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*Committee on the Internal Market and Consumer Protection*

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**2012/0011(COD)**

28.1.2013

## **OPINION**

of the Committee on the Internal Market and Consumer Protection

for the Committee on Civil Liberties, Justice and Home Affairs

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

Rapporteur: Lara Comi

PA\_Legam

## SHORT JUSTIFICATION

Data protection is a fundamental right and citizens' trust needs to be ensured to enable them to benefit better of the on-line environment. The approach needs to be updated for the new technologic tools and the data flows stemming from them, so that the current provisions of Directive 95/46/EC are not fully addressing the needs of the Digital Single Market.

The variety of the available business models, technologies and services – including those of great importance in the context of e-commerce and Internal Market – have resulted in a vast spectrum of data protection issues. Companies and governments are using these technologies often without the individuals being aware of the impact they may have.

On 25 January 2012, the European Commission presented proposals of a new regulation<sup>1</sup> and directive<sup>2</sup> on the protection of individuals with regard to the processing of personal data and on the free movement of such data. The proposed regulation aims to complement the provisions of the e-Privacy Directive (2002/58/EC) and ensure that legal certainty and consistency are paramount for effective work across the EU in this area.

The proposed regulation aims to harmonise rights, ensuring the free flow of information, cut red tape and improve enforcement. More transparency will increase trust, and new provisions will make the EU more attractive as a business destination. The proposed regulation also aims to:

- modernise the EU legal system for the protection of personal data, in particular to meet the challenges resulting from globalisation and the use of new technologies;
- strengthen individuals' rights, and at the same time reduce administrative formalities to ensure a unhindered flow of personal data within the EU;
- improve the clarity and coherence of the EU rules for personal data protection and achieve a consistent and effective implementation and application of this fundamental right in all areas of the Union's activities.

### **The internal market dimension**

The proposal has a high potential for enhancing the internal market and creating a level-playing field for all businesses active in the EU. Key elements include:

- the shift of the legislative instrument (from directive to regulation);
- the 'one-stop shop' principle regarding the competent supervisory authority in cross-border cases;
- the marketplace principle (which makes EU data protection standards also applicable to businesses based outside the EU, if they are active within the EU);

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<sup>1</sup> 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) 11 final; hereinafter referred to also as "General Regulation".

<sup>2</sup> Directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data, COM(2012) 10 final.

- the general principle of accountability (which replaces the obligation of data controllers or processors to make a general notification about their processing to their national regulator);
- the strengthening of the existing tools and the introduction of new ones for a consistent implementation and enforcement in all Member States.

### **Strengthening the rights of the consumer**

As for strengthening the rights of consumers, it seems that the balance of competing interests such as consumer awareness, autonomy, protection and the internal market has been struck through the promotion of transparency.

Improvements have been made especially in relation to the notion of consent as one of the legitimating factors for processing personal data, to the data subject rights as powerful tools of consumer protection and to the conditions for lawfulness of data transfers outside the EU. Nonetheless, there remain many areas of the Proposal which require further refinement and clarification. This is particularly the case with the practicalities of implementation particularly in relation to some rights. This ambiguity must be resolved and in particular the following elements require attention:

- clarify in Article 17 to what extent, once informed by a data controller that a data subject has exercised the right of erasure, the data held by the third party data controller must also be deleted;
- the specific protection required for minors up to the age of 14 as they are still children;
- the proposed definition of “personal data”;
- the role that anonymisation and pseudonimisation can play to protect the data subject;
- the Proposal should be refined as regards precise division and determination of the obligations and responsibilities of the data controller and data processor;
- profiling operations and the differences in “profiling” in the different sectors of the economy or legal relations need to be considered thoroughly as well as taking the consequences of overly restrictive regulation in this area.

With this in mind the Rapporteur would like to focus especially on the:

- definitions;
- rights of the data subject;
- obligations of data controller and processor with reference to consumer rights;
- consistency.

The Rapporteur would also like to embrace a wider view of technological neutrality; as well as address the:

- purpose limitation principle;
- use of Delegated and Implementing Acts in association to the proposed package; and,
- practical implementation of the provisions.

## AMENDMENTS

The Committee on the Internal Market and Consumer Protection 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 6 a (new)

*Text proposed by the Commission*

*Amendment*

***(6a) A proper balance between protection of privacy and respect of the single market has to be ensured. Data protection rules should not undermine competitiveness, innovation and new technology.***

### Amendment 2

#### Proposal for a regulation Recital 13 a (new)

*Text proposed by the Commission*

*Amendment*

***(13a) Technological neutrality should also mean that similar acts, in similar conditions and with similar consequences should be legally equivalent, with no regard of their happening online or offline, unless the diverse dynamics of data processing in such environments does not make a substantial difference among them.***

#### *Justification*

*A recital to better assess the difference between online and offline was necessary. Without it, some economic actors could perceive this regulation as specifically meant to address online and, in particular, social networking issues.*

### Amendment 3

## 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 does 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.

#### *Justification*

*The scope of this exemption should be clarified, particularly in view of the development of social networks which make it possible to share information with hundreds of people. In its judgments in Cases C-101/01 and C-73/07, the CJEU advocates accessibility 'by an indefinite number of people' as a criterion for application of this exemption. The EDPS shares this view.*

## Amendment 4

## Proposal for a regulation

### Recital 23

#### *Text proposed by the Commission*

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

#### *Amendment*

(23) The principles of protection should apply to any information concerning an identified or identifiable person. To determine whether a person is identifiable, account should be taken of all the means likely reasonably to be used either by the controller or by any other person to identify the individual. The principles of data protection should not apply to data rendered anonymous in such a way that the data subject is no longer **directly** identifiable, **including, where possible, a separation of processed data from**

*identity-revealing data. In the latter case, also pseudonymised data are useful if the key to link the pseudonymous with the identity is safe according to the state of the art.*

*Justification*

*The definition of "personal data" needs clarifications to make it useful in both consumer experience and business running. The introduction of pseudonymous and anonymous data is helpful in this domain.*

**Amendment 5**  
**Proposal for a regulation**  
**Recital 23 a (new)**

*Text proposed by the Commission*

*Amendment*

*(23a) A large amount of personal data might be processed for purposes of fraud detection and prevention. The pursuit of such claims, regulated by Member States' or Union law, should be taken into account when the data minimization principle and the lawfulness of processing are assessed.*

*Justification*

*This Amendment wants to underline a principle that is not in contrast with the present Regulation, but at the same time is not clearly stated.*

**Amendment 6**  
**Proposal for a regulation**  
**Recital 23 b (new)**

*Text proposed by the Commission*

*Amendment*

*(23b) Following the principle of data protection by default, online services and products must initially be set on maximum protection of personal information and data without demanding any action from the data subject.*

## Amendment 7

### 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 conducted, on a case-by-case basis and in accordance with technological developments, into whether** identification numbers, location data, online identifiers or other specific factors as such **must** necessarily be considered as personal data **but shall be considered as one, when processed with the intention of targeting particular content at an individual or of singling that individual out for any other purpose;**

#### *Justification*

*Against a background of an increasing number of new on-line services and constant technological development, a higher level of protection of personal data is required. A case-by-case study would therefore seem indispensable.*

## Amendment 8

### 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

#### *Amendment*

(25) Consent should be given 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,



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.

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 indicates, **clearly within the** 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. **The information provided in order for children to express the consent should be given in a clear and age-appropriate language, in a way that would be easy to understand for the child above the age of 13.**

#### *Justification*

*In order to smooth some daily life situation, both online and offline, it was necessary to add some specific words for the cases where the consent can be assumed by the context. For instance: asking a doctor for a diagnosis implies the treatment of some personal data, without necessarily an explicit action as defined at the beginning of this recital. In the same instance, the doctor can talk to a specialist, if necessary to deliver the diagnosis, without necessarily asking for permission.*

#### **Amendment 9 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 through stable arrangements. This criterion should not depend whether the processing of personal data is actually carried out at

##### *Amendment*

(27) The main establishment of a controller **or a processor** 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

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.***

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.

*Justification*

*This amendment completes the amendment to Art. 4(13)*

**Amendment 10**  
**Proposal for a regulation**  
**Recital 27 a (new)**

*Text proposed by the Commission*

*Amendment*

***(27a) The representative is liable, together with the controller, for any behaviour that is contrary to the present Regulation.***

*Justification*

*The liability of the representative is not sufficiently clearly stated, and this recital helps to underline it.*

**Amendment 11**

**Proposal for a regulation**  
**Recital 29**

*Text proposed by the Commission*

*Amendment*

(29) Children deserve specific protection of their personal data, as they may be less aware of risks, consequences, safeguards and their rights in relation to the processing of personal data. To determine when an individual is a child, this Regulation should take over the definition laid down by the UN Convention on the Rights of the Child.

(29) Children deserve specific protection of their personal data, as they may be less aware of risks, consequences, safeguards and their rights in relation to the processing of personal data ***and they are vulnerable consumers***. To determine when an individual is a child, this Regulation should take over the definition laid down by the UN Convention on the Rights of the Child. ***In particular, child-friendly language has***

*to be used to ensure the right of consent for children above the age of 13.*

## Amendment 12

### Proposal for a regulation Recital 30

#### *Text proposed by the Commission*

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

#### *Amendment*

(30) Any processing of personal data should be lawful, fair and transparent in relation to the individuals concerned. In particular, the specific purposes for which the data are processed should be explicit and legitimate and determined at the time of the collection of the data. The data should be adequate, relevant and limited to the minimum necessary for the purposes for which the data are processed; this requires ensuring that the data collected are not excessive and that the period for which the data are stored is *no longer than is necessary for the purposes for which the personal data is processed*. Personal data should only be processed if the purpose of the processing could not be fulfilled by other means. Every reasonable step should be taken to ensure that personal data which are inaccurate are rectified or deleted. In order to ensure that the data are not kept longer than necessary, time limits should be established by the controller for erasure or for a periodic review. *When the assessment is made of the minimum data necessary for the purposes for which the data are processed, consideration should be given of the obligations of other legislation which require comprehensive data to be processed when used for prevention and detection of fraud, confirmation of identity and/or determination of creditworthiness.*

#### *Justification*

*This amendment is designed to clarify obligation for controllers to monitor the minimum data*

*necessary and storage periods. This amendment in addition seeks to ensure consistency with the language of this recital with that included in Article 5(e). The amendment also seeks to harmonise the Regulation with existing legislation, such as the Consumer Credit Directive and Credit Agreements for Residential Property, and existing good practice, which require a comprehensive assessment of a consumer's financial situation through creditworthiness assessment.*

### **Amendment 13**

#### **Proposal for a regulation Recital 33**

*Text proposed by the Commission*

(33) In order to ensure free consent, it should be clarified that consent does not provide a valid legal ground where the individual has no genuine and free choice and is subsequently not able to refuse or withdraw consent without detriment.

*Amendment*

(33) In order to ensure free consent, it should be clarified that consent does not provide a valid legal ground where the individual has no genuine and free choice and is subsequently not able to refuse or withdraw consent without detriment.  
***Similarly, consent should not provide a legal basis for data processing when the data subject has no different access to equivalent services.***

### **Amendment 14**

#### **Proposal for a regulation Recital 34**

*Text proposed by the Commission*

(34) Consent ***should not provide a valid legal ground for the*** processing of ***personal*** data, where there is a ***clear*** imbalance between ***the*** data subject and ***the*** controller. This ***is especially*** the case where the data subject is in a situation of dependence from the controller, among others, where personal data are processed by the employer of employees' personal data in the employment context. Where the controller is a public authority, there would be an imbalance only in the specific data processing operations where the public authority can impose ***an*** obligation by

*Amendment*

(34) Consent ***shall be freely given and the data subject shall not be forced to consent for*** processing of ***its*** data, ***especially*** where there is a ***significant*** imbalance between data subject and controller. This ***may be*** the case where the data subject is in a situation of dependence from the controller, among others, where personal data are processed by the employer of employees' personal data in the employment context. ***However, when the purpose of data processing is in the interest of the data subject and the data subject is subsequently able to withdraw***

virtue of its relevant public powers and the consent cannot be deemed as freely given, taking into account the interest of the data subject.

***consent without detriment, the consent should provide a valid legal ground for processing.***

Where the controller is a public authority, there would be an imbalance only in the specific data processing operations where the public authority can impose ***a new and unjustified*** obligation by virtue of its relevant public powers and the consent cannot be deemed as freely given, taking into account the interest of the data subject.

#### *Justification*

*The provision should assure that data subject has a genuine and free choice and is subsequently able to withdraw consent or object to further processing in any situation. It shall not deprive natural persons of the possibility of agreeing to the processing of data, especially when it is in the purpose which is to their benefit (e.g. offering an insurance by the employer). The regulation should not presume that it is impossible to freely consent to data processing in employment relation.*

## **Amendment 15**

### **Proposal for a regulation Recital 34 a (new)**

*Text proposed by the Commission*

*Amendment*

***(34a) When personal data, processed on the basis of a data subject's consent are necessary for the provision of a service, the withdrawal of the consent can constitute the ground for the termination of a contract by the service provider. This shall apply in particular to the services which are provided free of charge to the consumers.***

#### *Justification*

*Adding such a recital would have an awareness-raising meaning. Although the possibility to terminate a contract stems from the terms of contract in cases where data processing is necessary for the provision of a service, it is necessary to make users conscious that in some cases data are the currency by which they pay for the service. Auction platforms, for instance, use stored data to examine credibility of those selling with the use of a platform and a mutual*

*evaluation exercised by the users is used by them to attract more potential clients but also to prevent fraud. Withdrawing consent to process such data would run against the whole point of such platforms. Consumers should also be aware that many business models provide access to services "free" of charge in return for the access to some of their personal data. Withdrawing the right to process these data can therefore result in no access to the service.*

## **Amendment 16**

### **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 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.

##### *Amendment*

(38) The legitimate interests of a **data subject** 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 **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.

##### *Justification*

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

## **Amendment 17**

**Proposal for a regulation**  
**Recital 40 a (new)**

*Text proposed by the Commission*

*Amendment*

***(40a) In general, harmonisation of the Union law as regards to data protection must not take away the possibility of Member States to practice sector specific legislation, inter alia in the field of register-based research.***

*Justification*

*The current legal framework on data protection in the EU, directive 95/46/EC, gives Member States various degrees of freedom to adapt the EU legislation to national circumstances.*

**Amendment 18**

**Proposal for a regulation**  
**Recital 40 b (new)**

*Text proposed by the Commission*

*Amendment*

***(40b) Processing of personal data collected to another purpose can be made available for public scientific research when a scientific relevance of the processing of the collected data can be documented. Privacy by design must be taken into account when making data available for public scientific research.***

**Amendment 19**

**Proposal for a regulation**  
**Recital 42**

*Text proposed by the Commission*

*Amendment*

(42) Derogating from the prohibition on processing sensitive categories of data should also be allowed if done by a law, and subject to suitable safeguards, so as to protect personal data and other fundamental rights, where grounds of

(42) Derogating from the prohibition on processing sensitive categories of data should also be allowed if done by a law, and subject to suitable safeguards, so as to protect personal data and other fundamental rights, where grounds of

public interest so justify and in particular for health purposes, including public health and social protection and the management of health-care services, especially in order to ensure the quality and cost-effectiveness of the procedures used for settling claims for benefits and services in the health insurance system, or for historical, statistical and scientific research purposes.

public interest so justify and in particular for health purposes, including public health and social protection and the management of health-care services, ***including information sent via electronic text messages or e-mail to patients regarding appointments at hospitals or clinics,*** especially in order to ensure the quality and cost-effectiveness of the procedures used for settling claims for benefits and services in the health insurance system, or for historical, statistical and scientific research purposes.

## **Amendment 20**

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

#### *Justification*

*It is not possible to know in advance for how long personal data will be stored, particularly as this may be linked to specific legal obligations.*

## **Amendment 21**

### **Proposal for a regulation Recital 49**



*Text proposed by the Commission*

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

*Amendment*

(49) The information in relation to the processing of personal data relating to the data subject should be given to them at the time of collection, or, where the data are not collected from the data subject, within a reasonable period, depending on the circumstances of the case. Where data can be legitimately disclosed to another recipient, the data subject should be informed when the data are first disclosed to the recipient. ***At the same time, no processing other than storing should be allowed before the data subject is fully aware of the information referred to here.***

*Justification*

*This amendment matches the amendment to Art. 14(4b).*

**Amendment 22**

**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.

*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 which may be used to determine for 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

However, the result of these considerations should not be that all information is refused to the data subject.

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.

### *Justification*

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

## **Amendment 23**

### **Proposal for a regulation**

#### **Recital 53**

#### *Text proposed by the Commission*

(53) Any person should have the right to have personal data concerning them rectified and *a ‘right to **be forgotten**’* where the retention of such data is not in compliance with this Regulation. In particular, data subjects should have the right that their personal data are erased and no longer processed, where the data are no longer necessary in relation to the purposes for which the data are collected or otherwise processed, where data subjects have withdrawn their consent for processing or where they object to the processing of personal data concerning them or where the processing of their personal data otherwise does not comply with this Regulation. This right is particularly relevant, when the data subject has given their consent as a child, when not being fully aware of the risks involved by the processing, and later wants to remove such personal data especially on the Internet. However, the further retention of the data should be allowed where it is necessary for historical, statistical and scientific research purposes, for reasons of public interest in the area of public health, for exercising the right of freedom of expression, when required by law or where there is a reason to restrict the processing

#### *Amendment*

(53) Any person should have the right to have personal data concerning them rectified and *the right to **have such personal data erased*** where the retention of such data is not in compliance with this Regulation. In particular, data subjects should have the right that their personal data are erased and no longer processed, where the data are no longer necessary in relation to the purposes for which the data are collected or otherwise processed, where data subjects have withdrawn their consent for processing or where they object to the processing of personal data concerning them or where the processing of their personal data otherwise does not comply with this Regulation. This right is particularly relevant, when the data subject has given their consent as a child, when not being fully aware of the risks involved by the processing, and later wants to remove such personal data especially on the Internet. However, the further retention of the data should be allowed where it is necessary for historical, statistical and scientific research purposes, for reasons of public interest in the area of public health, for exercising the right of freedom of expression, when required by law or where there is a reason to restrict the processing

of the data instead of erasing them.

of the data instead of erasing them. *Also, the right to erasure shall not apply when the retention of personal data is necessary for the performance of a contract with the data subject, or when there is a regulatory requirement to retain this data, or for the prevention of financial crime.*

*Justification*

*This amendment matches the amendment to the title of Art. 17.*

**Amendment 24**  
**Proposal for a regulation**  
**Recital 54**

*Text proposed by the Commission*

(54) To strengthen the ‘right to *be forgotten*’ in the online environment, *the* right to *erasure* should also be extended in such a way that a controller who has *made* the personal data public should be obliged to inform third parties which are processing such data that a data subject requests them to erase any links to, or copies or replications of that personal data. To ensure this information, the controller should take all reasonable steps, including technical measures, in relation to data for the publication of which the controller is responsible. In relation to a third party publication of personal data, the controller should be considered responsible for the publication, where the controller has authorised the publication by the third party.

*Amendment*

(54) To strengthen the right to *erasure* in the online environment, *such* right should also be extended in such a way that a controller who has *transferred* the personal data *or made them* public *without being instructed to do so by the data subject* should be obliged to inform third parties which are processing such data that a data subject requests them to erase any links to, or copies or replications of that personal data. To ensure this information, the controller should take all reasonable steps, including technical measures, in relation to data for the publication of which the controller is responsible. In relation to a third party publication of personal data, the controller should be considered responsible for the publication, where the controller has authorised the publication by the third party.

*Justification*

*This amendment accompanies the amendment to Article 17(2).*

**Amendment 25**  
**Proposal for a regulation**  
**Recital 55 a (new)**

*Text proposed by the Commission*

*Amendment*

***(55a) Some personal data, once processed by the data controller or processor, produce outcomes that are used only internally by the data controller and whose format is meaningless even for the data subject. In this case, the right to data portability should not apply, while the other rights, in particular the right to object and the right of access and the right to rectification, are still valid.***

*Justification*

*This amendment is meant to clarify the "meaningfulness" introduced in the previous amendment.*

## **Amendment 26**

### **Proposal for a regulation Recital 60**

*Text proposed by the Commission*

*Amendment*

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

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

*Justification*

*Strengthens the protection of personal data. A general principle that responsibility rests with the controller needs to be explicitly laid down.*

## **Amendment 27**

### **Proposal for a regulation Recital 61 a (new)**

*Text proposed by the Commission*

*Amendment*

***(61a) This Regulation encourages enterprises to develop internal programmes that will identify the processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, and to put in place appropriate privacy safeguards and develop innovative privacy-by-design solutions and privacy enhancing techniques. Enterprises that can publicly demonstrate that they have embedded privacy accountability do not also require the application of the additional oversight mechanisms of prior consultation and prior authorisation.***

*Justification*

*This amendment aligns the text with an approach in which accountability is an alternative process that properly incentivises good organizational practices. Such an alignment also shifts the burden of the costs of compliance and assurance to the marketplace rather than the public purse.*

**Amendment 28**  
**Proposal for a regulation**  
**Recital 61 b (new)**

*Text proposed by the Commission*

*Amendment*

***(61b) Data protection by design is a very useful tool as it allows the data subject to be fully in control of his own data protection, of the information he shares and with the subject with whom he shares. When considering this principle as well as data protection by default, the context should heavily influence the assessment of lawfulness of processing.***

*Justification*

*This Amendment clarifies the Amendment to Art. 23(2). It refers to cases where the data subject has the choice to opt in a data processing system, and in that case the whole range of*

*consequences shall be taken into consideration. For instance, when signing in a social network, the data subjects should accept that some information be public for the other users to connect with him, while the same level of publicity of data should not be accepted by a data subject that asks for a loan.*

## **Amendment 29**

### **Proposal for a regulation Recital 61 c (new)**

*Text proposed by the Commission*

*Amendment*

***(61c) The principle of data protection by design require data protection to be embedded within the entire life cycle of the technology, from the very early design stage, right through to their ultimate deployment, use and ultimate disposal. The principle of data protection by default requires privacy settings on services and products should by default comply with the general principles of data protection, such as data minimisation and purpose limitation.***

## **Amendment 30**

### **Proposal for a regulation Recital 62**

*Text proposed by the Commission*

*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.

(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. ***Where joint and several liability applies, a processor which has made amends for damage done to the***

***data subject concerned may bring an action against the controller for reimbursement if it has acted in conformity with the legal act binding it to the controller.***

*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 data subject's right to compensation being affected.*

**Amendment 31**

**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 ***maintain relevant information on the main categories of*** processing ***undertaken***. ***The Commission should establish a uniform format for the documentation of this information across the EU***. 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 ***assist the supervisory authority in evaluating the compliance of*** those ***main categories of*** processing ***with this Regulation***.

*Justification*

*Effective data protection requires organisations to have a sufficiently documented understanding of their data processing activities. However, the maintenance of documentation for all processing operations is disproportionately burdensome. Instead of satisfying bureaucratic needs, the aim of the documentation should be to help controllers and processors meet their obligations.*

**Amendment 32**  
**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, ***addressing such economic loss and social harm should be the first and utmost priority. After that,*** as soon as the controller becomes aware that a breach, ***which would have a significantly adverse impact on the protection of the personal data or the privacy of the data subject concerned,*** has occurred, the controller should notify the breach to the supervisory authority without undue delay. 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, ***avoiding information overload for the data subject.*** 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, damage to reputation. The notification should describe the nature of the personal data breach 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*

*This Amendment is meant to clarify the actions that are desirable in case of data breach, and the Amendments to Article 31 and to Article 32.*

**Amendment 33**  
**Proposal for a regulation**  
**Recital 69**

*Text proposed by the Commission*

(69) In **setting detailed rules concerning the format and procedures applicable to** the notification of personal data breaches, due consideration should be given to the circumstances of the breach, including whether or not personal data had been protected by appropriate technical protection measures, effectively limiting the likelihood of identity fraud or other forms of misuse. Moreover, such rules and procedures should take into account the legitimate interests of law enforcement authorities in cases where early disclosure could unnecessarily hamper the investigation of the circumstances of a breach.

*Amendment*

(69) In **assessing the level of detail of** the notification of personal data breaches, due consideration should be given to the circumstances of the breach, including whether or not personal data had been protected by appropriate technical protection measures, effectively limiting the likelihood of identity fraud or other forms of misuse. Moreover, such rules and procedures should take into account the legitimate interests of law enforcement authorities in cases where early disclosure could unnecessarily hamper the investigation of the circumstances of a breach.

*Justification*

*This Amendment follows the deletion of Article 32(5).*

**Amendment 34**  
**Proposal for a regulation**  
**Recital 70 a (new)**

*Text proposed by the Commission*

*Amendment*

**(70a) Directive 2002/58/EC (as amended by Directive 2009/136/EC) sets out personal data breach notification obligations for the processing of personal**

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

#### *Justification*

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

### **Amendment 35**

#### **Proposal for a regulation Recital 97**

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

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

##### *Amendment*

(97) Where the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union takes place in more than one Member State, one single supervisory authority should be competent for monitoring the **processing** activities of the controller or processor throughout the Union and taking the related decisions, in order to increase the consistent application, provide legal certainty and reduce administrative burden for such controllers and processors. **By way of derogation from Article 51(2), when the processing of personal data is not mainly carried out by the main establishment, but by one of the**

*other establishments of the controller or processor situated in the European Union, the competent supervisory authority for those processing operations shall be that of the Member State where that other establishment is situated. In keeping with the provisions of Chapter VII, this derogation shall be without prejudice to the right of the supervisory authority of the Member State where the main establishment is situated to require an additional declaration.*

*Justification*

*While processing operations covering more than one country can easily be monitored by the main establishment, and should be the responsibility of a single authority, on the basis of a centralised declaration, national processing activities which are managed on a decentralised basis by branch establishments, and which are difficult for the main establishment to supervise, should be the responsibility of each national supervisory authority.*

**Amendment 36**  
**Proposal for a regulation**  
**Recital 105**

*Text proposed by the Commission*

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

*Amendment*

(105) In order to ensure the consistent application of this Regulation throughout the Union, a consistency mechanism for co-operation between the supervisory authorities themselves and the Commission should be established. This mechanism should in particular apply where a supervisory authority intends to take a measure as regards processing operations that are related to the offering of goods or services to data subjects in several Member States, or to the monitoring *of* such data subjects, or that might substantially affect the free flow of personal data. It should also apply where any supervisory authority or the Commission requests that the matter should be dealt with in the consistency mechanism. ***Furthermore, the data subjects should have the right to obtain consistency, if they deem a measure by a***

powers under the Treaties.

***Data Protection Authority of a Member State has not fulfilled this criterion.*** This mechanism should be without prejudice to any measures that the Commission may take in the exercise of its powers under the Treaties.

### *Justification*

*This Amendment introduces the new Article 63a.*

#### **Amendment 37 Proposal for a regulation Recital 111**

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

(111) Every data subject should have the right to lodge a complaint with a supervisory authority in any Member State and have the right to a judicial remedy if they consider that their rights under this Regulation are infringed or where the supervisory authority does not react on a complaint or does not act where such action is necessary to protect the rights of the data subject.

##### *Amendment*

(111) Every data subject should have the right to lodge a complaint with a supervisory authority in any Member State and have the right to a judicial remedy if they consider that their rights under this Regulation are infringed or where the supervisory authority does not react on a complaint or does not act where such action is necessary to protect the rights of the data subject. ***If the data subject deems consistency is not fulfilled, a complaint to the European Data Protection Board can be filed.***

#### **Amendment 38 Proposal for a regulation Recital 113**

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

(113) Each natural or legal person should have the right to a judicial remedy against decisions of a supervisory authority concerning them. Proceedings against a supervisory authority should be brought before the courts of the Member State, where the supervisory authority is established.

##### *Amendment*

(113) Each natural or legal person should have the right to a judicial remedy against decisions of a supervisory authority concerning them. Proceedings against a supervisory authority should be brought before the courts of the Member State, where the supervisory authority is established, ***or before the European Data Protection Board on grounds of***

*inconsistency with the application of the present Regulation in other Member States*

## **Amendment 39**

### **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*

#### *Justification*

*This possibility would bring no added value for the public and might jeopardise the cooperation of the supervisory authorities under the consistency mechanism.*

## **Amendment 40**

### **Proposal for a regulation Recital 118**

*Text proposed by the Commission*

*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.

(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.

***Where joint and several liability applies, a processor which has made amends for damage done to the data subject concerned may bring an action against the controller for reimbursement if it has acted in conformity with the legal act binding it to the controller.***

*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 41**  
**Proposal for a regulation**  
**Recital 120**

*Text proposed by the Commission*

(120) In order to strengthen and harmonise administrative sanctions against infringements of this Regulation, each supervisory authority should have the power to sanction administrative offences. This Regulation should indicate these offences and the upper limit for the related administrative fines, which should be fixed in each individual case proportionate to the specific situation, with due regard in particular to the nature, gravity and duration of the breach. The consistency mechanism may also be used to cover divergences in the application of administrative sanctions.

*Amendment*

(120) In order to strengthen and harmonise administrative sanctions against infringements of this Regulation, each supervisory authority should have the power to sanction administrative offences. This Regulation should indicate these offences and the upper limit for the related administrative fines, which should be fixed in each individual case proportionate to the specific situation, with due regard in particular to the nature, gravity and duration of the breach. ***In order to strengthen the internal market, the administrative sanctions should be consistent across Member States.*** The consistency mechanism may also be used to cover divergences in the application of administrative sanctions.

*Justification*

*This Amendment anticipates the consistency requirement of the administrative sanctions in Article 78 and Article 79.*

**Amendment 42**  
**Proposal for a regulation**  
**Recital 122**

*Text proposed by the Commission*

(122) The processing of personal data concerning health, as a special category of data which deserves higher protection, may often be justified by a number of legitimate reasons for the benefit of individuals and society as a whole, in particular in the context of ensuring continuity of cross-border healthcare. Therefore this Regulation should provide for harmonised conditions for the processing of personal data concerning health, subject to specific and suitable safeguards so as to protect the fundamental rights and the personal data of individuals. This includes the right for individuals to have access to their personal data concerning their health, for example the data in their medical records containing such information as diagnosis, examination results, assessments by treating physicians and any treatment or interventions provided.

*Amendment*

(122) The processing of personal data concerning health, as a special category of data which deserves higher protection, may often be justified by a number of legitimate reasons for the benefit of individuals and society as a whole, in particular in the context of ensuring continuity of cross-border healthcare. Therefore this Regulation should provide for harmonised conditions for the processing of personal data concerning health, subject to specific and suitable safeguards so as to protect the fundamental rights and the personal data of individuals. This includes the right for individuals to have access, ***directly or through previously delegated persons***, to their personal data concerning their health, for example the data in their medical records containing such information as diagnosis, examination results, assessments by treating physicians and any treatment or interventions provided.

*Justification*

*This Amendment is needed to allow access to information by a patient's relative, over all where the patient is not able to take decisions or to use such information, due to the gravity of the illness.*

**Amendment 43**  
**Proposal for a regulation**  
**Recital 122 a (new)**

*Text proposed by the Commission*

*Amendment*

***(122a) A professional who process personal data concerning health should receive, if possible, anonymised or pseudonymised data, leaving the knowledge of the identity only to the General Practitioner or to the Specialist***

*who has requested such data processing.*

### *Justification*

*This Amendment means to suggest a further tool for the protection of citizens whose health data are controlled or processed by a professional who does not need to know the identity of the data subject.*

## **Amendment 44**

### **Proposal for a regulation Recital 129**

#### *Text proposed by the Commission*

(129) In order to fulfil the objectives of this Regulation, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. In particular, delegated acts should be adopted in respect of lawfulness of processing; specifying the criteria and conditions in relation to the consent of a child; processing of special categories of data; ***specifying the criteria and conditions for manifestly excessive requests and fees for exercising the rights of the data subject***; criteria and requirements for the information to the data subject and in relation to the right of access; the right to be forgotten and to erasure; measures based on profiling; criteria and requirements in relation to the responsibility of the controller ***and to data protection by design and by default***; a processor; criteria and requirements for the documentation ***and the security of processing***; criteria and requirements for establishing a personal data breach and for its notification to the supervisory authority, and on the circumstances where a personal

#### *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; 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



data breach is likely to adversely affect the data subject; the criteria and conditions for processing operations requiring a data protection impact assessment; the criteria and requirements for determining a high degree of specific risks which require prior consultation; designation and tasks of the data protection officer; codes of conduct; criteria and requirements for certification mechanisms; criteria and requirements for transfers by way of binding corporate rules; transfer derogations; **administrative sanctions**; processing for health purposes; processing in the employment context and processing for historical, statistical and scientific research purposes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

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; 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 45

### 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**

#### *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 **in respect of** the documentation; specific requirements for the security of processing; the standard format and the procedures for the notification of a

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

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

## **Amendment 46**

### **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

##### *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 ***in respect of***

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, given that those acts are of general scope.

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.

#### Amendment 47

##### 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

###### *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 *enshrined in 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

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.

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 48

### Proposal for a regulation

#### Article 2 – paragraph 2 – point b

*Text proposed by the Commission*

*Amendment*

***(b) by the Union institutions, bodies, offices and agencies;***

***deleted***

#### *Justification*

*To ensure citizens' trust, all sectors must protect data equally well. If data breaches in the public sector create mistrust among citizens this will have a negative effect on the private sector's ICT activities and vice versa. This also holds true concerning the Union institutions.*

## Amendment 49

### Proposal for a regulation

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

*Text proposed by the Commission*

*Amendment*

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

(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;***

#### *Justification*

*The scope of this exemption should be clarified, particularly in view of the development of social networks which make it possible to share information with hundreds of people. In its judgments in Cases C-101/01 and C-73/07, the CJEU advocates accessibility 'by an indefinite number of people' as a criterion for application of this exemption. The EDPS shares that view.*

## **Amendment 50**

### **Proposal for a regulation**

#### **Article 2 – paragraph 2 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

***(da) which have been rendered anonymous within the meaning of Article 4(2a);***

*Justification*

*Clarification in the body of the text of recital 23, which refers to cases where data has been rendered anonymous and to which this Directive need not apply.*

## **Amendment 51**

### **Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

***(ea) in areas covered by Articles 153, 154 and 155 of the Treaty of the Functioning of the European Union (TFEU) regarding regulation of recruitment and conclusion and compliance of collective agreements.***

## **Amendment 52**

### **Proposal for a regulation**

#### **Article 2 – paragraph 2 – point e b (new)**

*Text proposed by the Commission*

*Amendment*

***(eb) of a natural person which are made public in the course of exercising professional duties such as name, contact details and function;***

## **Amendment 53**

### **Proposal for a regulation**

#### **Article 2 – paragraph 3**

*Text proposed by the Commission*

3. This Regulation shall be without prejudice to the application of Directive 2000/31/EC, in particular of the liability rules of intermediary service providers in Articles 12 to 15 of that Directive.

*Amendment*

3. This Regulation shall be without prejudice to the application of Directive 2000/31/EC, in particular of the liability rules of intermediary service providers in Articles 12 to 15 of that Directive, ***as well as to the specific provisions of Union law or law of Member States related to processing of data, especially with regard to legally protected interests, when they provide for a stricter protection than the provisions of this regulation;***

**Amendment 54**

**Proposal for a regulation  
Article 3 – paragraph 1**

*Text proposed by the Commission*

1. This Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union.

*Amendment*

1. This Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union, ***whether the processing takes place in the Union or not.***

**Amendment 55**

**Proposal for a regulation  
Article 3 – paragraph 2 – point a**

*Text proposed by the Commission*

(a) the offering of goods ***or*** services to such data subjects in the Union; ***or***

*Amendment*

(a) the offering of goods ***and*** services to such data subjects in the Union, ***including services provided without financial costs to the individual, or;***

*Justification*

*This addition helps to clarify that the objective pursued is not relevant to the application of this Regulation, and that no-profit or free services shall have the same obligations of the other actors, if similar conditions apply.*

## Amendment 56

### Proposal for a regulation

#### Article 3 – paragraph 2 – point b

*Text proposed by the Commission*

(b) *the monitoring of their behaviour.*

*Amendment*

(b) ***monitoring the behaviour of such data subjects with a view to offering goods or services to them.***

## Amendment 57

### Proposal for a regulation

#### Article 3 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

***3a. This Regulation applies to the processing of personal data of data subjects not residing in the Union by a controller or processor established in the Union, through their economic activities in a third country(ies).***

#### *Justification*

*EU companies or employers should not be allowed illegally to access employees' personal data to then monitor their behaviour, blacklist them due to trade union affiliation, etc., whether the employee is based in the EU or not.*

## Amendment 58

### Proposal for a regulation

#### Article 4 – point 1

*Text proposed by the Commission*

(1) 'data subject' means an identified natural person or a natural person who can be identified, directly or indirectly, by means reasonably likely to be used by the controller or by any other natural or legal person, in particular by reference to an identification number, location data, ***online identifier*** or to one or more factors specific

*Amendment*

(1) 'data subject' means an identified natural person or a natural person who can be identified, directly or indirectly, by means reasonably likely to be used by the controller or by any other natural or legal person, in particular by reference to an identification number ***or identifier***, location data or to one or more factors

to the physical, physiological, genetic, mental, economic, cultural or social identity of that person;

specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person;

*Justification*

*Adherence to the principle of technological neutrality.*

**Amendment 59**

**Proposal for a regulation**  
**Article 4 – point 2 a (new)**

*Text proposed by the Commission*

*Amendment*

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

*Justification*

*Businesses should be incentivized to anonymise data, which will ultimately strengthen consumers' privacy protection. The changes aim at clarifying the meaning of anonymous data and, in line with recital 23, explicitly excluding such data from the scope of the Regulation. The definition has been taken from Article 3 point 6 of the German Federal Data Protection Act.*

**Amendment 60**

**Proposal for a regulation**  
**Article 4 – point 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***(3a) 'profiling' means any form of automated processing of personal data intended to evaluate certain personal aspects relating to a natural person or to analyse or predict in particular the natural person's performance at work, economic situation, location, health, personal preferences, reliability or behaviour;***



## Amendment 61

### Proposal for a regulation Article 4 – point 3 b (new)

*Text proposed by the Commission*

*Amendment*

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

*Justification*

*This is part of a package of amendments enabling the use of pseudonymous and anonymous data and will encourage good business practice safeguarding the interests of data subjects. Ensuring that personal data cannot be attributed to a data subject (since it cannot be related back to a data subject without use of additional data) helps to further promote business use of data while providing a high level of consumer protection.*

## Amendment 62

### Proposal for a regulation Article 4 – point 5

*Text proposed by the Commission*

*Amendment*

(5) 'controller' means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes, ***conditions and means*** of the processing of personal data; where the purposes, ***conditions and means*** of processing are determined by Union law or Member State law, the controller or the specific criteria for his nomination may be designated by Union law or by Member State law;

(5) 'controller' means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes of the processing of personal data; where the purposes of processing are determined by Union law or Member State law, the controller or the specific criteria for his nomination may be designated by Union law or by Member State law;

## Justification

*With new technologies and services available such as cloud computing traditional division of entities involved in the processing of personal data may prove difficult, with the processor having in such cases significant influence over the way in which data are being processed. For this reason it seems reasonable to determine the controller as the entity, which decides over the purpose of processing personal data as determination of finality is the most important decision with the other factors serving as means to achieve it.*

### Amendment 63

#### Proposal for a regulation

##### Article 4 – point 8

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

(8) ‘the data subject's consent’ means any freely given specific, informed **and explicit** indication of his or her wishes by which the data subject, either by a statement or by a clear affirmative action, signifies agreement to personal data relating to them being processed;

###### *Amendment*

(8) ‘the data subject's consent’ means any freely given indication **that must be specific, informed and as explicit as possible according to the context**, of his or her wishes by which the data subject, either by a statement or by a clear affirmative action, **explicitly whenever the data referred to in Article 9(1) are to be processed**, signifies agreement to personal data relating to them being processed;

### Amendment 64

#### Proposal for a regulation

##### Article 4 – point 9

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

(9) ‘personal data breach’ means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;

###### *Amendment*

(9) ‘personal data breach’ means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed; **strongly encrypted data, where there is evidence that the encryption key has not been compromised fall outside this legislation**

## *Justification*

*Loss of data that has been encrypted with strong encryption and where the encryption key is not lost does not pose any risk of harm to the individual. The data can simply not be read. When data cannot be read it does not seem reasonable to treat them as stipulated in Articles 31 and 32. The notification does not give any privacy improvements to citizens in this situation.*

## **Amendment 65**

### **Proposal for a regulation**

#### **Article 4 – point 13**

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

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

##### *Amendment*

*(13) ‘main establishment’ means **the location as designated by the undertaking or group of undertakings, whether controller or processor, subject to the consistency mechanism set out in Article 57, on the basis of, but not limited to, the following optional objective criteria:***

- (a) the location of the European headquarters of a group of undertakings;***
- (b) the location of the entity within a group of undertakings with delegated data protection responsibilities;***
- (c) the location of the entity within the group which is best placed in terms of management functions and administrative responsibilities to deal with and enforce the rules as set out in this Regulation; or***
- (d) the location where effective and real management activities are exercised determining the data processing through stable arrangements.***

***The competent authority shall be informed by the undertaking or group of undertakings of the designation of the main establishment.***

*Justification*

*The proposed definition for ‘main establishment’ is too vague and provides too much room for diverging interpretation. It is necessary to have a uniform test for determining an organization’s “main establishment”, which can be applied to “undertakings/groups of undertakings” as the relevant reference point and based on a set of relevant objective criteria. These criteria are used to determine the appropriate DPA for BCRs and therefore are proven to be implementable.*

**Amendment 66**

**Proposal for a regulation  
Article 5 – point c**

*Text proposed by the Commission*

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

*Amendment*

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

*Justification*

*This change, which permits “not excessive” processing is more appropriate. It consists of a referral back to the wording of the original 95/46/EC Data Protection Directive and aims to avoid inconsistencies with other EU rules, such as the Consumer Credit Directive and the Capital Requirements Package, which also require, for example, lending institutions to process personal data.*

**Amendment 67**

**Proposal for a regulation  
Article 5 – point e**

*Text proposed by the Commission*

(e) kept in a form which permits identification of data subjects for no longer

*Amendment*

(e) kept in a form which permits identification of data subjects for no longer

than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the data will be processed solely for historical, statistical or scientific research purposes in accordance with the rules and conditions of **Article 83** and if a periodic review is carried out to assess the necessity to continue the storage;

than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the data will be processed solely for historical, statistical or scientific research purposes in accordance with the rules and conditions of **Articles 81 and 83** and if a periodic review is carried out to assess the necessity to continue the storage;

#### *Justification*

*It should also be possible to store personal data for longer periods for health purposes (Article 81) as well as for historical, statistical and scientific research purposes (Article 83), which is already referenced in the Commission's text. This will ensure that all relevant data is available to deliver the most appropriate care to the data subject.*

#### **Amendment 68**

##### **Proposal for a regulation Article 6 – paragraph 1 – point c**

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

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

###### *Amendment*

(c) processing is necessary for compliance with **or to avoid breach of an EU or national** legal obligation **or legal right** to which **a** controller is subject **including the performance of a task carried out for assessing creditworthiness or for fraud prevention and detection purposes.**

#### **Amendment 69**

##### **Proposal for a regulation Article 6 – paragraph 1 – point e**

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

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

###### *Amendment*

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

*prevention and detection purposes;*

## **Amendment 70**

### **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 controllers or by the third party or parties to whom the data are disclosed***, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. This shall not apply to processing carried out by public authorities in the performance of their tasks.

#### *Justification*

*This amendment seeks to regulate the situation when a third party has a legitimate interest to process data, in line with the current Directive 95/46/EC which recognizes the legitimate interest of a third party. This is for example the case in some Member States where the social partners regulate wages and other work conditions through collective agreements. Trade unions negotiate with employers to ensure a common set of rights that apply to all employees at a workplace, regardless of whether or not they are union members. In order for this system to function the unions must have the possibility to monitor the observance of collective agreements.*

## **Amendment 71**

### **Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

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

## **Amendment 72**

**Proposal for a regulation**  
**Article 6 – paragraph 1 – point f b (new)**

*Text proposed by the Commission*

*Amendment*

***(fb) the processing of data, inter alia information of members of an organisation, which is done by the organisation in question in compliance with its statutory rules, is of outmost importance for the data controller in voluntary membership based organisations;***

**Amendment 73**

**Proposal for a regulation**  
**Article 6 – paragraph 1 – point f c (new)**

*Text proposed by the Commission*

*Amendment*

***(fc) processing is necessary for fraud detection and prevention purposes according to applicable financial regulation or established industry, or professional body, codes of practice;***

*Justification*

*Experience in practice has shown that a "legal obligation" doesn't include the domestic financial regulation or codes of conduct which are fundamental in fraud prevention and detection, of paramount importance for data controllers and to protect data subjects.*

**Amendment 74**

**Proposal for a regulation**  
**Article 6 – paragraph 1 – point f d (new)**

*Text proposed by the Commission*

*Amendment*

***(fd) the processing is necessary to defend an interest, collecting evidences as judicial proofs or file an action;***

**Amendment 75**

**Proposal for a regulation**  
**Article 6 – paragraph 1 – point f e (new)**

*Text proposed by the Commission*

*Amendment*

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

*Justification*

*This is part of a package of amendments enabling the use of pseudonymous and anonymous data and will encourage good business practice safeguarding the interests of data subjects. Ensuring that personal data cannot be attributed to a data subject (since it cannot be related back to a data subject without use of additional data) helps to further promote business use of data while providing a high level of consumer protection.*

**Amendment 76**

**Proposal for a regulation**  
**Article 6 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

The law of the Member State must meet an objective of public interest or must be necessary to protect the rights and freedoms of others, ***respect the essence of the right to the protection of personal data and be*** proportionate to the legitimate aim pursued.

The law of the Member State must meet an objective of public interest or must be necessary to protect the rights and freedoms of others. ***The law of the Member State must also respect this regulation and international treaties that the Member State has decided to follow. Finally the Member State is obliged to evaluate and decide if national legislation is*** proportionate to the legitimate aim pursued ***or if a legitimate aim could be achieved using less privacy invasive solutions.***

*Justification*

*Article 6, paragraph 1, point e states that processing is lawful if: “processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller”. Seen in connection with paragraph 3, this leaves Member States a very wide margin for eroding citizens’ protection of data mentioned in this regulation using national legislation. The harmonisation among Member States will be under pressure because national interests will result in many different examples of legislation. Citizens’ data will be processed differently in the different countries.*



## Amendment 77

### Proposal for a regulation Article 6 – paragraph 4

*Text proposed by the Commission*

*Amendment*

4. Where the purpose of further processing is not compatible with the one for which the personal data have been collected, the processing must have a legal basis at least in one of the grounds referred to ***in points (a) to (e) of*** paragraph 1. This shall in particular apply to any change of terms and general conditions of a contract.

4. Where the purpose of further processing is not compatible with the one for which the personal data have been collected, the processing must have a legal basis at least in one of the grounds referred to paragraph 1. This shall in particular apply to any change of terms and general conditions of a contract.

#### *Justification*

*Designing for consent in context and to ensure effective privacy experiences is in line with the objectives of proposals to recital 25.*

## Amendment 78

### Proposal for a regulation Article 6 – paragraph 5

*Text proposed by the Commission*

*Amendment*

***5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the conditions referred to in point (f) of paragraph 1 for various sectors and data processing situations, including as regards the processing of personal data related to a child.***

***deleted***

#### *Justification*

*There is no need for further specifications.*

## Amendment 79

### Proposal for a regulation Article 7 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. ***The controller shall bear the burden of proof*** for the data subject's ***consent*** to the processing ***of their personal data for specified purposes***.

1. ***Where consent is required, the form of consent captured*** for the ***processing of a*** data subject's ***personal data shall be proportionate*** to the ***type of data processed, the purpose for the processing and any identified risks, as determined through a data protection impact assessment***.

## **Amendment 80**

### **Proposal for a regulation Article 7 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

3. The data subject shall have the right to withdraw his or her consent ***at any time***. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal.

3. The data subject shall have the right to withdraw his or her consent. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal ***or in cases where a minimum mandatory term of storage is provided by a European or national law, or data are processed according to European and national regulatory provisions, or for anti-fraud or legal purposes. The data subject has to communicate his willingness to withdraw his or her consent to the processor.***

## **Amendment 81**

### **Proposal for a regulation Article 7 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

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

***deleted***

### *Justification*

*Terminology such as 'significant imbalance' is likely to cause legal uncertainty. Furthermore, it is unnecessary because contract law, including consumer protection law, provides adequate safeguards against fraud, threats, unfair exploitation etc and those should apply also to agreements to process personal data.*

### **Amendment 82**

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

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

*Text proposed by the Commission*

*Amendment*

***4a. The execution of a contract or the provision of a service may not be made dependent on the consent to the processing or use of data that is not necessary for the execution of the contract or the provision of the service according to Article 6 (1) (b).***

### **Amendment 83**

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

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

*Text proposed by the Commission*

*Amendment*

***4b. This article shall not apply where the data subject's consent is required by law.***

### **Amendment 84**

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

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

*Text proposed by the Commission*

*Amendment*

***4c. Access to a given consent in regards to Article 6, paragraph 1 (a), as well as Article 9, paragraph 2 (a), can be limited in cases where internal rules of organisations regarding fraud and of crime prevention reasons, in accordance***

*with legislation of the Member State, are enforced.*

#### **Amendment 85**

##### **Proposal for a regulation Article 7 – paragraph 4 d (new)**

*Text proposed by the Commission*

*Amendment*

***4d. 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.***

#### **Amendment 86**

##### **Proposal for a regulation Article 7 – paragraph 4 e (new)**

*Text proposed by the Commission*

*Amendment*

***4e. This provision shall not apply to the right of the employer to process data on the basis of consent by the employee nor the right of public authorities to process data on the basis of consent by the citizen.***

#### **Amendment 87**

##### **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

1. For the purposes of this Regulation, in relation to the offering of ***goods and*** 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

reasonable efforts to obtain verifiable consent, taking into consideration available technology.

obtain verifiable consent, taking into consideration available technology ***without causing unnecessary processing of personal data.***

## **Amendment 88**

### **Proposal for a regulation**

#### **Article 8 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. The information provided in order to express the consent should be given in a clear and age-appropriate language, in a way that would be easy to understand for the child above the age of 13;***

## **Amendment 89**

### **Proposal for a regulation**

#### **Article 8 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. The information referred to in paragraphs 1, 1a, 2, and 3 shall not apply where the processing of personal data of a child concerns health data and where the Member State law in the field of health and social care prioritises the competence of an individual over physical age.***

#### *Justification*

*In the context of health and social care authorisation from a child's parent or guardian should not be necessary where the child has the competence to make a decision for him or herself. In Child Protection Cases, it is not always in the interests of the data subject for their parent or guardian to have access to their data and this needs to be reflected in the legislation.*

## **Amendment 90**

### **Proposal for a regulation**

#### **Article 9 – paragraph 1**

*Text proposed by the Commission*

1. The processing of personal data, revealing race or ethnic origin, political opinions, religion or beliefs, trade-union membership, and the processing of genetic data or data concerning health or sex life or criminal convictions or related security measures shall be prohibited.

*Amendment*

1. The processing of personal data, revealing race or ethnic origin, political opinions, religion or beliefs, trade-union membership ***and activities, significant social problems, private information*** and the processing of genetic data or data concerning health or sex life or criminal convictions or related security measures shall be prohibited.

*Justification*

*In Denmark the special categories of data that are demanded to be protected the most are more extensive than the regulation proposes. The result is that the regulation actually makes Danish citizens worse off than the current legislation. For this reason, I suggest that the special categories be expanded to include “significant social problems and private information”.*

**Amendment 91**

**Proposal for a regulation**

**Article 9 – paragraph 2 – point a**

*Text proposed by the Commission*

(a) the data subject has given consent to the processing of those personal data, subject to the conditions laid down in Articles 7 and 8, except where Union law or Member State law provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject; or

*Amendment*

(a) the data subject has given consent to the processing of those personal data, subject to the conditions laid down in Articles 7 and 8, except where Union law or Member State law provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject. ***In particular, this would include safeguards to prevent the blacklisting of workers, for example in relation to their trade union activities or health and safety representative roles;*** or

**Amendment 92**

**Proposal for a regulation**

**Article 9 – paragraph 2 – point b**

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 93**

**Proposal for a regulation**

**Article 9 – paragraph 2 – point d**

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 94**

**Proposal for a regulation**

**Article 9 – paragraph 2 – point e**

*Text proposed by the Commission*

(e) the processing relates to personal data which are manifestly made public by the data subject; or

*Amendment*

(e) the processing relates to personal data which are manifestly made public by the data subject *or which are freely transferred to the controller on the initiative of data subject and which are processed for the specific purpose*

*determined by data subject and in his interest, or*

## **Amendment 95**

### **Proposal for a regulation Article 9 – paragraph 2 – point j**

#### *Text proposed by the Commission*

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

#### *Amendment*

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

#### *Justification*

*It is important that the employers' organisations and employees' organisations (labour unions) can continue in the future to negotiate with each other and create collective agreements that are in accordance with national culture, tradition, competitiveness and economic situation.*

## **Amendment 96**

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

#### *Text proposed by the Commission*

#### *Amendment*

***(ja) processing of personal data concerning criminal convictions or related security measures is carried out in the context of databases which contain***



*data on fraud committed against the credit institutions or members of other financial groups regulated by EU or national legislation and set up by financial institutions to prevent fraud; The restrictions on the processing of data relating to criminal convictions should not apply to data relating to criminal offences.*

#### **Amendment 97**

##### **Proposal for a regulation Article 9 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

*3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria, conditions and appropriate safeguards for the processing of the special categories of personal data referred to in paragraph 1 and the exemptions laid down in paragraph 2.*

*deleted*

#### **Amendment 98**

##### **Proposal for a regulation Article -11 (new)**

*Text proposed by the Commission*

*Amendment*

##### *Article -11*

*General principles for data subject rights*

*1. The basis of data protection are clear and unambiguous rights for the data subject with respect to the data controller. The provisions of this Regulation aim to strengthen, clarify, guarantee and where appropriate, codify, these rights.*

*2. Such rights include, inter alia, the provision of clear, easily understood information regarding the data*

*controller's policies for data subject access, rectification and erasure to their data, the right to data portability and the right to object to profiling; that such rights in general must be exercised free of charge and that the data controller will undertake requests from the data subject within a reasonable period of time.*

## **Amendment 99**

### **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.

*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 100**

### **Proposal for a regulation Article 11 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

*2a. Information for data subjects shall be provided in a format offering data subjects the information needed to understand their position and make decisions in an appropriate way. Full information shall be available on request. Therefore the controller shall provide*

*transparency in information and communication in his data protection policies through an easily understandable icon-based mode of description for the different steps of data-processing.*

## **Amendment 101**

### **Proposal for a regulation Article 12 – paragraph 1**

*Text proposed by the Commission*

1. The controller shall establish procedures for providing the information referred to in Article 14 and for the exercise of the rights of data subjects referred to in Article 13 and Articles 15 to 19. The controller shall provide in particular mechanisms for facilitating the request for the actions referred to in Article 13 and Articles 15 to 19. Where personal data are processed by automated means, the controller shall also provide means for requests to be made electronically.

*Amendment*

1. The controller shall establish procedures for providing the information referred to in Article 14 and for the exercise of the rights of data subjects referred to in Article 13 and Articles 15 to 19. The controller shall provide in particular mechanisms for facilitating the request for the actions referred to in Article 13 and Articles 15 to 19. Where personal data are processed by automated means, the controller shall also provide means for requests to be made electronically. ***The procedures referred to in this Article can be procedures already established by public authorities in the Member States provided that the procedures comply with the provisions of the Regulation.***

## **Amendment 102**

### **Proposal for a regulation Article 12 – paragraph 2**

*Text proposed by the Commission*

2. The controller shall inform the data subject without delay and, at the latest within one month of receipt of the request, whether or not any action has been taken pursuant to Article 13 and Articles 15 to 19 and shall provide the requested information. This period may be prolonged for a further month, if several data subjects

*Amendment*

2. The controller shall inform the data subject without delay and, at the latest within one month of receipt of the request, whether or not any action has been taken pursuant to Article 13 and Articles 15 to 19 and shall provide the requested information. This period may be prolonged for a further month, if several data subjects

exercise their rights and their cooperation is necessary to a reasonable extent to prevent an unnecessary and disproportionate effort on the part of the controller. The information shall be given in writing. 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.

exercise their rights and their cooperation is necessary to a reasonable extent to prevent an unnecessary and disproportionate effort on the part of the controller. The information shall be given in writing. Where the data subject makes the request in electronic form, the information shall be provided in electronic form, unless otherwise requested by the data subject ***or unless the controller has reason to believe that providing the information in electronic form would create a significant risk of fraud.***

#### *Justification*

*Releasing certain data in electronic form such as credit files could result in modification or identity theft when provided to consumers. Release of data from credit reference agencies should be dependent upon authentication checks which satisfy criteria set out by the agency holding the data to prevent interception, misuse, fraudulent use or modification.*

#### **Amendment 103**

##### **Proposal for a regulation Article 12 – paragraph 4**

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

4. The information and the actions taken on requests referred to in paragraph 1 shall be free of charge. Where requests are manifestly excessive, in particular because of their repetitive character, the controller may charge a fee for providing the information or taking ***the action requested, or the controller may not take*** the action requested. In that case, the controller shall bear the burden of proving the manifestly excessive character of the request.

###### *Amendment*

4. The information and the actions taken on requests referred to in paragraph 1 shall be free of charge. Where requests are manifestly excessive, in particular because of their repetitive character, the controller may charge a ***reasonable*** fee for providing the information or taking the action requested. In that case, the controller shall bear the burden of proving the manifestly excessive character of the request.

#### **Amendment 104**

##### **Proposal for a regulation Article 12 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

**5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for the manifestly excessive requests and the fees referred to in paragraph 4.** *deleted*

*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 105**

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

*Justification*

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

#### **Amendment 106**

##### **Proposal for a regulation Article 13**

*Text proposed by the Commission*

*Amendment*

**The controller shall communicate** any rectification or erasure carried out in accordance with Articles 16 and 17 to each recipient to whom the data have been disclosed, **unless this proves impossible or involves a disproportionate effort.**

Any rectification or erasure carried out in accordance with Articles 16 and 17 **is extended** to each recipient to whom the data have been disclosed **without the control of the data subject.**

*Justification*

*Selling a database to a third party does not exempt the data controller from executing her obligations. If, instead, the data subject has voluntarily or consciously transferred some information through the data controller, the latter does not bear further responsibility.*

## **Amendment 107**

### **Proposal for a regulation Article 14 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 14a**

##### **Verification of a data subject's identity**

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

*Justification*

*New rights for the citizens are introduced in this regulation. However, nowhere is it stated how the citizens should be made document their identities to enforce the rights. It is important that citizen's identity is documented and potentially challenged by the controller to make sure that no form of identity theft can occur.*

## **Amendment 108**

### **Proposal for a regulation Article 14 – paragraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

1. Where personal data relating to a data

1. Where personal data relating to a data

subject are collected, the controller shall provide the data subject with *at least* the following information:

subject are collected, the controller shall provide the data subject with the following information:

#### **Amendment 109**

##### **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 and/or legal requirements for determining*** the period for which the personal data will be stored ***for each purpose***;

*Justification*

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

#### **Amendment 110**

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

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

*Text proposed by the Commission*

*Amendment*

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

(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.

*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 111**

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

##### **Article 14 – paragraph 5 – point b**

*Text proposed by the Commission*

*Amendment*

(b) the data are not collected from the data subject and the provision of such information proves impossible or would involve a disproportionate effort; or

(b) the data are ***meant to serve solely the purposes of art. 83, are*** not collected from the data subject and the provision of such information proves impossible or would involve a disproportionate effort ***and generate excessive administrative burden, especially when the processing is carried out by a SME as defined in EU recommendation 2003/361; or***

*Justification*

*This provision emanates directly from art. 11(2) of the Directive 95/46/EC, but without this specification it would have resulted as a loophole in consumer protection. This amendment restores the match between the original intentions and the wording.*

**Amendment 112**  
**Proposal for a regulation**  
**Article 14 – paragraph 7**

*Text proposed by the Commission*

*Amendment*

***7. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria for categories of recipients referred to in point (f) of paragraph 1, the requirements for the notice of potential access referred to in point (g) of paragraph 1, the criteria for the further information necessary referred to in point (h) of paragraph 1 for specific sectors and situations, and the conditions and appropriate safeguards for the exceptions laid down in point (b) of paragraph 5. In doing so, the Commission shall take the appropriate measures for micro, small and medium-sized-enterprises.***

***deleted***

*Justification*

*There is no need for such further specifications.*



**Amendment 113**  
**Proposal for a regulation**  
**Article 15 – paragraph 1 – subparagraph 2 (new)**

*Text proposed by the Commission*

*Amendment*

***On request, and free of charge, the data controller shall also provide a proof of the lawfulness of processing in a reasonable time.***

*Justification*

*If the data controller provides this proof directly to the data subject, the number of lawsuits should be reduced.*

**Amendment 114**

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

*Text proposed by the Commission*

*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.

2. The data subject shall have the right to obtain from the controller communication of the personal data undergoing processing ***and profiling***. 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.***

*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 115**  
**Proposal for a regulation**  
**Article 15 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

**3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the communication to the data subject of the content of the personal data referred to in point (g) of paragraph 1.** *deleted*

*Justification*

*This addition does not seem necessary.*

#### **Amendment 116**

**Proposal for a regulation  
Article 15 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

**4a. Subject to the necessary legal safeguards, especially in order to ensure that information are not used to take measures or decisions regarding specific persons, Member States can, in cases with no risk of violation of privacy, by law limit the rights following article 15 only if these rights are processed as part of scientific research in compliance with article 83 of this Regulation or only if these personal data are stored in the specific timeframe it takes to make statistics.**

*Justification*

*See Article 13, paragraph 2, of Directive 95/46/EC, OJ L 281/95.*

#### **Amendment 117**

**Proposal for a regulation  
Article 16 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

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

*Justification*

*This is part of a package of amendments enabling the use of pseudonymous and anonymous data and will encourage good business practice safeguarding the interests of data subjects. Ensuring that personal data cannot be attributed to a data subject (since it cannot be related back to a data subject without use of additional data) helps to further promote business use of data while providing a high level of consumer protection.*

**Amendment 118**  
**Proposal for a regulation**  
**Article 17 – title**

*Text proposed by the Commission*

*Amendment*

Right to ***be forgotten and to*** erasure

Right to erasure

*Justification*

*The title proposed by the Commission is misleading.*

**Amendment 119**

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

*Text proposed by the Commission*

*Amendment*

(c) the data subject objects to the processing of personal data pursuant to Article 19;

(c) the data subject objects to the processing of personal data pursuant to Article 19, ***and the objection is upheld;***

*Justification*

*This amendment is designed to ensure that a data subject cannot simply make an objection under Article 19, therefore triggering the principle of the Right to be Forgotten, where the objection would be without merit.*

**Amendment 120**  
**Proposal for a regulation**  
**Article 17 – paragraph 2**

*Text proposed by the Commission*

2. Where the controller referred to in paragraph 1 has **made** the personal data public, it shall take all reasonable steps, including technical measures, in relation to data for the publication of which the controller is responsible, to inform third parties which are processing such data, that a data subject requests them to erase any links to, or copy or replication of that personal data. Where the controller has authorised a third party publication of personal data, the controller shall be considered responsible for that publication.

*Amendment*

2. Where the controller referred to in paragraph 1 has **transferred** the personal data, **or has made such data public without the consent of the data subject**, it shall take all reasonable steps, including technical measures, in relation to data for the publication of which the controller is responsible, to inform third parties which are processing such data, that a data subject requests them to erase any links to, or copy or replication of that personal data. **When data has been transferred, the transferring controller shall inform these subsequent controllers that the data subject requests the deletion of the personal data, any links to, or copy or replication of that personal data.** Where the controller has authorised a third party publication of personal data, the controller shall be considered responsible for that publication.

*Justification*

*This provision targets particularly the transfer of data that are object of an erasure request. It must be clear that, if the data subject made them public, or instructed the controller to do so, or did it through the controller, the responsibility is still borne by the data subject. On the other side, the controller is responsible for applying this provision also to data that have been voluntarily transferred or released to third parties that have no relation with the data subject.*

**Amendment 121**

**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, where possible, of the action taken in response to their request by the third**

*parties referred to in paragraph 2.*

*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 122**

**Proposal for a regulation**

**Article 17 – paragraph 3 – points e a and e b (new)**

*Text proposed by the Commission*

*Amendment*

*(ea) for prevention or detection of fraud or other financial crime, confirming identity, and/or determining creditworthiness,*

*(eb) for keeping documentary evidence of a given case history, when the data controller is a public authority.*

*Justification*

*It would not be appropriate for individuals to be able to delete data about themselves which is held for legitimate reasons in line with existing legislation.*

**Amendment 123**

**Proposal for a regulation**

**Article 17 – paragraph 9 – introductory part**

*Text proposed by the Commission*

*Amendment*

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

The Commission shall be empowered to adopt delegated acts in accordance with Article 86, *after requesting an opinion of the European Data Protection Board*, for the purpose of further specifying:

**Amendment 124**

**Proposal for a regulation**

**Article 18 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

**3. The Commission may specify the electronic format referred to in paragraph 1 and the technical standards, modalities and procedures for the transmission of personal data pursuant to paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).**

*deleted*

*Justification*

*Once the format is portable, the market can provide it without the Commission's intervention*

#### **Amendment 125**

##### **Proposal for a regulation Article 19 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

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

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

*Justification*

*This amendment is designed to demonstrate that legitimate grounds should constitute sufficient grounds for processing, as per Article 6.*

#### **Amendment 126**

##### **Proposal for a regulation Article 19 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

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

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

#### **Amendment 127**

##### **Proposal for a regulation Article 19 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

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

3. Where an objection is upheld pursuant to paragraphs 1 and 2, the controller shall no longer use or otherwise process the personal data concerned ***for the purposes determined in the objection.***

#### **Amendment 128**

##### **Proposal for a regulation Article 19 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. Where pseudonymous data are processed based on Article 6(1)(g), the data subject shall have the right to object free of charge to the processing. This right shall be explicitly offered to the data subject in an intelligible manner and shall be clearly distinguishable from other information.***

#### *Justification*

*This is part of a package of amendments enabling the use of pseudonymous and anonymous data and will encourage good business practice safeguarding the interests of data subjects. Ensuring that personal data cannot be attributed to a data subject (since it cannot be related*

back to a data subject without use of additional data) helps to further promote business use of data while providing a high level of consumer protection.

## Amendment 129

### Proposal for a regulation

#### Article 20 – title

*Text proposed by the Commission*

*Amendment*

Measures based on **profiling**

Measures based on **automated processing**

#### *Justification*

*Article 20 concerns automated processing rather than profiling. The title of this article should therefore be amended to “Measures based on automated processing”.*

## Amendment 130

### Proposal for a regulation

#### Article 20 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. **Every natural person shall have the right not to be subject to a measure which produces legal effects concerning this natural person or significantly affects this natural person, and which is based solely on automated processing intended to evaluate certain personal aspects relating to this natural person or to analyse or predict in particular the natural person's performance at work, economic situation, location, health, personal preferences, reliability or behaviour.**

1. **A data subject shall not be subject to a decision which is unfair or discriminatory, and which is based solely on automated processing intended to evaluate certain personal aspects relating to this data subject.**

#### *Justification*

*Article 20 in its current form does not recognise the positive uses of profiling nor does it take into account the varying levels of risk or impact on the privacy of the individuals associated with profiling. By focusing on techniques which are either "unfair" or "discriminatory" as defined in Directive 2005/29/EC the approach in this proposal is more technologically neutral and focuses on the negative uses of profiling techniques rather than the technology itself.*



## Amendment 131

### Proposal for a regulation Article 20 – paragraph 2

*Text proposed by the Commission*

*Amendment*

**2. Subject to the other provisions of this Regulation, a person may be subjected to a measure of the kind referred to in paragraph 1 only if the processing:**

*deleted*

**(a) is carried out in the course of the entering into, or performance of, a contract, where the request for the entering into or the performance of the contract, lodged by the data subject, has been satisfied or where suitable measures to safeguard the data subject's legitimate interests have been adduced, such as the right to obtain human intervention; or**

**(b) is expressly authorized by a Union or Member State law which also lays down suitable measures to safeguard the data subject's legitimate interests; or**

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

*Justification*

*Deletion following proposed amendment to paragraph 1.*

## Amendment 132

### Proposal for a regulation Article 20 – paragraph 3

*Text proposed by the Commission*

*Amendment*

**3. Automated processing of personal data intended to evaluate certain personal aspects relating to a natural person shall not be based solely on the special categories of personal data referred to in Article 9.**

**3. Automated processing of personal data intended to evaluate certain personal aspects relating to a natural person shall not be based solely on the special categories of personal data referred to in Articles **8 and 9**.**

*Justification*

*Deletion following proposed amendment to paragraph 1.*

**Amendment 133**

**Proposal for a regulation**  
**Article 20 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

**4. In the cases referred to in paragraph 2, the information to be provided by the controller under Article 14 shall include information as to the existence of processing for a measure of the kind referred to in paragraph 1 and the envisaged effects of such processing on the data subject..** **deleted**

**Amendment 134**

**Proposal for a regulation**  
**Article 20 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

**5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for suitable measures to safeguard the data subject's legitimate interests referred to in paragraph 2.** **deleted**

**Amendment 135**

**Proposal for a regulation**  
**Article 21 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. In particular, any legislative measure referred to in paragraph 1 shall contain specific provisions at least as to the

2. In particular, any legislative measure referred to in paragraph 1 shall contain specific provisions at least as to ***the aim of***

objectives to be pursued by the processing and the determination of the controller.

**the processing**, the objectives to be pursued by the processing and the determination of the controller.

*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 136**

**Proposal for a regulation**

**Article 22 – title**

*Text proposed by the Commission*

*Amendment*

**Responsibility** of the controller

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

*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 137**

**Proposal for a regulation**

**Article 22 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

**4. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of specifying any further criteria and requirements for appropriate measures referred to in paragraph 1 other than those already referred to in paragraph 2, the conditions for the verification and auditing mechanisms referred to in paragraph 3 and as regards the criteria for proportionality under paragraph 3, and considering specific measures for micro, small and medium-sized-enterprises.**

**deleted**

*Justification*

*The text is already clear enough, and no further specification seems necessary.*

**Amendment 138**

**Proposal for a regulation  
Article 23 – paragraph 1**

*Text proposed by the Commission*

***1. Having regard to the state of the art and the cost of implementation, the controller shall, both at the time of the determination of the means for processing and at the time of the processing itself, implement appropriate technical and organisational measures and procedures in such a way that the processing will meet the requirements of this Regulation and ensure the protection of the rights of the data subject.***

*Amendment*

***1. Where required, mandatory measures may be adopted to ensure that categories of goods or services are designed and have default settings meeting the requirements of this Regulation relating to the protection of individuals with regard to the processing of personal data. Such measures shall be based on standardisation pursuant to [Regulation .../2012 of the European Parliament and of the Council on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Decision 87/95/EEC and Decision No 1673/2006/EC].***

*Justification*

*This is part of a package of amendments aimed at recognising that, while data protection by design and default is a commendable concept, the Commission's proposal does not achieve sufficient certainty while creating a risk for possible restrictions on free movement. Therefore, the established mechanism of using standardisation, as compiled in the 'Standardisation Package', should be used to harmonise the applicable requirements and enabling free movement instead.*

**Amendment 139**

**Proposal for a regulation  
Article 23 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Anonymisation or pseudonymisation of personal data should be applied by the data processor where feasible and proportionate according to the purpose of processing.***

## **Amendment 140**

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

*Text proposed by the Commission*

*Amendment*

***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.***

***2. Until such time as mandatory measures have been adopted pursuant to paragraph 1, Member States shall ensure that no mandatory design or default requirements are imposed on goods or services relating to the protection of individuals with regard to the processing of personal data which could impede the placing of equipment on the market and the free circulation of such goods and services in and between Member States.***

#### *Justification*

*This is part of a package of amendments aimed at recognising that, while data protection by design and default is a commendable concept, the Commission's proposal does not achieve sufficient certainty while creating a risk for possible restrictions on free movement. Therefore, the established mechanism of using standardisation to harmonise the applicable requirements and enabling free movement should be used instead.*

## **Amendment 141**

### **Proposal for a regulation Article 23 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

***3. The Commission shall be empowered to***      ***deleted***

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

*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 142**

**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*

*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 143**

**Proposal for a regulation  
Article 24**

*Text proposed by the Commission*

*Amendment*

Where a controller determines the purposes, conditions and means of the

Where a controller determines the purposes, conditions and means of the

processing of personal data jointly with others, the joint controllers shall determine their respective responsibilities for compliance with the obligations under this Regulation, in particular as regards the procedures and mechanisms for exercising the rights of the data subject, by means of an arrangement between them.

processing of personal data jointly with others, the joint controllers shall determine their respective responsibilities for compliance with the obligations under this Regulation, in particular as regards the procedures and mechanisms for exercising the rights of the data subject, by means of an arrangement between them. ***Where such determination is lacking or is not sufficiently clear, the data subject can exercise his rights with any of the controllers and they shall be equally liable.***

#### *Justification*

*This amendment gives the data subject more protection in this specific case.*

#### **Amendment 144**

##### **Proposal for a regulation Article 26 – paragraph 1**

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

1. Where a processing operation is to be carried out on behalf of a controller, the controller shall choose a processor providing sufficient guarantees to implement appropriate technical and organisational measures and procedures in such a way that the processing will meet the requirements of this Regulation and ensure the protection of the rights of the data subject, in particular in respect of the technical security measures and organizational measures governing the processing to be carried out and shall ensure compliance with those measures.

###### *Amendment*

1. Where a processing operation is to be carried out on behalf of a controller ***and which involves the processing of data that would permit the processor to reasonably identify the data subject***, the controller shall choose a processor providing sufficient guarantees to implement appropriate technical and organisational measures and procedures in such a way that the processing will meet the requirements of this Regulation and ensure the protection of the rights of the data subject, in particular in respect of the technical security measures and organizational measures governing the processing to be carried out and shall ensure compliance with those measures. ***The controller remains solely responsible for ensuring compliance with the requirements of this Regulation.***

### *Justification*

*Where, due to proper anonymisation techniques, it is technically not feasible for the processor to identify a data subject, Article 26 shall not apply. The lessening of administrative burdens will incentivize investment in effective anonymisation technology and use of strong system of restricted access. The basic principle according to which primary and direct responsibility and liability for processing is incumbent upon the controller should be clearly stated in this Article.*

### **Amendment 145**

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

#### **Article 26 – paragraph 2 – point d**

*Text proposed by the Commission*

*Amendment*

***(d) enlist another processor only with the prior permission of the controller;***                      ***deleted***

### *Justification*

*The requirement to obtain prior authorization from the controller for the processor to enlist sub-processors imposes burdens with no clear benefit in terms of enhanced data protection. Also, it is not workable particularly in the cloud context and especially if interpreted to require prior authorization to use specific sub-processors. This requirement should be removed.*

### **Amendment 146**

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

#### **Article 26 – paragraph 2 – point h a (new)**

*Text proposed by the Commission*

*Amendment*

***(ha) When a processor is processing data on behalf of the controller, the processor must implement privacy by design and privacy by default.***

### **Amendment 147**

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

#### **Article 26 – paragraph 3 a (new)**



*Text proposed by the Commission*

*Amendment*

***3a. The controller is deemed to have fulfilled the obligations set out in paragraph 1 when choosing a processor who has voluntarily self-certified or voluntarily obtained a certification, seal or mark pursuant to Articles 38 or 39 of this Regulation showing the implementation of appropriate standard technical and organizational measures in response to the requirements set out in this Regulation.***

*Justification*

*The Regulation should offer clear incentives to controllers and processors to invest in security and privacy enhancing measures. Where controllers and processors propose additional safeguards to protect data, which are in line with or go beyond accepted industry standards and who can demonstrate this via conclusive certificates they should benefit from less prescriptive requirements. In particular this would allow for flexibility and a reduced burden for cloud providers and cloud customers,*

**Amendment 148**  
**Proposal for a regulation**  
**Article 26 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

***5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the responsibilities, duties and tasks in relation to a processor in line with paragraph 1, and conditions which allow facilitating the processing of personal data within a group of undertakings, in particular for the purposes of control and reporting.***      ***deleted***

*Justification*

*These specifications are not necessary. The intra-group transfers are already considered in another part of the present proposal.*

## Amendment 149

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

*Text proposed by the Commission*

1. Each controller and processor and, if any, the controller's representative, shall maintain documentation of ***all processing operations*** under its responsibility.

*Amendment*

1. Each controller and processor and, if any, the controller's representative, shall maintain documentation of ***the main categories of processing*** under its responsibility.

#### *Justification*

*Effective data protection requires organisations to have a sufficiently documented understanding of their data processing activities. However, the maintenance of documentation for all processing operations is disproportionately burdensome. Instead of satisfying bureaucratic needs, the aim of the documentation should be to help controllers and processors meet their obligations.*

## Amendment 150

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

*Text proposed by the Commission*

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

*Amendment*

2. The documentation shall contain the following information:

#### *Justification*

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

## Amendment 151

### Proposal for a regulation Article 28 – paragraph 2 – point c

*Text proposed by the Commission*

(c) the purposes of ***the*** processing, ***including the legitimate interests pursued by the controller where the processing is***

*Amendment*

(c) the ***generic*** purposes of processing.

***based on point (f) of Article 6(1);***

*Justification*

*This amendment helps to reduce administrative burdens on both data controllers and data processors.*

**Amendment 152**

**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  
data relating to them;*** ***deleted***

*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 aims.*

**Amendment 153**

**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***

*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 aims.*

## Amendment 154

### Proposal for a regulation

#### Article 28 – paragraph 2 – point f

*Text proposed by the Commission*

*Amendment*

(f) where applicable, transfers of data to a third country or an international organisation, ***including the identification of that third country or international organisation and***, in case of transfers referred to in point (h) of Article 44(1), ***the documentation of appropriate*** safeguards;

(f) where applicable, transfers of ***personal*** data to a third country or an international organisation ***and*** in case of transfers referred to in point (h) of Article 44(1), ***a reference to the*** safeguards ***employed***;

#### *Justification*

*This amendment helps to reduce administrative burdens on both data controllers and data processors.*

## Amendment 155

### 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***

#### *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 aims.*

## Amendment 156

### Proposal for a regulation

#### Article 28 – paragraph 3

*Text proposed by the Commission*

*Amendment*

3. The controller and the processor and, if any, the controller's representative, shall

3. The controller and the processor and, if any, the controller's representative, shall

make the documentation available, on request, to the supervisory authority.

make the documentation available, on request, to the supervisory authority **and, in an electronic format, to the data subject.**

*Justification*

*The privacy policy should be made available to the data subject as well as to the supervisory authority.*

**Amendment 157**

**Proposal for a regulation**

**Article 28 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. a public authority when dealing with data other than personal sensitive data as referred to in Article 9, paragraph 1, of this Regulation.***

**Amendment 158**

**Proposal for a regulation**

**Article 28 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

***5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the documentation referred to in paragraph 1, to take account of in particular the responsibilities of the controller and the processor and, if any, the controller's representative.***

***deleted***

*Justification*

*There is no need for such further specification.*

**Amendment 159**

**Proposal for a regulation**  
**Article 28 – paragraph 6**

*Text proposed by the Commission*

*Amendment*

**6. The Commission may lay down standard forms for the documentation referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).** *deleted*

**Amendment 160**

**Proposal for a regulation**  
**Article 30 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

**3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for the technical and organisational measures referred to in paragraphs 1 and 2, including the determinations of what constitutes the state of the art, for specific sectors and in specific data processing situations, in particular taking account of developments in technology and solutions for privacy by design and data protection by default, unless paragraph 4 applies.** *deleted*

**Amendment 161**

**Proposal for a regulation**  
**Article 30 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

**4. The Commission may adopt, where necessary, implementing acts for specifying the requirements laid down in paragraphs 1 and 2 to various situations, in particular to:** *deleted*

- (a) prevent any unauthorised access to personal data;*
- (b) prevent any unauthorised disclosure, reading, copying, modification, erasure or removal of personal data;*
- (c) ensure the verification of the lawfulness of processing operations.*

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

**Amendment 162**  
**Proposal for a regulation**  
**Article 31 – paragraph 1**

*Text proposed by the Commission*

1. In the case of a personal data breach, the controller shall without undue delay *and, where feasible, not later than 24 hours after having become aware of it*, notify the personal data breach to the supervisory authority. *The notification to the supervisory authority shall be accompanied by a reasoned justification in cases where it is not made within 24 hours.*

*Amendment*

1. In the case of a personal data breach, *which would have a significantly adverse impact on the protection of the personal data or privacy of the data subject*, the controller shall without undue delay notify the personal data breach to the supervisory authority.

*Justification*

*After a data breach, the priority should be to take appropriate measures meant to reduce the damages. An explicit deadline shifts the priority to the notification.*

**Amendment 163**  
**Proposal for a regulation**  
**Article 31 – paragraph 3 – introductory part**

*Text proposed by the Commission*

3. The notification referred to in paragraph 1 must *at least*:

*Amendment*

3. The notification referred to in paragraph 1 must *if possible*:

**Amendment 164**  
**Proposal for a regulation**  
**Article 31 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

4. The controller shall document any personal data breaches, comprising the facts surrounding the breach, its effects and the remedial action taken. This documentation must enable the supervisory authority to verify compliance with this Article. The documentation shall only include the information necessary for that purpose.

4. The controller shall document any personal data breaches, comprising the facts surrounding the breach, its effects and the remedial action taken. This documentation must enable the supervisory authority to verify compliance with this Article **and with Article 30**. The documentation shall only include the information necessary for that purpose.

*Justification*

*The data controller must prove that he has taken any reasonably possible measure to avoid data breaches, besides showing he has managed correctly the breaches occurred.*

**Amendment 165**  
**Proposal for a regulation**  
**Article 31 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

***5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for establishing the data breach referred to in paragraphs 1 and 2 and for the particular circumstances in which a controller and a processor is required to notify the personal data breach.***

***deleted***

*Justification*

*There is no need for such further specification.*

**Amendment 166**  
**Proposal for a regulation**  
**Article 31 – paragraph 6**



*Text proposed by the Commission*

*Amendment*

**6. The Commission may lay down the standard format of such notification to the supervisory authority, the procedures applicable to the notification requirement and the form and the modalities for the documentation referred to in paragraph 4, including the time limits for erasure of the information contained therein. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).**

*deleted*

**Amendment 167**  
**Proposal for a regulation**  
**Article 32 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

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

1. When the personal data breach is likely to **have a significantly adverse impact on** the protection of the personal data or privacy of the data subject, **for example identity theft or fraud, physical harm, significant humiliation or damage to the reputation,** the controller shall, after the notification referred to in Article 31, communicate the personal data breach to the data subject **in a clear and concise manner and** without undue delay.

*Justification*

*There are cases where the cooperation of the data subject is fundamental to reduce the adverse effects of the data breach. For instance, if credit card numbers are stolen, the data subject is the only one empowered to separate due payments from undue ones. Therefore, his cooperation is even more important than the notification to the Authority. Adding such cases, and giving them the priority, becomes then very important.*

**Amendment 168**

**Proposal for a regulation**  
**Article 32 – paragraph 2**

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 169**

**Proposal for a regulation  
Article 32 – paragraph 3**

*Text proposed by the Commission*

3. The communication of a personal data breach to the data subject shall not be required if the controller demonstrates to the satisfaction of the supervisory authority that it has implemented appropriate technological protection measures, and that those measures were applied to the data concerned by the personal data breach. Such technological protection measures shall render the data unintelligible to any person who is not authorised to access it.

*Amendment*

3. The communication of a personal data breach to the data subject shall not be required if the *data breach does not have significant risk of harm to citizens and the* controller demonstrates to the satisfaction of the supervisory authority that it has implemented appropriate technological protection measures, and that those measures were applied to the data concerned by the personal data breach. Such technological protection measures shall render the data unintelligible to any person who is not authorised to access it.

**Amendment 170**

**Proposal for a regulation  
Article 32 – paragraph 5**

*Text proposed by the Commission*

***5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements as to the circumstances in which a personal data breach is likely to adversely affect the personal data referred to in paragraph 1.***

*Amendment*

*deleted*

## *Justification*

*In the Impact Assessment, the Data Protection Authority has all the information it needs to judge whether the consequences of a data breach are likely to have an adverse effect on the personal data or privacy of the data subject.*

### **Amendment 171**

#### **Proposal for a regulation Article 32 – paragraph 6**

*Text proposed by the Commission*

*Amendment*

**6. The Commission may lay down the format of the communication to the data subject referred to in paragraph 1 and the procedures applicable to that communication. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).**

*deleted*

### **Amendment 172**

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

*Text proposed by the Commission*

*Amendment*

1. Where processing operations present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, the controller or the processor acting on the controller's behalf shall carry out an assessment of the impact of the envisaged processing operations on the protection of personal data.

1. Where processing operations present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, ***or where processing takes place as a public sector infrastructure project*** the controller or the processor acting on the controller's behalf shall carry out an assessment of the impact of the envisaged processing operations on the protection of personal data.

### **Amendment 173**

#### **Proposal for a regulation Article 33 – paragraph 2 – introductory part**

*Text proposed by the Commission*

*Amendment*

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

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

*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 ensure legal certainty.*

**Amendment 174**

**Proposal for a regulation**

**Article 33 – paragraph 2 – point b**

*Text proposed by the Commission*

*Amendment*

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

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

**Amendment 175**

**Proposal for a regulation**

**Article 33 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

3. The assessment shall contain at least a general description of the envisaged processing operations, an assessment of the risks to the rights and freedoms of data subjects, the measures envisaged to address the risks, safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Regulation, taking

3. The assessment shall contain at least a general description of the envisaged processing operations, an assessment of the risks to the rights and freedoms of data subjects, the measures envisaged to address the risks, safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Regulation, taking

into account the rights and legitimate interests of data subjects and other persons concerned.

into account the rights and legitimate interests of data subjects and other persons concerned ***and also taking into account modern technologies and methods that can improve citizens' privacy.***

## **Amendment 176**

### **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***

*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 177**

### **Proposal for a regulation Article 33 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

***5. Where the controller is a public authority or body and where the processing results from a legal obligation pursuant to point (c) of Article 6(1) providing for rules and procedures pertaining to the processing operations and regulated by Union law, paragraphs 1 to 4 shall not apply, unless Member States deem it necessary to carry out such assessment prior to the processing activities.***

***deleted***

## **Amendment 178**

**Proposal for a regulation**  
**Article 33 – paragraph 7**

*Text proposed by the Commission*

*Amendment*

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

**Amendment 179**

**Proposal for a regulation**  
**Article 34 – paragraph 8**

*Text proposed by the Commission*

*Amendment*

**8. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for determining the high degree of specific risk referred to in point (a) of paragraph 2.** *deleted*

**Amendment 180**

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

*Text proposed by the Commission*

*Amendment*

1. The controller and the processor **shall** designate a data protection officer in any case where:

1. The controller and the processor **should** designate a data protection officer in any case where:

*Justification*

*The appointment of a DPO should not be encouraged but not mandatory, to ensure this would generate disproportionate financial and administrative obligations on organisations whose activities do not present a substantial risk to the privacy of the data subject. This AM is linked to ECR AMs to Article 79, which ensure DPAs take into consideration the presence, or lack, of a DPO when deciding upon administrative sanctions and empowers DPAs to appoint*

*DPOs as form of administrative sanction.*

### **Amendment 181**

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

#### **Article 35 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

***(b) the processing is carried out by an enterprise employing 250 persons or more; or***

***deleted***

### **Amendment 182**

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

#### **Article 35 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

***2. In the case referred to in point (b) of paragraph 1, a group of undertakings may appoint a single data protection officer.***

***deleted***

*Justification*

*After deleting point (b) of paragraph (1), this paragraph no longer makes any sense.*

### **Amendment 183**

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

#### **Article 35 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

5. The controller or processor shall designate the data protection officer on the basis of professional qualities and, in particular, expert knowledge of data protection law and practices and ability to fulfil the tasks referred to in Article 37. The necessary level of expert knowledge shall be determined in particular according to the data processing carried out and the protection required for the personal data

5. The controller or processor shall designate the data protection officer on the basis of professional qualities and, in particular, expert knowledge of data protection law and practices and ability to fulfil the tasks referred to in Article 37. The necessary level of expert knowledge shall be determined in particular according to the data processing carried out and the protection required for the personal data

processed by the controller or the processor.

processed by the controller or the processor. ***The data protection officer must be given sufficient time and resources to carry out these tasks.***

#### **Amendment 184**

##### **Proposal for a regulation Article 35 – paragraph 7**

*Text proposed by the Commission*

*Amendment*

7. The controller or the processor shall designate a data protection officer for a period of at least two years. The data protection officer may be reappointed for further terms. ***During their term of office, the data protection officer may only be dismissed, if the data protection officer no longer fulfils the conditions required for the performance of their duties.***

7. The controller or the processor shall designate a data protection officer for a period of at least two years. The data protection officer may be reappointed for further terms.

*Justification*

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

#### **Amendment 185**

##### **Proposal for a regulation Article 35 – paragraph 10**

*Text proposed by the Commission*

*Amendment*

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

10. Data subjects shall have the right to contact the data protection officer on all issues related to exercising the rights under this Regulation.

#### **Amendment 186**

##### **Proposal for a regulation Article 35 – paragraph 11**



*Text proposed by the Commission*

*Amendment*

**11. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the core activities of the controller or the processor referred to in point (c) of paragraph 1 and the criteria for the professional qualities of the data protection officer referred to in paragraph 5.**

**deleted**

*Justification*

*Such further specifications are not necessary.*

**Amendment 187**  
**Proposal for a regulation**  
**Article 37 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

**2. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for tasks, certification, status, powers and resources of the data protection officer referred to in paragraph 1.**

**deleted**

*Justification*

*There is no need for such further specifications.*

**Amendment 188**  
**Proposal for a regulation**  
**Article 41 – paragraph 2 – point a**

*Text proposed by the Commission*

*Amendment*

(a) the rule of law, relevant legislation in force, both general and sectoral, including concerning public security, defence, national security and criminal law, the

(a) the rule of law, relevant legislation in force, both general and sectoral, including concerning public security, defence, national security and criminal law, the

professional rules and security measures which are complied with in that country or by that international organisation, as well as effective and enforceable rights including effective administrative and judicial redress for data subjects, in particular for those data subjects residing in the Union whose personal data are being transferred;

professional rules and security measures which are complied with in that country or by that international organisation, ***jurisprudential precedents*** as well as effective and enforceable rights including effective administrative and judicial redress for data subjects, in particular for those data subjects residing in the Union whose personal data are being transferred;

*Justification*

*In some countries, the precedent rulings of the Courts have a high relevance (e.g.: Common Law Countries).*

**Amendment 189**  
**Proposal for a regulation**  
**Article 41 – paragraph 7**

*Text proposed by the Commission*

7. The Commission shall publish in the Official Journal of the European Union a list of those third countries, territories and processing sectors within a third country and international organisations where it has decided that an adequate level of protection is or is not ensured.

*Amendment*

7. The Commission shall publish in the Official Journal of the European Union ***and on its website*** a list of those third countries, territories and processing sectors within a third country and international organisations where it has decided that an adequate level of protection is or is not ensured.

*Justification*

*The website makes it easier to update and, in many cases, to find.*

**Amendment 190**  
**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

*Amendment*

1. Where the Commission has taken no decision pursuant to Article 41, a controller or processor may transfer personal data to a third country or an international organisation only if the controller or

processor has adduced appropriate safeguards with respect to the protection of personal data in a legally binding instrument.

processor has adduced appropriate safeguards with respect to the protection of personal data in a legally binding instrument, ***and where appropriate pursuant to an impact assessment, where the controller or processor has ensured that the recipient of data in a third country maintains high standards of data protection.***

*Justification*

*In accordance with ECR Amendments aimed at incentivising controllers to have high standards of data protection by encouraging them to undertake an impact assessment, on an optional basis.*

**Amendment 191**

**Proposal for a regulation**

**Article 42 – paragraph 2 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

***(ca) standard data protection clauses, as adopted according to points (a) and (b), between the data controller or data processor and the recipient of data situated in a third country, which may include standard terms for onward transfers to a recipient situated in a third country;***

*Justification*

*The Parliament's policy department study on reforming the data protection package points out that under the proposed Regulation, standard clauses do not extend to agreements between processors and sub-processors. This gap could significantly disadvantage EU firms and new technology start-ups. This amendment seeks to close this gap.*

**Amendment 192**

**Proposal for a regulation**

**Article 44 – paragraph 1 – point h**

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 193**

**Proposal for a regulation  
Article 44 – paragraph 7**

*Text proposed by the Commission*

***7. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying ‘important grounds of public interest’ within the meaning of point (d) of paragraph 1 as well as the criteria and requirements for appropriate safeguards referred to in point (h) of paragraph 1.***

*Amendment*

***deleted***

**Amendment 194  
Proposal for a regulation  
Article 62**

*Text proposed by the Commission*

***Article 62***

***Implementing acts***

***1. The Commission may adopt implementing acts for:***

*Amendment*

***deleted***

*(a) deciding on the correct application of this Regulation in accordance with its objectives and requirements in relation to matters communicated by supervisory authorities pursuant to Article 58 or 61, concerning a matter in relation to which a reasoned decision has been adopted pursuant to Article 60(1), or concerning a matter in relation to which a supervisory authority does not submit a draft measure and that supervisory authority has indicated that it does not intend to follow the opinion of the Commission adopted pursuant to Article 59;*

*(b) deciding, within the period referred to in Article 59(1), whether it declares draft standard data protection clauses referred to in point (d) of Article 58(2), as having general validity;*

*(c) specifying the format and procedures for the application of the consistency mechanism referred to in this section;*

*(d) specifying the arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the European Data Protection Board, in particular the standardised format referred to in Article 58(5), (6) and (8).*

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

*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.*

*3. The absence or adoption of a measure under this Section does not prejudice any other measure by the Commission under the Treaties.*

*Justification*

*It is not wise to overload the Commission with such tasks, which can be more effectively handled by the European Data Protection Board.*

**Amendment 195**  
**Proposal for a regulation**  
**Article 63 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 63a**

***Appealing procedures***

***(1) Without prejudice to the competences of the European Court of Justice, the European Data Protection Board can issue binding opinions if:***

***(a) a data subject or data controller appeals on ground of inconsistent application of the present Regulation across the Member States: or***

***(b) a draft measure of the competent authority has gone through the whole Consistency Mechanism described in this Section without being yet perceived as consistent with the application of this Regulation in the whole EU.***

***(2) Before issuing such opinion, the European Data Protection Board shall take into consideration every information the competent Data Protection Authority knows, including the point of view of the interested parties.***

*Justification*

*Notwithstanding the competence of the Data Protection Authority of the main establishment Country, an additional measure is needed to ensure consistency in the whole single market for the remote case of a measure so controversial that the whole consistency mechanism has failed to produce a wide consensus.*

**Amendment 196**  
**Proposal for a regulation**  
**Article 66 – paragraph 1 – point d**

*Text proposed by the Commission*

*Amendment*

(d) issue opinions on draft decisions of supervisory authorities pursuant to the consistency mechanism referred to in Article 57;

(d) issue opinions on draft decisions of supervisory authorities pursuant to the consistency mechanism referred to in Article 57 **and in Article 63a**;

*Justification*

*This amendment matches the new Article 63a*

## **Amendment 197**

### **Proposal for a regulation Article 73 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Without prejudice to any other administrative or judicial remedy, every data subject shall have the right to lodge a complaint with a supervisory authority in any Member State if they consider that the processing of personal data relating to them does not comply with this Regulation.

1. Without prejudice to any other administrative or judicial remedy, every data subject shall have the right to lodge a complaint with a supervisory authority in any Member State if they consider that the processing of personal data relating to them does not comply with this Regulation.  
***This complaint must not inflict costs on the data subject.***

## **Amendment 198**

### **Proposal for a regulation Article 73 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

***2. Any body, organisation or association which aims to protect data subjects' rights and interests concerning the protection of their personal data and has been properly constituted according to the law of a Member State shall have the right to lodge a complaint with a supervisory authority in any Member State on behalf of one or more data subjects if it considers that a data subject's rights under this***

***deleted***

*Regulation have been infringed as a result of the processing of personal data.*

## **Amendment 199**

### **Proposal for a regulation Article 74 – paragraph 1**

*Text proposed by the Commission*

1. *Each* natural or legal person shall have the right to a judicial remedy against decisions of a supervisory authority concerning them.

*Amendment*

1. ***Without prejudice to the procedure described in Article 63a (new), each natural or legal person, including each data controller and data processor, shall have the right to a judicial remedy against decisions of a supervisory authority concerning or affecting them.***

*Justification*

*This amendment is essential to clarify the basic principle that data controllers may seek a judicial remedy when they are affected by decisions, even where they themselves are not the direct subject of the decision by a national authority.*

## **Amendment 200**

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

*Text proposed by the Commission*

***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.***

*Amendment*

***deleted***

*Justification*

*This possibility would bring no added value for the public and might jeopardise the cooperation of the supervisory authorities under the consistency mechanism.*



## Amendment 201

### Proposal for a regulation Article 76 – paragraph 1

*Text proposed by the Commission*

**1. Any body, organisation or association referred to in Article 73(2) shall have the right to exercise the rights referred to in Articles 74 and 75 on behalf of one or more data subjects.**

*Amendment*

**deleted**

## Amendment 202

### Proposal for a regulation Article 77 – paragraph 1

*Text proposed by the Commission*

1. Any person who has suffered damage as a result of an unlawful processing operation or of an action incompatible with this Regulation shall have the right to receive compensation from the controller or the processor for the damage suffered.

*Amendment*

1. Any person who has suffered **material or immaterial** damage as a result of an unlawful processing operation, **including blacklisting**, or of an action incompatible with this Regulation shall have the right to receive compensation from the controller or the processor for the damage suffered **and for any emotional injury**.

## Amendment 203

### Proposal for a regulation Article 78 – paragraph 1

*Text proposed by the Commission*

1. Member States shall lay down the rules on penalties, applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented, including where the controller did not comply with the obligation to designate a representative. The penalties provided for must be effective, proportionate and dissuasive.

*Amendment*

1. Member States shall lay down the rules on penalties, applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented, including where the controller did not comply with the obligation to designate a representative. The penalties provided for must be effective, **consistent** proportionate and dissuasive.

## Justification

*Penalties must be applied consistently throughout the European Union.*

### Amendment 204

#### Proposal for a regulation Article 79 – paragraph 1

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

1. Each supervisory authority shall be empowered to impose administrative sanctions in accordance with this Article.

##### *Amendment*

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

### Amendment 205

#### 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, **non discriminatory** 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 category of personal data**, the degree of **harm or risk of harm created by the violation**, **the degree of** responsibility of the natural or legal person and of previous breaches by this person, the technical and organisational measures and procedures implemented pursuant to Article 23 and the degree of co-operation with the supervisory authority in order to remedy the breach. **Where appropriate, the Data Protection Authority shall also be empowered to require that a data protection officer is appointed if the body, organisation or association has opted not to do so.**

## *Justification*

*This AM aims to ensure that deliberate or reckless violations merit more substantial penalties than merely negligent violations. The package of amendments relating to administrative sanctions are aimed at ensuring that the penalty is proportionate to the conduct, and the most punitive sanctions are reserved for the most serious misconduct. The DPA's ability to require the appointment of a DPO is also aimed at ensuring proportionality in terms of sanctions.*

### **Amendment 206**

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

#### **Article 79 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Aggravating factors shall include in particular:***

***(a) repeated violations committed in reckless disregard of applicable law;***

***(b) refusal to co-operate with or obstruction of an enforcement process;***

***(c) violations that are deliberate, serious and likely to cause substantial damage;***

***(d) a data protection impact assessment has not been undertaken;***

***(e) a data protection officer has not been appointed.***

### **Amendment 207**

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

#### **Article 79 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***2b. Mitigating factors shall include:***

***(a) measures having been taken by the natural or legal person to ensure compliance with relevant obligations;***

***(b) genuine uncertainty as to whether the activity constituted a violation of the relevant obligations;***

- (c) immediate termination of the violation upon knowledge;*
- (d) co-operation with any enforcement processes;*
- (e) a data protection impact assessment has been undertaken;*
- (f) a data protection officer has been appointed.*

**Amendment 208**

**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).**

*Justification*

*See Article 79, paragraph 3.*

**Amendment 209**

**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**

*deleted*

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

*(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.*

*Justification*

*See Article 79, paragraph 3.*

## Amendment 210

### 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:**
- (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;**
  - (i) does not carry out a data protection impact assessment pursuant or processes personal data without prior authorisation or prior consultation of the supervisory authority pursuant to Articles 33 and 34;**

*deleted*

*(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.*

#### *Justification*

*See Article 79, paragraph 3.*

### **Amendment 211**

#### **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*

*deleted*

*in paragraph 2.*

*Justification*

*See Article 79, paragraph 3.*

**Amendment 212**  
**Proposal for a regulation**  
**Article 81 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. Within the limits of this Regulation and in accordance with point (h) of Article 9(2), processing of personal data concerning health must be on the basis of Union law or Member State law which shall provide for suitable and specific measures to safeguard the data subject's legitimate interests, and be necessary for:

*Amendment*

1. Within the limits of this Regulation and in accordance with point (h) of Article 9(2), processing of personal data concerning health must be on the basis of Union law or Member State law which shall provide for suitable, **consistent** and specific measures to safeguard the data subject's legitimate interests, and be necessary for:

*Justification*

*Adding the consistency requirement allows the Member States' laws to have a lesser degree of freedom, bearing in mind the objective of the Single Market.*

**Amendment 213**  
**Proposal for a regulation**  
**Article 81 – paragraph 3**

*Text proposed by the Commission*

***3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying other reasons of public interest in the area of public health as referred to in point (b) of paragraph 1, as well as criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1.***

*Amendment*

***deleted***



## *Justification*

*There is no need for such further specifications.*

### **Amendment 214**

#### **Proposal for a regulation Article 82 – paragraph 1**

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

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

##### *Amendment*

1. Within the limits of this Regulation, Member States may adopt by law ***or collective agreement among employers and employees*** specific rules regulating the processing of employees' personal data in the employment context, in particular for the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organisation of work, health and safety at work, ***criminal conviction*** and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship. ***This Regulation must, in accordance with the principles of Article 5, respect collective agreements regarding decentralized regulation of the employer's data processing concluded in accordance with this Regulation.***

### **Amendment 215**

#### **Proposal for a regulation Article 82 – paragraph 3**

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

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

##### *Amendment*

3. ***This regulation recognizes the role of the social partners. In Member States where it has been left to the parties on the***

*specifying the criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1.*

*labour market to regulate wages and other work conditions through collective agreements, the social partners' obligations and rights under collective agreements should be taken into specific consideration when applying Article 6.1 (f).*

**Amendment 216**  
**Proposal for a regulation**  
**Article 83 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

*3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the processing of personal data for the purposes referred to in paragraph 1 and 2 as well as any necessary limitations on the rights of information to and access by the data subject and detailing the conditions and safeguards for the rights of the data subject under these circumstances.*

*deleted*

*Justification*

*There is no need for such further specifications.*

**Amendment 217**

**Proposal for a regulation**  
**Article 83 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

*3a. Member States can adopt specific measures to regulate the processing of personal data for historical, statistical or scientific purposes while respecting the provisions of paragraph 1 and 2 of this article as well as respecting the Charter of Fundamental Rights of the European Union.*

## Amendment 218

### Proposal for a regulation

#### Article 83 – paragraph 3 b (new)

*Text proposed by the Commission*

*Amendment*

***3b. A Member State adopting specific measures according to article 83, paragraph 3a, must inform the Commission about the adopted measures prior to the date set in article 91, paragraph 2, and without undue delay inform the Commission about eventual changes at a later stage of the measures.***

## Amendment 219

### Proposal for a regulation

#### Article 84 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. Each Member State shall notify to the Commission the rules adopted pursuant to paragraph 1, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.

2. Each Member State shall notify to the Commission the rules adopted pursuant to paragraph 1, ***in order for the Commission to verify the consistency with the other Member States rules***, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.

#### *Justification*

*The Single market needs consistent application of the present Regulation.*

## Amendment 220

### 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)***,

2. The delegation of power referred to in Article 8(3), Article 9(3), Article 12(5), Article ***20(5)***, Article 23(3), Article 30(3),

*Article 17(9), Article 20(6), Article 22(4), Article 23(3), Article 26(5), Article 28(5), Article 30(3), Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11), Article 37(2), Article 39(2), Article 43(3), Article 44(7), Article 79(6), Article 81(3), Article 82(3) and Article 83(3)* shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

Article 33(6), Article 34(8), Article 39(2), Article 43(3), Article 44(7), Article 79(7) and Article 82(3) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

#### *Justification*

*It is necessary to match the amendments that deleted such power. Where there has been a correction of the paragraph referred to, a typing error had been found.*

### **Amendment 221** **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 12(5), Article 20(5), Article 23(3), Article 30(3), Article 33(6), Article 34(8), Article 39(2), Article 43(3), Article 44(7), Article 79(7), and Article 82(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.

#### *Justification*

*This amendment completes the ones deleting this power. Where the referred Article has been amended, a typing mistake had been found.*

**Amendment 222**  
**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 12(5), Article **20(5)**, Article 23(3), Article 30(3), Article 33(6), Article 34(8), Article 39(2), Article 43(3), Article 44(7), Article 79(7), **and** Article 82(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.

*Justification*

*This amendment is necessary to make effective those amendments that deleted the power referred to at the beginning of this article.*

**Amendment 223**  
**Proposal for a regulation**  
**Article 86 – paragraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***5a. When adopting the acts referred to in this article, the Commission shall promote technological neutrality.***

## Amendment 224

### Proposal for a regulation Article 89 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. In relation to natural or legal persons who are under obligations to report personal data breaches under Directive 2002/58/EC as amended by Directive 2009/136/EC in relation to the processing of personal data in connection with the provision of publicly available electronic communications services, this Regulation shall not impose additional obligations in relation to the process of notifying a personal data breach to the supervisory authority and in relation to the process of communicating a personal data breach to the data subjects. Such a natural or legal person shall notify personal data breaches affecting all personal data for which it is a controller in accordance with the personal data breach notification process set out in Directive 2002/58/EC as amended by Directive 2009/136/EC.***

#### *Justification*

*This new paragraph establishes that electronic communications service providers are subject to a single notification regime for any breaches relating to the data they process, not multiple regimes depending on the service offered or the data held. This ensures a level playing field among industry players.*

## Amendment 225

### Proposal for a regulation Article 89 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. Article 1(2) of Directive 2002/58/EC shall be deleted.

2. Article 1(2), **Article 2(c) and Article 9** of Directive 2002/58/EC shall be deleted.

### *Justification*

*This amendment provides an essential alignment of Directive 2002/58/EC with the present Regulation. Furthermore, it avoids double-regulation, which may seriously harm the competitiveness of sectors covered by Directive 2002/58/EC. The general requirements of the present Regulation, including those relating to privacy impact assessments, will ensure that location is treated with the appropriate degree of care regardless of source or the industry of its data controller.*

### **Amendment 226**

#### **Proposal for a regulation Article 90 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***Delegated acts and implementing acts adopted by the Commission should be evaluated by the Parliament and the Council every second year.***

## PROCEDURE

<b>Title</b>	Protection of individuals with regard to the processing of personal data, and the free movement of such data (General Data Protection Regulation)			
<b>References</b>	COM(2012)0011 – C7-0025/2012 – 2012/0011(COD)			
<b>Committee responsible</b> Date announced in plenary	LIBE 16.2.2012			
<b>Opinion by</b> Date announced in plenary	IMCO 16.2.2012			
<b>Rapporteur</b> Date appointed	Lara Comi 29.2.2012			
<b>Discussed in committee</b>	21.6.2012	10.10.2012	28.11.2012	17.12.2012
<b>Date adopted</b>	23.1.2013			
<b>Result of final vote</b>	+: -: 0:	19 16 1		
<b>Members present for the final vote</b>	Preslav Borissov, Cristian Silviu Buşoi, Jorgo Chatzimarkakis, Sergio Gaetano Cofferati, Birgit Collin-Langen, Lara Comi, Anna Maria Corazza Bildt, Cornelis de Jong, Christian Engström, Dolores García-Hierro Caraballo, Evelyne Gebhardt, Małgorzata Handzlik, Malcolm Harbour, Philippe Juvin, Hans-Peter Mayer, Angelika Niebler, Sirpa Pietikäinen, Phil Prendergast, Mitro Repo, Heide Rühle, Christel Schaldemose, Andreas Schwab, Catherine Stihler, Emilie Turunen, Bernadette Vergnaud, Barbara Weiler			
<b>Substitute(s) present for the final vote</b>	Raffaele Baldassarre, Jürgen Creutzmann, Anna Hedh, Constance Le Grip, Morten Løkkegaard, Emma McClarkin, Konstantinos Poupakis, Kyriacos Triantaphyllides, Patricia van der Kammen, Sabine Verheyen			