

## Proposals for amendments on the Data Protection Regulation

### Anonymous Data and Pseudonymous Data (Recital 23)

#### Article 4: Definitions

For the purposes of this Regulation:

4(1): 'data subject' means an identified ***or identifiable*** natural person or a natural person who can be ***uniquely and directly*** 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~~ ***name, 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. ***If identification requires a disproportionate amount of time, effort or material resources the natural living person shall not be considered identifiable.;***

4(2): 'personal data' means any information, ***by itself***, relating to a data subject

***4(3): 'pseudonymous data' means any personal data that has been collected, altered or otherwise processed so that it of itself cannot be attributed to a data subject without the use of additional data which is subject to separate and distinct technical and organisational controls to ensure such non attribution, or that such attribution would require a disproportionate amount of time, expense and effort.***

***4(4): '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.***

#### Article 2: Material Scope

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

***2(2)(f): that has been rendered anonymous.***

#### Article 6: Lawfulness of Processing

6(1): Processing of personal data shall be lawful only if and to the extent that at least one of the following applies:

- (a) the data subject has given consent to the processing of their personal data for one or more specific purposes;
- (b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
- (c) processing is necessary for compliance with a legal obligation to which the controller is subject;
- (d) processing is necessary in order to protect the vital interests of the data subject;
- (e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;

(f) processing is necessary for the purposes of the legitimate interests pursued by a controller ***or by a third party***, 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***

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

#### Article 16: Right to Rectification

1. The data subject shall have the right to obtain from the controller the rectification of personal data relating to them which are inaccurate. The data subject shall have the right to obtain completion of incomplete personal data, including by way of supplementing a corrective statement.

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

#### Article 19: Right to Object

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

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

3. ***Where 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.***

4. Where an objection is upheld pursuant to paragraphs 1, 2 and 23, the controller shall no longer use or otherwise process the personal data concerned.

#### Article 20: Measures Based on Profiling

20(1): Every ~~natural person~~ ***data subject*** shall have the right not to be subject to a measure which produces ***adverse*** legal effects concerning this ~~natural person~~ ***data subject*** ~~or significantly affects this natural person, and~~ which is based solely on automated processing intended to evaluate, ***analyse or predict*** certain personal aspects relating to this ~~natural person~~ ***data subject***, ~~or to analyse or predict in particular the natural person's~~ ***data subject's*** performance at work, economic situation, location, health, personal preferences, reliability or behaviour ***where and to the extent such prohibition is expressly authorised by a Union or Member State Law.***

20(2): ~~Subject to the other provisions of this Regulation, a person~~ A data subject may be subjected to a measure of the kind referred to in paragraph 1 only if the processing:

- (a) is carried out in the course of the entering into, or performance of, a contract, where the request for the entering into or the performance of the contract, lodged by the data subject, has been satisfied or where suitable measures to safeguard the data subject's legitimate interests have been adduced, such as the right to obtain human intervention; or
- ~~(b) is expressly authorized by a Union or Member State law which also lays down suitable measures to safeguard the data subject's legitimate interests; or~~
- (b) is based on the data subject's consent, subject to the conditions laid down in Article 7 and to suitable safeguards;
- (c) *is limited to pseudonymous data.*
- (d) *is necessary for the purposes of the legitimate interests pursued by the controller, except where such interests are overridden by the interests for fundamental rights and freedoms of the data subject which require protection of personal data. This shall not apply to processing carried out by public authorities in the performance of their tasks.*

Recital 23: The principles of protection should apply to any information concerning an identified or identifiable person. To determine whether a person is identifiable, account should be taken of all the means likely reasonably to be used ~~either by the controller or by any other person~~ to identify the individual. The principles of data protection should not apply to data rendered anonymous in such a way that the data subject is no longer identifiable.

#### Justification:

The aim of this amendment is to explicitly define anonymous data so that the Draft Regulation will not apply in circumstances involving anonymous data.

Further, we would like the processing of personal data to be considered lawful when that personal data has been rendered pseudonymous. This is similar to the concept found in § 15 III of the German Telemedia Act. To this end, an-opt out is available for the processing of pseudonymous data in Article 19(3).

To provide for this use of pseudonymous data will likely have the effect of encouraging the practice of “pseudonymising” data which is in the benefit of all data subjects as, by definition, personal data is altered so that it of itself cannot be attributed to a data subject without the use of additional data which is subject to separate and distinct technical and organisational controls.