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Committee on Industry, Research and Energy

2012/0011(COD)

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OPINION

of the Committee on Industry, Research and Energy

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) (COM(2012)0011 – C7-0025/2012 – 2012/0011(COD))

Rapporteur: Seán Kelly

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SHORT JUSTIFICATION

On 25 January 2012 the European Commission presented a comprehensive reform of the EU's data protection rules. The proposed regulation aims to harmonise online privacy rights and guarantee the free movement of such data within the European Union.

The proposed regulation also aims to:

- adapt data protection to the changed demand of the digital world, knowing that the current provisions have been adopted 17 years ago when less than 1% of the Europeans used the internet;
- prevent the current divergences in enforcement of the 1995 rules by the different member States and ensure that the fundamental rights to personal data protection is applied in a uniform way in all areas of the Union's activities;
- reinforce consumer confidence in online services with a better information about the rights and data protection with the introduction of the right to rectification, to be forgotten and to erasure, to data portability and the right to object;
- boost the Digital Single Market reducing the current fragmentation and the administrative burdens and, more generally, play an important role in the Europe 2020 Strategy.

Compared to the existing Directive 95/46/EC, the proposed regulation introduces a mandatory data protection officer for the public sector, and, in the private sector, for large enterprises with more than 250 persons and for those enterprises whose core activity concerns the processing of personal data.

Improvements have also been made concerning the transfer of personal data to third countries or international organisations.

The current proposal establishes the European data Protection Board and provides sanctions, penalties and rights to compensation in case of infringement of the Regulation.

Your rapporteur substantially supports the main aims of the Commission proposal.

The proposed changes should help avoid excessive administrative burdens for enterprises, especially for those enterprises that have embedded privacy accountability, and guarantee a certain level of flexibility concerning some provisions of the Regulation, in particular those regarding the accountability mechanism and the notification to the supervisory authority. Some definitions and aspects of the original text need also to be clarified, contextualised and simplified.

Your rapporteur has prioritised a qualitative rather than a quantitative approach to data protection which focuses on corporate governance, based on the aforementioned accountability principle, as opposed to the over-reliance on consent or bureaucratic documentation procedures, which nevertheless also play a role in data protection.

It is important to also place emphasis on the role of technical solutions such as privacy by design, pseudonymisation and anonymisation of data, prioritising the protection of sensitive data and targeted compliance measures.

Your rapporteur wishes to highlight the importance of avoiding unintended consequences which may have negative consequences in the areas of freedom of the press, health research, the fight against financial crime, the fight against fraud in sport and innovation in the delivery of energy smart grids and intelligent transport systems.

Another aspect of the proposal concerns the important number of delegated acts. Your rapporteur considers that the use of the delegated acts is too extensive and proposes to delete the majority of them.

AMENDMENTS

The Committee on Industry, Research and Energy calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a regulation
Citation 1 a (new)

Text proposed by the Commission

Amendment

Having regard to the Charter of Fundamental rights of the European Union, and in particular Article 7 and 8 thereof,

Amendment 2

Proposal for a regulation
Citation 1 b (new)

Text proposed by the Commission

Amendment

Having regard to the European Convention of Human Rights and in particular Article 8 thereof,

Amendment 3
Proposal for a regulation
Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) The protection of the freedom of expression and information is a fundamental right in accordance with Article 11 of the European Charter of Fundamental Rights. This right includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The freedom and pluralism of the media should be respected.

Justification

Explicit reference should be made to the freedom of information and the right to free expression which are fundamental rights in the European Union, pursuant to Article 11 of the European Charter of Fundamental Rights.

Amendment 4

Proposal for a regulation Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) The protection of individual privacy must be the point of departure for how to deal with personal data in public registers.

Amendment 5

Proposal for a regulation Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) The principles of free access to information that characterise the Member States through their constitutional traditions should not be undermined, while freedom of expression and freedom of the press as expressed in Member State constitutions must be safeguarded.

Amendment 6

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 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.

Amendment

(5) Rapid technological developments and globalisation have brought new challenges for the protection of personal data. The scale of data sharing and **collection** 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 publicly and globally. Technology has transformed both the economy and social life, and requires **improved legal safeguards which will** facilitate the free flow of data within the Union and the transfer to third countries and international organisations, ensuring an high level of the protection of personal data.

Justification

While the Regulation has two aims – protecting personal data and allowing their free flow within the Union -, the first objective should be stressed more as it is a fundamental right

Amendment 7

Proposal for a regulation
Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) Amongst other technologies, cloud computing has the potential to transform the European economy, provided, that appropriate data safety and data protection measures are put in place. In order to ensure the highest level of safety of personal data, it is essential to understand rights and obligations of data controllers and data processors within the Regulation.

Amendment 8

Proposal for a regulation
Recital 8

Text proposed by the Commission

(8) In order to ensure consistent and high level of protection of individuals and to remove the obstacles to flows of personal data, the level of protection of the rights and freedoms of individuals with regard to the processing of such data should be equivalent in all Member States. Consistent and homogenous application of the rules for the protection of the fundamental rights and freedoms of natural persons with regard to the processing of personal data should be ensured throughout the Union.

Amendment

(8) In order to ensure consistent and high level of protection of individuals and to remove the obstacles to flows of personal data, the level of protection of the rights and freedoms of individuals with regard to the processing of such data should be equivalent in all Member States **and identical where possible**. Consistent and homogenous application of the rules for the protection of the fundamental rights and freedoms of natural persons with regard to the processing of personal data should be ensured throughout the Union.

Justification

Rules for processing of data are already theoretically “equivalent” in all Member States. The failure of this approach is the logic behind this proposal being a Regulation. This recital should adequately reflect this thinking.

Amendment 9

Proposal for a regulation
Recital 10

Text proposed by the Commission

(10) Article 16(2) of the Treaty mandates the European Parliament and the Council to lay down the rules relating to the protection of individuals with regard to the processing of personal data and the rules relating to the free movement of personal data.

Amendment

(10) Article 16(2) of the Treaty mandates the European Parliament and the Council to lay down the rules relating to the protection of individuals with regard to the processing of personal data **by the Union institutions, bodies, offices and agencies, and by Member States when carrying out activities which fall within the scope of Union law, and** the rules relating to the free movement of personal data.

Amendment 10
Proposal for a regulation
Recital 11

Text proposed by the Commission

(11) In order to ensure a consistent level of protection for individuals throughout the Union and to prevent divergences hampering the free movement of data within the internal market, a Regulation is necessary to provide legal certainty and transparency for economic operators, including micro, small and medium-sized enterprises, and to provide individuals in all Member States with the same level of legally enforceable rights and obligations and responsibilities for controllers and processors, to ensure consistent monitoring of the processing of personal data, and equivalent sanctions in all Member States as well as effective co-operation by the supervisory authorities of different Member States. To take account of the specific situation of micro, small and medium-sized enterprises, this Regulation includes a number of derogations. In addition, the Union institutions and bodies, Member States and their supervisory authorities are encouraged to take account of the specific needs of micro, small and medium-sized enterprises in the application of this Regulation. The notion of micro, small and medium-sized enterprises should draw upon Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

Amendment

(11) In order to ensure a consistent level of protection for individuals throughout the Union and to prevent divergences hampering the free movement of data within the internal market, a Regulation is necessary to provide legal certainty and transparency for economic operators, including micro, small and medium-sized enterprises, and to provide individuals in all Member States with the same level of legally enforceable rights and obligations and responsibilities for controllers and processors, to ensure consistent monitoring of the processing of personal data, and equivalent sanctions in all Member States as well as effective co-operation by the supervisory authorities of different Member States. ***Where demonstrably necessary and without undermining either protection of personal data or single market principles,*** to take account of the specific situation of micro, small and medium-sized enterprises, this Regulation includes a number of derogations. In addition, the Union institutions and bodies, Member States and their supervisory authorities are encouraged to take account of the specific needs of micro, small and medium-sized enterprises in the application of this Regulation ***in consultation with the parties concerned, and also take into account the 'Think Small First' principle, so that the interests of micro, small and medium-sized enterprises are taken into account at the very early stages of policy making.*** The notion of micro, small and medium-sized enterprises should draw upon Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

Amendment 11

Proposal for a regulation
Recital 12

Text proposed by the Commission

(12) The protection afforded by this Regulation concerns natural persons, whatever their nationality or place of residence, in relation to the processing of personal data. With regard to the processing of data which concern legal persons and in particular undertakings established as legal persons, including the name and the form of the legal person and the contact details of the legal person, the protection of this Regulation should **not** be claimed by any person. ***This should also apply where the name of the legal person contains the names of one or more natural persons.***

Amendment 12
Proposal for a regulation
Recital 16 a (new)

Text proposed by the Commission

Amendment

(12) The protection afforded by this Regulation concerns natural persons, whatever their nationality or place of residence, in relation to the processing of personal data. With regard to the processing of data which concern legal persons and in particular undertakings established as legal persons, including the name and the form of the legal person and the contact details of the legal person, the protection of this Regulation should **also** be claimed by any person.

(16a) This Regulation does not sit in isolation from other legal acts of the Union. The liability limitations of the e-commerce directive have a horizontal structure and therefore apply to all information. This Regulation determines what constitutes a data protection infringement while the e-commerce directive sets the conditions by which the information service provider is liable for third party infringements of the law.

Justification

It is necessary to further explain in a recital the reasons for a reference to the liability limitations of the e-commerce directive.

Amendment 13
Proposal for a regulation
Recital 23

Text proposed by the Commission

(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.

Amendment 14

Proposal for a regulation Recital 23 a (new)

Text proposed by the Commission

Amendment 15

Proposal for a regulation Recital 24

Text proposed by the Commission

(24) When using online services, individuals may be associated with online identifiers provided by their devices, applications, tools and protocols, such as Internet Protocol addresses or cookie identifiers. This may leave traces which, combined with unique identifiers and other information received by the servers, may

Amendment

(23) The principles of protection should apply **only to specific** any information concerning an identified or identifiable person. To determine whether a person is identifiable, account should be taken: **(i) only of those** means likely to be used by the controller or by any other **natural or legal** person to identify the individual, **and (ii) of the likeliness of a person being identified**. The principles of data protection should not apply to data rendered anonymous in such a way that the data subject is no longer identifiable **from the data, taking full account of the technological "state of the art" and technological trends**.

Amendment

(23a) This regulation recognises that pseudonymisation 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 additional data. By this, controllers shall be encouraged to the practice of pseudonymising data.

Amendment

(24) When using online services, individuals may be associated with online identifiers provided by their devices, applications, tools and protocols, such as Internet Protocol addresses or cookie identifiers. This may leave traces which, combined with unique identifiers and other information received by the servers, may

be used to create profiles of the individuals and identify them. It follows that identification numbers, location data, online identifiers or other specific factors **as such** need not necessarily be considered as personal data in all circumstances.

Amendment 16

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 17

Proposal for a regulation

Recital 25 a (new)

Text proposed by the Commission

be used to create profiles of the individuals and identify them. It follows that identification numbers, location data, online identifiers or other specific factors need not necessarily be considered as personal data in all circumstances.

Amendment

(25) Consent should be given **unambiguously** by any appropriate method **within the context of the product or service being offered** 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.

(25a) This regulation recognises that the pseudonymisation of data can help minimise the risks to privacy of data

subjects. To the extent that a controller pseudonymises data such processing shall be considered justified as a legitimate interest of the controller according to point (f) of paragraph 1 of Article 6.

Amendment 18
Proposal for a regulation
Recital 26

Text proposed by the Commission

(26) Personal data relating to health should include in particular all data pertaining to the health status of a data subject; information about the registration of the individual for the provision of health services; information about payments or eligibility for healthcare with respect to the individual; a number, symbol or particular assigned to an individual to uniquely identify the individual for health purposes; any information about the individual collected in the course of the provision of health services to the individual; information derived from the testing or examination of a body part or bodily substance, including biological samples; identification of a person as provider of healthcare to the individual; or any information on e.g. a disease, disability, disease risk, medical history, clinical treatment, or the actual physiological or biomedical state of the data subject independent of its source, such as e.g. from a physician or other health professional, a hospital, a medical device, or an in vitro diagnostic test.

Amendment 19
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

Amendment

(26) Personal data relating to health should include in particular all ***personal*** data pertaining to the health status of a data subject ***including genetic information***; information about the registration of the individual for the provision of health services; information about payments or eligibility for healthcare with respect to the individual; a number, symbol or particular assigned to an individual to uniquely identify the individual for health purposes; any information about the individual collected in the course of the provision of health services to the individual; ***personal data*** derived from the testing or examination of a body part, bodily substance ***or biological sample***; identification of a person as provider of healthcare to the individual; or any information on e.g. a disease, disability, disease risk, medical history, clinical treatment, or the actual physiological or biomedical state of the data subject independent of its source, such as e.g. from a physician or other health professional, a hospital, a medical device, or an in vitro diagnostic test.

Amendment

(27) Where a controller or a processor has multiple establishments in the Union, including but not limited to cases where the controller or the processor is a group

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 20

Proposal for a regulation Recital 28

Text proposed by the Commission

(28) A group of undertakings should cover a controlling undertaking and its controlled undertakings, whereby the controlling undertaking should be the undertaking which can exercise a dominant influence over the other undertakings by virtue, for example, of ownership, financial participation or the rules which govern it or the power to have personal data protection rules implemented.

Amendment 21

Proposal for a regulation Recital 29

Text proposed by the Commission

(29) Children deserve specific protection of their personal data, as they may be less aware of risks, consequences, safeguards and their rights in relation to the processing

of undertakings, the main establishment of a controller in the Union ***for the purposes of this Regulation*** 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 ***not*** determining criteria for a main establishment.

Amendment

(28) A group of undertakings should cover a controlling undertaking and its controlled undertakings, whereby the controlling undertaking should be the undertaking which can exercise a dominant influence over the other undertakings by virtue, for example, of ownership, financial participation or the rules which govern it or the power to have personal data protection rules implemented. ***A group of undertakings may nominate a single main establishment in the Union.***

Amendment

(29) Children deserve specific protection of their personal data, as they may be less aware of risks, consequences, safeguards and their rights in relation to the processing

of personal data. To determine when an individual is a child, this Regulation should take over the definition laid down by the UN Convention on the Rights of the Child.

of personal data. ***Such protection is particularly important in the context of social networks, where children should be aware of the identities of those with whom they are communicating.*** To determine when an individual is a child, this Regulation should take over the definition laid down by the UN Convention on the Rights of the Child. ***No reference to child protection in this Regulation should be understood as an implicit instruction that protection of personal data of adults should be treated with less care than would have been the case if the reference was not included.***

Amendment 22

Proposal for a regulation Recital 30

Text proposed by the Commission

(30) Any processing of personal data should be lawful, fair and transparent in relation to the individuals concerned. In particular, the specific purposes for which the data are processed should be explicit and legitimate and determined at the time of the collection of the data. The data should be adequate, relevant and ***limited to the minimum necessary for*** the purposes for which the data are processed; this requires in particular ensuring that the data collected are not excessive and that the period for which the data are stored is limited to a strict minimum. Personal data should only be processed if the purpose of the processing could not be fulfilled by other means. Every reasonable step should be taken to ensure that personal data which are inaccurate are rectified or deleted. In order to ensure that the data are not kept longer than necessary, time limits should be established by the controller for erasure or for a periodic review.

Amendment

(30) Any processing of personal data should be lawful, fair and transparent in relation to the individuals concerned. In particular, the specific purposes for which the data are processed should be explicit and legitimate and determined at the time of the collection of the data. The data should be adequate, relevant and ***not excessive in relation*** to the purposes for which the data are processed; this requires in particular ensuring that the data collected are not excessive and that the period for which the data are stored is limited to a strict minimum. Personal data should only be processed if the purpose of the processing could not be fulfilled by other means. Every reasonable step should be taken to ensure that personal data which are inaccurate are rectified or deleted. In order to ensure that the data are not kept longer than necessary, time limits should be established by the controller for erasure or for a periodic review.

Amendment 23

Proposal for a regulation Recital 31

Text proposed by the Commission

(31) In order for processing to be lawful, personal data should be processed on ***the basis*** of the ***consent of the person concerned or some other legitimate basis***, laid down by law, either in this Regulation or in other Union or Member State law as referred to in this Regulation.

Amendment

(31) In order for processing to be lawful, personal data should be processed on ***one*** of the legitimate ***bases*** laid down by law, either in this Regulation or in other Union or Member State law as referred to in this Regulation.

Justification

This amendment encourages an appropriate use of consent, as equal among the other grounds for lawful processing set out in Article 6.

Amendment 24
Proposal for a regulation
Recital 32

Text proposed by the Commission

(32) Where processing is based on the data subject's consent, the controller should have the burden of proving that the data subject has given the consent to the processing operation. In particular in the context of a written declaration on another matter, safeguards should ensure that the data subject is aware that and to what extent consent is given.

Amendment

(32) Where processing is based on the data subject's consent, the controller should have the burden of proving that the data subject has given the consent to the processing operation. In particular in the context of a written declaration on another matter, safeguards should ensure that the data subject is aware that and to what extent consent is given. ***To comply with the principle of data minimisation, this burden of proof should not be understood neither as requiring positive identification of data subjects unless necessary nor as causing more data to be processed than otherwise have been the case.***

Amendment 25
Proposal for a regulation
Recital 33 a (new)

Text proposed by the Commission

Amendment

(33a) Consent may not be the primary or the most desirable means of legitimising the processing of personal data. The use of consent in the right context is crucial, but it should be relied on as the legitimate

basis for processing only when data subjects can meaningfully and easily provide and revoke their consent. When used in inappropriate contexts, consent loses its value and places an unnecessary burden on the data subject. For example, consent is not an appropriate justification when the processing is necessary for a service the user has requested or when subjects cannot refuse consent without impacting the underlying service. In these and other contexts, data controllers should aim to ensure the lawfulness of the processing on another legitimate ground.

Justification

This amendment aligns the text with the Article 29 Working Party Opinion 15/2011 on the definition of consent (p. 10) by reinforcing the point that consent may be unhelpful or outright harmful to privacy protection when overused, particularly in information services.

Amendment 26

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. 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.

Justification

Consent to data processing in an employment context should not be called into question across the board, as it is often given when it comes to matters in which it is in the interest of the employees concerned themselves to allow the processing of their personal data.

Amendment 27

Proposal for a regulation Recital 36 a (new)

Text proposed by the Commission

Amendment

(36a) These tasks carried out in the public interest or in the exercise of official authority include the processing of personal data necessary for the management and functioning of those authorities.

Justification

A further indication is needed of what exactly can be covered by the legal obligation or the tasks carried out in the public interest or in the exercise of public authority.

Amendment 28

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

(38) The legitimate interests of a controller, ***or of the third party or parties in whose interest the data is processed,*** may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding. ***To ensure clarity, the Data Protection Board will set out comprehensive guidelines on what can be defined as "legitimate interest".*** ***Processing*** 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, free of charge. To ensure transparency, the controller should be obliged to explicitly inform the data subject on the legitimate

authorities to process data, this legal ground should not apply for the processing by public authorities in the performance of their tasks.

Amendment 29
Proposal for a regulation
Recital 40

Text proposed by the Commission

(40) The processing of personal data for other purposes should be only allowed where the processing is compatible with those purposes for which the data have been initially collected, ***in particular*** where the processing is necessary for historical, statistical or scientific research purposes. Where the other purpose is not compatible with the initial one for which the data are collected, the controller should obtain the consent of the data subject for this other purpose ***or should base the processing on another legitimate ground for lawful processing, in particular where provided by Union law or the law of the Member State to which the controller is subject.*** In any case, the application of the principles set out by this Regulation and in particular the information of the data subject on those other purposes should be ensured.

Amendment 30
Proposal for a regulation
Recital 40 a (new)

Text proposed by the Commission

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.

Amendment

(40) The processing of personal data for other purposes should be only allowed where the processing is compatible with those purposes for which the data have been initially collected, ***such as*** where the processing is necessary for historical, statistical or scientific purposes. Where the other purpose is not compatible with the initial one for which the data are collected, the controller should obtain the consent of the data subject for this other purpose. In any case, the application of the principles set out by this Regulation and in particular the information of the data subject on those other purposes should be ensured.

(40a) The processing of data to the extent strictly necessary for the purposes of ensuring that electrical or distribution system operators as defined in Directive 2009/72/EC and Directive 2009/73/EC can meet system, grid or operational

needs, or the implementation of demand response, energy management, or energy efficiency programmes should be allowed provided that the electrical or gas undertaking or the distribution system operator has required by contract that the processor fulfils the requirements outlined in this Regulation.

Amendment 31
Proposal for a regulation
Recital 41

Text proposed by the Commission

(41) Personal data which are, by their nature, particularly sensitive and vulnerable in relation to fundamental rights or privacy, deserve specific protection. Such data should not be processed, unless the data subject gives his **explicit** consent. However, derogations from this prohibition should be explicitly provided for in respect of specific needs, in particular where the processing is carried out in the course of legitimate activities by certain associations or foundations the purpose of which is to permit the exercise of fundamental freedoms.

Amendment 32
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

Amendment

(41) Personal data which are, by their nature, particularly sensitive and vulnerable in relation to fundamental rights or privacy, deserve specific protection. Such data should not be processed, unless the data subject gives his **informed** consent. However, derogations from this prohibition should be explicitly provided for in respect of specific needs, in particular where the processing is carried out in the course of legitimate activities by certain associations or foundations the purpose of which is to permit the exercise of fundamental freedoms **of the data subjects in question**.

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 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. **The data controller**

that person seeks.

shall not invoke a possible lack of information to refuse a request of access, when this information can be provided by the data subject to enable such access.

Amendment 33

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 right to lodge a complaint. Where the data are collected from the data subject, the data subject should also be informed whether they are obliged to provide the data and of the consequences, in cases they do not provide such data.

Amendment

(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 ***and the criteria which may be used as the basis for determining how long the data will be stored***, on the existence of the right of access, rectification or erasure and on the right to lodge a complaint. Where the data are collected from the data subject, the data subject should also be informed whether they are obliged to provide the data and of the consequences, in cases they do not provide such data.

Amendment 34

Proposal for a regulation Recital 49

Text proposed by the Commission

(49) The information in relation to the processing of personal data relating to the data subject should be given to them at the time of collection, or, where the data are not collected from the data subject, within a reasonable period, depending on the circumstances of the case. Where data can be legitimately disclosed to another recipient, the data subject should be informed when the data are first disclosed to the recipient.

Amendment

(49) The information in relation to the processing of personal data relating to the data subject should be given to them at the time of collection, or, where the data are not collected from the data subject, within a reasonable period, depending on the circumstances of the case. Where data can be legitimately disclosed to another recipient ***without the data subject's consent or renewed consent***, the data subject should be informed when the data are first disclosed to the recipient, ***should the data subject request to be provided with this information.***

Justification

If data are legitimately disclosed to another recipient, there should be no need for a constant, iterative process of informing the data subject. This may lead to unintended consequences such as the data subject removing their consent to legitimate processing, or even worse, the data subject becoming desensitised to information pertaining to the status of their personal data.

Amendment 35 **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 36 **Proposal for a regulation** **Recital 52**

Text proposed by the Commission

(52) The controller should use all reasonable measures to verify the **identity** of a **data** subject that requests access, in particular in the context of online services and online identifiers. A controller should not retain personal data for the unique

Amendment

(51) Any person should have the right of access to **personal** 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 **personal** data are processed, for what period, which recipients receive the **personal** data, what is the logic of the **personal** data that are undergoing the processing and what might be the consequences of such processing. This right should not adversely affect the rights and freedoms of others, including trade secrets or intellectual property, **such as in relation to** copyright protecting the software. However, the result of these considerations should not be that all information is refused to the data subject.

Amendment

(52) The controller should use all reasonable measures **within the context of the product or service being provided, or otherwise within the context of the relationship between the controller and the data subject, and the sensitivity of the personal data being processed** to verify

purpose of being able to react to potential requests.

the **authenticity of a** subject access **request**, in particular in the context of online services and online identifiers. A controller should not retain ***nor be forced to gather*** personal data for the unique purpose of being able to react to potential requests.

Amendment 37
Proposal for a regulation
Recital 53 a (new)

Text proposed by the Commission

Amendment

(53a) A data subject should always have the option to give broad consent for his or her data to be used for historical, statistical or scientific research purposes, and to withdraw consent at any time.

Justification

Broad consent is a necessity for conducting research in fields of medicine that rely on biobanks and tissue banks among other forms. Biobanks are collections of biological samples and data, accumulated over a period of time, used for medical research and diagnostic purposes. These repositories store data from millions of data subjects, which is used by scientists to perform research. The option of broad consent given to a data subject at their first encounter with a doctor allows the researchers to use this data without having to go back to the data subject for every minor research they are conducting and is thus a necessary and practical solution for protecting and fostering public health research.

Amendment 38
Proposal for a regulation
Recital 58

Text proposed by the Commission

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.

(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 ***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 and 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.

Justification

The amendment clarifies that commercial communication, like for example in the field of customer relationship management or customer acquisition does not significantly affect a natural person in the sense of Article 20 paragraph 1. Actual effects must be comparable in their intensity to legal effects to fall under this provision.

Amendment 39 **Proposal for a regulation** **Recital 60**

Text proposed by the Commission

(60) ***Comprehensive*** responsibility and liability of the controller for any processing of personal data carried out by the controller or on the controller's behalf should be established. In particular, the controller should ensure and be obliged to demonstrate the compliance of each processing operation with this Regulation.

Amendment

(60) ***Overall*** responsibility and liability of the controller for any processing of personal data carried out by the controller or on the controller's behalf should be established ***in order to ensure accountability***. In particular, the controller should ensure and be obliged to demonstrate the compliance of each processing operation with this Regulation. ***Otherwise unnecessary data processing may not be justified on the basis of the need to respect this obligation.***

Amendment 40 **Proposal for a regulation** **Recital 61**

Text proposed by the Commission

(61) ***The*** protection of the rights and freedoms of data subjects with regard to

Amendment

(61) ***To meet consumer and business expectations around the*** protection of the

the processing of personal data **require that** appropriate **technical and** organisational measures **are** taken, both at the time of the design of the processing and at the time of the processing itself, to ensure that the requirements of this Regulation are met. **In order to ensure and demonstrate compliance with this Regulation, the controller should adopt internal policies and implement appropriate measures, which meet in particular the principles of data protection by design and data protection by default.**

rights and freedoms of data subjects with regard to the processing of personal data, appropriate organisational measures **should be** taken, both at the time of the design of the processing and **its underlying technologies as well as** at the time of the processing itself, to ensure that the requirements of this Regulation are met. **Measures having as an objective to increase consumer information and ease of choice shall be encouraged, based on industry cooperation and favouring innovative solutions, products and services. Data protection by design is the process by which data protection and privacy are integrated in the development of products and services through both technical and organisational measures. Data protection by default means that products and services are by default configured in a way that limits the processing and especially the disclosure of personal data. In particular, personal data should not be disclosed to an unlimited number of persons by default.**

Amendment 41
Proposal for a regulation
Recital 61 a (new)

Text proposed by the Commission

Amendment

(61a) This Regulation encourages enterprises to develop internal programmes that will identify the processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, and to put in place appropriate data protection safeguards and develop innovative data protection-by-design solutions and data protection enhancing techniques. Enterprises would then demonstrate publicly and pro-actively their compliance with the provisions and spirit of this Regulation and thus increase the trust of the European citizens. Corporate accountability on personal data protection cannot however exempt an enterprise from any obligation laid down

in this Regulation.

Amendment 42

Proposal for a regulation Recital 62

Text proposed by the Commission

(62) The protection of the rights and freedoms of data subjects as well as the responsibility and liability of controllers and processor, also in relation to the monitoring by and measures of supervisory authorities, requires a clear attribution of the responsibilities under this Regulation, including where a controller determines the purposes, ***conditions and means*** of the processing jointly with other controllers or where a processing operation is carried out on behalf of a controller.

Amendment

(62) The protection of the rights and freedoms of data subjects as well as the responsibility and liability of controllers and processor, also in relation to the monitoring by and measures of supervisory authorities, requires a clear attribution of the responsibilities under this Regulation, including where a controller determines the purposes of the processing jointly with other controllers or where a processing operation is carried out on behalf of a controller.

Amendment 43

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

Amendment

(65) In order to demonstrate compliance with this Regulation, the controller should document each processing operation ***under its responsibility***. Each controller should be obliged to co-operate with the supervisory authority and make this documentation, on request, available to it, so that it might serve for monitoring those processing operations.

Amendment 44

Proposal for a regulation Recital 66

Text proposed by the Commission

(66) In order to maintain security and to prevent processing in breach of this Regulation, the controller or processor should evaluate the risks inherent to the

Amendment

(66) In order to maintain security and to prevent processing in breach of this Regulation, the controller or processor should evaluate the risks inherent to the

processing and implement measures to mitigate those risks. These measures should ensure an appropriate level of security, taking into account the state of the art and the costs of their implementation in relation to the risks and the nature of the personal data to be protected. When establishing technical standards and organisational measures to ensure security of processing, **the Commission should promote** technological neutrality, interoperability and innovation, and, where appropriate, cooperate with third countries.

Amendment 45
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 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

processing and implement measures to mitigate those risks. ***In particular, the controller or processor shall duly take into account the greater risks arising from the processing of personal data of the data subject, due to the sensitive nature of the data.*** These measures should ensure an appropriate level of security, taking into account the state of the art and the costs of their implementation in relation to the risks and the nature of the personal data to be protected. When establishing technical standards and organisational measures to ensure security of processing, technological neutrality, interoperability and innovation ***should be promoted***, and, where appropriate, cooperate with third countries ***should be encouraged***.

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. Where this cannot be achieved within ***a reasonable time period***, 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

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.

Amendment 46

Proposal for a regulation

Recital 70

Text proposed by the Commission

(70) Directive 95/46/EC provided for a general obligation to notify processing of personal data to the supervisory authorities. While this obligation produces administrative and financial burdens, it did not in all cases contribute to improving the protection of personal data. Therefore such indiscriminate general notification obligation should be abolished, and replaced by effective procedures and mechanism which focus instead on those processing operations which are likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes. In such cases, a data protection impact assessment should be carried out by the controller *or processor* prior to the processing, which should include in particular the envisaged measures, safeguards and mechanisms for ensuring the protection of personal data and for demonstrating the compliance with this

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.

Amendment

(70) Directive 95/46/EC provided for a general obligation to notify processing of personal data to the supervisory authorities. While this obligation produces administrative and financial burdens, it did not in all cases contribute to improving the protection of personal data. Therefore such indiscriminate general notification obligation should be abolished, and replaced by effective procedures and mechanism which focus instead on those processing operations which are likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes. In such cases, a data protection impact assessment should be carried out by the controller prior to the processing, which should include in particular the envisaged measures, safeguards and mechanisms for ensuring the protection of personal data and for demonstrating the compliance with this Regulation.

Regulation.

Justification

It should be up to the data controllers to assess the impact to privacy as they will determine the purposes of the processing.

Amendment 47
Proposal for a regulation
Recital 70 a (new)

Text proposed by the Commission

Amendment

(70a) Directive 2002/58/EC sets out personal data breach notification obligations for the processing of personal data in connection with the provision of publicly available electronic communications services in public communications networks in the Union. Where providers of publicly available electronic communications services also provide other services, they continue to be subject to the breach notification obligations of Directive 2002/58/EC, not this Regulation. Such providers should be subject to a single personal data breach notification regime for both personal data processed in connection with the provision of a publicly available electronic communications service and for any other personal data for which they are a controller.

Justification

Electronic communications service providers should be subject to a single notification regime for any breaches relating to the data they process, not multiple regimes depending on the service offered. This ensures a level playing field among industry players.

Amendment 48

Proposal for a regulation
Recital 76

Text proposed by the Commission

Amendment

(76) Associations or other bodies representing categories of controllers should be encouraged to draw up codes of conduct, within the limits of this

(76) Associations or other bodies representing categories of controllers should be encouraged to draw up codes of conduct, within the limits of this

Regulation, so as to facilitate the effective application of this Regulation, taking account of the specific characteristics of the processing carried out in certain sectors.

Regulation, so as to facilitate the effective application of this Regulation, taking account of the specific characteristics of the processing carried out in certain sectors. ***Such codes should make compliance easier for industry.***

Justification

It should be made clear that such codes of conduct are beneficial for industry and not a gesture which needs to be reciprocated with less oversight by DPAs.

Amendment 49

**Proposal for a regulation
Recital 77**

Text proposed by the Commission

(77) In order to enhance transparency and compliance with this Regulation, the establishment of certification mechanisms, data protection seals and marks should be encouraged, allowing data subjects to quickly assess the level of data protection of relevant products and services.

Amendment

(77) In order to enhance transparency and compliance with this Regulation, the establishment of certification mechanisms, data protection seals and marks should be encouraged, allowing data subjects to quickly, ***reliably and verifiably*** assess the level of data protection of relevant products and services.

Justification

Such tools must be rigorously tested, learning from successes and failures experienced with this approach.

Amendment 50

**Proposal for a regulation
Recital 80**

Text proposed by the Commission

(80) The Commission may decide with effect for the entire Union that certain third countries, or a territory or a processing sector within a third country, or an international organisation, offer an adequate level of data protection, thus providing legal certainty and uniformity throughout the Union as regards the third countries or international organisations

Amendment

(80) The Commission may decide with effect for the entire Union that certain third countries, or a territory or a processing sector within a third country, or an international organisation, offer an adequate level of data protection, thus providing legal certainty and uniformity throughout the Union as regards the third countries or international organisations

which are considered to provide such level of protection. In these cases, transfers of personal data to these countries may take place without needing to obtain any further authorisation.

which are considered to provide such level of protection. In these cases, transfers of personal data to these countries may take place without needing to obtain any further authorisation. ***The Commission may also decide, having given notice and a complete justification to the third country, to revoke such a decision.***

Justification

It would be illogical to imagine that the data protection situation in such a third country could not subsequently deteriorate.

Amendment 51

Proposal for a regulation

Recital 84

Text proposed by the Commission

(84) The possibility for the controller or processor to use standard data protection clauses adopted by the Commission or by a supervisory authority should neither prevent the possibility for controllers or processors to include the standard data protection clauses in a wider contract nor to add other clauses as long as they do not contradict, directly or indirectly, the standard contractual clauses adopted by the Commission or by a supervisory authority or prejudice the fundamental rights or freedoms of the data subjects.

Amendment

(84) The possibility for the controller or processor to use standard data protection clauses adopted by the Commission or by a supervisory authority should neither prevent the possibility for controllers or processors to include the standard data protection clauses in a wider contract nor to add other clauses as long as they do not contradict, directly or indirectly, the standard contractual clauses adopted by the Commission or by a supervisory authority or prejudice the fundamental rights or freedoms of the data subjects. ***In some scenarios, it may be appropriate to encourage controllers and processors to provide even more robust safeguards via additional contractual commitments that supplement standard data protection clauses.***

Justification

This amendment would provide an incentive for organisations to go beyond the baseline regulatory requirements comply with regimes such as a "data seal" or "trust mark".

Amendment 52

Proposal for a regulation

Recital 85 a (new)

Text proposed by the Commission

Amendment

(85a) A group of companies planning to submit for approval binding corporate rules may propose a supervisory authority as the lead authority. This should be the supervisory authority of the Member State in which the main establishment of the controller or processor is situated.

Justification

The Article 29 Working Party established a system for mutual recognition of binding corporate rules (WP 107, 14 April 2005). This system should be incorporated into this Regulation. The criterion for designating the competent authority should be the place of the main establishment, as set out in Article 51(2) of the Regulation.

Amendment 53
Proposal for a regulation
Recital 87

Text proposed by the Commission

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, or to competent authorities for the prevention, investigation, detection and prosecution of criminal offences.

(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. ***Transferring personal data for such important grounds of public interest should 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.***

Amendment 54

Proposal for a regulation
Recital 94

Text proposed by the Commission

(94) Each supervisory authority should be provided with the adequate financial and human resources, premises and infrastructure, which is necessary for the effective performance of their tasks, including for the tasks related to mutual assistance and co-operation with other supervisory authorities throughout the Union.

Amendment

(94) Each supervisory authority should be provided with the adequate financial and human resources, ***paying particular attention to ensuring adequate technical skills of staff***, premises and infrastructure, which is ***are*** necessary for the effective performance of their tasks, including for the tasks related to mutual assistance and co-operation with other supervisory authorities throughout the Union.

Justification

Strong, independent supervisory authorities are one of the necessary conditions for effective data protection. They should be free from external influence, as confirmed by the ECJ (C-518/07 and C-614/10), and should have the necessary resources – financial and human – to ensure enforcement of data protection legislation. These changes aim to provide supervisory authorities with the independence and resources they need to effectively protect the fundamental right to data protection. Supervisory authorities are needed to ensure enforcement of data protection legislation. As Article 16(2) TFEU states, they shall be independent in the exercise of their duties. Experience with the current framework has shown that this level of independence is not always provided in practice. It should be noted that this should not only be seen as referring to interference by Member States, but also by the Commission. Independence on paper alone is not enough, supervisory authorities also need the means to put their powers into action. This implies a need for appropriate resources and skilled staff, including staff with technical expertise. The increasing technical challenges facing supervisory authority staff must be recognised and addressed.

Amendment 55

Proposal for a regulation

Recital 95

Text proposed by the Commission

(95) The general conditions for the members of the supervisory authority should be laid down by law in each Member State and should in particular provide that those members should be either appointed by the parliament or the government of the Member State, and include rules on the personal qualification of the members and the position of those members.

Amendment

(95) The general conditions for the members of the supervisory authority should be laid down by law in each Member State and should in particular provide that those members should be either appointed by the parliament or the government of the Member State ***taking due care to minimise the possibility of political interference***, and include rules on the personal qualification of the members, ***the avoidance of conflicts of interest*** and the position of those members.

Justification

Strong, independent supervisory authorities are one of the necessary conditions for effective data protection. They should be free from external influence, as confirmed by the ECJ (C-518/07 and C-614/10), and should have the necessary resources – financial and human – to ensure enforcement of data protection legislation. These changes aim to provide supervisory authorities with the independence and resources they need to effectively protect the fundamental right to data protection. Supervisory authorities are needed to ensure enforcement of data protection legislation. As Article 16(2) TFEU states, they shall be independent in the exercise of their duties. Experience with the current framework has shown that this level of independence is not always provided in practice. It should be noted that this should not only be seen as referring to interference by Member States, but also by the Commission. Independence on paper alone is not enough, supervisory authorities also need the means to put their powers into action. This implies a need for appropriate resources and skilled staff, including staff with technical expertise.

Amendment 56

Proposal for a regulation

Recital 97

Text proposed by the Commission

(97) Where the processing of personal data ***in the context of the activities of an establishment of a controller or a processor in the Union*** takes place in more than one Member State, one single supervisory authority should be competent for monitoring the activities of the controller or processor throughout the Union and taking the related decisions, in order to increase the consistent application, provide legal certainty and reduce administrative burden for such controllers and processors.

Amendment

(97) Where the processing of personal data takes place in more than one Member State, one single supervisory authority should be competent for monitoring the activities of the controller or processor throughout the Union and taking the related decisions, in order to increase the consistent application, provide legal certainty and reduce administrative burden for such controllers and processors.

Justification

The one-stop shop principle should apply consistently to both EU and non-EU based controllers subject to the law.

Amendment 57

Proposal for a regulation

Recital 98 a (new)

Text proposed by the Commission

Amendment

(98a) Where such processing is the subject of a complaint lodged by a data subject, the competent authority, providing such one-stop shop, should be the supervisory authority of the Member State in which the data subject has its main residence. Where data subjects lodge similar complaints against such processing with supervisory authorities in different Member States, the competent authority should be the first seized.

Justification

It is appropriate to enable the data subject to exercise its administrative action towards the supervisory authority closest to its main residence, and in the same Member State where he/she can take legal action if needed, in order to enhance the accessibility and coherence of the recourse of the data subject and also to avoid administrative burden.

Amendment 58

Proposal for a regulation

Recital 105

Text proposed by the Commission

Amendment

(105) In order to ensure the consistent application of this Regulation throughout the Union, a consistency mechanism for co-operation between the supervisory authorities themselves and the Commission should be established. This mechanism should in particular apply where **a** supervisory authority intends to take a measure as regards processing operations that are related to the offering of goods or services to data subjects in several Member States, , or to the monitoring such data subjects, or that might substantially affect the free flow of personal data. It should also apply where any supervisory authority or the Commission requests that the matter should be dealt with in the consistency mechanism. This mechanism should be without prejudice to any measures that the Commission may take in the exercise of its powers under the Treaties.

(105) In order to ensure the consistent application of this Regulation throughout the Union, a consistency mechanism for co-operation between the supervisory authorities themselves and the Commission should be established. This mechanism should in particular apply where **the competent** supervisory authority intends to take a measure as regards processing operations that are related to the offering of goods or services to data subjects in several Member States, or to the monitoring such data subjects, or that might substantially affect the free flow of personal data. It should also apply where any supervisory authority or the Commission requests that the matter should be dealt with in the consistency mechanism. This mechanism should be without prejudice to any measures that the Commission may take in the exercise of its powers under the

Amendment 59
Proposal for a regulation
Recital 121

Text proposed by the Commission

(121) The processing of personal data ***solely*** for journalistic purposes, or for the purposes of artistic or literary expression should qualify for exemption from the requirements of certain provisions of this Regulation in order to reconcile the right to the protection of personal data with the right to freedom of expression, and notably the right to receive and impart information, as guaranteed in particular by Article 11 of the Charter of Fundamental Rights of the European Union. This should apply in particular to processing of personal data in the audiovisual field and in news archives and press libraries. ***Therefore, Member States should adopt legislative measures, which should lay down exemptions and derogations which are necessary for the purpose of balancing these fundamental rights. Such exemptions and derogations should be adopted by the Member States on general principles, on the rights of the data subject, on controller and processor, on the transfer of data to third countries or international organisations, on the independent supervisory authorities and on co-operation and consistency. This should not, however, lead Member States to lay down exemptions from the other provisions of this Regulation.*** In order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary to interpret notions relating to that freedom, such as journalism, broadly. ***Therefore, Member States should classify activities as ‘journalistic’ for the purpose of the exemptions and derogations to be laid down under this Regulation if the object of these activities is the disclosure to the***

Amendment

(121) The processing of personal data for journalistic purposes, or for the purposes of artistic or literary expression should qualify for exemption from the requirements of certain provisions of this Regulation in order to reconcile the right to the protection of personal data with the right to freedom of expression, and notably the right to receive and impart information, as guaranteed in particular by Article 11 of the Charter of Fundamental Rights of the European Union. This should apply in particular to processing of personal data in the audiovisual field and in news archives and press libraries. In order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary to interpret notions relating to that freedom, such as journalism, broadly ***and*** irrespective of the medium which is used to transmit them.

public of information, opinions or ideas, irrespective of the medium which is used to transmit them. They should not be limited to media undertakings and may be undertaken for profit-making or for non-profit making purposes.

Amendment 60

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.

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 61

Proposal for a regulation Recital 123 a (new)

Text proposed by the Commission

Amendment

(123a) The processing of personal data concerning health, as a special category of data, may be necessary for reasons of historical, statistical or scientific research. Therefore this Regulation should ensure that the harmonisation of conditions provided for the processing of personal data concerning health, subject to specific and suitable safeguards so as to protect the fundamental rights and the

personal data of individuals, do not act as a barrier to translational, clinical and public health research.

Justification

Ensuring seamless access to medical data is crucial for public health research. This Regulation makes it essential to find a balance between protecting individual data and respecting public health researchers enough to provide them with the means to conduct medical research. One of the aims of this Regulation is to harmonize data protection across different sectors. It is thus important to note that any harmonization of data protection across countries or sectors must protect public health research sector and not constitute a barrier to crucial research addressing the great societal challenges.

Amendment 62 **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***

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 certain limited circumstances***. 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.

establishing a personal data breach and for its notification to the supervisory authority, and on the circumstances 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.

Amendment 63
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 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*

Amendment

(130) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. *In implementing the provisions of this Regulation, it shall be ensured that no mandatory requirements for specific technical features are imposed on products and services, including terminal or other electronic communications equipment, which could impede the placing of equipment on the market and the free circulation of such equipment in and between Member States.*

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

Amendment 64

Proposal for a regulation Recital 139

Text proposed by the Commission

(139) In view of the fact that, as underlined by the Court of Justice of the European Union, the right to the protection of personal data is not an absolute right, but must be considered in relation to its function in society and be balanced with other fundamental rights, in accordance

In this context, the Commission should consider specific measures for micro, small and medium-sized enterprises *in consultation with the parties concerned, as these measures should not overly burden these enterprises.*

Amendment

(139) In view of the fact that, as underlined by the Court of Justice of the European Union, the right to the protection of personal data is not an absolute right, but must be considered in relation to its function in society and *the actual and potential advances in science, health and*

with the principle of proportionality, this Regulation respects all fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union as enshrined in the Treaties, notably the right to respect for private and family life, home and communications, the right to the protection of personal data, the freedom of thought, conscience and religion, the freedom of expression and information, the freedom to conduct a business, the right to an effective remedy and to a fair trial as well as cultural, religious and linguistic diversity.

technology and be balanced with other fundamental rights, in accordance with the principle of proportionality, this Regulation respects all fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union as enshrined in the Treaties, notably the right to respect for private and family life, home and communications, the right to the protection of personal data, the freedom of thought, conscience and religion, the freedom of expression and information, the freedom to conduct a business, **the right to property and in particular the protection of intellectual property** the right to an effective remedy and to a fair trial as well as cultural, religious and linguistic diversity.

Justification

The processing of IP addresses is often a critical component of investigations into IPR abuses under Directive 2004/48/EC and should not be prevented by the Regulation.

Amendment 65

Proposal for a regulation Article 1 – paragraph 1

Text proposed by the Commission

1. This Regulation lays down rules relating to the protection of **individuals** with regard to the processing of personal data and rules relating to the free movement of personal data.

Amendment

1. This Regulation lays down rules relating to the protection of **natural and legal persons** with regard to the processing of personal data and rules relating to the free movement of personal data.

Amendment 66

Proposal for a regulation Article 1 – paragraph 2

Text proposed by the Commission

2. This Regulation protects the fundamental rights and freedoms of natural persons, and in particular their right to the protection of personal data.

Amendment

2. This Regulation protects the fundamental rights and freedoms of natural **and legal** persons, and in particular their right to the protection of personal data.

Amendment 67

Proposal for a regulation Article 1 – paragraph 3

Text proposed by the Commission

3. The free movement of personal data within the Union shall neither be restricted nor prohibited for reasons connected with the protection of *individuals* with regard to the processing of personal data.

Amendment

3. The free movement of personal data within the Union shall neither be restricted nor prohibited for reasons connected with the protection of *natural and legal persons* with regard to the processing of personal data.

Amendment 68

Proposal for a regulation Article 1 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The provisions of this Regulation shall not influence or restrict the freedom of the press and the freedom of expression that are enshrined in Member State constitutions and are derived from the tradition of freedom of expression and freedom of the press that characterises free and open societies. Nor should citizens' rights and access to information from the public authorities be affected or impaired. The Member States' right and responsibility to protect individual privacy with respect to dealing with public registers through special legislation shall also not be affected by this regulation.

Amendment 69

Proposal for a regulation Article 2 – paragraph 1

Text proposed by the Commission

1. This Regulation applies to the processing of personal data wholly or partly by automated means, and to the processing other than by automated means of personal data which form part of a filing

Amendment

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

system or are intended to form part of a filing system.

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.

Amendment 70
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

Amendment 71

Proposal for a regulation
Article 2 – paragraph 2 – point e a (new)

Text proposed by the Commission

Amendment

(ea) for historical, statistical and scientific research purposes

Amendment 72

Proposal for a regulation
Article 2 – paragraph 2 – point e a (new)

Text proposed by the Commission

Amendment

(ea) in the course of an activity which can be attributed to the professional or a commercial activity of a data subject.

Amendment 73

Proposal for a regulation
Article 2 – paragraph 2 – point e a (new)

Text proposed by the Commission

Amendment

(ea) made by the employer as part of the treatment of employee personal data in the employment context

Justification

It is important that an employer can continue to process data about the employee – for

example with regards to wage, vacation, benefits, anniversary, education, health, criminal convictions, etc. Currently the employee can consent that the employer processes these data. However, the wording in the regulation could be interpreted as if in the future an imbalance between employer and employee is introduced.

Amendment 74

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(ea) which have been rendered anonymous within the meaning of Article 4(2(b)(new));

Amendment 75

Proposal for a regulation

Article 3 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. This Regulation applies to the processing of personal data of data subjects **residing** in the Union by a controller not established in the Union, where the processing activities are related to:

2. This Regulation applies to the processing of personal data of data subjects **domiciled** in the Union by a controller not established in the Union, where the processing activities are related to

Justification

Clarification of the concept of ‘residence’.

Amendment 76

Proposal for a regulation

Article 4 – paragraph 1 – 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

(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

identity of that person;

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***;

Amendment 77
Proposal for a regulation
Article 4 – paragraph 1 – point 2

Text proposed by the Commission

Amendment

(2) ‘personal data’ means any information relating to a data subject;

Amendment 78
Proposal for a regulation
Article 4 – paragraph 1 – 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,

Amendment 79
Proposal for a regulation
Article 4 – paragraph 1 – point 2 a (new)

Text proposed by the Commission

Amendment

(2a) ‘identification number’ means any numeric, alphanumeric or similar code typically used in the online space, excluding codes assigned by a public or state controlled authority to identify a natural person as an individual.

Amendment 80
Proposal for a regulation
Article 4 – paragraph 1 – point 2 b (new)

Text proposed by the Commission

Amendment

(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

Amendment 81

Proposal for a regulation

Article 4 – paragraph 1 – point 5

Text proposed by the Commission

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, ***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;

(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 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 82

Proposal for a regulation

Article 4 – paragraph 1 – point 6

Text proposed by the Commission

Amendment

(6) 'processor' means a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller;

(6) 'processor' means a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller; ***is able to access personal data in a technically feasible way, without disproportionate effort, and is reasonably likely to gain knowledge of its content;***

Justification

This amendment is consistent with the amendment to Recital 24a (new).

Amendment 83
Proposal for a regulation
Article 4 – paragraph 1 – 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 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;**

Amendment 84
Proposal for a regulation
Article 4 – point 9 a (new)

Text proposed by the Commission

Amendment

(9a) 'Special categories of personal data' means information which shows the racial or ethnic origin, political beliefs, religion or belief or membership of a trade union as well as genetic data, data concerning health or sex life and data relating to criminal convictions or related security measures;

Justification

The processing of "special categories of personal data" is already subject to specific requirements (see Article 9). This group of sensitive data should, for reasons of proportionality, also be taken into account when determining other obligations of the controller (see amendment to Article 31). The addition of this definition creates more legal certainty.

Amendment 85
Proposal for a regulation
Article 4 – paragraph 1 – point 10

Text proposed by the Commission

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

Amendment

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

Justification

The proposed definition should be in line with definitions used elsewhere, such as the definition of “human genetic data” used in the United Nations International Declaration on Human Genetic Data.

Amendment 86

Proposal for a regulation

Article 4 – paragraph 1 – point 12

Text proposed by the Commission

(12) ‘data concerning health’ means **any information** which relates to the physical or mental health of an individual, or to the provision of health services to the individual;

Amendment

(12) ‘data concerning health’ means **personal data** which relates to the physical or mental health of an individual, or to the provision of health services to the individual;

Amendment 87

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 determined by the data controller or data processor on the basis of the following transparent and objective criteria: the location of the group’s European headquarters, or, the location of the company within the group with delegated data protection responsibilities, or, the location of the company which is best placed (in terms of management function, administrative capability etc) to address and enforce the rules as set out in this Regulation, or, the place where the main decisions as to the purposes of processing are taken for the regional group;**

Justification

This amendment seeks to provide clarity reflecting the real situation of companies acting across a number of different jurisdictions. This should not be interpreted as a charter for “forum shopping”, as the company must provide transparent, objective criteria to justify the location of its main establishment for the purposes of the regulation.

Amendment 88

Proposal for a regulation

Article 4 – paragraph 1 – point 13 a (new)

Text proposed by the Commission

Amendment

(13a) 'competent supervisory authority' means the supervisory authority which shall be solely competent for the supervision of a controller in accordance with Articles 51(2), 51(3) and 51(4).

Amendment 89

Proposal for a regulation

Article 4 – paragraph 1 – point 14

Text proposed by the Commission

Amendment

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

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

Amendment 90

Proposal for a regulation

Article 4 – point 19 a (new)

Text proposed by the Commission

Amendment

(19a) 'financial crime' means criminal offences in connection with organised crime, racketeering, terrorism, terrorist financing, trafficking in human beings, migrant smuggling, sexual exploitation, trafficking in narcotic drugs and psychotropic substances, illegal arms trafficking, trafficking in stolen goods, corruption, bribery, fraud, counterfeiting currency, counterfeiting and piracy of products, environmental offences, kidnapping, illegal restraint and hostage-taking, robbery, theft, smuggling, offences related to taxation, extortion, forgery, piracy, insider trading and

market manipulation.

Justification

It is necessary to add a definition of 'financial crime', derived from the recommendations of the Financial Action Task Force, as the processing of personal data will be allowed in order to prevent, investigate or detect financial crime.

Amendment 91

Proposal for a regulation

Article 5 – paragraph 1 – point b

Text proposed by the Commission

(b) collected for specified, explicit and legitimate purposes and not further processed in a way ***incompatible*** with those purposes;

Amendment

(b) collected for specified, explicit and legitimate purposes and not further processed in a way ***irreconcilable*** with those purposes;

Amendment 92

Proposal for a regulation

Article 5 – paragraph 1 – 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 ***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;

Amendment 93

Proposal for a regulation

Article 5 – paragraph 1 – 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 ***undue*** delay;

Amendment 94

Proposal for a regulation Article 5 – paragraph 1 – 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 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 95

Proposal for a regulation Article 5 – paragraph 1 – point f

Text proposed by the Commission

(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.

Amendment

(f) processed under the responsibility and liability of the controller, who shall ensure and, **if required to do so, demonstrate compliance of the controller's processing with the provisions of this Regulation to the supervisory authority having competence under paragraph 2 of Article 51.**

Amendment 96

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

Text proposed by the Commission

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

Amendment

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

Amendment 97

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

Text proposed by the Commission

Amendment

(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;

(b) processing is necessary for the performance of a contract ***or of collective agreements and company-level agreements***, 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.

Justification

Collective agreements in Germany are equivalent to state law contracts and can thus also be the basis for legitimate data processing.

Amendment 98

Proposal for a regulation

Article 6 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) processing is necessary for compliance with a legal obligation to which the controller is subject;

(c) processing is necessary for compliance with a legal obligation, ***regulatory rule, guidance, industry code of practice, either domestically or internationally*** to which the controller is subject ***including the requirements of supervisory authorities***;

Justification

The provision should ensure that domestic financial regulation or codes of conduct are included.

Amendment 99

Proposal for a regulation

Article 6 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) processing of data necessary to ensure network and information security;

Justification

This amendment incorporates into the text the safeguards established in Recital 39 by clarifying in a legally binding article that processing of data for network and information

security purposes is considered lawful processing.

Amendment 100

Proposal for a regulation

Article 6 – paragraph 1 – point e

Text proposed by the Commission

(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;

Amendment

(e) processing is necessary for the performance of a task carried out in the exercise of official authority vested in the controller; ***or in the public interest,***

Amendment 101

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, ***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. ***The interest or fundamental rights and freedoms of the data subject shall not over-ride 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.***

Amendment 102

Proposal for a regulation

Article 6 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) 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).

Amendment 103

Proposal for a regulation

Article 6 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) the data are collected from public registers, lists or documents accessible by everyone;

Amendment 104

Proposal for a regulation

Article 6 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) where the controller entrusts personal data to a third party, the third party concerned shall become jointly responsible for compliance with this Regulation;

Amendment 105

Proposal for a regulation

Article 6 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) processing is strictly necessary for the proper response to detected network and/or information security incidents, breaches or attacks;

Amendment 106

Proposal for a regulation

Article 6 – paragraph 1 – point f b (new)

Text proposed by the Commission

Amendment

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

Amendment 107

Proposal for a regulation
Article 6 – paragraph 2

Text proposed by the Commission

2. Processing of personal data which is necessary for the purposes of historical, statistical or scientific research shall be lawful subject to the conditions and safeguards referred to in Article 83.

Amendment

2. **Subsequent** processing of personal data which is necessary for the purposes of historical, statistical or scientific research shall be lawful subject to the conditions and safeguards referred to in Article 83.

Justification

It is important to specify and allow for subsequent processing (e.g. linkage, correction and addition of data concerning a data subject) since modern and innovative public health research will be build on multiple data sets and historical series.

Amendment 108

Proposal for a regulation
Article 6 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Processing of pseudonymised data to safeguard the legitimate interests pursued by a controller shall be lawful, 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.

Justification

The regulation does not yet currently recognise different categories of data and their different treatment.

Amendment 109

Proposal for a regulation
Article 6 – paragraph 3 – subparagraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) international conventions to which the Union or a Member State is a party.

Justification

A public interest can also be expressed in international conventions, even in the absence of specific national or EU laws. Such conventions would still need to respect the essence of the right to the protection of personal data and be proportionate to the legitimate aim pursued. Moreover, any processing of personal data on this basis would obviously have to comply with all other aspects of the Regulation as well.

Amendment 110

Proposal for a regulation

Article 6 – paragraph 3 – subparagraph 2

Text proposed by the Commission

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 and be proportionate to the legitimate aim pursued.

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. ***The law of the Member State must also*** respect the essence of the right to the protection of personal data ***this regulation and international treaties that the Member State has decided to follow. Finally the Member State is obliged to evaluate and decide if national legislation is*** and be proportionate to the legitimate aim pursued ***or if a legitimate aim could be achieved using less privacy invasive solutions.***

Justification

Article 6, paragraph 1, indent e states that processing is lawful if the following applies: “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”. Seen in connection with the above mentioned paragraph 3 this leaves Member States a very wide room for eroding citizens’ protection of data mentioned in this regulation using national legislation. The harmonisation among Member States will come under pressure because national interests will result in many different examples of legislation. Citizens’ data will be processed differently in the different countries. This is not satisfying. Similar arguments can be found in relation to article 21.

Amendment 111

Proposal for a regulation

Article 6 – paragraph 4

Text proposed by the Commission

4. Where the purpose of further processing

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

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

Justification

It is important to also include legitimate interests, such as the sector-specific example of providing a more efficient energy supply chain through the provision of smart grids. Whereas a data subject's energy consumption may not have explicitly been collected for the purpose of providing a more efficient overall supply, if it is in the legitimate interest of the service provider to use this information to achieve this goal, flexibility should be provided to ensure this is possible.

Amendment 112 **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***

Amendment 113 **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. ***deleted***

Justification

Superfluous as the burden of proof under normal procedural law applies currently.

Amendment 114 **Proposal for a regulation** **Article 7 – paragraph 1 a (new)**

Text proposed by the Commission

Amendment

1a. The form of consent captured for the processing of a data subject's personal data shall be proportionate to the type of data processed and the purpose for the processing, as determined through a properly conducted data protection impact assessment as described in Article 33.

Justification

This amendment ties the identification of proportionate consent to the results of impact assessments, which will encourage their use. Where no data protection impact assessment has been conducted, a default requirement of explicit consent would continue to apply.

Amendment 115
Proposal for a regulation
Article 7 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Unless another form of consent is determined to be proportionate by such an impact assessment, consent shall be captured in a specific, informed and explicit statement or other clear affirmative action.

Justification

This amendment ties the identification of proportionate consent to the results of impact assessments, which will encourage their use. Where no data protection impact assessment has been conducted, a default requirement of explicit consent would continue to apply.

Amendment 116
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 presented ***distinguishable*** in its appearance from this other matter.

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 ***conspicuously*** in its appearance from this other matter.

Justification

Data subjects should be given clear and unambiguous conditions for offering their consent. If the intention is to ensure that consent language does not get lost amidst other technical jargon, perhaps the term “distinguishable” should not be used but the term “conspicuous” should be used instead. It should be highlighted, not distinguished.

Amendment 117

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. **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.

Amendment 118

Proposal for a regulation

Article 7 – paragraph 4

Text proposed by the Commission

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.*

Amendment

4. Consent *of an employee* shall not provide a legal basis for the processing *of data by the employer when it has not been given freely. The lawfulness of the processing shall be assessed in accordance with points (a) through (f) of Article 6(1) and paragraphs 2 through 5. The individual consent according to point (a) of Article 6(1) can be replaced by collective agreements as legal basis, in particular by collective bargaining agreements or works council agreements.*

Amendment 119

Proposal for a regulation

Article 8 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Where an information society service

makes social networking facilities available to children it shall take explicit measures to protect their welfare, including by ensuring, in so far as possible, that they are aware of the identities of those with whom they are communicating.

Amendment 120
Proposal for a regulation
Article 8 – 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 methods to obtain verifiable consent referred to in paragraph 1. In doing so, the Commission shall consider specific measures for micro, small and medium-sized enterprises.

deleted

Amendment 121
Proposal for a regulation
Article 9 – paragraph 1

Text proposed by the Commission

Amendment

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.

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, ***criminal offences, including offences and matters which have not lead to conviction, significant social problems,*** or related security measures shall be prohibited.

Amendment 122
Proposal for a regulation
Article 9 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) processing is necessary for the purposes of carrying out the obligations and

(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 in so far as it is authorised by Union law or Member State law providing for adequate safeguards; or

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

Amendment 123

Proposal for a regulation

Article 9 – paragraph 2 – point d

Text proposed by the Commission

(d) processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other non-profit-seeking body with a political, philosophical, religious or trade-union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the data are not disclosed outside that body without the consent of the data subjects; or

Amendment

(d) processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association, **organizations on the labour market** or any other non-profit-seeking body with a political, philosophical, religious or trade-union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the data are not disclosed outside that body without the consent of the data subjects; or

Justification

It is important that organisations on the labour market can continue to process and exchange personal information about their members.

Amendment 124

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 **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

Amendment 125
Proposal for a regulation
Article 9 – paragraph 2 – point h

Text proposed by the Commission

(h) processing of data concerning health is necessary for health purposes and subject to the conditions and safeguards referred to in Article 81; or

Amendment

(h) processing **and sharing** of data concerning health is necessary for health purposes, **including for historical, statistical or scientific research** and subject to the conditions and safeguards referred to in Article 81; or

Justification

This clarification is necessary in order to safeguard the processing of medical data used for historical, statistical or scientific research purposes. Scientists heavily rely on patient registries and biobanks to conduct epidemiological, clinical and translational research, thus making it necessary to ensure the processing of personal data for health purposes.

Amendment 126

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 **and sharing** is necessary for historical, statistical or scientific research purposes subject to the conditions and safeguards referred to in Article 83; or

Amendment 127
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

Amendment

(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

register of criminal convictions shall be kept only under the control of official authority.

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.

Amendment 128

Proposal for a regulation Article 9 – paragraph 2 – point j a (new)

Text proposed by the Commission

Amendment

(ja) processing of data concerning health is necessary for private social protection, especially by providing income security or tools to manage risks that are in the interests of the data subject and his or her dependants and assets, or by enhancing inter-generational equity by means of distribution.

Amendment 129

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.

3. The European Data Protection Board shall be entrusted with the task of issuing the recommendations regarding criteria, conditions and appropriate safeguards for the protection of special categories of personal data in accordance with paragraph 2.

Amendment 130

Proposal for a regulation Article 10 – paragraph 1

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

If the data processed by a controller do not permit the controller, **through means used by the controller** to identify **a data subject**,

to acquire additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation.

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.

The controller of research databases shall provide general information on the original data sources of the research database.

Amendment 131

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 have transparent policies with regard to the processing of personal data and for the exercise of data subjects' rights *and on request for this purpose shall provide to everybody the information set out in points (a) through (g) of Article 28(2) in an appropriate manner.*

Amendment 132

Proposal for a regulation Article 11 a (new)

Text proposed by the Commission

Amendment

Article 11a

Article 12 of Directive 2002/58/EC and Articles 20 and 21(3)(e) of 2002/22/EC are an application of the data subjects' right to transparent information and communication which requires that the controller informs data subjects of their rights with respect to the use of their personal information and draws attention to the presence of systems which have been developed in accordance with the principles of privacy by design.

Justification

Article 12 of the e-Privacy Directive and Articles 20 and 21 of the Universal Service Directive cover directory services, as part of the scope of universal services. The databases of directory service providers are required to be "comprehensive" and the inclusion of subscriber data is therefore important, as is the need for subscriber to be clearly informed of all their options, regardless of the model adopted by a Member State (opt-in, opt-out or hybrid).

Amendment 133

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 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 **may** also provide means for requests to be made electronically.

Amendment 134

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**

Amendment

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.

information shall be provided in electronic form, unless otherwise requested by the data subject.

Justification

An enormous amount of red tape could be involved, particularly for SMEs, if electronic arrangements had to be made to ensure that the procedure was conducted electronically.

Amendment 135

**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.

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 136

**Proposal for a regulation
Article 12 – 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 conditions for the manifestly excessive requests and the fees referred to in paragraph 4.

Amendment

deleted

Amendment 137

Proposal for a regulation Article 12 – paragraph 6

Text proposed by the Commission

6. The Commission **may** lay down standard forms and **specifying** standard procedures for the communication referred to in paragraph 2, including the electronic format. In doing so, the Commission shall take the appropriate measures for micro, small and medium-sized-enterprises. 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 and **specify** standard procedures for the communication referred to in paragraph 2, including the electronic format. In doing so, the Commission shall take the appropriate measures for micro, small and medium-sized-enterprises. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).

Justification

Standard forms and procedures need to be laid down in order to guarantee that this measure is properly implemented, in particular by micro, small and medium-sized enterprises.

Amendment 138

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);

Justification

The requirement to communicate contract terms and general conditions is an issue adequately regulated under civil law. From a data protection perspective there is therefore only the need to provide information regarding the purposes or the legitimate interests of processing.

Amendment 139

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

Text proposed by the Commission

Amendment

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

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

Amendment 140
Proposal for a regulation
Article 14 – paragraph 1 – point e

Text proposed by the Commission

Amendment

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

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

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 141

Proposal for a regulation
Article 14 – paragraph 1 – point g b (new)

Text proposed by the Commission

Amendment

(gb) information regarding specific security measures taken to protect personal data;

Amendment 142
Proposal for a regulation
Article 14 – paragraph 1 – point h

Text proposed by the Commission

Amendment

(h) any further information necessary to guarantee fair processing in respect of the data subject, having regard to the specific circumstances in which the personal data are collected.

deleted

Justification

The blanket clause-like extension of the already substantial information obligations is likely to result in considerable legal uncertainty. Neither the company concerned, nor the consumer can from this formulation assess with legal certainty what information in each individual case must be made available.

Amendment 143 **Proposal for a regulation** **Article 14 – paragraph 2**

Text proposed by the Commission

2. Where the personal data are collected from the data subject, the controller shall inform the data subject, in addition to the information referred to in paragraph 1, whether the provision of personal data is obligatory *or voluntary, as well as the possible consequences of failure to provide such data.*

Amendment

2. Where the personal data are collected from the data subject, the controller shall inform the data subject, in addition to the information referred to in paragraph 1, whether the provision of personal data is obligatory.

Justification

The information needs of data subjects are adequately taken into account, if they are informed whether the data provision is obligatory. Where this is not indicated, the provision of the data is consequently optional. The consumer is already accustomed to this practice. There is no reason to change this effective and functioning system. Information about whether the provision of information is mandatory or optional and the possible consequences of the refusal of the data would unnecessarily expand the information requirements. It is also unnecessary in many cases because it is already obvious from the context. In the course of ordering a product it is for example necessary to specify a shipping address, so that the product can actually be delivered.

Amendment 144 **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, **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.

Amendment 145
Proposal for a regulation
Article 14 – paragraph 4 – point b

Text proposed by the Commission

(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.

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 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.***

Justification

The data subject's right to informational self-determination is adequately taken into account if the relevant information is provided at this time.

Amendment 146
Proposal for a regulation
Article 14 – paragraph 5 – point b

Text proposed by the Commission

(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

Amendment

(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 ***such as by generating excessive administrative burden, especially when the processing is carried out by a SME as defined in EU recommendation 2003/361; or***

Amendment 147
Proposal for a regulation
Article 14 – paragraph 5 – point d a (new)

Text proposed by the Commission

Amendment

(da) the data originates from publicly available sources

Amendment 148

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.

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, ***in consultation with relevant stakeholders.***

Justification

The potential lack of transparency associated with delegated acts should be avoided by ensuring that they are drafted in close cooperation with the stakeholders affected.

Amendment 149

Proposal for a regulation Article 15 – paragraph 1 – introductory part

Text proposed by the Commission

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. ***Where such personal data are being processed,*** the controller shall provide the following information:

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**:

Amendment 150

Proposal for a regulation

Article 15 – paragraph 1 – point d

Text proposed by the Commission

Amendment

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

(d) the **maximum** period for which the personal data will be stored.

Justification

The storage period varies considerably for all sorts of data and can often not be determined precisely from the outset. The maximum storage period for personal data should, however, be stated.

Amendment 151

Proposal for a regulation

Article 15 – paragraph 1 – point e

Text proposed by the Commission

Amendment

(e) the existence of the right to request from the controller rectification or erasure of personal data concerning the data subject or to object to the processing of such personal data;

(e) the existence of the right to request from the controller rectification **in accordance with Article 16** or erasure of personal data concerning the data subject or to object to the processing of such personal data;

Amendment 152

Proposal for a regulation

Article 15 – paragraph 1 – point f

Text proposed by the Commission

Amendment

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

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

Justification

A duty to specify the contact details of the supervisory authority associated with liability in respect of any misinformation would make a continuous review of the relevant information necessary, thus leading to disproportionate efforts especially for small and medium-sized enterprises.

Amendment 153

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 significance and envisaged consequences of such processing.

Amendment 154

Proposal for a regulation

Article 15 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The data subject shall have the right to obtain from the controller of the data source at any time, on request, confirmation as to whether or not personal data relating to the data subject are being processed to a research data base, in accordance with the provisions referred to in Article 10.

Justification

Data in research databases will most often be considered personal data according to a high threshold of the definition of data considered personal. For linked research databases it would involve a disproportionate effort for the controller of the linked data to back track data on individual data subjects, since information on the single data subject may be build on data from different data sources, and data may not directly identifiable when the Key ID is kept with the controller of the original data source. Article 10 solves the paradox that in order to notify data subjects on data about him or her in the database, the controller should do what he is not allowed to, namely to identify that data subject.

Amendment 155

Proposal for a regulation

Article 15 – 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 communication to the data subject of the content of the personal data

deleted

referred to in point (g) of paragraph 1.

Amendment 156

Proposal for a regulation Article 16 – paragraph 1

Text proposed by the Commission

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.

Amendment

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

Amendment 157

Proposal for a regulation Article 17 – title

Text proposed by the Commission

Right to **be forgotten and to** erasure

Amendment

Right to erasure

Amendment 158

Proposal for a regulation Article 17 – paragraph 1 – introductory part

Text proposed by the Commission

1. The data subject **shall have** the right to obtain from the controller the erasure of personal data relating to them and the abstention from further **dissemination** of such data, **especially** 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:

Amendment

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:

Amendment 159

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

Text proposed by the Commission

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

Amendment 160
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 161
Proposal for a regulation
Article 17 – paragraph 1 a (new)

Text proposed by the Commission

Amendment 162
Proposal for a regulation
Article 17 – paragraph 1 b (new)

Text proposed by the Commission

Amendment 163
Proposal for a regulation
Article 17 – paragraph 2

Amendment

(a) the data are no longer necessary in relation to the purposes for which they were collected or *further* processed **and the legally mandatory minimum retention period has expired**;

Amendment

(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;

Amendment

1a. The controller shall take all reasonable steps to communicate any erasure to each legal entity to whom the data have been disclosed.

Amendment

1b. The application of paragraph 1 is dependent upon the ability of the data controller to confirm the identity of the data subject making the erasure request.

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

Justification

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

Amendment 164

Proposal for a regulation

Article 17 – paragraph 3 – introductory part

Text proposed by the Commission

Amendment

3. The controller shall carry out the erasure without delay, except to the extent that the retention of the personal data is necessary:

3. The controller shall carry out the erasure without **undue** delay, except to the extent that the retention **and dissemination** of the personal data is necessary:

Amendment 165

Proposal for a regulation

Article 17 – paragraph 3 – point b

Text proposed by the Commission

Amendment

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

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

Amendment 166

Proposal for a regulation

Article 17 – paragraph 3 – point d

Text proposed by the Commission

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; ***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;***

(d) for compliance with a legal obligation to retain the personal data by Union or Member State law to which the controller is subject;

Justification

There may be laws of other member states that require a controller to refuse the right to be forgotten. Data may need to be held for accounting reasons under financial reporting rules for example.

Amendment 167

Proposal for a regulation

Article 17 – paragraph 3 – point e a (new)

Text proposed by the Commission

Amendment

(ea) for prevention or detection of fraud, confirming identity, and/or determining creditworthiness, or ability to pay.

Amendment 168

Proposal for a regulation

Article 17 – paragraph 4 – point d a (new)

Text proposed by the Commission

Amendment

(da) the controller has to store the personal data in order to ensure that based on an objection pursuant to Article 19, further processing of the respective data is excluded.

Justification

An objection to the processing of personal data pursuant to Article 19 regularly excludes the processing of the respective data for the future. To ensure that the respective data is not actually used for future data processing measures, it must not be deleted but blocked or otherwise marked.

Amendment 169

Proposal for a regulation
Article 17 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. Requests for the rectification, erasure or blocking of data shall not prejudice processing that is necessary to secure, protect and maintain the resiliency of one or more information systems. In addition, the right of rectification and/or erasure or personal data shall not apply to any personal data that is required to be maintained by legal obligation or to protect the rights of the controller, processor or third parties.

Justification

There are circumstances where the right of the data subject to rectify or erase personal data should not apply – for example, in compliance with EU Member States laws and other jurisdictions requiring maintenance of certain types of personal data for national security reasons or for investigations of potential wrongdoing.

Amendment 170
Proposal for a regulation
Article 17 – paragraph 9

Text proposed by the Commission

Amendment

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

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

Amendment 171
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 172
Proposal for a regulation
Article 18 – paragraph 2

Text proposed by the Commission

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 and retained by an automated processing system, *into another one, in an electronic format which is commonly used, without hindrance from the controller from whom the personal data are withdrawn.*

Amendment 173
Proposal for a regulation
Article 18 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

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** 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.

Amendment

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, , **where technically feasible** and retained by an automated processing system.

Amendment

2a. The rights referred to in paragraphs 1 and 2 shall not adversely affect the rights and freedoms of others, including trade secrets or intellectual property rights. The result of such considerations shall not be that all information is refused to the data subject.

Justification

Use of language from Recital 51 in relation to access to data. Due regard must be given to the limits to data portability, especially in relation to the legitimate interests of businesses to protect trade secrets and intellectual property rights, within reason.

Amendment 174

Proposal for a regulation Article 18 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. This right is without prejudice to the obligation to delete data when they are no longer necessary under Article 5(e).

Amendment 175

Proposal for a regulation Article 18 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Paragraphs 1 and 2 do not apply to the processing of anonymised and pseudonymised data, insofar as the data subject is not sufficiently identifiable on the basis of such data, or identification would require the controller to undo the process of pseudonymisation.

Amendment 176

Proposal for a regulation Article 18 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Paragraphs 1 and 2 do not apply where a controller can reasonably demonstrate that it is not possible to separate the data subject's data from data of other data subjects.

Amendment 177

Proposal for a regulation Article 18 – paragraph 3

Text proposed by the Commission

Amendment

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).**

3. **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.

Amendment 178

Proposal for a regulation Article 18 a (new)

Text proposed by the Commission

Amendment

Article 18a

Controller must ensure that sufficient documentation for a data subject's identity has been received, when the data subject enforces the rights referred to in articles 14-19 in this regulation.

Justification

Citizens have to document their identities to enforce the rights in order to make sure that no form of identity theft can occur.

Amendment 179

Proposal for a regulation Article 19 – paragraph 1

Text proposed by the Commission

Amendment

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**

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

processing *which override the interests or fundamental rights and freedoms of the data subject.*

by the controller may no longer refer to this data

Justification

The changes reflect the effective and proven provision on objection of Article 14a) of Directive 95/46/EC. There is no reason to change the current system. There are no known practical problems in this area, which would justify a legislative change. This applies even more so as the Regulation will now apply directly and thus without the flexibility of the Directive.

Amendment 180

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 direct marketing purposes *or where processing is based on Article 6(1)(f)*, 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, *using clear and plain language, adapted to the data subject, in particular for any information addressed specifically to a child*, and shall be clearly distinguishable from other information.

Amendment 181

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.

Amendment 182
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. **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.

Amendment 183

Proposal for a regulation
Article 20 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. For the purposes of advertising, market research or tailoring telemedia, user profiles may be created using pseudonymised data, provided that the person concerned does not object. The person concerned must be informed of his/her right to object. User profiles may not be combined with data about the bearer of the pseudonym.

Justification

The original wording of Article 20 could lead to companies having to obtain consent for any form of processing personal data. In order, however, not to destroy the business models of countless small and medium-sized European companies in particular, and thus give priority to large US firms, certain forms of data processing should be allowed with due respect to the protection of personal data.

Amendment 184

Proposal for a regulation
Article 20 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Data controllers should notify the data subject where such processing takes place and give the individual the right to have any such decision reviewed.

Justification

Profiling for the purposes of credit scoring should be clearly distinguished from other purposes, not least in that this profiling is clearly notified to the individual in advance.

Amendment 185

Proposal for a regulation

Article 20 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Is based on pseudonymous data.

Amendment 186

Proposal for a regulation

Article 20 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Is based on the legitimate interests pursued by the data controller.

Amendment 187

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.

Amendment 188

Proposal for a regulation

Article 20 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(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

deleted

Amendment 189

Proposal for a regulation

Article 20 – paragraph 2 – point c

Text proposed by the Commission

Amendment

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

deleted

Amendment 190

Proposal for a regulation

Article 20 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(ca) is necessary to protect the vital interests of the data subject or in the public interest as provided by points (d) and (e) of Article 5;

Amendment 191

Proposal for a regulation

Article 20 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(ca) is limited to pseudonymised data. Such pseudonymised data must not be collated with data on the bearer of the pseudonym. Art. 19 (3) [new] shall apply correspondingly.

Justification

In line with Article 15, paragraph 3 of the German Telemedia Act which encourages the pseudonymisation of data and provides a clear legislative framework for profiling in the areas of, inter alia, advertising and market research.

Amendment 192

Proposal for a regulation

Article 20 – paragraph 2 – point c b (new)

Text proposed by the Commission

Amendment

(cb) is necessary to protect the rights available to other data subjects, for example for the purposes of detecting fraud, or for the purposes of detecting irregularities or other illegal activity according to Union law or Member State law;

Amendment 193

Proposal for a regulation

Article 20 – paragraph 2 – point c c (new)

Text proposed by the Commission

Amendment

(cc) concerns data which have been made anonymous.

Justification

Data that are rendered permanently anonymous as per the definition in Article 4, paragraph 1, point 2 b (new).

Amendment 194

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

Amendment 195

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.

Amendment 196

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

Amendment 197

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

deleted

specifying the criteria and conditions for suitable measures to safeguard the data subject's legitimate interests referred to in paragraph 2.

Amendment 198

Proposal for a regulation Article 21 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Parties on the labour market may restrict by way of a legislative measure the scope of the obligations and rights provided for in points (a) to (e) of Article 5 and Articles 11 to 20 and Article 32, when such a restriction have been agreed by national collective agreements to constitutes a necessary and proportionate measure.

Justification

The labour market is regulated very differently in the different Member States. Some Member States have a tradition with legislation and other Member States have a high degree of regulation that stems from collective agreements on the labour market.

Amendment 199

Proposal for a regulation Article 22 – paragraph 1

Text proposed by the Commission

Amendment

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.

1. Having regard to the state of the art, the nature of personal data processing and the type of the organization, both at the time of the determination of the means for processing and at the time of the processing itself, appropriate and demonstrable technical and organizational measures should be implemented in such a way that the processing will meet the requirements of this Regulation and ensures the protection of the rights of the data subject by design.

Justification

The Regulation should provide enough flexibility to allow different organizations to implement the most effective technical and organizational measures, fit for the nature and structure of each respective organization.

Amendment 200

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

Text proposed by the Commission

Amendment

1a. Upon request by the competent data protection authority, the controller or processor shall demonstrate the existence of technical and organizational measures.

Amendment 201

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

Text proposed by the Commission

Amendment

1b. Group of undertakings may apply joint technical and organizational measures to meet its obligations arising from the Regulation.

Amendment 202

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

Text proposed by the Commission

Amendment

1c. This article does not apply to a natural person processing personal data without commercial interest.

Amendment 203

**Proposal for a regulation
Article 22 – paragraph 2 – introductory part**

Text proposed by the Commission

Amendment

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

2. Such measures include, without limitation:

Amendment 204

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

Text proposed by the Commission

(a) keeping the documentation pursuant to Article 28;

Amendment

(a) independent management oversight of processing of personal data to ensure the existence and effectiveness of the technical and organizational measures;

Amendment 205

Proposal for a regulation Article 22 – paragraph 2 – point a a (new)

Text proposed by the Commission

Amendment

(aa) implementing a control management system, including the assignment of responsibilities, training of staff and adequate instructions;

Amendment 206

Proposal for a regulation Article 22 – paragraph 2 – point b

Text proposed by the Commission

(b) implementing the data security requirements laid down in Article 30;

Amendment

(b) existence of proper policies, instructions or other guidelines to guide data processing needed to comply with the Regulation as well as procedures and enforcement to make such guidelines effective;

Amendment 207

Proposal for a regulation Article 22 – paragraph 2 – point c

Text proposed by the Commission

(c) performing a data protection impact assessment pursuant to Article 33;

Amendment

(c) existence of proper planning procedures to ensure compliance and to address potentially risky processing of personal data prior to the commencement

of the processing;

Amendment 208

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

Text proposed by the Commission

(d) complying with the requirements for prior authorisation or prior consultation of the supervisory authority pursuant to Article 34(1) and (2);

Amendment

(d) existence of appropriate documentation of data processing to enable compliance with the obligations arising from the Regulation;

Amendment 209

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

Text proposed by the Commission

Amendment

(ea) clear and accessible data governance policies that are proportionate to the amount and type of personal data processed by the controller and the risk of harm to data protection involved in the processing of the data;

Justification

The additional sections are intended to provide the basis for a true, enforceable accountability mechanism that can be flexible enough to accommodate both large enterprises and smaller organizations. Such a concept is in line with best practices already in place in other compliance regimes, such as anti-bribery provisions.

Amendment 210

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

Text proposed by the Commission

Amendment

(ea) existence of proper awareness and training of the staff participating in data processing and decisions thereto of the obligations arising from this Regulation.

Amendment 211

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

Text proposed by the Commission

Amendment

(ea) establishing and documenting the measures referred to in Article 11.

Amendment 212

Proposal for a regulation

Article 22 – paragraph 2 – point e b (new)

Text proposed by the Commission

Amendment

(eb) evidence of top-level management commitment to implementing the data governance policies throughout the enterprise so as to ensure compliance with this Regulation.

Justification

The additional sections are intended to provide the basis for a true, enforceable accountability mechanism that can be flexible enough to accommodate both large enterprises and smaller organizations. Such a concept is in line with best practices already in place in other compliance regimes, such as anti-bribery provisions.

Amendment 213

Proposal for a regulation

Article 22 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Any regular report of the activities of the controller shall contain a description of the policies and measures referred to in Article 22(1).

Amendment 214

Proposal for a regulation

Article 22 – paragraph 4

Text proposed by the Commission

Amendment

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

deleted

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 215
Proposal for a regulation
Article 23 – title

Text proposed by the Commission

Data protection by design *and by default*

Amendment

Data protection by design

Amendment 216
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, 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, 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.

Amendment 217

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*

Amendment

2. *Such measures and procedures shall:*

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.

(a) take due account of existing technical standards and regulations in the area of public safety and security

(b) follow the principle of technology, service and business model neutrality

(c) be based on global industry-led efforts and standards

(d) take due account of international developments

Amendment 218

Proposal for a regulation

Article 23 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. In implementing the provisions of this Regulation, it shall be ensured that no mandatory requirements for specific technical features are imposed on products and services, including terminal or other electronic communications equipment, which could impede the placing of equipment on the market and the free circulation of such equipment in and between Member States.

Amendment 219

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

deleted

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.

Amendment 220
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

Amendment 221

Proposal for a regulation
Article 24 – paragraph 1

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 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. **The arrangement shall duly reflect the joint controllers' respective effective roles and relationships vis-à-vis data subjects.**

Justification

The arrangement to be entered into by joint controllers should be expressly required to duly reflect the joint controllers' respective roles and relationships with the data subjects. Joint controllers are not necessarily in an equal negotiation position when it comes to contractual agreements. Moreover, not all joint controllers enjoy a direct relationship with the data subject and they do not control the same kind and amount of personal data.

Amendment 222
Proposal for a regulation
Article 25 – paragraph 4

Text proposed by the Commission

Amendment

4. The designation of a representative by the controller shall be without prejudice to legal actions which could be initiated against the controller itself. **deleted**

Justification

The representative acts on behalf of the controller and is the controller in the EU. Non bis in idem.

Amendment 223
Proposal for a regulation
Article 26 – paragraph 1

Text proposed by the Commission

Amendment

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.

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.

Amendment 224
Proposal for a regulation
Article 26 – paragraph 2 – introductory part

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

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:*

the controller. *The controller and the processor shall be free to determine respective roles and responsibilities with respect to the requirements of this Regulation, and shall provide for the following:*

Amendment 225

Proposal for a regulation

Article 26 – paragraph 2 – point a

Text proposed by the Commission

(a) act only on instructions from the controller, in particular, where the transfer of the personal data used is prohibited;

Amendment

(a) *the processor shall* act only on instructions from the controller, in particular, where the transfer of the personal data used is prohibited;

Amendment 226

Proposal for a regulation

Article 26 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) take account of the principle of data protection by design;

Amendment 227

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

Amendment 228

Proposal for a regulation

Article 26 – paragraph 2 – point e

Text proposed by the Commission

Amendment

(e) insofar as this is possible given the nature of the processing, *create in* agreement with the controller the *necessary* technical and organisational requirements *for the fulfilment of the controller's obligation* to respond to requests for exercising the *data* subject's

(e) insofar as this is possible given the nature of the processing *and the processor's ability to assist with reasonable effort, an* agreement as to the *appropriate and relevant* technical and organisational requirements *which support the ability of the controller* to respond to

rights laid down in Chapter III;

requests for exercising the subject's rights laid down in Chapter III.

Amendment 229
Proposal for a regulation
Article 26 – paragraph 2 – point f

Text proposed by the Commission

(f) assist ***the controller in ensuring*** compliance with the obligations pursuant to Articles 30 to 34;

Amendment

(f) *insofar as this is possible given the nature of processing, the information available to the processor and his ability to assist with reasonable effort, an agreement on how compliance will be ensured* with the obligations pursuant to Articles 30 to 34;

Amendment 230
Proposal for a regulation
Article 26 – paragraph 2 – point g

Text proposed by the Commission

(g) hand over all results to the controller after the end of the processing and ***not process the personal data otherwise;***

Amendment

(g) hand over all results to the controller after the end of the processing and ***or destroy it in a commercially accepted manner.***

Amendment 231

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

deleted

Amendment 232

Proposal for a regulation
Article 26 – paragraph 5

Text proposed by the Commission

5. The Commission shall be empowered to

Amendment

deleted

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 facilitating the processing of personal data within a group of undertakings, in particular for the purposes of control and reporting.

Justification

Accountability principle should leave details to controller and processor

Amendment 233
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, if any, the controller's representative, shall maintain **appropriate** documentation of **the measures taken to ensure that the processing of personal data** under its responsibility **is in compliance with this Regulation.**

Amendment 234
Proposal for a regulation
Article 28 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The documentation shall contain the information necessary for the supervisory authority to ascertain that the controller or processor has complied with this Regulation, including a description of any of the applicable internal measures and mechanisms intended to comply with Article 22.

Justification

A prescriptive documentation requirement for each data processing activity is unachievable both for multinational enterprises and for smaller enterprises and would not lead to greater privacy protection for customers. The proposed amendment avoids legalistic, onerous compliance programmes for data protection that create paperwork but do not result in better

operational practices on the ground.

Amendment 235

Proposal for a regulation Article 28 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The obligation made to the controller shall not apply to SMEs processing data only as an activity ancillary to the sale of goods or services. Ancillary activity should be defined as business or non-trade activity that is not associated with the core activities of a firm. In relation to data protection, data processing activities which do not represent more than 50% of company's turnover shall be considered ancillary.

Amendment 236

Proposal for a regulation Article 28 – paragraph 2 – introductory part

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:

Justification

This change follows the amendment to Article 28(1).

Amendment 237 Proposal for a regulation Article 28 – paragraph 2

Text proposed by the Commission

Amendment

2. The documentation shall contain at least the following information:

deleted

(a) the name and contact details of the controller, or any joint controller or processor, and of the representative, if any;

(b) the name and contact details of the

data protection officer, if any;

(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);

(d) a description of categories of data subjects and of the categories of personal data relating to them;

(e) the recipients or categories of recipients of the personal data, including the controllers to whom personal data are disclosed for the legitimate interest pursued by them;

(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;

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

(h) the description of the mechanisms referred to in Article 22(3).

Amendment 238

Proposal for a regulation Article 28 – paragraph 3

Text proposed by the Commission

3. The controller **and the processor** and, if any, the controller's representative, shall make the documentation available, on request, to the supervisory authority.

Amendment

3. The controller and, if any, the controller's representative, shall make the documentation available, on request, to the supervisory authority.

Amendment 239

Proposal for a regulation Article 28 – paragraph 5

Text proposed by the Commission

5. The Commission shall be empowered to adopt delegated acts in accordance with

Amendment

deleted

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.

Amendment 240

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 referred to in Article 87(2).

Amendment

6. The Commission, ***after consulting the European Data Protection Board***, 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 referred to in Article 87(2).

Amendment 241

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 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. ***The controller and the processor and, if any, the representative of the controller, shall make the documentation available, on the basis of a request outlining the reasons for requiring access to the documents, to the supervisory authority.***

Amendment 242

Proposal for a regulation
Article 29 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Where the controller and the processor are established in several Member States for the purposes of the full or partial management of data, they shall be given the opportunity to designate their main establishment.

Amendment 243
Proposal for a regulation
Article 30 – paragraph 1

Text proposed by the Commission

Amendment

1. The controller and the processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected, having regard to the state of the art and the costs of their implementation.

1. The controller and the processor shall implement appropriate technical and organisational measures, ***including pseudonymisation***, to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected, having regard to the state of the art and the costs of their implementation.

Notwithstanding, the controller and the processor 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.

Amendment 244
Proposal for a regulation
Article 30 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

The legal obligations, as referred to in paragraphs 1 and 2, which would require processing of personal data to the extent strictly necessary for the purposes of ensuring network and information security, constitute a legitimate interest pursued by or on behalf of a data controller or processor, as referred to in Article 6 (1) f.

Amendment 245
Proposal for a regulation
Article 30 – 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 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 for privacy by design and data protection by default, unless paragraph 4 applies. *deleted*

Amendment 246

Proposal for a regulation
Article 30 – paragraph 4

Text proposed by the Commission

Amendment

4. 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.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

Amendment 247

Proposal for a regulation
Article 30 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Amendment

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

deleted

Amendment 248
Proposal for a regulation
Article 31 – paragraph 1

Text proposed by the Commission

Amendment

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.***

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.***

Amendment 249

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 ***without undue delay*** after the ***identification of a*** personal data breach ***that is likely to produce legal effects to the detriment of the data subject's privacy.***

Amendment 250

Proposal for a regulation
Article 31 – paragraph 3 – point e

Text proposed by the Commission

Amendment

(e) describe the measures proposed or taken by the controller to address the personal data breach.

(e) describe the measures proposed or taken by the controller to address the personal data breach ***and/or mitigate its***

effects.

Amendment 251

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, comprising the facts surrounding the breach, its effects and the remedial action taken. This documentation must ***be sufficient to*** enable the supervisory authority to verify compliance with this Article. The documentation shall only include the information necessary for that purpose.

Amendment 252

Proposal for a regulation Article 31 – 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 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.

Amendment

deleted

Amendment 253

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***

Amendment

6. The Commission may lay down the standard format of such notification to the supervisory authority ***and*** the procedures applicable to the ***filing of reports.***

4, including the time limits for erasure of the information contained therein. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

Amendment 254
Proposal for a regulation
Article 32 – paragraph 1

Text proposed by the Commission

1. When the personal data breach is likely to adversely affect the protection of the personal data or privacy 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.

Amendment

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.***

Amendment 255
Proposal for a regulation
Article 32 – paragraph 2

Text proposed by the Commission

2. The communication to the data subject referred to in paragraph 1 shall describe the nature of the personal data breach and contain at least the information and the recommendations provided for in points (b) **and** (c) of Article 31(3).

Amendment

2. The communication to the data subject referred to in paragraph 1 shall ***be comprehensive, clear and understandable by any individual and shall*** describe the nature of the personal data breach and contain at least the information and the recommendations provided for in points (b), (c) **and** (d) of Article 31(3).

Amendment 256
Proposal for a regulation
Article 32 – paragraph 3

Text proposed by the Commission

3. The communication of a personal data

Amendment

3. The communication of a personal data

breach to the data subject shall not be required if the controller *demonstrates to the satisfaction of the supervisory authority that it* has implemented appropriate technological protection measures, and that 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.

breach to the data subject shall not be required if the *data breach has not produced significant harm and the* controller has implemented appropriate technological protection measures, and that those measures were applied to the data concerned by the personal data breach. Such technological protection measures shall render the data unintelligible, *unusable or anonymised* to any person who is not authorised access to it.

Amendment 257
Proposal for a regulation
Article 32 – 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 as to the circumstances in which a personal data breach is likely to adversely affect the personal data referred to in paragraph 1.

Amendment 258

Proposal for a regulation
Article 32 a (new)

Text proposed by the Commission

Amendment

deleted

Amendment

Article 32a

Communication of a personal data breach to other organisations

A controller that communicates a personal data breach to a data subject pursuant to Article 32 may notify another organisation, a government institution or a part of a government institution of the personal data breach if that organisation, government institution or part may be able to reduce the risk of the harm that could result from it or mitigate that harm. Such notifications can be done without

informing the data subject if the disclosure is made solely for the purposes of reducing the risk of the harm to the data subject that could result from the breach or mitigating that harm.

Justification

In many cases other organisations or government institutions are in a position to be able to assist in mitigating harm that may result to a data subject following a personal data breach if they are made aware of the breach and the circumstances surrounding the breach.

Amendment 259

**Proposal for a regulation
Chapter 4 – section 3 – title**

Text proposed by the Commission

Amendment

DATA PROTECTION IMPACT
ASSESSMENT AND PRIOR
AUTHORISATION

DATA PROTECTION IMPACT
ASSESSMENT AND PRIOR
NOTIFICATION

Justification

Procedures requiring prior authorisation are costly and time-consuming for the controller, and their added value compared to a system of prior notification can be questioned from the point of view of data protection. Prior notifications, which would give the supervising authority the possibility to react and act, is sufficient and also provides for a user-friendly data protection procedure.

Amendment 260

**Proposal for a regulation
Article 33 – paragraph 1**

Text proposed by the Commission

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.

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.***

Amendment 261
Proposal for a regulation
Article 33 – paragraph 2 – introductory part

Text proposed by the Commission

2. The following processing operations ***in particular*** present specific risks referred to in paragraph 1:

Amendment

2. The following processing operations present specific risks referred to in paragraph 1:

Justification

In the interests of legal certainty it is necessary to clearly stipulate which specific risks pertain, in an exhaustive manner.

Amendment 262
Proposal for a regulation
Article 33 – paragraph 2 – point a

Text proposed by the Commission

(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 ***concerning*** the individual ***or significantly affect the individual***;

Amendment

(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***;

Amendment 263

Proposal for a regulation
Article 33 – paragraph 2 – point b

Text proposed by the Commission

(b) information on sex life, health, race and ethnic origin or for the provision of health care, epidemiological researches, or surveys of mental or infectious diseases, where the data are processed for taking measures or decisions regarding specific individuals on a large scale;

Amendment

(b) information on sex life, health, ***political opinions, religious beliefs, criminal convictions***, race and ethnic origin or for the provision of health care, epidemiological researches, or surveys of mental or infectious diseases, where the data are processed for taking measures or decisions regarding specific individuals on

a large scale;

Amendment 264
Proposal for a regulation
Article 33 – paragraph 3

Text proposed by the Commission

3. The assessment shall contain at least a general description of the envisaged processing operations, an assessment of the risks to the rights and freedoms of data subjects, the measures envisaged to address 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.

Amendment

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 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.***

Amendment 265
Proposal for a regulation
Article 33 – paragraph 4

Text proposed by the Commission

4. The controller shall seek the views of data subjects or their representatives on the intended processing, without prejudice to the protection of commercial or public interests or the security of the processing operations.

Amendment

deleted

Justification

To actively seek the views of data subjects represents a disproportionate burden on data controllers.

Amendment 266
Proposal for a regulation
Article 33 – paragraph 5

Text proposed by the Commission

Amendment

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.

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.

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 267

**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

Amendment 268

Proposal for a regulation
Article 33 – paragraph 7

Text proposed by the Commission

Amendment

7. The Commission may specify standards and procedures for carrying out and verifying and auditing the assessment referred to in paragraph 3. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2). **deleted**

Amendment 269

Proposal for a regulation
Article 33 – paragraph 7 a (new)

Text proposed by the Commission

Amendment

(7a) Data protection impact assessments shall be deemed as privileged communications.

Justification

Important to stipulate this to allay the fears of companies that innovative new processes subject to commercial secrecy may be released into the public domain.

Amendment 270

Proposal for a regulation
Article 34 – title

Text proposed by the Commission

Amendment

Prior authorisation and prior consultation Prior consultation

Justification

Internal consistency with objectives set out in Recital 70.

Amendment 271

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 **deleted**

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 as referred to in Article 42(5) for the transfer of personal data to a third country or an international organisation.

Justification

Prior authorization or consultation with supervisory authorities will lead to a misallocation of privacy resources and place a significant burden on already overextended supervisory authorities, create significant, inevitable delays in the rollout of new products and services, and generally disincentivise the creation of effective corporate privacy programmes. Requiring enterprises that have invested in these internal programmes to submit to compulsory consultation with the supervisory authority will have an adverse impact on their ability to develop and release to the market new products and services which benefit consumers and the economy.

Amendment 272

Proposal for a regulation

Article 34 – paragraph 2 – introductory part

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 **may** consult the supervisory authority prior to the processing of **special categories 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 273

Proposal for a regulation

Article 34 – paragraph 2 – point b

Text proposed by the Commission

(b) the supervisory authority deems it necessary to carry out a prior consultation on processing operations that are likely to

Amendment

(b) the supervisory authority deems it necessary to carry out a prior consultation on processing operations that are likely to

present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope and/or their purposes, **and specified according to paragraph 4.**

present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope and/or their purposes.

Justification

See justification of deletion of paragraph 4.

Amendment 274
Proposal for a regulation
Article 34 – paragraph 3

Text proposed by the Commission

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

Amendment

3. Where the **competent** supervisory authority **determines in accordance with its power** that the intended processing does not comply with this Regulation, in particular where risks are insufficiently identified or mitigated, it shall prohibit the intended processing and make appropriate proposals to remedy such non-compliance. **Such a decision shall be subject to appeal in a competent court and it may not be enforceable while being appealed unless the processing results to immediate serious harm suffered by data subjects.**

Amendment 275

Proposal for a regulation
Article 34 – paragraph 4

Text proposed by the Commission

4. The supervisory authority shall establish and make public a list of the processing operations which are subject to prior consultation pursuant to point (b) of paragraph 2. The supervisory authority shall communicate those lists to the European Data Protection Board.

Amendment

deleted

Justification

Too administratively complex to implement effectively, especially in light of the need to have a non-sector specific, future-proof Regulation.

Amendment 276

Proposal for a regulation
Article 34 – paragraph 5

Text proposed by the Commission

5. Where ***the list provided for in paragraph 4 involves*** processing activities ***which are related*** to the offering of goods or services to data subjects in several Member States, or to the monitoring of their behaviour, or may substantially affect the free movement of personal data within the Union, the supervisory authority shall apply the consistency mechanism referred to in Article 57 ***prior to the adoption of the list.***

Amendment

5. Where processing activities ***relate*** to the offering of goods or services to data subjects in several Member States, or to the monitoring of their behaviour, or may substantially affect the free movement of personal data within the Union, the supervisory authority shall apply the consistency mechanism referred to in Article 57.

Justification

Focuses the consistency mechanism at where it is most appropriate, in line with amendments to Article 58, paragraph 2.

Amendment 277

Proposal for a regulation
Article 34 – paragraph 6

Text proposed by the Commission

6. The controller ***or processor*** shall provide the supervisory authority with the data protection impact assessment provided for in Article 33 and, on request, with any other information to allow the supervisory authority to make an assessment of the compliance of the processing and in particular of the risks for the protection of personal data of the data subject and of the related safeguards.

Amendment

6. The controller shall provide the supervisory authority with the data protection impact assessment provided for in Article 33 and, on request, with any other information to allow the supervisory authority to make an assessment of the compliance of the processing and in particular of the risks for the protection of personal data of the data subject and of the related safeguards.

Justification

With the view to ensure legal certainty and enable better enforcement by supervisory authorities and in accordance with Recital 62 which requires “a clear attribution of the responsibilities under this Regulation”, prior authorisation from and consultation with the supervisory authority should rest solely with the controller. This establishes a much clearer framework both for business and supervisory authorities.

Amendment 278
Proposal for a regulation
Article 34 – paragraph 8

Text proposed by the Commission

8. 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 determining the high degree of specific risk referred to in point (a) of paragraph 2.

Amendment

deleted

Amendment 279

Proposal for a regulation
Article 34 – paragraph 9

Text proposed by the Commission

9. The Commission may set out standard forms and procedures for prior **authorisations and** consultations referred to in **paragraphs 1 and 2**, and standard forms and procedures for informing the supervisory authorities pursuant to paragraph 6. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

Amendment

9. The Commission may set out standard forms and procedures for prior consultations referred to in **paragraph 2** and standard forms and procedures for informing the supervisory authorities pursuant to paragraph 6. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

Amendment 280

Proposal for a regulation
Article 35 – paragraph 1 – introductory part

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 designate a data **protection organisation or data** protection officer in any case where:

Amendment 281

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 of data subjects.

Amendment

(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 of data subjects. ***Core activities should be defined as activities where 50% of the annual turnover resulting from the sale of data or revenue is gained from this data. In relation to data protection, data processing activities which do not represent more than 50% of company's turnover shall be considered ancillary.***

Justification

Designating data protection officers should only be deemed necessary when the core activities of an enterprise concern the processing of personal data.

Amendment 282

**Proposal for a regulation
Article 35 – paragraph 3**

Text proposed by the Commission

3. Where the controller or the processor is a public authority or body, the data protection officer may be designated for several of its entities, taking account of the organisational structure of the public authority or body.

Amendment

3. Where the controller or the processor is a public authority or body, the data protection ***organisation or data protection*** officer may be designated for several of its entities, taking account of the organisational structure of the public authority or body.

Amendment 283

**Proposal for a regulation
Article 35 – paragraph 5**

Text proposed by the Commission

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

Amendment

5. The controller or processor ***may*** 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.

Amendment 284

Proposal for a regulation Article 35 – paragraph 6

Text proposed by the Commission

6. The controller or the processor shall ensure that any other professional duties of the data protection officer are compatible with the person's tasks and duties as data protection officer and do not result in a conflict of interests.

Amendment 285

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.***

Justification

Like all other personnel it should be possible to dismiss the DPO if he does not perform the tasks set up by management. It is management who decides if they are satisfied with the person they hired or not.

Amendment 286

Proposal for a regulation Article 35 – paragraph 10

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.

Amendment

6. The controller or the processor shall ensure that any other professional duties of the data protection ***organisation or data protection*** officer are compatible with the person's tasks and duties as data protection officer and do not result in a conflict of interests.

Amendment

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.

Text proposed by the Commission

10. Data subjects shall have the right to contact the data protection officer on all issues related to the processing of the data subject's data and to request exercising the rights under this Regulation.

Amendment

10. Data subjects shall have the right to contact the data protection ***organisation or data protection*** officer on all issues related to the processing of the data subject's data and to request exercising the rights under this Regulation.

Amendment 287

Proposal for a regulation Article 35 – paragraph 11

Text proposed by the Commission

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.

Amendment

deleted

Amendment 288

Proposal for a regulation Article 36 – paragraph 1

Text proposed by the Commission

1. The controller or the processor shall ***ensure that*** the data protection officer is properly and in a timely manner involved in all issues which relate to the protection of personal data.

Amendment

1. The ***executive management of the*** controller or the processor shall ***support*** the data protection ***organisation or data protection*** officer ***in performing their duties and shall provide staff, premises, equipment and any other resources necessary to carry out the roles and duties referred to in Article 37.***

Amendment 289

Proposal for a regulation Article 36 – paragraph 2

Text proposed by the Commission

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.

Amendment 290

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 291

Proposal for a regulation Article 37 – paragraph 1 – introductory part

Text proposed by the Commission

1. The controller or the processor shall entrust the data protection officer at least with the following tasks:

Amendment 292

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

2. The **data protection organisation or** data protection officer shall **perform his or her** duties and tasks independently and shall directly report to the management of the controller or the processor.

Amendment

3. The controller or the processor shall support the data protection **organisation or 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

1. The controller or the processor shall entrust the data protection **organisation or the data protection** officer at least with the following tasks:

Amendment

(a) **to raise awareness**, 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 293

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

Text proposed by the Commission

(c) to monitor ***the implementation and application of this Regulation, in particular as to the requirements related to data protection by design, data protection by default and data security and to the information of data subjects and their requests in exercising their rights under this Regulation;***

Amendment

(c) to monitor ***in compliance with the Regulation;***

Amendment 294

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

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

Amendment 295

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

Text proposed by the Commission

(e) to monitor ***the documentation, notification and communication of*** personal data breaches pursuant to Articles 31 and 32;

Amendment

(e) ***to develop processes*** to monitor, ***document, notify and communicate*** personal data breaches pursuant to Articles 31 and 32;

Amendment 296

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

Amendment

(f) ***to develop processes that*** monitor the performance of the data protection impact assessment by the controller or processor and the application for prior authorisation

consultation, if required pursuant Articles 33 and 34;

or prior consultation, if required pursuant Articles 33 and 34;

Amendment 297

Proposal for a regulation

Article 37 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) to ensure that accountability measures exist as defined in points (c) to (eb) of Article 22(2).

Justification

Clarifying the central role of the Data Protection Officer in the chain of accountability to top-level management.

Amendment 298

Proposal for a regulation

Article 37 – paragraph 1 – point g

Text proposed by the Commission

Amendment

(g) to **monitor the response** to requests from the supervisory authority, and, within the sphere of the data protection officer's competence, co-operating with the supervisory authority at the latter's request or on the data protection officer's own initiative;

(g) to **assist in responding** to requests from the supervisory authority, and, within the sphere of the data protection officer's competence, co-operating with the supervisory authority at the latter's request or on the data protection officer's own initiative;

Amendment 299

Proposal for a regulation

Article 39 – paragraph 1

Text proposed by the Commission

Amendment

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

1. The Member States and the Commission shall **work with controllers, processors and other stakeholders to** encourage, in particular at European level, the establishment of data protection certification mechanisms and of data protection seals and marks, allowing data subjects **and Member State authorities to** quickly assess the level of data protection provided by controllers and processors. The data protection certifications mechanisms shall contribute to the proper

operations.

application of this Regulation, taking account of the specific features of the various sectors and different processing operations.

Justification

This amendment encourages and enables the creation of a system in which regulators accredit independent assessors, for both whole-enterprise assessments and product- or technology-specific assessments.

Amendment 300

Proposal for a regulation

Article 39 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(1a) The data protection certifications mechanisms shall be voluntary, affordable, and available via a process that is transparent and not unduly burdensome. These mechanisms shall also be technology neutral and capable of global application and shall contribute to the proper application of this Regulation, taking account of the specific features of the various sectors and different processing operations.

Justification

Certification mechanisms should be designed to be effective without being overly bureaucratic or burdensome.

Amendment 301

Proposal for a regulation

Article 39 – paragraph 2

Text proposed by the Commission

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 data protection certification mechanisms referred to in paragraph 1, including conditions for granting and

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 data protection certification mechanisms referred to in paragraph 1, including conditions for granting and

withdrawal, and requirements for recognition within the Union and in third countries.

withdrawal, and requirements for recognition within the Union and in third countries, ***provided such measures are technology neutral.***

Amendment 302

Proposal for a regulation Article 39 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission may lay down technical standards for certification mechanisms and data protection seals and marks and mechanisms to promote and recognize certification mechanisms and data protection seals and marks. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).

deleted

Amendment 303

Proposal for a regulation Article 41 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) the rule of law, relevant 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 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;

(a) the rule of law, relevant legislation in force, both general and sectoral, including concerning public security, defence, national security and criminal law, ***as well as the implementation of this legislation,*** 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;

Amendment 304

Proposal for a regulation Article 41 – paragraph 4 b (new)

Text proposed by the Commission

Amendment

(4b) If the Commission has grounds to believe, either because of the monitoring pursuant to paragraph 4a or any other source, that a country or international organisation concerning which a decision pursuant to paragraph 3 has been adopted no longer provides an adequate level of protection within the meaning of paragraph 2, it shall review this decision.

Amendment 305
Proposal for a regulation
Article 42 – paragraph 1

Text proposed by the Commission

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.

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.***

Amendment 306

Proposal for a regulation
Article 42 – paragraph 2 – point b

Text proposed by the Commission

(b) standard data protection clauses adopted by the Commission. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2); or

Amendment

(b) standard data protection clauses, ***between the controller or processor and the recipient, that can be a sub-processor, of the data outside the EEA, which may include standard terms for onward transfers outside the EEA,*** adopted by the Commission. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2); or

Justification

This is an important addition to clarify the relationship between controllers, processors and sub-processors in the context of international data transfers.

Amendment 307

Proposal for a regulation
Article 42 – paragraph 2 – point c

Text proposed by the Commission

(c) standard data protection clauses adopted by a supervisory authority in accordance with the consistency mechanism referred to in Article 57 when declared generally valid by the Commission pursuant to point (b) of Article 62(1); or

Amendment

(c) standard data protection clauses, ***between the controller or processor and the recipient, that can be a sub-processor, of the data outside the EEA, which may include standard terms for onward transfers outside the EEA,*** adopted by a supervisory authority in accordance with the consistency mechanism referred to in Article 57 when declared generally valid by the Commission pursuant to point (b) of Article 62(1); or

Justification

This is an important addition to clarify the relationship between controllers, processors and sub-processors in the context of international data transfers.

Amendment 308

Proposal for a regulation
Article 42 – paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) contractual clauses between the controller or processor and the recipient of the data authorised by a supervisory authority in accordance with paragraph 4.

(d) contractual clauses between the controller or processor and the recipient of the data authorised by a supervisory authority in accordance with paragraph 4;
or

Amendment 309

Proposal for a regulation

Article 42 – paragraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(da) contractual clauses between the controller or processor and the recipient of the data that supplement standard data protection clauses as referred to in points (b) and (c) of paragraph 2 of this Article, and are authorised by the competent supervisory authority in accordance with paragraph 4;

Justification

This amendment would provide an incentive for organisations to go beyond the baseline regulatory requirements comply with regimes such as a "data seal" or "trust mark".

Amendment 310

Proposal for a regulation

Article 42 – paragraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(d a) for historical, statistical or scientific purposes, the measures referred to in Article 83(4);

Amendment 311

Proposal for a regulation

Article 42 – paragraph 3

Text proposed by the Commission

Amendment

3. A transfer based on ***standard data***

3. A transfer based on points (a), (b), (c) ***or***

protection clauses or binding corporate rules as referred to in points (a), (b) or (c) of paragraph 2 shall not require any further authorisation.

(e) of paragraph 2 shall not require any further authorisation.

Justification

A transfer for research purposes of key-coded data that cannot and will not be re-identified by recipients located in third countries should be permitted without further administrative burdens.

Amendment 312 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 apply the consistency mechanism referred to in Article 57.

Amendment

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.

Amendment 313

Proposal for a regulation Article 42 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

(4a) A controller or processor may choose to base transfers on standard data protection clauses as referred to in points (b) and (c) of paragraph 2 of this Article, and to offer in addition to these standard clauses supplemental, legally binding commitments that apply to transferred data. In such cases, these additional commitments shall be subject to prior consultation with the competent

supervisory authority and shall supplement and not contradict, directly or indirectly, the standard clauses. Member States, supervisory authorities and the Commission shall encourage the use of supplemental and legally binding commitments by offering a data protection seal, mark or mechanism, adopted pursuant to Article 39, to controllers and processors who adopt these heightened safeguards.

Justification

Controllers and processors will often have direct and practical experience that demonstrates that additional safeguards may be appropriate in relation to the personal data they are transferring. The Regulation should encourage these controllers and processors to offer supplemental safeguards where these are appropriate. These supplemental commitments should not contradict the standard clauses.

Amendment 314

**Proposal for a regulation
Article 42 – paragraph 4 a (new)**

Text proposed by the Commission

Amendment

(4a) To encourage the use of supplemental contractual clauses as referred to in point (e) of paragraph 2 of this Article, competent authorities may offer a data protection seal, mark or mechanism, adopted pursuant to Article 39, to controllers and processors who adopt these safeguards.

Justification

Amendment to encourage the use of supplemental data protection seals or trust marks.

**Amendment 315
Proposal for a regulation
Article 43 – paragraph 1 – introductory part**

Text proposed by the Commission

Amendment

1. A supervisory authority shall in accordance with the consistency mechanism set out in Article 58 approve

1. The competent supervisory authority shall authorize through a single act of approval binding corporate rules for a

binding corporate rules, provided that they:

group of undertakings. These rules will allow multiple intracompany international transfers in and out of Europe, provided that they:

Amendment 316

Proposal for a regulation

Article 43 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) are legally binding and apply to and are enforced by every member within the controller's or processor's group of undertakings, and include their employees;

(a) are legally binding and apply to and are enforced by every member within the controller's or processor's group of undertakings ***and their external subcontractors***, and include their employees;

Justification

In the Cloud Computing services, cloud providers often use the external subcontractors to perform a specific task to deliver 24/7 service and maintenance. Therefore, this should be recognised in the Binding Corporate Rules by the supervising authority.

Amendment 317

Proposal for a regulation

Article 43 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) expressly confer enforceable rights on data subjects;

(b) expressly confer enforceable rights on data subjects ***and are transparent for data subjects***;

Amendment 318

Proposal for a regulation

Article 43 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) the structure and contact details of the group of undertakings and its members;

(a) the structure and contact details of the group of undertakings and its members, ***and their external subcontractors***;

Amendment 319

Proposal for a regulation

Article 43 – 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 requirements for binding corporate rules within the meaning of this Article, in particular as regards the criteria for their approval, the application of points (b), (d), (e) and (f) of paragraph 2 to binding corporate rules adhered to by processors and on further necessary requirements to ensure the protection of personal data of the data subjects concerned.

Amendment 320
Proposal for a regulation
Article 44 – title

Text proposed by the Commission

Derogations

Amendment 321

Proposal for a regulation
Article 44 – paragraph 1 – introductory part

Text proposed by the Commission

1. In the absence of an adequacy decision pursuant to Article 41 *or* of appropriate safeguards pursuant to Article 42, a transfer or a set of transfers of personal data to a third country or an international organisation may take place only on condition that:

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 binding corporate rules within the meaning of this Article, in particular as regards the criteria for their approval, ***including transparency for data subjects***, the application of points (b), (d), (e) and (f) of paragraph 2 to binding corporate rules adhered to by processors and on further necessary requirements to ensure the protection of personal data of the data subjects concerned.

Amendment

Other legitimate grounds for international transfers

Amendment

1. In the absence of an adequacy decision pursuant to Article 41; ***or where the Commission 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 Article 41(5); or in the absence*** of appropriate safeguards pursuant to Article 42, a transfer or a set of transfers of personal data to a third country or an international organisation may take place only on condition that:

Amendment 322
Proposal for a regulation
Article 44 – paragraph 1 – point h

Text proposed by the Commission

(h) the transfer is necessary for the purposes of the legitimate interests pursued by the controller or the processor, **which cannot be qualified as frequent or massive**, and where the controller or processor has assessed all the circumstances surrounding the data transfer operation or the set of data transfer operations and based on this assessment adduced appropriate safeguards with respect to the protection of personal data, where necessary.

Amendment

(h) the transfer is necessary for the purposes of the legitimate interests pursued by the controller or the processor, and where the controller or processor has assessed all the circumstances surrounding the data transfer operation or the set of data transfer operations and based on this assessment adduced appropriate safeguards with respect to the protection of personal data, where necessary.

Justification

In today's data driven society, there is no justification to single out massive or frequent transfers as this does not meet the realities of data flows and therefore would be at odds with the objective of ensuring free flow of data.

Amendment 323
Proposal for a regulation
Article 44 – paragraph 5

Text proposed by the Commission

5. The public interest referred to in point (d) of paragraph 1 must be recognised in Union law or in the law of the Member State to which the controller is subject.

Amendment

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.***

Amendment 324

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

Amendment

deleted

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 325
Proposal for a regulation
Article 44 – 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 ‘important grounds of public 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.

deleted

Amendment 326
Proposal for a regulation
Article 46 – paragraph 1

Text proposed by the Commission

Amendment

1. Each Member State shall provide **that one or more** public **authorities are** responsible for monitoring the application of this Regulation and for contributing to its consistent application throughout the Union, in order to protect the fundamental rights and freedoms of natural persons in relation to the processing of their personal data and to facilitate the free flow of personal data within the Union. For these purposes, the supervisory authorities shall co-operate with each other and the Commission.

1. Each Member State shall provide **a lead** public **supervisory authority** responsible for monitoring the application of this Regulation and for contributing to its consistent application throughout the Union, in order to protect the fundamental rights and freedoms of natural persons in relation to the processing of their personal data and to facilitate the free flow of personal data within the Union. For these purposes, the supervisory authorities shall co-operate with each other and the Commission.

Justification

A lead supervisory authority should be clearly assigned in order to streamline the implementation of a true one-stop shop.

Amendment 327
Proposal for a regulation
Article 46 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Each supervisory authority shall have the power to sanction administrative offences, in particular those referred to in Article 79(4), (5) and (6). Supervisory authorities may only issue sanctions for controllers or processors with their main establishment within the same Member State or, in coordination with Articles 56 and 57 if the supervisory authority of the main establishment fails to take action.

Justification

Clarifies and underlines the role of supervisory authorities in relation to sanctions.

Amendment 328
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 authority shall act with complete independence in exercising the duties and powers entrusted to it, ***notwithstanding co-operative and consistency arrangements related to Chapter VII.***

Justification

Due regard must be given to the supervisory authorities' obligations to each other under the consistency mechanism.

Amendment 329
Proposal for a regulation
Article 48 – paragraph 1

Text proposed by the Commission

Amendment

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.

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

Amendment 330

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 331

Proposal for a regulation
Article 51 – paragraph 2 a (new)

Text proposed by the Commission

Amendment 332

Proposal for a regulation
Article 51 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2. Where the *Regulation applies by virtue of Article 3(1), the competent supervisory authority will be the supervisory authority of the Member State or territory where the main establishment of the controller or processor subject to the Regulation is established. Disputes should be decided upon in accordance with the consistency mechanism set out in article 58, and this without prejudice to the other provisions of Chapter VII of this Regulation.*

Amendment

(2a) Where the Regulation applies by virtue of Article 3(2), the competent supervisory authority will be the supervisory authority of the Member State or territory where the controller has designated a representative in the Union pursuant to Article 25.

Amendment

(2a) Where the Regulation applies to several controllers and/ or processors with the same group of undertakings by virtue of both Article 3(1) and 3(2), only one supervisory authority will be competent and it will be determined in accordance with Article 51(2).

Amendment 333

Proposal for a regulation Article 52 – paragraph 3

Text proposed by the Commission

3. The supervisory authority shall, upon request, advise any data subject in exercising the rights under this Regulation and, if appropriate, co-operate with the supervisory authorities in other Member States to this end.

Amendment

3. The **competent** supervisory authority shall, upon request, advise any data subject in exercising the rights under this Regulation and, if appropriate, co-operate with the supervisory authorities in other Member States to this end.

Amendment 334

Proposal for a regulation Article 53 – paragraph 1 – introductory part

Text proposed by the Commission

1. **Each** supervisory authority shall have the power:

Amendment

1. **The competent** supervisory authority shall have the power:

Amendment 335

Proposal for a regulation Article 53 – paragraph 1 – point d

Text proposed by the Commission

(d) to ensure the compliance with prior **authorisations and prior** consultations referred to in Article 34;

Amendment

(d) to ensure the compliance with prior consultations referred to in Article 34;

Amendment 336

Proposal for a regulation Article 53 – paragraph 1 – point j a (new)

Text proposed by the Commission

Amendment

(ja) to inform the controller and/or the processor of the judicial remedies available against its decision.

Justification

The provisions on supervisory authority powers against the controller and/or the processor should be complemented with explicit legal safeguards for controllers and/or processors.

Amendment 337

Proposal for a regulation

Article 53 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

Each supervisory authority shall have the investigative power to obtain from the controller or the processor:

Amendment

The competent supervisory authority shall have the investigative power to obtain from the controller or the processor:

Amendment 338

Proposal for a regulation

Article 53 – paragraph 3

Text proposed by the Commission

3. *Each* supervisory authority shall have the power to bring violations of this Regulation to the attention of the judicial authorities and to engage in legal proceedings, in particular pursuant to Article 74(4) and Article 75(2).

Amendment

3. **The competent** supervisory authority shall have the power to bring violations of this Regulation to the attention of the judicial authorities and to engage in legal proceedings, in particular pursuant to Article 74(4) and Article 75(2).

Amendment 339

Proposal for a regulation

Article 53 – paragraph 4

Text proposed by the Commission

4. *Each* supervisory authority shall have the power to sanction administrative offences, in particular those referred to in Article 79(4), (5) and (6).

Amendment

4. **The competent** supervisory authority shall have the power to sanction administrative offences, in particular those referred to in Article 79(4), (5) and (6).

Amendment 340

Proposal for a regulation

Article 55 – paragraph 1

Text proposed by the Commission

1. Supervisory authorities shall provide each other relevant information and mutual assistance in order to implement and apply this Regulation in a consistent manner, and shall put in place measures for effective co-operation with one another. Mutual assistance shall cover, in particular, information requests and supervisory

Amendment

1. Supervisory authorities shall provide each other relevant information and mutual assistance in order to implement and apply this Regulation in a consistent manner, and shall put in place measures for effective co-operation with one another. Mutual assistance shall cover, in particular, information requests and supervisory

measures, such as requests to carry out prior **authorisations and** consultations, inspections and prompt information on the opening of cases and ensuing developments where data subjects in several Member States are likely to **be affected by processing operations**.

Amendment 341

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 342

Proposal for a regulation Article 56 – paragraph 4

Text proposed by the Commission

4. Supervisory authorities shall lay down the practical aspects of specific co-operation actions.

Amendment 343

Proposal for a regulation Article 58 – paragraph 1

Text proposed by the Commission

1. Before **a** supervisory authority adopts a measure referred to in paragraph 2, this supervisory authority shall communicate

measures, such as requests to carry out prior consultations, inspections and prompt information on the opening of cases and ensuing developments where data subjects in several Member States are likely to **cause legal effects to the detriment of the data subjects**.

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 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 **that have been proven** contrary to this Regulation.

Amendment

4. Supervisory authorities shall lay down the practical aspects of specific co-operation actions **in their rules of procedure. The rules of procedures shall be made public in the Official Journal of the European Union.**

Amendment

1. Before **the competent** supervisory authority adopts a measure referred to in paragraph 2, this supervisory authority

the draft measure to the European Data Protection Board and the Commission.

shall communicate the draft measure to the European Data Protection Board and the Commission.

Amendment 344

Proposal for a regulation

Article 58 – paragraph 2 – point a

Text proposed by the Commission

(a) relates to processing activities which are related to the offering of goods or services to data subjects in several Member States, ***or to the monitoring of their behaviour***; or

Amendment

(a) relates to processing activities ***of personal data*** which are related to the offering of goods or services to data subjects in several Member States ***when the non-EEA controller or processor does not name a representative in the territory of the EEA***; or it

Justification

This should incentivise non-EU companies to name a representative in the territory of the EU. There should be no discrimination against non-EU companies who are established in the EU.

Amendment 345

Proposal for a regulation

Article 58 – paragraph 2 – point b

Text proposed by the Commission

(b) may substantially affect the free movement of personal data within the Union; or

Amendment

deleted

Amendment 346

Proposal for a regulation

Article 58 – paragraph 2 – point c

Text proposed by the Commission

(c) aims at adopting a list of the processing operations subject to prior consultation pursuant to Article 34(5); or

Amendment

deleted

Justification

See amendments to Article 34 on prior consultation - the requirement to draft up lists and submit them to the consistency mechanism is overly bureaucratic and anti-innovation.

Amendment 347

Proposal for a regulation

Article 58 – paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) aims to determine standard data protection clauses referred to in point (c) of Article 42(2); or **deleted**

Amendment 348

Proposal for a regulation

Article 58 – paragraph 2 – point e

Text proposed by the Commission

Amendment

(e) aims to authorise contractual clauses referred to in point (d) of Article 42(2); or **deleted**

Amendment 349

Proposal for a regulation

Article 58 – paragraph 2 – point f

Text proposed by the Commission

Amendment

(f) aims to approve binding corporate rules within the meaning of Article 43. **deleted**

Justification

DPA's should be competent under the direct effect of the Regulation to draw up BCRs without having to submit it to the consistency mechanism.

Amendment 350

Proposal for a regulation

Article 58 – paragraph 2 – point f a (new)

Text proposed by the Commission

Amendment

(fa) permits processing for research purposes in accordance with Article 81(3)

and/or Article 83(3).

Amendment 351

Proposal for a regulation Article 58 – paragraph 3

Text proposed by the Commission

3. Any supervisory authority or the European Data Protection Board may request that any matter shall be dealt with in the consistency mechanism, in particular where **a supervisory** authority does not submit a draft measure referred to in paragraph 2 or does not comply with the obligations for mutual assistance in accordance with Article 55 or for joint operations in accordance with Article 56.

Amendment

3. Any supervisory authority or the European Data Protection Board may request that any matter shall be dealt with in the consistency mechanism, in particular where **the competent** authority does not submit a draft measure referred to in paragraph 2 or does not comply with the obligations for mutual assistance in accordance with Article 55 or for joint operations in accordance with Article 56.

Amendment 352

Proposal for a regulation Article 58 – paragraph 4

Text proposed by the Commission

4. In order to ensure correct and consistent application of this Regulation, the Commission may request that any matter shall be dealt with in the consistency mechanism.

Amendment

4. In order to ensure correct and consistent application of this Regulation, the Commission may, **acting on its own behalf, and shall at the request of a stakeholder**, request that any matter shall be dealt with in the consistency mechanism.

Justification

When there are inconsistencies with regards to the application of the Regulation which threaten the harmonized implementation and affect specific stakeholders, the affected stakeholders should be given the right to bring their concerns into the consistency mechanism.

Amendment 353

Proposal for a regulation Article 58 – paragraph 6

Text proposed by the Commission

6. The chair of the European Data Protection Board shall ***immediately*** electronically inform the members of the European Data Protection Board and the Commission of any relevant information which has been communicated to it, using a standardised format. The chair of the European Data Protection Board shall provide translations of relevant information, where necessary.

Amendment 354

Proposal for a regulation Article 58 – paragraph 8

Text proposed by the Commission

8. The supervisory authority referred to in paragraph 1 ***and the supervisory authority competent under Article 51*** shall take account of the opinion of the European Data Protection Board and shall within two weeks after the information on the opinion by the chair of the European Data Protection Board, electronically communicate to the chair of the European Data Protection Board and to the Commission whether it maintains or amends its draft measure and, if any, the amended draft measure, using a standardised format.

Amendment 355

Proposal for a regulation Article 61 – paragraph 1

Text proposed by the Commission

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, ***in particular*** 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

Amendment

6. The chair of the European Data Protection Board shall ***without undue delay*** electronically inform the members of the European Data Protection Board and the Commission of any relevant information which has been communicated to it, using a standardised format. The chair of the European Data Protection Board shall provide translations of relevant information, where necessary.

Amendment

8. The ***competent*** supervisory authority referred to in paragraph 1 shall take account of the opinion of the European Data Protection Board and shall within two weeks after the information on the opinion by the chair of the European Data Protection Board, electronically communicate to the chair of the European Data Protection Board and to the Commission whether it maintains or amends its draft measure and, if any, the amended draft measure, using a standardised format.

Amendment

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, 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,

averting major disadvantages *or for other reasons*, 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 *and to the Commission*.

by way of derogation from the procedure referred to in Article 58, it may immediately adopt provisional measures with a specified period of validity. This supervisory authority shall, without delay, communicate those measures, with full reasons, to the competent supervisory authority, the European Data Protection Board, *the Commission and the controller or processor concerned*.

Amendment 356

Proposal for a regulation Article 61 – paragraph 2

Text proposed by the Commission

2. Where a supervisory authority has taken a measure pursuant to paragraph 1 *and considers that final measures need urgently be adopted, it may* request an urgent opinion of the European Data Protection Board, giving reasons for *requesting such opinion*, including for the urgency of final measures.

Amendment

2. Where a supervisory authority has taken a measure pursuant to paragraph 1, *it shall* request an urgent opinion of the European Data Protection Board, giving reasons for *the request*, including for the urgency of final measures.

Amendment 357

Proposal for a regulation Article 62 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

(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 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;

Amendment

deleted

Amendment 358

Proposal for a regulation

Article 66 – paragraph 1 – introductory part

Text proposed by the Commission

1. The European Data Protection Board shall ensure the consistent application of this Regulation. To this effect, the European Data Protection Board shall, on its own initiative *or* at the request of the Commission, in particular:

Amendment

1. The European Data Protection Board shall ensure the consistent application of this Regulation. To this effect, the European Data Protection Board shall, on its own initiative, at the request of the Commission *or other stakeholders*, in particular:

Amendment 359

Proposal for a regulation

Article 66 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

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

Amendment 360

Proposal for a regulation

Article 66 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Amendment 361

Proposal for a regulation

Article 66 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

(4a) Where appropriate, the European Data Protection Board shall, in its execution of the tasks as outlined in article 66, consult interested parties and give them the opportunity to comment within a reasonable period. The European Data Protection Board shall, without prejudice to Article 72, make the results of the consultation procedure publicly available.

Justification

Before the Board adopts opinions and reports, they should consult interested parties and give them the opportunity to comment within a reasonable period as possible for other regulatory domains.

Amendment 362
Proposal for a regulation
Article 68 – paragraph 2

Text proposed by the Commission

Amendment

2. The European Data Protection Board shall adopt its own rules of procedure and organise its own operational arrangements. In particular, it shall provide for the continuation of exercising duties when a member's term of office expires or a member resigns, for the establishment of subgroups for specific issues or sectors and for its procedures in relation to the consistency mechanism referred to in Article 57.

2. The European Data Protection Board shall adopt its own rules of procedure and organise its own operational arrangements. In particular, it shall provide for the continuation of exercising duties when a member's term of office expires or a member resigns, for the establishment of subgroups for specific issues or sectors and for its procedures in relation to the consistency mechanism referred to in Article 57 ***and the legal safeguards applicable to controllers or processors concerned.***

Justification

There are no explicit legal safeguards for controllers or processors concerned.

Amendment 363
Proposal for a regulation
Article 69 – paragraph 2

Text proposed by the Commission

2. The term of office of the chair and of the deputy chairpersons shall be five years and be renewable.

Amendment

2. The term of office of the chair and of the deputy chairpersons shall be five years and be renewable. ***Their appointment may be revoked by a decision of the European Parliament adopted by a two-thirds majority of the votes cast, representing a majority of its component Members.***

Amendment 364

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 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.

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 ***from among its membership*** if it considers that a data subject's rights under this Regulation have been infringed as a result of the processing of personal data ***and it has minimum funding of EUR 80 000 and representative membership with a corresponding membership structure.***

Justification

Minimum funding and a representative membership structure are necessary in order to guarantee that collective actions are not misused and avoid a situation where associations are set up specifically for this purpose, as well as to ensure minimum cover for lawyers' fees and court costs.

Amendment 365

Proposal for a regulation

Article 75 – paragraph 2

Text proposed by the Commission

2. Proceedings against a controller or a processor shall be brought before the

Amendment

2. Proceedings against a controller or a processor shall be brought before the

courts of the Member State where the controller or processor has an establishment. Alternatively, such proceedings may be brought before the courts of the Member State where the data subject has its habitual residence, unless the controller is a public authority acting in the exercise of its public powers.

courts of the Member State where the controller or processor has an establishment. Alternatively, such proceedings may be brought before the courts of the Member State where the data subject has its habitual residence, unless the controller is a public authority acting in the exercise of its public powers. ***The derogation does not apply to a public authority of a third country.***

Amendment 366

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 on behalf of one or more data subjects. ***Claims according to Article 77 may not be exercised by bodies, organisations or associations within the meaning of Article 73(2).***

Amendment 367

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 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 for the damage suffered.

Amendment 368

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,

Amendment

2. Where more than one controller is involved in the processing, each controller

each controller or processor shall be jointly and severally liable for the entire amount of the damage.

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.*

Amendment 369

Proposal for a regulation Article 77 – paragraph 3

Text proposed by the Commission

3. The controller *or the processor* may be exempted from this liability, in whole or in part, if the *controller or the processor* proves that *they are* not responsible for the event giving rise to the damage.

Amendment

3. The controller may be exempted from this liability, in whole or in part, if the proves that *it is* not responsible for the event giving rise to the damage.

Amendment 370

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 competent* supervisory authority shall be empowered to impose administrative sanctions in accordance with this Article.

Amendment 371

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 created by the violation, the degree of* responsibility of the natural

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.

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.

Amendment 372

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.*

Amendment 373

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.

Amendment 374
Proposal for a regulation
Article 79 – paragraph 3

Text proposed by the Commission

Amendment

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:

3. The supervisory authority may give a written warning without imposing a sanction. The supervisory authority may impose a fine of up to EUR 1 000 000 for repeated, deliberate breaches or, in the case of a company, of up to 1% of its annual worldwide turnover.

(a) a natural person is processing personal data without a commercial interest; or

(b) an enterprise or an organisation employing fewer than 250 persons is processing personal data only as an activity ancillary to its main activities.

Justification

The maximum amount of the fine which can be imposed by a supervisory authority, which may be as much as EUR 1 million and, for companies, 1% of their annual worldwide

turnover, must be retained. However, the independence of supervisory authorities established by Article 8(3) of the Charter of Fundamental Rights of the European Union must be maintained. In addition, the consistency mechanism, and in particular Article 58(3) and (4), could contribute to a harmonised policy in the EU for administrative sanctions.

Amendment 375

Proposal for a regulation

Article 79 – paragraph 3 – point a

Text proposed by the Commission

Amendment

(a) a natural person is processing personal data without a commercial interest; or ***deleted***

Amendment 376

Proposal for a regulation

Article 79 – paragraph 3 – point b

Text proposed by the Commission

Amendment

(b) an enterprise or an organisation employing fewer than 250 persons is processing personal data only as an activity ancillary to its main activities. ***deleted***

Amendment 377

Proposal for a regulation

Article 79 – paragraph 4 – introductory part

Text proposed by the Commission

Amendment

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: ***deleted***

Amendment 378

Proposal for a regulation

Article 79 – paragraph 4 – point a

Text proposed by the Commission

Amendment

(a) does not provide the mechanisms for requests by data subjects or does not respond promptly or not in the required ***deleted***

format to data subjects pursuant to Articles 12(1) and (2);

Amendment 379
Proposal for a regulation
Article 79 – paragraph 4 – point b

Text proposed by the Commission

Amendment

(b) charges a fee for the information or for responses to the requests of data subjects in violation of Article 12(4). **deleted**

Amendment 380
Proposal for a regulation
Article 79 – paragraph 5 – introductory part

Text proposed by the Commission

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 annual worldwide turnover, to anyone who, intentionally or negligently: **deleted**

Amendment 381
Proposal for a regulation
Article 79 – paragraph 5 – point a

Text proposed by the Commission

Amendment

(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; **deleted**

Amendment 382
Proposal for a regulation
Article 79 – paragraph 5 – point b

Text proposed by the Commission

Amendment

(b) does not provide access for the data subject or does not rectify personal data pursuant to Articles 15 and 16 or does not communicate the relevant information to a recipient pursuant to Article 13; **deleted**

Amendment 383
Proposal for a regulation
Article 79 – paragraph 5 – point c

Text proposed by the Commission

Amendment

(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; **deleted**

Amendment 384
Proposal for a regulation
Article 79 – paragraph 5 – point d

Text proposed by the Commission

Amendment

(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; **deleted**

Amendment 385
Proposal for a regulation
Article 79 – paragraph 5 – point e

Text proposed by the Commission

Amendment

(e) does not or not sufficiently determine the respective responsibilities with co-controllers pursuant to Article 24; **deleted**

Amendment 386
Proposal for a regulation
Article 79 – paragraph 5 – point f

Text proposed by the Commission

Amendment

(f) does not or not sufficiently maintain the documentation pursuant to Article 28, Article 31(4), and Article 44(3); **deleted**

Amendment 387
Proposal for a regulation
Article 79 – paragraph 5 – point g

Text proposed by the Commission

Amendment

(g) does not comply, in cases where special categories of data are not involved, pursuant to Articles 80, 82 and 83 with rules in relation to freedom of expression or with rules on the processing in the employment context or with the conditions for processing for historical, statistical and scientific research purposes. *deleted*

Amendment 388
Proposal for a regulation
Article 79 – paragraph 6 – introductory part

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: *deleted*

Amendment 389
Proposal for a regulation
Article 79 – paragraph 6 – point a

Text proposed by the Commission

Amendment

(a) processes personal data without any or sufficient legal basis for the processing or does not comply with the conditions for consent pursuant to Articles 6, 7 and 8; *deleted*

Amendment 390
Proposal for a regulation
Article 79 – paragraph 6 – point b

Text proposed by the Commission

Amendment

(b) processes special categories of data in violation of Articles 9 and 81; *deleted*

Amendment 391
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; *deleted*

Amendment 392
Proposal for a regulation
Article 79 – paragraph 6 – point d

Text proposed by the Commission

Amendment

(d) does not comply with the conditions in relation to measures based on profiling pursuant to Article 20; *deleted*

Amendment 393
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*

Amendment 394
Proposal for a regulation
Article 79 – paragraph 6 – point f

Text proposed by the Commission

Amendment

(f) does not designate a representative pursuant to Article 25; *deleted*

Amendment 395
Proposal for a regulation
Article 79 – paragraph 6 – point g

Text proposed by the Commission

Amendment

(g) processes or instructs the processing of personal data in violation of the *deleted*

obligations in relation to processing on behalf of a controller pursuant to Articles 26 and 27;

Amendment 396
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; **deleted**

Amendment 397
Proposal for a regulation
Article 79 – paragraph 6 – point i

Text proposed by the Commission

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 pursuant to Articles 33 and 34; **deleted**

Amendment 398
Proposal for a regulation
Article 79 – paragraph 6 – point j

Text proposed by the Commission

Amendment

(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; **deleted**

Amendment 399
Proposal for a regulation
Article 79 – paragraph 6 – point k

Text proposed by the Commission

Amendment

(k) misuses a data protection seal or mark in the meaning of Article 39; **deleted**

Amendment 400
Proposal for a regulation
Article 79 – paragraph 6 – point l

Text proposed by the Commission

Amendment

(l) carries out or instructs a data transfer to a third country or an international organisation that is not allowed by an adequacy decision or by appropriate safeguards or by a derogation pursuant to Articles 40 to 44; **deleted**

Amendment 401
Proposal for a regulation
Article 79 – paragraph 6 – point m

Text proposed by the Commission

Amendment

(m) does not comply with an order or a temporary or definite ban on processing or the suspension of data flows by the supervisory authority pursuant to Article 53(1); **deleted**

Amendment 402
Proposal for a regulation
Article 79 – paragraph 6 – point n

Text proposed by the Commission

Amendment

(n) does not comply with the obligations to assist or respond or provide relevant information to, or access to premises by, the supervisory authority pursuant to Article 28(3), Article 29, Article 34(6) and Article 53(2); **deleted**

Amendment 403
Proposal for a regulation
Article 79 – paragraph 6 – point o

Text proposed by the Commission

Amendment

(o) does not comply with the rules for safeguarding professional secrecy pursuant to Article 84. **deleted**

Amendment 404
Proposal for a regulation
Article 79 – 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 updating the amounts of the administrative fines referred to in paragraphs 4, 5 and 6, taking into account the criteria referred to in paragraph 2.

deleted

Amendment 405
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.

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 406

Proposal for a regulation
Article 80 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(1a) The European Data Protection Board shall issue guidance on when such exemptions or derogations may be necessary, after consultation with representatives of the press, authors and artists, data subjects and relevant civil society organisations.

Amendment 407

Proposal for a regulation
Article 80 a (new)

Text proposed by the Commission

Amendment

Article 80 a

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.

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 408
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

deleted

Article 86 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.

Amendment 409

Proposal for a regulation

Article 82 – paragraph 1

Text proposed by the Commission

1. ***Within the limits of*** this Regulation, Member States may adopt by law specific rules regulating the processing of employees' personal data in the employment context, in particular for the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organisation of work, health and safety at work, and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship.

Amendment 410

Proposal for a regulation

Article 82 – 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 requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1.***

Amendment

1. ***Without prejudice to*** this Regulation, Member States ***or collective agreement among employers and employees*** may adopt by law specific rules regulating the processing of employees' personal data in the employment context, in particular for the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organisation of work, ***criminal conviction***, health and safety at work, and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship.

Amendment

deleted

Amendment 411
Proposal for a regulation
Article 83 – paragraph 1 – introductory part

Text proposed by the Commission

1. ***Within the limits of*** this Regulation, personal data may be processed for historical, statistical or scientific research purposes only if:

Amendment

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:

Amendment 412
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) these purposes cannot be ***reasonably*** fulfilled by processing data which does not permit or not any longer permit the identification of the data subject;

Amendment 413

Proposal for a regulation
Article 83 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(1a) Further processing of data for historical, statistical or scientific purposes shall not be considered as incompatible under point (b) of Article 5(1) provided that the processing:

(a) is subject to the conditions and safeguards of this Article; and

(b) complies with all other relevant legislation.

Amendment 414

Proposal for a regulation
Article 83 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(1a) Further processing of data for historical, statistical or scientific purposes shall not be considered as incompatible under point (b) of Article 5(1) provided that the processing:

(a) is subject to the conditions and safeguards of this Article; and

(b) complies with all other relevant legislation.

Justification

By relating Article 5(1)(b) to Article 83, this amendment clarifies that historical, statistical and scientific research purposes are not intended to be incompatible purposes.

Amendment 415

Proposal for a regulation

Article 83 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(1a) Within the limits of this Regulation, especially this article, Member States may adopt specific regulations concerning the processing of personal data for scientific research purposes, in particular public health research.

Justification

Data protection rules at Member State-level are complex and nuanced also with regard to public health research. Member States legislators should be empowered to maintain or adopt concrete measures on ethical review of public health research, carried out without the need for the data subject's consent. Ethical review at Member State level offers data subjects a guarantee that the use and reuse of their personal data for research purposes is in line with societal values at the given point in time.

Amendment 416

Proposal for a regulation

Article 83 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(ca) the personal data is processed for the purpose of generating aggregate data

reports, wholly composed of either anonymous data, pseudonymous data or both.

Justification

The purpose of such reports is not to identify or go back to individuals. To create such reports, individual data sets are pooled together in an anonymous way and have no privacy impact. Web Analytics are an example of Aggregate Data Reports.

Amendment 417

Proposal for a regulation

Article 83 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Where personal data is collected for statistical and public health purposes, such data should be made anonymous immediately after the end of data collection, checking or matching operations, except if the identification data remain necessary for statistical[1], and public health purposes such as epidemiological, translational and clinical research.

([1] Paragraph 8 of the Appendix to the Council Recommendation No. R (97) concerning protection of personal data collected and processed for statistical purposes – Adopted by the Committee of Ministers on 30 September 1997 at the 602nd meeting of the Ministers' Deputies.)

Justification

Epidemiological research relies heavily on using “linked data” and cannot be done with completely anonymised or pseudonymised data. Linked research has been a luxury for certain countries in the European Union, whereas with the measures suggested in this binding Regulation, there is a possibility of this kind of crucial research to come to a halt.

Amendment 418

Proposal for a regulation

Article 83 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(2a) A controller or processor may transfer personal data to a third country or an international organisation for

historical, statistical or scientific purposes if:

(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;

(b) the recipient does not reasonably have access to data enabling the attribution of information to an identified or identifiable data subject; and

(c) contractual clauses between the controller or processor and the recipient of the data prohibit re-identification of the data subject and limit processing in accordance with the conditions and safeguards laid down in this Article.

Justification

A recipient of key-coded data, transferred for scientific research purposes has no means to re-identify subjects, and under this amendment, does not have access to the key and is contractually precluded from re-identifying data subjects. This amendment would formalize a process for reasonably ensuring that key-coded data cannot and will not be re-identified by recipients located in third countries, allowing for the transfer of such data without further burdens.

Amendment 419
Proposal for a regulation
Article 83 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Where the data subject is required to give his/her consent for the processing of medical data exclusively for public health research purposes, the option of broad consent may be available to the data subject for the purposes of epidemiological, translational and clinical research.

Justification

In many fields of medicine and science, it is crucial for researchers to be able to follow the data of a certain patient they have been monitoring. This enables the researchers to understand and constantly improve their search for new treatments and cures. Importantly, epidemiological research involves monitoring populations to decipher trends in lifestyle, genetics, diseases among others, and is crucial for furthering public health research, an example of which is patient registries. Thus record linkage should remain possible, when it

comes to the case of using medical data solely for the furthering of public health research, specifically epidemiological, translational and clinical research. With respect to the point on broad consent, the current Directive on Data Protection (95/46/EC) allows for exceptions for the processing of data for public health research and the general aim of the proposed Regulation is to apply the principle of explicit consent for the processing of personal data. For public health research purposes, such as epidemiological, clinical and translational research it becomes virtually impossible to acquire the consent of every single data subject required for research. Public health researchers need to have access to the past, current and future medical records of patients in order to conduct their research. The option of broad consent gives the data subject a measure of control over their data and the option for their data being used for furthering public health research.

Amendment 420
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

Amendment 421
Proposal for a regulation
Article 83 a (new)

Text proposed by the Commission

Amendment

Article 83a

Processing of criminal convictions data for the purpose of the prevention of financial crime

Within the limits of this Regulation and in accordance with point (j) of Article 9(2), processing of personal data concerning criminal convictions or related security measures shall be permitted if it provides for appropriate

measures to protect the data subject's fundamental rights and freedoms and is for:

(a) the purposes of the prevention, investigation or detection of financial crime, or

(a) reasons of public interest such as protecting against cross-border threats of financial crime,

and in either case, must necessarily be carried out without the consent of the data subject being sought so as not to prejudice those purposes.

Justification

The amendment adds a provision in order to allow the processing of criminal convictions data for the purpose of the prevention of financial crime. The EU has demonstrated its commitment to fight against financial crime with recent initiatives such as the review of the Anti-Money laundering Directive, the anti-corruption package, the anti-fraud strategy, and the establishment of the European Parliament special committee on organised crime, corruption and money laundering. This provision is therefore a needed complementary measure that will allow an effective fight against financial crime. Finally, no consent should be asked in this scenario as this would not be forthcoming. Actors of financial crime would not be keen in providing consent and this would therefore defeat the purpose of processing the data.

Amendment 422 **Proposal for a regulation** **Article 86 – paragraph 2**

Text proposed by the Commission

2. The delegation of power referred to in **Article 6(5), Article 8(3), Article 9(3), Article 12(5), Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 22(4), Article 23(3), Article 26(5), Article 28(5), Article 30(3), Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11), Article 37(2), Article 39(2), Article 43(3), Article 44(7), Article 79(6), Article 81(3), Article 82(3) and Article 83(3)** shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

Amendment

2. The delegation of power referred to in Article 14(7), Article 26(5), Article 33(6), Article 35(11), Article 37(2), Article 39(2) **and** Article 43(3) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

Amendment 423
Proposal for a regulation
Article 89 – paragraph 2

Text proposed by the Commission

2. Article 1(2) of Directive 2002/58/EC shall be deleted.

Amendment 424

Proposal for a regulation
Article 90 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

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.

Amendment

(1a) Delegated acts and Implementing acts adopted by the Commission should be evaluated by the Parliament and the Council every second year.

PROCEDURE

Title	Protection of individuals with regard to the processing of personal data, and the free movement of such data (General Data Protection Regulation)		
References	COM(2012)0011 – C7-0025/2012 – 2012/0011(COD)		
Committee responsible Date announced in plenary	LIBE 16.2.2012		
Opinion by Date announced in plenary	ITRE 16.2.2012		
Rapporteur Date appointed	Seán Kelly 14.3.2012		
Discussed in committee	31.5.2012	28.11.2012	23.1.2013
Date adopted	20.2.2013		
Result of final vote	+: -: 0:	33 24 1	
Members present for the final vote	Amelia Andersdotter, Josefa Andrés Barea, Zigmantas Balčytis, Bendt Bendtsen, Jan Březina, Reinhard Bütikofer, Maria Da Graça Carvalho, Giles Chichester, Jürgen Creutzmann, Pilar del Castillo Vera, Dimitrios Droutsas, Christian Ehler, Vicky Ford, Gaston Franco, Adam Gierek, Norbert Glante, Fiona Hall, Jacky Hélin, Kent Johansson, Romana Jordan, Krišjānis Kariņš, Lena Kolarska-Bobińska, Béla Kovács, Philippe Lamberts, Marisa Matias, Angelika Niebler, Jaroslav Paška, Herbert Reul, Teresa Riera Madurell, Michèle Rivasi, Paul Rübig, Amalia Sartori, Salvador Sedó i Alabart, Francisco Sosa Wagner, Konrad Szymański, Britta Thomsen, Patrizia Toia, Evžen Tošenovský, Catherine Trautmann, Marita Ulvskog, Vladimir Urutchev, Adina-Ioana Vălean		
Substitute(s) present for the final vote	Lara Comi, Ioan Enciu, Satu Hassi, Roger Helmer, Jolanta Emilia Hibner, Seán Kelly, Holger Kraemer, Bernd Lange, Werner Langen, Zofija Mazej Kukovič, Vladko Todorov Panayotov, Pavel Poc, Vladimír Remek, Algirdas Saudargas, Silvia-Adriana Țicău		
Substitute(s) under Rule 187(2) present for the final vote	Axel Voss		