

Compromise Amendments

CA 30

Article 2 - paragraph 1

(Replac

1. This Regulation applies to the processing of personal data wholly or partly by automated means, **without discrimination between such processing means and the technology used**, and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.

CA 31

Article 4 – paragraph 1 – point 1

(Replacübig, and 326

(1) ‘data subject’ means an identified natural person or a natural person who can be identified, directly or indirectly, by means reasonably likely to be used by the controller or by any other natural or legal person, **working together with the controller**, in particular by reference to an identification number **or other unique identifier**, location data, online identifier or to one or more factors specific to the **gender**, physical, physiological, genetic, mental, economic, cultural or social identity **or sexual orientation** of that person **and who is not acting in his/her professional capacity**;

CA 32

Article 4 – paragraph 1 – point 2

(Replac

(2) ‘personal data’ means any information relating to a data subject **whose specific identity can be identified, directly or indirectly by the controller or by any other natural or legal person, working together with the controller**.

CA 33

Article 4 – paragraph 1 – point 2 a (new)

(Replac

(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 that such attribution would require a disproportionate amount of time, expense and effort

CA 34

Article 4 – paragraph 1 – point 2 b (new)

(Replac

(2 b) 'anonymous data' means any personal data that has been collected, altered or otherwise processed in such a way that it can no longer be attributed to a data subject; anonymous data shall not be considered personal data

CA 35

Article 4 – paragraph 1 – point 8

(Replac

(8) 'the data subject's consent' means any freely given specific, informed and *unambiguous* indication of his or her wishes by which the data subject signifies agreement to personal data relating to them being processed; *Silence or inactivity does not in itself indicate acceptance;*

CA 36

Article 4 – paragraph 1 – point 9

(Replac

(9) 'personal data breach' means **an unlawful processing of personal data 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;****

CA 37

Article 4 – paragraph 1 – point 14

(Replac

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

CA 37_a_new - Article 5 - paragraph 1 - point c

(Replacing amendments 358 Valean/Creutzmann and 359 - Audy)

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

CA 38

Article 6 – paragraph 1 – point a

(Replac

(a) the data subject has given consent to the processing of their personal data;

CA 39

Article 6 – paragraph 1 – point f

(Replac

(f) processing is necessary for the purposes of the legitimate interests pursued by, **or on behalf of** a controller or a processor, **or by a third party or parties in whose interest the data is processed, including for the security of processing**, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. This shall not apply to processing carried out by public authorities in the performance of their tasks **or enterprises in the exercise of their legal obligations, and in order to safeguard against fraudulent behaviour.**

CA 40

Replacing Amendments 374 - Kelly, del Castillo, Niebler, 377 - Vidal-Quadras,

380 - Rohde

processing is limited to pseudonymised data, where the data subject is adequately protected and the recipient of the service is given a right to object pursuant to Art. 19 (3) (new).

CA 40_a_new

Replacing Amendments 376 - Niebler, 381 - Valean, Creutzmann

processing is necessary for the purpose of anonymisation or pseudonymisation of personal data;

CA 41

Article 7 – paragraph 3

(Replac

3. The data subject shall have the right to withdraw his or her consent at any time. **If the consent is part of a contractual or statutory relationship the withdrawal shall depend on the contractual or legal conditions.** The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal. **It is acknowledged that the withdrawal of consent can lead to the termination of the service and of the relationship with the controller.**

CA 42

Article 7 – paragraph 4

(Replacübig)

4. Consent shall not provide a legal basis for the processing, **when it has not been given freely**, where there is a significant imbalance between the position of the data subject and the controller.

CA 43

Article 8 – paragraph 1

(Replac

1. For the purposes of this Regulation, in relation to the offering of services directly to a child, the processing of personal data of a **data subject** 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.

CA 43

The processing of personal data, revealing race or ethnic origin, political opinions, religion or *philosophical* beliefs, trade-union membership, and the processing of genetic data or data concerning health or sex life or criminal convictions, *criminal offences, including offences and matters which have not lead to conviction, significant social problems, private information* or related security measures shall be prohibited.

CA 44

Article 9 – paragraph 2 – point b

(Replac

(b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller in the field of employment law **or collective agreements on the labour market** in so far as it is authorised by Union law or Member State law providing for adequate safeguards **for the fundamental rights and the interests of the data subject;** or

CA 45

Article 9 – paragraph 2 – point g

(Replac

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

CA 46

Article 9 – paragraph 2 – point j

(Replac

(j) processing of data relating to criminal convictions or related security measures is carried out either **subject to the conditions and safeguards referred to in Article 83a** or under the **supervision of a supervisory authority** or when the processing is necessary for compliance with **or to avoid a breach of** a legal or regulatory obligation **or collective agreements on the labour market** to which a controller is subject, or for the performance of a task carried out for important public interest reasons, and in so far as authorised by Union law or Member State law providing for adequate safeguards **for the fundamental rights of the data subject**. A complete register of criminal convictions shall be kept only under the control of official authority.

CA 47

Article 10 – paragraph 1

(Replacübig, 431

If the data processed by a controller do not permit the controller, through means used by the controller to identify a natural person, **in particular when rendered anonymous or pseudonymous**, the controller shall not acquire additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation.

CA 48

Article 14 – paragraph 1 – point c

(Replac

(c) the **expected** period for which the personal data will be stored, **when it is feasible to name a precise period**;

CA 49

Article 14 – paragraph 3

(Replac

3. Where the personal data are not collected from the data subject, the controller shall inform the data subject, **as far as possible**, in addition to the 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.**

CA 50

Article 14 – paragraph 5 – point b

(Replac

(b) the data are not collected from the data subject **or the data processes do not allow the verification of identity** and the provision of such information proves impossible or would involve a disproportionate effort **and generate excessive administrative burden, especially when the processing is carried out by a SME as defined in EU recommendation 2003/361; or**

CA 51

Article 15 – paragraph 1 – introductory part

(Replac

1. The data subject shall have the right to obtain from the controller at any time, on request, **in clear and plain language**, confirmation as to whether or not personal data relating to the data subject are being processed. **With the exception of data being used for historical, statistical or scientific research purposes**, the controller shall provide the following information **when personal data are being processed:**

CA 52

Article 17 – paragraph 1 – introductory part

(Replac

1. The data subject **has** the right to obtain from the controller the erasure of personal data relating to them and the abstention from further **processing** of such data, **unless the data controller is a public authority or an entity commissioned by the authority or otherwise acting on the behalf of the authority, including** in relation to personal data which are made available by the data subject while he or she was a child, where one of the following grounds applies:

CA 53

Article 17 – paragraph 1 – point b

(Replac

(b) the data subject withdraws consent on which the processing is based according to point (a) of Article 6(1), or when the **retention** period consented to has expired, and where there is no other legal ground for the processing **or storage** of the **data**, **or unless it would require a disproportionate effort by the data controller to ensure deletion of the data**;

CA 54 - withdrawn

CA 55

Article 17 – paragraph 3 – introductory part

(Replac

3. The controller shall carry out the erasure without **undue delay and regardless of the effort required under the conditions of paragraph 1**, except to the extent that the retention **and dissemination** of the personal data is necessary:

CA 56

Article 18 – paragraph 1

(Replac

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, **by request**, from the controller, **where technically feasible and appropriate** 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.

CA 57

Article 18 – paragraph 2

(Replac

2. Where the data subject has provided the personal data and the processing is based on consent or on a contract, the data subject shall have the right to transmit those personal data and any other information provided by the data subject, **or related to the data subject, where technically feasible and appropriate**, and retained by an automated processing system

CA 57 a new

Article 18 - paragraph 3

(Replacing Amendments 68 - Rapporteur, 512 - del Castillo, 513 - Chichester, 514 - Rohde, Vaelean)

The electronic format, related functionalities and procedures for the transmission of personal data pursuant to paragraph 2, shall be determined by the controller by reference to the most appropriate industry standards available or as defined by industry stakeholders or standardisation bodies. The Commission shall promote and assist industry, stakeholders and standardisation bodies in the mapping and adoption of technical standards, modalities and procedures for the transmission of personal data pursuant to paragraph 2.

CA 58

Article 19 – paragraph 1

(Replac

1. The data subject **has** 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.**

CA 59

Article 20 – paragraph 1

(Replac

1. **A data subject** shall have the right not to be subject to a **measure which adversely affects this data subject, both offline and online** which is based solely on automated processing **of data** intended to evaluate certain personal aspects relating to **a data subject** or to analyse or predict in particular the

data subject's performance at work, economic situation, location, health, personal preferences, reliability or behaviour.

CA 60

Article 23 – paragraph 1

(Replacürk, 595)

1. Having regard to the state of the art, the cost of implementation **and international best practice**, the controller shall, both at the time of the determination of the means for processing and at the time of the processing itself, **and when significant changes are made to the processing environment**, implement appropriate measures and procedures in such a way that the processing will meet the requirements of this Regulation and ensure the protection of the rights of the data subject.

Notwithstanding, the controller should only be burdened with measures that are proportionate to the risk of data processing reflected by the nature of the personal data to be processed.

CA 60 a new

Article 26 - paragraph 1

(Replacing Amendments 614 - Chichester, 615 - Rohde, Valean, 616 - Kelly, Valean, Niebler)

1. Where a processing operation is to be carried out on behalf of a controller **and 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.**

CA61

Article 28 – paragraph 1

(Replac

1. Each controller and, if any, the controller's representative, shall maintain documentation of **the measures taken to ensure that the processing of personal data** under its responsibility **is in compliance with this**

Regulation.

CA 62

Article 31 – paragraph 1

(Replac

1. In the case of a personal data breach **relating to special categories of personal data, personal data which are subject to professional secrecy, personal data relating to criminal offences or to the suspicion of a criminal act or personal data relating to bank or credit card accounts, which seriously threaten the rights or legitimate interests of the data subject**, the controller shall without undue delay notify the personal data breach to the supervisory authority.

CA 63

Article 32 – paragraph 1

(Replac

1. When the personal data breach is likely to adversely affect the protection of the personal data, **the** privacy, the right or the legitimate interests of the data subject, the controller shall, after the notification referred to in Article 31, communicate the personal data breach to the data subject without undue delay. **A breach 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.**

CA 64

Article 33 – paragraph 1

(Replac

1. Where processing operations present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, the controller shall carry out an assessment of the impact of the envisaged processing operations on the protection of personal data. **A single assessment shall be sufficient to address a set of processing operations that present similar risks. SMEs shall only be required to perform an impact assessment after their third year of incorporation where data**

processing is deemed as a core activity of their business.

CA 65

Article 33 – paragraph 2 – point a

(Replacübig)

(a) a systematic and extensive evaluation of personal aspects relating to a natural person or for analysing or predicting in particular the natural person's economic situation, location, health, personal preferences, reliability or behaviour, which is based on automated processing and on which measures are based that produce legal effects **to the detriment of the individual, including any further processing operation of the kind referred to in Article 20(1) of this Regulation;**

CA 66

Article 33 – paragraph 3

(Replac

3. The assessment shall contain at least a general description of the envisaged processing operations, an assessment of the risks to the rights and freedoms of data subjects, **including in particular the risk of discrimination being embedded in or reinforced by the operation,** the measures envisaged to address the risks, safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Regulation, taking into account the rights and legitimate interests of data subjects and other persons concerned **and also taking into account modern technologies and methods that can improve citizens' privacy. Where European guidelines exist, such guidelines should be taken into account for the impact assessment.**

CA 67

Article 34 – paragraph 2 – introductory part

(Replac

2. The controller or processor acting on the controller's behalf **may** consult the supervisory authority prior to the processing of **special categories of personal data as provided for in Article 9,** 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:

CA 68

Article 42 – paragraph 1

(Replac

1. Where the Commission has taken no decision pursuant to Article 41, **or decides that a third country, or a territory or a processing sector within that third country, or an international organisation does not ensure an adequate level of protection in accordance with paragraph 5 of this Article**, a controller or processor may transfer personal data to a third country or an international organisation **transferring data on an international basis** only if the controller or processor has adduced appropriate safeguards with respect to the protection of personal data in a legally binding instrument, **and where appropriate pursuant to an impact assessment, where the controller or processor has ensured that the recipient of data in a third country maintains high standards of data protection.**

These safeguards shall, at least, guarantee the observance of the principles of personal data processing as established in Article 5 and guarantee data subject rights as established in Chapter III.

CA 69

Article. 42 - paragraph 4

(Replacing amendments 109 - Rapporteur, 785 - Andersdotter, and 786 - Kelly, Vaele)

4. The controller or processor shall obtain prior authorisation of the contractual clauses according to point (a) of Article 34(1) from the **competent** supervisory authority **for transfers according to this Article**. If the transfer is related to processing activities which substantially affect the free movement of personal data within the Union, the **competent** supervisory authority shall apply the consistency mechanism referred to in Article 57.

CA 70

Article 43 - paragraph. 1, intro

(Replacing amendments 110 - Rapporteur, and 790 - Vaele, Creutzmann)

The competent supervisory authority shall **authorize through a single act of approval** binding corporate rules **for a group of undertakings. These rules**

will allow multiple intracompany international transfers in and out of Europe, provided that they:

CA 71

Article 44 - paragraph 5

(Replacing amendments 113 - Rapporteur, and 802 - Andersdotter)

5. The public interest referred to in point (d) of paragraph 1 must be recognised in ***international conventions, in*** Union law or in the law of the Member State to which the controller is subject. ***This derogation shall only be used for occasional transfers. In each and every case, a careful assessment of all circumstances of the transfer needs to be carried out.***

CA 72

Article 61 - paragraph 1

(Replacing amendments 122 - Rapporteur, 841 - Rohde, Valean, and 842 - Valean, Creutzmann)

1. In exceptional circumstances, where a supervisory authority considers that there is an urgent need to act in order to protect the interests of data subjects ***within their territory***, when the danger exists that the enforcement of a right of a data subject could be considerably impeded by means of an alteration of the existing state or for averting major disadvantages, by way of derogation from the procedure referred to in Article 58, it may immediately adopt provisional measures with a specified period of validity. The supervisory authority shall, without delay, communicate those measures, with full reasons, to the European Data Protection Board, ***the Commission and the controller or processor concerned***.

CA 73

Article 77 - paragraph 1

(Replacing amendments 860 - Andersdotter, 861 - Valean, Creutzmann, Rohde, Kelly, and 862 - Del Castillo Vera)

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 ***(deletion: or the processor)*** for the damage suffered.

CA 74

Article 77 - paragraph 2

(Replacing amendments 863 - Andersdotter, 864 - Valean, Creutzmann, Kelly, and 865 - Del Castillo Vera)

2. Where more than one controller is involved in the processing, each controller shall be jointly and severally liable for the entire amount of the damage ***to the extent that the joint controllers' respective liability has not been determined in the legal arrangement referred to in Article 24. In the case of a group of undertakings, the entire group shall be liable as a single economic entity.***

CA 75

Article 79 - paragraph 2

(Replacing amendments 124 - Rapporteur, 869 - Valean, Creutzmann, and 870 - Chichester)

2. The administrative sanction shall be in each individual case effective, proportionate and dissuasive. The amount of the administrative fine shall be fixed with due regard to the nature, gravity and duration of the breach, the ***sensitivity of the data in issue, the*** intentional or negligent character of the infringement, the degree of ***harm created by the violation, the degree of*** responsibility of the natural or legal person and of previous breaches by this person, the technical and organisational measures and procedures implemented pursuant to Article 23 and the degree of co-operation with the supervisory authority in order to remedy the breach. ***While some discretion is granted in the imposition of such sanctions to take into account the circumstances outlined above and other facts specific to the situation, divergences in the application of administrative sanctions may be subject to review pursuant to the consistency mechanism. Where appropriate, the data protection authority shall also be empowered to require that a data protection officer is appointed if the body, organisation or association has opted not to do so.***

CA 76

Article 83 - paragraph 1, intro

(Replacing amendments 890 - Valean, Creutzmann, Kelly, 891 - Andersdotter, 892 - Ticau, 893 - Chichester, and 894 - Valean, Creutzmann)

1. ***Without prejudice to*** this Regulation, personal data ***not falling within the categories of data covered by Article 8 of the Regulation*** may be processed for historical, statistical or scientific ***purposes under paragraph 2 of Article 6 and point (i) of Article 9(2)*** only if:

CA 77

Article 89 - paragraph 2

(Replacing amendments 164 - Rapporteur, and 915 - Proust)

2. Article 1(2), **Article 2(b) and (c), Article 4(3), (4) and (5) and Articles 6 and 9** of Directive 2002/58/EC shall be deleted.