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Committee on Civil Liberties, Justice and Home Affairs

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*****I**

DRAFT REPORT

on the proposal for a 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)0010 – C7-0024/2012 – 2012/0010(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Dimitrios Droutsas

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 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)0010 – C7-0024/2012 – 2012/0010(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0010),
 - having regard to Article 294(2) and Article 16(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0024/2012),
 - 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 Riksdag of the Kingdom of Sweden and the German Bundesrat, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - 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 opinion of the Committee on Legal Affairs (A7 0000/2013),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

**Proposal for a directive
Recital 7**

Text proposed by the Commission

(7) Ensuring a consistent and high level of protection of the personal data of individuals and facilitating the exchange of personal data between competent authorities of Member States is crucial in order to ensure effective judicial co-operation in criminal matters and police cooperation. To that aim, the level of protection of the rights and freedoms 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 must be equivalent in all Member States.

Amendment

(7) Ensuring a consistent and high level of protection of the personal data of individuals and facilitating the exchange of personal data between competent authorities of Member States is crucial in order to ensure effective judicial co-operation in criminal matters and police cooperation. To that aim, the level of protection of the rights and freedoms 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 must 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 should be ensured throughout the Union. Effective protection of personal data throughout the Union requires strengthening the rights of data subjects and the obligations of those who process personal data, but also equivalent powers for monitoring and ensuring compliance with the rules for the protection of personal data in the Member States.***

Or. en

Amendment 2

Proposal for a directive Recital 11

Text proposed by the Commission

(11) Therefore a **distinct** Directive should meet the specific nature of these fields and lay down the rules relating to 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.

Amendment

(11) Therefore a **specific** Directive should meet the specific nature of these fields and lay down the rules relating to 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.

Or. en

Amendment 3

Proposal for a directive Recital 15

Text proposed by the Commission

(15) The protection of individuals should be technological neutral and not depend on the techniques used; otherwise this would create a serious risk of circumvention. The protection of individuals should apply to processing of personal data by automated means, as well as to manual processing if the data are contained or are intended to be contained in a filing system. Files or sets of files as well as their cover pages, which are not structured according to specific criteria, should not fall within the scope of this Directive. This Directive should not apply to the processing of personal data in the course of an activity which falls outside the scope of Union law, in particular concerning national security, or to data processed by the Union institutions, bodies, offices and agencies, **such as Europol or Eurojust**.

Amendment

(15) The protection of individuals should be technological neutral and not depend on the techniques used; otherwise this would create a serious risk of circumvention. The protection of individuals should apply to processing of personal data by automated means, as well as to manual processing if the data are contained or are intended to be contained in a filing system. Files or sets of files as well as their cover pages, which are not structured according to specific criteria, should not fall within the scope of this Directive. This Directive should not apply to the processing of personal data in the course of an activity which falls outside the scope of Union law, in particular concerning national security, or to data processed by the Union institutions, bodies, offices and agencies, **which are subject to Regulation (EC) No 45/2001 or other**

legal instruments such as Council Decision 2009/371/JHA establishing the European Police Office (Europol) or Council Decision 2002/187/JHA setting up Eurojust.

Or. en

Amendment 4

Proposal for a directive Recital 16

Text proposed by the Commission

(16) The principles of protection should apply to any information concerning an identified or identifiable natural person. To determine whether a natural 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

(16) The principles of protection should apply to any information concerning an identified or identifiable natural person. To determine whether a natural 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. ***Given the importance of the developments under way in the framework of the information society, of the techniques used to capture, transmit, manipulate, record, store or communicate location data relating to natural persons, which may be used for different purposes including surveillance or creating profiles, this Directive should be applicable to processing involving such personal data.***

Or. en

Amendment 5

Proposal for a directive Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) Any processing of personal data must be lawful, fair and transparent in relation towards 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 personal data. The personal data should be adequate, relevant and limited to the minimum necessary for the purposes for which the personal data are processed. This requires in particular limiting the data collected and the period for which the data are stored 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 should be rectified or deleted. In order to ensure that the data are kept no longer than necessary, time limits should be established by the controller for erasure or periodic review.

Or. en

Amendment 6

Proposal for a directive Recital 18

Text proposed by the Commission

Amendment

(18) Any processing of personal data must be fair and lawful in relation to the individuals concerned. In particular, the specific purposes for which the data are processed should be explicit. ***deleted***

Amendment 7

Proposal for a directive Recital 19

Text proposed by the Commission

Amendment

(19) For the prevention, investigation and prosecution of criminal offences, it is necessary for competent authorities to retain and process personal data, collected in the context of the prevention, investigation, detection or prosecution of specific criminal offences beyond that context to develop an understanding of criminal phenomena and trends, to gather intelligence about organised criminal networks, and to make links between different offences detected. ***deleted***

Or. en

Amendment 8

Proposal for a directive Recital 19

Text proposed by the Commission

Amendment

(20) Personal data should not be processed for purposes incompatible with the purpose for which it was collected. Personal data should be adequate, relevant and not excessive for the purposes for which the personal data are processed. Every reasonable step should be taken to ensure that personal data which are inaccurate should be rectified or erased. ***deleted***

Or. en

Amendment 9

Proposal for a directive Recital 22

Text proposed by the Commission

(22) In the interpretation and application of the general principles relating to personal data processing by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, account should be taken of the specificities of the sector, including the specific objectives pursued.

Amendment

deleted

Or. en

Amendment 10

Proposal for a directive Recital 25

Text proposed by the Commission

(25) In order to be lawful, the processing of personal data should be necessary for compliance with a legal obligation to which the controller is subject, for the performance of a task carried out in the public interest by a competent authority based on law *or in order to protect the vital interests of the data subject or of another person, or for the prevention of an immediate and serious threat to public security.*

Amendment

(25) In order to be lawful, the processing of personal data should be ***only allowed when*** necessary for compliance with a legal obligation to which the controller is subject, for the performance of a task carried out in the public interest by a competent authority based on ***Union or national law which should contain explicit and detailed provisions at least as to the objectives, the personal data, the specific purposes and means, designate or allow to designate the controller, the procedures to be followed, the use and limitations of the scope of any discretion conferred to the competent authorities in relation to the processing activities.***

Or. en

Amendment 11

Proposal for a directive Recital 25 a (new)

Text proposed by the Commission

Amendment

(25a) Personal data should not be processed for purposes incompatible with the purpose for which it was collected. Further processing by competent authorities for a purpose falling within the scope of this Directive which is not compatible with the initial purpose should only be authorised in specific cases where such processing is necessary for compliance with a legal obligation, based on Union or national law, to which the controller is subject, or in order to protect the vital interest of the data subject or of another person or for the prevention of an immediate and serious threat to public security. The fact that data are processed for a law enforcement purpose does not necessarily imply that this purpose is compatible with the initial purpose. The concept of compatible use is to be interpreted restrictively.

Or. en

Amendment 12

Proposal for a directive Recital 25 b (new)

Text proposed by the Commission

Amendment

(25b) Personal data processed in breach of the national provisions adopted pursuant to this Directive should not be longer processed.

Or. en

Amendment 13

Proposal for a directive Recital 26

Text proposed by the Commission

(26) Personal data which are, by their nature, particularly sensitive in relation to fundamental rights or privacy, including genetic data, deserve specific protection. Such data should not be processed, unless processing is specifically **authorised by a** law which provides for suitable measures to safeguard the data subject's legitimate interests; or processing is necessary to protect the vital interests of the data subject or of another person; or the processing relates to data which are manifestly made public by the data subject.

Amendment

(26) 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 processing is specifically **necessary for the performance of a task carried out in the public interest, on the basis of Union or national** law which provides for suitable measures to safeguard the data subject's legitimate interests; or processing is necessary to protect the vital interests of the data subject or of another person; or the processing relates to data which are manifestly made public by the data subject.

Or. en

Amendment 14

Proposal for a directive Recital 26 a (new)

Text proposed by the Commission

Amendment

(26a) The processing of genetic data should only be allowed if there is a genetic link which appears in the course of a criminal investigation or a judicial procedure. Genetic data should only be stored as long as strictly necessary for the purpose of such investigations and procedures, while Member States can provide for longer storage under the conditions set out in this Directive.

Amendment 15

Proposal for a directive

Recital 27

Text proposed by the Commission

(27) Every natural person should have the right not to be subject to a measure which is based *solely* on automated processing *if it* produces *an adverse* legal effect for that person, unless authorised by law and subject to suitable measures to safeguard the data subject's legitimate interests.

Amendment

(27) Every natural person should have the right not to be subject to a measure which is based on *profiling by means of* automated processing. *Such processing which* produces a legal effect for that person, *or significantly affects them should be prohibited*, unless authorised by law and subject to suitable measures to safeguard the data subject's legitimate interests.

Amendment 16

Proposal for a directive

Recital 28

Text proposed by the Commission

(28) In order to exercise their rights, any information to the data subject should be easily accessible and easy to understand, including the use of clear and plain language.

Amendment

(28) In order to exercise their rights, any information to the data subject should be easily accessible and easy to understand, including the use of clear and plain language. *This information should be adapted to the needs of the data subject in particular when information is addressed specifically to a child.*

Amendment 17

Proposal for a directive Recital 29

Text proposed by the Commission

(29) Modalities should be provided for facilitating the data subject's exercise of their rights under this Directive, including mechanisms to request, free of charge, in particular access to data, rectification and erasure. The controller should be obliged to respond to requests of the data subject without *undue* delay.

Amendment

(29) Modalities should be provided for facilitating the data subject's exercise of their rights under this Directive, including mechanisms to request, free of charge, in particular access to data, rectification and erasure. The controller should be obliged to respond to requests of the data subject without delay.

Or. en

Amendment 18

Proposal for a directive Recital 30

Text proposed by the Commission

(30) The principle of fair processing requires that the data subjects 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

(30) The principle of fair *and transparent* processing requires that the data subjects 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.

Or. en

Amendment 19

Proposal for a directive Recital 32

Text proposed by the Commission

(32) 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 of and verify the lawfulness of the processing. Every data subject should therefore have the right to know about and obtain communication in particular of the purposes for which the data are processed, for what period, which recipients receive the data, including in third countries. Data subjects should be allowed to receive a copy of their personal data which are being processed.

Amendment

(32) 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 of and verify the lawfulness of the processing. Every data subject should therefore have the right to know about and obtain communication in particular of the purposes for which the data are processed, for what period, which recipients receive the data, including in third countries, ***and the right to lodge a complaint to the supervisory authority and its contact details***. Data subjects should be allowed to receive a copy of their personal data which are being processed.

Or. en

Amendment 20

Proposal for a directive Recital 33

Text proposed by the Commission

(33) Member States should be allowed to adopt legislative measures delaying, restricting ***or omitting*** the information of data subjects or the access to their personal data to the extent that and as long as such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the legitimate interests of the person concerned, to avoid obstructing official or legal inquiries, investigations or procedures, to avoid prejudicing the prevention, detection, investigation and prosecution of criminal offences or for the

Amendment

(33) Member States should be allowed to adopt legislative measures delaying, restricting the information of data subjects or the access to their personal data to the extent that and as long as such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the ***fundamental rights and the*** legitimate interests of the person concerned, to avoid obstructing official or legal inquiries, investigations or procedures, to avoid prejudicing the prevention, detection, investigation and prosecution of criminal

execution of criminal penalties, to protect public security or national security, or, to protect the data subject or the rights and freedoms of others.

offences or for the execution of criminal penalties, to protect public security or national security, or, to protect the data subject or the rights and freedoms of others. ***The controller should assess by way of concrete and individual examination of each case if partial or complete restriction of the right of access should apply.***

Or. en

Amendment 21

Proposal for a directive Recital 35

Text proposed by the Commission

(35) Where Member States have adopted legislative measures restricting wholly or partly the right to access, the data subject should have the right to request that the competent national supervisory authority checks the lawfulness of the processing. The data subject should be informed of this right. When access is exercised by the supervisory authority on behalf of the data subject, the data subject should be informed by the supervisory authority at least that all necessary verifications by the supervisory authority have taken place and of the result as regards to the lawfulness of the processing in question.

Amendment

(35) Where Member States have adopted legislative measures restricting wholly or partly the right to access, the data subject should have the right to request that the competent national supervisory authority checks the lawfulness of the processing. The data subject should be informed of this right. When access is exercised by the supervisory authority on behalf of the data subject, the data subject should be informed by the supervisory authority at least that all necessary verifications by the supervisory authority have taken place and of the result as regards to the lawfulness of the processing in question. ***The supervisory authority should also inform the data subject of the right to seek a judicial remedy.***

Or. en

Amendment 22

Proposal for a directive Recital 35 a (new)

Text proposed by the Commission

Amendment

(35a) Any restriction of the data subject's rights must be in compliance with the Charter of Fundamental Rights of the European Union and with the European Convention for the Protection of Human Rights and Freedoms, as clarified by the case law of the Court of Justice of the European Union and the European Court of Human Rights, and in particular respect the essence of the rights and freedoms.

Or. en

Amendment 23

Proposal for a directive Recital 36

Text proposed by the Commission

Amendment

(36) Any person should have the right to have inaccurate personal data concerning them rectified and the right of erasure where the processing of such data is not in compliance with the ***main principles*** laid down in this Directive. Where the personal data are processed in the course of a criminal investigation and proceedings,, rectification, the rights of information, access, erasure and restriction of processing may be carried out in accordance with national rules on judicial proceedings.

(36) Any person should have the right to have inaccurate ***or unlawfully processed*** personal data concerning them rectified and the right of erasure where the processing of such data is not in compliance with the ***provisions*** laid down in this Directive. Where the personal data are processed in the course of a criminal investigation and proceedings, rectification, the rights of information, access, erasure and restriction of processing may be carried out in accordance with national rules on judicial proceedings.

Or. en

Amendment 24

Proposal for a directive Recital 37

Text proposed by the Commission

(37) 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 *the* compliance of processing operations with the rules adopted pursuant to this Directive.

Amendment

(37) 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 be able to demonstrate*** compliance of ***each*** processing operation with the rules adopted pursuant to this Directive.

Or. en

Amendment 25

Proposal for a directive Recital 39

Text proposed by the Commission

(39) The protection of the rights and freedoms of data subjects as well as the responsibility and liability of controllers and processors requires a clear attribution of the responsibilities under this Directive, 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

(39) The protection of the rights and freedoms of data subjects as well as the responsibility and liability of controllers and processors requires a clear attribution of the responsibilities under this Directive, 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. ***The data subject should have the right to exercise his or her rights under this Directive in respect of and against each of the joint controllers.***

Or. en

Amendment 26

Proposal for a directive Recital 40 a (new)

Text proposed by the Commission

Amendment

(40a) Every processing operation of personal data should be recorded in order to enable the verification of the lawfulness of the data processing, self-monitoring and ensuring proper data integrity and security. This record should be made available upon request to the supervisory authority for the purpose of monitoring compliance with the rules laid down in this Directive.

Or. en

Amendment 27

Proposal for a directive Recital 40 b (new)

Text proposed by the Commission

Amendment

(40b) A data protection impact assessment should be carried out by the controller or processors, where the processing operations are likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, which should include in particular the envisaged measures, safeguards and mechanisms to ensure the protection of personal data and for demonstrating compliance with this Directive. Impact assessments should concern relevant systems and processes of a personal data processing operations, but not individual cases.

Or. en

Amendment 28

Proposal for a directive Recital 41

Text proposed by the Commission

(41) In order to ensure effective protection of the rights and freedoms of data subjects by way of preventive actions, the controller or processor should consult with the supervisory authority in certain cases prior to the processing.

Amendment

(41) In order to ensure effective protection of the rights and freedoms of data subjects by way of preventive actions, the controller or processor should consult with the supervisory authority in certain cases prior to the processing. ***Moreover, where a data protection impact assessment indicates that processing operations are likely to present a high degree of specific risks to the rights and freedoms of data subjects, the supervisory authority should be in a position to prevent, prior to the start of operations, a risky processing which is not in compliance with this Directive, and to make proposals to remedy such situation. Such consultation may equally take place in the course of the preparation either of a measure of the national parliament or of a measure based on such legislative measure which defines the nature of the processing and lays down appropriate safeguards.***

Or. en

Amendment 29

Proposal for a directive Recital 42

Text proposed by the Commission

(42) A personal data breach may, if not addressed in an adequate and timely manner, result in harm, including ***reputational damage*** to the individual concerned. Therefore, as soon as the controller becomes aware that such a breach has occurred, it should notify the

Amendment

(42) A personal data breach may, if not addressed in an adequate and timely manner, result in ***a 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

breach to the competent national authority. The individuals whose personal data or privacy 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 an individual where it could result in, for example, identity theft or fraud, physical harm, significant humiliation or damage to reputation in connection with the processing of personal data.

occurred, it should notify the breach to the competent national authority. The individuals whose personal data or privacy could be adversely affected by the breach should be notified without 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 an individual where it could result in, for example, identity theft or fraud, physical harm, significant humiliation or damage to reputation in connection with the processing of personal data. ***The notification should include information about measures taken by the provider to address the breach, as well as recommendations for the subscriber or individual concerned. Notifications to data subject should be made as soon as feasible and in close cooperation with the supervisory authority and respecting guidance provided by it.***

Or. en

Amendment 30

Proposal for a directive Recital 44

Text proposed by the Commission

(44) The controller or the processor should designate a person who would assist the controller or processor to monitor compliance with the provisions adopted pursuant to this Directive. ***A data protection officer may be appointed jointly by several entities of the competent authority.*** The data protection officers must be in a position to perform their duties and tasks independently and effectively.

Amendment

(44) The controller or the processor should designate a person who would assist the controller or processor to monitor ***and demonstrate*** compliance with the provisions adopted pursuant to this Directive. ***Where several competent authorities are acting under the supervision of a central authority, at least this central authority should designate such data protection officer.*** The data protection officers must be in a position to perform their duties and tasks independently and effectively, ***in particular by establishing rules that avoid***

conflict of interest with other tasks performed by the data protection officer.

Or. en

Amendment 31

Proposal for a directive

Recital 45

Text proposed by the Commission

(45) Member States should ensure that a transfer to a third country only takes place if *it* is necessary for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the controller in the third country or international organisation is *an authority* competent within the meaning of this Directive. A transfer may take place in cases where the Commission has decided that the third country or international organisation in question ensures an adequate level of protection, or when appropriate safeguards have been adduced.

Amendment

(45) Member States should ensure that a transfer to a third country only takes place if *this specific transfer* is necessary for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the controller in the third country or international organisation is *a public authority* competent within the meaning of this Directive. A transfer may take place in cases where the Commission has decided that the third country or international organisation in question ensures an adequate level of protection, or when appropriate safeguards have been adduced, *or where appropriate safeguards have been adduced by way of a legally binding instrument.*

Or. en

Amendment 32

Proposal for a directive

Recital 48

Text proposed by the Commission

(48) The Commission should equally be able to recognise that a third country, or a territory or a processing sector within a third country, or an international

Amendment

(48) The Commission should equally be able to recognise that a third country, or a territory or a processing sector within a third country, or an international

organisation, does not offer an adequate level of data protection. Consequently the transfer of personal data to that third country should be prohibited except when they are based on an international agreement, appropriate safeguards or a derogation. Provision should be made for procedures for consultations between the Commission and such third countries or international organisations. However, such a Commission decision shall be without prejudice to the possibility to undertake transfers on the basis of appropriate safeguards or on the basis of a derogation laid down in the Directive.

organisation, does not offer an adequate level of data protection. Consequently the transfer of personal data to that third country should be prohibited except when they are based on an international agreement, appropriate safeguards or a derogation. Provision should be made for procedures for consultations between the Commission and such third countries or international organisations. However, such a Commission decision shall be without prejudice to the possibility to undertake transfers on the basis of appropriate safeguards ***by means of legally binding instruments*** or on the basis of a derogation laid down in this Directive.

Or. en

Amendment 33

Proposal for a directive

Recital 49

Text proposed by the Commission

(49) Transfers not based on such an adequacy decision should only be allowed where appropriate safeguards have been adduced in a legally binding instrument, which ensure the protection of the personal data ***or 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, considers that appropriate safeguards with respect to the protection of personal data exist. In cases where no grounds for allowing a transfer exist, derogations should be allowed if necessary in order to protect the vital interests of the data subject or another person, or to safeguard legitimate interests of the data subject where the law of the Member State transferring the personal data so provides, or where it is***

Amendment

(49) Transfers not based on such an adequacy decision should only be allowed where appropriate safeguards have been adduced in a legally binding instrument, which ensure the protection of the personal data.

essential for the prevention of an immediate and serious threat to the public security of a Member State or a third country, or in individual cases for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, or in individual cases for the establishment, exercise or defence of legal claims.

Or. en

Amendment 34

Proposal for a directive Recital 49 a (new)

Text proposed by the Commission

Amendment

(49a) In cases where no grounds for allowing a transfer exist, derogations should be allowed if necessary in order to protect the vital interests of the data subject or another person, or to safeguard legitimate interests of the data subject where the law of the Member State transferring the personal data so provides, or where it is essential for the prevention of an immediate and serious threat to the public security of a Member State or a third country, or in individual cases for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, or in individual cases for the establishment, exercise or defence of legal claims. These derogations should be interpreted restrictively and should not allow frequent, massive and structural transfer of personal data and should not allow wholesale transfer of data which should be limited to data strictly necessary. Moreover, the decision for transfer should be made by a duly authorised person and this transfer must

be documented and should be made available to the supervisory authority on request in order to monitor the lawfulness of the transfer.

Or. en

Amendment 35

Proposal for a directive Recital 51

Text proposed by the Commission

(51) The establishment of supervisory authorities in Member States, exercising their functions with complete independence, is an essential component of the protection of individuals with regard to the processing of their personal data. The supervisory authorities should monitor the application of the provisions pursuant to this Directive and contribute to its consistent application throughout the Union, in order to protect natural persons in relation to the processing of their personal data. For that purpose, the supervisory authorities should co-operate with each other *and the Commission*.

Amendment

(51) The establishment of supervisory authorities in Member States, exercising their functions with complete independence, is an essential component of the protection of individuals with regard to the processing of their personal data. The supervisory authorities should monitor the application of the provisions pursuant to this Directive and contribute to its consistent application throughout the Union, in order to protect natural persons in relation to the processing of their personal data. For that purpose, the supervisory authorities should co-operate with each other.

Or. en

Amendment 36

Proposal for a directive Recital 53

Text proposed by the Commission

(53) Member States should be allowed to establish more than one supervisory authority to reflect their constitutional, organisational and administrative structure. Each supervisory authority should be

Amendment

(53) Member States should be allowed to establish more than one supervisory authority to reflect their constitutional, organisational and administrative structure. Each supervisory authority should be

provided with adequate financial and human resources, 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.

provided with adequate financial and human resources, premises and infrastructure, ***including technical capabilities, experience and skills***, which are 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;

Or. en

Amendment 37

Proposal for a directive Recital 54

Text proposed by the Commission

(54) 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

(54) 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, ***on the basis of the consultation of the parliament***, of the Member State, and include rules on the personal qualification of the members and the position of those members.

Or. en

Amendment 38

Proposal for a directive Recital 56

Text proposed by the Commission

(56) In order to ensure consistent monitoring and enforcement of this Directive throughout the Union, the supervisory authorities should have the

Amendment

(56) In order to ensure consistent monitoring and enforcement of this Directive throughout the Union, the supervisory authorities should have the

same duties and effective powers in each Member State, including powers of investigation, legally binding intervention, decisions and sanctions, particularly in cases of complaints from individuals, and to engage in legal proceedings.

same duties and effective powers in each Member State, including *effective* powers of investigation, *power to access all personal data and all information necessary for the performance of each supervisory function, power to access any of the premises of the data controller or the processor including data processing requirements, and* legally binding intervention, decisions and sanctions, particularly in cases of complaints from individuals, and to engage in legal proceedings.

Or. en

Amendment 39

Proposal for a directive Recital 58

Text proposed by the Commission

(58) The supervisory authorities should assist one another in performing their duties and provide mutual assistance, so as to ensure the consistent application and enforcement of the provisions adopted pursuant to this Directive.

Amendment

(58) The supervisory authorities should assist one another in performing their duties and provide mutual assistance, so as to ensure the consistent application and enforcement of the provisions adopted pursuant to this Directive. *Each supervisory authority should be ready to participate in joint operations. The requested supervisory authority should be obliged to respond in a defined time period to the request.*

Or. en

Amendment 40

Proposal for a directive Recital 59

Text proposed by the Commission

(59) The European Data Protection Board established by Regulation (EU).../2012 should contribute to the consistent application of this Directive throughout the Union, including advising the **Commission** **and** promoting the co-operation of the supervisory authorities throughout the Union.

Amendment

(59) The European Data Protection Board established by Regulation (EU).../2012 should contribute to the consistent application of this Directive throughout the Union, including advising the **Union institutions**, promoting the co-operation of the supervisory authorities throughout the Union, **and give its opinion to the Commission in the preparation of delegated and implementing acts based on this Directive.**

Or. en

Amendment 41

Proposal for a directive Recital 61

Text proposed by the Commission

(61) 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 or exercise the right to a judicial remedy on behalf of data subjects if duly mandated by them, or to lodge, independently of a data subject's complaint, its own complaint where it considers that a personal data breach has occurred.

Amendment

(61) Any body, organisation or association **acting in the public interest** constituted according to the law of a Member State should have the right to lodge a complaint or exercise the right to a judicial remedy on behalf of data subjects if duly mandated by them, or to lodge, independently of a data subject's complaint, its own complaint where it considers that a personal data breach has occurred.

Or. en

Amendment 42

Proposal for a directive Recital 65 a (new)

Text proposed by the Commission

Amendment

(65a) Transmission of personal data to other authorities or private parties in the Union is prohibited unless the transmission is in compliance with law, and the recipient is established in a Member State, and no legitimate specific interests of the data subject prevent transmission, and the transmission is necessary in a specific case for the controller transmitting the data for either the performance of a task lawfully assigned to it, or the prevention of an immediate and serious danger to public security, or the prevention of serious harm to the rights of individuals. The controller should inform the recipient of the purpose of the processing and the supervisory authority of the transmission. The recipient should also be informed of processing restrictions and ensure that they are met.

Or. en

Amendment 43

Proposal for a directive Recital 66

Text proposed by the Commission

Amendment

(66) In order to fulfil the objectives of this Directive, 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 exchange of personal data by competent authorities within the Union, the power to adopt acts in accordance with

(66) In order to fulfil the objectives of this Directive, 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 exchange of personal data by competent authorities 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 notifications of a personal data breach to the supervisory authority. 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.

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 notifications of a personal data breach to the supervisory authority ***and as regards 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***. 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 Council.

Or. en

Amendment 44

Proposal for a directive Recital 67

Text proposed by the Commission

(67) In order to ensure uniform conditions for the implementation of this Directive as regards documentation by controllers and processors, security of processing, notably in relation to encryption standards, notification of a personal data breach to the supervisory authority, ***and 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***, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European

Amendment

(67) In order to ensure uniform conditions for the implementation of this Directive as regards documentation by controllers and processors, security of processing, notably in relation to encryption standards, notification of a personal data breach to the supervisory authority, implementing powers should be conferred on the Commission. 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

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.

Commission's exercise of implementing powers.

Or. en

Amendment 45

Proposal for a directive Recital 68

Text proposed by the Commission

(68) The examination procedure should be used for the adoption of measures as regards ***documentation by controllers and processors***, security of processing, notification of a personal data breach to the supervisory authority, ***and 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***, given that those acts are of general scope.

Amendment

(68) The examination procedure should be used for the adoption of measures as regards security of processing and notification of a personal data breach to the supervisory authority, given that those acts are of general scope.

Or. en

Amendment 46

Proposal for a directive Recital 69

Text proposed by the Commission

(69) 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,

Amendment

deleted

imperative grounds of urgency so require.

Or. en

Amendment 47

Proposal for a directive Recital 72

Text proposed by the Commission

(72) Specific provisions 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 in acts of the Union which were adopted prior to the date of the adoption of this Directive, regulating the processing of personal data between Member States or the access of designated authorities of Member States to information systems established pursuant to the Treaties, should remain unaffected. The Commission should evaluate the situation with regard to the relation between this Directive and the acts adopted prior to the date of adoption of this Directive regulating the processing of personal data between Member States or the access of designated authorities of Member States to information systems established pursuant to the Treaties, *in order to assess the need for alignment of these specific provisions with this Directive.*

Amendment

(72) Specific provisions 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 in acts of the Union which were adopted prior to the date of the adoption of this Directive, regulating the processing of personal data between Member States or the access of designated authorities of Member States to information systems established pursuant to the Treaties, should remain unaffected. ***Moreover, this Directive should not apply to the processing of personal data carried out by the Union institutions, bodies, offices and agencies, which are governed by different legal instruments. As a result, this Directive does not entirely remedy the existing lack of comprehensiveness of the data protection legal rules in the Union and the uneven level of protection of the rights of data subjects. Since Article 8 of the Charter of Fundamental Rights and Article 16 TFEU imply that the fundamental right to the protection of personal data should be ensured in a consistent and homogeneous manner through the Union,*** the Commission should, *within two years after the entry into force of this Directive*, evaluate the situation with regard to the relation between this Directive and the acts adopted prior to the date of adoption of this Directive regulating the processing of

personal data between Member States or the access of designated authorities of Member States to information systems established pursuant to the Treaties, ***and should present appropriate proposals with a view to ensuring consistent and homogeneous legal rules relating to the processing of personal data by competent authorities or the access of designated authorities of Member States to information systems established pursuant to the Treaties as well as the processing of personal data by Union institutions, bodies, offices and agencies for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties within the scope of this Directive.***

Or. en

Justification

The proposal does not cover all the legal instruments on data protection for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties. As a result, the Directive does not remedy the existing lack of comprehensiveness of the data protection legal rules in the European Union and the uneven level of protection of the rights of data subjects. Therefore, it is necessary to propose new legal instruments to ensure consistent and homogeneous legal rules throughout the Union.

Amendment 48

Proposal for a directive Article 1 - paragraph 1

Text proposed by the Commission

1. This Directive lays down the rules relating to the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties.

Amendment

1. This Directive lays down the rules relating to the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties ***and rules relating to free movement of such personal data.***

Justification

Clarification of the twofold objective of the proposal, protection of the fundamental right to data protection and facilitating the free movement of personal data within the European Union.

Amendment 49**Proposal for a directive
Article 3 - 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 identifiers or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural ***or*** social identity of that person;

Amendment

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

Or. en

Justification

Clarification of the concept of personal data.

Amendment 50**Proposal for a directive
Article 3 - point 3 a (new)***Text proposed by the Commission**Amendment*

(3a) 'transfer' means any communication of personal data, actively made available to a limited number of identified parties,

with the knowledge or intention of the sender to give the recipient access to the personal data;

Or. en

Justification

Clarification of the concept of transfer. The proposal uses this term without explaining its meaning.

Amendment 51

**Proposal for a directive
Article 3 - point 3 b (new)**

Text proposed by the Commission

Amendment

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

Or. en

Amendment 52

**Proposal for a directive
Article 4 – point a**

Text proposed by the Commission

Amendment

(a) processed fairly and lawfully;

(a) processed fairly and lawfully *and in a transparent manner in relation to the data subject;*

Or. en

Justification

Alignment with the proposed Regulation on data protection to ensure consistency of EU data protection law. Suggestion also raised by the EDPS.

Amendment 53

Proposal for a directive Article 4 - point c

Text proposed by the Commission

(c) adequate, relevant, and ***not excessive*** in relation to the purposes for which they are processed;

Amendment

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

Or. en

Justification

Purpose limitation and data quality are essential principles of data protection law. The proposed Directive does not define them properly. Alignment with the proposed Regulation to ensure consistency of EU data protection law.

Amendment 54

Proposal for a directive Article 4 – point d

Text proposed by the Commission

(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;

Amendment

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

Or. en

Justification

Data quality and accuracy of data processed require that personal data are kept up to date to ensure the lawful processing and to avoid the liability of the data controller resulting from inaccurate processing.

Amendment 55

**Proposal for a directive
Article 4 – point e**

Text proposed by the Commission

(e) kept in a form which permits identification of data subjects for no longer than it is necessary for the purposes for which the personal data are processed;

Amendment

(e) kept in a form which permits identification ***or singling out*** of data subjects for no longer than it is necessary for the purposes for which the personal data are processed;

Or. en

Justification

Alignment with the concept of personal data.

Amendment 56

**Proposal for a directive
Article 4 – point f**

Text proposed by the Commission

(f) processed under the responsibility and liability of the controller, who shall ensure compliance with the provisions adopted pursuant to this Directive

Amendment

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

Or. en

Justification

Consistency with the proposed Regulation and addresses concerns of the EDPS.

Amendment 57

Proposal for a directive Article 4 - point f a (new)

Text proposed by the Commission

Amendment

(fa) accessed by or made available only to those duly authorized staff in competent authorities who need them for performance of their tasks;

Or. en

Justification

Personal data processed pursuant to this proposal will be only for law enforcement purposes and processed by duly authorised competent law enforcement authorities.

Amendment 58

Proposal for a directive Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4a

Access to data initially processed for purposes other than those referred to in Article 1(1)

Member States shall provide that competent authorities may only have access to personal data initially processed for purposes other than those referred to in Article 1(1) if they are specifically authorised by Union or national law which must meet the requirements set out in Article 7(1a) and must provide that:

(a) access is allowed only by duly authorised staff of the competent authorities in the performance of their tasks where, in a specific case, reasonable grounds give reason to believe that the processing of the personal data will substantially contribute to the prevention,

investigation, detection or prosecution of criminal offences or the execution of criminal penalties;

(b) requests for access must be in writing and refer to the legal ground for the request; and

(c) appropriate safeguards are implemented to ensure the protection of fundamental rights and freedoms in relation to the processing of personal data. Those safeguards shall be without prejudice to and complementary to specific conditions of access to personal data such as judicial authorisation in accordance with national law.

Or. en

Justification

It is necessary to clarify the conditions relating to access by law enforcement authorities to personal data initially processed for purposes other than law enforcement in order to ensure compliance with Article 8 of the EU Charter of Fundamental Rights.

Amendment 59

Proposal for a directive Article 4 b (new)

Text proposed by the Commission

Amendment

Article 4b

Time limits of storage and review

1. Member States shall provide that personal data processed pursuant to this Directive shall be deleted by the competent authorities where they are no longer necessary for the purposes for which they were processed.

2. Member States shall provide that the competent authorities put mechanisms in

place to ensure that time-limits are established for the erasure of personal data and for a periodic review of the need for the storage of the data, including fixing storage periods for the different categories of personal data. Procedural measures shall be established to ensure that these time-limits or the periodic review intervals are observed.

Or. en

Justification

The text should include the principle on data retention and deletion of data that is no longer necessary. However, several current legal instruments, e.g. Framework Decision 2008/977/JHA or Europol Decision 2009/371/JHA, contain such a principle which is already a basic element of the rules applied in the EU for data processing for law enforcement purposes. It addresses concerns of the EDPS.

Amendment 60

Proposal for a directive

Article 5 - paragraph 1 - introductory part

Text proposed by the Commission

1. Member States shall provide that, *as far as possible*, the controller makes a clear distinction between personal data of different categories of data subjects, such as:

Amendment

1. Member States shall provide that the controller makes a clear distinction between personal data of different categories of data subjects, such as:

Or. en

Amendment 61

Proposal for a directive

Article 5 - paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall provide for specific safeguards for the processing of personal data relating to persons who

have not been convicted of a criminal offence, or in relation to whom there are no serious grounds for believing that they have committed a criminal offence.

Or. en

Justification

Concerns raised by the EDPS and the Article 29 Working Party.

Amendment 62

**Proposal for a directive
Article 6 - paragraph 1**

Text proposed by the Commission

1. Member States shall ensure that, *as far as possible*, the different categories of personal data undergoing processing are distinguished in accordance with their degree of accuracy and reliability.

Amendment

1. Member States shall ensure that the different categories of personal data undergoing processing are distinguished in accordance with their degree of accuracy and reliability.

Or. en

Justification

A proper differentiation is an obligation on Member States and any relativisation of such an obligation shall be avoided.

Amendment 63

**Proposal for a directive
Article 6 - paragraph 2**

Text proposed by the Commission

2. Member States shall ensure that, *as far as possible*, personal data based on facts are distinguished from personal data based on personal assessments.

Amendment

2. Member States shall ensure that personal data based on facts are distinguished from personal data based on personal assessments.

Or. en

Justification

Such a distinction is an obligation on Member States and any relativisation of such an obligation shall be avoided.

Amendment 64

**Proposal for a directive
Article 7**

Text proposed by the Commission

Member States shall provide that the processing of personal data is lawful only if and to the extent that processing is necessary:

(a) for the performance of a task carried out by a competent authority, based on law for the purposes set out in Article 1(1); or

(b) for compliance with a legal obligation to which the controller is subject; or

(c) in order to protect the vital interests of the data subject or of another person; or

(d) for the prevention of an immediate and serious threat to public security.

Amendment

I. Member States shall provide that the processing of personal data is lawful only if and to the extent that processing is necessary for the performance of a task carried out by a competent authority, based on ***Union or national*** law for the purposes set out in Article 1(1).

Or. en

Justification

See AM 65.

Amendment 65

**Proposal for a directive
Article 7 – paragraph 1 a (new)**

Text proposed by the Commission

Amendment

1a. ***Union or national law regulating the processing of personal data within the***

scope of this Directive shall contain explicit and detailed provisions specifying at least:

- (a) the objectives of the processing;*
- (b) the personal data to be processed;*
- (c) the specific purposes and means of processing;*
- (d) the appointment of the controller, or of the specific criteria for the appointment of the controller;*
- (e) the categories of duly authorised staff of the competent authorities for the processing of personal data;*
- (f) the procedure to be followed for the processing;*
- (g) the use that may be made of the personal data obtained;*
- (h) limitations on the scope of any discretion conferred on the competent authorities in relation to the processing activities.*

Or. en

Justification

This provision clarifies that processing of personal data for law enforcement purposes must be provided for by law, which fulfils the requirements of the EU Charter of Fundamental Rights and the case law of the Court of Justice as well as the ECHR, in particular as regards the accessibility and foreseeability.

Amendment 66

Proposal for a directive Article 7 a (new)

Text proposed by the Commission

Amendment

Article 7a

Further processing

1. Member States shall provide that personal data may only be further

processed for another purpose set out in Article 1(1) which is not compatible with the purposes for which the data were initially collected if and to the extent that such further processing is necessary and proportionate and specifically required by Union or national law.

2. In addition to the requirements set out in Article 7(1a), Union or national law authorising further processing as referred to in paragraph 1 shall contain explicit and detailed provisions specifying at least as to:

(a) the specific purposes and means of that particular processing;

(b) that access is allowed only by the duly authorised staff of the competent authorities in the performance of their tasks where in a specific case there are reasonable grounds for believing that the processing of the personal data will contribute substantially to the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties; and

(c) that appropriate safeguards are established to ensure the protection of fundamental rights and freedoms in relation to the processing of personal data.

Member States may require that access to the personal data is subject to additional conditions such as judicial authorisation, in accordance with their national law.

3. Member States may also allow further processing for historical, statistical or scientific purposes provided that they establish appropriate safeguards, such as making the data anonymous.

Or. en

Justification

Processing of personal data for incompatible purposes other than the initial purpose can take place only if provided by law and for strict limited purposes. Processing for purposes other than those referred to in this provision does not fall under the scope of this Directive but under the scope of the proposed Regulation and shall comply with it.

Amendment 67

Proposal for a directive Article 7 b (new)

Text proposed by the Commission

Amendment

Article 7b

***Processing in breach of this Directive
Member States shall provide that any
personal data processed in breach of the
provisions adopted pursuant to this
Directive shall not be processed any
further.***

Or. en

Justification

Clarification that personal data unlawfully processed in breach of data protection rules shall not be processed any longer.

Amendment 68

Proposal for a directive Article 8 - paragraph 2, point a

Text proposed by the Commission

Amendment

(a) the processing is ***authorised by a law providing appropriate safeguards***; or

(a) the processing is ***necessary for the performance of a task carried out in the public interest by the competent authorities for the purposes set out in Article 1(1), on the basis of Union or national law which shall provide for specific and suitable measures to safeguard the data subject's legitimate interests, including specific authorisation***

*from a judicial authority, if required
national law; or*

Or. en

Justification

Initial proposed wording was too broad. It is necessary to clarify that the processing of sensitive data must be carried out in the public interest, on the basis of Union or national law which shall provide for suitable measures to safeguard the data subject. Takes account of the concerns of the EDPS and the Article 29 Working Party.

Amendment 69

**Proposal for a directive
Article 8 a (new)**

Text proposed by the Commission

Amendment

Article 8a

***Processing of genetic data for the purpose
of a criminal investigation or a judicial
procedure***

***1. Member States shall ensure that genetic
data may only be used to establish a
genetic link within the framework of
adducing evidence, preventing a threat to
public security or preventing the
commission of a specific criminal offence.
Genetic data may not be used to determine
other characteristics which may be linked
genetically.***

***2. Member States shall provide that
genetic data or information derived from
their analysis may only be retained as
long as necessary for the purposes for
which data are processed and where the
individual concerned has been convicted
of serious offences against the life,
integrity or security of persons, subject to
strict storage periods to be determined by
national law.***

***3. Member States shall ensure that genetic
data or information derived from their
analysis is only stored for longer periods***

when the genetic data cannot be attributed to an individual, in particular when it is found at the scene of a crime.

Or. en

Justification

Processing of genetic data is extremely sensitive. It may only be carried out under specific safeguards and conditions as the ECHR has stressed in its ruling in the case Marper v. UK.

Amendment 70

Proposal for a directive Article 9 – paragraph 1

Text proposed by the Commission

1. Member States shall provide that measures which produce *an adverse* legal effect for the data subject or significantly affect them and which are based *solely* on automated processing of personal data intended to evaluate certain personal aspects relating to the data subject shall be prohibited unless authorised by a law which also lays down measures to safeguard the data subject's legitimate interests.

Amendment

1. Member States shall provide that measures which produce *a* legal effect for the data subject or significantly affect them and which are based on automated processing of personal data intended to evaluate certain personal aspects relating to the data subject shall be prohibited unless authorised by a law which also lays down measures to safeguard the data subject's legitimate interests.

Or. en

Amendment 71

Proposal for a directive Article 9 – paragraph 2

Text proposed by the Commission

2. Automated processing of personal data intended to evaluate certain personal aspects relating to the data subject shall not be based *solely* on special categories of

Amendment

2. Automated processing of personal data intended to evaluate certain personal aspects relating to the data subject shall not be based on special categories of personal

personal data referred to in Article 8.

data referred to in Article 8.

Or. en

Justification

Clarification of the meaning of profiling to align the text with the Council of Europe Recommendation on profiling of 25 November 2010.

Amendment 72

**Proposal for a directive
Article 10 – paragraph 1**

Text proposed by the Commission

1. Member States shall provide that the controller ***takes all reasonable steps to have*** transparent and easily accessible policies with regard to the processing of personal data and for the exercise of the data subjects' rights.

Amendment

1. Member States shall provide that the controller ***has*** transparent and easily accessible policies with regard to the processing of personal data and for the exercise of the data subjects' rights.

Or. en

Amendment 73

**Proposal for a directive
Article 10 – paragraph 2**

Text proposed by the Commission

2. Member States shall provide that any information and any communication relating to the processing of personal data are to be provided by the controller to the data subject in an intelligible form, using clear and plain language.

Amendment

2. Member States shall provide that any information and any communication relating to the processing of personal data are to be provided by the controller to the data subject in an intelligible form, using clear and plain language, ***adapted to the data subject, in particular where that information is addressed specifically to a child.***

Or. en

Amendment 74

Proposal for a directive Article 10 – paragraph 3

Text proposed by the Commission

3. Member States shall provide that the controller ***takes all reasonable steps to establish*** procedures for providing the information referred to in Article 11 and for the exercise of the rights of data subjects referred to in Articles 12 to 17.

Amendment

3. Member States shall provide that the controller ***establishes*** procedures for providing the information referred to in Article 11 and for the exercise of the rights of data subjects referred to in Articles 12 to 17. ***Where personal data are processed by automated means, the controller shall provide also means for requests to be made electronically.***

Or. en

Amendment 75

Proposal for a directive Article 10 – paragraph 4

Text proposed by the Commission

4. Member States shall provide that the controller informs the data subject about the follow-up given to their request without ***undue*** delay.

Amendment

4. Member States shall provide that the controller informs the data subject about the follow-up given to their request without delay, ***and in any event at the latest within one month of receipt of the request. 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.***

Or. en

Justification

Alignment with the proposed Regulation on data protection. Takes account of the EDPS opinion.

Amendment 76

Proposal for a directive

Article 11 - paragraph 1 - introductory part

Text proposed by the Commission

1. Where personal data relating to a data subject are collected, Member States shall ensure that the controller **takes all appropriate measures to provide** the data subject with at least the following information:

Amendment

1. Where personal data relating to a data subject are collected, Member States shall ensure that the controller **provides** the data subject with at least the following information:

Or. en

Justification

Takes account of concerns of the EDPS and the Article 29 Working Party. Consistency with the proposed Regulation. A provision on information is an essential element of the EU data protection framework. Information must be provided unless any of the limitations provided for in paragraph 4 allow for a restriction or exemption to the right to information.

Amendment 77

Proposal for a directive

Article 11 - paragraph 1 - point f

Text proposed by the Commission

(f) the recipients or categories of recipients of the personal data, including in third countries or international organizations;

Amendment

(f) the recipients or categories of recipients of the personal data, including in third countries or international organisations, **and on potential access to the data transferred by authorities to that third country or international organisation under the rules of that third country or international organisation;**

Or. en

Justification

The information to be provided to the data subject must be complete. The data subject must be aware of the possibility that personal data transmitted to a given authority of a third country or international organisation for law enforcement purposes may be further transferred or

disclosed to other law enforcement authorities.

Amendment 78

Proposal for a directive

Article 11 - paragraph 4 - introductory part

Text proposed by the Commission

4. Member States may adopt legislative measures delaying, restricting ***or omitting*** the provision of the information to the data subject to the extent that, and as long as, such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the legitimate interests of the person concerned:

Amendment

4. Member States may adopt legislative measures delaying or restricting the provision of the information to the data subject to the extent that, and as long as, such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the ***fundamental rights and the*** legitimate interests of the person concerned:

Or. en

Justification

Clarification of the conditions that may justify a limitation of the right to information.

Amendment 79

Proposal for a directive

Article 11 - paragraph 5

Text proposed by the Commission

5. Member States may determine categories of data processing which may wholly or partly fall under the exemptions of paragraph 4.

Amendment

5. Member States shall provide that the controller shall assess, in each specific case, by means of a concrete and individual examination, whether a partial or complete restriction for one of the reasons referred to in paragraph 4 applies. Member States may ***also*** determine categories of data processing which may wholly or partly fall under the exemptions ***under points (a), (b), (c) and (d)*** of paragraph 4.

Justification

The limitations to the provision on information are exemptions to a basic right of the data subject. They need to be assessed on a case by case basis in the light of the specific case. Takes account of the concerns expressed by the EDPS and the Article 29 Working Party.

Amendment 80

Proposal for a directive

Article 13 – paragraph 1 – introductory part

Text proposed by the Commission

1. Member States may adopt legislative measures restricting, wholly or partly, the data subject's right of access to the extent that such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the legitimate interests of the person concerned:

Amendment

1. Member States may adopt legislative measures restricting, wholly or partly, the data subject's right of access to the extent that such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the ***fundamental rights and the*** legitimate interests of the person concerned:

Justification

Clarification of the conditions that may justify a limitation of the right to access.

Amendment 81

Proposal for a directive

Article 13 - paragraph 2

Text proposed by the Commission

2. Member States may determine by law categories of data processing which may wholly or partly fall under the exemptions of paragraph 1.

Amendment

2. Member States shall provide that the controller assesses, in each specific case by means of a concrete and individual examination whether a partial or complete restriction for one of the reasons referred to in paragraph 1 applies. Member States may also determine by law categories of data

processing which may wholly or partly fall under the exemptions under points (a) to (d) of paragraph 1.

Or. en

Justification

The limitations to the provision on information are exemptions to a basic right of the data subject. They need to be assessed on a case by case basis in the light of the specific case. Takes account of the concerns expressed by the EDPS and the Article 29 Working Party.

Amendment 82

**Proposal for a directive
Article 13 - paragraph 4**

Text proposed by the Commission

4. Member States shall ensure that the controller documents the grounds for **omitting** the communication of the factual or legal reasons on which the decision is based.

Amendment

4. Member States shall ensure that the controller documents the **assessment referred to in paragraph 2 as well as** the grounds for **restricting** the communication of the factual or legal reasons on which the decision is based.

Or. en

Justification

Assessment documentation and the grounds for restricting the right of access will enable the controller to demonstrate that he acted lawfully.

Amendment 83

**Proposal for a directive
Article 14 – paragraph 1**

Text proposed by the Commission

1. Member States shall provide for the right of the data subject to request, in particular in cases referred to in Article 13, that the supervisory authority checks the

Amendment

1. Member States shall provide for the right of the data subject to request, **at all times**, in particular in cases referred to in Article 13, that the supervisory authority

lawfulness of the processing.

checks the lawfulness of the processing.

Or. en

Justification

Alignment with the proposed Regulation. The right to access can be exercised by the data subject continuously and not only once.

Amendment 84

**Proposal for a directive
Article 14 – paragraph 3**

Text proposed by the Commission

3. When the right referred to in paragraph 1 is exercised, the supervisory authority shall inform the data subject at least that all necessary verifications by the supervisory authority have taken place, and of the result as regards the lawfulness of the processing in question.

Amendment

3. When the right referred to in paragraph 1 is exercised, the supervisory authority shall inform the data subject at least that all necessary verifications by the supervisory authority have taken place, and of the result as regards the lawfulness of the processing in question. ***The supervisory authority shall also inform the data subject of his or her right to seek a judicial remedy.***

Or. en

Justification

The data subject must be aware of his right to seek judicial remedy against the decision of the data protection authority.

Amendment 85

**Proposal for a directive
Article 15 – paragraph 1**

Text proposed by the Commission

1. Member States shall provide for the right of the data subject to obtain from the controller the rectification of personal data relating to them which are inaccurate. The

Amendment

1. Member States shall provide for the right of the data subject 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, in particular by way of a corrective statement.

data subject shall have the right to obtain completion *or correction* of incomplete *or inaccurate* personal data, in particular by way of a *completing or* corrective statement.

Or. en

Justification

The right to rectification covers not only rectification of incomplete data but also the rectification and clarification of inaccurate data.

Amendment 86

**Proposal for a directive
Article 15 – paragraph 2a (new)**

Text proposed by the Commission

Amendment

2a. The controller shall communicate any rectification carried out to each recipient to whom the data have been disclosed, unless to do so proves impossible or involves a disproportionate effort.

Or. en

Justification

Such a principle is already established in EU law, for instance Directive 95/46/EC, Regulation 45/2001 or the Europol Decision 2009/371/JHA. It is essential to ensure the accuracy and quality of data processing.

Amendment 87

**Proposal for a directive
Article 16 – paragraph 3 – introductory part**

Text proposed by the Commission

Amendment

3. Instead of erasure, the controller shall ***mark*** the personal data where:

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

Justification

Consistency with the proposed Regulation. It takes account of the EDPS opinion.

Amendment 88

Proposal for a directive

Article 16 – paragraph 3a (new)

Text proposed by the Commission

Amendment

3a. The personal data referred to in paragraph 3 may only be processed for purposes of proof or for the protection of the public interest.

Or. en

Justification

Consistency with the proposed Regulation.

Amendment 89

Proposal for a directive

Article 16 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. Where processing of personal data is restricted pursuant to paragraph 3, the controller shall inform the data subject before lifting the restriction on processing.

Or. en

Justification

Consistency with the proposed Regulation. It also addresses concerns of the EDPS.

Amendment 90

Proposal for a directive

Article 16 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The controller shall communicate any erasure carried out to each recipient to whom the data have been disclosed, unless to do so proves impossible or involves a disproportionate effort.

Or. en

Justification

Such a principle is already established in EU law, for instance Directive 95/46/EC, Regulation 45/2001 or the Europol Decision 2009/371/JHA. It is essential to ensure the accuracy and quality of data processing.

Amendment 91

Proposal for a directive

Article 18 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall provide that the controller adopts policies and implements appropriate measures to ensure that the processing of personal data is performed in compliance with the provisions adopted pursuant to this Directive.

1. Member States shall provide that the controller adopts policies and implements appropriate measures to ensure ***and demonstrate, for each processing operation***, that the processing of personal data is performed in compliance with the provisions adopted pursuant to this Directive.

Or. en

Justification

Consistency with the proposed Regulation. The data controller must ensure compliance and also demonstrate that he or she implements policies and measures for that purpose (accountability). Taking into account the sensitiveness of the processing of data covered by this proposal, it is an essential requirement, as was highlighted also by the EDPS and the Article 29 Working Party.

Amendment 92

Proposal for a directive Article 18 – paragraph 2 – point a a(new)

Text proposed by the Commission

Amendment

(aa) performing a data protection impact assessment pursuant to Article 25a;

Or. en

Justification

Consistency with the requirements set out in the proposed Regulation. A data protection impact assessment needs to be performed in matters covered by this proposal in the specific circumstances indicated in Article 25a.

Amendment 93

Proposal for a directive Article 19 – paragraph 2

Text proposed by the Commission

Amendment

2. The controller shall implement mechanisms for ensuring that, by default, only those personal data which are necessary for ***the purposes of the processing are processed.***

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

Or. en

Justification

Consistency with the requirements set out in the proposed Regulation.

Amendment 94

Proposal for a directive Article 20

Text proposed by the Commission

Member States shall provide that where a controller determines the purposes, conditions and means of the processing of personal data jointly with others, the joint controllers must determine the respective responsibilities for compliance with the provisions adopted pursuant to this Directive, in particular as regards the procedures and mechanisms for exercising the rights of the data subject, by means of *an* arrangement between them.

Amendment

1. Member States shall provide that where a controller determines the purposes, conditions and means of the processing of personal data jointly with others, the joint controllers must determine the respective responsibilities for compliance with the provisions adopted pursuant to this Directive, in particular as regards the procedures and mechanisms for exercising the rights of the data subject, by means of **a written** arrangement between them **or a legal act**.

2. The data subject may exercise his or her rights under this Directive in respect of and against each of any two or more joint controllers.

Or. en

Justification

Clarification that a joint controllership can be established also by a legal act and not only by a written contract, as well as that the conditions and responsibilities of the joint controllers can be established by a legal act.

Amendment 95

Proposal for a directive Article 21 – paragraph 1

Text proposed by the Commission

1. Member States shall provide that where a processing operation is carried out on behalf of a controller, the controller must choose a processor providing sufficient guarantees to implement appropriate

Amendment

1. Member States shall provide that where a processing operation is carried out on behalf of a controller, the controller must 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 the provisions adopted pursuant to this Directive and ensure the protection of the rights of the data subject,

technical and organisational measures and procedures in such a way that the processing will meet the requirements of the provisions adopted pursuant to this Directive 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 to ensure compliance with those measures.*

Or. en

Justification

Alignment with the proposed Regulation.

Amendment 96

Proposal for a directive Article 21 – paragraph 2

Text proposed by the Commission

2. Member States shall provide that the carrying out of processing by a processor must be governed by a legal act binding the processor to the controller and stipulating in particular that the processor shall act only on instructions from the controller, *in particular, where the transfer of the personal data used is prohibited.*

Amendment

2. Member States shall provide that the carrying out of processing by *means of* a processor must be governed by a *contract or* legal act binding the processor to the controller and stipulating in particular that the processor shall:

(a) act only on instructions from the controller;

(b) employ only staff who have agreed to be bound by an obligation of confidentiality or are under a statutory obligation of confidentiality;

(c) take all required measures pursuant to Article 28;

(d) engage another processor only with the permission of the controller and therefore inform the controller of the intention to engage another processor in such a timely fashion that the controller

- has the possibility to object;*
- (e) insofar as it is possible given the nature of the processing, adopt 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 28 to 32;*
- (g) hand all results over to the controller after the end of the processing and not otherwise process the personal data;*
- (h) make available to the controller and the supervisory authority all the information necessary to verify compliance with the obligations laid down in this Article;*
- (i) take into account the principle of data protection by design and default.*

Or. en

Justification

Alignment with the proposed Regulation. To guarantee legal certainty it is necessary to establish the conditions governing the processing of personal data by a processor.

Amendment 97

Proposal for a directive
Article 21 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Justification

Alignment with the proposed Regulation. To guarantee adequate legal certainty it is necessary to establish the conditions governing the processing of personal data by a processor.

Amendment 98

**Proposal for a directive
Article 22 – paragraph 1 a (new)**

Text proposed by the Commission

Amendment

1a. Where the processor is or becomes the determining part in relation to the purposes, means, or methods of data processing or does not act exclusively on the instructions of the controller, it shall be considered a joint controller pursuant to Article 20.

Or. en

Justification

Alignment with the proposed Regulation. To guarantee adequate legal certainty it is necessary to establish the conditions governing the processing of personal data by a processor.

Amendment 99

**Proposal for a directive
Article 23 – paragraph 2 – point aa (new)**

Text proposed by the Commission

Amendment

(aa) the name and contact details of the data protection officer;

Or. en

Amendment 100

Proposal for a directive

Article 23 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) an indication of the parts of the controller's or processor's organisation entrusted with the processing of personal data for a particular purpose;

Or. en

Amendment 101

Proposal for a directive

Article 23 – paragraph 2 – point b b (new)

Text proposed by the Commission

Amendment

(bb) a description of the category or categories of data subjects and of the data or categories of data relating to them;

Or. en

Amendment 102

Proposal for a directive

Article 23 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 103

Proposal for a directive

Article 23 – paragraph 2 – point c b (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 104

Proposal for a directive

Article 23 – paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) transfers of data to a third country or an international organisation, including the identification of that third country or international organisation.

(d) transfers of data to a third country or an international organisation, including the identification of that third country or international organisation ***and the legal grounds on which the data are transferred; a substantive explanation shall be given when a transfer is based on Articles 35 or 36 of this Directive;***

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

(db) the results of the verifications of the measures referred to in Article 20(1);

(dc) an indication of the legal basis of the processing operation for which the data are intended.

Or. en

Justification

Keeping of documentation is crucial to ensure and demonstrate compliance with data protection law. It also enables the data protection authority to verify the respect of national data protection law by the competent authority. Article 29 Working Party has raised concerns

about the lack of consistency with the documentation requirement of the proposed Regulation.

Amendment 105

Proposal for a directive Article 23 – paragraph 3

Text proposed by the Commission

3. The controller and the processor shall make the documentation available, on request, to the supervisory authority.

Amendment

3. The controller and the processor shall make the documentation available, on request, to the supervisory authority:

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

(b) the results of the verifications of the measures referred to in Article 20(1);

(c) an indication of the legal basis of the processing operation for which the data are intended.

Or. en

Amendment 106

Proposal for a directive Article 24 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that records are kept of at least the following processing operations: collection, alteration, consultation, disclosure, combination or erasure. The records of consultation and disclosure shall show in particular the purpose, date and time of such operations and *as far as possible* the identification of the person who consulted or disclosed personal data.

Amendment

1. Member States shall ensure that records are kept of at least the following processing operations: collection, alteration, consultation, disclosure, combination or erasure. The records of consultation and disclosure shall show in particular the purpose, date and time of such operations and the identification of the person who consulted or disclosed personal data, *and the identity of the recipient of such data.*

Or. en

Justification

Necessary to ensure the proper control and supervision of the lawfulness of the processing performed. It takes account of the EDPS opinion.

Amendment 107

Proposal for a directive

Article 24 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The controller and the processor shall make the documentation available, on request, to the supervisory authority.

Or. en

Justification

Necessary to ensure the proper control and supervision of the lawfulness of the processing performed. It takes account of the EDPS opinion. This requirement is already established in several EU legal instruments.

Amendment 108

Proposal for a directive

Article 25 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall provide that the controller and the processor shall cooperate, on request, with the supervisory authority in the performance of its duties, in particular by providing ***all*** information ***necessary for the supervisory authority to perform its duties.***

1. Member States shall provide that the controller and the processor shall cooperate, on request, with the supervisory authority in the performance of its duties, in particular by providing ***the*** information ***referred to in Article 46(2)(a) and by granting access as provided in Article 46(2)(b).***

Or. en

Justification

Consistency with the proposed Regulation.

Amendment 109

Proposal for a directive Article 25 – paragraph 2

Text proposed by the Commission

2. In response to the supervisory authority's exercise of its powers under **points (a) and (b)** of Article 46, the controller and the processor shall reply to the supervisory authority within a reasonable period. The reply shall include a description of the measures taken and the results achieved, in response to the remarks of the supervisory authority.

Amendment

2. In response to the supervisory authority's exercise of its powers under **point (b)** of Article 46, 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.

Or. en

Justification

Consistency with the proposed Regulation.

Amendment 110

Proposal for a directive Article 25 a (new)

Text proposed by the Commission

Amendment

Article 25a

Data Protection impact assessment

- 1. Member States shall provide that, prior to the processing of personal data, the controller or the processor shall carry out an assessment of the impact of the envisaged processing systems and procedures on the protection of personal data, where the processing operations are likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes.*
- 2. In particular the following processing*

operations are likely to present such specific risks as referred to in paragraph 1:

(a) processing of personal data in large scale filing systems for the purposes of the prevention, detection, investigation or prosecution of criminal offences and the execution of criminal penalties;

(b) processing of special categories of personal data within the meaning of Article 8, of personal data related to children and of biometric data for the purposes of the prevention, detection, investigation or prosecution of criminal offences and the execution of criminal penalties.

(c) an evaluation of personal aspects relating to a natural person or for analysing or predicting in particular the natural person's behaviour, which is based on automated processing and likely to result in measures that produces legal effects concerning the individual or significantly affects the individual;

(d) monitoring publicly accessible areas, especially when using optic-electronic devices (video surveillance); or

(e) other processing operations for which the consultation of the supervisory authority is required pursuant to Article 26(1).

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 those risks, safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate the compliance with the provisions adopted pursuant to this Directive, taking into account the rights and legitimate interests of the data subjects and other persons concerned.

4. Member States shall provide that the controller consults the public on the intended processing, without prejudice to the protection of the public interests or the security of the processing operations.

5. Without prejudice to the protection of the public interests or the security of the processing operations, the assessment shall be made easily accessible to the public.

6. The Commission shall be empowered to adopt, after requesting an opinion of the European Data Protection Board, delegated acts in accordance with Article 56 for the purpose of specifying further 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.

Or. en

Justification

There is no justification for the absence of a provision on a data protection impact assessment in this proposal. The specific nature of the activities covered by the proposal makes it even more necessary. EDPS and Article 29 Working Party have expressed their serious concerns about the absence of such a provision.

Amendment 111

Proposal for a directive Article 26 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the controller or the processor consults the supervisory authority prior to the processing of personal data ***which will form part of a new filing system to be created where:***

Amendment

1. Member States shall ensure that the controller or the processor consults the supervisory authority prior to the processing of personal data ***in order to ensure the compliance of the intended processing with the provisions adopted***

(a) special categories of data referred to in Article 8 are to be processed;

(b) the type of processing, in particular using new technologies, mechanisms or procedures, holds otherwise specific risks for the fundamental rights and freedoms, and in particular the protection of personal data, of data subjects.

pursuant to this Directive and in particular to mitigate the risks involved for the data subjects where:

(a) a data protection impact assessment as provided for in Article 25a indicates that processing operations by virtue of their nature, their scope and/or their purposes, are likely to present a high degree of specific risks; or

(b) the supervisory authority deems it necessary to carry out a prior consultation on specified 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.

Or. en

Amendment 112

Proposal for a directive Article 26 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Where the supervisory authority is of the opinion that the intended processing does not comply with the provisions adopted pursuant to this Directive, in particular where risks are insufficiently identified or mitigated, it shall prohibit the intended processing and make appropriate proposals to remedy such non-compliance.

Or. en

Amendment 113

Proposal for a directive Article 26 – paragraph 2

Text proposed by the Commission

2. Member States *may* provide that the supervisory authority *establishes* a list of the processing operations which are subject to prior consultation pursuant to *paragraph 1*.

Amendment

2. Member States *shall* provide that the supervisory authority *shall establish* a list of the processing operations which are subject to prior consultation pursuant to *point (b) of paragraph 1*. *The supervisory authority shall communicate that list to the controllers and to the European Data Protection Board.*

2a. Member States shall provide that the controller or processor shall provide the supervisory authority with the data protection impact assessment provided for in Article 25a 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.

2b. If the supervisory authority is of the opinion that the intended processing does not comply with the provisions adopted pursuant to this Directive or that the risks are insufficiently identified or mitigated, it shall make appropriate proposals to remedy such non-compliance.

2c. Member States may 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 under this Directive, and in particular to mitigate the risks involved for the data subjects.

Or. en

Amendment 114

Proposal for a directive Article 27 – paragraph 1

Text proposed by the Commission

1. Member States shall provide that the controller and the processor implements appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the data to be protected, having regard to the state of the art and the cost of their implementation.

Amendment

1. Member States shall provide that the controller and the processor implements appropriate technical and organisational measures **and procedures** to ensure a level of security appropriate to the risks represented by the processing and the nature of the data to be protected, having regard to the state of the art and the cost of their implementation.

Or. en

Justification

The data controller must not only take measures of a technical or organisational nature but also procedures that allow him to ensure data security.

Amendment 115

Proposal for a directive Article 27 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall provide that processors may be appointed only if they guarantee that they observe the requisite technical and organisational measures under paragraph 1 and comply with the instructions under Article 21(2)(a). The competent authority shall monitor the processor in those respects.

Or. en

Justification

The data controller must ensure that the processor intended to process personal data on behalf of the controller must be able to ensure security of the processing.

Amendment 116

**Proposal for a directive
Article 28 – paragraph 4 a (new)**

Text proposed by the Commission

Amendment

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

Or. en

Amendment 117

**Proposal for a directive
Article 28 – paragraph 5**

Text proposed by the Commission

Amendment

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 56 for the purpose of specifying further the criteria and requirements for establishing the data breach referred to in paragraphs 1 and 2 and for the particular circumstances in which a controller and a processor is required to notify the personal data breach.

5. The Commission shall be empowered to adopt, ***after requesting an opinion of the European Data Protection Board,*** delegated acts in accordance with Article 56 for the purpose of specifying further the criteria and requirements for establishing the data breach referred to in paragraphs 1 and 2 and for the particular circumstances in which a controller and a processor is required to notify the personal data breach.

Or. en

Amendment 118

Proposal for a directive Article 29 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Without prejudice to the controller's obligation to notify the personal data breach to the data subject, if the controller has not already communicated the personal data breach to the data subject, the supervisory authority, having considered the likely adverse effects of the breach, may require it to do so.

Or. en

Justification

Consistency with the proposed Regulation. Takes account of the opinion of the Article 29 Working Party which considers that there is no justification for two different systems in the case of a data breach.

Amendment 119

Proposal for a directive Article 30 – paragraph 2

Text proposed by the Commission

Amendment

2. The data protection officer shall be designated 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 32.

2. The data protection officer shall be designated 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 32. ***The necessary level of expert knowledge shall be determined in particular according by the data processing carried out and the protection required for the personal data processed by the controller or the processor.***

Or. en

Justification

The aforementioned areas of expertise derived from practical experience.

Amendment 120

Proposal for a directive

Article 30 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall provide that the controller or the processor ensures that any other professional duties of the data protection officer are compatible with that person's tasks and duties as data protection officer and do not result in a conflict of interests.

Or. en

Justification

Consistency with the proposed Regulation. According to the EDPS and the Article 29 Working Party there is no justification for the rules provided for by this proposal to be more lenient and abstract than the ones provided for by the proposed Regulation.

Amendment 121

Proposal for a directive

Article 30 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. The data protection officer shall be appointed for a period of at least four years. The data protection officer may be reappointed for further terms. During the term of office, the data protection officer may only be dismissed from that function, if they no longer fulfil the conditions required for the performance of their duties.

Or. en

Justification

The minimum period of two years is too short. Experience shows that even with appropriate knowledge and skills, a newly named data protection officer needs at least half a year to familiarize herself/himself with the tasks. Were she/he to be replaced - without good reason - by a new person after only two years, this could make the implementation of data protection requirements less effective. Experience also shows that an independent activity of the officer requires an adequate protection from unjustified dismissal.

Amendment 122

Proposal for a directive Article 30 – paragraph 2 d (new)

Text proposed by the Commission

Amendment

2d. Member States shall provide for the data subject the right to contact the data protection officer on all issues related to the processing of his or her personal data.

Or. en

Justification

Consistency with the proposed Regulation. According to the EDPS and the Article 29 Working Party there is no justification for the rules provided for by this proposal to be more lenient and abstract than the ones provided for by the proposed Regulation.

Amendment 123

Proposal for a directive Article 31 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The controller or the processor shall support the data protection officer in performing his or her tasks and shall provide all the means, including staff, premises, equipment and any other resources necessary to carry out the duties and tasks referred to in Article 32, and to maintain his or her professional knowledge.

Justification

Consistency with the proposed Regulation. According to the EDPS and the Article 29 Working Party there is no justification for the rules provided for by this proposal to be more lenient and abstract than the ones provided for by the proposed Regulation.

Amendment 124

**Proposal for a directive
Article 32 – point a**

Text proposed by the Commission

(a) to inform and advise the controller or the processor of their obligations in accordance with the provisions adopted pursuant to this Directive and to document this activity and the responses received;

Amendment

(a) to inform and advise the controller or the processor of their obligations in accordance with the provisions adopted pursuant to this Directive, ***in particular with regards to technical and organisational measures and procedures*** and to document this activity and the responses received;

Or. en

Amendment 125

**Proposal for a directive
Article 32 – point f**

Text proposed by the Commission

(f) to monitor the application for prior consultation to the supervisory authority, if required pursuant to ***Article 26***;

Amendment

(f) to monitor ***the performance of the data protection impact assessment by the controller or processor and*** the application for prior consultation to the supervisory authority, if required pursuant to ***Article 26(1)***;

Or. en

Justification

Consistency with the proposed Regulation. According to the EDPS and the Article 29 Working Party there is no justification for the rules provided for by this proposal to be more lenient and abstract than the ones provided for by the proposed Regulation.

Amendment 126

Proposal for a directive Article 33

Text proposed by the Commission

Member States shall provide that any transfer of personal data by competent authorities that is undergoing processing or is intended for processing after transfer to a third country, or to an international organisation, including further onward transfer to another third country or international organisation, may take place only if:

(a) the transfer is necessary for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties; **and**

(b) the **conditions laid down in this Chapter** are complied with by the controller and processor.

Amendment

1. Member States shall provide that any transfer of personal data by competent authorities that is undergoing processing or is intended for processing after transfer to a third country, or to an international organisation, including further onward transfer to another third country or international organisation, may take place only if:

(a) the **specific** transfer is necessary for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties;

(aa) the data are transferred to a controller in a third country or international organisation that is an public authority competent for the purposes referred in Article 1(1);

(ab) the conditions laid down in Articles 34 to 37 are complied with by the controller and the processor, including for onward transfers of personal data from the third country or an international organisation to another third country or to another international organisation;

(b) the **other provisions adopted pursuant to this Directive** are complied with by the controller and processor; **and**

(ba) the level of protection of the personal data individuals guaranteed in the Union by this Directive is not undermined.

2. Member States shall provide that a

transfer, subject to the conditions set out in paragraph 1, may only take place:

(a) where the Commission has decided under the conditions and procedure referred to in Article 34 that the third country or international organisation in question ensures an adequate level of protection; or

(b) where appropriate safeguards with respect to the protection of personal data have been adduced in a legally binding instrument as referred to in Article 35.

Or. en

Justification

A more detailed clarification of conditions for transfers to third countries, and the mentioning of the two regular methods of transfer, adequacy decision or a legally binding instrument.

Amendment 127

Proposal for a directive

Article 34 – 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 as well as the security measures which are complied with in that country or by that international organisation; as well as effective and enforceable rights including effective administrative and judicial redress for data subjects, in particular for those data subjects residing in the Union whose personal data are being transferred;

Amendment

(a) the rule of law, relevant legislation in force, including concerning public security, defence, national security and criminal law as well as the security measures which are complied with in that country or by that international organisation; as well as effective and enforceable rights including effective administrative and judicial redress for data subjects, in particular for those data subjects residing in the Union whose personal data are being transferred;

Or. en

Amendment 128

Proposal for a directive Article 34 – paragraph 2 –point b

Text proposed by the Commission

(b) the existence and effective functioning of one or more independent supervisory authorities in the third country or international organisation in question responsible for ensuring compliance with the data protection rules, for assisting and advising the data subject in exercising their rights and for co-operation with the supervisory authorities of the Union and of Member States; and

Amendment

(b) the existence and effective functioning of one or more independent supervisory authorities in the third country or international organisation in question responsible for ensuring compliance with the data protection rules, ***including sufficient sanctioning powers***, for assisting and advising the data subject in exercising their rights and for co-operation with the supervisory authorities of the Union and of Member States; and

Or. en

Amendment 129

Proposal for a directive Article 34 – paragraph 3

Text proposed by the Commission

3. The Commission ***may*** decide, within the scope of this Directive, 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 57(2).***

Amendment

3. The Commission ***shall be empowered to adopt, after requesting an opinion of the European Data Protection Board, delegated acts in accordance with Article 56 to*** decide, within the scope of this Directive, that a third country or a territory or a processing sector within that third country or an international organisation ensures an adequate level of protection within the meaning of paragraph 2.

Or. en

Amendment 130

Proposal for a directive Article 34 – paragraph 4

Text proposed by the Commission

4. The **implementing** act shall specify its geographical and sectoral application, and, **where applicable**, identify the supervisory authority mentioned in point (b) of paragraph 2.

Amendment

4. The **delegated** act shall specify its geographical and sectoral application, and identify the supervisory authority mentioned in point (b) of paragraph 2.

Or. en

Amendment 131

Proposal for a directive Article 34 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The Commission shall, on an on-going basis, monitor developments that could affect the fulfilment of the elements listed in paragraph 2 in third countries and international organisations in relation to which a delegated act pursuant to paragraph 3 has been adopted.

Or. en

Amendment 132

Proposal for a directive Article 34 – paragraph 5

Text proposed by the Commission

Amendment

5. The Commission **may** decide within the scope of this Directive 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

5. The Commission shall be empowered to adopt, after requesting an opinion of the European Data Protection Board, delegated acts in accordance with Article 56 to decide within the scope of this Directive that a third country or a territory or a

paragraph 2, 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 whose personal data are being transferred. ***Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(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 57(3).***

processing sector within that third country or an international organisation does not ensure an adequate level of protection within the meaning of paragraph 2, 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 whose personal data are being transferred.

Or. en

Amendment 133

Proposal for a directive Article 34 – paragraph 6

Text proposed by the Commission

6. Member States shall ensure that where the Commission decides pursuant to paragraph 5, that 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, ***this decision shall be without prejudice to transfers under Article 35(1) or in accordance with Article 36.*** 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. Member States shall ensure that where the Commission decides pursuant to paragraph 5, that 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. At the appropriate time, the Commission shall enter into consultations with the third country or international organisation with a view to remedying the situation resulting from the Decision made pursuant to paragraph 5 of this Article.

Or. en

Amendment 134

Proposal for a directive Article 35

Text proposed by the Commission

1. Where the Commission has taken no decision pursuant to Article 34, Member States shall provide that a transfer of personal data to a recipient in a third country or an international organisation may take place where:

(a) appropriate safeguards with respect to the protection of personal data have been adduced in a legally binding instrument; *or*

(b) the controller or processor has assessed all the circumstances surrounding the transfer of personal data and concludes that appropriate safeguards exist with respect to the protection of personal data.

2. The decision for transfers under paragraph 1(b) must be made by duly authorised staff. These transfers must be documented and the documentation must be made available to the supervisory authority on request.

Amendment

1. Where the Commission has taken no decision pursuant to Article 34, Member States shall provide that a transfer of personal data to a recipient in a third country or an international organisation may take place where appropriate safeguards with respect to the protection of personal data have been adduced in a legally binding instrument.

2. These transfers must be documented and the documentation must be made available to the supervisory authority on request.

Or. en

Justification

Transfers based on a case by case decision (point b in the proposal) can not be considered as a regular way of transfer according to Article 35, but are an exception.

Amendment 135

Proposal for a directive Article 36 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Processing based on paragraph 1 must have a legal basis in Union law, or the law of the Member State to which the controller is subject; that law must meet public interest objective or the need to protect the rights and freedoms of others, respects the essence of the right to the protection of personal data and be proportionate to the legitimate aim pursued.

Or. en

Amendment 136

Proposal for a directive Article 36 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. The decision for transfers under paragraph 1 must be made by duly authorised staff. These transfers must be documented and the documentation must be made available to the supervisory authority on request.

Or. en

Amendment 137

Proposal for a directive Article 38 a (new)

Text proposed by the Commission

Amendment

Article 38a

Report by the Commission

The Commission shall submit a report on the application of Articles 33 to 38 to the European Parliament and the Council at regular intervals. The first report shall be submitted no later than four years after the entry into force of this Directive. For that purpose, the Commission may request information from the Member States and supervisory authorities, which shall supply this information without undue delay. The report shall be made public.

Or. en

Justification

The Commission shall submit a report on the application of Articles 33 to 38 to the European Parliament and the Council at regular intervals. The first report shall be submitted no later than four years after the entry into force of this Directive. For that purpose, the Commission may request information from the Member States and their supervisory authorities, which shall supply this information without undue delay. The report shall be made public.

Amendment 138

Proposal for a directive Article 41 – paragraph 1

Text proposed by the Commission

1. Member States shall provide that the members of the supervisory authority must be appointed either by the parliament or the government of the Member State concerned

Amendment

1. Member States shall provide that the members of the supervisory authority must be appointed either by the parliament or the government, ***after consultation of the parliament***, of the Member State concerned

Or. en

Justification

A national parliament should be always involved in the designation of the data protection authority.

Amendment 139

Proposal for a directive Article 45 – paragraph 1 – point b

Text proposed by the Commission

(b) hears complaints lodged by any data subject, or by an association **representing and duly mandated by that data subject** in accordance with Article 50, investigates, to the extent appropriate, the matter and informs the data subject the association of the progress and the outcome of the complaint within a reasonable period, in particular where further investigation or coordination with another supervisory authority is necessary;

Amendment

(b) hears complaints lodged by any data subject, or by an association in accordance with Article 50, investigates, to the extent appropriate, the matter and informs the data subject the association of the progress and the outcome of the complaint within a reasonable period, in particular where further investigation or coordination with another supervisory authority is necessary;

Or. en

Amendment 140

Proposal for a directive Article 45 – paragraph 1 – point e

Text proposed by the Commission

(e) conducts investigations either on its own initiative or on the basis of a complaint, or on request of another supervisory authority, and informs the data subject concerned, if the data subject has addressed a complaint, of the outcome of the investigations within a reasonable period;

Amendment

(e) conducts investigations, **inspections and audits**, either on its own initiative or on the basis of a complaint, or on request of another supervisory authority, and informs the data subject concerned, if the data subject has addressed a complaint, of the outcome of the investigations within a reasonable period;

Or. en

Justification

Technical clarification.

Amendment 141

Proposal for a directive Article 45 – paragraph 6

Text proposed by the Commission

6. Where requests are vexatious, in particular due to their repetitive character, the supervisory authority may charge a fee **or not take the action required by the data subject**. The supervisory authority shall bear the burden of proving of the vexatious character of the request.

Amendment

6. Where requests are vexatious, in particular due to their repetitive character, the supervisory authority may charge a **reasonable** fee. The supervisory authority shall bear the burden of proving of the vexatious character of the request.

Or. en

Amendment 142

Proposal for a directive Article 46

Text proposed by the Commission

Member States shall provide that each supervisory authority **must in particular be endowed with:**

(a) **investigative powers, such as powers of access to data forming the subject matter of processing operations and powers to collect all the information necessary for the performance of its supervisory duties;**

(b) **effective powers of intervention, such as the delivering of opinions before processing is carried out, and ensuring appropriate publication of such opinions, ordering the restriction, erasure or destruction of data, imposing a temporary or definitive ban on processing, warning or admonishing the controller, or referring the matter to national parliaments or other political institutions;**

(c) **the power to engage in legal**

Amendment

1. Member States shall provide that each supervisory authority **has 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 to comply with the data subject's requests to exercise his or her rights under this Directive, including those provided by Articles 12 to 17 where such requests have been refused in breach of those provisions;**

(c) **to order the controller or the processor**

proceedings where the provisions adopted pursuant to this Directive have been infringed or to bring this infringement to the attention of the judicial authorities.

to provide information pursuant to Article 10(1) and (2) and Articles 11, 28 and 29;

(d) to ensure compliance with opinions on prior consultations referred to in Article 26;

(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 adopted pursuant to this Directive 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 inform national parliaments, the government or other public institutions as well as the public on the matter.

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 supervisory duties,

(b) access to any of its premises, including to any data processing equipment and means, in accordance with national law, where there are reasonable grounds for presuming that an activity in violation of the provisions adopted pursuant to this Directive is being carried out there, without prejudice to a judicial authorisation if required by national law.

3. Each supervisory authority shall have the power to bring violations of the provisions adopted pursuant to this Directive to the attention of the judicial

authorities and to engage in legal proceedings and bring an action to the competent court pursuant to Article 53(2).

4. Each supervisory authority shall have the power to impose penalties in respect of administrative offences.

Or. en

Justification

Consistency with the proposed Regulation. Stresses that the powers of the data protection authority must be the same as in the Regulation and cannot be limited or reduced with regard to the Regulation because of the processing activities and the nature of the data controllers.

Amendment 143

Proposal for a directive Article 47

Text proposed by the Commission

Member States shall provide that each supervisory authority draws up an annual report on its activities. The report shall be made available to the Commission and the European Data Protection Board.

Amendment

Member States shall provide that each supervisory authority draws up an annual report on its activities. The report ***shall be presented to the national parliament and*** shall be made available to ***the public***, the Commission and the European Data Protection Board.

Or. en

Amendment 144

Proposal for a directive Article 48 – paragraph 2

Text proposed by the Commission

2. Member States shall provide that a supervisory authority takes all appropriate measures required to reply to the request of another supervisory authority.

Amendment

2. Member States shall provide that a supervisory authority takes all appropriate measures required to reply to the request of another supervisory authority. ***Such measures may include, in particular, the***

transmission of relevant information or enforcement measures to bring about the cessation or prohibition of processing operations contrary to this Directive without delay and not later than one month after having received the request.

Or. en

Amendment 145

Proposal for a directive Article 48 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The request for assistance shall contain all the necessary information, including the purpose of the request, and reasons for the request. Information exchanged shall be used only in respect of the matter for which it was requested.

Or. en

Amendment 146

Proposal for a directive Article 48 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. A supervisory authority to which a request for assistance is addressed may not refuse to comply with it unless:

(a) it is not competent to deal with the request; or

(b) compliance with the request would be incompatible with the provisions adopted pursuant to this Directive.

Or. en

Amendment 147

Proposal for a directive Article 48 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Supervisory authorities shall supply the information requested by other supervisory authorities by electronic means and within the shortest possible period of time, using a standardised format.

Or. en

Amendment 148

Proposal for a directive Article 48 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. No fee shall be charged for any action taken following a request for mutual assistance.

Or. en

Amendment 149

Proposal for a directive Article 48 a (new)

Text proposed by the Commission

Amendment

Article 48a

Joint operations

1. Member States shall provide that, in order to step up cooperation and mutual assistance, the supervisory authorities may carry out joint enforcement measures

and other joint operations in which designated members or staff from supervisory authorities of other Member States participate in operations within a Member State's territory.

2. Member States shall provide that in cases where data subjects in another Member State or other Member States are likely to be affected by processing operations, the competent supervisory authority may be invited to participate in the joint operations. The competent supervisory authority may invite the supervisory authority of each of those Member States to take part in the respective operation and in case where it is invited, respond to the request of a supervisory authority to participate in the operations without delay.

3. Member States shall lay down the practical aspects of specific co-operation actions.

Or. en

Amendment 150

Proposal for a directive Article 49 – 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 Directive

Amendment

(a) advise the **Union institutions** on any issue related to the protection of personal data in the Union, including on any proposed amendment of this Directive;

Or. en

Justification

The EDPB should also be able to advise other EU Institutions. Consistency with the proposed Regulation.

Amendment 151

Proposal for a directive

Article 49 – paragraph 1 – point b

Text proposed by the Commission

(b) examine, on request of the Commission or on its own initiative or of one of its members, any question covering the application of the provisions adopted pursuant to this Directive and issue guidelines, recommendations and best practices addressed to the supervisory authorities in order to encourage consistent application of those provisions;

Amendment

(b) examine, on request of the Commission, ***the European Parliament or the Council*** or on its own initiative or of one of its members, any question covering the application of the provisions adopted pursuant to this Directive and issue guidelines, recommendations and best practices addressed to the supervisory authorities in order to encourage consistent application of those provisions, ***including on the use of enforcement powers***;

Or. en

Amendment 152

Proposal for a directive

Article 49 – paragraph 1 – point e

Text proposed by the Commission

(e) promote the co-operation and the effective bilateral and multilateral exchange of information and practices between the supervisory authorities;

Amendment

(e) promote the co-operation and the effective bilateral and multilateral exchange of information and practices between the supervisory authorities, ***including the coordination of joint operations and other joint activities where it so decides at the request of one or more supervisory authorities***;

Or. en

Amendment 153

Proposal for a directive

Article 49 – paragraph 1 – point g a (new)

Text proposed by the Commission

Amendment

(ga) give its opinion to the Commission in the preparation of delegated and implementing acts under this Directive.

Or. en

Amendment 154

Proposal for a directive

Article 49 – paragraph 2

Text proposed by the Commission

Amendment

2. Where the Commission requests advice from the European Data Protection Board, it may lay out a time limit within which the European Data Protection Board shall provide such advice, taking into account the urgency of the matter.

2. Where ***the European Parliament, the Council or*** the Commission requests advice from the European Data Protection Board, it may lay out a time limit within which the European Data Protection Board shall provide such advice, taking into account the urgency of the matter.

Or. en

Justification

The EDPB should be able to advise other EU institutions. Additionally, the role of the EDPB in coordinating joint operations and other common activities should be strengthened. Moreover the EDPB should be consulted in the preparation of implementing and delegated acts adopted in accordance with this Directive.

Amendment 155

Proposal for a directive

Article 50 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall provide for the

2. Member States shall provide for the

right of any body, organisation or association which *aims to protect data subjects' rights and interests concerning the protection of their personal data and is being* properly constituted according to the law of a Member State 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 Directive have been infringed as a result of the processing of personal data. ***The organisation or association must be duly mandated by the data subject(s).***

right of any body, organisation or association ***acting in the public interest*** which ***has been*** properly constituted according to the law of a Member State 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 Directive have been infringed as a result of the processing of personal data.

Or. en

Justification

Civil society organisations and other bodies, not only those working in the data protection field, should be able to take a more direct role in litigations ensuring a better implementation of data protection law.

Amendment 156

Proposal for a directive Article 51 – paragraph 1

Text proposed by the Commission

1. Member States shall provide for the right to a judicial remedy against decisions of a supervisory authority.

Amendment

1. Member States shall provide for the right ***for each natural or legal person*** to a judicial remedy against decisions of a supervisory authority ***concerning them***.

Or. en

Amendment 157

Proposal for a directive Article 51 – paragraph 2

Text proposed by the Commission

2. ***Each*** data subject shall have the right to

Amendment

2. ***Member States shall provide that each***

a judicial remedy for obliging the supervisory authority to act on a complaint, in the absence of a decision which is 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 45(1).

data subject shall have the right to a judicial remedy for obliging the supervisory authority to act on a complaint, in the absence of a decision which is 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 45(1).

Or. en

Amendment 158

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

Text proposed by the Commission

Amendment

3a. Member States shall undertake mutually to enforce final decisions by the court referred to in this Article.

Or. en

Amendment 159

Proposal for a directive Article 52 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall undertake mutually to enforce final decisions by the court referred to in this Article.

Or. en

Amendment 160

Proposal for a directive Article 53 – paragraph 2

Text proposed by the Commission

2. *Each* supervisory authority shall have the right to engage in legal proceedings and bring an action to court, in order to enforce the provisions adopted pursuant to this Directive or to ensure consistency of the protection of personal data within the Union.

Amendment

2. **Member States shall provide that each** supervisory authority shall have the right to engage in legal proceedings and bring an action to court, in order to enforce the provisions adopted pursuant to this Directive or to ensure consistency of the protection of personal data within the Union.

Or. en

Amendment 161

Proposal for a directive Article 54 – paragraph 1

Text proposed by the Commission

1. Member States shall provide that any person who has suffered damage as a result of an unlawful processing operation or of an action incompatible with the provisions adopted pursuant to this Directive shall have the right to receive compensation from the controller or the processor for the damage suffered.

Amendment

1. Member States shall provide that any person who has suffered damage, **including non pecuniary loss**, as a result of an unlawful processing operation or of an action incompatible with the provisions adopted pursuant to this Directive shall have the right to receive compensation from the controller or the processor for the damage suffered.

Or. en

Amendment 162

Proposal for a directive Article 55 a (new)

Text proposed by the Commission

Amendment

Chapter VIIIa

Transmission of personal data to other parties

Article 55a

Transmission of personal data to other authorities or private parties in the Union

1. Member States shall ensure that the controller does not transmit personal data to a natural or legal person not subject to the provisions adopted pursuant to this Directive, unless:

(a) the transmission complies with Union or national law; and

(b) the recipient is established in a Member State of the European Union; and

(c) no legitimate specific interests of the data subject prevent transmission; and

(d) the transmission is necessary in a specific case for the controller transmitting the personal data for:

(i) the performance of a task lawfully assigned to it; or

(ii) the prevention of an immediate and serious danger to public security; or

(iii) the prevention of serious harm to the rights of individuals.

2. The controller shall inform the recipient of the purpose for which the personal data may exclusively be processed.

3. The controller shall inform the supervisory authority of such transmissions.

4. The controller shall inform the

recipient of processing restrictions and ensure that these restrictions are met.

Or. en

Justification

It is necessary to establish rules and the conditions that will govern the transmission of personal data processed for law enforcement purposes to other authorities or private entities. This Article respects principle 5 of Council of Europe Recommendation No R (87) 15.

Amendment 163

**Proposal for a directive
Article 56 – paragraph 2**

Text proposed by the Commission

2. The delegation of power referred to in Article 28(5) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Directive.

Amendment

2. The delegation of power referred to in **Article 25a(6)**, Article 28(5), **Article 34(3) and Article 34(5)** shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Directive.

Or. en

Justification

Consistency of the legal instrument. Article 34(3) and (5) will provide that adequacy decisions shall be adopted by delegated acts.

Amendment 164

**Proposal for a directive
Article 56 – paragraph 3**

Text proposed by the Commission

3.- The delegation of power referred to in Article 28(5) 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 the power specified in that decision. It shall take

Amendment

3.- The delegation of power referred to in **Article 25a(6)**, Article 28(5), **Article 34(3) and Article 34(5)** 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 the power

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.

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.

Or. en

Justification

Consistency of the legal instrument. Article 34(3) and (5) will provide that adequacy decisions shall be adopted by delegated acts.

Amendment 165

Proposal for a directive Article 56 – paragraph 5

Text proposed by the Commission

5. A delegated act adopted pursuant to Article 28(5) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 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 2 months at the initiative of the European Parliament or the Council.

Amendment

5. A delegated act adopted pursuant to **Article 25a(6)**, Article 28(5), **Article 34(3) and Article 34(5)** shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 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 2 months at the initiative of the European Parliament or the Council.

Or. en

Amendment 166

Proposal for a directive Article 56 a (new)

Text proposed by the Commission

Amendment

Article 56a

Deadline for the adoption of delegated acts

1. The Commission shall adopt the delegated acts under Article 25a(6) and Article 28(5) by [six months before the date referred to in Article 62(1)]. The Commission may extend the deadline referred to in this paragraph by six months.

Or. en

Justification

In order to ensure the proper implementation of the Directive and legal certainty it is necessary that the delegated act relating to the notification of data breaches is adopted before the date of application of the Directive.

Amendment 167

Proposal for a directive Article 57 – paragraph 3

Text proposed by the Commission

Amendment

3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply. *deleted*

Or. en

Justification

Consistency of the legal instrument.

Amendment 168

Proposal for a directive Article 61 – paragraph 2

Text proposed by the Commission

2. The Commission shall review within **three years** after the entry into force of this Directive other acts adopted by the European Union which regulate 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, in particular those acts adopted by the Union referred to in Article 59, **in order to assess the need to align them with this Directive and make, where appropriate, the necessary proposals to amend these acts to ensure a consistent approach on the protection of personal data** within the scope of this Directive.

Amendment

2. The Commission shall review within **two years** after the entry into force of this Directive other acts adopted by the European Union which regulate 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, in particular those acts adopted by the Union referred to in Article 59, and shall make appropriate proposals **with a view to ensuring consistent and homogeneous legal rules relating 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** within the scope of this Directive.

Or. en

Amendment 169

Proposal for a directive Article 61 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The Commission shall present within two years of the entry into force of this Directive appropriate proposal for the revision of the legal framework applicable to the processing of personal data by Union institutions, bodies, offices and agencies, for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties with a view to ensuring

*consistent and homogeneous legal rules
relating to the fundamental right to the
protection of personal data in the Union.*

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EXPLANATORY STATEMENT

Context of the proposal

The rapporteur is of the opinion that an efficient data protection framework in Europe can majorly contribute to achieving a good level of data protection for every single European citizen. The content of the Commission's proposal 2012/0010 (COD) was amended by the rapporteur for the purpose of raising the standards of protection to a level similar to that of the proposed Regulation, and providing at the same time clear justifications for the proposed solutions.

The existing Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters does not provide a comprehensive framework of data protection by law enforcement and judicial authorities in criminal matters, as it addresses only cross-border situations and does not address the issue of parallel existing provisions on data protection in other EU instruments on law enforcement and criminal law.

The rapporteur is convinced that rapid technological developments have brought new challenges for the protection of personal data. The scale of data sharing and collecting has increased dramatically. Technology allows both public authorities, including law enforcement authorities as well as private entities to make use of personal data on an unprecedented scale. Individuals increasingly make personal information available publicly and globally. Technology has transformed both the economy and social life.

In a globalised and interconnected world built around communications online, personal data are available, stored, used and evaluated on a daily basis and on an unprecedented scale. The next few years, the next decades, Europe has to decide how to make use of all this information, especially as regards in the law enforcement sector and the prevention and fight against crime without betraying the fundamental rights and norms we have struggled so much to develop. It is a unique chance to develop two high standard and well balanced legal instruments.

The rapporteur strongly welcomes the efforts undertaken by the Commission to create a unified data protection framework and harmonise the different systems between EU Member States, and hopes that also the Council will fully meet its obligations.

Proposed changes by the rapporteur

The rapporteur is of the view that several specific issues had to be further clarified in the proposed directive referring, inter alia, to the following:

- Every exception to the principle had to be duly justified, as data protection is a fundamental right. It has to be equally protected in all circumstances and Article 52 of the Charter allowing limitations fully applies. Such limitations should be an exception to the general rule, and cannot become the rule itself. Therefore open blanket and broad exceptions could not be accepted;

- Clear definition of the data protection principles, such as elements on data retention, transparency, keeping data up to date, adequate, relevant and not excessive. Moreover, provisions requiring the data controller to demonstrate compliance were also missing;
- The processing of personal data must be lawful, fair and transparent in relation towards the individuals concerned. The specific purposes for which the data are processed should be explicit and legitimate and determined at the time of the collection of the personal data. Moreover, the personal data should be adequate, relevant and limited to the minimum necessary for the purposes for which the personal data are processed. Personal data should only be processed if the purpose of the processing could not be fulfilled by other means. Furthermore, under the proposed system, in order to ensure that the data are kept no longer than necessary. Time limits should be established by the controller for erasure or periodic review.
- Personal data should not be processed for purposes incompatible with the purpose for which it was collected. The fact that data are processed for a law enforcement purpose does not necessarily imply that this purpose is compatible with the initial purpose. The concept of compatible use has to be interpreted restrictively.
- It is essential that transmission of personal data to other authorities or private parties in the Union is prohibited unless the transmission is in compliance with law, and the recipient is established in a Member State. Furthermore, no legitimate specific interests of the data subject should prevent transmission, and the transmission is necessary in a specific case for the controller transmitting the data for either the performance of a task lawfully assigned to it, or the prevention of an immediate and serious danger to public security, or the prevention of serious harm to the rights of individuals. The controller should inform the recipient of the purpose of the processing and the supervisory authority of the transmission, while the recipient should also be informed of processing restrictions and ensure that they are met.
- An evaluation mechanism was lacking regarding a proper evaluation of necessity and proportionality. This question is essential to evaluate if certain data processing is necessary at all and fulfils its goal. Such an evaluation would furthermore prevent the establishment of a kind of "Orwellian" society where at the end all data will be processed and analysed. The collection of data must be necessary in order to justify a goal, taking into account that the goal can not be achieved by other means and the core of the private sphere of the individual is well preserved. Proportionality is also connected with the question on the re- use of data for a purpose other than it was initially legitimately processed to prevent an overall creation of profiles of the population;
- The creation of a data protection impact assessment is desired, that should be carried out by the controller or processors, which should include in particular the envisaged measures, safeguards and mechanisms to ensure the protection of personal data and for demonstrating compliance with this Directive. Impact assessments should concern relevant systems and processes of a personal data processing operations, but not individual cases Moreover where a data protection impact assessment indicates that processing operations are likely to present a high degree of specific risks to the rights and freedoms of data subjects, the supervisory authority should be in a position to prevent, prior to the start of operations, a risky processing

which is not in compliance with this Directive, and to make proposals to remedy such situation. Such consultation may equally take place in the course of the preparation either of a measure of the national parliament or of a measure based on such legislative measure which defines the nature of the processing and lays down appropriate safeguards.

- A clear definition on profiling was missing. Any such definition should be in line with the Council of Europe Recommendation CM/Rec(2010)13. Profiling in law enforcement has to be provided by law, which lays down measures to safeguard data subjects' legitimate interests, particularly by allowing them to put forward their point of view. Any negative consequences have to be assessed through human intervention. At the same time profiling should not become a boxing area of purely innocent individuals without any justified personal trigger- it should not lead to the so called general Rasterfahndung.

- The proposed regime for transferring personal data to third countries was weak and did not provide all the necessary safeguards to ensure the protection of the rights of individuals whose data will be transferred. This system provided lower protection than the proposed Regulation. For example, the Commission proposal would allow the transfer to a third country authority or an international organisation that was not competent for law enforcement purposes. Moreover, when the transfer was based on the assessment made by the data controller (Article 35(1)(b)), the Directive could possibly allow massive and bulk transfer of personal data.

- It is of utmost importance that in cases where no grounds for allowing a transfer exist, derogations should be allowed if necessary in order to protect the vital interests of the data subject or another person, or to safeguard legitimate interests of the data subject. Derogations, such as public security of a Member State or a third country should be interpreted restrictively and should not allow frequent, massive and structural transfer of personal data and should not allow wholesale transfer of data which should be limited to data strictly necessary. Moreover the decision for transfer should be made by a duly authorised person and this transfer must be documented and should be made available to the supervisory authority on request in order to monitor the lawfulness of the transfer.

- The power of the DPAs to monitor and ensure compliance with data protection rules were not properly defined. Compared to the proposed Regulation the competences of the DPAs were less clear. It was not evident that the DPA could access the premises of the data controller, as provided under the Regulation. Also the sanctions and enforcement measures appeared to be less precise.

- A new article was introduced concerning genetic data. The processing of genetic data should only be allowed if there is a genetic link which appears in the course of a criminal investigation or a judicial procedure. Genetic data should only be stored as long as strictly necessary for the purpose of such investigations and procedures, while Member States can provide for longer storage under the conditions set out in this Directive.

- The rapporteur believes that that the proposed Directive, in many aspects, did not meet the requirements of a high level of data protection, described by the Commission as `crucial` (see recital 7) and was not legally aligned to the provisions of the proposed Regulation. Moreover, he thinks it is paramount that the two legal instruments (Data Protection Regulation and Directive) are considered a package regarding the time table and the eventual adoption.

After a period where national law enforcement authorities had to adapt the level of data protection according to the situation they were dealing with (internal or cross- border situation, Prum, Europol, Eurojust), finally a sustainable and coherent instrument can provide legal certainty and can be at the same time internationally competitive and a model for data protection in the 21st century.