



2018/0336(COD)

5.12.2018

OPINION

of the Committee on Civil Liberties, Justice and Home Affairs

for the Committee on Constitutional Affairs

on the proposal for a regulation of the European Parliament and of the Council
on the protection of personal data in the context of elections to the European
Parliament
(COM(2018)0636 – C8-0413/2018 – 2018/0336(COD))

Rapporteur for opinion: Sophia in 't Veld

PA_Legam

AMENDMENTS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Constitutional Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) To that end, a verification procedure should be established whereby the Authority must, ***in certain circumstances***, ask the committee of independent eminent persons to assess whether a European political party or a European political foundation has deliberately influenced or attempted to influence the outcome of elections to the European Parliament by taking advantage of an infringement of the applicable rules on protection of personal data. Where the committee finds that to be the case, the Authority should impose sanctions in line with the effective, proportionate and dissuasive sanctioning system established by the Regulation (EU, Euratom) No 1141/2014.

Amendment

(4) To that end, a verification procedure should be established whereby the Authority must, ***following a final decision by the national supervisory authority or European Data Protection Supervisor***, ask the committee of independent eminent persons to assess whether a European political party or a European political foundation has deliberately influenced or attempted to influence the outcome of elections to the European Parliament by taking advantage of an infringement of the applicable rules on protection of personal data. Where the committee finds that to be the case, the Authority should impose sanctions in line with the effective, proportionate and dissuasive sanctioning system established by the Regulation (EU, Euratom) No 1141/2014. ***These sanctions should pursue the objective of guaranteeing free and fair elections to the European Parliament, while possible sanctions imposed by the data protection authorities should pursue the objective of protecting natural persons with regard to the processing of personal data.***

Amendment 2

Proposal for a regulation

Recital 5 a (new)

(5 a) When the Authority imposes a sanction on the European political party or foundation pursuant to the verification procedure, it shall take due account of the ne bis in idem principle, to avoid that the same infringement is sanctioned twice, on the national level following the decision of the supervisory authority, and on the European level following the verification procedure.

Justification

If the Authority imposes a sanction on the European political party/foundation pursuant to the verification procedure, the sanction could be considered a bis in idem: the decision by the supervisory authority, and the sanction imposed by the Authority. This would be contrary to Article 50 of the Charter and Article 4 of Protocol No. 7 to the European Convention on Human Rights.

Amendment 3

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU, Euratom) 1141/2014

Article 10a –paragraph 1

If the Authority becomes aware of a decision of a supervisory authority within the meaning of point 21 of Article 4 of Regulation (EU) 2016/679 of the European Parliament and of the Council¹⁷ finding that a natural or legal person has infringed applicable rules on the protection of personal data and if it follows from that decision, **or where there are otherwise reasonable grounds to believe**, that the infringement is linked to political activities by a European political party or a European political foundation in the context of elections to the European Parliament, the Authority shall refer this matter to the committee of independent eminent persons

If the Authority becomes aware of a **final** decision of a supervisory authority within the meaning of point 21 of Article 4 of Regulation (EU) 2016/679 of the European Parliament and of the Council **adopted pursuant to Article 58(2) of Regulation (EU) 2016/679 or of a final decision of the European Data Protection Supervisor established in accordance with Article 52 of Regulation (EU) 2018/1725^{17a} of the European Parliament and of the Council adopted pursuant to Article 58(2) of Regulation 2018/1725** finding that a natural or legal person has infringed applicable rules on the protection of personal data and if it follows from that

established by Article 11. The committee shall give an opinion as to whether the European political party or the European political foundation concerned has deliberately influenced or attempted to influence the outcome of elections to the European Parliament by taking advantage of that infringement. The Authority shall request the opinion without undue delay and no later than 1 month after the decision of the supervisory authority. The committee shall deliver its opinion within a short, reasonable deadline set by the Authority.

final decision or where there are factual grounds indicating that the infringement is linked to political activities by *or was committed on behalf of, under instructions from, or with the support of* a European political party or a European political foundation in the context of elections to the European Parliament, the Authority shall refer this matter to the committee of independent eminent persons established by Article 11. The committee shall give an opinion as to whether the European political party or the European political foundation concerned has deliberately influenced or attempted to influence the outcome of elections to the European Parliament by *infringing the applicable rules on the protection of personal data, or by authorising, instructing or supporting an entity that has infringed the applicable rules, by* taking advantage of that infringement. The Authority shall request the opinion without undue delay and no later than 1 month after the decision of the supervisory authority. The committee shall deliver its opinion within a short, reasonable deadline set by the Authority.

¹⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), (OJ L 119, 4.5. 2016, p. 1).

¹⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), (OJ L 119, 4.5. 2016, p. 1).

^{17a} **Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, (OJ L 295, 21.11.2018, p. 39)**

Justification

If only final decisions can trigger the verification procedures, the principles of legal certainty and respect of the rights to a fair trial and due process are better guaranteed. By including Regulation [2018/xxxx (45/2001)], also EDPS decisions on infringements of data protection rules by EU institutions (including MEPs and staff) can trigger the procedure. Only decisions adopted by DPAs or EDPS based on their corrective powers can lead to this procedure, not investigative or advisory decisions.

Amendment 4

Proposal for a regulation

Article 1 – paragraph 1 – point 4

Regulation 1141/2014

Article 11 – paragraph 3 – subparagraph 1 – second sentence

Text proposed by the Commission

When requested by the Authority, the committee shall give an opinion on whether a European political party or a European political foundation has deliberately influenced or attempted to influence the outcome of elections to the European Parliament by taking advantage of an infringement of the applicable rules on the protection of personal data. In both cases the committee may request any relevant document and evidence from the Authority, the European Parliament, the European political party or European political foundation concerned, other political parties, political foundations or other stakeholders, and it may request to hear their representatives. In the case of opinions on whether a European political party or a European political foundation has ***deliberately*** influenced or attempted to influence the outcome of elections to the European Parliament by ***taking advantage of an infringement of*** the applicable rules on the protection of personal data, the supervisory authorities referred to in the Article 10(a) shall cooperate with the committee in accordance with applicable law.

Amendment

When requested by the Authority, the committee shall give an opinion on whether a European political party or a European political foundation has deliberately influenced or attempted to influence the outcome of elections to the European Parliament by taking advantage of an infringement of the applicable rules on the protection of personal data, ***or by authorising, instructing or supporting an entity that has infringed the applicable rules***. In both cases the committee may request any relevant document and evidence from the Authority, the European Parliament, the European political party or European political foundation concerned, other political parties, political foundations or other stakeholders, and it may request to hear their representatives. In the case of opinions on whether a European political party or a European political foundation has influenced or attempted to influence the outcome of elections to the European Parliament by ***infringing*** the applicable rules on the protection of personal data, ***or by authorising, instructing or supporting an entity that has infringed the applicable rules***, the supervisory authorities referred to in the Article 10(a) shall cooperate with the committee in accordance with

applicable law ***and in compliance with the duty of professional secrecy as laid down in Article 54(2) of Regulation (EU) 2016/679 and in Article 56 of Regulation (EU) 2018/1725.***

Justification

The GDPR and new Regulation (EU) 2018/1725 provide that the members and staff of supervisory authorities are bound by professional secrecy. If they will share any confidential information with this committee of eminent persons, this cooperation should respect the duty of professional secrecy.

Amendment 5

Proposal for a regulation

Article 1 – paragraph 1 – point 6 – point a

Regulation (EU, Euratom) 1141/2014

Article 27 – paragraph 2 – point a – point vii

Text proposed by the Commission

(vii) where, in accordance with Article 10a, the committee issues an opinion finding that a European political party or a European political foundation has deliberately influenced or attempted to influence the outcome of elections to the European Parliament by taking advantage of an infringement of the applicable rules on the protection of personal data.;

Amendment

(vii) where, in accordance with Article 10a, the committee issues an opinion finding that a European political party or a European political foundation has deliberately influenced or attempted to influence the outcome of elections to the European Parliament by taking advantage of an infringement of the applicable rules on the protection of personal data. ***In this case, due account shall be taken of the ne bis in idem principle;***

Justification

If the Authority imposes a sanction on the European political party/foundation pursuant to the verification procedure, the sanction could be considered a bis in idem: the decision by the supervisory authority, and the sanction imposed by the Authority. This would be contrary to Article 50 of the Charter and Article 4 of Protocol No. 7 to the European Convention on Human Rights.

Amendment 6

Proposal for a regulation

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

Regulation (EU, Euratom) 1141/2014

Article 27a – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(6 a) in Article 27a, the following point is added:

(ba) in the situation referred to in point (a) (vii) of Article 27, where the natural person has been found to be also responsible for the facts and conducts in question pursuant to the procedure established in Article 10a.

Justification

For the sake of consistency, this point needs to be added to Article 27a (Responsibility of natural persons).

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Protection of personal data in the context of elections to the European Parliament
References	COM(2018)0636 – C8-0413/2018 – 2018/0336(COD)
Committee responsible Date announced in plenary	AFCO 1.10.2018
Opinion by Date announced in plenary	LIBE 1.10.2018
Rapporteur Date appointed	Sophia in 't Veld 5.11.2018
Discussed in committee	20.11.2018 3.12.2018
Date adopted	3.12.2018
Result of final vote	+: 39 -: 2 0: 1
Members present for the final vote	Heinz K. Becker, Monika Beňová, Malin Björk, Michał Boni, Caterina Chinnici, Cornelia Ernst, Romeo Franz, Kinga Gál, Sylvie Guillaume, Monika Hohlmeier, Filiz Hyusmenova, Sophia in 't Veld, Dietmar Köster, Barbara Kudrycka, Cécile Kashetu Kyenge, Juan Fernando López Aguilar, Roberta Metsola, Claude Moraes, József Nagy, Ivari Padar, Judith Sargentini, Birgit Sippel, Branislav Škripek, Sergei Stanishev, Helga Stevens, Traian Ungureanu, Marie-Christine Vergiat, Udo Voigt, Josef Weidenholzer, Kristina Winberg, Auke Zijlstra
Substitutes present for the final vote	Carlos Coelho, Gérard Deprez, Anna Hedh, Sylvia-Yvonne Kaufmann, Emilian Pavel, Morten Helveg Petersen, Christine Revault d'Allonnes Bonnefoy, Barbara Spinelli, Josep-Maria Terricabras
Substitutes under Rule 200(2) present for the final vote	Max Andersson, France Jamet

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

39	+
ALDE	Gérard Deprez, Filiz Hyusmenova, Sophia in 't Veld, Morten Helveg Petersen
ECR	Branislav Škripek, Helga Stevens, Kristina Winberg
GUE/NGL	Malin Björk, Cornelia Ernst, Barbara Spinelli, Marie-Christine Vergiat
NI	Udo Voigt
PPE	Heinz K. Becker, Michał Boni, Carlos Coelho, Kinga Gál, Monika Hohlmeier, Barbara Kudrycka, Roberta Metsola, József Nagy
S&D	Monika Beňová, Caterina Chinnici, Sylvie Guillaume, Anna Hedh, Sylvia-Yvonne Kaufmann, Dietmar Köster, Cécile Kashetu Kyenge, Juan Fernando López Aguilar, Claude Moraes, Ivari Padar, Emilian Pavel, Christine Revault d'Allonnes Bonnefoy, Birgit Sippel, Sergei Stanishev, Josef Weidenholzer
VERTS/ALE	Max Andersson, Romeo Franz, Judith Sargentini, Josep-Maria Terricabras

2	-
ENF	France Jamet, Auke Zijlstra

1	0
PPE	Traian Ungureanu

Key to symbols:

+ : in favour

- : against

0 : abstention