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*Committee on Legal Affairs*

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**2012/0011(COD)**

18.10.2012

## **DRAFT OPINION**

of the Committee on Legal Affairs

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))

Rapporteure: Marielle Gallo

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## SHORT JUSTIFICATION

The proposal for a regulation maintains the principles of Directive 95/46/EC and strengthens citizens' rights concerning the protection of personal data. The rapporteur welcomes the Commission's work and would like to make the following comments.

In spite of the hesitation of some parties, the rapporteur would like to retain a broad definition of personal data and the principle of explicit consent as grounds for the lawfulness of processing. These are necessary conditions if this fundamental right is to be effectively protected and if we are to enjoy the trust of our fellow citizens, particularly in the digital world.

The rapporteur then proposes strengthening the protection of children by broadening the scope of Article 8 to include the sale of all goods and services rather than continue its restriction to services of the information society.

She also proposes deleting Article 18 introducing the right to data portability. This new right included in the proposal for a directive brings no added value to citizens concerning right of access, which is dealt with in Article 15 of the proposal and enables an individual to obtain a communication of the data which are being processed.

The rapporteur would like explicitly to introduce the general principle of the responsibility of the controller. The proposal for a regulation reinforces the obligations of controllers, thereby enabling the rights of the individual concerned to be effectively exercised. However, more measures are needed if this general principle of responsibility is to be established explicitly.

The 'right to be forgotten' should also be strengthened. Article 17(2) imposes an obligation of responsibility on the controller with regard to data processed by a third party. The rapporteur proposes introducing an obligation on the controller to inform the person concerned of the action taken by the third party in response to the request.

The provisions concerning the transfer of data to third countries or international organisations have been significantly developed and clarified. The rapporteur proposes introducing the system of mutual recognition of binding corporate rules already put in place by the Article 29 Working Party. The authority responsible should be that of the place of the main establishment of the controller or processor.

Regarding the competencies of the supervisory authorities, the rapporteur welcomes the adoption of the principle of the one-stop shop, which simplifies the task of economic operators based in more than one Member State. However, we must not lose sight of the fact that citizens generally contact the authority in their Member State of origin and wait for that authority to take the necessary steps to ensure their rights are complied with. Application of the one-stop shop principle must not mean that other supervisory authorities become simply 'letterboxes'. The rapporteur proposes specifying that the lead authority shall be obliged to cooperate with the other supervisory authorities involved and with the European Commission, pursuant to the provisions of Chapter 7 of the regulation.

Regarding administrative sanctions, the rapporteur welcomes the large sums provided for by the proposal for a regulation. However, the supervisory authorities must have considerable scope for manoeuvre when imposing fines. Article 8(3) of the Charter of Fundamental Rights of the European Union establishes the principle of the independence of supervisory authorities. The consistency mechanism might contribute to a harmonised policy within the EU regarding fines.

The proposal for a regulation also contains a large number of delegated and implementing acts. Some of these are necessary, as they add non-essential elements to the regulation. The rapporteur proposes that others simply be deleted. This might be investigated separately by the Committee on Legal Affairs. According to Rule 37(1) of the European Parliament's Rules of Procedure, the Committee on Legal Affairs is responsible for verification of the legal basis of every legislative initiative and can decide, either on its own initiative or at the request of the committee responsible, on what use is made of the delegated and implementing acts.

## AMENDMENTS

The Committee on Legal Affairs 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 Recital 15

##### *Text proposed by the Commission*

(15) This Regulation should not apply to processing of personal data by a natural person, which are exclusively personal or domestic, such as correspondence and the holding of addresses, and without any gainful interest and thus without any connection with a professional or commercial activity. The exemption should also not apply to controllers or processors which provide the means for processing personal data for such personal or domestic activities.

##### *Amendment*

(15) This Regulation should not apply to processing of personal data by a person, which are exclusively personal or domestic, such as correspondence and the holding of addresses, and without any gainful interest and thus without any connection with a professional or commercial activity, ***and which do not involve making such data accessible to an indefinite number of people***. The exemption should also not apply to controllers or processors which provide the means for processing personal data for such personal or domestic activities.

Or. fr

### *Justification*

*The scope of this exemption should be clarified, particularly in view of the development of social networks enabling information to be shared with hundreds of people. In cases C-101/01 and C-73/07, the ECJ advocates accessibility 'by an indefinite number of people' as a criterion for application of this exception. The EDPS shares this view.*

## **Amendment 2**

### **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 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*

(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 ***a study should be undertaken, on a case-by-case basis and in accordance with technological developments, of whether*** identification numbers, location data, online identifiers or other specific factors as such need not necessarily be considered as personal data in all circumstances.

Or. fr

### *Justification*

*With an increasing number of new on-line services and with constant technological development, there must be a higher level of protection of citizens' personal data. A case-by-case study would therefore seem indispensable.*

### Amendment 3

#### Proposal for a regulation

##### Recital 25

*Text proposed by the Commission*

(25) Consent should be given explicitly by any **appropriate method** enabling a freely given specific and informed indication of the data subject's wishes, either by a statement or by a clear affirmative action by the data subject, ensuring that individuals are aware that they give their consent to the processing of personal data, including by ticking a box when visiting an Internet website or by any other statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of their personal data. Silence or inactivity should therefore not constitute consent. Consent should cover all processing activities carried out for the same purpose or purposes. If the data subject's consent is to be given following an electronic request, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided.

*Amendment*

(25) Consent should be given explicitly by any **method appropriate to the media used** 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.

Or. fr

### Amendment 4

#### Proposal for a regulation

##### Recital 27

*Text proposed by the Commission*

(27) The main establishment of a controller in the Union should be determined according to objective criteria and should imply the effective and real exercise of management activities determining the main decisions as to the purposes, conditions and means of processing

*Amendment*

(27) The main establishment of a controller in the Union should be determined according to objective criteria and should imply the effective and real exercise of management activities determining the main decisions as to the purposes, conditions and means of processing

through stable arrangements. This criterion should not depend whether the processing of personal data is actually carried out at that location; the presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute such main establishment and are therefore no determining criteria for a main establishment. The main establishment of the processor should be the place of its central administration in the Union.

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. ***‘Main establishment of the controller’ means the place in the EU where personal data protection policy is determined, taking into account the dominant influence of the establishment over others, particularly in the case of a group of companies, the implementation of rules on personal data protection and rules relevant for data protection.*** The main establishment of the processor should be the place of its central administration in the Union.

Or. fr

#### *Justification*

*Both national supervisory authorities and the EDPS want to see a more precise definition of ‘main establishment’, particularly for the possible situation of groups of companies operating in more than one Member State. This is essential in order to determine the competent authority.*

#### **Amendment 5**

##### **Proposal for a regulation**

##### **Recital 38**

###### *Text proposed by the Commission*

(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

###### *Amendment*

(38) The legitimate interests of a ***person*** may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding. This would need careful assessment in particular where the data subject is a child, given that children deserve specific protection. The

data subject should have the right to object the processing, on grounds relating to their particular situation and free of charge. To ensure transparency, the controller should be obliged to explicitly inform the data subject on the legitimate interests pursued and on the right to object, and also be obliged to document these legitimate interests. Given that it is for the legislator to provide by law the legal basis for public authorities to process data, this legal ground should not apply for the processing by public authorities in the performance of their tasks.

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 **or the third parties to whom the data are sent** should be obliged to explicitly inform the data subject on the legitimate interests pursued and on the right to object, and also be obliged to document these legitimate interests. Given that it is for the legislator to provide by law the legal basis for public authorities to process data, this legal ground should not apply for the processing by public authorities in the performance of their tasks.

Or. fr

### *Justification*

*The rapporteur proposes maintaining the wording of Directive 95/46/EC. It is worth recalling that the Regulation concerns not only the digital world but will also apply to off-line activities. Some sectors such as newspaper publishing need, in order to finance their activities, to use external sources in order to contact possible new subscribers.*

## **Amendment 6**

### **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, **the criteria enabling determination of** how long the data will be stored **for each purpose**, 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.

Or. fr

*Justification*

*It is not always possible to determine precisely how long personal data will be stored, particularly in the case of storage for different purposes.*

**Amendment 7**

**Proposal for a regulation**

**Recital 51**

*Text proposed by the Commission*

(51) Any person should have the right of access to data which has been collected concerning them, and to exercise this right easily, in order to be aware and verify the lawfulness of the processing. Every data subject should therefore have the right to know and obtain communication in particular for what purposes the data are processed, **for what period**, which recipients receive the data, what is the logic of the data that are undergoing the processing and what might be, at least when based on profiling, the consequences of such processing. This right should not adversely affect the rights and freedoms of others, including trade secrets or intellectual property and in particular the copyright protecting the software. However, the result of these considerations should not be that all information is refused to the data subject.

*Amendment*

(51) Any person should have the right of access to data which has been collected concerning them, and to exercise this right easily, in order to be aware and verify the lawfulness of the processing. Every data subject should therefore have the right to know and obtain communication in particular for what purposes the data are processed, **the criteria enabling determination of how long the data will be stored for each purpose**, which recipients receive the data, what is the logic of the data that are undergoing the processing and what might be, at least when based on profiling, the consequences of such processing. This right should not adversely affect the rights and freedoms of others, including trade secrets or intellectual property and in particular the copyright protecting the software. However, the result of these considerations should not be that all information is refused to the data subject.

Or. fr

*Justification*

*It is not always possible to determine precisely how long personal data will be stored,*

particularly in the case of storage for different purposes.

## Amendment 8

### Proposal for a regulation

#### Recital 55

*Text proposed by the Commission*

*Amendment*

***(55) To further strengthen the control over their own data and their right of access, data subjects should have the right, where personal data are processed by electronic means and in a structured and commonly used format, to obtain a copy of the data concerning them also in commonly used electronic format. The data subject should also be allowed to transmit those data, which they have provided, from one automated application, such as a social network, into another one. This should apply where the data subject provided the data to the automated processing system, based on their consent or in the performance of a contract.***

***deleted***

Or. fr

#### *Justification*

*Data subjects have right of access, as established by Article 15 of the proposal for a regulation. The right of access gives every data subject the right to know which personal data are being processed. Article 18, which enables data subjects to obtain a copy of their data, brings no added value in terms of the protection of citizens' personal data and creates confusion regarding the exact scope of the right of access, which is a principal right.*

## Amendment 9

### Proposal for a regulation

#### Recital 60

*Text proposed by the Commission*

*Amendment*

***(60) Comprehensive*** responsibility and

***(60) Overall*** responsibility and liability of

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.

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.

Or. fr

#### *Justification*

*Strengthens the protection of personal data. A general principle of responsibility on the part of the controller needs to be explicitly established.*

### **Amendment 10**

#### **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, conditions and means of the processing jointly with other controllers or where a processing operation is carried out on behalf of a controller. ***In the event of joint and several liability, a processor which has made amends for damage done to the data subject may appeal against the controller for reimbursement if it has acted in conformity with the legal act binding it to the controller.***

Or. fr

### *Justification*

*The processor is defined as the organisation acting on behalf of the controller. Therefore, if the processor complies exactly with the instructions it has received, it is the controller and not the processor which should be held responsible for any breach of personal data, without the remuneration of the data subject being affected.*

## **Amendment 11**

### **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 or processor should **keep a documentary record of all the processing systems and procedures for which they are responsible**. 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.

Or. fr

### *Justification*

*Il convient de rapprocher la formulation de cette disposition à celle contenue dans la proposition de directive relative à la protection des personnes physiques à l'égard du traitement des données à caractère personnel par les autorités compétentes à des fins de prévention et de détection des infractions pénales, d'enquêtes et de poursuites en la matière ou d'exécution de sanctions pénales, et à la libre circulation de ces données. Comme indiqué par le CEPD dans son avis du 7 mars 2012, la proposition de la Commission qui consiste à conserver la documentation liée à tout traitement, ne contribue pas à la réalisation de l'objectif de la proposition de règlement qui est la réduction de la charge administrative générée par les règles de protection des données.*

## Amendment 12

### 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 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*

(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 a breach **which would have a significant impact on the data subject** has occurred, the controller should notify the breach to the supervisory authority without undue delay. The individuals whose personal data could be **significantly** 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 **significantly** adversely affecting the personal data or privacy of a data subject where it could result in, for example, identity theft or fraud, physical harm, significant humiliation or damage to reputation. The notification should describe the nature of the personal data breach as well as recommendations as well as recommendations for the individual concerned to mitigate potential adverse effects. Notifications to data subjects should be made as soon as reasonably feasible, and in close cooperation with the supervisory authority and respecting guidance provided by it or other relevant authorities (e.g. law enforcement authorities). For example, the chance for data subjects to mitigate an immediate risk of harm would call for a prompt notification of data subjects whereas the need to implement appropriate measures against continuing or similar data breaches may justify a longer delay.

*Justification*

*In the event of a breach, the controller must initially concentrate on putting into practice all appropriate measures to prevent it from continuing. An obligation to notify the competent supervisory authority within 24 hours together with sanctions for failing to do so might achieve just the opposite. In addition, as the Article 29 Working Party stated in its opinion of 23 March 2012, notification must not concern minor breaches, as otherwise the supervisory authorities would be over-burdened.*

**Amendment 13****Proposal for a regulation****Recital 82***Text proposed by the Commission*

(82) The Commission may equally recognise that a third country, or a territory or a processing sector within a third country, or an international organisation offers no adequate level of data protection. Consequently the transfer of personal data to that third country should be ***prohibited***. ***In that case, provision should be made for consultations between the Commission and such third countries or international organisations.***

*Amendment*

(82) The Commission may equally recognise that a third country, or a territory or a processing sector within a third country, or an international organisation offers no adequate level of data protection. Consequently the transfer of personal data to that third country should be ***authorised subject to appropriate guarantees or under the derogations set out in this Regulation.***

*Justification*

*In line with the recommendation of the EPDS set out in its opinion of 7 March 2012 (point 220).*

**Amendment 14****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.*

Or. fr

*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 15**

**Proposal for a regulation**

**Recital 115**

*Text proposed by the Commission*

*Amendment*

*(115) In situations where the competent supervisory authority established in another Member State does not act or has taken insufficient measures in relation to a complaint, the data subject may request the supervisory authority in the Member State of his or her habitual residence to bring proceedings against that supervisory authority to the competent court in the other Member State. The requested supervisory authority may decide, subject to judicial review, whether it is appropriate to follow the request or not.*

*deleted*

Or. fr

*Justification*

*This opportunity would bring no added value for citizens and might jeopardise the cooperation of the supervisory authorities in the consistency mechanism.*

## Amendment 16

### Proposal for a regulation Recital 118

*Text proposed by the Commission*

(118) Any damage which a person may suffer as a result of unlawful processing should be compensated by the controller or processor, who may be exempted from liability if they prove that they are not responsible for the damage, in particular where he establishes fault on the part of the data subject or in case of force majeure.

*Amendment*

(118) Any damage which a person may suffer as a result of unlawful processing should be compensated by the controller or processor, who may be exempted from liability if they prove that they are not responsible for the damage, in particular where he establishes fault on the part of the data subject or in case of force majeure. ***In the event of joint and several liability, a processor which has made amends for damage done to the person concerned may appeal against the controller for reimbursement if it has acted in conformity with the legal act binding it to the controller.***

Or. fr

### *Justification*

*The proposal for a regulation introduces the overall principle of the responsibility of the controller (Articles 5f and 22), which must be retained and clarified. The processor is defined as the organisation acting on behalf of the controller. If the processor does not follow the instructions it has received, Article 26(4) states that it shall be considered to be a controller.*

## Amendment 17

### 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

*Amendment*

(129) In order to fulfil the objectives of this Regulation, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 of the Treaty



on the Functioning of the European Union should be delegated to the Commission. In particular, delegated acts should be adopted in respect of lawfulness of processing; specifying the criteria and conditions in relation to the consent of a child; processing of special categories of data; ***specifying the criteria and conditions for manifestly excessive requests and fees for exercising the rights of the data subject***; criteria and requirements for the information to the data subject and in relation to the right of access; the right to be forgotten and to erasure; measures based on profiling; criteria and requirements in relation to the responsibility of the controller ***and to data protection by design and by default***; a processor; criteria and requirements for the documentation ***and the security of processing***; criteria and requirements for establishing a personal data breach and for its notification to the supervisory authority, and on the circumstances 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

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; 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; a processor; criteria and requirements for the documentation; criteria and requirements for 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; transfers by way of binding corporate rules; derogations concerning transfers; 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 18

### 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 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

#### *Amendment*

(130) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission for: specifying standard forms in relation to the processing of personal data of a child; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access; standard forms in relation to the responsibility of the controller to 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

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.

Commission's exercise of implementing powers. In this context, the Commission should consider specific measures for micro, small and medium-sized enterprises.

Or. fr

## Amendment 19

### Proposal for a regulation

#### Recital 131

##### *Text proposed by the Commission*

(131) The examination procedure should be used for the adoption of specifying standard forms in relation to the consent of a child; standard procedures and forms for exercising the rights of data subjects; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access; ***the right to data portability***; standard forms in relation to the responsibility of the controller ***to data protection by design and by default and to the documentation***; specific requirements for the security of processing; the standard format and the procedures for the notification of a personal data breach to the supervisory authority and the communication of a personal data breach to the data subject; standards and procedures for a data protection impact assessment; forms and procedures for prior authorisation and prior consultation; technical standards and mechanisms for certification; ***the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an international organisation***; disclosures not authorized

##### *Amendment*

(131) The examination procedure should be used for the adoption of specifying standard forms in relation to the consent 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; standard forms in relation to the responsibility of the controller 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; disclosures not authorized by Union law; mutual assistance; joint operations; decisions under the consistency mechanism, given that those acts are of general scope.

by Union law; mutual assistance; joint operations; decisions under the consistency mechanism, given that those acts are of general scope.

Or. fr

## Amendment 20

### 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 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.

#### *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 be balanced with other rights *established by the Charter of Fundamental Rights of the European Union*, 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 an effective remedy and to a fair trial as well as cultural, religious and linguistic diversity.

Or. fr

## Amendment 21

### Proposal for a regulation

#### Article 2 – paragraph 2 – point d

*Text proposed by the Commission*

d) by a natural person without any gainful interest in the course of its own exclusively personal or household activity;

*Amendment*

d) by a natural person without any gainful interest in the course of its own exclusively personal or household activity ***and on condition that no personal data are made accessible to an indefinite number of people;***

Or. fr

#### *Justification*

*The scope of this exemption should be clarified, particularly in view of the development of social networks enabling information to be shared with hundreds of people. In cases C-101/01 and C-73/07, the ECJ advocates accessibility 'by an indefinite number of people' as a criterion for application of this exception. The EDPS shares this view.*

## Amendment 22

### Proposal for a regulation

#### Article 4 – point 2 a

*Text proposed by the Commission*

*Amendment*

***(2a) 'data rendered sufficiently anonymous' means data, the information on personal or material characteristics contained in which can no longer be associated with an identified or identifiable individual or could only be so associated at a disproportionate cost in terms of time and financial and human resources;***

Or. fr

#### *Justification*

*Recital 23 of the proposal for a regulation states that the principles of data protection should not apply to data rendered sufficiently anonymous. The rapporteur proposes introducing a*

*definition of this term to ensure better legal certainty. Such a definition appears in Article 3 point 6 of the German Federal Data Protection Act of 23 May 2001.*

## **Amendment 23**

### **Proposal for a regulation Article 4 – point 13**

#### *Text proposed by the Commission*

(13) ‘main establishment’ means as regards the controller, the place of its establishment in the Union where ***the main decisions as to the purposes, conditions and means of the processing of personal data are taken***; if no decisions as to the purposes, conditions and means of the processing of personal data are taken in the Union, the main establishment is the place where the main processing activities in the context of the activities of an establishment of a controller in the Union take place. As regards the processor, ‘main establishment’ means the place of its central administration in the Union;

#### *Amendment*

(13) ‘main establishment’ means as regards the controller, the place of its establishment in the Union where personal data ***protection policy is determined, taking into account the dominant influence of the establishment over others, particularly in the case of a group of companies, the implementation of rules on personal data protection and rules relevant for data protection***; if no decisions as to the purposes, conditions and means of the processing of personal data are taken in the Union, the main establishment 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;

Or. fr

#### *Justification*

*Both national supervisory authorities and the EDPS want to see a more precise definition of ‘main establishment’, particularly for the possible situation of groups of companies operating in more than one Member State. This is essential in order to determine the competent authority.*

## Amendment 24

### Proposal for a regulation

#### Article 6 – paragraph 1 – point f

*Text proposed by the Commission*

f) processing is necessary for the purposes of the legitimate interests pursued by a controller, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. This shall not apply to processing carried out by public authorities in the performance of their tasks.

*Amendment*

f) processing is necessary for the purposes of the legitimate interests pursued by a controller **or by a third party or third parties to whom the data are communicated**, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. This shall not apply to processing carried out by public authorities in the performance of their tasks.

Or. fr

#### *Justification*

*The rapporteur proposes maintaining the wording of Directive 95/46/EC. It is worth recalling that the Regulation concerns not only the digital world but will also apply to off-line activities. Some sectors such as newspaper publishing need, in order to finance their activities, to use external sources in order to contact possible new subscribers.*

## Amendment 25

### Proposal for a regulation

#### Article 6 – 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 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.**

*Amendment*

**deleted**

Or. fr

### *Justification*

*The proposal for a regulation provides for a considerable number of delegated acts, which is not justified. More precisely, this area is covered in case law, and the matter of consent for the processing of personal data of children is dealt with in Article 8.*

### **Amendment 26**

#### **Proposal for a regulation**

#### **Article 7 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. The legislation of the Member State in which a person lacking the legal capacity to act resides shall apply when determining the conditions under which consent is given or authorised by that person.***

Or. fr

### **Amendment 27**

#### **Proposal for a regulation**

#### **Article 8 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. For the purposes of this Regulation, in relation to the offering of ***information society*** services directly to a child, the processing of personal data of a child below the age of 13 years shall only be lawful if and to the extent that consent is given or authorised by the child's parent or ***custodian***. The controller shall make reasonable efforts to obtain verifiable consent, taking into consideration available technology.

1. For the purposes of this Regulation, in relation to the offering of ***goods or*** services directly to a child, the processing of personal data of a child below the age of 13 years shall only be lawful if and to the extent that consent is given or authorised by the child's parent or ***legal representative***. The controller shall make reasonable efforts to obtain verifiable consent, taking into consideration available technology.

Or. fr



*Justification*

*Ensuring increased protection of children's personal data will entail enlarging the scope of Article 8 and not limiting it to information society services.*

**Amendment 28**

**Proposal for a regulation  
Article 11 – paragraph 2**

*Text proposed by the Commission*

2. The controller shall provide any information and any communication relating to the processing of personal data to the data subject in an intelligible form, using clear and plain language, ***adapted to the data subject***, in particular for any information addressed specifically to a child.

*Amendment*

2. The controller shall provide any information and any communication relating to the processing of personal data to the data subject in an intelligible form, using clear and plain language, in particular for any information addressed specifically to a child.

Or. fr

*Justification*

*Information or communications concerning data processing must be clear and intelligible. Inclusion of 'adapted to the data subject' might give rise to legal uncertainty. It would seem proportionate to impose a particular obligation only with regard to children comprising a specific category.*

**Amendment 29**

**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***

Or. fr

*Justification*

*There is no need for this provision to be further clarified by means of a delegated act. The Member States' supervisory authorities are better placed to resolve any difficulties which may arise.*

**Amendment 30**

**Proposal for a regulation**  
**Article 12 – paragraph 6**

*Text proposed by the Commission*

*Amendment*

**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 referred to in Article 87(2).**

**deleted**

Or. fr

*Justification*

*The Member States' supervisory authorities are better placed to resolve any difficulties which may arise.*

**Amendment 31**

**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 criteria for determining** the period for which the personal data will be stored **for each purpose**;

Or. fr

*Justification*

*It is not always possible to determine precisely how long personal data will be stored, particularly in the case of storage for different purposes.*

**Amendment 32**

**Proposal for a regulation**

**Article 14 – paragraph 1 – point g**

*Text proposed by the Commission*

g) where applicable, that the controller intends to transfer to a third country or international organisation and ***on the level of protection afforded by that third country or international organisation by reference to*** an adequacy decision by the Commission;

*Amendment*

g) where applicable, that the controller intends to transfer to a third country or international organisation and ***the existence or absence of*** an adequacy decision by the Commission;

Or. fr

*Justification*

*The provision of information on a decision or the absence of a decision by the Commission ensures that the data subject has sufficient information and clarifies the obligation of the controller.*

**Amendment 33**

**Proposal for a regulation**

**Article 14 – paragraph 1 – point h**

*Text proposed by the Commission*

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.

*Amendment*

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

Or. fr

*Justification*

*The scope of this provision needs to be made clear, and it should be specified that controllers can provide a greater degree of transparency.*

**Amendment 34**

**Proposal for a regulation  
Article 15 – paragraph 2**

*Text proposed by the Commission*

2. The data subject shall have the right to obtain from the controller communication of the personal data undergoing processing. Where the data subject makes the request in electronic form, the information shall be provided in electronic form, unless otherwise requested by the data subject.

*Amendment*

2. The data subject shall have the right to obtain from the controller communication of the personal data undergoing processing. Where the data subject makes the request in electronic form, the information shall be provided in electronic form, unless otherwise requested by the data subject.  
***The controller shall use all reasonable measures to verify the identity of a data subject requesting access to data.***

Or. fr

*Justification*

*The right of access must never be abused, particularly when a request is made in electronic form. The controller must therefore verify the identity of the person requesting access and be able to prove that it acted with all due care.*

**Amendment 35**

**Proposal for a regulation  
Article 17 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. The controller referred to in paragraph 1 shall inform the data subject of the action taken in response to their request by the third parties referred to in paragraph 2.***

Or. fr

## *Justification*

*The rights of data subjects must be reinforced. Article 17(2) imposes an obligation of responsibility on the controller. This must be accompanied at the very least by a duty to inform regarding the action taken by third parties processing the personal data in question.*

### **Amendment 36**

#### **Proposal for a regulation**

#### **Article 18**

*Text proposed by the Commission*

*Amendment*

#### ***Right to data portability***

***deleted***

***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.***

***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.***

***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 set out in Article 87(2).***

Or. fr

*Justification*

*Data subjects have the right of access established by Article 15 of the proposal for a regulation. The right of access gives every data subject the right to know which personal data are being processed. Article 18, which enables data subjects to obtain a copy of their data, brings no added value in terms of the protection of citizens' personal data and creates confusion regarding the exact scope of the right of access, which is a principal right.*

**Amendment 37**

**Proposal for a regulation**

**Article 21 – paragraph 2**

*Text proposed by the Commission*

2. In particular, any legislative measure referred to in paragraph 1 shall contain specific provisions at least as to the objectives to be pursued by the processing and the determination of the controller.

*Amendment*

2. In particular, any legislative measure referred to in paragraph 1 shall contain specific provisions at least as to ***the aim of the processing***, the objectives to be pursued by the processing and the determination of the controller.

Or. fr

*Justification*

*In order to ensure a higher degree of protection, the legislation should, in the event of limitation, also mention the aims of processing personal data.*

**Amendment 38**

**Proposal for a regulation**

**Article 22 – title**

*Text proposed by the Commission*

***Responsibility*** of the controller

*Amendment*

***Overall principle of responsibility*** of the controller.

Or. fr

*Justification*

*The principle of responsibility which is implicitly introduced by Chapter 4 of the proposal for a regulation must be mentioned explicitly in order to ensure a higher degree of protection.*

## Amendment 39

### Proposal for a regulation Article 23 – paragraph 2

*Text proposed by the Commission*

2. The controller shall implement mechanisms for ensuring that, by default, only those personal data are processed which are necessary for each specific purpose of the processing and are especially not collected or retained beyond the minimum necessary for those purposes, both in terms of the amount of the data and the time of their storage. In particular, those mechanisms shall ensure that by default personal data are not made accessible to an indefinite number of individuals.

*Amendment*

2. The controller shall implement mechanisms for ensuring that, by default, ***only those personal data are collected for purposes which are defined, explicit and legitimate and*** only those personal data are processed which are necessary for each specific purpose of the processing and are especially not collected or retained beyond the minimum necessary for those purposes, both in terms of the amount of the data and the time of their storage. In particular, those mechanisms shall ensure that by default personal data are not made accessible to an indefinite number of individuals.

Or. fr

### *Justification*

*Data protection by default is a new principle introduced by the proposal for a regulation. The scope of this is not clear. The general principles of data processing set out in Article 5 of the proposal for a regulation should therefore be brought together in order to avoid creating legal uncertainty and to ensure a higher degree of protection.*

## Amendment 40

### Proposal for a regulation Article 23 – 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 specifying any further criteria and requirements for appropriate measures and mechanisms referred to in paragraph 1 and 2, in***

*Amendment*

***deleted***

*particular for data protection by design requirements applicable across sectors, products and services.*

Or. fr

*Justification*

*The proposal for a regulation applies to all sectors, both online and offline. It is not the Commission's task to adopt delegated acts on data protection from the very beginning and by default which might undermine technological innovation. Member States' supervisory authorities and the European Data Protection Board are better placed to resolve any difficulties which might arise.*

**Amendment 41**

**Proposal for a regulation  
Article 23 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

***4. The Commission may lay down technical standards for the requirements laid down in paragraph 1 and 2. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).***

***deleted***

Or. fr

*Justification*

*The proposal for a regulation applies to all sectors, both online and offline. It is not the Commission's task to establish technical standards which might undermine technological innovation. Member States' supervisory authorities and the European Data Protection Board are better placed to resolve any difficulties which might arise.*

**Amendment 42**

**Proposal for a regulation  
Article 28 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Each controller and processor and, if

1. Each controller and processor and, if



any, the controller's representative, shall maintain documentation of all processing *operations* under its responsibility.

any, the controller's representative, shall maintain documentation of all processing *systems and procedures* under its responsibility.

Or. fr

#### *Justification*

*Il convient de rapprocher la formulation de cette disposition à celle contenue dans la proposition de directive relative à la protection des personnes physiques à l'égard du traitement des données à caractère personnel par les autorités compétentes à des fins de prévention et de détection des infractions pénales, d'enquêtes et de poursuites en la matière ou d'exécution de sanctions pénales, et à la libre circulation de ces données. Comme indiqué par le CEPD dans son avis du 7 mars 2012, la proposition de la Commission qui consiste à conserver la documentation liée à tout traitement, ne contribue pas à la réalisation de l'objectif de la proposition de règlement qui est la réduction de la charge administrative générée par les règles de protection des données.*

#### **Amendment 43**

##### **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 documentation shall contain the following information:

Or. fr

#### *Justification*

*The list of information contained in the documentation must be exhaustive in order to guarantee legal certainty.*

#### **Amendment 44**

##### **Proposal for a regulation**

##### **Article 28 – paragraph 2 – point d**

*Text proposed by the Commission*

*Amendment*

*d) a description of categories of data subjects and of the categories of personal*

*deleted*

*data relating to them;*

Or. fr

*Justification*

*The regulation has two aims: to ensure a high degree of protection for personal data and to reduce the administrative burden generated by rules on data protection. The obligation imposed on the controller and processor by Article 28(2)(h) is sufficient to achieve these.*

**Amendment 45**

**Proposal for a regulation  
Article 28 – paragraph 2 – point e**

*Text proposed by the Commission*

*Amendment*

*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;*      *deleted*

Or. fr

*Justification*

*The regulation has two aims: to ensure a high degree of protection for personal data and to reduce the administrative burden generated by rules on data protection. The obligation imposed on the controller and processor by Article 28(2)(h) is sufficient to achieve these.*

**Amendment 46**

**Proposal for a regulation  
Article 28 – paragraph 2 – point g**

*Text proposed by the Commission*

*Amendment*

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

Or. fr

### *Justification*

*The regulation has two aims: to ensure a high degree of protection for personal data and to reduce the administrative burden generated by rules on data protection. The obligation imposed on the controller and processor by Article 28(2)(h) is sufficient to achieve these.*

#### **Amendment 47**

##### **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**

Or. fr

### *Justification*

*The proposal for a regulation provides for a considerable number of delegated acts, which is not justified. More precisely, if the Commission adopted technical measures concerning the security of processing operations, this might undermine technical innovation. In addition, paragraph 4 of the same Article provides for the adoption of implementing acts to specify the requirements set out in paragraphs 1 and 2.*

#### **Amendment 48**

##### **Proposal for a regulation Article 31 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. In the case of a personal data breach, the

1. In the case of a personal data breach

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.***

***which has a considerable effect on the data subject***, the controller shall, without undue delay after having become aware of it, notify the personal data breach to the supervisory authority.

Or. fr

#### *Justification*

*In the event of a breach, the controller must initially concentrate on putting into practice all appropriate measures to prevent it continuing. An obligation to notify the competent supervisory authority within 24 hours together with sanctions for failing to do so might have the opposite effect. In addition, as the Article 29 Working Party stated in its opinion of 23 March 2012, notification must not concern minor breaches, as otherwise the supervisory authorities would be over-burdened.*

#### **Amendment 49**

##### **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:

Or. fr

#### *Justification*

*The list of processing operations which must be subjected to an impact assessment, set out in Article 33(2), has been drawn up in a general way. It must be limiting in order to comply with the principle of proportionality and in order to ensure legal certainty.*

## **Amendment 50**

### **Proposal for a regulation Article 33 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

**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.** *deleted*

Or. fr

*Justification*

*It would seem disproportionate to impose an overall obligation on controllers to seek the views of data subjects, whatever the sector, before any data processing had been done.*

## **Amendment 51**

### **Proposal for a regulation Article 34 – title**

*Text proposed by the Commission*

*Amendment*

**Prior authorisation and prior consultation** *Prior consultation*

Or. fr

*Justification*

*Article 34(1) should be moved to Chapter 5, which concerns the transfer of personal data to a third country or an international organisation. The title of the Article should therefore be changed.*

## Amendment 52

### Proposal for a regulation Article 34 – paragraph 1

*Text proposed by the Commission*

*Amendment*

***1. The controller or the processor as the case may be shall obtain an authorisation from the supervisory authority prior to the processing of personal data, in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where a controller or processor adopts contractual clauses as provided for in point (d) of Article 42(2) or does not provide for the appropriate safeguards in a legally binding instrument as referred to in Article 42(5) for the transfer of personal data to a third country or an international organisation.***

*deleted*

Or. fr

*Justification*

*See Article 34.*

## Amendment 53

### Proposal for a regulation Article 40 a (new)

*Text proposed by the Commission*

*Amendment*

***Article 40 a***

***Prior authorisation***

***The controller or the processor as the case may be shall obtain an authorisation from the supervisory authority prior to the processing of personal data, in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where a controller or***

*processor adopts contractual clauses as provided for in point (d) of Article 42(2) or does not provide for the appropriate safeguards in a legally binding instrument as referred to in Article 42(5) for the transfer of personal data to a third country or an international organisation.*

Or. fr

*Justification*

*See Article 34.*

**Amendment 54**

**Proposal for a regulation  
Article 41 – paragraph 3**

*Text proposed by the Commission*

3. The Commission may decide that a third country, or a territory or a processing sector within that third country, or an international organisation ensures an adequate level of protection within the meaning of paragraph 2. ***Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).***

*Amendment*

3. The Commission may decide that a third country, or a territory or a processing sector within that third country, or an international organisation ensures an adequate level of protection within the meaning of paragraph 2.

Or. fr

*Justification*

*The Commission's decisions should not be adopted solely in accordance with the examination procedure. In addition, the European Data Protection Board should be consulted in this context.*

## Amendment 55

### Proposal for a regulation Article 42 – paragraph 1

*Text proposed by the Commission*

1. Where the Commission has taken no decision pursuant to Article 41, a controller or processor may transfer personal data to a third country or an international organisation only if the controller or processor has adduced appropriate safeguards with respect to the protection of personal data in a legally binding instrument.

*Amendment*

1. Where the Commission has taken no decision pursuant to Article 41, ***or if it finds that a third country, a region or a data processing sector in a third country, or an international organisation, does not offer a sufficient level of data protection,*** 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.

Or. fr

*Justification*

*In line with the recommendation of the EPDS set out in its opinion of 7 March 2012 (point 220).*

## Amendment 56

### Proposal for a regulation Article 43 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***2a. The supervisory authority which approves the binding corporate rules shall be that of the place of the main establishment of the controller or processor.***

Or. fr

*Justification*

*The Article 29 Working Party established a system for mutual recognition of binding*



corporate rules (WP 107, 14 April 2005, and WP 195, 6 June 2012 for processors). 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 57

### Proposal for a regulation

#### Article 51 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. In the event of a complaint by a data subject or a body, organisation or association referred to in Article 73(2), the supervisory authority responsible shall be that of the Member State in which the complaint was made. It shall be competent to take action on the complaint. It shall also be competent to supervise the controller's processing activities or those of a processor, without prejudice to paragraph 2.***

Or. fr

#### *Justification*

*Article 51 is a key provision in this Regulation which introduces the principle of the lead authority. However, it is important to clarify to citizens the competencies of the supervisory authority receiving the complaint.*

## Amendment 58

### Proposal for a regulation

#### Article 51 – paragraph 2

*Text proposed by the Commission*

*Amendment*

***2. Where the processing of personal data takes place in the context of the activities of an establishment of a controller or a processor in the Union, and the controller or processor is established in more than one Member State, the supervisory authority of the main establishment of the***

***2. In the context of the activities of a controller or a processor established in more than one Member State, the supervisory authority of the Member State where the main establishment of the controller or processor is situated shall be competent for the supervision 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.

processing activities of the controller or the processor in all Member States. ***This supervisory authority shall be obliged to cooperate with the other supervisory authorities and with the Commission, pursuant*** to the provisions of Chapter VII of this Regulation.

Or. fr

#### *Justification*

*It should be specified that, if the controller or the processor is established in more than one Member State, the lead authority does not have exclusive competence and must cooperate with the other supervisory authorities involved and with the European Commission.*

#### **Amendment 59**

##### **Proposal for a regulation Article 59 – paragraph 4**

###### *Text proposed by the Commission*

4. Where the supervisory authority concerned intends not to follow the opinion of the Commission, it shall inform the Commission and the European Data Protection Board thereof within the period referred to in paragraph 1 and provide a justification. ***In this case the draft measure shall not be adopted for one further month.***

###### *Amendment*

4. Where the supervisory authority concerned intends not to follow the opinion of the Commission, it shall inform the Commission and the European Data Protection Board thereof within the period referred to in paragraph 1 and provide a justification.

Or. fr

#### *Justification*

*This additional time period seems unreasonable.*

## Amendment 60

### Proposal for a regulation Article 62 – paragraph 2

*Text proposed by the Commission*

*Amendment*

**2. On duly justified imperative grounds of urgency relating to the interests of data subjects in the cases referred to in point (a) of paragraph 1, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 87(3). Those acts shall remain in force for a period not exceeding 12 months.** **deleted**

Or. fr

#### *Justification*

*This Commission prerogative would undermine the independence of the supervisory authorities.*

## Amendment 61

### Proposal for a regulation Article 74 – paragraph 4

*Text proposed by the Commission*

*Amendment*

**4. A data subject which is concerned by a decision of a supervisory authority in another Member State than where the data subject has its habitual residence, may request the supervisory authority of the Member State where it has its habitual residence to bring proceedings on its behalf against the competent supervisory authority in the other Member State.** **deleted**

Or. fr

#### *Justification*

*This opportunity would bring no added value for citizens and might jeopardise the*

*cooperation of the supervisory authorities in the consistency mechanism.*

## **Amendment 62**

### **Proposal for a regulation Article 79 – paragraph 2**

#### *Text proposed by the Commission*

2. The administrative sanction shall be in each individual case effective, proportionate and dissuasive. The amount of the administrative fine shall be fixed with due regard to the nature, gravity and duration of the breach, the intentional or negligent character of the infringement, the degree of responsibility of the natural or legal person and of previous breaches by this person, the technical and organisational measures and procedures implemented pursuant to Article 23 and the degree of co-operation with the supervisory authority in order to remedy the breach.

#### *Amendment*

2. The administrative sanction shall be in each individual case effective, proportionate and dissuasive. The amount of the administrative fine shall be fixed with due regard to the nature, gravity and duration of the breach, the intentional or negligent character of the infringement, ***the particular categories of personal data***, the degree of responsibility of the natural or legal person and of previous breaches by this person, the technical and organisational measures and procedures implemented pursuant to Article 23 and the degree of co-operation with the supervisory authority in order to remedy the breach.

Or. fr

#### *Justification*

*The fact of data being ‘sensitive’ or not should also affect the amount of the fine imposed.*

## **Amendment 63**

### **Proposal for a regulation Article 79 – paragraph 3**

#### *Text proposed by the Commission*

3. ***In case of a first and non-intentional non-compliance with this Regulation***, a warning ***in writing may be given and no sanction imposed, where:***

#### *Amendment*

3. ***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 2 % 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.***

Or. fr

#### *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, 2 % 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 64**

##### **Proposal for a regulation Article 79 – paragraph 4**

*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***

***a) does not provide the mechanisms for requests by data subjects or does not respond promptly or not in the required format to data subjects pursuant to Articles 12(1) and (2);***

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

Or. fr

#### *Justification*

*See Article 79 – paragraph 3*

## Amendment 65

### Proposal for a regulation Article 79 – paragraph 5

*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*

**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;**

**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;**

**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;**

**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;**

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

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

**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.*

Or. fr

*Justification*

*See Article 79 – paragraph 3*

**Amendment 66**

**Proposal for a regulation  
Article 79 – paragraph 6**

*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*
- 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;**
  - b) processes special categories of data in violation of Articles 9 and 81;**
  - c) does not comply with an objection or the requirement pursuant to Article 19;**
  - d) does not comply with the conditions in relation to measures based on profiling pursuant to Article 20;**
  - e) does not adopt internal policies or does not implement appropriate measures for ensuring and demonstrating compliance pursuant to Articles 22, 23 and 30;**
  - f) does not designate a representative pursuant to Article 25;**

***g) processes or instructs the processing of personal data in violation of the obligations in relation to processing on behalf of a controller pursuant to Articles 26 and 27;***

***h) does not alert on or notify a personal data breach or does not timely or completely notify the data breach to the supervisory authority or to the data subject pursuant to Articles 31 and 32;***

***h) does not alert on or notify a personal data breach or does not timely or completely notify the data breach to the supervisory authority or to the data subject pursuant to Articles 31 and 32;***

***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;***

***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;***

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

***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;***

***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);***

***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);***



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

Or. fr

*Justification*

*See Article 79 – paragraph 3*

**Amendment 67**

**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**

Or. fr

*Justification*

*See Article 79 – paragraph 3*

**Amendment 68**

**Proposal for a regulation  
Article 86 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

**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),**

**2. The power *to adopt delegated acts* referred to in Article 8(3), Article 9(3), 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, Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11), Article 37(2),**

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.

Article 39(2), Article 43(3), Article 44(7), 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.

Or. fr

## **Amendment 69**

### **Proposal for a regulation Article 86 – paragraph 3**

#### *Text proposed by the Commission*

3. 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) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

#### *Amendment*

3. The delegation of power referred to in Article 8(3), Article 9(3), 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 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 81(3), Article 82(3) and Article 83(3) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Or. fr

## Amendment 70

### Proposal for a regulation Article 86 – paragraph 5

*Text proposed by the Commission*

5. A delegated act adopted pursuant to **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 enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

*Amendment*

5. A delegated act adopted pursuant to Article 8(3), Article 9(3), 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 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 81(3), Article 82(3) and Article 83(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

Or. fr

## Amendment 71

### Proposal for a regulation Article 86 – paragraph 5 a (new)

*Text proposed by the Commission*

*Amendment*

***5a. The Commission will promote technological neutrality on adoption of the acts referred to in this Article.***

Or. fr

