



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Industry, Research and Energy

2012/0011(COD)

20.12.2012

AMENDMENTS

165 - 356

Draft opinion
Seán Kelly
(PE496.562v01-00)

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

Proposal for a regulation
(COM(2012)0011 – C7-0025/2012 – 2012/0011(COD))

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PE502.053v01-00

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United in diversity

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Amendment 165

Paul Rübzig

Proposal for a regulation

Title 1

Text proposed by the Commission

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)

(Text with EEA relevance)

Amendment

Proposal for a
REGULATION OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL
on the protection of *natural and legal
persons* with regard to the processing of
personal data and on the free movement of
such data (General Data Protection
Regulation)

(Text with EEA relevance)

Or. de

Amendment 166

Silvia-Adriana Țicău

Proposal for a regulation

Citation 1 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 167

Silvia-Adriana Țicău

Proposal for a regulation

Citation 1 b (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 168
Paul Rübig

Proposal for a regulation
Recital 1

Text proposed by the Commission

Amendment

(1) The protection of natural persons in relation to the processing of personal data is a fundamental right. Article 8(1) of the Charter of Fundamental Rights of the European Union and Article 16(1) of the Treaty lay down that everyone has the right to the protection of personal data concerning him or her.

(1) The protection of natural ***and legal*** persons in relation to the processing of personal data is a fundamental right. Article 8(1) of the Charter of Fundamental Rights of the European Union and Article 16(1) of the Treaty lay down that everyone has the right to the protection of personal data concerning him or her.

Or. de

Amendment 169
Paul Rübig

Proposal for a regulation
Recital 2

Text proposed by the Commission

Amendment

(2) The processing of personal data is designed to serve man; the principles and rules on the protection of ***individuals*** with regard to the processing of their personal data should, whatever the nationality or residence of natural persons, respect their fundamental rights and freedoms, notably their right to the protection of personal

(2) The processing of personal data is designed to serve man; the principles and rules on the protection of ***natural and legal persons*** with regard to the processing of their personal data should, whatever the nationality or residence of natural persons ***or the domicile of legal persons***, respect their fundamental rights and freedoms,

data. It should contribute to the accomplishment of an area of freedom, security and justice and of an economic union, to economic and social progress, the strengthening and the convergence of the economies within the internal market, and the well-being of individuals.

notably their right to the protection of personal data. It should contribute to the accomplishment of an area of freedom, security and justice and of an economic union, to economic and social progress, the strengthening and the convergence of the economies within the internal market, and the well-being of individuals.

Or. de

Amendment 170
Gunnar Hökmark

Proposal for a regulation
Recital 2 a (new)

Text proposed by the Commission

Amendment

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

Or. sv

Amendment 171
Gunnar Hökmark

Proposal for a regulation
Recital 3 a (new)

Text proposed by the Commission

Amendment

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

Or. sv

Amendment 172
Amelia Andersdotter

Proposal for a regulation
Recital 5

Text proposed by the Commission

(5) Rapid technological developments and globalisation have brought new challenges for the protection of personal data. The scale of data sharing and **collecting** has increased spectacularly. Technology allows both private companies and public authorities to make use of personal data on an unprecedented scale in order to pursue their activities. Individuals increasingly make personal information available publicly and globally. Technology has transformed both the economy and social life, and requires **to further** facilitate the free flow of data within the Union and the transfer to third countries and international organisations, **while** ensuring an high level of the protection of personal data.

Amendment

(5) Rapid technological developments and globalisation have brought new challenges for the protection of personal data. The scale of data sharing and **collection** has increased spectacularly. Technology allows both private companies and public authorities to make use of personal data on an unprecedented scale in order to pursue their activities. Individuals increasingly make personal information available publicly and globally. Technology has transformed both the economy and social life, and requires **improved legal safeguards which will** facilitate the free flow of data within the Union and the transfer to third countries and international organisations, ensuring an high level of the protection of personal data.

Or. en

Justification

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

Amendment 173
András Gyürk

Proposal for a regulation
Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) Amongst other technologies, cloud computing has the potential to transform the European economy, provided, that

appropriate data safety and data protection measures are put in place. In order to ensure the highest level of safety of personal data, it is essential to understand rights and obligations of data controllers and data processors within the Regulation.

Or. en

Amendment 174
Silvia-Adriana Țicău

Proposal for a regulation
Recital 7

Text proposed by the Commission

(7) The objectives and principles of Directive 95/46/EC remain sound, but it has not prevented fragmentation in the way data protection is implemented across the Union, legal uncertainty and a widespread public perception that there are significant risks for the protection of individuals associated notably with online activity. Differences in the level of protection of the rights and freedoms of individuals, notably to the right to the protection of personal data, with regard to the processing of personal data afforded in the Member States may prevent the free flow of personal data throughout the Union. These differences may therefore constitute an obstacle to the pursuit of economic activities at the level of the Union, distort competition and impede authorities in the discharge of their responsibilities under Union law. This difference in levels of protection is due to the existence of differences in the implementation and application of Directive 95/46/EC.

Amendment

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Justification

Differences in the level of protection of the rights and freedoms of individuals, notably to the right to the protection of personal data, with regard to the processing of personal data afforded in the Member States may prevent the free flow of personal data throughout the Union and may create legal uncertainty regarding the respect of the fundamental rights to privacy and data protection.

Amendment 175**Amelia Andersdotter****Proposal for a regulation****Recital 7***Text proposed by the Commission*

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Amendment

(7) The objectives and principles of Directive 95/46/EC remain sound, but *this* has not prevented fragmentation in the way data protection is implemented across the Union, legal uncertainty and a widespread public perception that there are significant risks for the protection of individuals associated notably with online activity. Differences in the level of protection of the rights and freedoms of individuals, notably to the right to the protection of personal data, with regard to the processing of personal data afforded in the Member States may prevent the free flow of personal data throughout the Union *and inevitably lead to breaches of the fundamental rights to privacy and data protection*. These differences may therefore constitute an obstacle to the pursuit of economic activities at the level of the Union, distort competition and impede authorities in the discharge of their responsibilities under Union law. This difference in levels of protection is due to the existence of differences in the implementation and application of Directive 95/46/EC.

Justification

Inconsistent application of data protection legislation inevitably leads to restrictions on the fundamental rights of citizens.

Amendment 176
Amelia Andersdotter

Proposal for a regulation
Recital 8

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 177
Paul Rübzig

Proposal for a regulation
Recital 8

Text proposed by the Commission

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

Amendment

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

Or. de

Amendment 178
Amelia Andersdotter

Proposal for a regulation
Recital 9

Text proposed by the Commission

(9) Effective protection of personal data throughout the Union requires strengthening and detailing the rights of data subjects and the obligations of those who process and determine the processing of personal data, but also equivalent powers for monitoring and ensuring compliance with the rules for the protection of personal data and equivalent sanctions for offenders in the Member States.

Amendment

(9) Effective protection of personal data throughout the Union requires strengthening and detailing the rights of data subjects and the obligations of those who process and determine the processing of personal data, but also equivalent powers **and technical and operational capacity** for monitoring and ensuring compliance with the rules for the protection of personal data and equivalent sanctions for offenders in the Member States.

Or. en

Justification

Strong, independent supervisory authorities are one of the necessary conditions for effective

data protection. They should be free from external influence, as confirmed by the ECJ (C-518/07 and C-614/10), and should have the necessary resources – financial and human – to ensure enforcement of data protection legislation. These changes aim to provide supervisory authorities with the independence and resources they need to effectively protect the fundamental right to data protection.

Amendment 179
Jean-Pierre Audy

Proposal for a regulation
Recital 10

Text proposed by the Commission

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

Amendment

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

Or. fr

Amendment 180
Amelia Andersdotter

Proposal for a regulation
Recital 11

Text proposed by the Commission

(11) In order to ensure a consistent level of protection for individuals throughout the Union and to prevent divergences hampering the free movement of data within the internal market, a Regulation is necessary to provide legal certainty and transparency for economic operators, including micro, small and medium-sized enterprises, and to provide individuals in

Amendment

(11) In order to ensure a consistent level of protection for individuals throughout the Union and to prevent divergences hampering the free movement of data within the internal market, a Regulation is necessary to provide legal certainty and transparency for economic operators, including micro, small and medium-sized enterprises, and to provide individuals in

all Member States with the same level of legally enforceable rights and obligations and responsibilities for controllers and processors, to ensure consistent monitoring of the processing of personal data, and equivalent sanctions in all Member States as well as effective co-operation by the supervisory authorities of different Member States. To take account of the specific situation of micro, small and medium-sized enterprises, this Regulation includes a number of derogations. In addition, the Union institutions and bodies, Member States and their supervisory authorities are encouraged to take account of the specific needs of micro, small and medium-sized enterprises in the application of this Regulation. The notion of micro, small and medium-sized enterprises should draw upon Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

all Member States with the same level of legally enforceable rights and obligations and responsibilities for controllers and processors, to ensure consistent monitoring of the processing of personal data, and equivalent sanctions in all Member States as well as effective co-operation by the supervisory authorities of different Member States. ***Where demonstrably necessary and without undermining either protection of personal data or single market principles***, to take account of the specific situation of micro, small and medium-sized enterprises, this Regulation includes a number of derogations. In addition, the Union institutions and bodies, Member States and their supervisory authorities are encouraged to take account of the specific needs of micro, small and medium-sized enterprises in the application of this Regulation. The notion of micro, small and medium-sized enterprises should draw upon Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

Or. en

Justification

Exceptions for micros, small and medium-sized businesses should only be given when necessary. They should also be implemented in a way which does not undermine either predictability and legal certainty for citizens or the single market for businesses.

Amendment 181

András Gyürk

Proposal for a regulation

Recital 11

Text proposed by the Commission

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Amendment

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

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

Or. en

Amendment 182
Rachida Dati

Proposal for a regulation
Recital 11

Text proposed by the Commission

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

Amendment

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

Or. fr

Justification

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

Amendment 183
Paul Rübige

Proposal for a regulation
Recital 12

Text proposed by the Commission

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

Amendment

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

Or. de

Amendment 184
Paul Rübige

Proposal for a regulation
Recital 13

Text proposed by the Commission

(13) The protection of **individuals** should be technologically neutral and not depend on the techniques used; otherwise this would create a serious risk of circumvention. The protection of individuals should apply to processing of personal data by automated means as well as to manual processing, if the data are contained or are intended to be contained in a filing system. Files or sets of files as well as their cover pages, which are not structured according to specific criteria,

Amendment

(13) The protection of **natural and legal persons** should be technologically neutral and not depend on the techniques used; otherwise this would create a serious risk of circumvention. The protection of individuals should apply to processing of personal data by automated means as well as to manual processing, if the data are contained or are intended to be contained in a filing system. Files or sets of files as well as their cover pages, which are not structured according to specific criteria,

should not fall within the scope of this Regulation.

should not fall within the scope of this Regulation.

Or. de

Amendment 185
Amelia Andersdotter

Proposal for a regulation
Recital 14

Text proposed by the Commission

(14) This Regulation does not address issues of protection of fundamental rights and freedoms or the free flow of data related to activities which fall outside the scope of Union law, ***nor does it cover the processing of personal data by the Union institutions, bodies, offices and agencies, which are subject to Regulation (EC) No 45/2001⁴⁵, or the processing of personal data by the Member States when carrying out activities in relation to the common foreign and security policy of the Union.***

Amendment

(14) This Regulation does not address issues of protection of fundamental rights and freedoms or the free flow of data related to activities which fall outside the scope of Union law.

Or. en

Justification

The logic put forward by the Commission when proposing a Regulation – namely, the need for a consistent approach to protection of the fundamental right to privacy – is contradicted by this very broad set of exceptions. Consequently, these exceptions must, in the interest of consistency, be deleted. See also the proposed amendments to Article 2.

Amendment 186
Amelia Andersdotter

Proposal for a regulation
Recital 16

Text proposed by the Commission

(16) 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, is subject of a specific legal instrument at Union level. Therefore, this Regulation should not apply to the processing activities for those purposes. However, data processed by public authorities under this Regulation when used for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties should be governed by the more specific legal instrument at Union level (Directive XX/YYYY).

Amendment

(16) The protection of individuals with regard to the processing of personal data by competent **public** 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, is subject of a specific legal instrument at Union level. Therefore, this Regulation should not apply to the processing activities for those purposes. However, data processed by public authorities under this Regulation when used for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties should be governed by the more specific legal instrument at Union level (Directive XX/YYYY).

Or. en

Justification

Clarification in line with proposed amendment to Article 2.

Amendment 187
Amelia Andersdotter

Proposal for a regulation
Recital 17

Text proposed by the Commission

(17) This Regulation should 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

(17) *The liability limitations of the Directive on Electronic Commerce 2000/31/EC are horizontal in nature and therefore apply to relevant activities of all information society service providers. This Regulation establishes the rules for the processing of personal data while the Directive on Electronic Commerce sets*

out the conditions by which an information service provider is liable for third party infringements of the law. In the interest of legal certainty for European citizens and businesses, the clear and distinct roles of the two instruments need to be consistently respected. This Regulation should 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.

Or. en

Justification

In the interest of legal certainty for citizens and for businesses, the delineation of roles between this Regulation and the 2000/31/ec Directive should be as clear as possible.

Amendment 188
Amelia Andersdotter

Proposal for a regulation
Recital 21

Text proposed by the Commission

(21) In order to determine whether a processing activity can be considered to 'monitor the behaviour' of data subjects, it should be ascertained whether individuals are tracked *on the internet with* data processing techniques which consist of applying a 'profile' *to an individual*, particularly in order to take decisions concerning her or him or for analysing or predicting her or his personal preferences, behaviours and attitudes.

Amendment

(21) In order to determine whether a processing activity can be considered to 'monitor the behaviour' of data subjects, it should be ascertained whether individuals are tracked *with the intention to use, or potential of subsequent use of*, data processing techniques which consist of applying a 'profile', particularly in order to take decisions concerning her or him or for analysing or predicting her or his personal preferences, behaviours and attitudes.

Or. en

Justification

Tracking does not necessarily take place on the internet (e.g. "smart CCTV" tracking customers in a mall, or tracking via RFID tags), thus removing the words "on the internet" ensures technological neutrality. Additionally, data collection and their use for profiling are not necessarily simultaneous. Data may be collected for one purpose in the first place, and could then afterwards be used for profiling.

Amendment 189 **Amelia Andersdotter**

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 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 **taking full account of the technological "state of the art" and technological trends.**

Or. en

Justification

"Data subject" are not defined too narrowly. The Regulation should clearly apply to data that only allow "singling out" and it should be clear that online identifiers should in most cases be considered personal data. Since technology is steadily advancing, de-anonymisation attacks will become more sophisticated. Having wide definitions of "personal data" and "data subject" is important for future-proof protection.

Amendment 190 **Adina-Ioana Vălean, Jürgen Creutzmann, Jens Rohde, Seán Kelly**

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

Or. en

Amendment 191
Adina-Ioana Vălean, Jürgen Creutzmann, Seán Kelly

Proposal for a regulation
Recital 23 a (new)

Text proposed by the Commission

Amendment

(23a) This regulation recognises that pseudonymisation is in the benefit of all data subjects as, by definition, personal data is altered so that it of itself cannot be attributed to a data subject without the use of additional data. By this, controllers shall be encouraged to the practice of pseudonymising data.

Or. en

Amendment 192
Amelia Andersdotter

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 ***one or more*** online identifiers provided by their devices, applications, tools and protocols, such as Internet Protocol addresses, ***cookie identifiers, or other unique*** identifiers. ***Since these identifiers*** leave traces ***and can be used to single out natural persons, this Regulation should be applicable to processing involving such data, unless these identifiers demonstrably do not relate to natural persons, such as for example the IP addresses of web servers and thus cannot*** be considered as 'personal data' ***as defined in Article 4(2)***.

Or. en

Justification

To ensure good protection, it is important that the terms "personal data" and "data subject" are not defined too narrowly. Online identifiers should in most cases be considered personal data. The Commission proposal significantly reduces the applicability of data protection principles to such online identifiers. The proposed amendment makes it clear that such identifiers should be considered personal data, unless they demonstrably are not.

Amendment 193
Adina-Ioana Vălean, Jürgen Creutzmann, Seán Kelly

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,

Amendment

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Or. en

Amendment 194
Silvia-Adriana Țicău

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 identification numbers, location data, online identifiers or other specific factors as such **may** not necessarily be considered as personal data **only if the information processed can not be used to single out the individual**.

Or. en

Justification

As soon as the information allows the data controller to identify an individual, the information should be deemed personal data.

Amendment 195
Amelia Andersdotter

Proposal for a regulation
Recital 25

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Informed consent depends on information being freely available to the data subject in a user-friendly format. Additionally, the principle that consent cannot be inferred from inaction, such as not removing pre-ticked boxes, needs to be strengthened.

Amendment 196
Paul Rübzig

Proposal for a regulation
Recital 25

Text proposed by the Commission

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

Amendment

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

Or. de

Justification

The lesser the consequences of data processing, the lower the requirements regarding a declaration of consent should be. In principle, therefore, there should be no requirement to obtain explicit consent, but such consent should only be required in cases where the data protection impact assessment has shown that explicit consent is required. Acceptance obtained via appropriate browser settings should also be regarded as other affirmative action in accordance with Article 7, paragraph 1b.

Amendment 197
Silvia-Adriana Țicău

Proposal for a regulation
Recital 25

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Informed consent depends on information being freely available to the data subject in a user friendly format. Also, it is needed to strengthen the principle that consent cannot be inferred from inaction, such as not removing pre-ticked boxes.

Amendment 198

Adina-Ioana Vălean, Jürgen Creutzmann, Seán Kelly

Proposal for a regulation

Recital 25

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 199

Adina-Ioana Vălean, Jürgen Creutzmann, Seán Kelly

Proposal for a regulation

Recital 25 a (new)

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 200

Adina-Ioana Vălean, Jürgen Creutzmann, Seán Kelly

Proposal for a regulation

Recital 26

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Data concerning health includes personal data obtained from testing biological samples, rather than biological samples per se.

Amendment 201

Jens Rohde

Proposal for a regulation

Recital 26

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

It should be clear that genetic information of any kind is included in the definition of health data, since genetic data are not more sensitive than some other health data, as for example data subjects carrying infectious diseases. To consider genetic data as a special category in the context of health care might also fuel unwarranted fears among the public and could create unwarranted barriers for research. At this point in time research into genetic data has shown that they are far more complex than previously thought, such as the discovery of epigenetic changes, and do not easily fit into a model of one dimensional genetic determinism as often perceived by the lay public.

Amendment 202 **Giles Chichester**

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 that location; the presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute such main establishment and are therefore no determining criteria for a main establishment. The main establishment of the processor should be the place of its central administration in the Union.

Amendment

(27) The main establishment of a controller in the Union, ***including a controller that is also a processor***, should be determined according to objective criteria and should imply the effective and real exercise of management activities determining the main decisions as to the purposes, conditions and means of processing through stable arrangements. This criterion should not depend whether the processing of personal data is actually carried out at that location; the presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute such main establishment and are therefore no determining criteria for a main establishment. The main establishment of the processor ***that is not also a controller*** should be the place of its central administration in the Union.

Or. en

Justification

In the case of a controller that is also a processor it makes little sense to apply different tests to determine which regulator has the authority over the organisation. This amendment ensures that such controllers are fully able to benefit from the one-stop-shop.

Amendment 203 **Amelia Andersdotter**

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 that location; the presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute such main establishment and are therefore **no** determining criteria for a main establishment. The main establishment of the processor should be the place of its central administration in the Union.

Amendment

(27) The main establishment of a controller in the Union should be determined according to objective criteria and should imply the effective and real exercise of management activities determining the main decisions as to the purposes, conditions and means of processing through stable arrangements. This criterion should not depend whether the processing of personal data is actually carried out at that location; the presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute such main establishment and are therefore **not** determining criteria for a main establishment. The main establishment of the processor should be the place of its central administration in the Union.

Or. en

Amendment 204 **Adina-Ioana Vălean, Jürgen Creutzmann, Seán Kelly**

Proposal for a regulation **Recital 28**

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 205
Amelia Andersdotter

Proposal for a regulation
Recital 29

Text proposed by the Commission

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

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. ***No reference to child protection in this Regulation should be understood as an implicit instruction that protection of personal data of adults should be treated with less care than would have been the case if the reference was not included.***

Or. en

Justification

Particular attention to the treatment of the personal data of children should not be used or useable as a means of downgrading personal data protection more generally.

Amendment 206

Marian Harkin, Seán Kelly

Proposal for a regulation

Recital 29

Text proposed by the Commission

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

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. ***Such protection is particularly important in the context of social networks, where children should be aware of the identities of those with whom they are communicating.*** To determine when an individual is a child, this Regulation should take over the definition laid down by the UN Convention on the Rights of the Child.

Or. en

Amendment 207

Jean-Pierre Audy

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

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 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.

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

Or. fr

Amendment 208

Paul Rübzig

Proposal for a regulation

Recital 32

Text proposed by the Commission

Amendment

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

deleted

Or. de

Justification

The lesser the consequences of data processing, the lower the requirements regarding a declaration of consent should be. In principle, therefore, there should be no requirement to obtain explicit consent, but such consent should only be required in cases where the data protection impact assessment has shown that explicit consent is required. Acceptance

obtained via appropriate browser settings should also be regarded as other affirmative action in accordance with Article 7, paragraph 1b.

Amendment 209

Silvia-Adriana Țicău

Proposal for a regulation

Recital 32

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 210

Amelia Andersdotter

Proposal for a regulation

Recital 32

Text proposed by the Commission

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

Amendment

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

data subject is aware that and to what extent consent is given.

data subject is aware that and to what extent consent is given. ***To comply with the principle of data minimisation, this burden of proof should not be understood as requiring positive identification of data subjects unless necessary.***

Or. en

Justification

It is important that such obligations not have the perverse effect of causing more data to be processed than otherwise have been the case.

Amendment 211 Amelia Andersdotter

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.
Consent should also not provide a legal basis for data processing when the data subject has no access to different equivalent services. Default settings such as pre-ticked boxes, silence, or the simple use of a service do not imply consent. Consent can only be obtained for processing that is lawful and thus not excessive in relation to the purpose. Disproportional data processing cannot be legitimised through obtaining consent.

Or. en

Justification

It aims at avoiding situations in which controllers try to obtain consent for processing that is clearly disproportional. This should give regulators and judges an entry to discuss substantive rather than procedural fairness. Such a look beyond the procedural rules can also be found in general contract law, where principles like 'good faith' and reasonableness and fairness ultimately govern relations between parties in cases where specific terms of contract are found to breach these principles.

Amendment 212

Silvia-Adriana Țicău

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.

Consent should also not provide a legal basis for data processing when the data subject has no access to different equivalent services. Default settings such as pre-ticked boxes, silence, or the simple use of a service do not imply consent. Consent can only be obtained for processing that is lawful and thus not excessive in relation to the purpose. Disproportional data processing cannot be legitimised through obtaining consent.

Or. en

Justification

The controller shall not try to obtain consent for processing that is clearly disproportional. This should give regulators and judges an entry to discuss substantive rather than procedural fairness.

Amendment 213
Jens Rohde, Adina-Ioana Vălean

Proposal for a regulation
Recital 34

Text proposed by the Commission

Amendment

(34) Consent should not provide a valid legal ground for the processing of personal data, where there is a clear imbalance between the data subject and the controller. This is especially the case where the data subject is in a situation of dependence from the controller, among others, where personal data are processed by the employer of employees' personal data in the employment context. Where the controller is a public authority, there would be an imbalance only in the specific data processing operations where the public authority can impose an obligation by virtue of its relevant public powers and the consent cannot be deemed as freely given, taking into account the interest of the data subject.

deleted

Or. en

Justification

To keep recital 34 does not make sense according to the changes made in article 7.4.

Amendment 214
Paul Rübzig

Proposal for a regulation
Recital 34

Text proposed by the Commission

Amendment

(34) Consent should not provide a valid legal ground for the processing of personal data, *where there is a clear imbalance between the data subject and the*

(34) Consent should not provide a valid legal ground for the processing of personal data *when it has not been given freely.*

controller. This is especially the case where the data subject is in a situation of dependence from the controller, among others, where personal data are processed by the employer of employees' personal data in the employment context. Where the controller is a public authority, there would be an imbalance only in the specific data processing operations where the public authority can impose an obligation by virtue of its relevant public powers and the consent cannot be deemed as freely given, taking into account the interest of the data subject.

Or. de

Justification

Größenunterschiede bzw. ein Ungleichgewicht haben nicht per se und automatisch Einfluss auf die Freiwilligkeit einer Einwilligung und sollen daher nicht ausschlaggebend für die Definition der Freiwilligkeit sein. Das bloße Abstellen auf ein Ungleichgewicht birgt die Gefahr von Unsicherheiten im Rechtsverkehr, welche es zu vermeiden gilt. Es soll daher genügen, auf die Freiwilligkeit einer Einwilligung abzustellen; die Regelung bietet ausreichend Flexibilität, um im Rahmen eine Einzelfallbeurteilung unterschiedliche Sachverhalte adäquat zu berücksichtigen und zu beurteilen.

Amendment 215 **Angelika Niebler**

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

Amendment

(34) Consent should not provide a valid legal ground for the processing of personal data, where there is a clear imbalance between the data subject and the controller. This is especially the case where the data subject is in a situation of dependence from the controller. Where the controller is a public authority, there would be an imbalance only in the specific data processing operations where the public

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

authority can impose an obligation by virtue of its relevant public powers and the consent cannot be deemed as freely given, taking into account the interest of the data subject.

Or. de

Justification

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

Amendment 216 **Silvia-Adriana Țicău**

Proposal for a regulation **Recital 34**

Text proposed by the Commission

(34) Consent should not provide a valid legal ground for the processing of personal data, where there is a clear imbalance between the data subject and the controller. This is especially the case where the data subject is in a situation of dependence from the controller, among others, where personal data are processed by the employer of employees' personal data in the employment context. Where the controller is a public authority, there would be an imbalance only in the specific data processing operations where the public authority can impose an obligation by virtue of its relevant public powers and the consent cannot be deemed as freely given, taking into account the interest of the data subject.

Amendment

(34) Consent should not provide a valid legal ground for the processing of personal data, where there is a clear imbalance between the data subject and the controller. This is especially the case where the data subject is in a situation of dependence from the controller, among others, where personal data are processed by the employer of employees' personal data in the employment context, ***or where a controller has a substantial market power with respect to certain products or services and where these products or services are offered on condition of consent to the processing of personal data, or where a unilateral and nonessential change in terms of service gives a data subject no option other than accept the change or abandon an online resource in which they have invested***

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

Or. en

Amendment 217
Amelia Andersdotter

Proposal for a regulation
Recital 34

Text proposed by the Commission

(34) Consent should not provide a valid legal ground for the processing of personal data, where there is a clear imbalance between the data subject and the controller. This is especially the case where the data subject is in a situation of dependence from the controller, among others, where personal data are processed by the employer of employees' personal data in the employment context. Where the controller is a public authority, there would be an imbalance only in the specific data processing operations where the public authority can impose an obligation by virtue of its relevant public powers and the consent cannot be deemed as freely given, taking into account the interest of the data subject.

Amendment

(34) Consent should not provide a valid legal ground for the processing of personal data, where there is a clear imbalance between the data subject and the controller. This is especially the case where the data subject is in a situation of dependence from the controller, among others, where personal data are processed by the employer of employees' personal data in the employment context, ***or where a controller has a substantial market power with respect to certain products or services and where these products or services are offered on condition of consent to the processing of personal data, or where a unilateral and non-essential change in terms of service gives a data subject no option other than accept the change or abandon an online resource in which they have invested significant time.*** Where the controller is a public authority, there would be an imbalance only in the specific data processing operations where the public authority can impose an obligation by virtue of its relevant public powers and the

consent cannot be deemed as freely given, taking into account the interest of the data subject.

Or. en

Justification

Many social media sites lead users to invest significant time and energy in developing online profiles. There would be a clear imbalance in any situation where the user was given the choice between accepting new and unnecessary data processing and abandoning the work they have already put into their profile. Another case would be if the market for the service in question is monopolistic/oligopolistic, so that the data subject does not in fact have a real possibility to choose a privacy-respecting service provider. Data portability would not fully address this issue, as it does not resolve the loss of the network effects in larger social networks.

Amendment 218

Amelia Andersdotter

Proposal for a regulation

Recital 36

Text proposed by the Commission

(36) Where processing is carried out in compliance with a legal obligation to which the controller is subject or ***where processing is necessary for the performance of a task carried out in the public interest or*** in the exercise of an official authority, the processing should have a legal basis in Union law, or in a Member State law which meets the requirements of the Charter of Fundamental Rights of the European Union for any limitation of the rights and freedoms. It is also for Union or national law to determine whether the controller performing a task carried out ***in the public interest or*** in the exercise of official authority should be a public administration or another natural or legal person governed by public law, or by private law such as a professional association.

Amendment

(36) Where processing is carried out in compliance with a legal obligation to which the controller is subject or in the exercise of an official authority, the processing should have a legal basis in Union law, or in a Member State law which meets the requirements of the Charter of Fundamental Rights of the European Union for any limitation of the rights and freedoms. It is also for Union or national law to determine whether the controller performing a task carried out in the exercise of official authority should be a public administration or another natural or legal person governed by public law, or by private law such as a professional association.

Justification

The deletion adds clarity to the text. As the text currently stands, it appears to imply that there are non-obligatory data processing tasks that could have a legal basis in EU law. Either processing is mandated by EU law and it is obligatory or it is not, in which case it is not authorised and must fall outside the scope of this exception.

Amendment 219
Silvia-Adriana Țicău

Proposal for a regulation
Recital 36 a (new)

Text proposed by the Commission

Amendment

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

Justification

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

Amendment 220
Amelia Andersdotter

Proposal for a regulation
Recital 38

Text proposed by the Commission

Amendment

(38) The legitimate interests of a controller may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of ***deleted***

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.

Or. en

Justification

Data subject rights are indispensable for empowering data subjects to take the protection of their data into their own hands and enforce their rights against controllers. They are one of the main levers to hold controllers accountable. For this reason, the rights to information, access, rectification, deletion, and data portability should be strengthened to allow users to understand what happens to their data and to exercise control over it. Exceptions and exemptions should be very limited. This exception, as proposed by the European Commission, grants a very wide exception to data controllers to process data if they feel justified in undertaking such processing. This risks creating legal uncertainty and barriers to the single market. The European Data Protection Board should establish guidelines for acceptable “legitimate interests” in this context.

Amendment 221
Silvia-Adriana Țicău

Proposal for a regulation
Recital 38

Text proposed by the Commission

Amendment

(38) The legitimate interests of a controller may provide a legal basis for processing,

(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.

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, 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.

Or. en

Amendment 222
Kent Johansson

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

Amendment

(38) The legitimate interests of a controller may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding. **To ensure clarity, the Data Protection Board will set out comprehensive guidelines on what can be defined as "legitimate interest". Processing** would need careful assessment in particular where the data subject is a child, given that children deserve specific protection. The data subject should have the right to object the processing, on grounds relating to their particular situation and free of charge. To ensure transparency,

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.

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.

Or. en

Amendment 223
Amelia Andersdotter

Proposal for a regulation
Recital 40

Text proposed by the Commission

(40) The processing of personal data for other purposes should be only allowed where the processing is compatible with those purposes for which the data have been initially collected, in particular where the processing is necessary for historical, statistical or scientific research purposes.

Where the other purpose is not compatible with the initial one for which the data are collected, the controller should obtain the consent of the data subject for this other purpose or should base the processing on another legitimate ground for lawful processing, in particular where provided by Union law or the law of the Member State to which the controller is subject. In any case, the application of the principles set out by this Regulation and in particular the information of the data subject on those other purposes should be ensured.

Amendment

(40) The processing of personal data for other purposes should be only allowed where the processing is compatible with those purposes for which the data have been initially collected, in particular where the processing is necessary for historical, statistical or scientific research purposes. In any case, the application of the principles set out by this Regulation and in particular the information of the data subject on those other purposes should be ensured.

Or. en

Justification

This amendment reflects the amendment proposed to Article 6.

Amendment 224

Silvia-Adriana Țicău

Proposal for a regulation

Recital 40

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 225

Adina-Ioana Vălean, Jürgen Creutzmann, Seán Kelly

Proposal for a regulation

Recital 40

Text proposed by the Commission

(40) The processing of personal data for

Amendment

(40) The processing of personal data for

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

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

Or. en

Amendment 226
Alejo Vidal-Quadras

Proposal for a regulation
Recital 40 a (new)

Text proposed by the Commission

Amendment

(40a) The processing of data to the extent strictly necessary for the purposes of ensuring that electrical or distribution system operators as defined in Directive 2009/72/EC and Directive 2009/73/EC can meet system, grid or operational needs, or the implementation of demand response, energy management, or energy efficiency programmes should be allowed provided that the electrical or gas undertaking or the distribution system operator has required by contract that the processor fulfils the requirements outlined in this Regulation.

Amendment 227
Amelia Andersdotter

Proposal for a regulation
Recital 41

Text proposed by the Commission

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

Amendment

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

Justification

This amendment seeks to clarify and narrow the scope of this exception.

Amendment 228
Silvia-Adriana Țicău

Proposal for a regulation
Recital 41

Text proposed by the Commission

(41) Personal data which are, by their nature, particularly sensitive and vulnerable in relation to fundamental rights or privacy, deserve specific protection.

Amendment

(41) Personal data which are, by their nature, particularly sensitive and vulnerable in relation to fundamental rights or privacy, deserve specific protection.

Such data should not be processed, unless the data subject gives his explicit consent. However, derogations from this prohibition should be explicitly provided for in respect of specific needs, in particular where the processing is carried out in the course of legitimate activities by certain associations or foundations the purpose of which is to permit the exercise of fundamental freedoms.

Such data should not be processed, unless the data subject gives his explicit **and informed** consent. However, derogations from this prohibition should be explicitly provided for in respect of specific needs, in particular where the processing is carried out in the course of legitimate activities by certain associations or foundations the purpose of which is to permit the exercise of fundamental freedoms.

Or. en

Amendment 229
Amelia Andersdotter

Proposal for a regulation
Recital 42

Text proposed by the Commission

(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.**

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 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. en

Justification

Processing of sensitive data for historical, statistical and scientific research purposes is not as urgent or compelling as public health or social protection. Consequently, there is no need to introduce an exception, based on national law, which would put them on the same level as

the other listed justifications, which risks undermining fundamental rights, legal certainty and the single market.

Amendment 230
Amelia Andersdotter

Proposal for a regulation
Recital 45

Text proposed by the Commission

(45) If the data processed by a controller do not permit the controller to identify a natural person, the data controller **should not be obliged** to acquire additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation. In case of a request for access, the controller should be entitled to ask the data subject for further information to enable the data controller to locate the personal data which that person seeks.

Amendment

(45) If the data processed by a controller do not permit the controller to identify a natural person, **nothing in this Regulation may be construed by the data controller as an obligation** to acquire additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation. In case of a request for access, the controller should be entitled to ask the data subject for further information to enable the data controller to locate the personal data which that person seeks. **If it is possible for the data subject to provide such data, controllers should not be able to invoke a lack of information to refuse an access request.**

Or. en

Justification

The amendment clarifies the text proposed by the Commission.

Amendment 231
Silvia-Adriana Țicău

Proposal for a regulation
Recital 45

Text proposed by the Commission

(45) If the data processed by a controller

Amendment

(45) If the data processed by a controller

do not permit the controller to identify a natural person, the data controller should not be obliged to acquire additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation. In case of a request for access, the controller should be entitled to ask the data subject for further information to enable the data controller to locate the personal data which that person seeks.

do not permit the controller to identify a natural person, the data controller should not be obliged to acquire additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation. In case of a request for access, the controller should be entitled to ask the data subject for further information to enable the data controller to locate the personal data which that person seeks. ***The data controller shall not invoke a possible lack of information to refuse a request of access, when this information can be provided by the data subject to enable such access.***

Or. en

Amendment 232
Amelia Andersdotter

Proposal for a regulation
Recital 47

Text proposed by the Commission

(47) Modalities should be provided for facilitating the data subject's exercise of their rights provided by this Regulation, including mechanisms to ***request***, free of charge, in particular access to data, rectification, erasure and to exercise the right to object. The controller should be obliged to respond to requests of the data subject within a fixed deadline and give reasons, in case he ***does not*** comply with the data subject's request.

Amendment

(47) Modalities should be provided for facilitating the data subject's exercise of their rights provided by this Regulation, including mechanisms to ***obtain***, free of charge, in particular access to data, rectification, erasure and to exercise the right to object. The controller should be obliged to respond to requests of the data subject within a fixed deadline and give reasons, in case he ***cannot*** comply with the data subject's request.

Or. en

Justification

Data subject rights are indispensable for empowering data subjects to take the protection of their data into their own hands and enforce their rights against controllers. They are one of the main levers to hold controllers accountable. For this reason, the rights to information,

access, rectification, deletion, and data portability should be strengthened to allow users to understand what happens to their data and to exercise control over it. Exceptions and exemptions should be very limited. This amendment stresses the rights of the data subjects, focusing on the outcome of them invoking their rights.

Amendment 233
Jean-Pierre Audy

Proposal for a regulation
Recital 48

Text proposed by the Commission

(48) The principles of fair and transparent processing require that the data subject should be informed in particular of the existence of the processing operation and its purposes, how long the data will be stored, on the existence of the right of access, rectification or erasure and on the right to lodge a complaint. Where the data are collected from the data subject, the data subject should also be informed whether they are obliged to provide the data and of the consequences, in cases they do not provide such data.

Amendment

(48) The principles of fair and transparent processing require that the data subject should be informed in particular of the existence of the processing operation and its purposes, how long the data will be stored ***and the criteria which may be used as the basis for determining how long the data will be stored***, on the existence of the right of access, rectification or erasure and on the right to lodge a complaint. Where the data are collected from the data subject, the data subject should also be informed whether they are obliged to provide the data and of the consequences, in cases they do not provide such data.

Or. fr

Amendment 234
Amelia Andersdotter

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

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.

a reasonable period, depending on the circumstances of the case. Where data can be legitimately disclosed to another recipient ***according to the provisions of this Regulation, such as after the data subject's consent***, the data subject should be informed when the data are first disclosed to the recipient.

Or. en

Amendment 235
Amelia Andersdotter

Proposal for a regulation
Recital 50

Text proposed by the Commission

(50) However, it is not necessary to impose this obligation where the data subject already disposes of this information, or where the recording or disclosure of the data is expressly laid down by law, or where the provision of information to the data subject proves impossible or would involve disproportionate efforts. ***The latter could be particularly the case where processing is for historical, statistical or scientific research purposes; in this regard, the number of data subjects, the age of the data, and any compensatory measures adopted may be taken into consideration.***

Amendment

(50) However, it is not necessary to impose this obligation where the data subject already disposes of this information, or where the recording or disclosure of the data is expressly laid down by law, or where the provision of information to the data subject proves impossible or would involve disproportionate efforts.

Or. en

Justification

Data subject rights are indispensable for empowering data subjects to take the protection of their data into their own hands and enforce their rights against controllers. They are one of the main levers to hold controllers accountable. For this reason, the rights to information, access, rectification, deletion, and data portability should be strengthened to allow users to understand what happens to their data and to exercise control over it. Exceptions and exemptions should be very limited. This amendment deletes text which may be misunderstood

as promoting a lower level of protection for certain kinds of data processing.

Amendment 236

Adina-Ioana Vălean, Jürgen Creutzmann, Seán Kelly

Proposal for a regulation

Recital 51

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 237

Amelia Andersdotter

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

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, for what period, which recipients receive the data, what is the logic of the data that are undergoing the processing and what might be, at least when based on profiling, the consequences of such processing. This right should not adversely affect the rights and freedoms of others, including trade secrets or intellectual property *and in particular* the copyright protecting the software. However, the result of these considerations should not be that all information is refused to the data subject.

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, *such as in relation to* the copyright protecting the software. However, the result of these considerations should not be that all information is refused to the data subject.

Or. en

Justification

Data subject rights are indispensable for empowering data subjects to take the protection of their data into their own hands and enforce their rights against controllers. They are one of the main levers to hold controllers accountable. For this reason, the rights to information, access, rectification, deletion, and data portability should be strengthened to allow users to understand what happens to their data and to exercise control over it. Exceptions and exemptions should be very limited. This amendment aims at clarifying the intention behind the Commission's proposal.

Amendment 238

Adina-Ioana Vălean, Jürgen Creutzmann, Seán Kelly

Proposal for a regulation

Recital 52

Text proposed by the Commission

(52) The controller should use all reasonable measures to verify the identity of a data subject that requests access, in particular in the context of online services and online identifiers. A controller should

Amendment

(52) The controller should use all reasonable measures *within the context of the product or service being provided, or otherwise within the context of the relationship between the controller and*

not retain personal data for the unique purpose of being able to react to potential requests.

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

Or. en

Justification

In some cases, complying with a right of access requirement will have as a consequence that the data controller will need to gather (more) personal data from the data subject in order to comply with the request. In line with the data minimisation principle, this potential consequence should be avoided.

Amendment 239 **Amelia Andersdotter**

Proposal for a regulation **Recital 52**

Text proposed by the Commission

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

Amendment

(52) The controller should use all reasonable measures to verify the ***authenticity of a*** subject ***access request***, in particular in the context of online services and online identifiers. A controller should not retain personal data for the unique purpose of being able to react to potential requests.

Or. en

Justification

Data subject rights are indispensable for empowering data subjects to take the protection of their data into their own hands and enforce their rights against controllers. They are one of the main levers to hold controllers accountable. For this reason, the rights to information, access, rectification, deletion, and data portability should be strengthened to allow users to understand what happens to their data and to exercise control over it. Exceptions and

exemptions should be very limited. It is entirely possible that in some circumstances positive identification of the data subject would not be strictly necessary to provide access.

Amendment 240

Amelia Andersdotter

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 of the data instead of erasing them.

Amendment

(53) Any person should have the right to have personal data concerning them rectified and ***erased.*** 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. However, the further retention of the data ***may*** 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.

Or. en

Justification

Data subject rights are indispensable for empowering data subjects to take the protection of their data into their own hands and enforce their rights against controllers. They are one of the main levers to hold controllers accountable. For this reason, the rights to information, access, rectification, deletion, and data portability should be strengthened to allow users to understand what happens to their data and to exercise control over it. Exceptions and exemptions should be very limited. As the rights being accorded to all citizens in this recital are comprehensive, there appears to be little specific value to demand “particular” attention for children. The text proposed by the Commission could have the perverse effect of implying a less than comprehensive protection for adults. Further retention and processing of personal data should not be automatically permitted simply on the basis that they are being processed ostensibly for historical, statistical or scientific research processes. Such uses must be subject to adequate safeguards.

Amendment 241 **Amelia Andersdotter**

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, *it* 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 *of the data subject's request for erasure. The controller should be considered responsible for the publication, where the controller has authorised the publication by the third party.*

Or. en

Justification

Data subject rights are indispensable for empowering data subjects to take the protection of their data into their own hands and enforce their rights against controllers. They are one of the main levers to hold controllers accountable. For this reason, the rights to information, access, rectification, deletion, and data portability should be strengthened to allow users to understand what happens to their data and to exercise control over it. Exceptions and exemptions should be very limited. The text proposed by the Commission is far too broad to be implemented “as is” without significant dangers for freedom of communication

Amendment 242

Amelia Andersdotter, Silvia-Adriana Țicău

Proposal for a regulation

Recital 55

Text proposed by the Commission

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

Amendment

(55) To further strengthen the control over their own data and their right of access, data subjects should have the right, where personal data are processed by electronic means, ***to obtain, free of charge***, a copy of the data concerning them also in ***an electronic, interoperable and structured format which is commonly used***. The data subject should also be allowed to transmit those data, which they have provided, from one automated application, such as a social network, into another one. ***Providers of information society services should not make the transfer of those data mandatory for the provision of their services. Social networks should be encouraged as much as possible to store data in a way which permits efficient data portability for data subjects.***

Or. en

Justification

Data subject rights are indispensable for empowering data subjects to take the protection of their data into their own hands and enforce their rights against controllers. They are one of the main levers to hold controllers accountable. For this reason, the rights to information,

access, rectification, deletion, and data portability should be strengthened to allow users to understand what happens to their data and to exercise control over it. Exceptions and exemptions should be very limited. The easier that it is to change providers, the less citizens will feel tied to a particular service, particularly if they are unhappy with the way their data is being used. The electronic formats in which data subjects obtain data should therefore be interoperable, structured and commonly used in order to avoid lock-in effects due to use of non-interoperable formats. However, providers should not make use of their services conditional on transferring data from previous service providers.

Amendment 243
Amelia Andersdotter

Proposal for a regulation
Recital 57

Text proposed by the Commission

(57) Where personal data are processed for the purposes of direct marketing, the data subject should have the right to object to such processing free of charge and in a manner that can be easily and effectively invoked.

Amendment

(57) Where personal data are processed for the purposes of direct marketing, the data subject should have the right to object to such processing ***in advance***, free of charge and in a manner that can be easily and effectively invoked.

Or. en

Justification

Data subject rights are indispensable for empowering data subjects to take the protection of their data into their own hands and enforce their rights against controllers. They are one of the main levers to hold controllers accountable. For this reason, the rights to information, access, rectification, deletion, and data portability should be strengthened to allow users to understand what happens to their data and to exercise control over it. Exceptions and exemptions should be very limited. There are no acceptable grounds to argue that processing for the purpose of direct marketing should be subject to fewer safeguards than other forms of processing.

Amendment 244
Jens Rohde

Proposal for a regulation
Recital 58

Text proposed by the Commission

(58) Every natural person should have the right not to be subject to a measure which is based on profiling by means of automated processing. However, such measure should be allowed when expressly authorised by law, carried out in the course of entering or performance of a contract, or when the data subject has given his consent. In any case, such processing should be subject to suitable safeguards, including specific information of the data subject and the right to obtain human intervention and that such measure should not concern a child.

Amendment

(58) Unfair or discriminatory profiling shall be prohibited. As defined in Article 5§2 in Directive 2005/29/EC on Unfair Commercial Practices, the decision referred to in Article 20 of this Regulation is "unfair" if:

(a) it is contrary to the requirements of professional diligence, and

(b) it materially distorts or is likely to materially distort the economic behaviour with regard to the product (or service) of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers.

The Guidance on the Unfair Commercial Practices Directive issued by the European Commission and the national enforcers, offers further clarifications to this definition.

Or. en

**Amendment 245
Amelia Andersdotter**

**Proposal for a regulation
Recital 58**

Text proposed by the Commission

(58) Every natural person should have the

Amendment

(58) Every natural person should have the

right not to be subject to a measure which is based on profiling by means of automated processing. However, such measure should be allowed when expressly authorised by law, carried out in the course of entering or performance of a contract, or when the data subject has given his consent. In any case, such processing should be subject to suitable safeguards, including specific information of the data subject and the right to obtain human intervention and that such measure should not concern a child.

right not to be subject to a measure which is based on profiling by means of automated processing. However, **any** such measure should be allowed when expressly authorised by law, carried out in the course of entering or performance of a contract, or when the data subject has given his consent. In any case, such processing should be subject to suitable safeguards, including specific information of the data subject and the right to obtain human intervention and that such measure should not concern a child. ***Specifically, such processing should never, whether intentionally or not, lead to the discrimination of data subjects on the basis of race or ethnic origin, political opinions, religion or beliefs, trade union membership, or sexual orientation. Given the risk of discrimination, such processing should not be used in order to predict very rare characteristics.***

Or. en

Justification

Profiling can entail serious risks for data subjects. It is prone to reinforcing discriminations, making decisions less transparent and carries an unavoidable risk of wrong decisions. For these reasons, it should be tightly regulated: its use should be clearly limited, and in those cases where it can be used, there should be safeguards against discrimination and data subjects should be able to receive clear and meaningful information on the logic of the profiling and its consequences. While some circles see profiling as a panacea for many problems, it should be noted that there is a significant body of research addressing its limitations. Notably, profiling tends to be useless for very rare characteristics, due to the risk of false positives. Also, profiles can be hard or impossible to verify. Profiles are based on complex and dynamic algorithms that evolve constantly and that are hard to explain to data subjects. Often, these algorithms qualify as commercial secrets and will not be easily provided to data subjects. However, when natural persons are subject to profiling, they should be entitled to information about the logic used in the measure, as well as an explanation of the final decision if human intervention has been obtained. This helps to reduce non transparency, which could undermine trust in data processing and may lead to loss or trust in especially online services. There is also a serious risk of unreliable and (in effect) discriminatory profiles being widely used, in matters of real importance to individuals and groups, which is the motivation behind several suggested changes in this Article that aim to improve the protection of data subjects against discrimination. In relation to this, the use of sensitive data in generating profiles should also be restricted. This amendment adapts the

recital to reflect proposed amendments in Article 20.

Amendment 246

Paul Rübzig

Proposal for a regulation

Recital 58

Text proposed by the Commission

(58) Every natural person should have the right not to be subject to a measure which is based on profiling by means of automated processing. However, such measure should be allowed when expressly authorised by law, carried out in the course of entering or performance of a contract, or when the data subject has given his consent. In any case, such processing should be subject to suitable safeguards, including specific information of the data subject and the right to obtain human intervention and that such measure should not concern a child.

Amendment

(58) Every natural *or legal* person should have the right not to be subject to a measure which is based on profiling by means of automated processing. However, such measure should be allowed when expressly authorised by law, carried out in the course of entering or performance of a contract, or when the data subject has given his consent. In any case, such processing should be subject to suitable safeguards, including specific information of the data subject and the right to obtain human intervention and that such measure should not concern a child.

Or. de

Amendment 247

Amelia Andersdotter

Proposal for a regulation

Recital 59

Text proposed by the Commission

(59) Restrictions on specific principles and on the rights of information, access, rectification and erasure or on the right to data portability, the right to object, measures based on profiling, as well as on the communication of a personal data breach to a data subject and on certain related obligations of the controllers may be imposed by Union or Member State

Amendment

(59) Restrictions on specific principles and on the rights of information, access, rectification and erasure or on the right to data portability, the right to object, measures based on profiling, as well as on the communication of a personal data breach to a data subject and on certain related obligations of the controllers may be imposed by Union or Member State

law, as far as necessary and proportionate in a democratic society to safeguard public security, including the protection of human life especially in response to natural or man made disasters, the prevention, investigation and prosecution of criminal offences or of breaches of ethics for regulated professions, other public interests of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, or the protection of the data subject or the rights and freedoms of others. Those restrictions should be in compliance with requirements set out by the Charter of Fundamental Rights of the European Union and by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

law, as far as **strictly** necessary and proportionate in a democratic society to safeguard public security, including the protection of human life especially in response to natural or man made disasters, the prevention, investigation and prosecution of criminal offences or of breaches of ethics for regulated professions, other public interests of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, or the protection of the data subject or the rights and freedoms of others. Those restrictions should be in compliance with requirements set out by the Charter of Fundamental Rights of the European Union, and by the European Convention for the Protection of Human Rights and Fundamental Freedoms. ***Any such measure should be notified to the Data Protection Board for an opinion which, if negative, should result in a referral to the Commission with view to starting an infringement procedure before the European Court of Justice.***

Or. en

Justification

Data subject rights are indispensable for empowering data subjects to take the protection of their data into their own hands and enforce their rights against controllers. They are one of the main levers to hold controllers accountable. For this reason, the rights to information, access, rectification, deletion, and data portability should be strengthened to allow users to understand what happens to their data and to exercise control over it. Exceptions and exemptions should be very limited. It takes too long for egregious breaches of fundamental rights to be processed by the courts. An immediate review of the case by the Data Protection Board should help to eliminate abuses of this exception at an early stage. If the Board comes to the conclusion that the measure is not compatible with the Regulation, it should inform the Commission, so that it can start proceedings against the Member State in question.

Amendment 248
Amelia Andersdotter

Proposal for a regulation

Recital 60

Text proposed by the Commission

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

Amendment

(60) 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 order to ensure accountability***. In particular, the controller should ensure and be obliged to demonstrate the compliance of each processing operation with this Regulation. ***Otherwise unnecessary data processing may not be justified on the basis of the need to respect this obligation.***

Or. en

Justification

The concept of accountability should be mentioned explicitly. It must be rigorously avoided that any measure in this Regulation leads to additional data processing.

Amendment 249

Amelia Andersdotter

Proposal for a regulation

Recital 61

Text proposed by the Commission

(61) The protection of the rights and freedoms of data subjects with regard to the processing of personal data require that appropriate technical and ***organisational*** measures are taken, both at the time of the design of the processing and at the time of the processing itself, to ensure that the requirements of this Regulation are met. In order to ensure and demonstrate compliance with this Regulation, the controller should adopt internal policies and implement appropriate measures,

Amendment

(61) The protection of the rights and freedoms of data subjects with regard to the processing of personal data require that appropriate technical and ***organizational*** measures are taken, both at the time of the design of the processing and ***its underlying technologies as well as*** at the time of the processing itself, to ensure that the requirements of this Regulation are met. In order to ensure and demonstrate compliance with this Regulation, the controller should adopt internal policies

which meet in particular the principles of data protection by design and data protection by default.

and implement appropriate measures, which meet in particular the principles of data protection by design and data protection by default. ***Data protection by design is the process by which data protection and privacy are integrated in the development of products and services through both technical and organisational measures. Data protection by default means that products and services are by default configured in a way that limits the processing and especially the disclosure of personal data. In particular, personal data should not be disclosed to an unlimited number of persons by default.***

Or. en

Justification

If “privacy by design” is going to be effective, it needs to be rigorously implemented at all stages in the design process and should be defined more clearly. Both “data protection by design” and “data protection by default” should be defined more clearly, as the amendment proposes.

Amendment 250

Adina-Ioana Vălean, Jürgen Creutzmann, Seán Kelly

Proposal for a regulation

Recital 61

Text proposed by the Commission

(61) ***The*** protection of the rights and freedoms of data subjects with regard to the processing of personal data ***require that*** appropriate ***technical and*** organisational measures ***are*** taken, both at the time of the design of the processing and at the time of the processing itself, to ensure that the requirements of this Regulation are met. ***In order to ensure and demonstrate compliance with this Regulation, the controller should adopt***

Amendment

(61) ***To meet consumer and business expectations around the*** protection of the rights and freedoms of data subjects with regard to the processing of personal data, appropriate organisational measures ***may be*** taken, both at the time of the design of the processing and at the time of the processing itself, to ensure that the requirements of this Regulation are met. ***Measures having as an objective to increase consumer information and ease***

internal policies and implement appropriate measures, which meet in particular the principles of data protection by design and data protection by default.

of choice shall be encouraged, based on industry cooperation and favouring innovative solutions, products and services.

Or. en

Justification

The way to integrate privacy and data protection into internal processes should remain flexible and leave room for adaptation. The PbD concept should be technology-neutral, not introduce specific technology or operational mandates and not contribute to a differentiation between ICT and other sectors.

Amendment 251
Amelia Andersdotter

Proposal for a regulation
Recital 61 a (new)

Text proposed by the Commission

Amendment

(61a) The present Regulation aims at encouraging enterprises to develop internal programmes that would 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 personal data protection safeguards and develop innovative data protection-by-design solutions and data protection enhancing techniques. Enterprises would then demonstrate publically and pro-actively their compliance with the provisions and spirit of this Regulation and thus increase the trust of the European citizens. Corporate accountability on personal data protection cannot however exempt an enterprise from any obligation laid down in this Regulation.

Or. en

Amendment 252

Adina-Ioana Vălean, Seán Kelly, Jürgen Creutzmann

Proposal for a regulation

Recital 62

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 253

Seán Kelly, Adina-Ioana Vălean

Proposal for a regulation

Recital 62

Text proposed by the Commission

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

Amendment

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

Amendment 254
Pilar del Castillo Vera

Proposal for a regulation
Recital 62

Text proposed by the Commission

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

Amendment

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

Amendment 255
Amelia Andersdotter, Silvia-Adriana Țicău

Proposal for a regulation
Recital 63

Text proposed by the Commission

(63) Where a controller not established in the Union is processing personal data of data subjects residing in the Union whose processing activities are related to the offering of goods or services to such data subjects, or to the monitoring their behaviour, the controller should designate a representative, unless the controller is established in a third country ensuring an adequate level of protection, or the controller is a small *or medium sized*

Amendment

(63) Where a controller not established in the Union is processing personal data of data subjects residing in the Union whose processing activities are related to the offering of goods or services to such data subjects, or to the monitoring their behaviour, the controller should designate a representative, unless the controller is established in a third country ensuring an adequate level of protection, or the controller is *an enterprise processing data*

enterprise or a public authority or body or where the controller is only occasionally offering goods or services to such data subjects. The representative should act on behalf of the controller and may be addressed by any supervisory authority.

on a small **number of data subjects** or a public authority or body or where the controller is only occasionally offering goods or services to such data subjects. The representative should act on behalf of the controller and may be addressed by any supervisory authority.

Or. en

Justification

In the digital environment, it is no longer appropriate to use employee numbers as a measure of the size of a company. A photo-manipulation company was recently purchased for one billion dollars and had 13 employees at the time. What matters is the number of data subjects.

Amendment 256

Adina-Ioana Vălean, Jürgen Creutzmann, Jens Rohde, Seán Kelly

Proposal for a regulation

Recital 65

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 257

Pilar del Castillo Vera

Proposal for a regulation

Recital 65

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 258

András Gyürk

Proposal for a regulation

Recital 66

Text proposed by the Commission

(66) In order to maintain security and to prevent processing in breach of this Regulation, the controller or processor should evaluate the risks inherent to the processing and implement measures to mitigate those risks. These measures should ensure an appropriate level of security, taking into account the state of the art and the costs of their implementation in relation to the risks and the nature of the personal data to be protected. When establishing technical standards and organisational measures to ensure security of processing, the Commission should promote technological neutrality, interoperability and innovation, and, where appropriate, cooperate with third countries.

Amendment

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

Justification

Not all personal data is created equal. There are some cases in which the personal data collected is more sensitive than others, for example, the personal data collected by travel agencies or marketing organizations

Amendment 259
Amelia Andersdotter

Proposal for a regulation
Recital 66

Text proposed by the Commission

(66) In order to maintain security and to prevent processing in breach of this Regulation, the controller or processor should evaluate the risks inherent to the processing and implement measures to mitigate those risks. These measures should ensure an appropriate level of security, taking into account the state of the art and the costs of their implementation in relation to the risks and the nature of the personal data to be protected. When establishing technical standards and organisational measures to ensure security of processing, **the Commission should promote** technological neutrality, interoperability and innovation, and, where appropriate, **cooperate with** third countries.

Amendment

(66) In order to maintain security and to prevent processing in breach of this Regulation, the controller or processor should evaluate the risks inherent to the processing and implement measures to mitigate those risks. These measures should ensure an appropriate level of security, taking into account the state of the art and the costs of their implementation in relation to the risks and the nature of the personal data to be protected. When establishing technical standards and organisational measures to ensure security of processing, technological neutrality, interoperability and innovation **should be promoted**, and, where appropriate, third countries **should be encouraged**.

Justification

There appears to be no valid reason that the measures to be promoted should be restricted to the European Commission.

Amendment 260
Ivailo Kalfin

Proposal for a regulation
Recital 67

Text proposed by the Commission

(67) A personal data breach may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud, to the individual concerned. Therefore, as soon as the controller becomes aware that such a breach has occurred, the controller should notify the breach to the supervisory authority without undue delay and, where feasible, within **24** hours. Where this cannot be achieved within **24** hours, an explanation of the reasons for the delay should accompany the notification. The individuals whose personal data could be adversely affected by the breach should be notified without undue delay in order to allow them to take the necessary precautions. A breach should be considered as adversely affecting the personal data or privacy of a data subject where it could result in, for example, identity theft or fraud, physical harm, significant humiliation or damage to reputation. The notification should describe the nature of the personal data breach as well as recommendations as well as recommendations for the individual concerned to mitigate potential adverse effects. Notifications to data subjects should be made as soon as reasonably feasible, and in close cooperation with the supervisory authority and respecting guidance provided by it or other relevant authorities (e.g. law enforcement authorities). For example, the chance for data subjects to mitigate an immediate risk of harm would call for a prompt notification of data subjects whereas the need to implement appropriate measures against continuing or similar data breaches may justify a longer delay.

Amendment

(67) A personal data breach may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud, to the individual concerned. Therefore, as soon as the controller becomes aware that such a breach has occurred, the controller should notify the breach to the supervisory authority without undue delay and, where feasible, within **72** hours. Where this cannot be achieved within **72** 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 261
Silvia-Adriana Țicău

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

Amendment

(67) A personal data breach may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud, to the individual concerned. Therefore, as soon as the controller becomes aware that such a breach has occurred, the controller should notify the breach to the supervisory authority without undue delay and, where feasible, within **72** hours. Where this cannot be achieved within **72** 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.

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.

Or. en

Amendment 262

Paul Rübige

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

Amendment

(67) A personal data breach may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud, to the individual concerned. Therefore, as soon as the controller becomes aware that such a breach has occurred, the controller should notify the breach to the supervisory authority without undue delay 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. **Persons** 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.

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.

Or. de

Amendment 263

Adina-Ioana Vălean, Jürgen Creutzmann, Seán Kelly

Proposal for a regulation

Recital 70

Text proposed by the Commission

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

Amendment

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

Regulation.

Or. en

Justification

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

Amendment 264
Amelia Andersdotter

Proposal for a regulation
Recital 70 a (new)

Text proposed by the Commission

Amendment

(70a) Directive 2002/58/EC sets out personal data breach notification obligations for the processing of personal data in connection with the provision of publicly available electronic communications services in public communications networks in the Union. Where providers of publicly available electronic communications services provide other services, they are subject to the breach notification obligations of this Regulation.

Or. en

Amendment 265
Adina-Ioana Vălean, Jürgen Creutzmann, Seán Kelly

Proposal for a regulation
Recital 74

Text proposed by the Commission

Amendment

(74) Where a data protection impact assessment indicates that processing operations involve a high degree of

(74) Where a data protection impact assessment indicates that processing operations involve a high degree of

specific risks to the rights and freedoms of data subjects, such as excluding individuals from their right, or by the use of specific new technologies, the supervisory authority should be consulted, prior to the start of operations, on a risky processing which might not be in compliance with this Regulation, **and to make proposals to remedy such situation. Such consultation should equally take place in the course of the preparation either of a measure by the national parliament or of a measure based on such legislative measure which defines the nature of the processing and lays down appropriate safeguards.**

specific risks to the rights and freedoms of data subjects, such as excluding individuals from their right, or by the use of specific new technologies, the supervisory authority should be consulted, prior to the start of operations, on a risky processing which might not be in compliance with this Regulation.

Or. en

Justification

Consultation should take place between supervisory authorities and data controllers and processors where there is an indication that processing operations involve a high degree of specific risks to the rights and freedom of data subjects and the risky processing might not be in compliance with this Regulation.

Amendment 266 **Amelia Andersdotter**

Proposal for a regulation **Recital 76**

Text proposed by the Commission

(76) Associations or other bodies representing categories of controllers should be encouraged to draw up codes of conduct, within the limits of this Regulation, so as to facilitate the effective application of this Regulation, taking account of the specific characteristics of the processing carried out in certain sectors.

Amendment

(76) Associations or other bodies representing categories of controllers should be encouraged to draw up codes of conduct, within the limits of this Regulation, so as to facilitate the effective application of this Regulation, taking account of the specific characteristics of the processing carried out in certain sectors. ***Such codes should make compliance easier for industry.***

Or. en

Justification

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

Amendment 267
Amelia Andersdotter

Proposal for a regulation
Recital 77

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 268
Paul Rübzig

Proposal for a regulation
Recital 78

Text proposed by the Commission

(78) Cross-border flows of personal data are necessary for the expansion of international trade and international co-operation. The increase in these flows has raised new challenges and concerns with respect to the protection of personal data. However, when personal data are

Amendment

(78) Cross-border flows of personal data are necessary for the expansion of international trade and international co-operation. The increase in these flows has raised new challenges and concerns with respect to the protection of personal data. However, when personal data are

transferred from the Union to third countries or to international organisations, the level of protection of *individuals* guaranteed in the Union by this Regulation should not be undermined. In any event, transfers to third countries may only be carried out in full compliance with this Regulation.

transferred from the Union to third countries or to international organisations, the level of protection of *natural and legal persons* guaranteed in the Union by this Regulation should not be undermined. In any event, transfers to third countries may only be carried out in full compliance with this Regulation.

Or. de

Amendment 269
Silvia-Adriana Țicău

Proposal for a regulation
Recital 79

Text proposed by the Commission

(79) This Regulation is without prejudice to international agreements concluded between the Union and third countries regulating the transfer of personal data including appropriate safeguards for the data subjects.

Amendment

(79) For a transitional period of [5 years] after the entry into force of this Regulation, *the Regulation* is without prejudice to international agreements concluded between the Union and third countries regulating the transfer of personal data including appropriate safeguards for the data subjects. *During the transitional period all international agreements concluded between the Union and third countries regulating the transfer of personal data including appropriate safeguards for the data subjects shall be revised in order to align them to this Regulation.*

Or. en

Amendment 270
Amelia Andersdotter

Proposal for a regulation
Recital 79

Text proposed by the Commission

(79) This Regulation is without prejudice to international agreements concluded between the Union and third countries regulating the transfer of personal data including appropriate safeguards for the data subjects.

Amendment

(79) This Regulation is without prejudice to international agreements concluded between the Union and third countries regulating the transfer of personal data including appropriate safeguards for the data subjects ***ensuring an equivalent level of protection for the fundamental rights of citizens.***

Or. en

Justification

This amendment ensures compatibility with the approach elsewhere in the Regulation.

Amendment 271
Amelia Andersdotter

Proposal for a regulation
Recital 80

Text proposed by the Commission

(80) The Commission may decide with effect for the entire Union that certain third countries, or a territory or a processing sector within a third country, or an international organisation, offer an adequate level of data protection, thus providing legal certainty and uniformity throughout the Union as regards the third countries or international organisations which are considered to provide such level of protection. In these cases, transfers of personal data to these countries may take place without needing to obtain any further authorisation.

Amendment

(80) The Commission may decide with effect for the entire Union that certain third countries, or a territory or a processing sector within a third country, or an international organisation, offer an adequate level of data protection, thus providing legal certainty and uniformity throughout the Union as regards the third countries or international organisations which are considered to provide such level of protection. In these cases, transfers of personal data to these countries may take place without needing to obtain any further authorisation. ***The Commission may also decide, having given notice and a complete justification to the third country, to revoke such a decision.***

Or. en

Justification

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

Amendment 272
Amelia Andersdotter

Proposal for a regulation
Recital 82

Text proposed by the Commission

Amendment

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

Or. en

Justification

It follows that any country that has not deemed to have an adequate level of data protection should not receive data transfers of EU data. This recital therefore adds no clarity or meaning.

Amendment 273
Amelia Andersdotter

Proposal for a regulation
Recital 83

Text proposed by the Commission

Amendment

(83) In the absence of an adequacy decision, the controller or processor *deleted*

should take measures to compensate for the lack of data protection in a third country by way of appropriate safeguards for the data subject. Such appropriate safeguards may consist of making use of binding corporate rules, standard data protection clauses adopted by the Commission, standard data protection clauses adopted by a supervisory authority or contractual clauses authorised by a supervisory authority, or other suitable and proportionate measures justified in the light of all the circumstances surrounding a data transfer operation or set of data transfer operations and where authorised by a supervisory authority.

Or. en

Justification

Deleting this recital would echo the proposed amendment to Article 44, which would delete this exception for “legitimate interests” of the controller.

Amendment 274
Seán Kelly, Adina-Ioana Vălean

Proposal for a regulation
Recital 84

Text proposed by the Commission

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

Amendment

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

scenarios, it may be appropriate to encourage controllers and processors to provide even more robust safeguards via additional contractual commitments that supplement standard data protection clauses.

Or. en

Justification

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

Amendment 275
Amelia Andersdotter

Proposal for a regulation
Recital 87

Text proposed by the Commission

(87) These derogations should in particular apply to data transfers required and necessary for the protection of important grounds of public interest, for example in cases of international data transfers between competition authorities, tax or customs administrations, financial supervisory authorities, between services competent for social security matters, or to competent authorities for the prevention, investigation, detection and prosecution of criminal offences.

Amendment

(87) These derogations should in particular apply to data transfers required and necessary for the protection of important grounds of public interest, for example in cases of international data transfers between competition authorities, tax or customs administrations, financial supervisory authorities, between services competent for social security matters, or to competent authorities for the prevention, investigation, detection and prosecution of criminal offences. ***Transferring personal data for such important grounds of public interest should only be used for occasional transfers. In each and every case, a careful assessment of all circumstances of the transfer needs to be carried out.***

Or. en

Justification

The public interest exception needs to be circumscribed more closely, in parallel to the proposed amendment to Article 44.

Amendment 276
Amelia Andersdotter

Proposal for a regulation
Recital 88

Text proposed by the Commission

Amendment

(88) Transfers which cannot be qualified as frequent or massive, could also be possible for the purposes of the legitimate interests pursued by the controller or the processor, when they have assessed all the circumstances surrounding the data transfer. For the purposes of processing for historical, statistical and scientific research purposes, the legitimate expectations of society for an increase of knowledge should be taken into consideration.

deleted

Or. en

Justification

Deleting this recital would echo the proposed amendment to Article 44, which would delete this exception for “legitimate interests” of the controller.

Amendment 277
Amelia Andersdotter

Proposal for a regulation
Recital 89

Text proposed by the Commission

Amendment

(89) In any case, where the Commission has taken no decision on the adequate level of data protection in a third country, the

(89) In any case, where the Commission has taken no decision on the adequate level of data protection in a third country, the

controller or processor should make use of solutions that provide data subjects with a guarantee that they will continue to benefit from the fundamental rights and safeguards as regards processing of their data in the Union once this data has been transferred.

controller or processor should make use of solutions that provide data subjects with a **legally binding** guarantee that they will continue to benefit from the fundamental rights and safeguards as regards processing of their data in the Union once this data has been transferred. ***This guarantee will include financial indemnification in cases of loss or unauthorised access or processing of the data and an obligation, regardless of local legislation, to provide full details of all access to the data by public authorities in the third country.***

Or. en

Justification

The Commission's text is too vague and out of step with the rest of the Regulation.

Amendment 278

Amelia Andersdotter

Proposal for a regulation

Recital 90

Text proposed by the Commission

(90) Some third countries enact laws, regulations and other legislative instruments which purport to directly regulate data processing activities of natural and legal persons under the jurisdiction of the Member States. The extraterritorial application of these laws, regulations and other legislative instruments **may** be in breach of international law and may impede the attainment of the protection of individuals guaranteed in the Union by this Regulation. . Transfers should only be allowed where the conditions of this Regulation for a transfer to third countries are met. This may inter alia be the case where the disclosure is necessary for an important

Amendment

(90) Some third countries enact laws, regulations and other legislative instruments which purport to directly regulate data processing activities of natural and legal persons under the jurisdiction of the Member States. The extraterritorial application of these laws, regulations and other legislative instruments **must, by default, be considered to** be in breach of international law and may impede the attainment of the protection of individuals guaranteed in the Union by this Regulation. . Transfers should only be allowed where the conditions of this Regulation for a transfer to third countries are met. This may inter alia be the case where the disclosure is

ground of public interest recognised in Union law or in a Member State law to which the controller is subject. The conditions under which an important ground of public interest exists should be further specified by the Commission in a delegated act.

necessary for an important ground of public interest recognised in Union law or in a Member State law to which the controller is subject. The conditions under which an important ground of public interest exists should be further specified by the Commission in a delegated act. ***The mere existence of legislation in a country which would even theoretically, regardless of its application, permit extra-territorial access to European citizens' data, is a sufficient reason to revoke recognition of adequacy of that data protection regime or any equivalent bilateral arrangement of that country.***

Or. en

Justification

The text of this amendment comes from a leaked interservice consultation draft. It protects against third countries wanting to enforce their laws extra-territorially. This protection is needed because some third countries have laws forcing controllers to disclose personal data without proper safeguards. Third-country authorities may only have access to personal data held by European controllers through the procedures for mutual legal assistance. It is logically impossible to consider that a country which has active legislation that could undermine European citizens' rights could be simultaneously capable of having legislation in place that could abuse personal data hosted in Europe and be considered to have "adequate" data protection for European data hosted in that jurisdiction. See also Article 44a (new).

Amendment 279

Paul Rübzig

Proposal for a regulation

Recital 90

Text proposed by the Commission

(90) Some third countries enact laws, regulations and other legislative instruments which purport to directly regulate data processing activities of natural and legal persons under the jurisdiction of the Member States. The extraterritorial application of these laws,

Amendment

(90) Some third countries enact laws, regulations and other legislative instruments which purport to directly regulate data processing activities of natural and legal persons under the jurisdiction of the Member States. The extraterritorial application of these laws,

regulations and other legislative instruments may be in breach of international law and may impede the attainment of the protection of *individuals* guaranteed in the Union by this Regulation. Transfers should only be allowed where the conditions of this Regulation for a transfer to third countries are met. This may inter alia be the case where the disclosure is necessary for an important ground of public interest recognised in Union law or in a Member State law to which the controller is subject. The conditions under which an important ground of public interest exists should be further specified by the Commission in a delegated act.

regulations and other legislative instruments may be in breach of international law and may impede the attainment of the protection of *natural and legal persons* guaranteed in the Union by this Regulation. Transfers should only be allowed where the conditions of this Regulation for a transfer to third countries are met. This may inter alia be the case where the disclosure is necessary for an important ground of public interest recognised in Union law or in a Member State law to which the controller is subject. The conditions under which an important ground of public interest exists should be further specified by the Commission in a delegated act.

Or. de

Amendment 280
Amelia Andersdotter

Proposal for a regulation
Recital 92

Text proposed by the Commission

(92) The establishment of supervisory authorities in Member States, exercising their functions with complete independence, is an essential component of the protection of individuals with regard to the processing of their personal data. Member States may establish more than one supervisory authority, to reflect their constitutional, organisational and administrative structure.

Amendment

(92) The establishment of supervisory authorities in Member States, exercising their functions with complete independence, is an essential component of the protection of individuals with regard to the processing of their personal data. Member States may establish more than one supervisory authority, to reflect their constitutional, organisational and administrative structure. ***Independence shall be understood as not having direct or indirect political involvement in selection of leadership and having adequate financial personal and legal resources to carry out its role fully.***

Or. en

Justification

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

Amendment 281

Amelia Andersdotter

Proposal for a regulation

Recital 94

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Strong, independent supervisory authorities are one of the necessary conditions for effective data protection. They should be free from external influence, as confirmed by the ECJ (C-518/07 and C-614/10), and should have the necessary resources – financial and human – to ensure enforcement of data protection legislation. These changes aim to provide supervisory

authorities with the independence and resources they need to effectively protect the fundamental right to data protection. Supervisory authorities are needed to ensure enforcement of data protection legislation. As Article 16(2) TFEU states, they shall be independent in the exercise of their duties. Experience with the current framework has shown that this level of independence is not always provided in practice. It should be noted that this should not only be seen as referring to interference by Member States, but also by the Commission. Independence on paper alone is not enough, supervisory authorities also need the means to put their powers into action. This implies a need for appropriate resources and skilled staff, including staff with technical expertise. The increasing technical challenges facing supervisory authority staff must be recognised and addressed.

Amendment 282

Amelia Andersdotter

Proposal for a regulation

Recital 95

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Strong, independent supervisory authorities are one of the necessary conditions for effective data protection. They should be free from external influence, as confirmed by the ECJ (C-518/07 and C-614/10), and should have the necessary resources – financial and human – to ensure enforcement of data protection legislation. These changes aim to provide supervisory authorities with the independence and resources they need to effectively protect the fundamental right to data protection. Supervisory authorities are needed to ensure enforcement of data protection legislation. As Article 16(2) TFEU states, they shall be independent in the exercise of their duties. Experience with the current framework has shown that this level of independence is not always provided in practice. It should be noted that this

should not only be seen as referring to interference by Member States, but also by the Commission. Independence on paper alone is not enough, supervisory authorities also need the means to put their powers into action. This implies a need for appropriate resources and skilled staff, including staff with technical expertise.

Amendment 283

Paul Rübiger

Proposal for a regulation

Recital 96

Text proposed by the Commission

(96) The supervisory authorities should monitor the application of the provisions pursuant to this Regulation and contribute to its consistent application throughout the Union, in order to protect natural persons in relation to the processing of their personal data and to facilitate the free flow of personal data within the internal market. For these purposes, the supervisory authorities shall co-operate with each other and the Commission.

Amendment

(96) The supervisory authorities should monitor the application of the provisions pursuant to this Regulation and contribute to its consistent application throughout the Union, in order to protect natural **and legal** persons in relation to the processing of their personal data and to facilitate the free flow of personal data within the internal market. For these purposes, the supervisory authorities shall co-operate with each other and the Commission.

Or. de

Amendment 284

Amelia Andersdotter

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

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 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.

increase the consistent application, provide legal certainty and reduce administrative burden for such controllers and processors. ***When carrying out these activities, this supervisory authority should take appropriate steps to cooperate with its counterparts in other Member States where there are data subjects likely to be affected by the processing operations, involving the European Data Protection Board where appropriate, including by carrying out joint investigations. Appropriate mechanisms should be put in place to ensure that smaller supervisory authorities have the financial, administrative and human resources capacity to deal with any extra burdens that this places on them.***

Or. en

Justification

There is a trend for multinational online companies to establish in some smaller EU Member States. Without a mechanism to ensure that these DPAs are not overwhelmed by the cost of providing adequate supervision in such circumstances significant gaps in supervision may occur. DPAs responsible for supervising controllers who process personal data in multiple Member States should take appropriate steps to cooperate with their counterparts in the other Member States. In some cases, it might be useful to involve the Board here.

Amendment 285

Adina-Ioana Vălean, Jürgen Creutzmann, Jens Rohde, Seán Kelly

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

Amendment

(97) Where the processing of personal data takes place in more than one Member State, one single supervisory authority should be competent for monitoring the activities of the controller or processor throughout the Union and taking the related decisions, in order to increase the

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.

consistent application, provide legal certainty and reduce administrative burden for such controllers and processors.

Or. en

Justification

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

Amendment 286
Amelia Andersdotter

Proposal for a regulation
Recital 98 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Justification

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

Amendment 287
Amelia Andersdotter

Proposal for a regulation
Recital 104

Text proposed by the Commission

(104) Each supervisory authority should have the right to participate in joint operations between supervisory authorities. The requested supervisory authority should be obliged to respond to the request in a defined time period.

Amendment

(104) Each supervisory authority should have the right to participate in joint operations between supervisory authorities. The requested supervisory authority should be obliged to respond to the request in a defined time period. ***The European Data Protection Board should be able to coordinate such activities, where the concerned supervisory authorities so wish. Each supervisory authority should have the right to participate in joint operations between supervisory authorities. The requested supervisory authority should be obliged to respond to the request in a defined time period.***

Or. en

Justification

In order to make cooperation more efficient, the Board could be entrusted with coordinating joint investigations, where the DPAs concerned so wish. See also the related proposed amendment to Article 66.

Amendment 288
Adina-Ioana Vălean, Jürgen Creutzmann, Jens Rohde, Seán Kelly

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

Amendment

(105) In order to ensure the consistent application of this Regulation throughout the Union, a consistency mechanism for co-operation between the supervisory authorities themselves and the Commission

should be established. This mechanism should in particular apply where *a* supervisory authority intends to take a measure as regards processing operations that are related to the offering of goods or services to data subjects in several Member States, , or to the monitoring such data subjects, or that might substantially affect the free flow of personal data. It should also apply where any supervisory authority or the Commission requests that the matter should be dealt with in the consistency mechanism. This mechanism should be without prejudice to any measures that the Commission may take in the exercise of its powers under the Treaties.

should be established. This mechanism should in particular apply where *the competent* supervisory authority intends to take a measure as regards processing operations that are related to the offering of goods or services to data subjects in several Member States, or to the monitoring such data subjects, or that might substantially affect the free flow of personal data. It should also apply where any supervisory authority or the Commission requests that the matter should be dealt with in the consistency mechanism. This mechanism should be without prejudice to any measures that the Commission may take in the exercise of its powers under the Treaties.

Or. en

Amendment 289
Amelia Andersdotter

Proposal for a regulation
Recital 107

Text proposed by the Commission

(107) In order to ensure compliance with this Regulation, the Commission may adopt an opinion on this matter, or a decision, requiring the supervisory authority to suspend its draft measure.

Amendment

(107) In order to ensure compliance with this Regulation, the Commission may adopt an opinion on this matter, or *in urgent cases* a decision, requiring the supervisory authority to suspend its draft measure.

Or. en

Justification

The Commission's proposal fails to respect Commission's own position on independence of DPAs.

Amendment 290
Amelia Andersdotter

Proposal for a regulation
Recital 110

Text proposed by the Commission

(110) At Union level, a European Data Protection Board should be set up. It should replace the Working Party on the Protection of Individuals with Regard to the Processing of Personal Data established by Directive 95/46/EC. It should consist of a head of a supervisory authority of each Member State and of the European Data Protection Supervisor. The Commission should participate in its activities. The European Data Protection Board should contribute to the consistent application of this Regulation throughout the Union, including by advising the **Commission** and promoting **co-operation** of the supervisory authorities throughout the Union. The European Data Protection Board should act independently when exercising its tasks.

Amendment

(110) At Union level, a European Data Protection Board should be set up. It should replace the Working Party on the Protection of Individuals with Regard to the Processing of Personal Data established by Directive 95/46/EC. It should consist of a head of a supervisory authority of each Member State and of the European Data Protection Supervisor. The Commission should participate in its activities. The European Data Protection Board should contribute to the consistent application of this Regulation throughout the Union, including by advising the **institutions of the European Union** and promoting **cooperation** of the supervisory authorities throughout the Union, **including the coordination of joint operations**. The European Data Protection Board should act independently when exercising its tasks.

Or. en

Justification

There is no obvious reason why the Board should restrict its advisory activities to the Commission. The second addition enables the Board to play a bigger role in coordinating joint operations of DPAs.

Amendment 291
Amelia Andersdotter

Proposal for a regulation
Recital 118

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

The existence of any level of fault on the part of the data subject should not automatically remove all responsibility from the data controller or processor if they share the fault.

Amendment 292
Angelika Niebler

Proposal for a regulation
Recital 121

Text proposed by the Commission

(121) The processing of personal data **solely** for journalistic purposes, or for the purposes of artistic or literary expression should qualify for exemption from the requirements of certain provisions of this Regulation in order to reconcile the right to the protection of personal data with the right to freedom of expression, and notably the right to receive and impart information, as guaranteed in particular by Article 11 of the Charter of Fundamental Rights of the European Union. This should apply in particular to processing of personal data in the audiovisual field and in news archives and press libraries. Therefore, Member States should adopt legislative measures, which should lay down exemptions and

Amendment

(121) The processing of personal data for journalistic purposes, or for the purposes of artistic or literary expression should qualify for exemption from the requirements of certain provisions of this Regulation in order to reconcile the right to the protection of personal data with the right to freedom of expression, and notably the right to receive and impart information, as guaranteed in particular by Article 11 of the Charter of Fundamental Rights of the European Union. This should apply in particular to processing of personal data in the audiovisual field and in news archives and press libraries. Therefore, Member States should adopt legislative measures, which should lay down exemptions and

derogations which are necessary for the purpose of balancing these fundamental rights. Such exemptions and derogations should be adopted by the Member States on general principles, on the rights of the data subject, on controller and processor, on the transfer of data to third countries or international organisations, on the independent supervisory authorities and on co-operation and consistency. This should not, however, lead Member States to lay down exemptions from the other provisions of this Regulation. In order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary to interpret notions relating to that freedom, such as journalism, broadly. Therefore, Member States should classify activities as "journalistic" for the purpose of the exemptions and derogations to be laid down under this Regulation if the object of these activities is the disclosure to the public of information, opinions or ideas, irrespective of the medium which is used to transmit them. They should not be limited to media undertakings and may be undertaken for profit-making or for non-profit making purposes.

derogations which are necessary for the purpose of balancing these fundamental rights. Such exemptions and derogations should be adopted by the Member States on general principles, on the rights of the data subject, on controller and processor, on the transfer of data to third countries or international organisations, on the independent supervisory authorities and on co-operation and consistency. This should not, however, lead Member States to lay down exemptions from the other provisions of this Regulation. In order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary to interpret notions relating to that freedom, such as journalism, broadly. Therefore, Member States should classify activities as "journalistic" for the purpose of the exemptions and derogations to be laid down under this Regulation if the object of these activities is the disclosure to the public of information, opinions or ideas, irrespective of the medium which is used to transmit them. They should not be limited to media undertakings and may be undertaken for profit-making or for non-profit making purposes.

Or. de

Justification

Measures to guarantee media freedom in relation to data protection law do not 'solely' concern journalism per se. Investigative journalism would also be under threat if outside bodies obtained information on business trips, fees paid to informants, etc.

Amendment 293
Amelia Andersdotter

Proposal for a regulation
Recital 121

Text proposed by the Commission

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

Amendment

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

purposes.

Or. en

Justification

This – and all – exceptions need to be clearly circumscribed.

Amendment 294
Amelia Andersdotter

Proposal for a regulation
Recital 121 a (new)

Text proposed by the Commission

Amendment

(121a) This Regulation allows the principle of public access to official documents to be taken into account when applying the provisions set out in this Regulation. Personal data in documents held by a public authority or a public body may be disclosed by this authority or body in accordance with Member State legislation to which the public authority or public body is subject. Such legislation shall reconcile the right to the protection of personal data with the principle of public access to official documents.

Or. en

Justification

It is essential to ensure that public oversight of public affairs is not unduly hampered by data protection rules. As expressed in opinions by the EDPS, the Article 29 Working Party and the FRA, the principle of public access to official documents should therefore be guaranteed.

Amendment 295
Marita Ulvskog

Proposal for a regulation
Recital 121 a (new)

PE502.053v01-00

100/138

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Text proposed by the Commission

Amendment

(121a) This Regulation allows the principle of public access to official documents to be taken into account when applying the provisions set out in this Regulation. Personal data in documents held by a public authority or a public body may be disclosed by this authority or body in accordance with Member State legislation to which the public authority or public body is subject. Such legislation shall reconcile the right to the protection of personal data with the principle of public access to official documents.

Or. en

Justification

It is essential to ensure that public oversight of public affairs is not unduly hampered by data protection rules. As expressed in opinions by the EDPS, the Article 29 Working Party and the FRA, the principle of public access to official documents should therefore be guaranteed in an article and not merely in a recital.

Amendment 296

Amelia Andersdotter

Proposal for a regulation

Recital 126

Text proposed by the Commission

Amendment

(126) Scientific research for the purposes of this Regulation should include fundamental research, applied research, and privately funded research and in addition should take into account the Union's objective under Article 179(1) of the Treaty on the Functioning of the European Union of achieving a European Research Area.

(126) Scientific research for the purposes of this Regulation should include fundamental research, applied research, and privately funded research ***in the meaning of Article 13 of the Charter of Fundamental Rights of the European Union*** and in addition should take into account the Union's objective under Article 179(1) of the Treaty on the Functioning of the European Union of achieving a European Research Area. ***It should not***

include market research.

Or. en

Justification

It should be clarified that the research exemption is meant for research in a strict sense, and not for market research.

Amendment 297

Adina-Ioana Vălean, Jürgen Creutzmann

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***

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, ***appropriate industry-led measures and policies shall take due account of the principles of technology, service and business model neutrality so as to favour the free movement of personal data within the Union.***

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

Or. en

Amendment 298

Paul Rübige

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

Amendment

(129) In order to fulfil the objectives of this Regulation, namely to protect the fundamental rights and freedoms of natural *and legal* persons and in particular their

protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. In particular, delegated acts should be adopted in respect of lawfulness of processing; specifying the criteria and conditions in relation to the consent of a child; processing of special categories of data; specifying the criteria and conditions for manifestly excessive requests and fees for exercising the rights of the data subject; criteria and requirements for the information to the data subject and in relation to the right of access; the right to be forgotten and to erasure; measures based on profiling; criteria and requirements in relation to the responsibility of the controller and to data protection by design and by default; a processor; criteria and requirements for the documentation and the security of processing; criteria and requirements for establishing a personal data breach and for its notification to the supervisory authority, and on the circumstances where a personal data breach is likely to adversely affect the data subject; the criteria and conditions for processing operations requiring a data protection impact assessment; the criteria and requirements for determining a high degree of specific risks which require prior consultation; designation and tasks of the data protection officer; codes of conduct; criteria and requirements for certification mechanisms; criteria and requirements for transfers by way of binding corporate rules; transfer derogations; administrative sanctions; processing for health purposes; processing in the employment context and processing for historical, statistical and scientific research purposes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing

right to the protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. In particular, delegated acts should be adopted in respect of lawfulness of processing; specifying the criteria and conditions in relation to the consent of a child; processing of special categories of data; specifying the criteria and conditions for manifestly excessive requests and fees for exercising the rights of the data subject; criteria and requirements for the information to the data subject and in relation to the right of access; the right to be forgotten and to erasure; measures based on profiling; criteria and requirements in relation to the responsibility of the controller and to data protection by design and by default; a processor; criteria and requirements for the documentation and the security of processing; criteria and requirements for establishing a personal data breach and for its notification to the supervisory authority, and on the circumstances where a personal data breach is likely to adversely affect the data subject; the criteria and conditions for processing operations requiring a data protection impact assessment; the criteria and requirements for determining a high degree of specific risks which require prior consultation; designation and tasks of the data protection officer; codes of conduct; criteria and requirements for certification mechanisms; criteria and requirements for transfers by way of binding corporate rules; transfer derogations; administrative sanctions; processing for health purposes; processing in the employment context and processing for historical, statistical and scientific research purposes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing

and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

Or. de

Amendment 299

Adina-Ioana Vălean, Jürgen Creutzmann

Proposal for a regulation

Recital 130

Text proposed by the Commission

(130) In *order to ensure uniform conditions for the implementation* of this Regulation, *implementing powers should be conferred on the Commission for: specifying standard forms in relation to the processing of personal data of a child; standard procedures and forms for exercising the rights of data subjects; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access; the right to data portability; standard forms in relation to the responsibility of the controller to data protection by design and by default and to the documentation; specific requirements for the security of processing; the standard format and the procedures for the notification of a personal data breach to the supervisory authority and the communication of a personal data breach to the data subject; standards and procedures for a data protection impact assessment; forms and procedures for prior authorisation and prior consultation; technical standards and mechanisms for certification; the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an*

Amendment

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

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 powers⁴⁶. In this context, the Commission should consider specific measures for micro, small and medium-sized enterprises.

Or. en

Amendment 300

Adina-Ioana Vălean, Jürgen Creutzmann

Proposal for a regulation

Recital 130

Text proposed by the Commission

(130) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission **for: specifying standard forms in relation to the processing of personal data of a child; standard procedures and forms for exercising the rights of data subjects; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access; the right to data portability; standard forms in relation to the responsibility of the controller to data protection by design and by default and to the documentation; specific requirements for the security of processing; the standard format and the procedures for the notification of a personal data breach to the supervisory authority and the**

Amendment

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

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 powers⁴⁶. In this context, the Commission should consider specific measures for micro, small and medium-sized enterprises.

Or. en

Amendment 301
András Gyürk

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

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 procedures and forms for exercising the rights of data subjects; standard forms for the information to the data subject; standard forms and procedures in relation

to the right of access; the right to data portability; standard forms in relation to the responsibility of the controller to data protection by design and by default and to the documentation; specific requirements for the security of processing; the standard format and the procedures for the notification of a personal data breach to the supervisory authority and the communication of a personal data breach to the data subject; standards and procedures for a data protection impact assessment; forms and procedures for prior authorisation and prior consultation; technical standards and mechanisms for certification; the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an international organisation; disclosures not authorized by Union law; mutual assistance; joint operations; decisions under the consistency mechanism. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European 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 powers⁴⁶. In this context, the Commission should consider specific measures for micro, small and medium-sized enterprises.

to the right of access; the right to data portability; standard forms in relation to the responsibility of the controller to data protection by design and by default and to the documentation; specific requirements for the security of processing; the standard format and the procedures for the notification of a personal data breach to the supervisory authority and the communication of a personal data breach to the data subject; standards and procedures for a data protection impact assessment; forms and procedures for prior authorisation and prior consultation; technical standards and mechanisms for certification; the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an international organisation; disclosures not authorized by Union law; mutual assistance; joint operations; decisions under the consistency mechanism. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European 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 powers⁴⁶. In this context, the Commission should consider specific measures for micro, small and medium-sized enterprises, *as these measures should not overly burden these enterprises.*

Or. en

Amendment 302
Rachida Dati

Proposal for a regulation
Recital 130

Text proposed by the Commission

(130) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission for: specifying standard forms in relation to the processing of personal data of a child; standard procedures and forms for exercising the rights of data subjects; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access; the right to data portability; standard forms in relation to the responsibility of the controller to data protection by design and by default and to the documentation; specific requirements for the security of processing; the standard format and the procedures for the notification of a personal data breach to the supervisory authority and the communication of a personal data breach to the data subject; standards and procedures for a data protection impact assessment; forms and procedures for prior authorisation and prior consultation; technical standards and mechanisms for certification; the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an international organisation; disclosures not authorized by Union law; mutual assistance; joint operations; decisions under the consistency mechanism. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European 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

(130) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission for: specifying standard forms in relation to the processing of personal data of a child; standard procedures and forms for exercising the rights of data subjects; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access; the right to data portability; standard forms in relation to the responsibility of the controller to data protection by design and by default and to the documentation; specific requirements for the security of processing; the standard format and the procedures for the notification of a personal data breach to the supervisory authority and the communication of a personal data breach to the data subject; standards and procedures for a data protection impact assessment; forms and procedures for prior authorisation and prior consultation; technical standards and mechanisms for certification; the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an international organisation; disclosures not authorized by Union law; mutual assistance; joint operations; decisions under the consistency mechanism. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European 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, ***in consultation with relevant stakeholders.***

Justification

The potential lack of transparency associated with the use of implementing powers by the Commission should be avoided by ensuring that measures are drafted in close cooperation with the stakeholders affected.

Amendment 303

Adina-Ioana Vălean, Jürgen Creutzmann, Seán Kelly

Proposal for a regulation**Recital 139***Text proposed by the Commission*

(139) In view of the fact that, as underlined by the Court of Justice of the European Union, the right to the protection of personal data is not an absolute right, but must be considered in relation to its function in society and be balanced with other fundamental rights, in accordance with the principle of proportionality, this Regulation respects all fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union as enshrined in the Treaties, notably the right to respect for private and family life, home and communications, the right to the protection of personal data, the freedom of thought, conscience and religion, the freedom of expression and information, the freedom to conduct a business, the right to an effective remedy and to a fair trial as well as cultural, religious and linguistic diversity.

Amendment

(139) In view of the fact that, as underlined by the Court of Justice of the European Union, the right to the protection of personal data is not an absolute right, but must be considered in relation to its function in society and ***the actual and potential advances in science, health and technology and*** be balanced with other fundamental rights, in accordance with the principle of proportionality, this Regulation respects all fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union as enshrined in the Treaties, notably the right to respect for private and family life, home and communications, the right to the protection of personal data, the freedom of thought, conscience and religion, the freedom of expression and information, the freedom to conduct a business, ***the right to property and in particular the protection of intellectual property*** the right to an effective remedy and to a fair trial as well as cultural, religious and linguistic diversity.

Justification

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

Amendment 304
Paul Rübzig

Proposal for a regulation
Article 1 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. de

Amendment 305
Paul Rübzig

Proposal for a regulation
Article 1 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. de

Amendment 306
Paul Rübzig

Proposal for a regulation
Article 1 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. de

Amendment 307
Gunnar Hökmark

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

Text proposed by the Commission

Amendment

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

Or. sv

Amendment 308
Adina-Ioana Vălean, Jürgen Creutzmann

Proposal for a regulation
Article 2 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 309
Ivailo Kalfin

Proposal for a regulation
Article 2 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 310
Amelia Andersdotter

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

Text proposed by the Commission

(a) in the course of an activity which falls outside the scope of Union law, in particular concerning national security;

Amendment

deleted

Justification

Activities outside the scope of Union law are excluded by definition. Repeating this does not add anything.

Amendment 311
Amelia Andersdotter

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

This follows from the insertion of paragraphs 2a and 2b.

Amendment 312
Jens Rohde, Bendt Bendtsen

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

There simply does not seem to be any good reasons why the Union's institutions should not protect personal data as well as other sectors

Amendment 313
Silvia-Adriana Țicău

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

Or. en

Justification

For the sake of legal certainty and uniformity, it is needed to incorporate the substantive rules for EU institutions and body in the Regulation. A single legal text avoid the risk of discrepancies between provisions and will be the most suitable vehicle for data exchanges between the EU level and the public and private entities in the Member States.

Amendment 314
Silvia-Adriana Țicău

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 **and thus without any connection with a professional or commercial activity**, in the course of its own exclusively personal or household activity, **bearing in mind that publishing data to an indefinite number of individuals, for example through the internet, could not be described as a purely personal or household activity.***

Or. en

Justification

According to the ECJ's case law C-101/0 Linquist, this text inserts a criterion to differentiate public and domestic activities based on the indefinite number of individuals who can access the information. This exception should only apply when the data is made available to a limited number of individuals. The text is now also coherent with recital 15.

Amendment 315

Marita Ulvskog

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(ea) for historical, statistical and scientific research purposes

Or. en

Amendment 316

Bernd Lange

Proposal for a regulation

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 317

Jens Rohde

Proposal for a regulation

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

Text proposed by the Commission

Amendment

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

Or. en

Justification

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

Amendment 318

Seán Kelly, Adina-Ioana Vălean

Proposal for a regulation

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 319

Franck Proust

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(ea) that has been rendered anonymous;

Or. fr

Amendment 320
Amelia Andersdotter

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

Text proposed by the Commission

Amendment

2a. Subject to the rules in this Regulation, the European Parliament and the Council, and the Commission where this is provided for in this Regulation, may adopt specific rules further clarifying the rules in this Regulation with regards to specific areas or to processing by specific entities. Within a period of one year from the coming into force of this Regulation, the European Parliament and the Council shall adopt such specific subsidiary rules with regard to the processing of personal data by:

(a) by providers of publicly available electronic communications services, both generally and as concerns the preservation of communications data for purposes of law enforcement;

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

Or. en

Justification

The aim of this proposal is to establish a general data protection regulation. In order to achieve this aim and to avoid fragmentation of the legal framework, the scope should thus be wide. There is no a priori reason why Union institutions, bodies, offices and agencies should be excluded; the same applies for providers of publicly available electronic communications services, both generally and as concerns the preservation of communications data for purposes of law enforcement. Existing legislation covering such entities should be brought in line with this Regulation. Until then, it should be applied in the spirit of the Regulation.

Amendment 321
Angelika Niebler

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Proposal for a regulation

Article 3 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

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

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

Or. de

Justification

Clarification of the concept of ‘residence’.

Amendment 322

Amelia Andersdotter

Proposal for a regulation

Article 3 – paragraph 2 – point a

Text proposed by the Commission

Amendment

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

(a) the offering of goods or services to such data subjects in the Union, **irrespective of whether a payment of the data subject is required**; or

Or. en

Justification

The notion of “processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union” could be clarified. This question has already been raised under the current framework (see e.g. Opinion of the Working Party 29 on applicable law). While under a Regulation, questions of applicable law become less complicated, there should still be explicit rules on the applicability of national law building on the Regulation, e.g. specific rules in the employment context (see Article 82). It should be clarified that controllers established outside the Union are also subject to the Regulation when offering goods or services without a payment (e.g. because the service is paid for by advertising) to data subjects in the Union.

Amendment 323
Amelia Andersdotter

Proposal for a regulation
Article 4 – paragraph 1 – 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 to the physical, physiological, genetic, mental, economic, cultural or social identity of that person;

Amendment

(1) 'data subject' means an identified natural person or a natural person who can be identified **or singled out**, 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 other unique identifier**, location data, online identifier or to one or more factors specific to the **gender**, physical, physiological, genetic, mental, economic, cultural or social identity **or sexual orientation** of that person;

Or. en

Justification

To ensure good protection, it is important that the terms "personal data" and "data subject" are not defined too narrowly. The Regulation should clearly apply to data that only allow "singling out" and it should be clear that online identifiers should in most cases be considered personal data. Since technology is steadily advancing, de-anonymisation attacks will become more sophisticated. Having wide definitions of "personal data" and "data subject" is important for future-proof protection.

Amendment 324
Adina-Ioana Vălean, Jürgen Creutzmann

Proposal for a regulation
Article 4 – paragraph 1 – 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

Amendment

(1) 'data subject' means an identified natural person or a natural person who can be identified, directly or indirectly, by

means reasonably likely to be used by the controller **or by any other natural or legal person**, in particular by reference to an identification number, location data, online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person;

means reasonably likely to be used by the controller, in particular by reference to an identification number, location data, online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person **and who is not acting in his/her professional capacity**;

Or. en

Justification

The means used to identify should be in direct relation to the data controller. Art 4.1 defines a 'data subject' as covering a natural person. Some particular situations might be difficult to assess as a sole trader (plumber, doctor) working freelance and using the same phone line for business and private purposes blurs the boundaries between natural and legal persons. The Regulation should be applicable only to natural persons not acting in their professional capacity.

Amendment 325 **Paul Rübige**

Proposal for a regulation **Article 4 – paragraph 1 – 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 to the physical, physiological, genetic, mental, economic, cultural or social identity of that person;

Amendment

(1) 'data subject' means an identified natural **or legal** person or a natural **or legal** person who can be identified, directly or indirectly, by means reasonably likely to be used by the controller or by any other natural or legal person, in particular by reference to an identification number, location data, online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person;

Or. de

Amendment 326
Angelika Niebler

Proposal for a regulation
Article 4 – paragraph 1 – 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 to the physical, physiological, genetic, mental, economic, cultural or social identity of that person;

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 ***working together with the controller***, in particular by reference to an identification number, location data, online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person;

Or. de

Amendment 327
Jens Rohde, Bendt Bendtsen

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

Text proposed by the Commission

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

Amendment

(2) 'personal data' means any information relating to a data subject; ***Data that cannot be related to a data subject like anonymised data, encrypted and some pseudonymised data fall outside this regulation; Business Contact information fall outside this regulation;***

Or. en

Justification

Anonymised data and some pseudonymised data can concern a data subject, but can no longer be linked to that data subject for technical reasons. Data that can no longer be linked

to a data subject should not be under this regulation. Business Contact Information include data like name, title, work e-mail address, work telephone number, work fax number, visitor address, etc. which should not be considered confidential as they are only supposed to be used in a professional context.

Amendment 328

Adina-Ioana Vălean, Jürgen Creutzmann

Proposal for a regulation

Article 4 – paragraph 1 – point 2

Text proposed by the Commission

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

Amendment

(2) ‘personal data’ means any **data specifically** relating to a data subject **whose specific identity can be identified, directly or indirectly by the controller;**

Or. en

Amendment 329

Adina-Ioana Vălean, Jürgen Creutzmann, Seán Kelly

Proposal for a regulation

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 330

Jens Rohde

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(2a) 'anonymised data' means previously identifiable data that have been de-identified and for which a code or other link no longer exists.

Or. en

Amendment 331

Jens Rohde

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(2b) 'pseudonymised data' means previously identifiable data where personal identifiable information – e.g. names, date of birth, address or account number, has been replaced with a code (pseudonyms or symbol). The link between the code and the data is kept separately.

Or. en

Amendment 332

Amelia Andersdotter

Proposal for a regulation

Article 4 – paragraph 1 – point 3 a (new)

Text proposed by the Commission

Amendment

(3a) 'profiling' means any form of automated processing intended to evaluate, or generate data about, aspects relating to natural persons or to analyse or predict a natural person's performance at work, economic situation, location, health, preferences, reliability, behaviour

or personality;

Or. en

Justification

Profiling can entail serious risks for data subjects. It is prone to reinforcing discriminations, making decisions less transparent and carries an unavoidable risk of wrong decisions. For these reasons, it should be tightly regulated: its use should be clearly limited, and in those cases where it can be used, there should be safeguards against discrimination and data subjects should be able to receive clear and meaningful information on the logic of the profiling and its consequences. While some circles see profiling as a panacea for many problems, it should be noted that there is a significant body of research addressing its limitations. Notably, profiling tends to be useless for very rare characteristics, due to the risk of false positives. Also, profiles can be hard or impossible to verify. Profiles are based on complex and dynamic algorithms that evolve constantly and that are hard to explain to data subjects. Often, these algorithms qualify as commercial secrets and will not be easily provided to data subjects. However, when natural persons are subject to profiling, they should be entitled to information about the logic used in the measure, as well as an explanation of the final decision if human intervention has been obtained. This helps to reduce non transparency, which could undermine trust in data processing and may lead to loss or trust in especially online services. There is also a serious risk of unreliable and (in effect) discriminatory profiles being widely used, in matters of real importance to individuals and groups, which is the motivation behind several suggested changes in this Article that aim to improve the protection of data subjects against discrimination. In relation to this, the use of sensitive data in generating profiles should also be restricted.

Amendment 333

Giles Chichester

Proposal for a regulation

Article 4 – paragraph 1 – point 3 a (new)

Text proposed by the Commission

Amendment

(3a) 'anonymous data' shall mean information that has never related to a data subject or has been collected, altered or otherwise processed so that it cannot be attributed to a data subject.

Or. en

Amendment 334
Pilar del Castillo Vera

Proposal for a regulation
Article 4 – paragraph 1 – point 5

Text proposed by the Commission

(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;

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, 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;

Or. en

Amendment 335
Seán Kelly, Adina-Ioana Vălean

Proposal for a regulation
Article 4 – paragraph 1 – point 5

Text proposed by the Commission

(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;

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 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;

Or. en

Justification

Removing "the conditions and means" substantially clarifies the distinction between the controller and the processor. The controller determines "why" the data is to be processed, i.e. the purpose or the end, whereas the processor determines "how" the data is to be processed, i.e. the conditions and means.

Amendment 336

Adina-Ioana Vălean, Jürgen Creutzmann

Proposal for a regulation

Article 4 – paragraph 1 – point 5

Text proposed by the Commission

(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;

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 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;

Or. en

Justification

The definition of controller should be based on the decision of the purposes for which personal data are processed rather than the conditions or means by which this is achieved. The control over the purpose for processing is the logical basis for allocating different responsibilities between controllers who are responsible for what and why data is processed and processing parties who deal with how data is processed.

Amendment 337

Jens Rohde, Adina-Ioana Vălean

Proposal for a regulation

Article 4 – paragraph 1 – point 6

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 338
Angelika Niebler

Proposal for a regulation
Article 4 – paragraph 1 – point 8

Text proposed by the Commission

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

Amendment

(8) 'the data subject's consent' means any ***consent*** given by the data subject ***on the basis of*** clear ***and comprehensive information about the purposes of the processing of*** personal data;

Or. de

Justification

Especially in the ‘online’ world, it is unclear what is meant by an ‘explicit’ indication of one’s wishes. This amendment is based on Article 5(3) of the ePrivacy Directive (2009/136/EC).

Amendment 339
Giles Chichester

Proposal for a regulation
Article 4 – paragraph 1 – point 8

Text proposed by the Commission

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

Amendment

(8) ‘the data subject's consent’ means any ***form of statement or conduct by*** the data subject ***indicating assent to the data processing proposed. Silence or inactivity does not in itself indicate acceptance;***

Or. en

Justification

The process for obtaining consent, i.e. the mechanism of information provided to the subject followed by the data subject's reaction, is the basic mechanism for forming an agreement, in this case for the processing of personal data. Using the time-honoured terminology for this, as reflected in the Common European Sales law, would simplify the text, create certainty by putting consent on a firm and established basis and avoid distinctions that would prove very difficult to apply in practice.

Amendment 340
Adina-Ioana Vălean, Jürgen Creutzmann

Proposal for a regulation
Article 4 – paragraph 1 – point 8

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 341
Giles Chichester

Proposal for a regulation
Article 4 – paragraph 1 – 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, ***which is likely to adversely affect the protection of the personal data or privacy of the data subject.***

Or. en

Justification

This amendment helps to avoid both unnecessary obligations upon data controllers and data processors and also the potential for "notification fatigue" for the data subject. A minimum threshold for triggering the obligation to notify, based upon the level of risk for the data subject, will increase protection for the data subject without becoming burdensome. This change is in accordance with Directive 2009/136/EC

Amendment 342
Bernd Lange

Proposal for a regulation
Article 4 – paragraph 1 – 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 ***an unlawful processing of personal data*** leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;

Or. en

Amendment 343
Amelia Andersdotter

Proposal for a regulation
Article 4 – paragraph 1 – 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 the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;

Or. en

Justification

Data breach notifications are an important tool for ensuring that controllers live up to their obligations on data security. They also empower data subjects to take steps to protect themselves against the consequences of breaches. This package of amendments aims at improving the provisions on data breaches by making the time limits for notification more manageable for controllers, preventing data subjects from developing "breach fatigue", and creating a public register of breaches.

Amendment 344
Jens Rohde, Bendt Bendtsen

Proposal for a regulation
Article 4 – paragraph 1 – 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.

Amendment 345

Adina-Ioana Vălean, Jürgen Creutzmann, Seán Kelly

Proposal for a regulation

Article 4 – paragraph 1 – point 10

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 346

Adina-Ioana Vălean, Jürgen Creutzmann, Seán Kelly

Proposal for a regulation

Article 4 – paragraph 1 – point 12

Text proposed by the Commission

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

Amendment

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

Amendment 347
Giles Chichester

Proposal for a regulation
Article 4 – paragraph 1 – 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:*

(1) the location of the European headquarters of a group of undertakings;

(2) the location of the entity within a group of undertakings with delegated data protection responsibilities;

(3) 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

(4) 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 348**Amelia Andersdotter****Proposal for a regulation****Article 4 – paragraph 1 – point 13***Text proposed by the Commission*

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

Amendment

(13) ‘main establishment’ means as regards the controller, the place of its establishment in the Union where the main decisions as to the purposes, conditions and means of the processing of personal data are taken ***or the place of its establishment which exercises dominant influence over other establishments of the controller***; 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 349**Franck Proust**

Proposal for a regulation
Article 4 – paragraph 1 – point 13

Text proposed by the Commission

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

Amendment

(13) ‘main establishment’ means as regards the controller, the place, **by activity sector**, 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;

Or. fr

Amendment 350
Adina-Ioana Vălean, Jürgen Creutzmann, Jens Rohde, Seán Kelly

Proposal for a regulation
Article 4 – paragraph 1 – point 13 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 351
Adina-Ioana Vălean, Jürgen Creutzmann, Jens Rohde

Proposal for a regulation
Article 4 – paragraph 1 – point 14

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Non-EU controllers who appoint an EU representative should benefit from the one stop shop principle.

Amendment 352

Jens Rohde, Adina-Ioana Vălean

Proposal for a regulation

Article 4 – paragraph 1 – point 14

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 353

Ivailo Kalfin

Proposal for a regulation

Article 4 – paragraph 1 – point 14 a (new)

Text proposed by the Commission

Amendment

(14a) 'Competent supervisory authority' means the supervisory authority which shall be solely competent for the supervision of a controller in accordance with Articles 51(2), 51(3) and 51(4);

Or. en

Amendment 354

Adina-Ioana Vălean, Jürgen Creutzmann

Proposal for a regulation

Article 4 – paragraph 1 – point 18

Text proposed by the Commission

Amendment

(18) 'child' means any person below the age of **18** years;

(18) 'child' means any person below the age of **13** years;

Or. en

Justification

The definition creates two distinct age definitions in a single regulatory instrument without clear explanation regarding the requirements and circumstances applied to each age-group. There should be a single and clear restriction that does not allow the processing of personal data for anyone below the age of 13 years of age without parental authorization, regardless of the sector in which that processing occurs.

Amendment 355

Angelika Niebler

Proposal for a regulation

Article 4 – paragraph 1 – point 19

Text proposed by the Commission

Amendment

(19) 'supervisory authority' means a public authority which is established by a Member State in accordance with Article

(Does not affect English version)

Justification

For subsidiarity reasons, the structure of the supervisory authority should be such that it is geared to the different structures in the Member States.

Amendment 356**Adina-Ioana Vălean, Jürgen Creutzmann****Proposal for a regulation****Article 4 – paragraph 1 – point 19 a (new)***Text proposed by the Commission**Amendment*

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

Or. en