



EUROPEAN PARLIAMENT

2009 - 2014

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Committee on Legal Affairs

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2012/0011(COD)

29.11.2012

# AMENDMENTS

## 72 - 451

**Draft opinion**  
**Marielle Gallo**  
(PE911497v01-00)

Protection of individuals with regard to the processing of personal data, and the free movement of such data (General Data Protection Regulation)

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

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**EN**

*United in diversity*

**EN**

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**Amendment 72**  
**David Casa**

**Proposal for a regulation**  
**Recital 4**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 73**  
**David Casa**

**Proposal for a regulation**  
**Recital 5**

*Text proposed by the Commission*

(5) Rapid technological developments and globalisation have brought new challenges for the protection of personal data. The scale of data sharing and collecting has increased spectacularly. Technology allows both private companies and public authorities to make use of personal data on an unprecedented scale in order to *pursue* their activities. Individuals increasingly make personal information available

*Amendment*

(5) Rapid technological developments and globalisation have brought new challenges for the protection of personal data. The scale of data sharing and collecting has increased spectacularly. Technology allows both private companies and public authorities to make use of personal data on an unprecedented scale in order to *carry out* their activities. Individuals increasingly make personal information available

publicly and globally. Technology has transformed both the economy and social life, **and requires to further** facilitate the free flow of data within the Union and **the** transfer to third countries and international organisations, **while ensuring an high** level of **the protection of** personal data.

publicly and globally. Technology has transformed both the economy and social life, **which led to the need to** facilitate the free flow of data within the Union and **secure** transfer to third countries and international organisations **and ensure the highest** level of personal data **protection**.

Or. en

## **Amendment 74** **Sajjad Karim**

### **Proposal for a regulation** **Recital 25**

#### *Text proposed by the Commission*

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

#### *Amendment*

(25) Consent should be given explicitly by any appropriate method enabling a freely given specific and informed indication of the data subject's wishes, either by a statement or by a clear affirmative action by the data subject, ensuring that individuals are aware that they give their consent to the processing of personal data, including by ticking a box when visiting an Internet website or by any other statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of their personal data. ***This is notwithstanding the possibility to express consent to processing in accordance with Directive 2002/58/EC by using the appropriate settings of a browser or other application.*** Consent should cover all processing activities carried out for the same purpose or purposes. If the data subject's consent is to be given following an electronic request, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided.

Or. en

### *Justification*

*The Regulation should be discouraged from imposing overly prescriptive requirements for consent. This amendment aims to ensure the continued use of implied consent and processing in accordance with Directive 2002/58/EC through the appropriate settings of a browser or other application. (c.f. recital 66 of Directive 136/2009/EC).*

#### **Amendment 75** **Sajjad Karim**

#### **Proposal for a regulation** **Recital 27**

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

(27) The main establishment of a controller in the Union should be determined according to objective criteria and should imply the effective and real exercise of management activities determining the main decisions as to the purposes, conditions and means of processing through stable arrangements. This criterion should not depend whether the processing of personal data is actually carried out at that location; the presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute such main establishment and are therefore no determining criteria for a main establishment. The main establishment of the processor should be the place of its central administration in the Union.

##### *Amendment*

(27) The main establishment of a controller in the Union, ***including a controller that is also a processor***, should be determined according to objective criteria and should imply the effective and real exercise of management activities determining the main decisions as to the purposes, conditions and means of processing through stable arrangements. This criterion should not depend whether the processing of personal data is actually carried out at that location; the presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute such main establishment and are therefore no determining criteria for a main establishment. The main establishment of the processor ***that is not also a controller*** should be the place of its central administration in the Union.

Or. en

### *Justification*

*In the case of a controller that is also a processor it makes little sense to apply different tests to determine which regulator has the authority over the organisation. This amendment ensures that such controllers are fully able to benefit from the one-stop-shop.*

**Amendment 76**  
**Rebecca Taylor**

**Proposal for a regulation**  
**Recital 27**

*Text proposed by the Commission*

(27) The main establishment of a controller in the Union should be **determined** according to objective criteria and should imply the effective and real exercise of **management** activities determining the main decisions as to the purposes, conditions and means of processing through stable arrangements. This criterion should not depend whether the processing of personal data is actually carried out at that location; the presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute such main establishment and are therefore no determining criteria for a main establishment. ***The main establishment of the processor should be the place of its central administration in the Union.***

*Amendment*

(27) The main establishment of a controller **and/or a processor** in the Union should be **designated** according to objective criteria and should imply the effective and real exercise of **data** activities determining the main decisions as to the purposes, conditions and means of processing through stable arrangements. This criterion **shall apply both to data controllers and data processors and** should not depend **on** whether the processing of personal data is actually carried out at that location. The presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute such main establishment and are therefore no determining criteria for a main establishment.

Or. en

*Justification*

*It is important to consider both the data controller and data processor as it provides consistency and legal clarity regarding the application of the criteria.*

**Amendment 77**  
**Marielle Gallo**

**Proposal for a regulation**  
**Recital 27**

*Text proposed by the Commission*

(27) The main establishment of a controller in the Union should be determined

*Amendment*

(27) The main establishment of a controller in the Union should be determined

according to objective criteria and should imply the effective and real exercise of management activities determining the main decisions as to the purposes, conditions and means of processing through stable arrangements. This criterion should not depend whether the processing of personal data is actually carried out at that location; the presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute such main establishment and are therefore no determining criteria for a main establishment. ***The main establishment of the processor should be the place of its central administration in the Union.***

according to objective criteria and should imply the effective and real exercise of management activities determining the main decisions as to the purposes, conditions and means of processing through stable arrangements. This criterion should not depend whether the processing of personal data is actually carried out at that location; the presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute such main establishment and are therefore no determining criteria for a main establishment.

Or. fr

**Amendment 78**  
**Evelyn Regner**

**Proposal for a regulation**  
**Recital 29 a (new)**

*Text proposed by the Commission*

*Amendment*

***(29 a) Workers' personal data, especially sensitive data, such as political orientation and membership of and activities in trade unions, should be protected in accordance with Articles 8, 12 and 28 of the Charter of Fundamental Rights of the European Union and Articles 8 and 11 of the European Convention on Human Rights, and enterprises should under no circumstances be permitted to use these data to put workers on so-called 'blacklists' to be passed on to other enterprises with the aim of discriminating against particular workers.***

Or. de

**Amendment 79**  
**Eva Lichtenberger**  
on behalf of the Verts/ALE Group  
**Evelyn Regner, Françoise Castex**

**Proposal for a regulation**  
**Recital 33**

*Text proposed by the Commission*

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

*Amendment*

(33) In order to ensure free consent, it should be clarified that consent does not provide a valid legal ground where the individual has no genuine and free choice and is subsequently not able to refuse or withdraw consent without detriment.  
***Consent should also not provide a legal basis for data processing when the data subject has no access to different equivalent services. Default settings such as pre-ticked boxes, silence, or the simple use of a service do not imply consent. Consent can only be obtained for processing that is lawful and thus not excessive in relation to the purpose. Disproportional data processing cannot be legitimised though obtaining consent.***

Or. en

*Justification*

*This addition serves to avoid situations in which controllers try to obtain consent for processing that is clearly disproportional. This should give regulators and judges an entry to discuss substantive rather than procedural fairness. Such a look beyond the procedural rules can also be found in general contract law, where principles like 'good faith' and reasonableness and fairness ultimately govern relations between parties in cases where specific terms of contract are found to breach these principles.*

**Amendment 80**  
**Eva Lichtenberger**  
on behalf of the Verts/ALE Group  
**Evelyn Regner, Françoise Castex**



**Proposal for a regulation**  
**Recital 34**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

*Many social media sites lead users to invest significant time and energy in developing online profiles. There would be a clear imbalance, in the sense of the Commission's proposal, in any situation where the user was given the choice between accepting new and unnecessary data processing and abandoning the work they have already put into their profile. Another case of clear imbalance would be if the market for the service in question is monopolistic/oligopolistic, so that the data subject does not in fact have a real possibility to choose a privacy-respecting service provider. Data portability would not fully address this*

issue, as it does not resolve the loss of the network effects in larger social networks.

## **Amendment 81**

**Eva Lichtenberger**

on behalf of the Verts/ALE Group

**Evelyn Regner, Françoise Castex**

### **Proposal for a regulation**

#### **Recital 38**

*Text proposed by the Commission*

*Amendment*

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

*deleted*

Or. en

#### *Justification*

*Data subject rights are indispensable for empowering data subjects to take the protection of their data into their own hands and enforce their rights against controllers. They are one of the main levers to hold controllers accountable. For this reason, the rights to information, access, rectification, deletion, and data portability should be strengthened to allow users to understand what happens to their data and to exercise control over it. Exceptions and*

*exemptions should be very limited. This exception, as proposed by the European Commission, grants a very wide exception to data controllers to process data if they feel justified in undertaking such processing. This risks creating legal uncertainty and barriers to the single market. The European Data Protection Board should establish guidelines for acceptable “legitimate interests” in this context.*

**Amendment 82**  
**Marielle Gallo**

**Proposal for a regulation**  
**Recital 45**

*Text proposed by the Commission*

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

*Amendment*

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

Or. fr

**Amendment 83**  
**Tadeusz Zwiefka**

**Proposal for a regulation**  
**Recital 48**

*Text proposed by the Commission*

(48) The principles of fair and transparent processing require that the data subject should be informed in particular of the existence of the processing operation and its purposes, how long the data will be stored, on the existence of the right of access, rectification or erasure and on the

*Amendment*

(48) The principles of fair and transparent processing require that the data subject should be informed in particular of the existence of the processing operation and its purposes, how long the data will be stored, **or if this is not possible, of the criteria used to determine this period**, on

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.

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. pl

**Amendment 84**  
**Tadeusz Zwiefka**

**Proposal for a regulation**  
**Recital 51**

*Text proposed by the Commission*

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

*Amendment*

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

Or. pl

**Amendment 85**  
**Rebecca Taylor**

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

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

## *Justification*

*It is in the vital interest of the data subject to keep a complete record of their health in order to receive the best care and treatment through their life. The right to be forgotten should not apply where data is processed for healthcare purposes as laid down in Article 81(a).*

### **Amendment 86** **Françoise Castex**

#### **Proposal for a regulation** **Recital 55**

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

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

##### *Amendment*

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

Or. en

### **Amendment 87** **Eva Lichtenberger** on behalf of the Verts/ALE Group **Evelyn Regner, Françoise Castex**

#### **Proposal for a regulation** **Recital 55**

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

(55) To further strengthen the control over

##### *Amendment*

(55) To further strengthen the control over

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

their own data and their right of access, data subjects should have the right, where personal data are processed by electronic means, **to obtain, free of charge**, a copy of the data concerning them **in an electronic, interoperable and structured** format **which is commonly used**. The data subject should also be allowed to transmit those data, which they have provided, from one automated application, such as a social network, into another one. **Providers of information society services should not make the transfer of those data mandatory for the provision of their services. Social networks should be encouraged as much as possible to store data in a way which permits efficient data portability for data subjects.**

Or. en

#### *Justification*

*Data subject rights are indispensable for empowering data subjects to take the protection of their data into their own hands and enforce their rights against controllers. They are one of the main levers to hold controllers accountable. For this reason, the rights to information, access, rectification, deletion, and data portability should be strengthened to allow users to understand what happens to their data and to exercise control over it. Exceptions and exemptions should be very limited. The easier that it is to change providers, the less citizens will feel tied to a particular service, particularly if they are unhappy with the way their data is being used. The electronic formats in which data subjects obtain data should therefore be interoperable, structured and commonly used in order to avoid lock-in effects due to use of non-interoperable formats. However, providers should not make use of their services conditional on transferring data from previous service providers.*

#### **Amendment 88** **Klaus-Heiner Lehne**

#### **Proposal for a regulation** **Recital 58**

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

(58) Every natural person should have the right not to be subject to a measure which

##### *Amendment*

(58) Every natural person should have the right not to be subject to a measure which

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

is based on profiling by means of automated processing **and which produces legal effects concerning that natural person or significantly affects that natural person. Actual effects should be comparable in their intensity to legal effects to fall under this provision. This is not the case for measures relating to commercial communication, like for example in the field of customer relationship management or customer acquisition.** However, a measure based on profiling by automated data processing which produces legal effects concerning a natural person or significantly affects a natural person should be allowed when expressly authorised by law, carried out in the course of entering or performance of a contract, or when the data subject has given his consent. In any case, such processing should be subject to suitable safeguards, including specific information of the data subject and the right to obtain human intervention and that such measure should not concern a child.

Or. en

**Amendment 89**  
**Rebecca Taylor**

**Proposal for a regulation**  
**Recital 58**

*Text proposed by the Commission*

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

*Amendment*

(58) Every **data subject** should have the right not to be subject to a measure which is based on profiling by means of automated processing **and which produces adverse legal effects concerning the fundamental rights and freedoms of this natural person or affects the data subject in a significantly negative manner.** However, such measure should be allowed when expressly authorised by law, carried



including specific information of the data subject and the right to obtain human intervention and that such measure should not concern a child.

out in the course of entering or performance of a contract, or when the data subject has given his consent. In any case, such processing should be subject to suitable safeguards, including specific information of the data subject and the right to obtain human intervention and that such measure should not concern a child.

Or. en

### *Justification*

*The proposed Commission wording implies that all profiling has negative consequences, when some profiling can have many positive impacts; such as improving or customizing services for similar customers.*

#### **Amendment 90**

**Eva Lichtenberger**

on behalf of the Verts/ALE Group

**Evelyn Regner, Françoise Castex**

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

##### **Recital 58**

#### *Text proposed by the Commission*

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

#### *Amendment*

(58) Every natural person should have the right not to be subject to a measure which is based on profiling by means of automated processing. However, ***any*** such measure should be allowed when expressly authorised by law, carried out in the course of entering or performance of a contract, or when the data subject has given his consent. In any case, such processing should be subject to suitable safeguards, including specific information of the data subject and the right to obtain human intervention and that such measure should not concern a child. ***Specifically, such processing should never, whether intentionally or not, lead to the discrimination of data subjects on the basis of race or ethnic origin, political***

***opinions, religion or beliefs, trade union membership, or sexual orientation. Given the risk of discrimination, such processing should not be used in order to predict very rare characteristics.***

Or. en

### *Justification*

*Profiling can entail serious risks for data subjects. It is prone to reinforcing discriminations, making decisions less transparent and carries an unavoidable risk of wrong decisions. For these reasons, it should be tightly regulated: its use should be clearly limited, and in those cases where it can be used, there should be safeguards against discrimination and data subjects should be able to receive clear and meaningful information on the logic of the profiling and its consequences. While some circles see profiling as a panacea for many problems, it should be noted that there is a significant body of research addressing its limitations. Notably, profiling tends to be useless for very rare characteristics, due to the risk of false positives. Also, profiles can be hard or impossible to verify. Profiles are based on complex and dynamic algorithms that evolve constantly and that are hard to explain to data subjects. Often, these algorithms qualify as commercial secrets and will not be easily provided to data subjects. However, when natural persons are subject to profiling, they should be entitled to information about the logic used in the measure, as well as an explanation of the final decision if human intervention has been obtained. This helps to reduce intransparency, which could undermine trust in data processing and may lead to loss or trust in especially online services. There is also a serious risk of unreliable and (in effect) discriminatory profiles being widely used, in matters of real importance to individuals and groups, which is the motivation behind several suggested changes in this Article that aim to improve the protection of data subjects against discrimination. In relation to this, the use of sensitive data in generating profiles should also be restricted. This amendment adapts the recital to reflect proposed amendments in Article 20.*

## **Amendment 91** **Sajjad Karim**

### **Proposal for a regulation** **Recital 65**

#### *Text proposed by the Commission*

(65) In order to demonstrate compliance with this Regulation, the controller or processor should ***document each*** processing ***operation***. Each controller and processor should be obliged to co-operate

#### *Amendment*

(65) In order to demonstrate compliance with this Regulation, the controller or processor should ***maintain relevant information on the main categories of*** processing ***undertaken. The Commission***

with the supervisory authority and make this documentation, on request, available to it, so that it might *serve for monitoring* those processing *operations*.

*should establish a uniform format for the documentation of this information across the Union.* Each controller and processor should be obliged to co-operate with the supervisory authority and make this documentation, on request, available to it, so that it might *assist the supervisory authority in evaluating the compliance of those main categories of processing with this Regulation*

Or. en

### *Justification*

*Effective data protection requires organisations to have a sufficiently documented understanding of their data processing activities, however the maintenance of documentation for all processing operations is disproportionately burdensome. Instead of satisfying bureaucratic needs, the aim of the documentation should be to help controllers and processors meet their obligations.*

## **Amendment 92** **Lidia Joanna Geringer de Oedenberg**

### **Proposal for a regulation** **Recital 67**

#### *Text proposed by the Commission*

(67) A personal data breach may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud, to the individual concerned. Therefore, as soon as the controller becomes aware that such a breach has occurred, the controller should notify the breach to the supervisory authority without undue delay and, where feasible, within **24** hours. Where this cannot be achieved within **24** hours, an explanation of the reasons for the delay should accompany the notification. The individuals whose personal data could be adversely affected by the breach should be notified without undue delay in order to

#### *Amendment*

(67) A personal data breach may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud, to the individual concerned. Therefore, as soon as the controller becomes aware that such a breach has occurred, the controller should notify the breach to the supervisory authority without undue delay and, where feasible, within **72** hours. Where this cannot be achieved within **72** hours, an explanation of the reasons for the delay should accompany the notification. The individuals whose personal data could be adversely affected by the breach should be notified without undue delay in order to

allow them to take the necessary precautions. A breach should be considered as adversely affecting the personal data or privacy of a data subject where it could result in, for example, identity theft or fraud, physical harm, significant humiliation or damage to reputation. The notification should describe the nature of the personal data breach as well as recommendations as well as recommendations for the individual concerned to mitigate potential adverse effects. Notifications to data subjects should be made as soon as reasonably feasible, and in close cooperation with the supervisory authority and respecting guidance provided by it or other relevant authorities (e.g. law enforcement authorities). For example, the chance for data subjects to mitigate an immediate risk of harm would call for a prompt notification of data subjects whereas the need to implement appropriate measures against continuing or similar data breaches may justify a longer delay.

allow them to take the necessary precautions. A breach should be considered as adversely affecting the personal data or privacy of a data subject where it could result in, for example, identity theft or fraud, physical harm, significant humiliation or damage to reputation. The notification should describe the nature of the personal data breach as well as recommendations as well as recommendations for the individual concerned to mitigate potential adverse effects. Notifications to data subjects should be made as soon as reasonably feasible, and in close cooperation with the supervisory authority and respecting guidance provided by it or other relevant authorities (e.g. law enforcement authorities). For example, the chance for data subjects to mitigate an immediate risk of harm would call for a prompt notification of data subjects whereas the need to implement appropriate measures against continuing or similar data breaches may justify a longer delay.

Or. pl

**Amendment 93**  
**Françoise Castex**

**Proposal for a regulation**  
**Recital 67**

*Text proposed by the Commission*

(67) A personal data breach may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud, to the individual concerned. Therefore, as soon as the controller becomes aware that such a breach has occurred, the controller should notify the breach to the supervisory authority without undue delay and, where feasible, within **24** hours. Where this

*Amendment*

(67) A personal data breach may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud, to the individual concerned. Therefore, as soon as the controller becomes aware that such a breach has occurred, the controller should notify the breach to the supervisory authority without undue delay and, where feasible, within **72** hours. Where this

cannot achieved within **24** hours, an explanation of the reasons for the delay should accompany the notification. The individuals whose personal data could be adversely affected by the breach should be notified without undue delay in order to allow them to take the necessary precautions. A breach should be considered as adversely affecting the personal data or privacy of a data subject where it could result in, for example, identity theft or fraud, physical harm, significant humiliation or damage to reputation. The notification should describe the nature of the personal data breach as well as recommendations as well as recommendations for the individual concerned to mitigate potential adverse effects. Notifications to data subjects should be made as soon as reasonably feasible, and in close cooperation with the supervisory authority and respecting guidance provided by it or other relevant authorities (e.g. law enforcement authorities). For example, the chance for data subjects to mitigate an immediate risk of harm would call for a prompt notification of data subjects whereas the need to implement appropriate measures against continuing or similar data breaches may justify a longer delay.

cannot achieved within **72** hours, an explanation of the reasons for the delay should accompany the notification. The individuals whose personal data could be adversely affected by the breach should be notified without undue delay in order to allow them to take the necessary precautions. A breach should be considered as adversely affecting the personal data or privacy of a data subject where it could result in, for example, identity theft or fraud, physical harm, significant humiliation or damage to reputation. The notification should describe the nature of the personal data breach as well as recommendations as well as recommendations for the individual concerned to mitigate potential adverse effects. Notifications to data subjects should be made as soon as reasonably feasible, and in close cooperation with the supervisory authority and respecting guidance provided by it or other relevant authorities (e.g. law enforcement authorities). For example, the chance for data subjects to mitigate an immediate risk of harm would call for a prompt notification of data subjects whereas the need to implement appropriate measures against continuing or similar data breaches may justify a longer delay.

Or. en

**Amendment 94**  
**Françoise Castex**

**Proposal for a regulation**  
**Recital 82**

*Text proposed by the Commission*

(82) The Commission may equally recognise that a third country, or a territory or a processing sector within a third country, or an international organisation

*Amendment*

(82) The Commission may equally recognise that a third country, or a territory or a processing sector within a third country, or an international organisation

offers no adequate level of data protection. Consequently the transfer of personal data to that third country should be prohibited. In that case, provision should be made for consultations between the Commission and such third countries or international organisations.

offers no adequate level of data protection. Consequently the transfer of personal data to that third country should be prohibited. ***The prohibition shall also apply to those countries for which the European Commission has already judged the lack of adequacy.*** In that case, provision should be made for consultations between the Commission and such third countries or international organisations.

Or. en

**Amendment 95**  
**József Szájer**

**Proposal for a regulation**  
**Recital 87**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 96**  
**Cecilia Wikström, Rebecca Taylor**

**Proposal for a regulation**  
**Recital 121 a (new)**

*Text proposed by the Commission*

*Amendment*

***(121a) This Regulation allows the principle of public access to official documents to be taken into account when applying the provisions set out in this Regulation. Personal data in documents held by a public authority or a public body may be disclosed by this authority or body in accordance with Member State legislation to which the public authority or public body is subject. Such legislation shall reconcile the right to the protection of personal data with the principle of public access to official documents.***

Or. en

**Amendment 97**  
**Eva Lichtenberger**  
on behalf of the Verts/ALE Group  
**Evelyn Regner, Françoise Castex**

**Proposal for a regulation**  
**Recital 121 a (new)**

*Text proposed by the Commission*

*Amendment*

***(121a) This Regulation allows the principle of public access to official documents to be taken into account when applying the provisions set out in this Regulation. Personal data in documents held by a public authority or a public body may be disclosed by this authority or body in accordance with Member State legislation to which the public authority or public body is subject. Such legislation shall reconcile the right to the protection of personal data with the principle of public access to official documents.***

Or. en

## *Justification*

*It is essential to ensure that public oversight of public affairs is not unduly hampered by data protection rules. As expressed in opinions by the EDPS, the Article 29 Working Party and the FRA, the principle of public access to official documents should therefore be guaranteed.*

### **Amendment 98** **Françoise Castex**

#### **Proposal for a regulation** **Recital 129**

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

(129) In order to fulfil the objectives of this Regulation, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. In particular, delegated acts should be adopted in respect ***of lawfulness of processing; specifying the criteria and conditions in relation to the consent of a child; processing of special categories of data; specifying the criteria and conditions for manifestly excessive requests and fees for exercising the rights of the data subject; criteria and requirements for the information to the data subject and in relation to the right of access; the right to be forgotten and to erasure; measures based on profiling; criteria and requirements in relation to the responsibility of the controller and to data protection by design and by default; a processor; criteria and requirements for the documentation and the security of processing; criteria and requirements for establishing a personal data breach and for its notification to the supervisory authority, and on the circumstances***

##### *Amendment*

(129) In order to fulfil the objectives of this Regulation, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. In particular, delegated acts should be adopted in respect specifying the criteria and conditions in relation to the consent of a child; specifying the criteria and conditions for manifestly excessive requests and fees for exercising the rights of the data subject; criteria and requirements for the information to the data subject and in relation to the right of access; criteria and requirements in relation to the responsibility of the controller and to data protection by design and by default; a processor; criteria and requirements for the documentation and the security of processing; designation and tasks of the data protection officer; criteria and requirements for certification mechanisms; criteria and requirements for transfers by way of binding corporate rules; processing in the employment context and processing for historical, statistical and scientific research purposes. It is of particular



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

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.

Or. en

**Amendment 99**  
**Françoise Castex**

**Proposal for a regulation**  
**Recital 130**

*Text proposed by the Commission*

(130) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission for: specifying standard forms in relation to the processing of personal data of a child; standard procedures and forms for exercising the rights of data subjects; standard forms for

*Amendment*

(130) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission for: specifying standard forms in relation to the processing of personal data of a child; standard procedures and forms for exercising the rights of data subjects; standard forms for

the information to the data subject; standard forms and procedures in relation to the right of access; *the right to data portability*; standard forms in relation to the responsibility of the controller to data protection by design and by default and to the documentation; specific requirements for the security of processing; *the standard format and the procedures for the notification of a personal data breach to the supervisory authority and the communication of a personal data breach to the data subject*; *standards and procedures for a data protection impact assessment*; forms and procedures for prior authorisation and prior consultation; technical standards and mechanisms for certification; the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an international organisation; disclosures not authorized by Union law; mutual assistance; joint operations; decisions under the consistency mechanism. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers<sup>46</sup>. In this context, the Commission should consider specific measures for micro, small and medium-sized enterprises.

the information to the data subject; standard forms and procedures in relation to the right of access; standard forms in relation to the responsibility of the controller to data protection by design and by default and to the documentation; specific requirements for the security of processing; forms and procedures for prior authorisation and prior consultation; technical standards and mechanisms for certification; the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an international organisation; disclosures not authorized by Union law; mutual assistance; joint operations; decisions under the consistency mechanism. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers<sup>46</sup>. In this context, the Commission should consider specific measures for micro, small and medium-sized enterprises.

Or. en

**Amendment 100**  
**Antonio López-Istúriz White**

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

*Text proposed by the Commission*

*Amendment*

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

**deleted**

Or. es

*Justification*

*Entendemos, sin embargo, que a través del proyecto de Directiva (2012/0010 (COD)) deberían establecerse las oportunas salvaguardas para asegurar que las garantías asociadas al tratamiento de datos en relación con el terrorismo y el crimen organizado no puedan utilizarse en contra de los intereses del Estado democrático de derecho. De esta manera todo lo relativo al crimen organizado y terrorismo sería objeto de un tratamiento especial en el que se incluirían los mecanismos de seguridad necesarios. Por otro lado, las instituciones y organismos de la Unión no deberían quedar completamente al margen del Reglamento. Si lo que se pretende con este instrumento es establecer con carácter uniforme para toda la Unión el núcleo de los principios y garantías asociados al tratamiento de datos de carácter personal, la exclusión de las instituciones europeas alienta, por lo menos formalmente, la idea de que existen dos regímenes jurídicos separados: el de los Estados Miembros y el de la Unión; y siendo así que no existe razón alguna por la cual los principios básicos no sean aplicables a ambos, estimamos que sería más pertinente establecer una regulación uniforme tanto para unos como para los otros, sin perjuicio de que pueda subsistir un marco jurídico parcial, separado, destinado únicamente a regular aquellas especificidades estrictamente necesarias para la instituciones europeas; especificidades que en todo caso deberían respetar el núcleo esencial de derechos y garantías que constituyen una de las razones de ser del sistema de protección de datos personales, contenidos en la propuesta de Reglamento.*

**Amendment 101**

**Antonio López-Istúriz White**

**Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

**(ea) by competent authorities for the  
purposes of producing and disseminating  
official statistics entrusted to them;**

Or. es

*Justification*

*To reduce the effort involved in responding to surveys, NSIs and the Commission should be allowed free access to, and entitled to use, the appropriate administrative registers belonging to government departments at whatever level, whenever this is necessary in order to develop, produce, and disseminate European statistics.*

**Amendment 102**

**Sajjad Karim**

**Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

***(ea) that has been rendered anonymous.***

Or. en

*Justification*

*By definition anonymous data does not constitute personal data.*

**Amendment 103**

**Antonio López-Istúriz White**

**Proposal for a regulation**

**Article 2 – paragraph 2 – point e b (new)**

*Text proposed by the Commission*

*Amendment*

***(eb) by competent authorities for the purposes of drawing up electoral rolls.***

Or. es

*Justification*

*To reduce the effort involved in responding to surveys, NSIs and the Commission should be allowed free access to, and entitled to use, the appropriate administrative registers belonging to government departments at whatever level, whenever this is necessary in order to develop, produce, and disseminate European statistics.*

**Amendment 104**  
**Françoise Castex, Arlene McCarthy, Evelyn Regner**

**Proposal for a regulation**  
**Article 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 3a**

***This Regulation applies to the processing of personal data of data subjects not residing in the Union by a controller or processor established in the Union, through their economic activities in a third country(ies).***

Or. en

*Justification*

*EU companies or employers should not be allowed illegally to access employees' personal data to then monitor their behaviour, blacklist them due to trade union affiliation, etc., whether the employee is based in the EU or not.*

**Amendment 105**  
**Sajjad Karim**

**Proposal for a regulation**  
**Article 4 – point 1**

*Text proposed by the Commission*

*Amendment*

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

(1) 'data subject' means an identified natural person or **an identifiable** natural person who can be **uniquely**, 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 **a name**, identification number, location data, online identifier, or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person. **If**

*identification requires a disproportionate amount of time, effort or material resources, the natural living person shall not be considered identifiable;*

Or. en

*Justification*

*This is part of a package of amendments enabling the use of pseudonymous and anonymous data and will encourage good business practice safeguarding the interests of data subjects. Ensuring that personal data cannot be attributed to a data subject (since it cannot be related back to a data subject without use of additional data) helps to further promote business use of data while providing a high level of consumer protection.*

**Amendment 106**

**Lidia Joanna Geringer de Oedenberg**

**Proposal for a regulation**

**Article 4 – point 1**

*Text proposed by the Commission*

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

*Amendment*

(1) 'data subject' means an identified natural person or a **legal** person; **an identified person is a person** who can be identified, directly or indirectly, by means reasonably likely to be used by the controller or by any other natural person, **where the use of such means does not entail excessive costs, is not overly time-consuming and does not require that disproportionate actions be taken;**

Or. pl

**Amendment 107**

**Eva Lichtenberger**

on behalf of the Verts/ALE Group

**Evelyn Regner, Françoise Castex**

**Proposal for a regulation**  
**Article 4 – point 1**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

*To ensure good protection, it is important that the terms "personal data" and "data subject" are not defined too narrowly. The Regulation should clearly apply to data that only allow "singling out" and it should be clear that online identifiers should in most cases be considered personal data. Since technology is steadily advancing, de-anonymisation attacks will become more sophisticated. Having wide definitions of "personal data" and "data subject" is important for future-proof protection.*

**Amendment 108**  
**Klaus-Heiner Lehne**

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

*Text proposed by the Commission*

*Amendment*

***(2a) 'pseudonymous data' means any personal data that has been collected, altered or otherwise processed so that it of itself cannot be attributed to a data subject without the use of additional data which is subject to separate and distinct technical and organisational controls to ensure***

*such non attribution;*

Or. en

**Amendment 109**  
**Marielle Gallo**

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

*Text proposed by the Commission*

*Amendment*

*(2a) 'pseudonymous data' means any personal data that has been collected, altered or otherwise processed so that, of itself, it cannot be attributed to a data subject without the use of additional data which is subject to separate and distinct technical and organisational controls to ensure such non attribution;*

Or. fr

**Amendment 110**  
**Sajjad Karim**

**Proposal for a regulation**  
**Article 4 – point 3**

*Text proposed by the Commission*

*Amendment*

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

*(3) 'anonymous data' shall mean information that has never related to a data subject or has been collected, altered or otherwise processed so that it cannot be attributed to a data subject;*

Or. en



### *Justification*

*This is part of a package of amendments enabling the use of pseudonymous and anonymous data and will encourage good business practice safeguarding the interests of data subjects. Ensuring that personal data cannot be attributed to a data subject (since it cannot be related back to a data subject without use of additional data) helps to further promote business use of data while providing a high level of consumer protection.*

#### **Amendment 111** **Sajjad Karim**

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

*Text proposed by the Commission*

*Amendment*

***(3a) 'pseudonymous data' means any personal data that has been collected, altered or otherwise processed so that it of itself cannot be attributed to a data subject without the use of additional data which is subject to separate and distinct technical and organisational controls to ensure such non attribution, or that such attribution would require a disproportionate amount of time expense;***

Or. en

### *Justification*

*This is part of a package of amendments enabling the use of pseudonymous and anonymous data and will encourage good business practice safeguarding the interests of data subjects. Ensuring that personal data cannot be attributed to a data subject (since it cannot be related back to a data subject without use of additional data) helps to further promote business use of data while providing a high level of consumer protection.*

#### **Amendment 112** **Eva Lichtenberger** on behalf of the Verts/ALE Group **Evelyn Regner, Françoise Castex**

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

**(3a) 'profiling' means any form of automated processing intended to evaluate, or generate data about, aspects relating to natural persons or to analyse or predict a natural person's performance at work, economic situation, location, health, preferences, reliability, behaviour or personality;**

Or. en

*Justification*

*Profiling can entail serious risks for data subjects. It is prone to reinforcing discriminations, making decisions less transparent and carries an unavoidable risk of wrong decisions. For these reasons, it should be tightly regulated: its use should be clearly limited, and in those cases where it can be used, there should be safeguards against discrimination and data subjects should be able to receive clear and meaningful information on the logic of the profiling and its consequences. While some circles see profiling as a panacea for many problems, it should be noted that there is a significant body of research addressing its limitations. Notably, profiling tends to be useless for very rare characteristics, due to the risk of false positives. Also, profiles can be hard or impossible to verify. Profiles are based on complex and dynamic algorithms that evolve constantly and that are hard to explain to data subjects. Often, these algorithms qualify as commercial secrets and will not be easily provided to data subjects. However, when natural persons are subject to profiling, they should be entitled to information about the logic used in the measure, as well as an explanation of the final decision if human intervention has been obtained. This helps to reduce intransparency, which could undermine trust in data processing and may lead to loss or trust in especially online services. There is also a serious risk of unreliable and (in effect) discriminatory profiles being widely used, in matters of real importance to individuals and groups, which is the motivation behind several suggested changes in this Article that aim to improve the protection of data subjects against discrimination. In relation to this, the use of sensitive data in generating profiles should also be restricted.*

**Amendment 113**  
**Marielle Gallo**

**Proposal for a regulation**  
**Article 4 – point 5**

*Text proposed by the Commission*

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

*Amendment*

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

Or. fr

**Amendment 114**  
**Sajjad Karim**

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

*Text proposed by the Commission*

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

*Amendment*

(8) 'the data subject's consent' means any ***form of statement or conduct by*** the data subject ***indicating assent to the data processing proposed. Silence or inactivity does not in itself indicate acceptance;***

Or. en

*Justification*

*The process for obtaining consent, i.e. the mechanism of information provided to the subject followed by the data subject's reaction, is the basic mechanism for forming an agreement, in this case for the processing of personal data. Using the time-honoured terminology for this, as reflected in the Common European Sales law, would simplify the text, create certainty by putting consent on a firm and established basis and avoid distinctions that would prove very difficult to apply in practice.*

**Amendment 115**  
**Lidia Joanna Geringer de Oedenberg**

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

*Text proposed by the Commission*

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

*Amendment*

(8) *(Does not affect English version)*

Or. pl

**Amendment 116**  
**Sajjad Karim**

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

*Text proposed by the Commission*

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

*Amendment*

(9) 'personal data breach' means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed, ***which is likely to adversely affect the protection of the personal data or privacy of the data subject;***

Or. en

*Justification*

*This amendment helps to avoid both unnecessary obligations upon data controllers and data processors and also the potential for "notification fatigue" for the data subject. A minimum threshold for triggering the obligation to notify, based upon the level of risk for the data subject, will increase protection for the data subject without becoming burdensome. This change is in accordance with Directive 2009/136/EC*

**Amendment 117**  
**Rebecca Taylor**

**Proposal for a regulation**  
**Article 4 – point 10**

*Text proposed by the Commission*

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

*Amendment*

(10) ‘genetic data’ means ***information on the hereditary characteristics, or alteration thereof, of an identified or identifiable person, obtained through nucleic acid analysis;***

Or. en

*Justification*

*The proposed definition is too broad and would turn inherited characteristics such as hair and eye colour into sensitive data needing higher protection. The proposed change is based on existing international standards.*

**Amendment 118**  
**Tadeusz Zwiefka**

**Proposal for a regulation**  
**Article 4 – point 13**

*Text proposed by the Commission*

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

*Amendment*

(13) ‘main establishment’ means as regards the controller, ***including a controller that is also a processor,*** the place of its establishment in the Union where ***personal data protection policy is determined, taking into account the dominant influence of the establishment over others, particularly in the case of a group of companies, the implementation of rules on personal data protection and rules relevant for protection;*** if no decisions as to the purposes, conditions and means of the processing of personal data are taken in the Union, the main establishment is the

administration in the Union;

place where the main processing activities in the context of the activities of an establishment of a controller in the Union take place. As regards the processor, ***that is not also a controller***, ‘main establishment’ means the place of its central administration in the Union; ***the competent authority shall be informed by the undertaking or group of undertakings of the designation of the main establishment***;

Or. en

**Amendment 119**  
**Sajjad Karim**

**Proposal for a regulation**  
**Article 4 – point 13**

*Text proposed by the Commission*

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

*Amendment*

(13) ‘main establishment’ means ***the location as designated by the undertaking or group of undertakings, whether controller or processor, subject to the consistency mechanism set out in Article 57, on the basis of, but not limited to, the following optional objective criteria***:

- (1) the location of the European headquarters of a group of undertakings;***
- (2) the location of the entity within a group of undertakings with delegated data protection responsibilities;***
- (3) the location of the entity within the group which is best placed in terms of***

*management functions and administrative responsibilities to deal with and enforce the rules as set out in this Regulation; or*

*(4) the location where effective and real management activities are exercised determining the data processing through stable arrangements.*

*The competent authority shall be informed by the undertaking or group of undertakings of the designation of the main establishment;*

Or. en

#### *Justification*

*The proposed definition for 'main establishment' is too vague and provides too much room for diverging interpretation. It is necessary to have a uniform test for determining an organization's "main establishment", which can be applied to "undertakings/groups of undertakings" as the relevant reference point and based on a set of relevant objective criteria. These criteria are used to determine the appropriate DPA for BCRs and therefore are proven to be implementable.*

#### **Amendment 120** **Marielle Gallo**

#### **Proposal for a regulation** **Article 4 – point 13**

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

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

##### *Amendment*

(13) 'main establishment' *of a controller or processor* means the place of its establishment in the Union where *personal data protection policy is determined, taking into account the dominant influence of the establishment over others, particularly in the case of a group of companies, the implementation of rules on* personal data *protection and rules relevant for data protection*; if no decisions as to the purposes, conditions and means of the processing of personal data are taken in the Union, the main

*establishment' means the place of its central administration in the Union;*

establishment is the place where the main processing activities in the context of the activities of an establishment of a controller *or a processor* in the Union take place;

Or. fr

**Amendment 121**  
**Rebecca Taylor**

**Proposal for a regulation**  
**Article 4 – point 13**

*Text proposed by the Commission*

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

*Amendment*

(13) ‘main establishment’ means *the place of establishment of* the controller, the *processor or group of companies* in the Union where the main decisions as to the purposes, conditions and means of the processing of personal data are taken. *The controller, processor or group of companies shall designate the main establishment for the purpose of data protection compliance and shall notify this to the relevant national supervisory authority. The national supervisory authority can in cases of disagreement on the designation of the main establishment request the opinion and guidance of the European Data Protection Board.*

Or. en

*Justification*

*This definition must apply equally to the controller, processor and group of companies to ensure legal certainty. In many cases companies operate in different Member States and it should be their responsibility to designate their main establishment for data protection compliance purposes.*



**Amendment 122**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 4 – point 13**

*Text proposed by the Commission*

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

*Amendment*

(13) ‘main establishment’ means as regards the controller *and the processor, the one constituting the official seat or registered office* in the Union, *if that is the place where the main decisions of the institution, enterprise, or group are taken, or the latter place, if different;*

Or. es

*Justification*

*The criteria used to define the main establishment are not entirely appropriate, because the connection which they establish is with the idea of main decisions as to the purposes, conditions, and means of processing personal data. It would be preferable to equate the main establishment with the official seat of an institution, or the corporate headquarters of an enterprise or group of undertakings, where the institution, enterprise, or group takes its main decisions.*

**Amendment 123**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 4 – point 19 a (new)**

*Text proposed by the Commission*

*Amendment*

**(19a) ‘official statistics’ means representative aggregate quantitative and**

*qualitative information characterising a collective phenomenon within a given population;*

Or. es

**Amendment 124**  
**Marielle Gallo**

**Proposal for a regulation**  
**Article 4 – point 19 a (new)**

*Text proposed by the Commission*

*Amendment*

*(19a) 'competent supervisory authority' means a supervisory authority with exclusive competence to supervise the processing activities of the controller or processor in accordance with Article 51(2);*

Or. fr

**Amendment 125**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 4 – point 19 b (new)**

*Text proposed by the Commission*

*Amendment*

*(19b) 'electoral rolls' means personal data, and data relating to the place of residence, of persons entitled to vote;*

Or. es

**Amendment 126**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 4 – point 19 c (new)**

*Text proposed by the Commission*

*Amendment*

**(19c) ‘information society services’ means services provided at the recipient’s individual request, at a distance, and by electronic means, that is to say, the service is sent initially and received at its destination by means of electronic equipment for the processing, including digital compression, and storage of data and is transmitted, conveyed, and received entirely by wire, by radio, by optical means, or by any other electromagnetic means.**

Or. es

**Amendment 127**  
**Sajjad Karim**

**Proposal for a regulation**  
**Article 5 – point c**

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

*Justification*

*This change, which permits “not excessive” processing is more appropriate. It consists of a referral back to the wording of the original 95/46/EC Data Protection Directive and aims to avoid inconsistencies with other EU rules, such as the Consumer Credit Directive and the Capital Requirements Package, which also require, for example, lending institutions to process personal data.*

**Amendment 128**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 5 – point c**

*Text proposed by the Commission*

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

*Amendment*

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

Or. es

*Justification*

*Clearer, simpler, and more effective.*

**Amendment 129**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 5 – point d**

*Text proposed by the Commission*

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

*Amendment*

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

Or. es

*Justification*

*Clearer, simpler, and more effective.*

**Amendment 130**  
**Sajjad Karim**

**Proposal for a regulation**  
**Article 5 – point e**

*Text proposed by the Commission*

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

*Amendment*

(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the data will be processed solely for historical, statistical or scientific research purposes in accordance with the rules and conditions of **Articles 81 and 83** and if a periodic review is carried out to assess the necessity to continue the storage;

Or. en

*Justification*

*It should also be possible to store personal data for longer periods for health purposes (Art 81) as well as for historical, statistical and scientific research purposes (Art 83), which is already referenced in the Commission's text. This will ensure that all relevant data is available to deliver the most appropriate care to the data subject.*

**Amendment 131**  
**Rebecca Taylor**

**Proposal for a regulation**  
**Article 5 – point e**

*Text proposed by the Commission*

(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the data will be processed solely for historical, statistical or

*Amendment*

(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the data will be processed solely for historical, statistical,

scientific research purposes in accordance with the rules and conditions of *Article 83* and if a periodic review is carried out to assess the necessity to continue the storage;

*aggregated* or scientific research purposes in accordance with the rules and conditions of *Articles 81 and 83* and if a periodic review is carried out to assess the necessity to continue the storage;

Or. en

*Justification*

*It should also be possible to store personal data for longer periods for health purposes according to the conditions set out in Article 81*

**Amendment 132**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 5 – point e**

*Text proposed by the Commission*

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

*Amendment*

(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed, *without prejudice to* Article 83;

Or. es

*Justification*

*All matters concerning the processing of personal data for historical, statistical, or scientific research purposes should be dealt with in Article 83.*

**Amendment 133**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 5 – point f**

*Text proposed by the Commission*

*Amendment*

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

Or. es

*Justification*

*The responsibility and liability of the person carrying out a processing operation are not so much a principle of processing per se as a consequence.*

**Amendment 134**  
**Francesco Enrico Speroni**

**Proposal for a regulation**  
**Article 6 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

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

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

Or. it

**Amendment 135**  
**Eva Lichtenberger**  
on behalf of the Verts/ALE Group  
**Evelyn Regner, Françoise Castex**

**Proposal for a regulation**  
**Article 6 – paragraph 1 – point f**

*Text proposed by the Commission*

*Amendment*

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

***deleted***

Or. en

*Justification*

*As drafted, this provision could offer controllers a way to avoid many restrictions, since experience suggests that few data subjects will test reliance on this ground in court. Moreover, the broadness of the term creates legal uncertainty. This is also likely to lead to divergences in practice between Member States and therefore fail to achieve harmonisation. Points (a) to (e) already offer ample grounds for lawfulness, so "legitimate interest" should be removed as a ground for processing. The vagueness of the term "legitimate interests" would encourage controllers to try to cover as much processing as possible under this ground, even though it could be covered under other grounds, notably consent, as well. This in turn would make it harder for data subjects to enforce their rights – while consent can easily be revoked, objecting to processing based on "legitimate interest" requires more effort on part of the data subject. Having such an ill-defined term be one of the grounds for lawfulness could also contribute to legal uncertainty, as it is quite likely that interpretations by supervisory authorities and courts will differ between Member States.*

**Amendment 136**  
**Françoise Castex**

**Proposal for a regulation**  
**Article 6 – paragraph 1 – point f**

*Text proposed by the Commission*

*Amendment*

(f) processing is necessary for the purposes of the legitimate interests pursued by a controller, except where such interests are overridden by the interests or fundamental

(f) processing is necessary for the purposes of the legitimate interests pursued by a controller, except where such interests are overridden by the interests or fundamental



rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. This shall not apply to processing carried out by public authorities in the performance of their tasks.

rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. This shall not apply to processing carried out by public authorities in the performance of their tasks. ***It shall also not apply to processing that can be based on one or several of the other grounds in this paragraph.***

Or. en

**Amendment 137**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 6 – paragraph 1 – point f**

*Text proposed by the Commission*

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

*Amendment*

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

Or. es

**Amendment 138**  
**Lidia Joanna Geringer de Oedenberg**

**Proposal for a regulation**  
**Article 6 – paragraph 1 – point f**

*Text proposed by the Commission*

f) processing is necessary for the purposes

*Amendment*

f) processing is necessary for the purposes

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

of the legitimate interests pursued by a controller, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. This shall not apply to processing carried out by public authorities in the performance of their tasks. ***This provision should also not apply to processing on the basis of one or several of the remaining grounds set out in this paragraph.***

Or. pl

**Amendment 139**  
**Sajjad Karim**

**Proposal for a regulation**  
**Article 6 – paragraph 1 – point f a (new)**

*Text proposed by the Commission*

*Amendment*

***(fa) processing is necessary for fraud detection and prevention purposes according to applicable financial regulation or established industry, or professional body, codes of practice.***

Or. en

*Justification*

*Experience in practice has shown that a "legal obligation" doesn't include the domestic financial regulation or codes of conduct which are fundamental in fraud prevention and detection, of paramount importance for data controllers and to protect data subjects.*

**Amendment 140**  
**Sajjad Karim**

**Proposal for a regulation**  
**Article 6 – paragraph 1 – point f b (new)**

*Text proposed by the Commission*

*Amendment*

***(fb) only pseudonymous data is processed.***

Or. en

*Justification*

*This is part of a package of amendments enabling the use of pseudonymous and anonymous data and will encourage good business practice safeguarding the interests of data subjects. Ensuring that personal data cannot be attributed to a data subject (since it cannot be related back to a data subject without use of additional data) helps to further promote business use of data while providing a high level of consumer protection.*

**Amendment 141**

**Françoise Castex**

**Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

***The EDPB should set up a list of common criteria to be met for further processing to be considered compatible with the one for which personal data have been originally collected.***

Or. en

**Amendment 142**

**Antonio López-Istúriz White**

**Proposal for a regulation**

**Article 6 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

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

***Union law and*** the law of the Member State must meet an objective of public interest or must be necessary to protect the rights and freedoms of others, respect the essence of the right to the protection of

and be proportionate to the legitimate aim pursued.

personal data and be proportionate to the legitimate aim pursued.

Or. es

*Justification*

*The requirements must be met in this instance not only by the laws of Member States, but also by Union law.*

**Amendment 143**

**Lidia Joanna Geringer de Oedenberg**

**Proposal for a regulation**

**Article 6 – paragraph 3 – subparagraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***In the case referred to in paragraph 1(f), the data controller shall clearly and separately notify the data subject of such processing. The data controller shall also indicate and publish the reasons which led him to believe that his legitimate interest took precedence over the primacy of the data subject's fundamental rights and freedoms.***

Or. pl

**Amendment 144**

**Klaus-Heiner Lehne**

**Proposal for a regulation**

**Article 6 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

4. Where the purpose of further processing is not compatible with the one for which the personal data have been collected, the processing must have a legal basis at least in one of the grounds referred to in points

4. Where the purpose of further processing is not compatible with the one for which the personal data have been collected, the processing must have a legal basis at least in one of the grounds referred to in points

(a) to (e) of paragraph 1. This shall in particular apply to any change of terms and general conditions of a contract.

(a) to (f) of paragraph 1. This shall in particular apply to any change of terms and general conditions of a contract.

Or. en

*Justification*

*The reference should include point (f) of paragraph 1 because otherwise stricter conditions would apply for subsequent processing than for the collection of personal data.*

**Amendment 145**  
**Antonio López-Istúriz White**

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

*Text proposed by the Commission*

*Amendment*

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

Or. es

*Justification*

*The delegation of power to the Commission provided for in paragraph 5 is too sweeping, given that it affects essential elements of the regulation which should be fleshed out in the regulation itself.*

**Amendment 146**  
**Françoise Castex, Arlene McCarthy, Evelyn Regner**

**Proposal for a regulation**  
**Article 6 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 6a**

***The data will not be used against the data subject in a disciplinary hearing, or to blacklist, vet or bar him or her from employment.***

Or. en

*Justification*

*Further specification is needed that personal data will never be used against the data subject in an employment context*

**Amendment 147**

**Evelyn Regner**

**Proposal for a regulation**

**Article 7 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. The controller shall bear the burden of proof for the data subject's consent to the processing of their personal data for specified purposes.

1. The controller shall bear the burden of proof for the data subject's ***explicit*** consent to the processing of their personal data for specified purposes.

Or. de

**Amendment 148**

**Lidia Joanna Geringer de Oedenberg**

**Proposal for a regulation**

**Article 7 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. If the data subject's consent is to be given in the context of a written declaration which also concerns another matter, the requirement to give consent must be

2. If the data subject's consent is to be given in the context of a written declaration which also concerns another matter, the requirement to give consent must be

presented distinguishable in its appearance from this other matter.

presented distinguishable in its appearance from this other matter. ***The permission of the data subject may be sought electronically, particularly in the context of information society services.***

Or. pl

**Amendment 149**  
**Sajjad Karim**

**Proposal for a regulation**  
**Article 7 – paragraph 3**

*Text proposed by the Commission*

3. The data subject shall have the right to withdraw his or her consent at any time. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal.

*Amendment*

3. The data subject shall have the right to withdraw his or her consent at any time. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal. ***Where the processing of personal data is an essential element to the controllers' ability to provide adequate security in the provision of a service to the data subject, the withdrawal of consent can lead to the termination of the service.***

Or. en

*Justification*

*When a withdrawal of consent compromises the ability of a service provider to adequately safeguard the personal data of the data subject, the service provider should not be obliged to provide the aforementioned service. For example, a bank should not be obliged to continue to offer a credit card if the data subject has withdrawn their consent to allow the processing of their personal data in order to prevent fraudulent activity.*

**Amendment 150**  
**Tadeusz Zwiefka**

**Proposal for a regulation**  
**Article 7 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. In the event that the data subject withdraws his consent, the controller may refuse to provide further services to the data subject if the processing of the data is vital for the provision of the service or for ensuring that the characteristics of the service are maintained.***

Or. pl

**Amendment 151**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 7 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

***4. Consent shall not provide a legal basis for the processing, where there is a significant imbalance between the position of the data subject and the controller.***      ***deleted***

Or. es

*Justification*

*There is no need for a specific provision to underline the point that consent given freely may produce the intended legal effects: it is sufficient to rely on the general rules applying to legal transactions.*

**Amendment 152**  
**Sajjad Karim**

**Proposal for a regulation**  
**Article 7 – paragraph 4**



*Text proposed by the Commission*

*Amendment*

**4. Consent shall not provide a legal basis for the processing, where there is a significant imbalance between the position of the data subject and the controller.** **deleted**

Or. en

*Justification*

*Terminology such as 'significant imbalance' is likely to cause legal uncertainty. Furthermore it is unnecessary because contract law, including consumer protection law, provides adequate safeguards against fraud, threats, unfair exploitation etc and those should apply also to agreements to process personal data.*

**Amendment 153**  
**Rebecca Taylor**

**Proposal for a regulation**  
**Article 7 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

4. Consent shall not provide a legal basis for the processing, where there is a significant imbalance between the position of the data subject and the controller.

4. Consent shall not provide a legal basis for the processing, where there is a significant, imbalance between the position of the data subject and the controller, ***which results in a lack of freedom in the provision of consent.***

Or. en

*Justification*

*Further legal certainty was needed as there are a number of situations where there is a significant imbalance between the data subject and the data controller; for example an employment relationship, a doctor-patient relationship etc. The importance here should focus on the lack of freedom when providing consent.*

**Amendment 154**  
**Francesco Enrico Speroni**

**Proposal for a regulation**  
**Article 7 – paragraph 4 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***Where the collection and processing of the personal data is purely for commercial purposes, the data subject must be paid a fee for agreeing that the processing be performed. The data subject may not renounce his right to receive that fee.***

Or. it

**Amendment 155**  
**Francesco Enrico Speroni**

**Proposal for a regulation**  
**Article 7 – paragraph 4 – subparagraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***The Commission shall be empowered to adopt delegated acts in accordance with Article 86 with a view to establishing the amount, nature and arrangements for payment of the fee to data subjects who agree to their personal data being processed for commercial purposes.***

Or. it

**Amendment 156**  
**Rebecca Taylor**

**Proposal for a regulation**  
**Article 8 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. For the purposes of this Regulation, in

1. For the purposes of this Regulation, in

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

relation to the offering of information society services directly to a child, the processing of personal data of a child below the age of 13 years **would normally require** that consent is given or authorised by the child's parent or custodian. **The appropriate form for obtaining consent should be based on any risk posed to the child by the amount of data, its type and the nature of the processing.** The controller shall make reasonable efforts to obtain verifiable consent, taking into consideration available technology.

Or. en

### *Justification*

*A balance needs to be considered between the level of data collected and the risk to the child, for example for simple exchange of information such as signing up to newsletters. The present Commission proposal could lead to the exclusion from the information society of a number of children, as it assumes that all parents engage fully with their children, which is not always the case. Parental consent is essential when high level of interaction with a child takes place, however a graduated approach needs to be considered.*

## **Amendment 157** **Françoise Castex**

### **Proposal for a regulation** **Article 8 – paragraph 1**

#### *Text proposed by the Commission*

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

#### *Amendment*

1. For the purposes of this Regulation, the processing of personal data of a child below the age of 13 years shall only be lawful if and to the extent that consent is given or authorised by the child's parent or custodian. The controller shall make reasonable efforts to obtain verifiable consent, taking into consideration available technology. **The methods to obtain verifiable consent shall not lead to the further processing of personal data which would otherwise not be necessary.**

**Amendment 158**  
**Sajjad Karim**

**Proposal for a regulation**  
**Article 8 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. Paragraphs 1, 2 and 3 shall not apply where the processing of personal data of a child concerns health data and where the Member State law in the field of health and social care prioritises the competence of an individual over physical age.***

Or. en

*Justification*

*In the context of health and social care authorisation from a child's parent or guardian should not be necessary where the child has the competence to make a decision for him or herself. In Child Protection Cases it is not always in the interests of the data subject for their parent or guardian to have access to their data, and this needs to be reflected in the legislation.*

**Amendment 159**  
**Rebecca Taylor**

**Proposal for a regulation**  
**Article 8 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. Paragraphs 1, 2 and 3 shall not apply where the processing of personal data of a child concerns health data and where the Member State law in the field of health and social care prioritises the maturity and competence of an individual over physical age.***

*Justification*

*In Child Protection cases, it is not always in the best interests of the data subject for their parent or guardian to have access to their data, and this needs to be reflected here. In some Member States, individuals under 13 are able to give consent to medical treatment once they have been assessed as having the competence to do so.*

**Amendment 160**

**Françoise Castex, Arlene McCarthy, Evelyn Regner**

**Proposal for a regulation**

**Article 9 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

1. The processing of personal data, revealing race or ethnic origin, political opinions, religion or beliefs, trade-union membership **and activities**, and the processing of genetic data or data concerning health or sex life or criminal convictions or related security measures shall be prohibited. ***In particular, this would include safeguards to prevent the blacklisting of workers, for example in relation to their trade union activities or health and safety representative roles.***

*Justification*

*Further specification is needed that personal data will never be used against the data subject in an employment context. Furthermore, it is important to highlight that accessing workers' personal data should be banned in terms of their trade union membership but also in terms of any union activities in which they may take part.*

**Amendment 161**

**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 9 – paragraph 2 – point f**

*Text proposed by the Commission*

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

*Amendment*

(f) processing is necessary for the establishment, exercise or defence of claims **at issue in legal or administrative proceedings of any kind**; or

Or. es

*Justification*

*The text should be enlarged upon so as to make it clear that data of the type concerned may be processed when the object is to establish, exercise, or defend claims at issue in legal or administrative proceedings of any kind.*

**Amendment 162**  
**József Szájer**

**Proposal for a regulation**  
**Article 9 – paragraph 2 – point g**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 163**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 9 – paragraph 2 – point i**

*Text proposed by the Commission*

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

*Amendment*

(i) processing is necessary for historical, statistical or scientific research purposes or ***for preliminary official or administrative investigation to determine biological parentage***, subject to the conditions and safeguards referred to in Article 83; or

Or. es

**Amendment 164**

**Antonio López-Istúriz White**

**Proposal for a regulation**

**Article 9 – paragraph 2 – point j**

*Text proposed by the Commission*

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

*Amendment*

(j) processing of data relating to criminal convictions or related security measures is carried out either under the control of official authority or when the processing is necessary for compliance with a legal or regulatory obligation to which a controller is subject, or for the performance of a task carried out for important public interest reasons, and in so far as authorised by Union law or Member State law providing for adequate safeguards. A register of criminal convictions, ***whether complete or not***, shall be kept only under the control of official authority.

Or. es

*Justification*

*Any register of this kind, complete or otherwise, has to be under the control of the authorities.*

**Amendment 165**

**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 9 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

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

Or. es

*Justification*

*The delegation of power under paragraph 3 is too sweeping, as it allows the Commission to flesh out essential aspects of the regulation, and the area concerned is a particularly delicate one for the type of data involved. The most appropriate course, therefore, would be to develop these aspects in the regulation proper.*

**Amendment 166**  
**Marielle Gallo**

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

*Text proposed by the Commission*

*Amendment*

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

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

Or. fr



**Amendment 167**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 11 – paragraph 1**

*Text proposed by the Commission*

1. The controller shall ***have transparent and easily accessible policies*** with regard to the processing of personal data and for the exercise of data subjects' rights.

*Amendment*

1. The controller shall ***observe transparency and accessibility criteria*** with regard to the processing of personal data and for the exercise of data subjects' rights. ***To that end it may disseminate those criteria by framing policies to be made known to all data subjects.***

Or. es

*Justification*

*Emphasises the principles of transparency and accessibility without removing the possibility of devising specific policies under the regulation.*

**Amendment 168**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 11 – paragraph 2**

*Text proposed by the Commission*

2. The controller shall provide any information and any communication relating to the processing of personal data to the data subject in an intelligible form, using clear and plain language, ***adapted to the data subject, in particular*** for any information addressed specifically to a child.

*Amendment*

2. The controller shall provide any information and any communication relating to the processing of personal data to the data subject in an intelligible form, using clear and plain language ***wherever possible. This last point shall be taken particularly into account*** for any information addressed specifically to a child.

Or. es

### *Justification*

*Information for data subjects should indeed be provided in an intelligible form and in clear and plain language. However, the obligation of tailoring language to their needs might be overambitious and hence difficult to fulfil on a general basis.*

#### **Amendment 169**

**Antonio López-Istúriz White**

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

#### **Article 12 – paragraph 1**

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

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

##### *Amendment*

1. The controller shall ***provide*** the information referred to in Article 14 and for the exercise of the rights of data subjects referred to in Article 13 and Articles 15 to 19. The controller shall provide in particular mechanisms for facilitating the request for the actions referred to in Article 13 and Articles 15 to 19. Where ***this is deemed appropriate, the above information as a whole may be presented in the form of policies and manuals of procedures to facilitate understanding and the use of such information.***

Or. es

### *Justification*

*What matters is that information is obtainable and rights can be exercised. If this is to happen, it might be the case that some institutions, given their size or complexity, will need to lay down clearly defined procedures to enable data subjects to exercise the rights in question, whereas other smaller or simpler organisations will not have to have any procedures in the strict sense or at most will need to issue very brief instructions telling data subjects what to do.*

#### **Amendment 170**

**Rebecca Taylor**

**Proposal for a regulation**  
**Article 12 – paragraph 2**

*Text proposed by the Commission*

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

*Amendment*

2. The controller shall inform the data subject without delay and, at the latest within **40 calendar days** of receipt of the request, whether or not any action has been taken pursuant to Article 13 and Articles 15 to 19 and shall provide the requested information. This period may be prolonged further, if several data subjects exercise their rights **resulting in a large and exceptional number of requests** and their cooperation is necessary to a reasonable extent to prevent an unnecessary and disproportionate effort on the part of the controller. **However, the controller must comply with the requests as soon as practicable and, if requested, should justify this extension to the supervisory authority.** The information shall be given in writing **or, where feasible, the data controller may provide access to a secure online platform which would provide the data subject with direct access their personal data.** Where the data subject makes the request in electronic form, the information shall be provided in electronic form, unless otherwise requested by the data subject **or not available in that format.**

Or. en

*Justification*

*The deletion of the fee could lead to an increase in requests for access to data, which added to a short time limit creates a heavy burden on companies as well as various organisations and public bodies. Data records are also not always available in electronic copy and adding this obligation would add to the administrative burden. Controllers should be allowed and encouraged to provide data on secure online platforms which would provide a direct and easy access for the data subject at very little cost for the controllers.*

**Amendment 171**  
**Sajjad Karim**

**Proposal for a regulation**  
**Article 12 – paragraph 4**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

*The provision of data held within a database has a cost. Requesting an appropriate, not for profit, contribution from data subjects for data access would help to limit frivolous requests and is critical in deterring fraudsters from obtaining high volumes of consumers' credit data which could be used for fraudulent purposes.*

**Amendment 172**  
**Antonio López-Istúriz White**

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

*Text proposed by the Commission*

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

*Amendment*

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

Or. es

**Amendment 173**  
**Klaus-Heiner Lehne**

**Proposal for a regulation**  
**Article 14 – paragraph 1 – point b**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 174**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 14 – paragraph 1 – point b**

*Text proposed by the Commission*

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

*Amendment*

(b) the purposes of the processing for which the personal data are intended;

Or. es

*Justification*

*Spelling out the purposes of the processing will suffice to inform data subjects, who, if in doubt, will be able to request such additional information as they might think relevant. There will thus be no need to mention the contract terms or the general conditions as well or to*

*elaborate on any legitimate interest.*

**Amendment 175**

**Francesco Enrico Speroni**

**Proposal for a regulation**

**Article 14 – paragraph 1 – point b**

*Text proposed by the Commission*

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

*Amendment*

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

***and, where the processing is purely for commercial purposes, the amount, nature and arrangements for payment of the fee to data subjects who agree to their personal data being processed;***

Or. it

**Amendment 176**

**Antonio López-Istúriz White**

**Proposal for a regulation**

**Article 14 – paragraph 1 – point c**

*Text proposed by the Commission*

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

*Amendment*

(c) ***where possible***, the period for which the personal data will be stored;

Or. es

**Amendment 177**

**Tadeusz Zwiefka**

**Proposal for a regulation**  
**Article 14 – paragraph 1 – point c**

*Text proposed by the Commission*

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

*Amendment*

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

Or. pl

**Amendment 178**  
**Klaus-Heiner Lehne**

**Proposal for a regulation**  
**Article 14 – paragraph 1 – point e**

*Text proposed by the Commission*

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

*Amendment*

(e) the right to lodge a complaint to the supervisory authority;

Or. en

*Justification*

*A duty to specify the contact details of the supervisory authority associated with liability in respect of any misinformation would necessitate a continuous review of the relevant information, which would be disproportionate for small and medium-sized enterprises in particular.*

**Amendment 179**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 14 – paragraph 1 – point e**

*Text proposed by the Commission*

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

*Amendment*

(e) the right to lodge a complaint to the supervisory authority;

**Amendment 180**  
**Klaus-Heiner Lehne**

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

*Text proposed by the Commission*

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

*Amendment*

3. Where the personal data are not collected from the data subject, the controller shall inform the data subject, in addition to the information referred to in paragraph 1, from which source the personal data originate, ***except where the data originate from a publicly available source or where the transfer is provided by law or the processing is used for purposes relating to the professional activities of the person concerned.***

Or. en

**Amendment 181**  
**Françoise Castex, Arlene McCarthy, Evelyn Regner**

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

*Text proposed by the Commission*

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

*Amendment*

3. Where the personal data are not collected from the data subject, the controller shall inform the data subject, in addition to the information referred to in paragraph 1, from which source the personal data ***originate. This would include data sourced from a third party illegally and passed on to the controller.***

Or. en



*Justification*

*Data subjects have the right to immediate notification if it has been found that their personal data have been accessed illegally to be used against them (for example to blacklist trade union activists and bar them from employment)*

**Amendment 182**

**Antonio López-Istúriz White**

**Proposal for a regulation**

**Article 14 – paragraph 4 – point a**

*Text proposed by the Commission*

*Amendment*

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

(a) ***in general*** at the time when the personal data are obtained from the data subject ***or as soon as possible where the above is not feasible, demands undue effort, or reduces the safeguards enjoyed by the data subject***; or

Or. es

*Justification*

*Some activities might require at least a degree of flexibility, and supervisory authorities would, moreover, easily be able to ascertain that this was being properly used. In addition, depending on the way in which data are collected, supplying information immediately after the event, in writing or online, might offer greater safeguards to a data subject, who would then be able to take exact note of the situation.*

**Amendment 183**

**Klaus-Heiner Lehne**

**Proposal for a regulation**

**Article 14 – paragraph 4 – point b**

*Text proposed by the Commission*

*Amendment*

(b) where the personal data are not collected from the data subject, at the time of the recording or within a reasonable period after the collection, having regard to the specific circumstances in which the

(b) where the personal data are not collected from the data subject, at the time of the recording or within a reasonable period after the collection, having regard to the specific circumstances in which the

data are collected or otherwise processed, or, if a disclosure to another recipient is envisaged, and at the latest when the data are first disclosed.

data are collected or otherwise processed, or, if a disclosure to another recipient is envisaged, and at the latest when the data are first disclosed, ***or, if the data shall be used for communication with the person concerned, at the latest at the time of the first communication to that person.***

Or. en

#### **Amendment 184**

**Françoise Castex, Arlene McCarthy, Evelyn Regner**

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

#### **Article 14 – paragraph 5 – point b**

*Text proposed by the Commission*

*Amendment*

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

***deleted***

Or. en

#### *Justification*

*Data subjects must always have the right to know if their personal data have been accessed illegally, especially if these will then be used against them, for example to blacklist trade union activists and bar them from employment, as there is ample evidence to support these illegal practices (Ref: ICO UK 2009 Consultancy Association Case on blacklisting)*

#### **Amendment 185**

**Sajjad Karim**

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

#### **Article 14 – paragraph 5 – point b**

*Text proposed by the Commission*

*Amendment*

(b) the data are not collected from the data subject and the provision of such information proves impossible or would

(b) the data are not collected from the data subject and the provision of such information proves impossible or would

involve a disproportionate effort; or

involve a disproportionate effort *and generate excessive administrative burden, especially when the processing is carried out by a SME as defined in Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises*<sup>1</sup>; or

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<sup>1</sup> OJ L 124, 20.5.2003, p. 36.

Or. en

### *Justification*

*This amendment is aimed at ensuring that SMEs are not placed under unnecessary administrative strain by the Regulation.*

### **Amendment 186**

**Antonio López-Istúriz White**

### **Proposal for a regulation**

### **Article 14 – paragraph 7**

*Text proposed by the Commission*

*Amendment*

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

*deleted*

Or. es

## *Justification*

*The delegated acts provided for in paragraph 7 to beyond the limits generally imposed on the use of this arrangement, given that their intended subject matter is such that it should be dealt with in the text of the regulation itself.*

### **Amendment 187**

**Antonio López-Istúriz White**

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

##### **Article 15 – paragraph 1 – introductory wording**

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

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

###### *Amendment*

1. The data subject shall have the right to obtain from the controller at any time, on request, confirmation as to whether or not personal data relating to the data subject are being processed. ***If the controller is processing a large number of files relating to the data subject, it may ask the data subject to specify in the necessary detail, before the information is supplied, which file or files, or what particular fields of activity, are covered by the data subject's request.*** Where such personal data are being processed, the controller shall provide the following information:

Or. es

### **Amendment 188**

**Tadeusz Zwiefka**

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

##### **Article 15 – paragraph 1 – point d**

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

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

###### *Amendment*

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

Or. pl

**Amendment 189**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 15 – paragraph 1 – point h**

*Text proposed by the Commission*

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

*Amendment*

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

Or. es

**Amendment 190**  
**Sajjad Karim**

**Proposal for a regulation**  
**Article 15 – paragraph 1 – point h a (new)**

*Text proposed by the Commission*

*Amendment*

***(ha) where applicable, where data is collected and processed in exchange for the provision of free services, the controller's value estimate of the subject's processed data.***

Or. en

*Justification*

*Personal data is a tradable commodity and data subjects are largely unaware of the value of their data for data controllers and processors. Providing the controller's value estimate to the data subject, where this has been requested, would enable data subjects to take a fully informed decision about use of their data, and would also help to curtail a one sided market by empowering consumers.*

**Amendment 191**  
**Eva Lichtenberger**  
on behalf of the Verts/ALE Group

**Evelyn Regner, Françoise Castex**

**Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

***(ha) in the case of measures based on profiles, meaningful information about the logic used in the profiling;***

Or. en

*Justification*

*Data subject rights are indispensable for empowering data subjects to take the protection of their data into their own hands and enforce their rights against controllers. They are one of the main levers to hold controllers accountable. For this reason, the rights to information, access, rectification, deletion, and data portability should be strengthened to allow users to understand what happens to their data and to exercise control over it. Exceptions and exemptions should be very limited.*

**Amendment 192**

**Antonio López-Istúriz White**

**Proposal for a regulation**

**Article 15 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

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

Or. es

*Justification*

*This paragraph is redundant, since the communication of the data concerned has already been dealt with in the previous paragraph; moreover, this paragraph again touches on issues*

*of technological neutrality and runs counter to our views as already expressed previously.*

**Amendment 193**  
**Françoise Castex**

**Proposal for a regulation**  
**Article 15 – paragraph 2**

*Text proposed by the Commission*

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

*Amendment*

2. The data subject shall have the right to obtain from the controller communication of the personal data undergoing processing. Where the data subject makes the request in electronic form, the information shall be provided in electronic form, unless otherwise requested by the data subject.  
***The controller shall verify the identity of a data subject requesting access to data within the limits of Articles 5 to 10 of this Regulation.***

Or. en

**Amendment 194**  
**Sajjad Karim**

**Proposal for a regulation**  
**Article 16 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***Paragraph 1 shall not apply to pseudonymous data.***

Or. en

*Justification*

*This is part of a package of amendments enabling the use of pseudonymous and anonymous data and will encourage good business practice safeguarding the interests of data subjects. Ensuring that personal data cannot be attributed to a data subject (since it cannot be related back to a data subject without use of additional data) helps to further promote business use of*

*data while providing a high level of consumer protection*

**Amendment 195**

**Sajjad Karim**

**Proposal for a regulation**

**Article 17 – title**

*Text proposed by the Commission*

*Amendment*

Right to ***be forgotten and to*** erasure

Right to erasure

Or. en

*Justification*

*The right to be forgotten is a notion which is largely incompatible with how information on data subjects circulates in the online environment. Recognition of a data subject's right to be forgotten would require an undue level of bureaucratic compliance expenditure and likely be impossible to implement / guarantee. Nevertheless, in a range of circumstances, a right to erasure can be upheld.*

**Amendment 196**

**Sajjad Karim**

**Proposal for a regulation**

**Article 17 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

***(a) the data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;***

***deleted***

Or. en

*Justification*

*It is difficult to clearly identify when personal data is definitively no longer of use for business purposes. Systematically deleting data where there is no immediate use would bring disproportionate compliance costs.*



**Amendment 197**  
**Sajjad Karim**

**Proposal for a regulation**  
**Article 17 – paragraph 1 – point b**

*Text proposed by the Commission*

(b) the data subject withdraws consent on which the processing is based according to point (a) of Article 6(1), or when the storage period consented to has expired, ***and where there is no other legal ground for the processing of the data;***

*Amendment*

(b) the data subject withdraws consent on which the processing is based according to point (a) of Article 6(1), or when the storage period consented to has expired;

Or. en

*Justification*

*This requirement is too broad and would lead to heavy compliance costs since data would have to be systematically deleted if there is no legal justification for holding it.*

**Amendment 198**  
**Sajjad Karim**

**Proposal for a regulation**  
**Article 17 – paragraph 1 – point d**

*Text proposed by the Commission*

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

*Amendment*

***deleted***

Or. en

*Justification*

*The potential implications of this clause are unclear and would need to be explained.*

**Amendment 199**  
**Lidia Joanna Geringer de Oedenberg**

**Proposal for a regulation**  
**Article 17 – paragraph 1 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

***da) there shall be no legal basis for the processing of data other than the consent of the data subject.***

Or. pl

**Amendment 200**  
**Sajjad Karim**

**Proposal for a regulation**  
**Article 17 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. The right to erasure shall not apply when the retention of personal data is necessary for the performance of a contract between an organisation and the data subject, or when there is a regulatory requirement to retain this data, or for fraud prevention purposes.***

Or. en

*Justification*

*This new proposal sets down appropriate circumstances for limiting the data subjects' right to erasure in terms of what is necessary for business and regulatory purposes.*

**Amendment 201**  
**Arlene McCarthy**

**Proposal for a regulation**  
**Article 17 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Credit institutions that retain data for the following grounds shall be exempt***

*from the requirements of this Article:*

- risk management purposes;*
- fulfilment of EU and international supervisory and compliance requirements;*
- market abuse purposes.*

Or. en

**Amendment 202**  
**Klaus-Heiner Lehne**

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

*Text proposed by the Commission*

*Amendment*

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

*deleted*

Or. en

*Justification*

*Given the nature of the internet and the possibilities to post information on various sites globally this provision is unworkable.*

**Amendment 203**  
**Eva Lichtenberger**  
on behalf of the Verts/ALE Group

Evelyn Regner, Françoise Castex

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

*Text proposed by the Commission*

*Amendment*

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

**deleted**

Or. en

*Justification*

*Data subject rights are indispensable for empowering data subjects to take the protection of their data into their own hands and enforce their rights against controllers. They are one of the main levers to hold controllers accountable. For this reason, the rights to information, access, rectification, deletion, and data portability should be strengthened to allow users to understand what happens to their data and to exercise control over it. Exceptions and exemptions should be very limited.*

**Amendment 204**  
**Antonio López-Istúriz White**

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

*Text proposed by the Commission*

*Amendment*

2. Where the controller referred to in paragraph 1 has **made the** personal data **public**, it shall take all reasonable steps, including technical measures, in relation to

2. Where the controller referred to in paragraph 1 has **explicitly or tacitly allowed third-party access to** personal data, it shall take all reasonable steps **in**

data for the publication of which the controller is responsible, to inform third parties which are processing such data, that a data subject requests them to erase any links to, or copy or replication of that personal data. Where the controller has ***authorised a third party publication of*** personal data, ***the controller shall be considered responsible for that publication.***

***proportion to its capacity***, including technical measures, in relation to data for the publication of which the controller is responsible, to inform third parties which are processing such data, that a data subject requests them to erase any links to, or copy or replication of that personal data.

Where the controller ***who has allowed access to personal data has disappeared, has ceased to exist or for other reasons cannot be contacted by the data subject, the data subject shall have the right to obtain from third-party controllers the erasure of any links to, or copy or replication of the*** personal data.

Or. es

#### *Justification*

*The question of whether or not the transferor of data is responsible for acts carried out by the recipient should be settled on a case-by-case basis, in line with the facts and circumstances; this differs substantially from the imposition of a kind of objective responsibility based on the right to be forgotten.*

#### **Amendment 205** **Rebecca Taylor**

#### **Proposal for a regulation** **Article 17 – paragraph 3 – point a**

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

(a) for exercising the right of freedom of expression in accordance with Article 80;

##### *Amendment*

(a) for exercising the right of freedom of expression in accordance with Article 80; ***or when providing an information society service to facilitate the accessing of such expression.***

Or. en

*Justification*

*The provision proposed by the Commission does provide media with enough to defend the rights of media in a digital age.*

**Amendment 206**

**Rebecca Taylor**

**Proposal for a regulation**

**Article 17 – paragraph 3 – point b**

*Text proposed by the Commission*

(b) for reasons of public interest in the area of public health in accordance with Article 81;

*Amendment*

(b) **for healthcare purposes or** for reasons of public interest in the area of public health in accordance with Article 81;

Or. en

*Justification*

*It is in the vital interests of the data subject to keep a complete record of their health in order to receive the best care and treatment through their life. The right to be forgotten should not apply where data is processed for healthcare purposes as laid down in Article 81(a).*

**Amendment 207**

**Antonio López-Istúriz White**

**Proposal for a regulation**

**Article 17 – paragraph 3 – point d**

*Text proposed by the Commission*

(d) for compliance with a legal obligation to retain the personal data by Union or Member State law to which the controller is subject; Member State laws shall meet an objective of public interest, respect the essence of the right to the protection of personal data and be proportionate to the legitimate aim pursued;

*Amendment*

(d) for compliance with a legal obligation to retain the personal data by Union or Member State law to which the controller is subject **under Union law**; Member State laws shall meet an objective of public interest, respect the essence of the right to the protection of personal data and be proportionate to the legitimate aim pursued;

Or. es

**Amendment 208**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 17 – paragraph 3 – point e**

*Text proposed by the Commission*

(e) in the cases referred to in paragraph 4.

*Amendment*

(e) in the cases referred to in paragraph 4.

***In the cases referred to in points (a) to (d), the data subject may exercise the right to object to the establishment of links or creation of copies or replications of their personal data. The viability of this right shall be resolved in the light of all the circumstances involved in the case, whilst making efforts not to frustrate the specific basis for the retention of data.***

Or. es

**Amendment 209**  
**Antonio López-Istúriz White**

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

*Text proposed by the Commission*

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

***(a) the criteria and requirements for the application of paragraph 1 for specific sectors and in specific data processing situations;***

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

***(c) the criteria and conditions for***

*Amendment*

*deleted*

*restricting the processing of personal data referred to in paragraph 4.*

Or. es

*Justification*

*With regard to delegated acts, we cannot accept paragraph 9 of this article, since it makes provision for the regulation of aspects which are essential if the legislation is to be correctly understood. If it is held that these aspects must be covered, this should be done in the Regulation itself.*

**Amendment 210**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 18 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

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

***Where the format requested by the data subject differs from the processing format, the controller may impose a charge for conversion at a level which may not exceed the cost of the service provided at market prices.***

Or. es

*Justification*

*A request for a specific format which differs from the processing format entails the provision of a fresh service that must be paid for. Moreover, if it is to be possible to obtain data in a specific format, it appears logical that the cost of conversion should not be borne by the controller. It thus seems reasonable to allow a charge to be imposed for converting data to the requested format.*



**Amendment 211**  
**Eva Lichtenberger**  
on behalf of the Verts/ALE Group  
**Evelyn Regner, Françoise Castex**

**Proposal for a regulation**  
**Article 18 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

*Data subject rights are indispensable for empowering data subjects to take the protection of their data into their own hands and enforce their rights against controllers. They are one of the main levers to hold controllers accountable. For this reason, the rights to information, access, rectification, deletion, and data portability should be strengthened to allow users to understand what happens to their data and to exercise control over it. Exceptions and exemptions should be very limited as the right to data portability is a corollary to the right of access. When replying to access requests, controllers must not provide data in formats which limits further use by the data subject. The right to data portability may contribute to a more competitive environment, especially for social networks and other online services, by allowing people to change service providers without difficulty.*

**Amendment 212**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 18 – paragraph 2 – subparagraph 1 a**

*Text proposed by the Commission*

*Amendment*

***The controller from whom the personal data are withdrawn shall delete those***

*data, unless their continued processing is covered by another legal provision in force. Union and Member State laws may regulate cases where there is a legal obligation to store data, based on objectives of public interest proportionate to the aim pursued, and respecting the essence of the right to the protection of personal data.*

Or. es

*Justification*

*In principle, portability in relation to obtaining a copy of data does not necessarily entail deletion. The question of deletion may nevertheless be raised in connection with portability in its strict sense, i.e. transfer from one controller to another. However, some safeguards are needed to cover cases where it is necessary to store data.*

**Amendment 213**  
**Sajjad Karim**

**Proposal for a regulation**  
**Article 18 – paragraph 3**

*Text proposed by the Commission*

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

*Amendment*

3. The electronic format referred to in paragraph 1 and the technical standards, modalities and procedures for the transmission of personal data pursuant to paragraph 2 *shall be determined by the controller by reference to harmonised industry standards, or where these are not already defined, shall be developed by industry stakeholders through standardisation bodies.*

Or. en

*Justification*

*The European Commission should not be the decision making body for establishing a harmonised electronic data transfer format. The approach proposed by this amendment is*

*furthermore more technologically neutral and is more appropriate given the range of sectors covered by this Regulation.*

**Amendment 214**  
**Klaus-Heiner Lehne**

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

*Text proposed by the Commission*

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

*Amendment*

1. The data subject shall have the right to object *in the cases of* points (d), (e) and (f) of Article 6(1) *on predominant and protection-worthy grounds relating to their particular situation, at any time to the processing of their personal data. In the case of a justified objection the processing by the controller may no longer refer to this data.*

Or. en

**Amendment 215**  
**Francesco Enrico Speroni**

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

*Text proposed by the Commission*

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

*Amendment*

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

Or. it

**Amendment 216**  
**Antonio López-Istúriz White**

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

*Text proposed by the Commission*

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

*Amendment*

3. Where an objection is upheld pursuant to **paragraph 1**, the controller shall **inform the data subject of the compelling legitimate grounds which apply in accordance with paragraph 1 or, if he does not do so, he shall no longer use or otherwise process the personal data concerned; where the objection is upheld pursuant to paragraph 2, the controller shall** no longer use or otherwise process the personal data concerned.

Or. es

*Justification*

*If the controller may adduce compelling legitimate grounds in response to the right to object, there appears to be no reason why merely lodging an objection should have the consequences laid down in paragraph 3.*

**Amendment 217**  
**Sajjad Karim**

**Proposal for a regulation**  
**Article 19 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**3a. Where pseudonymous data are processed based on Article 6(1)(g), the data subject shall have the right to object free of charge to the processing. This right shall be explicitly offered to the data subject in an intelligible manner and shall be clearly distinguishable from other information.**

*Justification*

*This is part of a package of amendments enabling the use of pseudonymous and anonymous data and will encourage good business practice safeguarding the interests of data subjects. Ensuring that personal data cannot be attributed to a data subject (since it cannot be related back to a data subject without use of additional data) helps to further promote business use of data while providing a high level of consumer protection.*

**Amendment 218**  
**Sajjad Karim**

**Proposal for a regulation**  
**Article 20 – title**

*Text proposed by the Commission*

*Amendment*

Measures based on ***profiling***

Measures based on ***automated processing***

Or. en

*Justification*

*Article 20 concerns automated processing rather than profiling. The title of this article should therefore be amended to “Measures based on automated processing”.*

**Amendment 219**  
**Sajjad Karim**

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

*Text proposed by the Commission*

*Amendment*

1. ***Every natural person*** shall ***have the right not to*** be subject to a ***measure*** which ***produces legal effects concerning this natural person or significantly affects this natural person***, and which is based solely on automated processing intended to evaluate certain personal aspects relating to this ***natural person or to analyse or***

1. ***A data subject*** shall ***not*** be subject to a ***decision*** which ***is unfair or discriminatory***, and which is based solely on automated processing intended to evaluate certain personal aspects relating to this ***data subject***.

*predict in particular the natural person's performance at work, economic situation, location, health, personal preferences, reliability or behaviour.*

Or. en

*Justification*

*Article 20 in its current form does not recognise the positive uses of profiling nor does it take into account the varying levels of risk or impact on the privacy of the individuals associated with profiling. By focusing on techniques which are either "unfair" or "discriminatory" as defined in Directive 2005/29/EC the approach in this proposal is more technologically neutral and focuses on the negative uses of profiling techniques rather than the technology itself.*

**Amendment 220**  
**Rebecca Taylor**

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

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

*It is important to consider that some profiling activities have considerable benefits for consumers and can be a good basis for good customer service. The wide definition of profiling does not differentiate routine data processing activities that are positive in nature*

*with more negative profiling. Positive profiling is often used to tailor services to consumers by recording their needs and preferences.*

## **Amendment 221**

**Eva Lichtenberger**

on behalf of the Verts/ALE Group

**Evelyn Regner, Françoise Castex**

### **Proposal for a regulation**

#### **Article 20 – paragraph 1**

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

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

##### *Amendment*

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

Or. en

##### *Justification*

*Profiling can entail serious risks for data subjects. It is prone to reinforcing discriminations, making decisions less transparent and carries an unavoidable risk of wrong decisions. For these reasons, it should be tightly regulated: its use should be clearly limited, and in those cases where it can be used, there should be safeguards against discrimination and data subjects should be able to receive clear and meaningful information on the logic of the profiling and its consequences. While some circles see profiling as a panacea for many problems, it should be noted that there is a significant body of research addressing its limitations. Notably, profiling tends to be useless for very rare characteristics, due to the risk of false positives. Also, profiles can be hard or impossible to verify. Profiles are based on complex and dynamic algorithms that evolve constantly and that are hard to explain to data subjects. Often, these algorithms qualify as commercial secrets and will not be easily provided to data subjects. However, when natural persons are subject to profiling, they should be entitled to information about the logic used in the measure, as well as an explanation of the final decision if human intervention has been obtained. This helps to*

*reduce intransparency, which could undermine trust in data processing and may lead to loss or trust in especially online services. There is also a serious risk of unreliable and (in effect) discriminatory profiles being widely used, in matters of real importance to individuals and groups, which is the motivation behind several suggested changes in this Article that aim to improve the protection of data subjects against discrimination. In relation to this, the use of sensitive data in generating profiles should also be restricted.*

## **Amendment 222**

**Sajjad Karim**

### **Proposal for a regulation**

#### **Article 20 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

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

**deleted**

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

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

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

Or. en

#### *Justification*

*Deletion following proposed amendment to paragraph 1.*



**Amendment 223**  
**Eva Lichtenberger**  
on behalf of the Verts/ALE Group  
**Evelyn Regner, Françoise Castex**

**Proposal for a regulation**  
**Article 20 – paragraph 2 – introductory part**

*Text proposed by the Commission*

*Amendment*

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

2. Subject to the other provisions of this Regulation, **including paragraphs (3) and (4)**, a person may be subjected to a measure of the kind referred to in paragraph 1 only if the processing:

Or. en

*Justification*

*Profiling can entail serious risks for data subjects. It is prone to reinforcing discriminations, making decisions less transparent and carries an unavoidable risk of wrong decisions. For these reasons, it should be tightly regulated: its use should be clearly limited, and in those cases where it can be used, there should be safeguards against discrimination and data subjects should be able to receive clear and meaningful information on the logic of the profiling and its consequences. While some circles see profiling as a panacea for many problems, it should be noted that there is a significant body of research addressing its limitations. Notably, profiling tends to be useless for very rare characteristics, due to the risk of false positives. Also, profiles can be hard or impossible to verify. Profiles are based on complex and dynamic algorithms that evolve constantly and that are hard to explain to data subjects. Often, these algorithms qualify as commercial secrets and will not be easily provided to data subjects. However, when natural persons are subject to profiling, they should be entitled to information about the logic used in the measure, as well as an explanation of the final decision if human intervention has been obtained. This helps to reduce intransparency, which could undermine trust in data processing and may lead to loss or trust in especially online services. There is also a serious risk of unreliable and (in effect) discriminatory profiles being widely used, in matters of real importance to individuals and groups, which is the motivation behind several suggested changes in this Article that aim to improve the protection of data subjects against discrimination. In relation to this, the use of sensitive data in generating profiles should also be restricted.*

**Amendment 224**  
**Eva Lichtenberger**  
on behalf of the Verts/ALE Group  
**Evelyn Regner, Françoise Castex**

**Proposal for a regulation**  
**Article 20 – paragraph 2 – point a**

*Text proposed by the Commission*

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

*Amendment*

(a) is ***necessary for*** the entering into, or performance of, a contract, where the request for the entering into or the performance of the contract, lodged by the data subject, has been satisfied or where suitable measures to safeguard the data subject's legitimate interests have been adduced, ***including the right to be provided with meaningful information about the logic used in the profiling, and the right to obtain human intervention, including an explanation of the decision reached after such*** intervention; or

Or. en

*Justification*

*Profiling can entail serious risks for data subjects. It is prone to reinforcing discriminations, making decisions less transparent and carries an unavoidable risk of wrong decisions. For these reasons, it should be tightly regulated: its use should be clearly limited, and in those cases where it can be used, there should be safeguards against discrimination and data subjects should be able to receive clear and meaningful information on the logic of the profiling and its consequences. While some circles see profiling as a panacea for many problems, it should be noted that there is a significant body of research addressing its limitations. Notably, profiling tends to be useless for very rare characteristics, due to the risk of false positives. Also, profiles can be hard or impossible to verify. Profiles are based on complex and dynamic algorithms that evolve constantly and that are hard to explain to data subjects. Often, these algorithms qualify as commercial secrets and will not be easily provided to data subjects. However, when natural persons are subject to profiling, they should be entitled to information about the logic used in the measure, as well as an explanation of the final decision if human intervention has been obtained. This helps to reduce intransparency, which could undermine trust in data processing and may lead to loss or trust in especially online services. There is also a serious risk of unreliable and (in effect) discriminatory profiles being widely used, in matters of real importance to individuals and groups, which is the motivation behind several suggested changes in this Article that aim to improve the protection of data subjects against discrimination. In relation to this, the use of sensitive data in generating profiles should also be restricted.*

**Amendment 225**  
**Eva Lichtenberger**  
on behalf of the Verts/ALE Group  
**Evelyn Regner, Françoise Castex**

**Proposal for a regulation**  
**Article 20 – paragraph 2 – point b**

*Text proposed by the Commission*

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

*Amendment*

(b) is expressly authorized by a Union or Member State law which also lays down suitable measures to safeguard the data subject's legitimate interests, **and which protects the data subjects against possible discrimination resulting from measures described in paragraph 1**; or

Or. en

*Justification*

*Profiling can entail serious risks for data subjects. It is prone to reinforcing discriminations, making decisions less transparent and carries an unavoidable risk of wrong decisions. For these reasons, it should be tightly regulated: its use should be clearly limited, and in those cases where it can be used, there should be safeguards against discrimination and data subjects should be able to receive clear and meaningful information on the logic of the profiling and its consequences. While some circles see profiling as a panacea for many problems, it should be noted that there is a significant body of research addressing its limitations. Notably, profiling tends to be useless for very rare characteristics, due to the risk of false positives. Also, profiles can be hard or impossible to verify. Profiles are based on complex and dynamic algorithms that evolve constantly and that are hard to explain to data subjects. Often, these algorithms qualify as commercial secrets and will not be easily provided to data subjects. However, when natural persons are subject to profiling, they should be entitled to information about the logic used in the measure, as well as an explanation of the final decision if human intervention has been obtained. This helps to reduce intransparency, which could undermine trust in data processing and may lead to loss or trust in especially online services. There is also a serious risk of unreliable and (in effect) discriminatory profiles being widely used, in matters of real importance to individuals and groups, which is the motivation behind several suggested changes in this Article that aim to improve the protection of data subjects against discrimination. In relation to this, the use of sensitive data in generating profiles should also be restricted.*

**Amendment 226**  
**Marielle Gallo**

**Proposal for a regulation**  
**Article 20 – paragraph 2 – point b**

*Text proposed by the Commission*

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

*Amendment*

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

Or. fr

**Amendment 227**  
**Klaus-Heiner Lehne**

**Proposal for a regulation**  
**Article 20 – paragraph 2 – point c**

*Text proposed by the Commission*

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

*Amendment*

(c) is ***lawful pursuant to Article 6(1) (a) to (f) of this regulation.***

Or. en

**Amendment 228**  
**Eva Lichtenberger**  
on behalf of the Verts/ALE Group  
**Evelyn Regner, Françoise Castex**

**Proposal for a regulation**  
**Article 20 – paragraph 2 – point c**

*Text proposed by the Commission*

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

*Amendment*

(c) is based on the data subject's consent, subject to the conditions laid down in Article 7 and to suitable safeguards, ***including effective protection against possible discrimination resulting from measures described in paragraph 1.***

### *Justification*

*Profiling can entail serious risks for data subjects. It is prone to reinforcing discriminations, making decisions less transparent and carries an unavoidable risk of wrong decisions. For these reasons, it should be tightly regulated: its use should be clearly limited, and in those cases where it can be used, there should be safeguards against discrimination and data subjects should be able to receive clear and meaningful information on the logic of the profiling and its consequences. While some circles see profiling as a panacea for many problems, it should be noted that there is a significant body of research addressing its limitations. Notably, profiling tends to be useless for very rare characteristics, due to the risk of false positives. Also, profiles can be hard or impossible to verify. Profiles are based on complex and dynamic algorithms that evolve constantly and that are hard to explain to data subjects. Often, these algorithms qualify as commercial secrets and will not be easily provided to data subjects. However, when natural persons are subject to profiling, they should be entitled to information about the logic used in the measure, as well as an explanation of the final decision if human intervention has been obtained. This helps to reduce intransparency, which could undermine trust in data processing and may lead to loss or trust in especially online services. There is also a serious risk of unreliable and (in effect) discriminatory profiles being widely used, in matters of real importance to individuals and groups, which is the motivation behind several suggested changes in this Article that aim to improve the protection of data subjects against discrimination. In relation to this, the use of sensitive data in generating profiles should also be restricted.*

#### **Amendment 229**

**Marielle Gallo**

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

**Article 20 – paragraph 2 – point c**

*Text proposed by the Commission*

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

*Amendment*

(c) is based on ***one of the situations referred to in Article 6(1), points (a) to (f);***

Or. fr

#### **Amendment 230**

**Sajjad Karim**

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

**Article 20 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

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

Or. en

*Justification*

*Deletion following proposed amendment to paragraph 1.*

**Amendment 231**

**Eva Lichtenberger**

on behalf of the Verts/ALE Group

**Evelyn Regner, Françoise Castex**

**Proposal for a regulation**

**Article 20 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

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

3. Automated processing of personal data intended to evaluate certain personal aspects relating to a natural person shall not ***include or generate any data that fall under*** the special categories of personal data referred to in Article 9, ***except when falling under the exceptions listed in Article 9(2).***

Or. en

*Justification*

*Profiling can entail serious risks for data subjects. It is prone to reinforcing discriminations, making decisions less transparent and carries an unavoidable risk of wrong decisions. For these reasons, it should be tightly regulated: its use should be clearly limited, and in those cases where it can be used, there should be safeguards against discrimination and data subjects should be able to receive clear and meaningful information on the logic of the profiling and its consequences. While some circles see profiling as a panacea for many*

*problems, it should be noted that there is a significant body of research addressing its limitations. Notably, profiling tends to be useless for very rare characteristics, due to the risk of false positives. Also, profiles can be hard or impossible to verify. Profiles are based on complex and dynamic algorithms that evolve constantly and that are hard to explain to data subjects. Often, these algorithms qualify as commercial secrets and will not be easily provided to data subjects. However, when natural persons are subject to profiling, they should be entitled to information about the logic used in the measure, as well as an explanation of the final decision if human intervention has been obtained. This helps to reduce intransparency, which could undermine trust in data processing and may lead to loss or trust in especially online services. There is also a serious risk of unreliable and (in effect) discriminatory profiles being widely used, in matters of real importance to individuals and groups, which is the motivation behind several suggested changes in this Article that aim to improve the protection of data subjects against discrimination. In relation to this, the use of sensitive data in generating profiles should also be restricted.*

**Amendment 232**

**Eva Lichtenberger**

on behalf of the Verts/ALE Group

**Evelyn Regner, Françoise Castex**

**Proposal for a regulation**

**Article 20 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. Profiling that (whether intentionally or otherwise) has the effect of discriminating against individuals on the basis of race or ethnic origin, political opinions, religion or beliefs, trade union membership, or sexual orientation, or that (whether intentionally or otherwise) results in measures which have such effect, shall be prohibited.***

Or. en

*Justification*

*Profiling can entail serious risks for data subjects. It is prone to reinforcing discriminations, making decisions less transparent and carries an unavoidable risk of wrong decisions. For these reasons, it should be tightly regulated: its use should be clearly limited, and in those cases where it can be used, there should be safeguards against discrimination and data subjects should be able to receive clear and meaningful information on the logic of the profiling and its consequences. While some circles see profiling as a panacea for many*

*problems, it should be noted that there is a significant body of research addressing its limitations. Notably, profiling tends to be useless for very rare characteristics, due to the risk of false positives. Also, profiles can be hard or impossible to verify. Profiles are based on complex and dynamic algorithms that evolve constantly and that are hard to explain to data subjects. Often, these algorithms qualify as commercial secrets and will not be easily provided to data subjects. However, when natural persons are subject to profiling, they should be entitled to information about the logic used in the measure, as well as an explanation of the final decision if human intervention has been obtained. This helps to reduce intransparency, which could undermine trust in data processing and may lead to loss or trust in especially online services. There is also a serious risk of unreliable and (in effect) discriminatory profiles being widely used, in matters of real importance to individuals and groups, which is the motivation behind several suggested changes in this Article that aim to improve the protection of data subjects against discrimination. In relation to this, the use of sensitive data in generating profiles should also be restricted.*

### **Amendment 233**

**Eva Lichtenberger**

on behalf of the Verts/ALE Group

**Evelyn Regner, Françoise Castex**

### **Proposal for a regulation**

**Article 20 – paragraph 3 b (new)**

*Text proposed by the Commission*

*Amendment*

***3b. Automated processing of personal data intended to evaluate certain personal aspects relating to a natural person shall not be used to identify or individualise children.***

Or. en

### *Justification*

*Profiling can entail serious risks for data subjects. It is prone to reinforcing discriminations, making decisions less transparent and carries an unavoidable risk of wrong decisions. For these reasons, it should be tightly regulated: its use should be clearly limited, and in those cases where it can be used, there should be safeguards against discrimination and data subjects should be able to receive clear and meaningful information on the logic of the profiling and its consequences. While some circles see profiling as a panacea for many problems, it should be noted that there is a significant body of research addressing its limitations. Notably, profiling tends to be useless for very rare characteristics, due to the risk of false positives. Also, profiles can be hard or impossible to verify. Profiles are based on complex and dynamic algorithms that evolve constantly and that are hard to explain to data*



*subjects. Often, these algorithms qualify as commercial secrets and will not be easily provided to data subjects. However, when natural persons are subject to profiling, they should be entitled to information about the logic used in the measure, as well as an explanation of the final decision if human intervention has been obtained. This helps to reduce intransparency, which could undermine trust in data processing and may lead to loss or trust in especially online services. There is also a serious risk of unreliable and (in effect) discriminatory profiles being widely used, in matters of real importance to individuals and groups, which is the motivation behind several suggested changes in this Article that aim to improve the protection of data subjects against discrimination. In relation to this, the use of sensitive data in generating profiles should also be restricted.*

**Amendment 234**

**Sajjad Karim**

**Proposal for a regulation**

**Article 20 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

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

Or. en

*Justification*

*Deletion following proposed amendment to paragraph 1.*

**Amendment 235**

**Eva Lichtenberger**

on behalf of the Verts/ALE Group

**Evelyn Regner, Françoise Castex**

**Proposal for a regulation**

**Article 20 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

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

4. In the cases referred to in paragraph 2, the information to be provided by the controller under **Articles 14 and 15** shall include information as to the existence of processing for a measure of the kind referred to in paragraph 1 and the envisaged effects of such processing on the data subject, **as well as the access to the logic underpinning the data undergoing processing.**

Or. en

*Justification*

*Profiling can entail serious risks for data subjects. It is prone to reinforcing discriminations, making decisions less transparent and carries an unavoidable risk of wrong decisions. For these reasons, it should be tightly regulated: its use should be clearly limited, and in those cases where it can be used, there should be safeguards against discrimination and data subjects should be able to receive clear and meaningful information on the logic of the profiling and its consequences. While some circles see profiling as a panacea for many problems, it should be noted that there is a significant body of research addressing its limitations. Notably, profiling tends to be useless for very rare characteristics, due to the risk of false positives. Also, profiles can be hard or impossible to verify. Profiles are based on complex and dynamic algorithms that evolve constantly and that are hard to explain to data subjects. Often, these algorithms qualify as commercial secrets and will not be easily provided to data subjects. However, when natural persons are subject to profiling, they should be entitled to information about the logic used in the measure, as well as an explanation of the final decision if human intervention has been obtained. This helps to reduce intransparency, which could undermine trust in data processing and may lead to loss or trust in especially online services. There is also a serious risk of unreliable and (in effect) discriminatory profiles being widely used, in matters of real importance to individuals and groups, which is the motivation behind several suggested changes in this Article that aim to improve the protection of data subjects against discrimination. In relation to this, the use of sensitive data in generating profiles should also be restricted.*

**Amendment 236**

**Antonio López-Istúriz White**

**Proposal for a regulation**

**Article 20 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

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

Or. es

**Amendment 237**  
**Sajjad Karim**

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

*Text proposed by the Commission*

*Amendment*

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

Or. en

*Justification*

*Deletion following proposed amendment to paragraph 1.*

**Amendment 238**  
**Eva Lichtenberger**  
on behalf of the Verts/ALE Group  
**Evelyn Regner, Françoise Castex**

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

*Text proposed by the Commission*

*Amendment*

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

**5. Within six months of the coming into force of this Regulation, the Commission shall** adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for suitable measures to safeguard the data **subjects'** legitimate interests referred to in paragraph 2. **The Commission shall consult representatives of data subjects and the Data Protection Board on its proposals before issuing them.**

Or. en

#### *Justification*

*Profiling can entail serious risks for data subjects. It is prone to reinforcing discriminations, making decisions less transparent and carries an unavoidable risk of wrong decisions. For these reasons, it should be tightly regulated: its use should be clearly limited, and in those cases where it can be used, there should be safeguards against discrimination and data subjects should be able to receive clear and meaningful information on the logic of the profiling and its consequences. While some circles see profiling as a panacea for many problems, it should be noted that there is a significant body of research addressing its limitations. Notably, profiling tends to be useless for very rare characteristics, due to the risk of false positives. Also, profiles can be hard or impossible to verify. Profiles are based on complex and dynamic algorithms that evolve constantly and that are hard to explain to data subjects. Often, these algorithms qualify as commercial secrets and will not be easily provided to data subjects. However, when natural persons are subject to profiling, they should be entitled to information about the logic used in the measure, as well as an explanation of the final decision if human intervention has been obtained. This helps to reduce intransparency, which could undermine trust in data processing and may lead to loss or trust in especially online services. There is also a serious risk of unreliable and (in effect) discriminatory profiles being widely used, in matters of real importance to individuals and groups, which is the motivation behind several suggested changes in this Article that aim to improve the protection of data subjects against discrimination. In relation to this, the use of sensitive data in generating profiles should also be restricted.*

#### **Amendment 239**

**Antonio López-Istúriz White**

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

**Article 22 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

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

Or. es

**Amendment 240**

**Antonio López-Istúriz White**

**Proposal for a regulation**

**Article 22 – paragraph 2 – introductory wording**

*Text proposed by the Commission*

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

*Amendment*

2. The measures provided for in paragraph 1 shall include, **in the cases and in accordance with the rules set out in this chapter**:

Or. es

**Amendment 241**

**Rebecca Taylor**

**Proposal for a regulation**

**Article 22 – paragraph 2 – introductory wording**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

*It is better to promote these measures as good practice, especially as otherwise this creates an unrealistic obligation from a regulatory perspective.*

**Amendment 242**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 22 – paragraph 2 – point e**

*Text proposed by the Commission*

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

*Amendment*

(e) designating a data protection officer pursuant to Article 35(1), ***or the obligation and maintenance of certification in accordance with the certification policies defined by the Commission.***

Or. es

**Amendment 243**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 22 – paragraph 4**

*Text proposed by the Commission*

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

*Amendment*

***deleted***

Or. es

**Amendment 244**  
**Antonio López-Istúriz White**

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

*Text proposed by the Commission*

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

*Amendment*

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

Or. es

**Amendment 245**  
**Sajjad Karim**

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

*Text proposed by the Commission*

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

*Amendment*

**1. *Where required, mandatory measures may be adopted to ensure that categories of goods or services are designed and have default settings meeting the requirements of this Regulation relating to the protection of individuals with regard to the processing of personal data. Such measures shall be based on standardisation pursuant to [Regulation .../2012 of the European Parliament and of the Council on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing***

**Decision 87/95/EEC and Decision No  
1673/2006/ECJ.**

Or. en

*Justification*

*This is part of a package of amendments aimed at recognising that, while data protection by design and default is a commendable concept, the Commission's proposal does not achieve sufficient certainty while creating a risk for possible restrictions on free movement. Therefore, the established mechanism of using standardisation, as compiled in the 'Standardisation Package', should be used to harmonise the applicable requirements and enabling free movement instead.*

**Amendment 246**

**Lidia Joanna Geringer de Oedenberg**

**Proposal for a regulation**

**Article 23 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

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

Or. pl

**Amendment 247**

**Antonio López-Istúriz White**

**Proposal for a regulation**

**Article 23 – paragraph 2**



*Text proposed by the Commission*

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

*Amendment*

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

Or. es

#### **Amendment 248**

**Sajjad Karim**

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

#### **Article 23 – paragraph 2**

*Text proposed by the Commission*

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

*Amendment*

***2. Until such time as mandatory measures have been adopted pursuant to paragraph 1, Member States shall ensure that no mandatory design or default requirements are imposed on goods or services relating to the protection of individuals with regard to the processing of personal data which could impede the placing of equipment on the market and the free circulation of such goods and services in and between Member States.***

Or. en

### *Justification*

*This is part of a package of amendments aimed at recognising that, while data protection by design and default is a commendable concept, the Commission's proposal does not achieve sufficient certainty while creating a risk for possible restrictions on free movement. Therefore, the established mechanism of using standardisation to harmonise the applicable requirements and enabling free movement should be used instead.*

#### **Amendment 249**

**Antonio López-Istúriz White**

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

**Article 23 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

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

Or. es

### *Justification*

*This provision is unnecessary. We support the general approach based on the principle of accountability, which should lead the authorities to focus chiefly on objectives and results rather than means. The objective sought in this provision can be achieved by compiling lists of best practice that can be made available to those involved, without any need for a strictly regulatory approach.*

#### **Amendment 250**

**Sajjad Karim**

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

**Article 23 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

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

Or. en

*Justification*

*This amendment is in accordance with the proposed change to Article 23 (1).*

**Amendment 251**

**Antonio López-Istúriz White**

**Proposal for a regulation**

**Article 23 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

**4. The Commission may lay down technical standards for the requirements laid down in paragraph 1 and 2. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).** *deleted*

Or. es

*Justification*

*See the justification to the previous paragraph.*

**Amendment 252**

**Sajjad Karim**

**Proposal for a regulation**  
**Article 23 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

**4. The Commission may lay down technical standards for the requirements laid down in paragraph 1 and 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).**

*deleted*

Or. en

*Justification*

*This amendment is in accordance with the proposed change to Article 23 (1).*

**Amendment 253**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 24**

*Text proposed by the Commission*

*Amendment*

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

Where a controller determines the purposes, conditions and means of the processing of personal data jointly with others, the joint controllers shall determine their respective responsibilities for compliance with the obligations under this Regulation, in particular as regards the procedures and mechanisms for exercising the rights of the data subject, by means of an arrangement between them. ***To ensure that data subjects may exercise their right to object to this arrangement, it must be documented and data subjects must have been notified in advance; otherwise, the above rights may be exercised in full in relation to any of the controllers, who shall be responsible for ensuring that the conditions laid down by law are fully complied with.***

**Amendment 254**  
**Marielle Gallo**

**Proposal for a regulation**  
**Article 24**

*Text proposed by the Commission*

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

*Amendment*

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

Or. fr

**Amendment 255**  
**Francesco Enrico Speroni**

**Proposal for a regulation**  
**Article 25 – paragraph 2 – point a**

*Text proposed by the Commission*

***a) a controller established in a third country where the Commission has decided that the third country ensures an adequate level of protection in accordance with Article 41; or***

*Amendment*

***deleted***

Or. it

**Amendment 256**  
**Francesco Enrico Speroni**

**Proposal for a regulation**  
**Article 25 – paragraph 2 – point b**

*Text proposed by the Commission*

*Amendment*

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

Or. it

**Amendment 257**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 25 – paragraph 2 – point b**

*Text proposed by the Commission*

*Amendment*

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

(b) an enterprise employing fewer than 250 persons, ***unless the processing carried out by that enterprise is considered high risk by the supervisory authorities, taking account of its characteristics, the type of data or the number of people affected;*** or

Or. es

**Amendment 258**  
**Francesco Enrico Speroni**

**Proposal for a regulation**  
**Article 25 – paragraph 2 – point d**

*Text proposed by the Commission*

*Amendment*

***d) a controller offering only occasionally goods or services to data subjects residing in the Union.***      *deleted*

Or. it

**Amendment 259**  
**Sajjad Karim**

**Proposal for a regulation**  
**Article 26 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

*Where, due to proper anonymization techniques, it is technically not feasible for the processor to identify a data subject, Article 26 shall not apply. The lessening of administrative burdens will incentivize investment in effective anonymisation technology and use of strong system of restricted access. The basic principle according to which primary and direct responsibility and liability for processing is incumbent upon the controller should be clearly stated in this Article.*

**Amendment 260**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 26 – paragraph 2 – introductory wording**

*Text proposed by the Commission*

*Amendment*

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

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

Or. es

**Amendment 261**  
**Sajjad Karim**

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

*Text proposed by the Commission*

*Amendment*

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

***deleted***

Or. en

*Justification*

*The requirement to obtain prior authorization from the controller for the processor to enlist sub-processors imposes burdens with no clear benefit in terms of enhanced data protection. Also, it is not workable particularly in the cloud context and especially if interpreted to require prior authorization to use specific sub-processors. This requirement should be removed.*

**Amendment 262**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 26 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

***3. The controller and the processor shall document in writing the controller's***

***deleted***



***instructions and the processor's obligations referred to in paragraph 2.***

Or. es

*Justification*

*The obligation for all instructions to be recorded in writing may represent a disproportionate burden, particularly if this obligation also includes instructions given within the framework of a contract after the contract has been signed. Operating instructions are generally given electronically and there is thus a perfectly good record of them. It seems reasonable that the contractual relationship between the controller and the processor should be documented in any form of which a record can be kept, and this procedure appears more appropriate than written form in a strict sense, which is more restricted.*

**Amendment 263**  
**Sajjad Karim**

**Proposal for a regulation**  
**Article 26 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. The controller is deemed to have fulfilled the obligations set out in paragraph 1 when choosing a processor who has voluntarily self-certified or voluntarily obtained a certification, seal or mark pursuant to Articles 38 or 39 of this Regulation showing the implementation of appropriate standard technical and organizational measures in response to the requirements set out in this Regulation.***

Or. en

*Justification*

*The Regulation should offer clear incentives to controllers and processors to invest in security and privacy enhancing measures. Where controllers and processors propose additional safeguards to protect data, which are in line with or go beyond accepted industry standards and who can demonstrate this via conclusive certificates they should benefit from less prescriptive requirements. In particular this would allow for flexibility and a reduced*

*burden for cloud providers and cloud customers*

**Amendment 264**

**Antonio López-Istúriz White**

**Proposal for a regulation**

**Article 26 – paragraph 4**

*Text proposed by the Commission*

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

*Amendment*

4. If a processor processes personal data other than as instructed by the controller, the processor shall be considered to be a controller in respect of that processing and shall be subject to the rules on joint controllers laid down in Article 24, ***without prejudice to the responsibility which the controller may have occurred in relation to compliance with their obligations.***

Or. es

*Justification*

*Competing responsibilities may arise in certain cases, and mention should be made of this possibility. Without prejudice to the possibility that excesses on the part of the processor may lead to that processor having a personal obligation and responsibility for the processing (ultra vires), the possible existence of negligence in vigilance should not be ruled out.*

**Amendment 265**

**Antonio López-Istúriz White**

**Proposal for a regulation**

**Article 26 – paragraph 5**

*Text proposed by the Commission*

***5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the responsibilities, duties and tasks in relation to a processor in line with paragraph 1, and conditions which allow***

*Amendment*

***deleted***

*facilitating the processing of personal data within a group of undertakings, in particular for the purposes of control and reporting.*

Or. es

*Justification*

*We consider the powers granted to the Commission here to be excessive. If these aspects are considered essential, they should be covered in the text of the Regulation itself.*

**Amendment 266**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 28 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

1. Each controller and processor and, if any, the controller's representative, shall ***ensure that they are in a position duly to inform the authorities which so request*** of all processing operations under its responsibility.

Or. es

**Amendment 267**  
**Sajjad Karim**

**Proposal for a regulation**  
**Article 28 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

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

*Justification*

*Effective data protection requires organisations to have a sufficiently documented understanding of their data processing activities, however the maintenance of documentation for all processing operations is disproportionately burdensome. Instead of satisfying bureaucratic needs, the aim of the documentation should be to help controllers and processors meet their obligations.*

**Amendment 268**  
**Rebecca Taylor**

**Proposal for a regulation**  
**Article 28 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. The obligation provided for in paragraph 1 shall not apply to SMEs who process data only as an activity ancillary to the sale of goods and services.***

*Justification*

*The application of the 'Think Small First' principle needs to apply here and consideration should be taken into account for SMEs on which this obligation would be a heavy burden. SMEs whose data processing activities do not represent more than 50% of the company's turnover is to be considered ancillary.*

**Amendment 269**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 28 – paragraph 2 – introductory wording**

*Text proposed by the Commission*

*Amendment*

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

***2. Enterprises or organisations which do not have a data protection officer or sufficient valid certification shall hold the***

**statutory model documentation for all processing operations under their responsibility. This documentation shall contain at least the following information:**

Or. es

*Justification*

*Stricter accountability criteria need to be established for organisations which do not have a data protection officer or sufficient certification, which means that a specific model should be drawn up and a minimum amount of documentation should be maintained in the form required by law.*

**Amendment 270**

**Sajjad Karim**

**Proposal for a regulation**

**Article 28 – paragraph 2 – introductory wording**

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

*Justification*

*This change follows the amendments to Recital 65 and Article 28(1).*

**Amendment 271**

**Antonio López-Istúriz White**

**Proposal for a regulation**

**Article 28 – paragraph 2 – point b**

*Text proposed by the Commission*

*Amendment*

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

***deleted***

**Amendment 272**  
**Sajjad Karim**

**Proposal for a regulation**  
**Article 28 – paragraph 2 – point c**

*Text proposed by the Commission*

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

*Amendment*

(c) the **generic** purposes of processing;

Or. en

*Justification*

*This amendment helps to reduce administrative burdens on both data controllers and data processors.*

**Amendment 273**  
**Sajjad Karim**

**Proposal for a regulation**  
**Article 28 – paragraph 2 – point f**

*Text proposed by the Commission*

(f) where applicable, transfers of data to a third country or an international organisation, *including the identification of that third country or international organisation and*, in case of transfers referred to in point (h) of Article 44(1), *the documentation of appropriate* safeguards;

*Amendment*

(f) where applicable, transfers of **personal** data to a third country or an international organisation **and** in case of transfers referred to in point (h) of Article 44(1), **a reference to the** safeguards **employed**;

Or. en

*Justification*

*This amendment helps to reduce administrative burdens on both data controllers and data*

*processors.*

**Amendment 274**

**Antonio López-Istúriz White**

**Proposal for a regulation**

**Article 28 – paragraph 2 – point g**

*Text proposed by the Commission*

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

*Amendment*

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

Or. es

*Justification*

*Bearing in mind the specific bureaucratic requirements contained elsewhere in the Regulation and the views expressed thereon, it would be consistent to provide for a degree of flexibility in the time limits for erasure of data stipulated in Article 28(2)(g), since there are many cases of processing in which this information cannot always be supplied, or can be supplied only in a very generic form.*

**Amendment 275**

**Francesco Enrico Speroni**

**Proposal for a regulation**

**Article 28 – paragraph 4**

*Text proposed by the Commission*

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

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

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

*Amendment*

***deleted***

Or. it

**Amendment 276**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 28 – paragraph 4 – introductory wording**

*Text proposed by the Commission*

*Amendment*

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

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

Or. es

*Justification*

*Paragraph 4 provides an exemption from the documentation requirement laid down in paragraph 2, leaving only enterprises or organisations that are processing personal data as their main activity. Such enterprises and organisations will have the three options considered above: an officer, certification or the legally stipulated documentation.*

**Amendment 277**  
**Antonio López-Istúriz White**

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

*Text proposed by the Commission*

*Amendment*

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

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

Or. es



**Amendment 278**  
**Antonio López-Istúriz White**

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

*Text proposed by the Commission*

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

*Amendment*

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

Or. es

**Amendment 279**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 29 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

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

Or. es

*Justification*

*The wording of the first paragraph should make it clear that, unlike the controller, the processor will be called on where appropriate and not as a general rule.*

**Amendment 280**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 29 – paragraph 2**

*Text proposed by the Commission*

2. In response to the supervisory authority's exercise of its powers under Article 53(2), the controller and the processor shall reply to the supervisory authority within a reasonable period to be specified by the supervisory authority. The reply shall include a description of the measures taken and the results achieved, in response to the remarks of the supervisory authority.

*Amendment*

In response to the supervisory authority's exercise of its powers under Article 53(2), the controller, ***either in person or through his representative*** and the processor shall reply to the supervisory authority within a reasonable period to be specified by the supervisory authority. The reply shall include a description of the measures taken and the results achieved, in response to the remarks of the supervisory authority.

Or. es

*Justification*

*The second paragraph makes no reference to representatives in the case of controllers not established in the Union.*

**Amendment 281**  
**Antonio López-Istúriz White**

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

*Text proposed by the Commission*

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

*Amendment*

***deleted***

***for privacy by design and data protection  
by default, unless paragraph 4 applies.***

Or. es

*Justification*

*In terms of security, it is enough to set clear objectives and, in the light of this, evaluate the results obtained and adopt enforcement measures where necessary. To this end, those concerned must be given adequate margin for manoeuvre in deciding what security measures to adopt in accordance with the specific characteristics of each sector and subsector, without the need for more detailed rules in the form of delegated acts.*

**Amendment 282**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 30 – paragraph 4 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

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

***deleted***

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

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

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

Or. es

*Justification*

*See previous justification.*

**Amendment 283**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 31 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

1. In the case of a personal data breach **such as to constitute a serious risk to personal data privacy**, the controller shall without undue delay notify the personal data breach to the supervisory authority.

Or. es

*Justification*

*It does not seem reasonable to require notification and documentation for every incident relating to security but only those resulting in a serious risk to personal data privacy. An excessive number of notifications, including those relating to minor breaches of no consequence, could actually blunt the effectiveness of the supervisory authorities in monitoring and targeting such incidents. A 24-hour deadline may in many cases be impracticable. The important thing is to ensure reasonably prompt action.*

**Amendment 284**  
**Sajjad Karim**

**Proposal for a regulation**  
**Article 31 – paragraph 1**

*Text proposed by the Commission*

1. In the case of a personal data breach, the controller shall without undue delay **and, where feasible, not later than 24 hours after having become aware of it**, notify the personal data breach to the supervisory authority. **The notification to the**

*Amendment*

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

***supervisory authority shall be accompanied by a reasoned justification in cases where it is not made within 24 hours.***

Or. en

*Justification*

*The proposed timeframe of 24 hours to notify the supervisory authority does not leave enough time for the controller to fully assess the impact and the consequences of the breach and identify the best mitigating plan. Therefore it is more appropriate to utilise the language of Directive 2009/136/EC in regards to data breach notification.*

**Amendment 285**

**Eva Lichtenberger**

on behalf of the Verts/ALE Group

**Evelyn Regner, Françoise Castex**

**Proposal for a regulation**

**Article 31 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

1. In the case of a personal data breach, the controller shall without undue delay and, where feasible, not later than **72** hours after having become aware of it, notify the personal data breach to the supervisory authority. The notification to the supervisory authority shall be accompanied by a reasoned justification in cases where it is not made within **72** hours.

Or. en

*Justification*

*Data breach notifications are an important tool for ensuring that controllers live up to their obligations on data security. They also empower data subjects to take steps to protect themselves against the consequences of breaches. This package of amendments aims at improving the provisions on data breaches by making the time limits for notification more manageable for controllers, preventing data subjects from developing "breach fatigue", and creating a public register of breaches.*

**Amendment 286**  
**Françoise Castex**

**Proposal for a regulation**  
**Article 31 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

1. In the case of a personal data breach, the controller shall without undue delay and, where feasible, not later than **72** hours after having become aware of it, notify the personal data breach to the supervisory authority. The notification to the supervisory authority shall be accompanied by a reasoned justification in cases where it is not made within **72** hours.

Or. en

**Amendment 287**  
**Lidia Joanna Geringer de Oedenberg**

**Proposal for a regulation**  
**Article 31 – paragraph 1 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***Cases in which it is probable that a breach of personal data protection will have a negative impact on the data subject's privacy shall be deemed serious breaches.***

Or. pl

**Amendment 288**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 31 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

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

2. Pursuant to point (f) of Article 26(2), the processor shall alert and inform the controller immediately after the establishment of a personal data breach ***referred to in paragraph 1.***

Or. es

**Amendment 289**

**Lidia Joanna Geringer de Oedenberg**

**Proposal for a regulation**

**Article 31 – paragraph 2 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

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

Or. pl

**Amendment 290**

**Antonio López-Istúriz White**

**Proposal for a regulation**

**Article 31 – paragraph 3 – introductory wording**

*Text proposed by the Commission*

*Amendment*

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

3. The notification ***must contain the details necessary to enable the supervisory authority to assess the gravity of the incidents and their consequences and, if***

*necessary recommend that action be taken, that is to say:*

Or. es

*Justification*

*It is not necessary to specify in detail the content of notifications, since this could in practice lead to over-refinement, given the particularities of the various sectors. It should be sufficient to require that the information given to the supervisory authority is sufficiently detailed to enable it accurately to assess the nature of the incident and the consequences thereof. Hence, the notification should contain the following essential information: the nature of the incidents, their actual or anticipated consequences and the measures taken or to be taken.*

**Amendment 291**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 31 – paragraph 4**

*Text proposed by the Commission*

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

*Amendment*

4. The controller shall document any personal data breaches ***referred to in paragraph 1 of this article***, comprising the facts surrounding the breach, its effects and the remedial action taken. ***Without prejudice to the above, the controller or, where appropriate the processor, shall keep records of previous breaches and their consequences not referred to in paragraph 1 but relating to the use of personal data, and make them available to the supervisory authorities, who may wish to receive copies thereof on a regular basis.***

Or. es

*Justification*

*Minor security breaches may undeniably occur. While these may pose no threat to data*



*privacy, it is nevertheless important to identify and record them for the purposes of preventing any recurrence thereof. Minor breaches of personal data security should accordingly be registered and the supervisory authorities given access to these records.*

**Amendment 292**

**Lidia Joanna Geringer de Oedenberg**

**Proposal for a regulation**

**Article 31 – paragraph 4 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***The supervisory authority shall maintain a public register of reported breaches.***

Or. pl

**Amendment 293**

**Antonio López-Istúriz White**

**Proposal for a regulation**

**Article 31 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

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

Or. es

*Justification*

*Delegated acts adopted by the Commission should in this case be limited to establishing a standard format for incident notification and the recording of previous breaches and their*

*consequences.*

**Amendment 294**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 31 – paragraph 6**

*Text proposed by the Commission*

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

*Amendment*

6. The Commission may lay down the standard format of *notifications* to the supervisory authority, *in accordance with paragraph 3, and of the register of breaches and their consequences*. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).

Or. es

**Amendment 295**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 32 – paragraph 4 – subparagraph 1 a**

*Text proposed by the Commission*

*Amendment*

*Those concerned shall not be notified in cases where this could clearly obstruct current investigations or hinder or delay measures to resolve the security breach. More detailed provision for such eventualities may be made under EU law and Member State legislation, the objective being at all times to uphold the public interest and comply with the spirit of data protection law.*

*Justification*

*It is, in our opinion, necessary to provide for some sort of safeguard in cases where notification of any those concerned could compromise investigation of the security breach and/or resolution of the problem. We accordingly propose a new paragraph, following the fourth paragraph, specifying the nature of such exceptions.*

**Amendment 296****Antonio López-Istúriz White****Proposal for a regulation****Article 32 – paragraph 5***Text proposed by the Commission**Amendment*

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

*Justification*

*Paragraph 5 should be deleted since, in our opinion, the powers conferred on the Commission exceed the scope of delegated acts. Moreover, further specification of the relevant criteria is not necessary under Article 32, since the correct interpretation thereof must be a matter for the supervisory authority and, in the final analysis, the courts.*

**Amendment 297****Antonio López-Istúriz White****Proposal for a regulation****Article 33 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

1. Where processing operations present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, the controller or the processor acting on the controller's behalf, ***if they have not recruited a data protection officer for their organisation or obtained adequate and valid certification for the processing of high-risk data***, shall carry out an assessment of the impact of the envisaged processing operations on the protection of personal data.

Or. es

**Amendment 298**

**Sajjad Karim**

**Proposal for a regulation**

**Article 33 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

1. Where processing operations present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, the controller or the processor acting on the controller's behalf shall carry out an assessment of the impact of the envisaged processing operations on the protection of personal data, ***unless the activities concerned do not present a risk to the privacy of the data subject***.

Or. en

*Justification*

*Making impact assessments optional removes undue obligations on data controllers and processors whose activities do not present a risk to the privacy of the data subject. This*

*provision works in conjunction with amendments to Article 79, with the choice to have an impact assessment being one of the factors to be taken into consideration when deciding upon administrative sanctions.*

## **Amendment 299**

**Sajjad Karim**

### **Proposal for a regulation**

#### **Article 33 – paragraph 5**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

*It should be the nature of the service provided, not the nature of the body providing that service which determines whether data impact assessment rules apply. For example private organisations are often entrusted with the responsibility to provide public services. There should be one single approach in the delivery of public services regardless of whether the body delivering that service is a public authority or body, or a contracted private organisation.*

## **Amendment 300**

**Antonio López-Istúriz White**

### **Proposal for a regulation**

#### **Article 33 – paragraph 6**

*Text proposed by the Commission*

*Amendment*

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

*deleted*

Or. es

*Justification*

*Delegated acts are not justified here, since they would be concerned with basic aspects of the rule itself, which should, in our opinion, contain provisions specifically establishing its scope.*

#### **Amendment 301**

**Antonio López-Istúriz White**

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

#### **Article 34 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

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

1. The controller or the processor as the case may be shall, ***if they have not recruited a data protection officer for their organisation or obtained or adequate and valid certification for the processing of high-risk data***, obtain an authorisation from the supervisory authority prior to the processing of personal data, in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where a controller or

as referred to in Article 42(5) for the transfer of personal data to a third country or an international organisation.

processor adopts contractual clauses as provided for in point (d) of Article 42(2) or does not provide for the appropriate safeguards in a legally binding instrument as referred to in Article 42(5) for the transfer of personal data to a third country or an international organisation.

Or. es

#### *Justification*

*The issues at stake should be dealt with in the context of international data transfers, given that not all companies will be in a position to include a data protection officer on their staff and it is necessary to seek alternative solutions to ensure that organisations with fewer resources are not overloaded with bureaucratic requirements.*

#### **Amendment 302**

**Antonio López-Istúriz White**

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

#### **Article 34 – paragraph 2 – introductory wording**

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

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

##### *Amendment*

2. The controller or processor acting on the controller's behalf shall, ***if they have not recruited a data protection officer for their organisation or obtained or adequate and valid certification for the processing of high-risk data***, consult the supervisory authority prior to the processing of personal data in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where:

Or. es

#### *Justification*

*See previous paragraph.*

**Amendment 303**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 34 – paragraph 7**

*Text proposed by the Commission*

*Amendment*

**7. Member States shall consult the supervisory authority in the preparation of a legislative measure to be adopted by the national parliament or of a measure based on such a legislative measure, which defines the nature of the processing, in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects.**

**deleted**

Or. es

*Justification*

*While we welcome the inclusion in the legislative process of consultations regarding the nature and suitability of the projected measures, we do not consider an EU regulation to be a suitable instrument for provisions of this nature affecting legislative procedures in the Member States.*

**Amendment 304**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 35 – paragraph 1 – introductory wording**

*Text proposed by the Commission*

*Amendment*

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

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

Or. es



**Amendment 305**  
**Sajjad Karim**

**Proposal for a regulation**  
**Article 35 – paragraph 1 – introductory wording**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

*The appointment of a DPO should not be encouraged but not mandatory, to ensure this would generate disproportionate financial and administrative obligations on organisations whose activities do not present a substantial risk to the privacy of the data subject. This AM is linked to ECR AMs to Article 79, which ensure DPAs take into consideration the presence, or lack of, a DPO when deciding upon administrative sanctions and empowers DPAs to appoint DPOs as form of administrative sanction.*

**Amendment 306**  
**Evelyn Regner**

**Proposal for a regulation**  
**Article 35 – paragraph 1 – introductory wording**

*Text proposed by the Commission*

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

*Amendment*

1. The controller and the processor shall, **with the consent of the workplace representation**, designate a data protection officer in any case where:

Or. de

**Amendment 307**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 35 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

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

Or. es

*Justification*

*The position of data protection officer should be an option rather than a mandatory requirement and should be encouraged by means of incentives basically consisting in a reduction in bureaucratic burdens and more flexible procedures and formalities, there being nothing, in our opinion, to prevent Member States, acting within their powers and as part of their public policy, from offering or providing for additional types of incentive.*

**Amendment 308**

**Rebecca Taylor**

**Proposal for a regulation**

**Article 35 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

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

Or. en

**Amendment 309**

**Antonio López-Istúriz White**

**Proposal for a regulation**

**Article 35 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

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

**Amendment 310**  
**Francesco Enrico Speroni**

**Proposal for a regulation**  
**Article 35 – paragraph 1 – point b**

*Text proposed by the Commission*

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

*Amendment*

b) the processing is carried out by an enterprise employing **50** persons or more;

Or. it

**Amendment 311**  
**Evelyn Regner**

**Proposal for a regulation**  
**Article 35 – paragraph 1 – point b**

*Text proposed by the Commission*

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

*Amendment*

b) the processing is carried out by an enterprise *processing the personal data of more than 20* persons;

Or. de

**Amendment 312**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 35 – paragraph 1 – point c**

*Text proposed by the Commission*

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

*Amendment*

*deleted*

*of data subjects.*

Or. es

**Amendment 313**

**Rebecca Taylor**

**Proposal for a regulation**

**Article 35 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. SME controllers and processors shall designate a data protection officer only where the SMEs' core activities consist of data processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects.***

Or. en

*Justification*

*The appointment of a data protection officer should not be linked to the number of employees but should be a risk based approach focusing on the processing activities, as well as the number of data subjects whose data the organisation processes.*

**Amendment 314**

**Antonio López-Istúriz White**

**Proposal for a regulation**

**Article 35 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

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

**2. A group of undertakings may appoint a single data protection officer.**

Or. es

**Amendment 315**  
**Evelyn Regner**

**Proposal for a regulation**  
**Article 35 – paragraph 2 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1 a. If the undertakings in this group are located in more than one Member State, a data protection officer shall be appointed in each of these Member States where the conditions set out in paragraph 1(b) and (c) are met.***

Or. de

**Amendment 316**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 35 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

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

4. The controller or processor or associations and other bodies representing categories of controllers or processors may designate a data protection officer.

Or. es

**Amendment 317**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 35 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

5. The controller or processor shall designate the data protection officer on the basis of professional qualities and, in

5. The controller or processor shall designate the data protection officer on the basis of professional qualities and, in

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

particular, expert knowledge of data protection law and practices and ability to fulfil the tasks referred to in Article 37, **in accordance with strict professional standards**. The necessary level of expert knowledge shall be determined in particular according to the data processing carried out and the protection required for the personal data processed by the controller or the processor.

Or. es

#### *Justification*

*While it is true that the data protection officer must act in accordance with strict professional standards (amendment to paragraph 5), by the same token one of the reasons justifying dismissal must be serious failure to do so (see amendment to paragraph 7).*

#### **Amendment 318** **Antonio López-Istúriz White**

#### **Proposal for a regulation** **Article 35 – paragraph 7**

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

**7. The controller or the processor shall designate a data protection officer for a period of at least two years. The data protection officer may be reappointed for further terms.** During their term of office, the data protection officer may only be dismissed, if the data protection officer no longer fulfils the conditions required for the performance of their duties.

##### *Amendment*

7. During their term of office, the data protection officer may only be dismissed, if the data protection officer no longer fulfils the conditions required for the performance of their duties **or for serious failure in this connection.**

Or. es

#### *Justification*

*This safeguard could, in our opinion, undermine freedom of public service contracting and detract from market competition. The stipulated period could run counter to certain labour law provisions or public service statutes, thereby giving rise to problems. Safeguards and*

*guarantees regarding the position of data protection officer should accordingly be sought through channels other than a statutory minimum period of employment.*

**Amendment 319**

**Antonio López-Istúriz White**

**Proposal for a regulation**

**Article 35 – paragraph 11**

*Text proposed by the Commission*

*Amendment*

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

***deleted***

Or. es

**Amendment 320**

**Antonio López-Istúriz White**

**Proposal for a regulation**

**Article 36 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

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

**2. The controller or processor shall ensure that the data protection officer performs the duties and tasks *in accordance with the provisions of this Regulation, without being able to* receive instructions *affecting the functions specifically relating to his post*. The data protection officer shall directly report to the management of the controller or the processor.**

*Justification*

*While the data protection officer is, on the one hand, bound by institutional requirements, he is, on the other, legally required to act objectively and in accordance with the Regulation, helping to ensure that it is correctly implemented. However this does not mean that he may go so far as to act completely without regard for, or even contrary to, the aims and objectives of the organisation.*

**Amendment 321****Antonio López-Istúriz White****Proposal for a regulation****Article 36 – paragraph 3***Text proposed by the Commission*

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

*Amendment*

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

*Justification*

*The wording of this article, in our opinion, relates fundamentally to data protection officers as employees or servants of the company or institution concerned, while failing to allow properly for the outsourcing in the form of service contracts.*

**Amendment 322****Antonio López-Istúriz White****Proposal for a regulation****Article 37 – paragraph 1 – point a**



*Text proposed by the Commission*

*Amendment*

(a) to inform and advise the controller or the processor of their obligations pursuant to this Regulation ***and to document this activity and the responses received;***

(a) to inform and advise the controller or the processor of their obligations pursuant to this Regulation ;

Or. es

**Amendment 323**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 37 – paragraph 1 – point d**

*Text proposed by the Commission*

*Amendment*

***(d) to ensure that the documentation referred to in Article 28 is maintained;***

***deleted***

Or. es

**Amendment 324**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 37 – paragraph 1 – point f**

*Text proposed by the Commission*

*Amendment*

***f) to monitor the performance of the data protection impact assessment by the controller or processor and the application for prior authorisation or prior consultation, if required pursuant Articles 33 and 34;***

***deleted***

Or. es

**Amendment 325**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 37 – paragraph 2**

*Text proposed by the Commission*

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for **tasks**, certification, status, **powers and resources** of the data protection officer **referred to in paragraph 1**.

*Amendment*

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for **the certification and** status of the data protection officer.

Or. es

*Justification*

*The Commission's work should be focused here on the certification and status of the data protection officer so that such positions, when they exist, are filled by people with the necessary skills and protected by the appropriate guarantees.*

**Amendment 326**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 38 – paragraph 1 – introductory wording**

*Text proposed by the Commission*

1. The Member States, the supervisory authorities and the Commission shall encourage the drawing up of codes of conduct intended to contribute to the proper application of this Regulation, taking account of the specific features of the various data processing sectors, in particular in relation to:

*Amendment*

1. The Member States, the supervisory authorities and the Commission shall encourage **participation in** the drawing up of codes of conduct intended to contribute to the proper application of this Regulation, taking account of the specific features of the various data processing sectors, in particular in relation to:

Or. es

**Amendment 327**  
**Francesco Enrico Speroni**

**Proposal for a regulation**  
**Article 38 – paragraph 1 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

***aa) respect for consumer rights;***

Or. it

**Amendment 328**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 38 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

***4. The Commission may adopt implementing acts for deciding that the codes of conduct and amendments or extensions to existing codes of conduct submitted to it pursuant to paragraph 3 have general validity within the Union. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).***

***deleted***

Or. es

**Amendment 329**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 38 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

***5. The Commission shall ensure appropriate publicity for the codes which have been decided as having general validity in accordance with paragraph 4.***

***deleted***

Or. es

**Amendment 330**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 39 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

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

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

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

Or. es

### *Justification*

*Certification should be linked by a rigorous capacity building procedure which must be given a life of its own life and be upgradable. Certificates should thus be subject to renewal and upgrading in specific cases and it should be possible to annul them in the event of serious violations. This should lead to the immediate loss of the benefits they may confer.*

#### **Amendment 331**

**Antonio López-Istúriz White**

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

#### **Article 41 – paragraph 1**

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

1. A transfer may take place where the Commission has decided that the third country, or a territory or a processing sector within that third country, or the international organisation in question ensures an adequate level of protection. Such transfer shall not require any **further** authorisation.

##### *Amendment*

1. A transfer may take place where the Commission has decided that the third country, or a territory or a processing sector within that third country, or the international organisation in question ensures an adequate level of protection. Such transfer shall not require any **specific** authorisation.

Or. es

### *Justification*

*By using the expression 'further authorisation', paragraph 1 of this Article seems to indicate that initial authorisation for the transfer is needed even if an adequacy decision exists. We do not think so. Adequacy decisions are specifically intended to make it possible to carry out transfers without any specific prior authorisation. We therefore propose to amend the wording by replacing 'further authorisation' with 'specific authorisation'.*

#### **Amendment 332**

**Antonio López-Istúriz White**

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

#### **Article 41 – paragraph 2 – point a**

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

a) the rule of law, relevant legislation in force, both general and sectoral, including

##### *Amendment*

a) the **level of penetration and consolidation of the** rule of law, relevant

concerning public security, defence, national security and criminal law, the professional rules and security measures which are complied with in that country or by that international organisation, as well as **effective and enforceable** rights including **effective** administrative and judicial **redress for data subjects**, in particular for those data subjects residing in the Union whose personal data are being transferred;

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

Or. es

**Amendment 333**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 41 – paragraph 6**

*Text proposed by the Commission*

6. Where the Commission decides pursuant to paragraph 5, any transfer of personal data to the third country, or a territory or a processing sector within that third country, or the international organisation in question shall be **prohibited, without prejudice to** Articles 42 to 44. At the appropriate time, the Commission shall enter into consultations with the third country or international organisation with a view to remedying the situation resulting from the Decision made pursuant to paragraph 5 of this Article.

*Amendment*

6. Where the Commission decides pursuant to paragraph 5, any transfer of personal data to the third country, or a territory or a processing sector within that third country, or the international organisation in question shall be **restricted under the terms of** Articles 42 to 44. At the appropriate time, the Commission shall enter into consultations with the third country or international organisation with a view to remedying the situation resulting from the Decision made pursuant to paragraph 5 of this Article.

Or. es

*Justification*

*The term ‘restricted’ should be used instead of ‘prohibited’.*

**Amendment 334**  
**Sajjad Karim**

**Proposal for a regulation**  
**Article 42 – paragraph 1**

*Text proposed by the Commission*

1. Where the Commission has taken no decision pursuant to Article 41, a controller or processor may transfer personal data to a third country or an international organisation only if the controller or processor has adduced appropriate safeguards with respect to the protection of personal data in a legally binding instrument.

*Amendment*

1. Where the Commission has taken no decision pursuant to Article 41, a controller or processor may transfer personal data to a third country or an international organisation only if the controller or processor has adduced appropriate safeguards with respect to the protection of personal data in a legally binding instrument, ***and where appropriate pursuant to an impact assessment, where the controller or processor has ensured that the recipient of data in a third country maintains high standards of data protection.***

Or. en

*Justification*

*In accordance with ECR Amendments aiming to incentivise controllers to have high standards of data protection by encouraging them to undertake an impact assessment, on an optional basis.*

**Amendment 335**  
**Sajjad Karim**

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

*Text proposed by the Commission*

*Amendment*

***(ca) by encouraging controllers to undertake an impact assessment, on an optional basis.***

*Justification*

*The Parliament's policy department study on reforming the data protection package points out that under the proposed Regulation, standard clauses do not extend to agreements between processors and sub-processors. This gap could significantly disadvantage EU firms and new technology start-ups. This amendment seeks to close this gap.*

**Amendment 336****Antonio López-Istúriz White****Proposal for a regulation****Article 42 – paragraph 2 – point d***Text proposed by the Commission*

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

*Amendment*

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

Or. es

**Amendment 337****Antonio López-Istúriz White****Proposal for a regulation****Article 42 – paragraph 4***Text proposed by the Commission*

4. Where a transfer is based on contractual clauses as referred to in point (d) of paragraph 2 of this Article the controller or processor shall obtain prior authorisation of the contractual clauses according to point (a) of Article 34(1) from the supervisory authority. If the transfer is related to processing activities which concern data subjects in another Member State or other Member States, or substantially affect the free movement of personal data within the Union, the supervisory authority shall

*Amendment*

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



apply the consistency mechanism referred to in Article 57.

Member States, or substantially affect the free movement of personal data within the Union, the supervisory authority shall apply the consistency mechanism referred to in Article 57.

Or. es

### *Justification*

*As far as we understand, the prior authorisations provided for in paragraphs 4 and 5 can be replaced by action by the data protection officer, where there is one, or the existence of sufficient and applicable certification issued in the context of the certification policy in Article 39.*

### **Amendment 338**

**Antonio López-Istúriz White**

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

#### **Article 42 – paragraph 5**

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

5. Where the appropriate safeguards with respect to the protection of personal data are not provided for in a legally binding instrument, the controller or processor shall obtain prior authorisation for the transfer, or a set of transfers, or for provisions to be inserted into administrative arrangements providing the basis for such transfer. Such authorisation by the supervisory authority shall be in accordance with point (a) of Article 34(1). If the transfer is related to processing activities which concern data subjects in another Member State or other Member States, or substantially affect the free movement of personal data within the Union, the supervisory authority shall apply the consistency mechanism referred to in Article 57. Authorisations by a supervisory authority on the basis of Article 26(2) of Directive 95/46/EC shall remain valid, until amended, replaced or repealed by that supervisory authority.

##### *Amendment*

5. Where the appropriate safeguards with respect to the protection of personal data are not provided for in a legally binding instrument ***and no data protection officer has been designated and no sufficient or applicable official certification is available***, the controller or processor shall obtain prior authorisation for the transfer, or a set of transfers, or for provisions to be inserted into administrative arrangements providing the basis for such transfer. Such authorisation by the supervisory authority shall be in accordance with point (a) of Article 34(1). If the transfer is related to processing activities which concern data subjects in another Member State or other Member States, or substantially affect the free movement of personal data within the Union, the supervisory authority shall apply the consistency mechanism referred to in Article 57. Authorisations by a supervisory authority on the basis of

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

Or. es

*Justification*

*See previous amendment.*

**Amendment 339**  
**Evelyn Regner**

**Proposal for a regulation**  
**Article 43 – paragraph 1 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

***b a) were drawn up by the group of undertakings with the agreement of the workplace representation and the data protection officer at the location of the branch concerned;***

Or. de

**Amendment 340**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 43 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

4. The Commission may specify the format and procedures for the exchange of information ***by electronic means*** between controllers, processors and supervisory authorities for binding corporate rules within the meaning of this Article. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).

4. The Commission may specify the format and procedures for the exchange of information between controllers, processors and supervisory authorities for binding corporate rules within the meaning of this Article. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).

*Justification*

*The term 'by electronic means' should be removed on the basis of the principle of technological neutrality which we feel should underpin this Regulation.*

**Amendment 341**  
**Arlene McCarthy**

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

*Text proposed by the Commission*

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

*Amendment*

(d) the transfer is necessary for important grounds of public interest ***for example in cases of international data transfers between competition authorities, tax or customs administrations, financial supervisory authorities, between services competent for social security matters, or to competent authorities for the prevention, investigation, detection and prosecution of criminal offences;*** or

Or. en

**Amendment 342**  
**Antonio López-Istúriz White**

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

*Text proposed by the Commission*

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

*Amendment*

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

Or. es

*Justification*

*It seems appropriate to also include administrative procedures, as these are in many cases the initial means of exercising or defending individual rights.*

**Amendment 343**

**Antonio López-Istúriz White**

**Proposal for a regulation**

**Article 44 – paragraph 6**

*Text proposed by the Commission*

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

*Amendment*

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

Or. es

*Justification*

*Consistent to our position, we understand in paragraph 6 that the documentation requirements as per Article 28 will apply when they match those of the amendment we proposed for that provision, i.e. when there is no data protection officer or sufficiently applicable certification. In other cases, the general accountability principle in Article 28.1 shall apply.*

**Amendment 344**

**Antonio López-Istúriz White**

**Proposal for a regulation**

**Article 44 – paragraph 7**

*Text proposed by the Commission*

***7. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying 'important grounds of public***

*Amendment*

***deleted***

*interest' within the meaning of point (d) of paragraph 1 as well as the criteria and requirements for appropriate safeguards referred to in point (h) of paragraph 1.*

Or. es

*Justification*

*The delegated acts provided for in paragraph 7 seem excessive to us, as they relate to key aspects of the rule rather than just developing it. If there is considered to be a need to supplement key aspects of the rules contained in this Article, this should be done in the provision itself.*

**Amendment 345**

**Eva Lichtenberger**

on behalf of the Verts/ALE Group

**Evelyn Regner, Françoise Castex**

**Proposal for a regulation**

**Article 44 a (new)**

*Text proposed by the Commission*

*Amendment*

*Article 44a*

*Disclosures not authorised by Union law*

*1. No judgment of a court or tribunal and no decision of an administrative authority of a third country requiring a controller or processor to disclose personal data shall be recognised or be enforceable in any manner, without prejudice to a mutual assistance treaty or an international agreement in force between the requesting third country and the Union or a Member State.*

*2. Where a judgment of a court or tribunal or a decision of an administrative authority of a third country requests a controller or processor to disclose personal data, the controller or processor and, if any, the controller's representative, shall notify the supervisory authority of the request without undue delay and must*

*obtain prior authorisation for the transfer by the supervisory authority in accordance with point (d) of Article 34(1).*

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

*4. The supervisory authority shall inform the competent national authority of the request. The controller or processor shall also inform the data subject of the request and of the authorisation by the supervisory authority.*

*5. The Commission may lay down the standard format of the notifications to the supervisory authority referred to in paragraph 2 and the information of the data subject referred to in paragraph 4 as well as the procedures applicable to the notification and information. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).*

Or. en

#### *Justification*

*The text of this amendment comes from a leaked interservice consultation draft. It protects against third countries wanting to enforce their laws extra-territorially. This protection is needed because some third countries have laws forcing controllers to disclose personal data without proper safeguards. Third-country authorities may only have access to personal data held by European controllers through the procedures for mutual legal assistance.*

**Amendment 346**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 45 – paragraph 2 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

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

Or. es

*Justification*

*The text suggested here is intended to supplement the establishment of conditions under which such agreements and activities may be carried out. The suggested model is taken from that established for cooperation by the competent authorities in the field of auditing in Directive 2006/43/EC of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC.*

**Amendment 347**

**Antonio López-Istúriz White**

**Proposal for a regulation**

**Article 45 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Cooperation may take place provided that:***

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

***(b) there are working arrangements on the basis of reciprocity agreed between the competent authorities concerned,***

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

Or. es

## *Justification*

*The text suggested here is intended to supplement the establishment of conditions under which such agreements and activities may be carried out. The suggested model is taken from that established for cooperation by the competent authorities in the field of auditing in Directive 2006/43/EC of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC.*

### **Amendment 348**

**Antonio López-Istúriz White**

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

**Article 45 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***2b. The working arrangements referred to in paragraph 2a, point (b), shall ensure that:***

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

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

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

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

***the prevention, investigation or***



*prosecution of criminal offences,  
the monitoring, inspection or regulation  
connected, even occasionally, with the  
exercise of official authority within the  
scope of the agreement.*

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

*(e) the appropriate technical and  
organisational security measures are  
adopted to protect personal data against  
accidental or unlawful destruction,  
accidental loss, alteration, unauthorised  
disclosure or access, and against all other  
unlawful forms of processing personal  
data;*

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

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

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

Or. es

#### *Justification*

*The text suggested here is intended to supplement the establishment of conditions under which such agreements and activities may be carried out. The suggested model is taken from that established for cooperation by the competent authorities in the field of auditing in Directive 2006/43/EC of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC.*

**Amendment 349**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 45 – paragraph 2 c (new)**

*Text proposed by the Commission*

*Amendment*

**2c. Member States shall communicate to the Commission the working arrangements referred to in paragraphs 2a and 2b.**

Or. es

*Justification*

*The text suggested here is intended to supplement the establishment of conditions under which such agreements and activities may be carried out. The suggested model is taken from that established for cooperation by the competent authorities in the field of auditing in Directive 2006/43/EC of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC.*

**Amendment 350**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 47 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

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

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

Or. es

**Amendment 351**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 47 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. The members of the supervisory **authority** shall, in the performance of their

2. The members of the supervisory **authorities** shall, in the performance of

duties, neither seek nor take instructions from anybody.

their duties, neither seek nor take instructions from anybody.

Or. es

**Amendment 352**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 47 – paragraph 5**

*Text proposed by the Commission*

5. Each Member State shall ensure that the supervisory **authority is** provided with the adequate human, technical and financial resources, premises and infrastructure necessary for the effective performance of its duties and powers, including those to be carried out in the context of mutual assistance, co-operation and participation in the European Data Protection Board.

*Amendment*

5. Each Member State shall, ***in line with its internal distribution of competencies,*** ensure that the supervisory **authorities are** provided with the adequate human, technical and financial resources, premises and infrastructure necessary for the effective performance of its duties and powers, including those to be carried out in the context of mutual assistance, co-operation and participation in the European Data Protection Board.

Or. es

**Amendment 353**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 47 – paragraph 6**

*Text proposed by the Commission*

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

*Amendment*

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

Or. es

**Amendment 354**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 47 – paragraph 7**

*Text proposed by the Commission*

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

*Amendment*

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

Or. es

**Amendment 355**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 48 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

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

Or. es

**Amendment 356**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 48 – paragraph 3**

*Text proposed by the Commission*

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

*Amendment*

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

Or. es

**Amendment 357**

**Antonio López-Istúriz White**

**Proposal for a regulation**

**Article 48 – paragraph 4**

*Text proposed by the Commission*

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

*Amendment*

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

Or. es

**Amendment 358**

**Antonio López-Istúriz White**

**Proposal for a regulation**

**Article 49 – point a**

*Text proposed by the Commission*

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

*Amendment*

a) the establishment and status of the supervisory **authorities**;

Or. es

**Amendment 359**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 49 – point b**

*Text proposed by the Commission*

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

*Amendment*

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

Or. es

**Amendment 360**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 49 – point c**

*Text proposed by the Commission*

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

*Amendment*

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

Or. es

**Amendment 361**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 49 – point d**

*Text proposed by the Commission*

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

*Amendment*

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

to protect the independence of the supervisory *authority* by means of a staggered appointment procedure;

necessary to protect the independence of the supervisory *authorities* by means of a staggered appointment procedure;

Or. es

**Amendment 362**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 49 – point e**

*Text proposed by the Commission*

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

*Amendment*

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

Or. es

**Amendment 363**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 49 – point f**

*Text proposed by the Commission*

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

*Amendment*

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

Or. es

**Amendment 364**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 49 – point g**

*Text proposed by the Commission*

g) the rules and procedures on the termination of the duties of the members of the supervisory **authority**, including in case that they no longer fulfil the conditions required for the performance of their duties or if they are guilty of serious misconduct.

*Amendment*

(g) the rules and procedures on the termination of the duties of the members of the supervisory **authorities**, including in case that they no longer fulfil the conditions required for the performance of their duties or if they are guilty of serious misconduct.

Or. es

**Amendment 365**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 50**

*Text proposed by the Commission*

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

*Amendment*

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

Or. es

**Amendment 366**  
**Françoise Castex**

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

*Text proposed by the Commission*

*Amendment*

***Each authority shall be competent within its territory for the processing activities taking place in the context of the activities of an establishment of the controller or***



*processor, or affecting its residents;*

Or. fr

**Amendment 367**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 51 – paragraph 2**

*Text proposed by the Commission*

2. Where the processing of personal data takes place in the context of the activities of an establishment of a controller or a processor in the Union, and the controller or processor is established in more than one Member State, the supervisory authority of the main establishment of the controller or processor shall be competent for the supervision of the processing activities of the controller or the processor in all Member States, without prejudice to the provisions of Chapter VII of this Regulation.

*Amendment*

2. Where the processing of personal data takes place in the context of the activities of an establishment of a controller or a processor in the Union, and the controller or processor is established in more than one Member State, the supervisory authority of the main establishment of the controller or processor shall be competent for the supervision of the processing activities of the controller or the processor in all Member States, ***except with regard to decisions in response to the complaints referred to in Article 73, in which case it shall coordinate the actions of the supervisory authorities concerned,*** without prejudice to the provisions of Chapter VII of this Regulation.

Or. es

*Justification*

*The amendment seeks to add a phrase to Article 51(2). The Commission's text excludes from the scope of the regulation the actions referred to in Article 73 (complaints by data subjects). In order to ensure consistency throughout the proposal, amendments have also been tabled to delete those provisions which were included because of the universal scope of the 'single authority' system.*

**Amendment 368**  
**Antonio López-Istúriz White**

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

*Text proposed by the Commission*

d) conduct investigations either on its own initiative *or* on the basis of a complaint *or* on request of another supervisory authority, and inform the data subject concerned, if the data subject has addressed a complaint to this supervisory authority, of the outcome of the investigations within a reasonable period;

*Amendment*

(d) conduct investigations either on its own initiative, on the basis of a complaint, on request of another supervisory authority *or following a police complaint*, and inform the data subject concerned, if the data subject has addressed a complaint to this supervisory authority, of the outcome of the investigations within a reasonable period;

Or. es

*Justification*

*A complaint filed with the police should also constitute grounds for launching investigations when relevant information emerges during the course of police activities demonstrating that people's right to privacy may have been infringed.*

**Amendment 369**  
**Antonio López-Istúriz White**

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

*Text proposed by the Commission*

*Amendment*

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

Or. es

*Justification*

*In the light of our position's emphasis on the strengthening of certification policies, reference should be made to the scope of the powers of the supervisory authority/-ies in connection with those policies.*

**Amendment 370**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 53 – paragraph 1 – point j b (new)**

*Text proposed by the Commission*

*Amendment*

***(jb) carry out personal data protection audits or audit plans.***

Or. es

**Amendment 371**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 54**

*Text proposed by the Commission*

*Amendment*

Each supervisory authority must draw up an annual report on its activities. The report shall be presented to the ***national*** parliament and shall be made *be* available to the public, the Commission and the European Data Protection Board.

Each supervisory authority must draw up an annual report on its activities. The report shall be presented to the parliament ***concerned and/or the other authorities specified under national legislation*** and shall be made available to the public, the Commission and the European Data Protection Board.

Or. es

*Justification*

*The amendment has been tabled to ensure that countries which have more than one supervisory authority within their territory are covered by the proposal.*

**Amendment 372**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 55 – paragraph 2**

*Text proposed by the Commission*

2. Each supervisory authority shall take all appropriate measures required to reply to the request of another supervisory authority without delay and no later than **one month** after having received the request. Such measures may include, in particular, the transmission of relevant information on the course of an investigation or enforcement measures to bring about the cessation or prohibition of processing operations contrary to this Regulation.

*Amendment*

2. Each supervisory authority shall take all appropriate measures required to reply to the request of another supervisory authority without delay and no later than **two weeks** after having received the request. Such measures may include, in particular, the transmission of relevant information on the course of an investigation or enforcement measures to bring about the cessation or prohibition of processing operations contrary to this Regulation.

Or. es

*Justification*

*In the interests of efficiency and credibility, the period should be reduced from one month to two weeks.*

**Amendment 373**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 55 – paragraph 8**

*Text proposed by the Commission*

8. Where a supervisory authority does not act within **one month** on request of another supervisory authority, the requesting supervisory authorities shall be competent to take a provisional measure on the territory of its Member State in accordance with Article 51(1) and shall submit the matter to the European Data Protection Board in accordance with the procedure referred to in Article 57.

*Amendment*

8. Where a supervisory authority does not act within **two weeks** on request of another supervisory authority, the requesting supervisory authorities shall be competent to take a provisional measure on the territory of its Member State in accordance with Article 51(1) and shall submit the matter to the European Data Protection Board in accordance with the procedure referred to in Article 57.

Or. es

*Justification*

*In the interests of efficiency and credibility, the period should be reduced from one month to two weeks.*

**Amendment 374**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 56 – paragraph 5**

*Text proposed by the Commission*

5. Where a supervisory authority does not comply within **one month** with the obligation laid down in paragraph 2, the other supervisory authorities shall be competent to take a provisional measure on the territory of its Member State in accordance with Article 51(1).

*Amendment*

5. Where a supervisory authority does not comply within **two weeks** with the obligation laid down in paragraph 2, the other supervisory authorities shall be competent to take a provisional measure on the territory of its Member State in accordance with Article 51(1).

Or. es

*Justification*

*In the interests of efficiency and credibility, the period should be reduced from one month to two weeks.*

**Amendment 375**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 58 – paragraph 7**

*Text proposed by the Commission*

7. The European Data Protection Board shall issue an opinion on the matter, if the European Data Protection Board so decides by simple majority of its members or **any supervisory authority or** the Commission so requests within one week after the relevant information has been provided according to paragraph 5. The opinion shall

*Amendment*

7. The European Data Protection Board shall issue an opinion on the matter, if the European Data Protection Board so decides by simple majority of its members or the Commission so requests within one week after the relevant information has been provided according to paragraph 5. The opinion shall be adopted within one month

be adopted within one month by simple majority of the members of the European Data Protection Board. The chair of the European Data Protection Board shall inform, without undue delay, the supervisory authority referred to, as the case may be, in paragraphs 1 and 3, the Commission and the supervisory authority competent under Article 51 of the opinion and make it public.

by simple majority of the members of the European Data Protection Board. The chair of the European Data Protection Board shall inform, without undue delay, the supervisory authority referred to, as the case may be, in paragraphs 1 and 3, the Commission and the supervisory authority competent under Article 51 of the opinion and make it public.

Or. es

*Justification*

*I agree with the Commission that the requirement for the Board to issue opinions on matters referred to it should be limited to certain circumstances. I therefore support Article 58(7), albeit with slight modifications.*

**Amendment 376**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 59**

*Text proposed by the Commission*

*Amendment*

*Article 59*

*deleted*

*Opinion by the Commission*

*1. Within ten weeks after a matter has been raised under Article 58, or at the latest within six weeks in the case of Article 61, the Commission may adopt, in order to ensure correct and consistent application of this Regulation, an opinion in relation to matters raised pursuant to Articles 58 or 61.*

*2. Where the Commission has adopted an opinion in accordance with paragraph 1, the supervisory authority concerned shall take utmost account of the Commission's opinion and inform the Commission and the European Data Protection Board whether it intends to maintain or amend*

*its draft measure.*

**3. During the period referred to in paragraph 1, the draft measure shall not be adopted by the supervisory authority.**

**4. Where the supervisory authority concerned intends not to follow the opinion of the Commission, it shall inform the Commission and the European Data Protection Board thereof within the period referred to in paragraph 1 and provide a justification. In this case the draft measure shall not be adopted for one further month.**

Or. es

#### *Justification*

*Articles which confer supervisory powers on the Commission in respect of the activities of the supervisory authorities have been deleted. Supervisory authorities should be individually and collectively independent and not be subordinate or subject to administrative and/or political bodies. The Commission's powers to oversee the application of European law should be exercised exclusively by means of the channels established in the Treaties.*

#### **Amendment 377**

**Antonio López-Istúriz White**

#### **Proposal for a regulation Article 60**

*Text proposed by the Commission*

*Amendment*

**Article 60**

**deleted**

#### ***Suspension of a draft measure***

***1. Within one month after the communication referred to in Article 59(4), and where the Commission has serious doubts as to whether the draft measure would ensure the correct application of this Regulation or would otherwise result in its inconsistent application, the Commission may adopt a reasoned decision requiring the supervisory authority to suspend the***

*adoption of the draft measure, taking into account the opinion issued by the European Data Protection Board pursuant to Article 58(7) or Article 61(2), where it appears necessary in order to:*

*a) reconcile the diverging positions of the supervisory authority and the European Data Protection Board, if this still appears to be possible; or*

*b) adopt a measure pursuant to point (a) of Article 62(1).*

*2. The Commission shall specify the duration of the suspension which shall not exceed 12 months.*

*3. During the period referred to in paragraph 2, the supervisory authority may not adopt the draft measure.*

Or. es

#### *Justification*

*Articles which confer supervisory powers on the Commission in respect of the activities of the supervisory authorities have been deleted. Supervisory authorities should be individually and collectively independent and not be subordinate or subject to administrative and/or political bodies. The Commission's powers to oversee the application of European law should be exercised exclusively by means of the channels established in the Treaties.*

#### **Amendment 378**

**Antonio López-Istúriz White**

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

**Article 62 – paragraph 1 – subparagraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

*a) deciding on the correct application of this Regulation in accordance with its objectives and requirements in relation to matters communicated by supervisory authorities pursuant to Article 58 or 61, concerning a matter in relation to which a reasoned decision has been adopted pursuant to Article 60(1), or concerning a* **deleted**



*matter in relation to which a supervisory authority does not submit a draft measure and that supervisory authority has indicated that it does not intend to follow the opinion of the Commission adopted pursuant to Article 59;*

Or. es

*Justification*

*Articles which confer supervisory powers on the Commission in respect of the activities of the supervisory authorities have been deleted. Supervisory authorities should be individually and collectively independent and not be subordinate or subject to administrative and/or political bodies. The Commission's powers to oversee the application of European law should be exercised exclusively by means of the channels established in the Treaties.*

**Amendment 379**

**Antonio López-Istúriz White**

**Proposal for a regulation**

**Article 62 – paragraph 1 – subparagraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

*b) deciding, within the period referred to in Article 59(1), whether it declares draft standard data protection clauses referred to in point (d) of Article 58(2), as having general validity;* *deleted*

Or. es

*Justification*

*Articles which confer supervisory powers on the Commission in respect of the activities of the supervisory authorities have been deleted. Supervisory authorities should be individually and collectively independent and not be subordinate or subject to administrative and/or political bodies. The Commission's powers to oversee the application of European law should be exercised exclusively by means of the channels established in the Treaties.*

**Amendment 380**

**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 62 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

**2. On duly justified imperative grounds of urgency relating to the interests of data subjects in the cases referred to in point (a) of paragraph 1, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 87(3). Those acts shall remain in force for a period not exceeding 12 months.** **deleted**

Or. es

*Justification*

*Articles which confer supervisory powers on the Commission in respect of the activities of the supervisory authorities have been deleted. Supervisory authorities should be individually and collectively independent and not be subordinate or subject to administrative and/or political bodies. The Commission's powers to oversee the application of European law should be exercised exclusively by means of the channels established in the Treaties.*

**Amendment 381**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 66 – paragraph 1 – point g a (new)**

*Text proposed by the Commission*

*Amendment*

**(ga) propose the concepts on which European certification policy should be based, monitor and assess implementation, and submit its conclusions to the Commission.**

Or. es

**Amendment 382**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 69 – paragraph 1**

*Text proposed by the Commission*

1. The European Data Protection Board shall elect a chair and two deputy chairpersons from amongst its members. ***One deputy chairperson shall be the European Data Protection Supervisor, unless he or she has been elected chair.***

*Amendment*

1. The European Data Protection Board shall elect a chair and two deputy chairpersons from amongst its members.

Or. es

*Justification*

*There is no legitimate reason why the EDPS should have more of a right than any other authority to hold permanently the position of deputy chair.*

**Amendment 383**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 71 – paragraph 1**

*Text proposed by the Commission*

1. The European Data Protection Board shall have a secretariat. The ***European Data Protection Supervisor shall provide that*** secretariat.

*Amendment*

1. The European Data Protection Board shall have a secretariat. The ***Commission shall ensure that the Board*** secretariat ***has everything it needs to carry out its work.***

Or. es

*Justification*

*The EDPS is a member of the Board with speaking and voting rights. It would not be appropriate for the supervisor to also head up the secretariat. If that were the case, the supervisor would be in a position to steer the Board's work and influence its proceedings in a manner incompatible with his/her role as an active member of the Board with his/her own specific interests.*

**Amendment 384**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 73 – paragraph 1**

*Text proposed by the Commission*

1. Without prejudice to any other administrative or judicial remedy, every data subject shall have the right to lodge a complaint with **a** supervisory authority in **any** Member State if they consider that the processing of personal data relating to them does not comply with this Regulation.

*Amendment*

1. Without prejudice to any other administrative or judicial remedy, every data subject shall have the right to lodge a complaint with **the** supervisory authority in **the** Member State **in which they live** if they consider that the processing of personal data relating to them does not comply with this Regulation, **or their rights under the latter have not been duly upheld.**

Or. es

*Justification*

*Data subjects have the right to appeal to supervisory authorities if they consider their rights under this regulation to have been infringed. They can do so by lodging a complaint personally, or by instructing the organisations or associations referred to in paragraph 2 of Article 73 to act on their behalf.*

**Amendment 385**  
**Francesco Enrico Speroni**

**Proposal for a regulation**  
**Article 73 – paragraph 1**

*Text proposed by the Commission*

1. Without prejudice to any other administrative or judicial remedy, every data subject shall have the right to lodge a complaint with a supervisory authority in any Member State if they consider that the processing of personal data relating to them does not comply with this Regulation.

*Amendment*

1. Without prejudice to any other administrative or judicial remedy, every data subject shall have the right to lodge, **free of any charge**, a complaint with a supervisory authority in any Member State if they consider that the processing of personal data relating to them does not

comply with this Regulation.

Or. it

**Amendment 386**

**Rebecca Taylor**

**Proposal for a regulation**

**Article 73 – paragraph 1**

*Text proposed by the Commission*

1. Without prejudice to any other administrative or judicial remedy, every data subject shall have the right to lodge a complaint with **a** supervisory authority in **any** Member State if they consider that the processing of personal data relating to them does not comply with this Regulation.

*Amendment*

1. Without prejudice to any other administrative or judicial remedy, every data subject shall have the right to lodge a complaint with **the** supervisory authority in **the Member State of his habitual residence or in the** Member State **where the data controller has its main establishment**; if they consider that the processing of personal data relating to them does not comply with this Regulation.

Or. en

*Justification*

*The Commission's wording provides considerable practical problems and logistical difficulties and the proposed change would provide increased legal certainty for the data subject as well as the national supervisory authority.*

**Amendment 387**

**Antonio López-Istúriz White**

**Proposal for a regulation**

**Article 73 – paragraph 2**

*Text proposed by the Commission*

2. Any body, organisation or association which aims to protect data subjects' rights and interests concerning the protection of their personal data and has been properly

*Amendment*

2. Any body, organisation or association which aims to protect data subjects' rights and interests concerning the protection of their personal data and has been properly

constituted according to the law of a Member State *shall have the right to* lodge a complaint with a supervisory authority in *any* Member State *on behalf of one or more data subjects* if it considers that *a data subject's* rights under this Regulation have been infringed *as a result of the processing of personal data*.

constituted according to the law of a Member State *may* lodge a complaint with a supervisory authority in *that* Member State if it considers that rights *covered* under this Regulation have been infringed. *It may also, on behalf of one or more data subjects living in that Member State, exercise the rights conferred on those subjects by the Regulation, provided it has sufficient authority to do so.*

Or. es

*Justification*

*See the justification to amendment 384.*

**Amendment 388**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 73 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

*3. Independently of a data subject's complaint, any body, organisation or association referred to in paragraph 2 shall have the right to lodge a complaint with a supervisory authority in any Member State, if it considers that a personal data breach has occurred.*

*deleted*

Or. es

**Amendment 389**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 74 – paragraph 1**

*Text proposed by the Commission*

1. Each natural or legal person shall have the right to **a judicial remedy against** decisions of a supervisory authority concerning them.

*Amendment*

1. Each natural or legal person shall have the right to **take legal action to challenge** decisions of a supervisory authority concerning them **or affecting them in any way**.

Or. es

*Justification*

*Natural or legal persons should have the right to take legal action against supervisory authorities in respect of any decisions those authorities may have adopted or any inactivity or omission on their part which may have damaged those persons' rights. The regulation should establish when and under what conditions a claim can be rejected. Those directly concerned by the action or omission or those whose rights have been affected may take legal action.*

**Amendment 390**  
**Francesco Enrico Speroni**

**Proposal for a regulation**  
**Article 74 – paragraph 1**

*Text proposed by the Commission*

1. Each natural or legal person shall have the right to a judicial remedy against decisions of a supervisory authority concerning them.

*Amendment*

1. Each natural or legal person shall have the right to **file, free of any charge, for** a judicial remedy against decisions of a supervisory authority concerning them.

Or. it

**Amendment 391**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 74 – paragraph 2**

*Text proposed by the Commission*

2. **Each data** subject **shall have the right to a judicial remedy obliging** the

*Amendment*

2. **The claim shall be understood to have been rejected if, three months after the**

supervisory authority *to act on a complaint in the absence of a decision necessary to protect their rights, or where the supervisory authority does not inform the data subject within three months on the progress or outcome of the complaint pursuant to point (b) of Article 52(1).*

*complaint was lodged by the subject, the supervisory authority has not informed the subject of the progress of the complaint. The claim shall also be understood to have been rejected if, six months after the complaint was lodged, the authority has not definitively resolved the complaint.*

Or. es

#### *Justification*

*In the interests of legal certainty, a maximum period of six months should be established within which decisions on complaints have to be taken. A longer deadline could apply in exceptional cases. In any event, supervisory authorities should also be required to inform the data subject about the progress on his/her complaint within a maximum time period. If the authorities fail to do so, the claim should be understood to have been rejected.*

#### **Amendment 392**

**Antonio López-Istúriz White**

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

**Article 74 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

*4. A data subject which is concerned by a decision of a supervisory authority in another Member State than where the data subject has its habitual residence, may request the supervisory authority of the Member State where it has its habitual residence to bring proceedings on its behalf against the competent supervisory authority in the other Member State.*

*deleted*

Or. es

#### **Amendment 393**

**Antonio López-Istúriz White**

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

**Article 75 – paragraph 1**



*Text proposed by the Commission*

1. Without prejudice to any available administrative remedy, including the right to lodge a complaint with a supervisory authority as referred to in Article 73, every natural person shall have the right to a judicial remedy if they consider that their rights under this Regulation have been infringed ***as a result of the processing of their personal data in non-compliance with this Regulation.***

*Amendment*

1. Without prejudice to any available administrative remedy, including the right to lodge a complaint with a supervisory authority as referred to in Article 73, every natural person shall have the right to a judicial remedy if they consider that their rights under this Regulation have been infringed.

Or. es

*Justification*

*The amendment seeks to delete the final part of the paragraph (from 'as a result of' to the end) in order to prevent interpretations which could in some way curtail the right to take legal action recognised under this regulation.*

**Amendment 394**  
**Francesco Enrico Speroni**

**Proposal for a regulation**  
**Article 75 – paragraph 1**

*Text proposed by the Commission*

1. Without prejudice to any available administrative remedy, including the right to lodge a complaint with a supervisory authority as referred to in Article 73, every natural person shall have the right to a judicial remedy if they consider that their rights under this Regulation have been infringed as a result of the processing of their personal data in non-compliance with this Regulation.

*Amendment*

1. Without prejudice to any available administrative remedy, including the right to lodge a complaint with a supervisory authority as referred to in Article 73, every natural person shall have the right to ***file, free of any charge, for*** a judicial remedy if they consider that their rights under this Regulation have been infringed as a result of the processing of their personal data in non-compliance with this Regulation.

Or. it

**Amendment 395**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 75 – paragraph 3**

*Text proposed by the Commission*

3. Where proceedings are pending in the consistency mechanism referred to in Article 58, which concern the same measure, decision or practice, a court may suspend the proceedings brought before it, except where the urgency of the matter for the protection of the data subject's rights does not allow to wait for the outcome of the procedure in the consistency mechanism.

*Amendment*

3. Where proceedings are pending in the consistency mechanism referred to in Article 58, which concern the same measure, decision or practice, a court may, ***at the request of any of the parties and after hearing all the parties***, suspend the proceedings brought before it, except where the urgency of the matter for the protection of the data subject's rights does not allow to wait for the outcome of the procedure in the consistency mechanism.

Or. es

*Justification*

*Proceedings should, in our opinion, only be suspended at the request of one of the parties and after hearing all the parties, this being the most appropriate course of action in cases of this nature.*

**Amendment 396**  
**Klaus-Heiner Lehne**

**Proposal for a regulation**  
**Article 76 – paragraph 1**

*Text proposed by the Commission*

***1. Any body, organisation or association referred to in Article 73(2) shall have the right to exercise the rights referred to in Articles 74 and 75 on behalf of one or more data subjects.***

*Amendment*

***deleted***

Or. en

*Justification*

*There is no practical need for such a mechanism.*

**Amendment 397**

**Antonio López-Istúriz White**

**Proposal for a regulation**

**Article 76 – paragraph 1**

*Text proposed by the Commission*

1. Any body, organisation or association referred to in Article 73(2) shall have the right to exercise the rights referred to in Articles 74 and 75 on behalf of one or more data subjects.

*Amendment*

1. Any body, organisation or association referred to in Article 73(2) shall have the right to exercise the rights referred to in Articles 74 and 75 on behalf of one or more data subjects, ***having been suitably empowered to do so.***

Or. es

*Justification*

*The bodies, organisations and associations referred to in Article 73(2) should, in our opinion, always be suitably empowered to exercise the right under this article to take legal action on behalf of data subjects. This should be made perfectly clear in the Regulation.*

**Amendment 398**

**Antonio López-Istúriz White**

**Proposal for a regulation**

**Article 76 – paragraph 3**

*Text proposed by the Commission*

***3. Where a competent court of a Member State has reasonable grounds to believe that parallel proceedings are being conducted in another Member State, it shall contact the competent court in the other Member State to confirm the existence of such parallel proceedings.***

*Amendment*

***deleted***

*Justification*

*We consider the wording of paragraphs 3 and 4 to be confused. If these paragraphs refer to lis pendens, this is not, in our opinion, the best instrument to establish the legal system applicable to situations of this type, the rules on jurisdiction at EU level being sufficient to resolve any questions which may arise.*

**Amendment 399**

**Antonio López-Istúriz White**

**Proposal for a regulation**

**Article 76 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

**4. Where such parallel proceedings in another Member State concern the same measure, decision or practice, the court may suspend the proceedings.** *deleted*

*Justification*

*We consider the wording of paragraphs 3 and 4 to be confused. If these paragraphs refer to lis pendens, this is not, in our opinion, the best instrument to establish the legal system applicable to situations of this type, the rules on jurisdiction at EU level being sufficient to resolve any questions which may arise.*

**Amendment 400**

**Françoise Castex, Arlene McCarthy, Evelyn Regner**

**Proposal for a regulation**

**Article 77 – paragraph 1**

*Text proposed by the Commission*

1. Any person who has suffered damage as a result of an unlawful processing operation or of an action incompatible with this Regulation shall have the right to receive compensation from the controller or the processor for the damage suffered.

*Amendment*

1. Any person who has suffered **material or immaterial** damage as a result of an unlawful processing operation, **including blacklisting**, or of an action incompatible with this Regulation shall have the right to receive compensation from the controller or the processor for the damage suffered **and for any injury to feeling**.

Or. en

*Justification*

*Compensation must be ensured to all data subjects who have had their data processed illegally and without their consent, especially if the data has then been used to bar them from current or future employment*

**Amendment 401**  
**Marielle Gallo**

**Proposal for a regulation**  
**Article 77 – paragraph 2**

*Text proposed by the Commission*

2. Where more than one controller or processor is involved in the processing, each controller or processor shall be jointly and severally liable for the entire amount of the damage.

*Amendment*

2. Where more than one controller or processor is involved in the processing, each controller or processor shall be jointly and severally liable for the entire amount of the damage. ***In the event of joint and several liability, a processor which has made amends for damage done to the person concerned may appeal against the controller for reimbursement if it has acted in conformity with the legal act referred to in Article 26(2).***

Or. fr

**Amendment 402**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 78 – paragraph 2**

*Text proposed by the Commission*

2. Where the controller has established a representative, any penalties shall be applied to the representative, without prejudice to any penalties which could be initiated against the controller.

*Amendment*

2. Where the controller has established a representative, any penalties shall be applied to the representative ***in this specific capacity and the representative shall be required to comply with them,*** without prejudice to any penalties which could be initiated against the controller.

Or. es

*Justification*

*The wording of the second paragraph appears to indicate clearly that the representative is required to comply with any penalty for acts committed by the representative or controller. If that is so, we consider it appropriate to specify that the penalty is imposed on the representative in this specific capacity and must be complied with accordingly.*

**Amendment 403**  
**Françoise Castex, Arlene McCarthy, Evelyn Regner**

**Proposal for a regulation**  
**Article 78 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Any person or enterprise that is known to have infringed the provisions of this Regulation, for example by illegally accessing employees' personal data to blacklist them or bar them from employment, should be excluded from receiving Union grants and funding and from taking part in calls for tender for other public procurement contracts at Union, national or public authority level until all legal proceedings are proven to be completed and all compensation has been paid in full to any victims.***

*Justification*

*The Regulation must make clear that companies' infringement of data protection rules will not be tolerated and that their access to EU funding will be blocked whilst they remain involved in such activities*

**Amendment 404**

**Sajjad Karim**

**Proposal for a regulation**

**Article 79 – paragraph 1**

*Text proposed by the Commission*

1. Each supervisory authority shall be empowered to impose administrative sanctions in accordance with this Article.

*Amendment*

1. Each **competent** supervisory authority shall be empowered to impose administrative sanctions in accordance with this Article.

*Justification*

*In accordance with the "one-stop-shop" principle this amendment ensures that multiple data protection authorities cannot sanction businesses for the same violation.*

**Amendment 405**

**Lidia Joanna Geringer de Oedenberg**

**Proposal for a regulation**

**Article 79 – paragraph 1**

*Text proposed by the Commission*

1. **Each** supervisory authority shall be empowered to impose administrative sanctions in accordance with this Article.

*Amendment*

1. **The** supervisory authority **competent under Article 51** shall be empowered to impose administrative sanctions in accordance with this Article.

**Amendment 406**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 79 – paragraph 2**

*Text proposed by the Commission*

2. The administrative sanction shall be in each individual case effective, proportionate and dissuasive. The amount of the administrative fine shall be fixed with due regard to the nature, gravity and duration of the breach, the intentional **or negligent** character of the infringement, the degree of responsibility of the natural or legal person and of previous breaches by this person, the technical and organisational measures and procedures implemented pursuant to Article 23 and the degree of co-operation with the supervisory authority in order to remedy the breach.

*Amendment*

2. The administrative sanction shall be in each individual case effective, proportionate and dissuasive. The amount of the administrative fine shall be fixed with due regard to the nature, gravity and duration of the breach, the intentional character of the infringement **or the type of negligence leading to it**, the degree of responsibility of the natural or legal person and of previous breaches by this person, the technical and organisational measures and procedures implemented pursuant to Article 23 and the degree of co-operation with the supervisory authority in order to remedy the breach, **as well as the true economic situation of those penalised**.

Or. es

**Amendment 407**  
**Sajjad Karim**

**Proposal for a regulation**  
**Article 79 – paragraph 2**

*Text proposed by the Commission*

2. The administrative sanction shall be in each individual case effective, proportionate and dissuasive. The amount of the administrative fine shall be fixed with due regard to the nature, gravity and duration of the breach, the intentional or negligent character of the infringement, the degree of responsibility of the natural or legal person and of previous breaches by this person, the technical and

*Amendment*

2. The administrative sanction shall be in each individual case effective, proportionate and dissuasive. The amount of the administrative fine shall be fixed with due regard to the nature, gravity and duration of the breach, the **sensitivity of the data in issue, the** intentional or negligent character of the infringement, the degree of **harm or risk of harm created by the violation, the degree of** responsibility of



organisational measures and procedures implemented pursuant to Article 23 and the degree of co-operation with the supervisory authority in order to remedy the breach.

the natural or legal person and of previous breaches by this person, the technical and organisational measures and procedures implemented pursuant to Article 23 and the degree of co-operation with the supervisory authority in order to remedy the breach.

***Where appropriate, the data protection authority shall also be empowered to require that a data protection officer is appointed if the body, organisation or association has opted not to do so.***

Or. en

### *Justification*

*This AM aims to ensure that deliberate or reckless violations merit more substantial penalties than merely negligent violations. The package of amendments relating to administrative sanctions are aimed at ensuring that the penalty is proportionate to the conduct, and the most punitive sanctions are reserved for the most serious misconduct. The DPA's ability to require the appointment of a DPO is also aimed at ensuring proportionality in terms of sanctions.*

**Amendment 408**  
**Sajjad Karim**

**Proposal for a regulation**  
**Article 79 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Aggravating factors that support administrative fines at the upper limits established in paragraphs 4 to 6 shall include in particular:***

***(i) repeated violations committed in reckless disregard of applicable law;***

***(ii) refusal to co-operate with or obstruction of an enforcement process;***

***(iii) violations that are deliberate, serious and likely to cause substantial damage;***

***(iv) a data protection impact assessment has not been undertaken;***

***(v) a data protection officer has not been***

*appointed.*

Or. en

**Amendment 409**  
**Sajjad Karim**

**Proposal for a regulation**  
**Article 79 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***2b. Mitigating factors which support administrative fines at the lower limits established in paragraphs 4 to 6 shall include:***

- (i) measures having been taken by the natural or legal person to ensure compliance with relevant obligations;***
- (ii) genuine uncertainty as to whether the activity constituted a violation of the relevant obligations;***
- (iii) immediate termination of the violation upon knowledge;***
- (iv) co-operation with any enforcement processes;***
- (v) a data protection impact assessment has been undertaken;***
- (vi) a data protection officer has been appointed.***

Or. en

**Amendment 410**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 79 – paragraph 3 – introductory wording**

*Text proposed by the Commission*

3. In case of ***a first and*** non-intentional non-compliance with this Regulation, a warning in writing may be given and no sanction imposed, ***where:***

*Amendment*

3. In case of non-intentional non-compliance with this Regulation, ***in the absence of any record of previous unappealable instances or where the record has been expunged,*** a warning in writing may be given and, ***in such an instance,*** no sanction imposed, ***with the sole exception of alternative corrective measures, which may only be imposed if the circumstances so require, in the following cases and in the following form:***

Or. es

*Justification*

*The objective is to introduce a wider range of alternative sanctions. These should accordingly be provided for in paragraph 3, so as to ensure that they may apply to not only the persons or institutions initially indicated but also, subject to certain specific conditions, public authorities and other enterprises and institutions.*

**Amendment 411**  
**Francesco Enrico Speroni**

**Proposal for a regulation**  
**Article 79 – paragraph 3 – point b**

*Text proposed by the Commission*

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

*Amendment*

***deleted***

Or. it

**Amendment 412**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 79 – paragraph 3 – point b**

*Text proposed by the Commission*

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

*Amendment*

(b) an enterprise or an organisation employing fewer than 250 persons is *willing to cooperate with the supervisory authority for the introduction of corrective measures designed to avoid similar cases of non-compliance in future. Cooperation in this area shall be governed by binding agreements with the supervisory authority. Failure to collaborate with the duly accredited supervisory authority within six months from the beginning of the proceedings shall incur the fine which would originally have been imposed.*

Or. es

*Justification*

*The objective is to introduce a wider range of alternative sanctions focusing on a strategy designed to prevent future infringements. Most of the alternative sanctions envisaged seek to establish agreement on ways of avoiding future infringements. The corrective measures are established on the basis of agreements with the supervisory authority or of acts or decisions adopted by the administration concerned.*

**Amendment 413**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 79 – paragraph 3 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

*(ba) a public administration collaborates with a supervisory authority to establish ways of avoiding similar infringements in future. Collaboration in this area shall be*

*determined on the basis of the agreements or decisions adopted by the administration concerned, which shall be referred to at the outset with regard to the measures taken. Failure to collaborate with the duly accredited supervisory authority within one year from the beginning of the proceedings shall incur the fine which would originally have been imposed.*

*For the purpose of this article, the record of previous unappealable sanctions for infringements through negligence shall be expunged within the following periods:*

*two years if the sanctions are accompanied by any of the fines specified under paragraph 4; four years if the sanctions are accompanied by any of the fines specified under paragraph 5; six years if the sanctions are accompanied by any of the fines specified under paragraph 6.*

*For the purpose of this article, the record of previous unappealable sanctions for infringements committed through serious negligence or with intent shall be expunged within the following periods:*

*five years if the sanctions are accompanied by any of the fines specified under paragraph 4; ten years if the sanctions are accompanied by any of the fines specified under paragraph 5; fifteen years if the sanctions are accompanied by any of the fines specified under paragraph 6.*

Or. es

*Justification*

*See previous justification.*

**Amendment 414**  
**Francesco Enrico Speroni**

**Proposal for a regulation**  
**Article 79 – paragraph 4 – introductory wording**

*Text proposed by the Commission*

4. The supervisory authority shall impose a fine up to **250 000** EUR, or in case of an enterprise up to **0,5 %** of its annual worldwide turnover, to anyone who, intentionally or negligently:

*Amendment*

4. The supervisory authority shall impose a fine up to **500 000** EUR, or in case of an enterprise up to **1 %** of its annual worldwide turnover, to anyone who, intentionally or negligently:

Or. it

**Amendment 415**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 79 – paragraph 5 – introductory wording**

*Text proposed by the Commission*

5. The supervisory authority shall impose a fine up to 500 000 EUR or, in case of an enterprise up to 1 % of its annual worldwide **turnover**, to anyone who, intentionally or negligently:

*Amendment*

5. The supervisory authority shall impose a fine up to 500 000 EUR or, in case of an enterprise up to 1 % of its **average** annual worldwide **profits** to anyone who, intentionally or negligently:

Or. es

**Amendment 416**  
**Francesco Enrico Speroni**

**Proposal for a regulation**  
**Article 79 – paragraph 5 – introductory wording**

*Text proposed by the Commission*

5. The supervisory authority shall impose a fine up to **500 000** EUR, or in case of an

*Amendment*

5. The supervisory authority shall impose a fine up to **1 000 000** EUR or, in case of an

enterprise up to **1 %** of its annual worldwide turnover, to anyone who, intentionally or negligently:

enterprise up to **2 %** of its annual worldwide turnover, to anyone who, intentionally or negligently:

Or. it

**Amendment 417**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 79 – paragraph 5 – point a**

*Text proposed by the Commission*

(a) does not provide the information, or does provide incomplete information, ***or does not provide the information in a sufficiently transparent manner, to the data subject*** pursuant to Article 11, Article 12(3) and Article 14;

*Amendment*

(a) does not provide the information, or does provide ***manifestly*** incomplete information, pursuant to Article 11, Article 12(3) and Article 14;

Or. es

**Amendment 418**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 79 – paragraph 5 – point c**

*Text proposed by the Commission*

(c) does not ***comply with*** the right to be forgotten or to erasure, ***or fails to put mechanisms in place to ensure that the time limits are observed or does not take all necessary steps to inform third parties that a data subjects requests to erase any links to, or copy or replication of the personal data pursuant Article 17;***

*Amendment*

(c) does not, ***in accordance with this Regulation, reply to a request concerning*** the right to be forgotten or erasure;

Or. es

**Amendment 419**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 79 – paragraph 5 – point d**

*Text proposed by the Commission*

(d) does not provide a copy of the personal data in electronic format or hinders the data subject to transmit the personal data to another application in violation of Article 18;

*Amendment*

(d) does not provide a copy of the personal data in electronic format or ***for no legitimate reason*** hinders the data subject to transmit the personal data to another application in violation of Article 18;

Or. es

**Amendment 420**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 79 – paragraph 5 – point f**

*Text proposed by the Commission*

(f) does not ***or not sufficiently maintain the documentation pursuant to Article 28, Article 31(4), and Article 44(3);***

*Amendment*

(f) does not ***report or ensure that it is able to report to the supervisory authority where required to do so and in the manner stipulated in this Regulation, except in the case of serious misconduct under the terms of this Regulation or the implementing legislation of the Member States;***

Or. es

**Amendment 421**  
**Francesco Enrico Speroni**

**Proposal for a regulation**  
**Article 79 – paragraph 6 – introductory wording**

*Text proposed by the Commission*

6. The supervisory authority shall impose a

*Amendment*

6. The supervisory authority shall impose a



fine up to **1 000 000** EUR or, in case of an enterprise up to **2 %** of its annual worldwide turnover, to anyone who, intentionally or negligently:

fine up to **1 500 000** EUR or, in case of an enterprise up to **3 %** of its annual worldwide turnover, to anyone who, intentionally or negligently:

Or. it

**Amendment 422**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 79 – paragraph 6 – introductory wording**

*Text proposed by the Commission*

*Amendment*

6. The supervisory authority shall impose a fine up to 1 000 000 EUR or, in case of an enterprise up to 2 % of its annual worldwide **turnover**, to anyone who, intentionally or negligently:

6. The supervisory authority shall impose a fine up to 1 000 000 EUR or, in case of an enterprise up to 2 % of its **average** annual worldwide **profits** to anyone who intentionally or negligently:

Or. es

**Amendment 423**  
**Françoise Castex, Arlene McCarthy, Evelyn Regner**

**Proposal for a regulation**  
**Article 79 – paragraph 6 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

***(aa) uses employees' or potential employees' personal data to blacklist them, vet them or bar them from access to future employment;***

Or. en

*Justification*

*Illegally accessing and misusing employees' or potential employees' personal data (often regarding, but not limited to, their trade union affiliation and activities) in order to blacklist them, bar them from future employment or any other measure that has the potential to hinder*

*their work and/or have a major effect on their future work and career, is a gross breach of their fundamental rights to privacy and freedom of association and warrants the imposition of the highest sanction*

**Amendment 424**  
**Francesco Enrico Speroni**

**Proposal for a regulation**  
**Article 79 – paragraph 6 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

***aa) uses for commercial purposes personal data which have been collected for non-commercial purposes;***

Or. it

**Amendment 425**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 79 – paragraph 6 – point c**

*Text proposed by the Commission*

*Amendment*

(c) does not comply with an objection or the requirement pursuant to Article 19;

(c) does not comply with an objection or the requirement pursuant to Article 19 ***unless duly justified by real and legitimate grounds or reasons in accordance with this Regulation;***

Or. es

**Amendment 426**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 79 – paragraph 6 – point d**

*Text proposed by the Commission*

*Amendment*

***(d) does not comply with the conditions in***      ***deleted***

*relation to measures based on profiling pursuant to Article 20;*

Or. es

**Amendment 427**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 79 – paragraph 6 – point e**

*Text proposed by the Commission*

*Amendment*

*(e) does not adopt internal policies or does not implement appropriate measures for ensuring and demonstrating compliance pursuant to Articles 22, 23 and 30;*

*deleted*

Or. es

**Amendment 428**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 79 – paragraph 6 – point h**

*Text proposed by the Commission*

*Amendment*

(h) does not alert on or notify a personal data breach or does not timely or completely notify the data breach to the supervisory authority or to the data subject pursuant to Articles 31 and 32;

(h) does not alert on or notify a personal data breach or does not timely or completely notify the data breach to the supervisory authority or to the data subject *where mandatory* pursuant to Articles 31 and 32;

Or. es

**Amendment 429**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 79 – paragraph 6 – point i**

*Text proposed by the Commission*

(i) does not carry out a data protection impact assessment pursuant or processes personal data without prior authorisation or prior consultation of the supervisory authority pursuant to Articles 33 and 34;

*Amendment*

(i) does not carry out a data protection impact assessment pursuant or processes personal data without prior authorisation or prior consultation of the supervisory authority **where mandatory** pursuant to Articles 33 and 34;

Or. es

**Amendment 430**

**Antonio López-Istúriz White**

**Proposal for a regulation**

**Article 79 – paragraph 6 – point j**

*Text proposed by the Commission*

(j) does not **designate a data protection officer or does not** ensure the conditions for fulfilling the tasks pursuant to Articles 35, 36 and 37;

*Amendment*

(j) does not ensure **that the conditions are met to enable the Data Protection Officer to fulfil** the tasks pursuant to Articles 35, 36 and 37;

Or. es

**Amendment 431**

**Antonio López-Istúriz White**

**Proposal for a regulation**

**Article 79 – paragraph 6 – point k**

*Text proposed by the Commission*

(k) misuses a data protection seal or mark in the meaning of Article 39;

*Amendment*

(k) misuses a data protection seal, mark **or certification** in the meaning of Article 39;

Or. es

**Amendment 432**

**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 79 – paragraph 7 a (new)**

*Text proposed by the Commission*

*Amendment*

**7a. The Commission shall compile an electronic record of previous instances accessible to all national supervisory authorities. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of managing the electronic record of previous instances in accordance with this article.**

Or. es

**Amendment 433**  
**Cecilia Wikström**

**Proposal for a regulation**  
**Article 80 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

**1. Member States shall provide for exemptions or derogations from the provisions on the general principles in Chapter II, the rights of the data subject in Chapter III, on controller and processor in Chapter IV, on the transfer of personal data to third countries and international organisations in Chapter V, the independent supervisory authorities in Chapter VI and on co-operation and consistency in Chapter VII for the processing of personal data carried out solely for journalistic purposes or the purpose of artistic or literary expression in order to reconcile the right to the protection of personal data with the rules governing freedom of expression.**

**1. Chapter II (General principles), Chapter III (Rights of the data subject), Chapter IV (Controller and processor), Chapter V (Transfer of personal data to third countries and international organisations), Chapter VI, (Independent supervisory authorities), Chapter VII (Co-operation and consistency) as well as Articles 73, 74, 76 and 79 of Chapter VIII (Remedies, liability and sanctions) shall not apply to the processing of personal data carried out solely for journalistic purposes or the purpose of artistic or literary expression in order to reconcile the right to the protection of personal data with the rules governing freedom of expression.**

*Justification*

*The new draft legislation on data protection takes the form of a regulation and thus is directly applicable. If data protection law applies directly, the freedom of the press exception must also be directly applicable. An implementation by Member States should not lower down the current level of protection. Furthermore, the exemption should be extended to Articles 73, 74, 76 and 79 of Chapter VIII (on Remedies, Liabilities and Sanctions) because these Articles include new elements which go far beyond what is foreseen in the current directive and are not suitable for journalistic activities or pose a serious threat to press freedom.*

**Amendment 434**  
**Rebecca Taylor**

**Proposal for a regulation**  
**Article 80 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall provide for exemptions or derogations from the provisions on the general principles in Chapter II, the rights of the data subject in Chapter III, on controller and processor in Chapter IV, on the transfer of personal data to third countries and international organisations in Chapter V, the independent supervisory authorities in Chapter VI and on co-operation and consistency in Chapter VII for the processing of personal data carried out **solely** for journalistic purposes or the purpose of artistic or literary expression in order to reconcile the right to the protection of personal data with the rules governing freedom of expression.

*Amendment*

1. Member States shall provide for exemptions or derogations from the provisions on the general principles in Chapter II, the rights of the data subject in Chapter III, on controller and processor in Chapter IV, on the transfer of personal data to third countries and international organisations in Chapter V, the independent supervisory authorities in Chapter VI and on co-operation and consistency in Chapter VII for the processing of personal data carried out for journalistic purposes or the purpose of artistic or literary expression in order to reconcile the right to the protection of personal data with the rules governing freedom of expression.

*Justification*

*The word 'solely' undermines legal certainty as it provides for a potentially significant loophole which undermines the provision set by this article.*

**Amendment 435**  
**Klaus-Heiner Lehne**

**Proposal for a regulation**  
**Article 80 – paragraph 1**

*Text proposed by the Commission*

1. **Member States shall provide for exemptions or derogations from the provisions on the general principles in Chapter II, the rights of the data subject in Chapter III, on controller and processor in Chapter IV, on the transfer of personal data to third countries and international organisations in Chapter V, the independent supervisory authorities in Chapter VI and on co-operation and consistency in Chapter VII for the processing of personal data carried out solely for journalistic purposes or the purpose of artistic or literary expression in order to reconcile the right to the protection of personal data with the rules governing freedom of expression.**

*Amendment*

1. **Chapter II (General principles), Chapter III (Rights of the data subject), Chapter IV (Controller and processor), Chapter V (Transfer of personal data to third countries and international organisations), Chapter VI (Independent supervisory authorities), Chapter VII (Co-operation and consistency) as well as Articles 73, 74, 76 and 79 of Chapter VIII (Remedies, liability and sanctions) shall not apply to the processing of personal data carried out solely for journalistic purposes or the purpose of artistic or literary expression in order to reconcile the right to the protection of personal data with the rules governing freedom of expression.**

Or. en

**Amendment 436**  
**Cecilia Wikström**

**Proposal for a regulation**  
**Article 80 – paragraph 2**

*Text proposed by the Commission*

2. **Each Member State shall notify to the Commission those provisions of its law which it has adopted pursuant to paragraph 1 by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment law or amendment affecting them.**

*Amendment*

*deleted*

**Amendment 437**  
**Klaus-Heiner Lehne**

**Proposal for a regulation**  
**Article 80 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

**2. Each Member State shall notify to the Commission those provisions of its law which it has adopted pursuant to paragraph 1 by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment law or amendment affecting them.**

*deleted*

Or. en

**Amendment 438**  
**Cecilia Wikström, Rebecca Taylor**

**Proposal for a regulation**  
**Article 80 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 80a**

***Processing of personal data and the principle of public access to official documents***

***Personal data in documents held by a public authority or a public body may be disclosed by this authority or body in accordance with Member State legislation regarding public access to official documents, which reconciles the right to the protection of personal data with the principle of public access to official documents.***

Or. en



*Justification*

*It is essential to ensure that public oversight of public affairs is not unduly hampered by data protection rules. As expressed in opinions by the EDPS, the Article 29 Working Party and the FRA, the principle of public access to official documents should therefore be guaranteed in an article and not merely in a recital.*

**Amendment 439**

**Eva Lichtenberger**

on behalf of the Verts/ALE Group

**Evelyn Regner, Françoise Castex**

**Proposal for a regulation**

**Article 80 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 80a**

***Processing of personal data and the principle of public access to official documents***

***Personal data in documents held by a public authority or a public body may be disclosed by this authority or body in accordance with Member State legislation regarding public access to official documents, which reconciles the right to the protection of personal data with the principle of public access to official documents.***

Or. en

*Justification*

*It is essential to ensure that public oversight of public affairs is not unduly hampered by data protection rules. As expressed in opinions by the EDPS, the Article 29 Working Party and the FRA, the principle of public access to official documents should therefore be guaranteed.*

**Amendment 440**

**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 81 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

**3. The Commission shall be empowered to adopt delegated acts in accordance with Article 87 for the purpose of further specifying other reasons of public interest in the area of public health as referred to in point (b) of paragraph 1, as well as criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1.**

**deleted**

Or. es

*Justification*

*Our only current objection to this provision concerns the delegation of power to the Commission under paragraph 3. This, in our opinion, goes beyond acceptable limits for legislative delegation and the matters referred to should accordingly be dealt with in this instrument, either now or in the form of subsequent amendments which may be necessary to ensure its future effectiveness.*

**Amendment 441**  
**Evelyn Regner**

**Proposal for a regulation**  
**Article 82 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

**1a. Member States shall adopt appropriate rules and carry out controls that prevent undertakings from putting certain workers on blacklists because of their political orientation, their membership of and activities in a trade union, which are passed on to other enterprises with the aim of discriminating against these workers; Member States shall adopt effective sanctions in respect of undertakings that create, pass on or**

*accept or demand such blacklists from other undertakings.*

Or. de

**Amendment 442**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 82 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

**3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1.** *deleted*

Or. es

*Justification*

*The delegation of power to the Commission under paragraph 3 is excessive and the measures referred to should accordingly be taken under existing terms of reference.*

**Amendment 443**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 83 – paragraph 1 – introductory wording**

*Text proposed by the Commission*

*Amendment*

1. Within the limits of this Regulation, personal data may be processed for historical, statistical or scientific research purposes only if:

1. Within the limits of this Regulation, personal data may be processed for historical, statistical or scientific research purposes, *as well as for preliminary official or administrative investigations to determine natural filiation* only if:

*Justification*

*In order to facilitate investigations to determine natural filiation following the theft or abduction of infants, we propose an addition to the first paragraph to clearly establish the legitimacy of the procedures followed for the purpose of such inquiries.*

**Amendment 444**  
**Rebecca Taylor**

**Proposal for a regulation**  
**Article 83 – paragraph 1 – point a**

*Text proposed by the Commission*

*(a) these purposes cannot be otherwise fulfilled by processing data which does not permit or not any longer permit the identification of the data subject;*

*Amendment*

*(a) the data subject has given consent, subject to the conditions laid down in Article 7;*

Or. en

*Justification*

*See justification in Amendment 25*

**Amendment 445**  
**Rebecca Taylor**

**Proposal for a regulation**  
**Article 83 – paragraph 1 – point b**

*Text proposed by the Commission*

*(b) data enabling the attribution of information to an identified or identifiable data subject is kept separately from the other information as long as these*

*Amendment*

*(b) the data has been rendered sufficiently anonymous.*

*purposes can be fulfilled in this manner.*

Or. en

*Justification*

*See justification in Amendment 25*

**Amendment 446**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 83 – paragraph 1 – point b**

*Text proposed by the Commission*

(b) data enabling the attribution of information to an identified or identifiable data subject is kept separately from the other information as long as these purposes can be fulfilled in this manner.

*Amendment*

(b) data enabling the attribution of information to an identified or identifiable data subject is kept separately from the other information as long as these purposes can be fulfilled in this manner.

***Personal data processed as part of a preliminary official or administrative investigation for the determination of natural filiation shall only be disclosed to those concerned as and when appropriate and without prejudice to any statutory criminal proceedings.***

Or. es

*Justification*

*In order to facilitate investigations to determine natural filiation following the theft or abduction of infants, this final paragraph should be added to the first section to ensure adequate protection of the confidentiality of personal data being used for the purposes of preliminary judicial or administrative investigations, so as to ensure that they are only disclosed as and when legally admissible.*

**Amendment 447**  
**Rebecca Taylor**

**Proposal for a regulation**  
**Article 83 – paragraph 2 – introductory wording**

*Text proposed by the Commission*

*Amendment*

2. Bodies conducting historical, statistical or scientific research may publish or otherwise publicly disclose personal data only if:

2. Bodies conducting historical, statistical, ***aggregated*** or scientific research may publish or otherwise publicly disclose personal data only if:

Or. en

*Justification*

*See justification in Amendment 25*

**Amendment 448**  
**Rebecca Taylor**

**Proposal for a regulation**  
**Article 83 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Within the limits of this Regulation, where the purposes of historical, statistical, aggregated or scientific research cannot be fulfilled by the disclosure of data which is rendered sufficiently anonymous and consent for disclosure has not been obtained from data subjects then approval for disclosure must be granted by an independent and competent body which has had its authority conferred by legal provision.***

Or. en

*Justification*

*The current proposal for Article 83 appears to allow processing of health data, in identifiable form, for research purposes without reference to consent. The only safeguards (that identifiable data must be kept separate and that researchers can use identifiable data only if research cannot be fulfilled by using non-identifiable data) significantly lowers the protection of health data. There is a risk that the current proposal will allow for researchers to use*

*identifiable data without consent.*

**Amendment 449**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 83 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

**3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the processing of personal data for the purposes referred to in paragraph 1 and 2 as well as any necessary limitations on the rights of information to and access by the data subject and detailing the conditions and safeguards for the rights of the data subject under these circumstances.**

**deleted**

Or. es

**Amendment 450**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 85 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Where in a Member State, churches and religious associations or communities apply, at the time of entry into force of this Regulation, comprehensive rules relating to the protection of individuals with regard to the processing of personal data, such rules may continue to apply, provided that they are brought in line with the provisions of this Regulation.

1. Where in a Member State, churches and religious associations or communities apply, at the time of entry into force of this Regulation, comprehensive rules relating to the protection of individuals with regard to the processing of personal data, such rules may continue to apply ***and may if necessary be amended***, provided that they are brought in line with the provisions of this Regulation.

Or. es

**Amendment 451**  
**Antonio López-Istúriz White**

**Proposal for a regulation**  
**Article 85 – paragraph 2**

*Text proposed by the Commission*

2. Churches and religious associations which apply comprehensive rules in accordance with paragraph 1 shall provide for the establishment of an independent supervisory authority in accordance with Chapter VI of this Regulation.

*Amendment*

2. Churches and religious associations which apply comprehensive rules in accordance with paragraph 1 shall provide for the establishment of an independent supervisory authority in accordance with Chapter VI of this Regulation ***or alternatively obtain the certification necessary for the procedures required under Article 39.***

Or. es

*Justification*

*As an alternative to the provision requiring an independent supervisory authority, a certification requirement might also be appropriate, particularly in respect of the less wealthy denominations.*