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Committee on Legal Affairs

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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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United in diversity

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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

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Amendment

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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

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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 powers⁴⁶. 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 powers⁴⁶. 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 nucleid 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*¹; or

¹ 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 of 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

Amendment

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

(c) the **generic** purposes of processing;

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

Amendment

(f) where applicable, transfers of data to a third country or an international organisation, *including the identification of that third country or international organisation and*, in case of transfers referred to in point (h) of Article 44(1), *the documentation of appropriate* safeguards;

(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*

<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>	<i>deleted</i>
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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

(a) to inform and advise the controller or the processor of their obligations pursuant to this Regulation ***and to document this activity and the responses received;***

Amendment

(a) to inform and advise the controller or the processor of their obligations pursuant to this Regulation ;

Or. es

Amendment 323
Antonio López-Istúriz White

Proposal for a regulation
Article 37 – paragraph 1 – point d

Text proposed by the Commission

(d) to ensure that the documentation referred to in Article 28 is maintained;

Amendment

deleted

Or. es

Amendment 324
Antonio López-Istúriz White

Proposal for a regulation
Article 37 – paragraph 1 – point f

Text proposed by the Commission

f) to monitor the performance of the data protection impact assessment by the controller or processor and the application for prior authorisation or prior consultation, if required pursuant Articles 33 and 34;

Amendment

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.