them;

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

Justification

Stricter accountability criteria need to be established for organisations which do not have a data protection officer or sufficient certification, which means that a specific model should be drawn up and a minimum amount of documentation should be maintained in the form required by law.

Amendment 105 Proposal for a regulation

Article 28 – paragraph 5

Text proposed by the Commission

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

Amendment

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

Amendment 106 Proposal for a regulation

Article 28 – paragraph 6

Text proposed by the Commission

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

Amendment

6. The Commission **shall** lay down standard forms for the documentation referred to in paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure

87(2).

set out in Article 87(2).

Amendment 107
Proposal for a regulation

Article 29 – paragraph 1

Text proposed by the Commission

1. The controller and the processor and, if any, the representative of the controller, shall co-operate, on request, with the supervisory authority in the performance of its duties, in particular by providing the information referred to in point (a) of Article 53(2) and by granting access as provided in point (b) of that paragraph.

Amendment

1. The controller and, **where appropriate**, the processor and, if any, the representative of the controller, shall co-operate, on request, with the supervisory authority in the performance of its duties, in particular by providing the information referred to in point (a) of Article 53(2) and by granting access as provided in point (b) of that paragraph.

Justification

The wording of the first paragraph should make it clear that, unlike the controller, the processor will be called on where appropriate and not as a general rule.

Amendment 108
Proposal for a regulation

Article 29 – paragraph 2

Text proposed by the Commission

2. In response to the supervisory authority's exercise of its powers under Article 53(2), the controller and the processor shall reply to the supervisory authority within a reasonable period to be specified by the supervisory authority. The reply shall include a description of the measures taken and the results achieved, in response to the remarks of the supervisory authority.

Amendment

In response to the supervisory authority's exercise of its powers under Article 53(2), the controller, **either in person or through his representative** and the processor shall reply to the supervisory authority within a reasonable period to be specified by the supervisory authority. The reply shall include a description of the measures taken and the results achieved, in response to the remarks of the supervisory authority.

Justification

The second paragraph makes no reference to representatives in the case of controllers not

established in the Union.

Amendment 109

Proposal for a regulation Article 30 – 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 conditions for the technical and organisational measures referred to in paragraphs 1 and 2, including the determinations of what constitutes the state of the art, for specific sectors and in specific data processing situations, in particular taking account of developments in technology and solutions for privacy by design and data protection by default, unless paragraph 4 applies. **deleted**

Justification

The proposal for a regulation provides for a considerable number of delegated acts, which is not justified. More precisely, if the Commission adopted technical measures concerning the security of processing operations, this might undermine technical innovation. In addition, paragraph 4 of the same Article provides for the adoption of implementing acts to specify the requirements set out in paragraphs 1 and 2.

Amendment 110

Proposal for a regulation

Article 30 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Amendment

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

(a) prevent any unauthorised access to personal data;

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

(c) ensure the verification of the lawfulness of processing operations.

Amendment 111

Proposal for a regulation Article 31 – paragraph 1

Text proposed by the Commission

1. In the case of a personal data breach, the controller shall, without undue delay *and, where feasible, not later than 24 hours after having become aware of it*, notify the personal data breach to the supervisory authority. *The notification to the supervisory authority shall be accompanied by a reasoned justification in cases where it is not made within 24 hours.*

Amendment

1. In the case of a personal data breach *which has a considerable effect on the data subject*, the controller shall, without undue delay notify the personal data breach to the supervisory authority.

Amendment 112

Proposal for a regulation

Article 31 – paragraph 2

Text proposed by the Commission

2. Pursuant to point (f) of Article 26(2), the processor shall alert and inform the controller immediately after the establishment of a personal data breach.

Amendment

2. Pursuant to point (f) of Article 26(2), the processor shall alert and inform the controller immediately after the establishment of a personal data breach *referred to in paragraph 1.*

Amendment 113

Proposal for a regulation

Article 31 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The communication of a personal data breach to the data subject shall not be required if the controller has implemented appropriate protection measures, and if those measures were applied to the data concerned by the personal data breach. Such technological protection measures shall render the data unintelligible to any person who is not authorised to access it.

Amendment 114
Proposal for a regulation

Article 31 – paragraph 5

Text proposed by the Commission

Amendment

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

deleted

Justification

Delegated acts adopted by the Commission should in this case be limited to establishing a standard format for incident notification and the recording of previous breaches and their consequences.

Amendment 115

Proposal for a regulation
Article 33 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. The following processing operations **in particular** present specific risks referred to in paragraph 1:

2. The following processing operations present specific risks referred to in paragraph 1:

Justification

The list of processing operations which must be subjected to an impact assessment, set out in Article 33(2), has been drawn up in a general way. It must be limiting in order to comply with the principle of proportionality and in order to ensure legal certainty.

Amendment 116

Proposal for a regulation Article 33 – paragraph 4

Text proposed by the Commission

Amendment

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

deleted

Justification

It would seem disproportionate to impose an overall obligation on controllers to seek the views of data subjects, whatever the sector, before any data processing had been done.

Amendment 117

Proposal for a regulation

Article 33 – paragraph 5

Text proposed by the Commission

Amendment

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

5. Where the controller is a public authority or body ***or where the data is processed by another body which has been entrusted with the responsibility of delivering public service tasks***, and where the processing results from a legal obligation pursuant to point (c) of Article 6(1) providing for rules and procedures pertaining to the processing operations and regulated by Union law, paragraphs 1 to 4 shall not apply, unless Member States deem it necessary to carry out such assessment prior to the processing activities.

Justification

It should be the nature of the service provided, not the nature of the body providing that service which determines whether data impact assessment rules apply. For example private organisations are often 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 organisation.

Amendment 118 **Proposal for a regulation**

Article 33 – paragraph 6

Text proposed by the Commission

Amendment

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for the processing operations likely to present specific risks referred to in paragraphs 1 and 2 and the requirements for the assessment referred to in paragraph 3, including conditions for scalability, verification and auditability. In doing so, the Commission shall consider specific measures for micro, small and medium-sized enterprises. **deleted**

Justification

Delegated acts are not justified here, since they would be concerned with basic aspects of the rule itself, which should, in our opinion, contain provisions specifically establishing its scope.

Amendment 119

Proposal for a regulation **Article 34 – title**

Text proposed by the Commission

Amendment

Prior authorisation and prior consultation **Prior consultation**

Justification

Article 34(1) should be moved to Chapter 5, which concerns the transfer of personal data to a third country or an international organisation. The title of the Article should therefore be changed.

Amendment 120

Proposal for a regulation Article 34 – paragraph 1

Text proposed by the Commission

Amendment

1. The controller or the processor as the case may be shall obtain an authorisation from the supervisory authority prior to the processing of personal data, in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where a controller or processor adopts contractual clauses as provided for in point (d) of Article 42(2) or does not provide for the appropriate safeguards in a legally binding instrument as referred to in Article 42(5) for the transfer of personal data to a third country or an international organisation. *deleted*

Amendment 121

Proposal for a regulation

Article 34 – paragraph 7

Text proposed by the Commission

Amendment

7. Member States shall consult the supervisory authority in the preparation of a legislative measure to be adopted by the national parliament or of a measure based on such a legislative measure, which defines the nature of the processing, in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data *deleted*

subjects.

Justification

While we welcome the inclusion in the legislative process of consultations regarding the nature and suitability of the projected measures, we do not consider an EU regulation to be a suitable instrument for provisions of this nature affecting legislative procedures in the Member States.

Amendment 122
Proposal for a regulation

Article 35 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) the processing is carried out by an enterprise employing 250 persons or more; or

deleted

Amendment 123
Proposal for a regulation

Article 35 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. SME controllers and processors shall designate a data protection officer only where the SMEs' core activities consist of data processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects.

Justification

The appointment of a data protection officer should not be linked to the number of employees but should be a risk based approach focusing on the processing activities, as well as the number of data subjects whose data the organisation processes.

Amendment 124
Proposal for a regulation

Article 35 – paragraph 2

Text proposed by the Commission

Amendment

2. In the case referred to in point (b) of paragraph 1, a group of undertakings may appoint a single data protection officer.

2. A group of undertakings may appoint a single data protection officer.

Amendment 125
Proposal for a regulation

Article 35 – paragraph 4

Text proposed by the Commission

Amendment

4. In cases other than those referred to in paragraph 1, the controller or processor or associations and other bodies representing categories of controllers or processors may designate a data protection officer.

4. The controller or processor or associations and other bodies representing categories of controllers or processors may designate a data protection officer.

Amendment 126
Proposal for a regulation

Article 35 – paragraph 5

Text proposed by the Commission

Amendment

5. The controller or processor shall designate the data protection officer on the basis of professional qualities and, in particular, expert knowledge of data protection law and practices and ability to fulfil the tasks referred to in Article 37. The necessary level of expert knowledge shall be determined in particular according to the data processing carried out and the protection required for the personal data processed by the controller or the processor.

5. The controller or processor shall designate the data protection officer on the basis of professional qualities and, in particular, expert knowledge of data protection law and practices and ability to fulfil the tasks referred to in Article 37, **in accordance with strict professional standards**. The necessary level of expert knowledge shall be determined in particular according to the data processing carried out and the protection required for the personal data processed by the controller or the processor.

Justification

While it is true that the data protection officer must act in accordance with strict professional standards (amendment to paragraph 5), by the same token one of the reasons justifying dismissal must be serious failure to do so (see amendment to paragraph 7).

Amendment 127
Proposal for a regulation

Article 35 – paragraph 7

Text proposed by the Commission

7. The controller or the processor shall designate a data protection officer for a period of at least two years. The data protection officer may be reappointed for further terms. During their term of office, the data protection officer may only be dismissed, if the data protection officer no longer fulfils the conditions required for the performance of their duties.

Amendment

7. During their term of office, the data protection officer may only be dismissed, if the data protection officer no longer fulfils the conditions required for the performance of their duties **or for serious failure in this connection.**

Justification

This safeguard could, in our opinion, undermine freedom of public service contracting and detract from market competition. The stipulated period could run counter to certain labour law provisions or public service statutes, thereby giving rise to problems. Safeguards and guarantees regarding the position of data protection officer should accordingly be sought through channels other than a statutory minimum period of employment.

Amendment 128
Proposal for a regulation

Article 35 – paragraph 11

Text proposed by the Commission

11. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the core activities of the controller or the processor referred to in point (c) of paragraph 1 and the criteria for the professional qualities of the data protection officer referred to in paragraph 5.

Amendment

deleted

Amendment 129
Proposal for a regulation

Article 36 – paragraph 3

Text proposed by the Commission

3. The controller or the processor shall support the data protection officer in performing the tasks and shall provide staff, premises, equipment and any other resources necessary to carry out the duties and tasks referred to in Article 37.

Amendment

3. The controller or the processor shall support the data protection officer in performing the tasks and, **when necessary**, shall provide staff, premises, equipment and any other resources necessary to carry out the duties and tasks referred to in Article 37.

Justification

The wording of this article, in our opinion, relates fundamentally to data protection officers as employees or servants of the company or institution concerned, while failing to allow properly for the outsourcing in the form of service contracts.

Amendment 130
Proposal for a regulation

Article 37 – paragraph 1 – point a

Text proposed by the Commission

(a) to inform and advise the controller or the processor of their obligations pursuant to this Regulation **and to document this activity and the responses received**;

Amendment

(a) to inform and advise the controller or the processor of their obligations pursuant to this Regulation ;

Amendment 131
Proposal for a regulation

Article 37 – paragraph 2

Text proposed by the Commission

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for **tasks**, certification, status, **powers and resources** of the data protection officer

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 certification and** status of the data protection officer.

referred to in paragraph 1.

Justification

The Commission's work should be focused here on the certification and status of the data protection officer so that such positions, when they exist, are filled by people with the necessary skills and protected by the appropriate guarantees.

Amendment 132 **Proposal for a regulation**

Article 38 – paragraph 1 – point a (new)

Text proposed by the Commission

Amendment

aa) respect for consumer rights;

Amendment 133 **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. 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 Regulation.

Justification

Certification should be linked by a rigorous capacity building procedure which must be given a life of its own life and be upgradable. Certificates should thus be subject to renewal and upgrading in specific cases and it should be possible to annul them in the event of serious violations. This should lead to the immediate loss of the benefits they may confer.

Amendment 134

Proposal for a regulation Article 40 a (new)

Text proposed by the Commission

Amendment

Article 40 a

Prior authorisation

The controller or the processor as the case may be shall obtain an authorisation from the supervisory authority prior to the processing of personal data, in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where a controller or processor adopts contractual clauses as provided for in point (d) of Article 42(2) or does not provide for the appropriate safeguards in a legally binding instrument as referred to in Article 42(5) for the transfer of personal data to a third country or an international organisation.

Amendment 135
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.

Justification

By using the expression ‘further authorisation’, paragraph 1 of this Article seems to indicate that initial authorisation for the transfer is needed even if an adequacy decision exists. We do not think so. Adequacy decisions are specifically intended to make it possible to carry out transfers without any specific prior authorisation. We therefore propose to amend the wording by replacing ‘further authorisation’ with ‘specific authorisation’.

Amendment 136

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 set out in Article 87(2).**

Amendment

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.

Justification

The Commission’s decisions should not be adopted solely in accordance with the examination procedure. In addition, the European Data Protection Board should be consulted in this context.

Amendment 137
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 ***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.

Justification

The term ‘restricted’ should be used instead of ‘prohibited’.

Amendment 138

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 if it finds that a third country, a region or a data processing sector in a third country, or an international organisation, does not offer a sufficient level of data protection,*** 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, ***and where appropriate pursuant to an impact assessment, where the controller or processor has ensured***

that the recipient of data in a third country maintains high standards of data protection.

Amendment 139

Proposal for a regulation

Article 43 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The supervisory authority which approves the binding corporate rules shall be that of the place of the main establishment of the controller or processor.

Justification

The Article 29 Working Party established a system for mutual recognition of binding corporate rules (WP 107, 14 April 2005, and WP 195, 6 June 2012 for processors). This system should be incorporated into this Regulation. The criterion for designating the competent authority should be the place of the main establishment, as set out in Article 51(2) of the Regulation.

Amendment 140

Proposal for a regulation

Article 44 – paragraph 1 – point d

Text proposed by the Commission

Amendment

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

(d) the transfer is necessary for important grounds of public interest ***for example in cases of international data transfers between competition authorities, tax or customs administrations, financial supervisory authorities, between services competent for social security matters, or to competent authorities for the prevention, investigation, detection and prosecution of criminal offences;*** or

Amendment 141
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; or

Amendment

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

Justification

It seems appropriate to also include administrative procedures, as these are in many cases the initial means of exercising or defending individual rights.

Amendment 142
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

Justification

The delegated acts provided for in paragraph 7 seem excessive to us, as they relate to key aspects of the rule rather than just developing it. If there is considered to be a need to supplement key aspects of the rules contained in this Article, this should be done in the provision itself.

Amendment 143
Proposal for a regulation

Article 47 – paragraph 1

Text proposed by the Commission

1. The supervisory **authority** shall act with

Amendment

1. The supervisory **authorities** shall act

complete independence in exercising the duties and powers entrusted to *it*.

with complete independence in exercising the duties and powers entrusted to *them*.

Amendment 144
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 *authorities* shall, in the performance of their duties, neither seek nor take instructions from anybody.

Amendment 145
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.

Amendment 146
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

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

supervisory authority.

appointed by and be subject to the direction of the head of the supervisory authority.

Amendment 147
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.

Amendment 148
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 parliament or the government **bodies** of the Member State concerned.

Amendment 149
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**

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**,

accordance with paragraph 5.

final conviction of an intentional crime or compulsory retirement.

Amendment 150
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*.

Amendment 151
Proposal for a regulation

Article 49 – point a

Text proposed by the Commission

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

Amendment

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

Amendment 152
Proposal for a regulation

Article 49 – point b

Text proposed by the Commission

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

Amendment

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

Amendment 153
Proposal for a regulation

Article 49 – point c

Text proposed by the Commission

(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;

Amendment

(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;

Amendment 154
Proposal for a regulation

Article 49 – 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;

Amendment 155
Proposal for a regulation

Article 49 – 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;

Amendment 156
Proposal for a regulation

Article 49 – point f

Text proposed by the Commission

(f) the regulations and common conditions

Amendment

(f) the regulations and common conditions

governing the duties of the members and staff of the supervisory *authority*;

governing the duties of the members and staff of the supervisory *authorities*;

Amendment 157
Proposal for a regulation

Article 49 – point g

Text proposed by the Commission

g) the rules and procedures on the termination of the duties of the members of the supervisory *authority*, including in case that they no longer fulfil the conditions required for the performance of their duties or if they are guilty of serious misconduct.

Amendment

(g) the rules and procedures on the termination of the duties of the members of the supervisory *authorities*, including in case that they no longer fulfil the conditions required for the performance of their duties or if they are guilty of serious misconduct.

Amendment 158
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.

Amendment 159

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

Text proposed by the Commission

Amendment

1a. In the event of a complaint by a data subject or a body or organisation or association referred to in Article 73(2), the supervisory authority responsible for

taking action on the complaint shall be that of the Member State in which the complaint is made.

Amendment 160

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. In the context of the activities of a controller or a processor established in more than one Member State, the supervisory authority of ***the Member State where*** the main establishment ***is situated*** shall be competent for the supervision of the processing activities of the controller or processor, ***including the adoption of decisions under this Regulation***, in all Member States.

The competent supervisory authority shall cooperate with the other supervisory authorities and with the Commission, pursuant to the provisions of Chapter VII of this Regulation.

In cases of disagreement based on the application of the Regulation, any supervisory authority can request the opinion of the European Data Protection Board.

Amendment 161

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

Amendment

(d) conduct investigations either on its own initiative, on the basis of a complaint, on request of another supervisory authority ***or***

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;

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;

Justification

A complaint filed with the police should also constitute grounds for launching investigations when relevant information emerges during the course of police activities demonstrating that people's right to privacy may have been infringed.

Amendment 162
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.

Justification

In the light of our position's emphasis on the strengthening of certification policies, reference should be made to the scope of the powers of the supervisory authority/-ies in connection with those policies.

Amendment 163
Proposal for a regulation

Article 53 – paragraph 1 – point j b (new)

Text proposed by the Commission

Amendment

(jb) carry out personal data protection audits or audit plans.

Amendment 164
Proposal for a regulation

Article 54

Text proposed by the Commission

Each supervisory authority must draw up an annual report on its activities. The report shall be presented to the ***national*** parliament and shall be made *be* available to the public, the Commission and the European Data Protection Board.

Amendment

Each supervisory authority must draw up an annual report on its activities. The report shall be presented to the parliament ***concerned and/or the other authorities specified under national legislation*** and shall be made available to the public, the Commission and the European Data Protection Board.

Justification

The amendment has been tabled to ensure that countries which have more than one supervisory authority within their territory are covered by the proposal.

Amendment 165

**Proposal for a regulation
Article 59 – paragraph 4**

Text proposed by the Commission

4. Where the supervisory authority concerned intends not to follow the opinion of the Commission, it shall inform the Commission and the European Data Protection Board thereof within the period referred to in paragraph 1 and provide a justification. ***In this case the draft measure shall not be adopted for one further month.***

Amendment

4. Where the supervisory authority concerned intends not to follow the opinion of the Commission, it shall inform the Commission and the European Data Protection Board thereof within the period referred to in paragraph 1 and provide a justification.

Justification

This additional time period seems unreasonable.

Amendment 166

**Proposal for a regulation
Article 62 – paragraph 2**

Text proposed by the Commission

2. On duly justified imperative grounds of

Amendment

deleted

urgency relating to the interests of data subjects in the cases referred to in point (a) of paragraph 1, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 87(3). Those acts shall remain in force for a period not exceeding 12 months.

Justification

This Commission prerogative would undermine the independence of the supervisory authorities.

Amendment 167
Proposal for a regulation

Article 66 – paragraph 1 – point g a (new)

Text proposed by the Commission

Amendment

(ga) propose the concepts on which European certification policy should be based, monitor and assess implementation, and submit its conclusions to the Commission.

Amendment 168
Proposal for a regulation

Article 69 – paragraph 1

Text proposed by the Commission

Amendment

1. The European Data Protection Board shall elect a chair and two deputy chairpersons from amongst its members. *One deputy chairperson shall be the European Data Protection Supervisor, unless he or she has been elected chair.*

1. The European Data Protection Board shall elect a chair and two deputy chairpersons from amongst its members.

Justification

There is no legitimate reason why the EDPS should have more of a right than any other authority to hold permanently the position of deputy chair.

Amendment 169
Proposal for a regulation

Article 73 – paragraph 1

Text proposed by the Commission

1. Without prejudice to any other administrative or judicial remedy, every data subject shall have the right to lodge a complaint with **a** supervisory authority in **any** Member State if they consider that the processing of personal data relating to them does not comply with this Regulation.

Amendment

1. Without prejudice to any other administrative or judicial remedy, every data subject shall have the right to lodge a complaint with **the** supervisory authority in **the Member State of his habitual residence or in the Member State where the data controller has its main establishment**; if they consider that the processing of personal data relating to them does not comply with this Regulation.

Amendment 170
Proposal for a regulation

Article 73 – paragraph 3

Text proposed by the Commission

3. Independently of a data subject's complaint, any body, organisation or association referred to in paragraph 2 shall have the right to lodge a complaint with a supervisory authority in any Member State, if it considers that a personal data breach has occurred.

Amendment

deleted

Amendment 171
Proposal for a regulation

Article 74 – paragraph 2

Text proposed by the Commission

2. Each data subject shall have the right to a judicial remedy obliging the supervisory authority to act on a complaint in the absence of a decision necessary to protect their rights, or where the supervisory authority does not inform the

Amendment

2. The claim shall be understood to have been rejected if, three months after the complaint was lodged by the subject, the supervisory authority has not informed the subject of the progress of the complaint. The claim shall also be understood to

data subject within three months on the progress or outcome of the complaint pursuant to point (b) of Article 52(1).

have been rejected if, six months after the complaint was lodged, the authority has not definitively resolved the complaint.

Justification

In the interests of legal certainty, a maximum period of six months should be established within which decisions on complaints have to be taken. A longer deadline could apply in exceptional cases. In any event, supervisory authorities should also be required to inform the data subject about the progress on his/her complaint within a maximum time period. If the authorities fail to do so, the claim should be understood to have been rejected.

Amendment 172

**Proposal for a regulation
Article 74 – paragraph 4**

Text proposed by the Commission

Amendment

4. A data subject which is concerned by a decision of a supervisory authority in another Member State than where the data subject has its habitual residence, may request the supervisory authority of the Member State where it has its habitual residence to bring proceedings on its behalf against the competent supervisory authority in the other Member State.

deleted

Justification

This opportunity would bring no added value for citizens and might jeopardise the cooperation of the supervisory authorities in the consistency mechanism.

Amendment 173

Proposal for a regulation

Article 75 – paragraph 3

Text proposed by the Commission

Amendment

3. Where proceedings are pending in the consistency mechanism referred to in Article 58, which concern the same measure, decision or practice, a court may suspend the proceedings brought before it,

3. Where proceedings are pending in the consistency mechanism referred to in Article 58, which concern the same measure, decision or practice, a court may, *at the request of any of the parties and*

except where the urgency of the matter for the protection of the data subject's rights does not allow to wait for the outcome of the procedure in the consistency mechanism.

after hearing all the parties, suspend the proceedings brought before it, except where the urgency of the matter for the protection of the data subject's rights does not allow to wait for the outcome of the procedure in the consistency mechanism.

Justification

Proceedings should, in our opinion, only be suspended at the request of one of the parties and after hearing all the parties, this being the most appropriate course of action in cases of this nature.

Amendment 174 Proposal for a regulation

Article 76 – paragraph 1

Text proposed by the Commission

Amendment

1. Any body, organisation or association referred to in Article 73(2) shall have the right to exercise the rights referred to in Articles 74 and 75 on behalf of one or more data subjects. **deleted**

Justification

There is no practical need for such a mechanism.

Amendment 175 Proposal for a regulation

Article 77 – paragraph 2

Text proposed by the Commission

Amendment

2. Where more than one controller or processor is involved in the processing, each controller or processor shall be jointly and severally liable for the entire amount of the damage.

2. Where more than one controller or processor is involved in the processing, each controller or processor shall be jointly and severally liable for the entire amount of the damage. *In the event of joint and several liability, a processor which has made amends for damage done to the person concerned may appeal against the*

controller for reimbursement if it has acted in conformity with the legal act referred to in Article 26(2).

Amendment 176

Proposal for a regulation

Article 79 – paragraph 1

Text proposed by the Commission

1. **Each** supervisory authority shall be empowered to impose administrative sanctions in accordance with this Article.

Amendment

1. **The** supervisory authority **competent under Article 51(2)** shall be empowered to impose administrative sanctions in accordance with this Article.

Amendment 177

Proposal for a regulation

Article 79 – paragraph 2

Text proposed by the Commission

2. The administrative sanction shall be in each individual case effective, proportionate and dissuasive. The amount of the administrative fine shall be fixed with due regard to ***the nature, gravity and duration of the breach, the intentional or negligent character of the infringement, the degree of responsibility of the natural or legal person and of previous breaches by this person, the technical and organisational measures and procedures implemented pursuant to Article 23 and the degree of co-operation with the supervisory authority in order to remedy the breach.***

Amendment

2. The administrative sanction shall be in each individual case effective, proportionate and dissuasive. The amount of the administrative fine shall be fixed with due regard to ***among other things:***

(a) the nature, gravity, and duration of the breach,

(b) the sensitivity of the data in issue,

(c) the intentional or negligent character of the infringement,

(d) the degree of cooperation or refusal or obstruction to cooperate with any

enforcement process,

(e) the measures having been taken by the natural or legal person to ensure compliance with relevant obligations,

(f) the degree of harm or risk of harm created by the violation,

(g) the degree of responsibility of the natural or legal person and of previous breaches by this person,

(h) the technical and organisational measures and procedures implemented pursuant to Article 23 and the degree of cooperation with the supervisory authority in order to remedy the breach.

(Part of paragraph 2 in the Commission text has become points (a), (c), (g) and (h) in Parliament's amendment)

Amendment 178

Proposal for a regulation Article 79 – paragraph 2 a

Text proposed by the Commission

Amendment

2a. The supervisory authority may give a written warning without imposing a sanction. The supervisory authority may impose a fine of up to EUR 1 000 000 for repeated, deliberate breaches or, in the case of a company, of up to 2 % of its annual worldwide turnover.

Justification

The maximum amount of the fine which can be imposed by a supervisory authority, which may be as much as EUR 1 million and, for companies, 2 % of their annual worldwide turnover, must be retained. However, the independence of supervisory authorities established by Article 8(3) of the Charter of Fundamental Rights of the European Union must be maintained. In addition, the consistency mechanism, and in particular Article 58(3) and (4), could contribute to a harmonised policy in the EU for administrative sanctions.

Amendment 179
Proposal for a regulation

Article 79 – paragraph 3 – points a and b

Text proposed by the Commission

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

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

Amendment

(a) an enterprise or an organisation employing fewer than 250 persons is willing to cooperate with the supervisory authority for the introduction of corrective measures designed to avoid similar cases of non-compliance in future. Cooperation in this area shall be governed by binding agreements with the supervisory authority. Failure to collaborate with the duly accredited supervisory authority within six months from the beginning of the proceedings shall incur the fine which would originally have been imposed.

(b) a public administration collaborates with a supervisory authority to establish ways of avoiding similar infringements in future. Collaboration in this area shall be determined on the basis of the agreements or decisions adopted by the administration concerned, which shall be referred to at the outset with regard to the measures taken. Failure to collaborate with the duly accredited supervisory authority within one year from the beginning of the proceedings shall incur the fine which would originally have been imposed.

For the purpose of this article, the record of previous unappealable sanctions for infringements through negligence shall be expunged within the following periods:

two years if the sanctions are accompanied by fines up to 250 000 EUR, or in case of an enterprise up to 0,5 % of its annual worldwide turnover; four years if the sanctions are accompanied by fines up to 500 000 EUR, or in case of an enterprise up to 1 % of its annual worldwide turnover; six years if the sanctions are accompanied by fines up to

1 000 000 EUR or, in case of an enterprise up to 2 % of its annual worldwide turnover.

For the purpose of this article, the record of previous unappealable sanctions for infringements committed through serious negligence or with intent shall be expunged within the following periods:

five years if the sanctions are accompanied by fines up to 250 000 EUR, or in case of an enterprise up to 0,5 % of its annual worldwide turnover; ten years if the sanctions are accompanied by fines up to 500 000 EUR, or in case of an enterprise up to 1 % of its annual worldwide turnover; fifteen years if the sanctions are accompanied by fines up to 1 000 000 EUR or, in case of an enterprise up to 2 % of its annual worldwide turnover.

(Part of point (b) in the Commission text has become part of point (a) in Parliament's amendment)

Justification

The objective is to introduce a wider range of alternative sanctions focusing on a strategy designed to prevent future infringements. Most of the alternative sanctions envisaged seek to establish agreement on ways of avoiding future infringements. The corrective measures are established on the basis of agreements with the supervisory authority or of acts or decisions adopted by the administration concerned.

Amendment 180

Proposal for a regulation Article 79 – paragraphs 4 to 7

Text proposed by the Commission

Amendment

4. The supervisory authority shall impose a fine up to 250.000 EUR or, in case of an enterprise up to 0,5 % of its annual worldwide turnover, to anyone who, intentionally or negligently:

deleted

a) does not provide the mechanisms for requests by data subjects or does not

respond promptly or not in the required format to data subjects pursuant to Articles 12(1) and (2);

b) charges a fee for the information or for responses to the requests of data subjects in violation of Article 12(4).

5. The supervisory authority shall impose a fine up to 500.000 EUR or, in case of an enterprise up to 1 % of its annual worldwide turnover, to anyone who, intentionally or negligently:

a) does not provide the information, or does provide incomplete information, or does not provide the information in a sufficiently transparent manner, to the data subject pursuant to Article 11, Article 12(3) and Article 14;

b) does not provide access for the data subject or does not rectify personal data pursuant to Articles 15 and 16 or does not communicate the relevant information to a recipient pursuant to Article 13;

c) does not comply with the right to be forgotten or to erasure, or fails to put mechanisms in place to ensure that the time limits are observed or does not take all necessary steps to inform third parties that a data subjects requests to erase any links to, or copy or replication of the personal data pursuant Article 17;

d) does not provide a copy of the personal data in electronic format or hinders the data subject to transmit the personal data to another application in violation of Article 18;

e) does not or not sufficiently determine the respective responsibilities with co-controllers pursuant to Article 24;

f) does not or not sufficiently maintain the documentation pursuant to Article 28, Article 31(4), and Article 44(3);

g) does not comply, in cases where special categories of data are not involved, pursuant to Articles 80, 82 and 83 with

rules in relation to freedom of expression or with rules on the processing in the employment context or with the conditions for processing for historical, statistical and scientific research purposes.

6. The supervisory authority shall impose a fine up to 1 000 000 EUR or, in case of an enterprise up to 2 % of its annual worldwide turnover, to anyone who, intentionally or negligently:

a) processes personal data without any or sufficient legal basis for the processing or does not comply with the conditions for consent pursuant to Articles 6, 7 and 8;

b) processes special categories of data in violation of Articles 9 and 81;

c) does not comply with an objection or the requirement pursuant to Article 19;

d) does not comply with the conditions in relation to measures based on profiling pursuant to Article 20;

e) does not adopt internal policies or does not implement appropriate measures for ensuring and demonstrating compliance pursuant to Articles 22, 23 and 30;

f) does not designate a representative pursuant to Article 25;

g) processes or instructs the processing of personal data in violation of the obligations in relation to processing on behalf of a controller pursuant to Articles 26 and 27;

h) does not alert on or notify a personal data breach or does not timely or completely notify the data breach to the supervisory authority or to the data subject pursuant to Articles 31 and 32;

i) does not carry out a data protection impact assessment pursuant or processes personal data without prior authorisation or prior consultation of the supervisory authority pursuant to Articles 33 and 34;

j) does not designate a data protection officer or does not ensure the conditions for fulfilling the tasks pursuant to Articles 35, 36 and 37;

k) misuses a data protection seal or mark in the meaning of Article 39;

l) carries out or instructs a data transfer to a third country or an international organisation that is not allowed by an adequacy decision or by appropriate safeguards or by a derogation pursuant to Articles 40 to 44;

m) does not comply with an order or a temporary or definite ban on processing or the suspension of data flows by the supervisory authority pursuant to Article 53(1);

n) does not comply with the obligations to assist or respond or provide relevant information to, or access to premises by, the supervisory authority pursuant to Article 28(3), Article 29, Article 34(6) and Article 53(2);

o) does not comply with the rules for safeguarding professional secrecy pursuant to Article 84.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of updating the amounts of the administrative fines referred to in paragraphs 4, 5 and 6, taking into account the criteria referred to in paragraph 2.

Amendment 181

Proposal for a regulation

Article 80 – paragraph 1

Text proposed by the Commission

1. Member States shall provide for exemptions or derogations from the provisions on the general principles in

Amendment

1. Chapter II (General principles), Chapter III (Rights of the data subject), Chapter IV (Controller and processor), Chapter V

Chapter **II**, *the* rights of the data subject *in* Chapter **III**, *on* controller and processor *in* Chapter **IV**, *on the* transfer of personal data to third countries and international organisations *in* Chapter **V**, *the* independent supervisory authorities *in* Chapter **VI** *and on co-operation and consistency in* Chapter **VII** *for the* processing of personal data carried out *solely* for journalistic purposes or the purpose of artistic or literary expression in order to reconcile the right to the protection of personal data with the rules governing freedom of expression.

(Transfer of personal data to third countries and international organisations), Chapter **VI**, (Independent supervisory authorities), Chapter **VII** (*Co-operation and consistency*) *as well as Articles 73, 74, 76 and 79 of Chapter VIII (Remedies, liability and sanctions)* shall not apply to the processing of personal data carried out for journalistic purposes or the purpose of artistic or literary expression in order to reconcile the right to the protection of personal data with the rules governing freedom of expression.

Justification

The new draft legislation on data protection takes the form of a regulation and thus is directly applicable. If data protection law applies directly, the freedom of the press exception must also be directly applicable. An implementation by Member States should not lower down the current level of protection. Furthermore, the exemption should be extended to Articles 73, 74, 76 and 79 of Chapter VIII (on Remedies, Liabilities and Sanctions) because these Articles include new elements which go far beyond what is foreseen in the current directive and are not suitable for journalistic activities or pose a serious threat to press freedom. The word "solely" undermines legal certainty as it provides for a potentially significant loophole which undermines the provision set by this article.

Amendment 182 **Proposal for a regulation**

Article 80 – paragraph 2

Text proposed by the Commission

Amendment

2. Each Member State shall notify to the Commission those provisions of its law which it has adopted pursuant to paragraph 1 by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment law or amendment affecting them.

deleted

Amendment 183 **Proposal for a regulation**

Article 80 a (new)

Text proposed by the Commission

Amendment

Article 80a

Processing of personal data and the principle of public access to official documents

Personal data in documents held by a public authority or a public body may be disclosed by this authority or body in accordance with Member State legislation regarding public access to official documents, which reconciles the right to the protection of personal data with the principle of public access to official documents.

Justification

It is essential to ensure that public oversight of public affairs is not unduly hampered by data protection rules. As expressed in opinions by the EDPS, the Article 29 Working Party and the FRA, the principle of public access to official documents should therefore be guaranteed in an article and not merely in a recital.

Amendment 184

Proposal for a regulation

Article 81 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 87 for the purpose of further specifying other reasons of public interest in the area of public health as referred to in point (b) of paragraph 1, as well as criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1.

deleted

Justification

Our only current objection to this provision concerns the delegation of power to the Commission under paragraph 3. This, in our opinion, goes beyond acceptable limits for

legislative delegation and the matters referred to should accordingly be dealt with in this instrument, either now or in the form of subsequent amendments which may be necessary to ensure its future effectiveness.

Amendment 185
Proposal for a regulation

Article 82 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1. **deleted**

Justification

The delegation of power to the Commission under paragraph 3 is excessive and the measures referred to should accordingly be taken under existing terms of reference.

Amendment 186
Proposal for a regulation

Article 83 – paragraph 1 – introductory wording

Text proposed by the Commission

Amendment

1. Within the limits of this Regulation, personal data may be processed for historical, statistical or scientific research purposes only if:

1. Within the limits of this Regulation, personal data may be processed for historical, statistical or scientific research purposes, **as well as for preliminary official or administrative investigations to determine natural filiation** only if:

Justification

In order to facilitate investigations to determine natural filiation following the theft or abduction of infants, we propose an addition to the first paragraph to clearly establish the legitimacy of the procedures followed for the purpose of such inquiries.

Amendment 187
Proposal for a regulation

Article 83 – paragraph 1 – point a

Text proposed by the Commission

(a) these purposes cannot *be otherwise fulfilled* by processing data which does not permit or not any longer permit the identification of the data subject;

Amendment

(a) these purposes cannot *reasonably be achieved* by processing data which does not permit or not any longer permit the identification of the data subject; and

Amendment 188
Proposal for a regulation

Article 83 – paragraph 1 – point b

Text proposed by the Commission

(b) data enabling the attribution of information to an identified or identifiable data subject is kept separately from the other information as long as these purposes can be fulfilled in this manner.

Amendment

(b) data enabling the attribution of information to an identified or identifiable data subject is kept separately from the other information as long as these purposes can be fulfilled in this manner.

Personal data processed as part of a preliminary official or administrative investigation for the determination of natural filiation shall only be disclosed to those concerned as and when appropriate and without prejudice to any statutory criminal proceedings.

Justification

In order to facilitate investigations to determine natural filiation following the theft or abduction of infants, this final paragraph should be added to the first section to ensure adequate protection of the confidentiality of personal data being used for the purposes of preliminary judicial or administrative investigations, so as to ensure that they are only disclosed as and when legally admissible.

Amendment 189
Proposal for a regulation

Article 83 – paragraph 2 – introductory wording

Text proposed by the Commission

Amendment

2. Bodies conducting historical, statistical or scientific research may publish or otherwise publicly disclose personal data only if:

2. Bodies conducting historical, statistical, **aggregated** or scientific research may publish or otherwise publicly disclose personal data only if:

Amendment 190
Proposal for a regulation

Article 83 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Further processing of data for historical, statistical, aggregated or scientific research purposes shall not be considered as incompatible under point (b) of Article 5 provided that the processing

(a) is subject to the conditions and safeguards of this Article; and

(b) complies with all other relevant legislations.

Justification

The current proposal for Article 83 appears to allow processing of health data, in identifiable form, for research purposes without reference to consent. The only safeguards (that identifiable data must be kept separate and that researchers can use identifiable data only if research cannot be fulfilled by using non-identifiable data) significantly lowers the protection of health data. There is a risk that the current proposal will allow for researchers to use identifiable data without consent.

Amendment 191
Proposal for a regulation

Article 83 – 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

deleted

for the processing of personal data for the purposes referred to in paragraph 1 and 2 as well as any necessary limitations on the rights of information to and access by the data subject and detailing the conditions and safeguards for the rights of the data subject under these circumstances.

Amendment 192
Proposal for a regulation

Article 85 – paragraph 2

Text proposed by the Commission

2. Churches and religious associations which apply comprehensive rules in accordance with paragraph 1 shall provide for the establishment of an independent supervisory authority in accordance with Chapter VI of this Regulation.

Amendment

2. Churches and religious associations which apply comprehensive rules in accordance with paragraph 1 shall provide for the establishment of an independent supervisory authority in accordance with Chapter VI of this Regulation *or alternatively obtain the certification necessary for the procedures required under Article 39.*

Justification

As an alternative to the provision requiring an independent supervisory authority, a certification requirement might also be appropriate, particularly in respect of the less wealthy denominations.

Amendment 193

Proposal for a regulation
Article 86 – paragraph 2

Text proposed by the Commission

2. The *delegation of* power referred to in **Article 6(5)**, Article 8(3), Article 9(3), **Article 12(5)**, Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 22(4), Article 23(3), Article 26(5), Article 28(5), Article 30(3), Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11),

Amendment

2. The power *to adopt delegated acts* referred to in Article 8(3), Article 9(3), Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 22(4), Article 23(3), Article 26(5), Article 28(5), Article 30, Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11), Article 37(2),

Article 37(2), Article 39(2), Article 43(3), Article 44(7), **Article 79(6)**, Article 81(3), Article 82(3) and Article 83(3) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

Article 39(2), Article 43(3), Article 44(7), Article 81(3), Article 82(3) and Article 83(3) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

Amendment 194

Proposal for a regulation Article 86 – paragraph 3

Text proposed by the Commission

3. The delegation of power referred to in **Article 6(5)**, Article 8(3), Article 9(3), **Article 12(5)**, Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 22(4), Article 23(3), Article 26(5), Article 28(5), **Article 30(3)**, Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11), Article 37(2), Article 39(2), Article 43(3), Article 44(7), **Article 79(6)**, Article 81(3), Article 82(3) and Article 83(3) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Amendment

3. The delegation of power referred to in Article 8(3), Article 9(3), Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 22(4), Article 23(3), Article 26(5), Article 28(5), Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11), Article 37(2), Article 39(2), Article 43(3), Article 44(7), Article 81(3), Article 82(3) and Article 83(3) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Amendment 195

Proposal for a regulation Article 86 – paragraph 5

Text proposed by the Commission

5. A delegated act adopted pursuant to **Article 6(5)**, Article 8(3), Article 9(3), **Article 12(5)**, Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 22(4),

Amendment

5. A delegated act adopted pursuant to Article 8(3), Article 9(3), Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 22(4), Article 23(3), Article 26(5),

Article 23(3), Article 26(5), Article 28(5), **Article 30(3)**, Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11), Article 37(2), Article 39(2), Article 43(3), Article 44(7), **Article 79(6)**, Article 81(3), Article 82(3) and Article 83(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

Article 28(5), Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11), Article 37(2), Article 39(2), Article 43(3), Article 44(7), Article 81(3), Article 82(3) and Article 83(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

Amendment 196

Proposal for a regulation

Article 86 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. The Commission will promote technological neutrality on adoption of the acts referred to in this Article.

PROCEDURE

Title	Protection of individuals with regard to the processing of personal data, and the free movement of such data (General Data Protection Regulation)		
References	COM(2012)0011 – C7-0025/2012 – 2012/0011(COD)		
Committee responsible Date announced in plenary	LIBE 16.2.2012		
Opinion by Date announced in plenary	JURI 14.6.2012		
Rapporteur Date appointed	Marielle Gallo 14.6.2012		
Discussed in committee	10.7.2012	6.11.2012	21.2.2013
Date adopted	19.3.2013		
Result of final vote	+: 14	–: 6	0: 4
Members present for the final vote	Raffaele Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Marielle Gallo, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Klaus-Heiner Lehne, Jiří Maštálka, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Rebecca Taylor, Alexandra Thein, Rainer Wieland, Cecilia Wikström, Zbigniew Ziobro, Tadeusz Zwiefka		
Substitute(s) present for the final vote	Piotr Borys, Eva Lichtenberger, Axel Voss		
Substitute(s) under Rule 187(2) present for the final vote	Ricardo Cortés Lastra		

PROCEDURE

Title	Protection of individuals with regard to the processing of personal data, and the free movement of such data (General Data Protection Regulation)			
References	COM(2012)0011 – C7-0025/2012 – 2012/0011(COD)			
Date submitted to Parliament	25.1.2012			
Committee responsible Date announced in plenary	LIBE 16.2.2012			
Committee(s) asked for opinion(s) Date announced in plenary	ECON 16.2.2012	EMPL 24.5.2012	ITRE 16.2.2012	IMCO 16.2.2012
	JURI 14.6.2012			
Not delivering opinions Date of decision	ECON 13.2.2012			
Rapporteur(s) Date appointed	Jan Philipp Albrecht 12.4.2012			
Discussed in committee	27.2.2012	31.5.2012	9.7.2012	19.9.2012
	5.11.2012	10.1.2013	21.1.2013	20.3.2013
	6.5.2013	21.10.2013		
Date adopted	21.10.2013			
Result of final vote	+	48		
	-	1		
	0	3		
Members present for the final vote	Jan Philipp Albrecht, Edit Bauer, Rita Borsellino, Emine Bozkurt, Arkadiusz Tomasz Bratkowski, Salvatore Caronna, Philip Claeys, Carlos Coelho, Agustín Díaz de Mera García Consuegra, Ioan Enciu, Frank Engel, Cornelia Ernst, Tanja Fajon, Kinga Gál, Kinga Göncz, Sylvie Guillaume, Salvatore Iacolino, Sophia in 't Veld, Teresa Jiménez-Becerril Barrio, Juan Fernando López Aguilar, Baroness Sarah Ludford, Monica Luisa Macovei, Clemente Mastella, Véronique Mathieu Houillon, Anthea McIntyre, Nuno Melo, Roberta Metsola, Louis Michel, Claude Moraes, Georgios Papanikolaou, Carmen Romero López, Judith Sargentini, Birgit Sippel, Wim van de Camp, Axel Voss, Josef Weidenholzer, Cecilia Wikström, Tatjana Ždanoka, Auke Zijlstra			
Substitute(s) present for the final vote	Alexander Alvaro, Silvia Costa, Dimitrios Droutsas, Evelyne Gebhardt, Monika Hohlmeier, Jan Mulder, Raúl Romeva i Rueda, Carl Schlyter, Marco Scurria			
Substitute(s) under Rule 187(2) present for the final vote	Jean-Pierre Audy, Pilar Ayuso, Miloslav Ransdorf, Britta Reimers, Kay Swinburne, Rafał Trzaskowski, Pablo Zalba Bidegain			
Date tabled	22.11.2013			

