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# Committee on Industry, Research and Energy

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09.01.2013

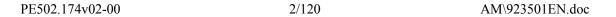
# **AMENDMENTS 690 - 917**

**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 (General Data Protection Regulation)

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

AM\923501EN.doc PE502.174v02-00



Amendment 690 Eija-Riitta Korhola

Proposal for a regulation Chapter 4 – section 3 – title

Text proposed by the Commission

DATA PROTECTION IMPACT ASSESSMENT AND PRIOR AUTHORISATION Amendment

DATA PROTECTION IMPACT ASSESSMENT AND PRIOR NOTIFICATION

Or. en

# Justification

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

Amendment 691 Seán Kelly, Adina-Ioana Vălean

Proposal for a regulation Article 33 – paragraph 1

Text proposed by the Commission

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

#### Amendment

1. Where processing operations present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, the controller or the processor acting on the controller's behalf shall carry out an assessment of the impact of the envisaged processing operations on the protection of personal data. SMEs shall only be required to perform an impact assessment after their third year of incorporation where data processing is deemed as a core activity of their business.

# Justification

Within the first three years after the establishment of a business, an average of 80% of newly established SMEs fail. Allowing this time period before the impact assessment is required will result in all businesses being given a chance to succeed before being by cost that can range in the thousands of Euros.

Amendment 692 Jens Rohde, Adina-Ioana Vălean

# Proposal for a regulation Article 33 – paragraph 1

Text proposed by the Commission

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

#### Amendment

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

Or. en

Amendment 693 Adina-Ioana Vălean, Jürgen Creutzmann, Seán Kelly

# Proposal for a regulation Article 33 – paragraph 1

Text proposed by the Commission

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

#### Amendment

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

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operations on the protection of personal data.

assessment shall be sufficient to address a set of processing operations that present similar risks.

Or. en

# Justification

A new privacy impact assessment should be required only where a process or project poses substantially new or different privacy risks from what has been analyzed in the past. Where a similar process or project has undergone a privacy impact analysis in the past, only those aspects of the process or project that are new or different should be required to be analyzed anew.

Amendment 694 Giles Chichester

Proposal for a regulation Article 33 – paragraph 1

Text proposed by the Commission

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

#### Amendment

1. Where processing operations present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, the controller or the processor acting on the controller's behalf shall carry out an assessment of the impact of the envisaged processing operations on the protection of personal data, unless the activities concerned do not present a risk to the privacy of the data subject.

Or. en

#### Justification

Making impact assessments optional removes undue obligations on data controllers and processors whose activities do not present a risk to the privacy of the data subject. This provision works in conjunction with amendments to Article 79, with the choice to have an impact assessment being one of the factors to be taken into consideration when deciding upon administrative sanctions.

# Amendment 695 Pilar del Castillo Vera

# Proposal for a regulation Article 33 – paragraph 1

Text proposed by the Commission

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

#### Amendment

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

Or. en

Amendment 696 Adina-Ioana Vălean, Jürgen Creutzmann

Proposal for a regulation Article 33 – paragraph 1 a (new)

Text proposed by the Commission

# Amendment

(1a) SMEs shall only be required to perform an impact assessment after their 3rd year of incorporation if data processing is deemed as a core activity of their business. That is, where sale or revenue from processing makes up for 50% of the SMEs revenue.

Or. en

## Justification

Research shows that a majority of SMEs fail within their first three years of operation. Allowing this time period before the impact assessment is required will result in all businesses being given a chance to succeed before facing undue costs.

# Amendment 697 Adina-Ioana Vălean, Jürgen Creutzmann, Seán Kelly

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

Text proposed by the Commission

(a) a systematic and extensive evaluation of personal aspects relating to a natural person or for analysing or predicting in particular the natural person's economic situation, location, health, personal preferences, reliability or behaviour, which is based on automated processing and on which measures are based that produce legal effects *concerning the individual or significantly affect* the individual;

#### Amendment

(a) a systematic and extensive evaluation of personal aspects relating to a natural person or for analysing or predicting in particular the natural person's economic situation, location, health, personal preferences, reliability or behaviour, which is based on automated processing and on which measures are based that produce legal effects to the detriment of the individual;

Or. en

Amendment 698 Amelia Andersdotter

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

Text proposed by the Commission

(a) a systematic and extensive evaluation of personal aspects relating to a natural person or for analysing or predicting in particular the natural person's economic situation, location, health, personal preferences, reliability or behaviour, which is based on automated processing and on which measures are based that produce legal effects concerning the individual or significantly affect the individual;

#### Amendment

(a) a systematic and extensive evaluation of personal aspects relating to a natural person or for analysing or predicting in particular the natural person's economic situation, location, health, personal preferences, reliability or behaviour, which is based on automated processing and on which measures are based that produce legal effects concerning the individual or significantly affect the individual, including any further processing operation of the kind referred to in Article 20(1) of this Regulation;

Or. en

# Amendment 699 Paul Rübig

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

Text proposed by the Commission

(a) a systematic and extensive evaluation of personal aspects relating to a natural person or for analysing or predicting in particular the natural person's economic situation, location, health, personal preferences, reliability or behaviour, which is based on automated processing and on which measures are based that produce legal effects concerning the individual or significantly affect the individual;

#### Amendment

(a) a systematic and extensive evaluation of personal aspects relating to a natural *or legal* person or for analysing or predicting in particular the natural person's economic situation, location, health, personal preferences, reliability or behaviour, which is based on automated processing and on which measures are based that produce legal effects concerning the individual or significantly affect the individual;

Or. de

Amendment 700 Jens Rohde, Adina-Ioana Vălean

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

*Text proposed by the Commission* 

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

#### Amendment

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

Or. en

Amendment 701 Amelia Andersdotter

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

Text proposed by the Commission

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

# Amendment

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

Or. en

Amendment 702 Amelia Andersdotter

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

Text proposed by the Commission

(c) monitoring publicly accessible areas, especially when using optic-electronic devices (video surveillance) *on a large scale*;

#### Amendment

(c) monitoring publicly accessible areas, especially when using optic-electronic devices (video surveillance);

Or. en

Amendment 703 Amelia Andersdotter

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

Text proposed by the Commission

(d) personal data in *large scale* filing systems on children, genetic data or biometric data;

Amendment

(d) personal data in filing systems on children, genetic data or biometric data;

Or. en

# Amendment 704 Jens Rohde

# Proposal for a regulation Article 33 – paragraph 3

Text proposed by the Commission

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

#### Amendment

3. The assessment shall contain at least a general description of the envisaged processing operations, an assessment of the risks to the rights and freedoms of data subjects, the measures envisaged to address the risks, safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Regulation, taking into account the rights and legitimate interests of data subjects and other persons concerned and also taking into account modern technologies and methods that can improve citizens' privacy. Where European guidelines exist, such guidelines provide the basis for the impact assessment.

Or. en

# Amendment 705 Amelia Andersdotter

# Proposal for a regulation Article 33 – paragraph 3

Text proposed by the Commission

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

#### Amendment

3. The assessment shall contain at least a general description of the envisaged processing operations, an assessment of the risks to the rights and freedoms of data subjects, *including in particular the risk of discrimination being embedded in or reinforced by the operation*, the measures envisaged to address the risks, safeguards,

compliance with this Regulation, taking into account the rights and legitimate interests of data subjects and other persons concerned.

security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Regulation, taking into account the rights and legitimate interests of data subjects and other persons concerned.

Or. en

Amendment 706 Jens Rohde

Proposal for a regulation Article 33 – paragraph 4

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 707 Pilar del Castillo Vera

Proposal for a regulation Article 33 – paragraph 4

Text proposed by the Commission

Amendment

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

deleted

Or. en

# Amendment 708 Amelia Andersdotter

# Proposal for a regulation Article 33 – paragraph 4

Text proposed by the Commission

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

#### Amendment

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

Or. en

Amendment 709 Jens Rohde

Proposal for a regulation Article 33 – paragraph 5

Text proposed by the Commission

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

Amendment

deleted

Or. en

**Amendment 710 Giles Chichester** 

Proposal for a regulation Article 33 – paragraph 5

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# Text proposed by the Commission

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

#### Amendment

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

Or. en

# Justification

It should be the nature of the service provided, not the nature of the body providing that service which determines whether data impact assessment rules apply. For example private organisations are often entrusted with the responsibility to provide public services. There should be one single approach in the delivery of public services regardless of whether the body delivering that service is a public authority or body, or a contracted private organisation.

Amendment 711 Adina-Ioana Vălean, Jürgen Creutzmann, Jens Rohde

Proposal for a regulation Article 33 – paragraph 6

Text proposed by the Commission

Amendment

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for the processing operations likely to present specific risks referred to in paragraphs 1 and 2 and the requirements for the assessment referred to in paragraph 3,

deleted

including conditions for scalability, verification and auditability. In doing so, the Commission shall consider specific measures for micro, small and mediumsized enterprises.

Or. en

Amendment 712 Rachida Dati

Proposal for a regulation Article 33 – paragraph 6

Text proposed by the Commission

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for the processing operations likely to present specific risks referred to in paragraphs 1 and 2 and the requirements for the assessment referred to in paragraph 3, including conditions for scalability, verification and auditability. In doing so, the Commission shall consider specific measures for micro, small and medium-sized enterprises.

#### Amendment

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for the processing operations likely to present specific risks referred to in paragraphs 1 and 2 and the requirements for the assessment referred to in paragraph 3, including conditions for scalability, verification and auditability. In doing so, the Commission shall consider specific measures for micro, small and medium-sized enterprises, in consultation with relevant stakeholders.

Or. fr

# Justification

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

Amendment 713 Adina-Ioana Vălean, Jürgen Creutzmann, Jens Rohde

Proposal for a regulation Article 33 – paragraph 7

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Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 714 Amelia Andersdotter

Proposal for a regulation Article 33 – paragraph 7

Text proposed by the Commission

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

Amendment

7. Subject to the previous provisions, within six months of the coming into force of this Regulation, the Commission shall specify standards and procedures for carrying out and verifying and auditing the assessment referred to in paragraph 3. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

Or en

Amendment 715 Seán Kelly, Adina-Ioana Vălean

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

Text proposed by the Commission

Amendment

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

# Justification

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

Amendment 716 Adina-Ioana Vălean, Jürgen Creutzmann

Proposal for a regulation Article 34 – title

Text proposed by the Commission

Amendment

**Prior authorisation and** prior consultation

Prior consultation

Or. en

Amendment 717 Amelia Andersdotter

Proposal for a regulation Article 34 – paragraph 1

Text proposed by the Commission

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

#### Amendment

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

(a) where a controller performs any

# processing operation of the kind referred to in Article 20(1) of this Regulation in relation to minors;

- (b) where a controller or processor adopts contractual clauses as provided for in point (d) of Article 42(2);
- (c) where a controller does not provide for the appropriate safeguards in a legally binding instrument as referred to in Article 42(5) for the transfer of personal data to a third country or an international organisation;
- (d) where a controller or processor transfers personal to a third country or an international organisation based on the derogations in Article 44;
- (e) where a controller performs processing operations referred to in Article 81(3) or Article 83(3).

Or. en

# Amendment 718 Eija-Riitta Korhola

# Proposal for a regulation Article 34 – paragraph 1

Text proposed by the Commission

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

#### Amendment

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

Or. en

#### Justification

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

Amendment 719 Adina-Ioana Vălean, Jürgen Creutzmann, Jens Rohde

Proposal for a regulation Article 34 – paragraph 1

Text proposed by the Commission

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

#### Amendment

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

Or. en

Amendment 720 Jens Rohde

Proposal for a regulation Article 34 – paragraph 2 – introductory part

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# Text proposed by the Commission

2. The controller *or processor acting on the controller's behalf* shall consult the supervisory authority prior to the processing of personal data in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where:

#### Amendment

2. The controller shall consult the supervisory authority prior to the processing of personal data in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where:

Or. en

Amendment 721 Adina-Ioana Vălean, Jürgen Creutzmann, Jens Rohde

Proposal for a regulation Article 34 – paragraph 2 – introductory part

Text proposed by the Commission

2. The controller or processor acting on the controller's behalf *shall* consult the supervisory authority prior to the processing of personal data in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where:

#### Amendment

2. The controller or processor acting on the controller's behalf *may* consult the supervisory authority prior to the processing of personal data in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where:

Or en

Amendment 722 Amelia Andersdotter

Proposal for a regulation Article 34 – paragraph 2 – introductory part

Text proposed by the Commission

2. The controller or processor acting on the controller's behalf shall consult the supervisory authority prior to the

#### Amendment

2. The controller or processor acting on the controller's behalf shall consult the supervisory authority prior to the

processing of personal data in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where: processing of *any* personal data in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where:

Or. en

Amendment 723 Amelia Andersdotter

Proposal for a regulation Article 34 – paragraph 2 – point a

Text proposed by the Commission

(a) a data protection impact assessment as provided for in Article 33 indicates that processing operations are by virtue of their nature, their scope or their purposes, likely to present a high degree of specific risks; or

# Amendment

(a) a data protection impact assessment as provided for in Article 33 indicates that processing operations are by virtue of their nature, their scope or their purposes, likely to present a high degree of specific risks, including in particular the risk that the operations may have a discriminatory impact; or

Or. en

Amendment 724 Amelia Andersdotter

Proposal for a regulation Article 34 – paragraph 2 – point a a (new)

Text proposed by the Commission

# Amendment

(aa) The supervisory authority shall seek the views of representatives of the data subjects and of the Data Protection Board on the intended processing;

Or. en

# Amendment 725 Seán Kelly, Adina-Ioana Vălean

# Proposal for a regulation Article 34 – paragraph 2 – point b

Text proposed by the Commission

(b) the supervisory authority deems it necessary to carry out a prior consultation on processing operations that are likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope and/or their purposes, and specified according to paragraph 4.

#### Amendment

(b) the supervisory authority deems it necessary to carry out a prior consultation on processing operations that are likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope and/or their purposes.

Or. en

## Justification

See justification of deletion of paragraph 4.

Amendment 726 Adina-Ioana Vălean, Jürgen Creutzmann

# Proposal for a regulation Article 34 – paragraph 3

Text proposed by the Commission

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

# Amendment

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

Or. en

# Amendment 727 Seán Kelly, Adina-Ioana Vălean

# Proposal for a regulation Article 34 – paragraph 3

Text proposed by the Commission

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

#### Amendment

3. Where the *competent* supervisory authority *determines in accordance with its power* that the intended processing does not comply with this Regulation, in particular where risks are insufficiently identified or mitigated, it shall prohibit the intended processing and make appropriate proposals to remedy such incompliance.

Or. en

Amendment 728 Amelia Andersdotter

Proposal for a regulation Article 34 – paragraph 3 a (new)

Text proposed by the Commission

#### Amendment

(3a) Where the supervisory authority is of the opinion that the intended processing may pose a risk of discriminatory treatment of data subjects, it shall order that the actual effects of the processing shall be monitored for such effects, and that it shall be provided with all the necessary information to assess this, at regular intervals.

Or. en

Amendment 729 Seán Kelly, Adina-Ioana Vălean

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# Proposal for a regulation Article 34 – paragraph 4

Text proposed by the Commission

Amendment

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

deleted

Or. en

## Justification

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

Amendment 730 Seán Kelly, Adina-Ioana Vălean

Proposal for a regulation Article 34 – paragraph 5

Text proposed by the Commission

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

# Amendment

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

Or. en

## Justification

Focuses the consistency mechanism at where it is most appropriate, in line with amendments

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# Amendment 731 Jens Rohde

# Proposal for a regulation Article 34 – paragraph 6

Text proposed by the Commission

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

#### Amendment

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

Or en

# Justification

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

Amendment 732 Seán Kelly, Adina-Ioana Vălean

Proposal for a regulation Article 34 – paragraph 9

Text proposed by the Commission

9. The Commission may set out standard forms and procedures for prior *authorisations and* consultations referred to in *paragraphs 1 and 2*, and standard forms and procedures for informing the

# Amendment

9. The Commission may set out standard forms and procedures for prior consultations referred to in *paragraph 2* and standard forms and procedures for informing the supervisory authorities

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supervisory authorities pursuant to paragraph 6. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

pursuant to paragraph 6. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

Or. en

Amendment 733 Eija-Riitta Korhola

Proposal for a regulation Chapter 4 – section 4

Text proposed by the Commission

Amendment

Chapter 4 – section 4 deleted

Or. en

## Justification

There is no justification to include provisions in the Regulation on how to organise companies' internal functions. Different kinds of organisational set ups can result in effective data protection and data protection legislation should not force companies to one specific model.

Amendment 734 Eija-Riitta Korhola

Proposal for a regulation Article 35

Text proposed by the Commission

Amendment

Article 35 deleted

Or. en

Justification

There is no justification to include provisions in the Regulation on how to organise

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companies' internal functions. Different kinds of organisational set ups can result in effective data protection and data protection legislation should not force companies to one specific model.

Amendment 735 Adina-Ioana Vălean, Jürgen Creutzmann

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

Text proposed by the Commission

1. The controller and the processor shall

designate a data protection officer in any case where:

Amendment

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

Or. en

Amendment 736 Amelia Andersdotter

Proposal for a regulation Article 35 – paragraph 1 – point b

*Text proposed by the Commission* 

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

Amendment

(b) the processing is carried out by an enterprise *processing personal data* relating to more than 250 data subjects a year; or

Or. en

Amendment 737 Adina-Ioana Vălean, Jürgen Creutzmann, Seán Kelly

Proposal for a regulation Article 35 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) the core activities of the controller or

(c) the core activities of the controller or

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the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects.

the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects. Core activities should be defined as activities where 50% of the annual turnover resulting from the sale of data or revenue is gained from this data. In relation to data protection, data processing activities which do not represent more than 50% of company's turnover shall be considered ancillary.

Or. en

# Justification

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

Amendment 738 Adina-Ioana Vălean, Jürgen Creutzmann

Proposal for a regulation Article 35 – paragraph 3

Text proposed by the Commission

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

#### Amendment

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

Or. en

Amendment 739 Giles Chichester

Proposal for a regulation Article 35 – paragraph 5

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#### Text proposed by the Commission

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

#### Amendment

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

Or. en

Amendment 740 Adina-Ioana Vălean, Jürgen Creutzmann

Proposal for a regulation Article 35 – paragraph 6

Text proposed by the Commission

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

#### Amendment

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

Or. en

Amendment 741 Adina-Ioana Vălean, Jürgen Creutzmann

Proposal for a regulation Article 35 – paragraph 7

# Text proposed by the Commission

Amendment

deleted

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

Or. en

Amendment 742 Jens Rohde

Proposal for a regulation Article 35 – paragraph 7

Text proposed by the Commission

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

#### Amendment

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

Or. en

#### Justification

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

Amendment 743 Silvia-Adriana Țicău

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# Proposal for a regulation Article 35 – paragraph 7

Text proposed by the Commission

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

#### Amendment

7. The controller or the processor shall designate a data protection officer for a *given term* period of *his choosing*. The data protection officer may be reappointed for further terms. During their term of office, the data protection officer may only be dismissed, if the data protection officer no longer fulfils the conditions required for the performance of their duties *as the company management sees fit*.

Or. en

Amendment 744 Adina-Ioana Vălean, Jürgen Creutzmann

Proposal for a regulation Article 35 – paragraph 10

Text proposed by the Commission

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

# Amendment

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

Or. en

Amendment 745 Adina-Ioana Vălean, Jürgen Creutzmann, Jens Rohde

Proposal for a regulation Article 35 – paragraph 11

# Text proposed by the Commission

Amendment

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

deleted

deleted

Or. en

Amendment 746 Eija-Riitta Korhola

Proposal for a regulation Article 36

Text proposed by the Commission

Amendment

# Article 36

Position of the data protection officer

- 1. The controller or the processor shall ensure that the data protection officer is properly and in a timely manner involved in all issues which relate to the protection of personal data.
- 2. The controller or processor shall ensure that the data protection officer performs the duties and tasks independently and does not receive any instructions as regards the exercise of the function. The data protection officer shall directly report to the management of the controller or the processor.
- 3. The controller or the processor shall support the data protection officer in performing the tasks and shall provide staff, premises, equipment and any other resources necessary to carry out the duties

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# Justification

There is no justification to include provisions in the Regulation on how to organise companies' internal functions. Different kinds of organisational set ups can result in effective data protection and data protection legislation should not force companies to one specific model.

Amendment 747 Silvia-Adriana Ticău

# Proposal for a regulation Article 36 – paragraph 1

Text proposed by the Commission

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

#### Amendment

1. The controller or the processor shall ensure that the data protection officer is *given access to all information relevant, and to premises necessary to perform his duties and is* properly and in a timely manner involved in all issues which relate to the protection of personal data.

Or. en

Amendment 748 Adina-Ioana Vălean, Jürgen Creutzmann

Proposal for a regulation Article 36 – paragraph 1

Text proposed by the Commission

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

# Amendment

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

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Amendment 749 Jens Rohde

Proposal for a regulation Article 36 – paragraph 2

Text proposed by the Commission

2. The controller or processor shall ensure that the data protection officer performs the duties and tasks independently and does not receive any instructions as regards the exercise of the function. The data protection officer shall directly report to the management of the controller or the processor.

#### Amendment

2. The data protection officer shall directly report to the management of the controller or the processor.

Or. en

# Justification

Management should always have the possibility to give instructions to the staff including the DPO and the DPO should not be able to act independently from management. Management have the responsibility for ALL activities in an organisation including data protection.

Amendment 750 Adina-Ioana Vălean, Jürgen Creutzmann

Proposal for a regulation Article 36 – paragraph 2

Text proposed by the Commission

2. The controller or processor shall ensure that the data protection officer performs the duties and tasks independently and does not receive any instructions as regards the exercise of the function. The data protection officer shall directly report to the management of the controller or the processor.

#### Amendment

2. The *data protection organisation or* data protection officer *shall perform his or her* duties and tasks independently.

# Amendment 751 Adina-Ioana Vălean, Jürgen Creutzmann

# Proposal for a regulation Article 36 – paragraph 3

Text proposed by the Commission

3. The controller or the processor shall support the data protection officer in performing the tasks and shall provide staff, premises, equipment and any other resources necessary to carry out the duties and tasks referred to in Article 37.

#### Amendment

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

Or. en

Amendment 752 Eija-Riitta Korhola

Proposal for a regulation Article 37

Text proposed by the Commission

Amendment

#### Article 37 deleted

Or. en

# Justification

There is no justification to include provisions in the Regulation on how to organise companies' internal functions. Different kinds of organisational set ups can result in effective data protection and data protection legislation should not force companies to one specific model.

Amendment 753 Adina-Ioana Vălean, Jürgen Creutzmann

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

Text proposed by the Commission

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

#### Amendment

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

Or. en

Amendment 754 Silvia-Adriana Țicău

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

Text proposed by the Commission

(a) to inform and advise the controller or the processor of their obligations pursuant to this Regulation and to document this activity and the responses received;

#### Amendment

(a) to raise awareness, to inform and advise the controller or the processor of their obligations pursuant to this Regulation and to document this activity and the responses received;

Or. en

Amendment 755 Adina-Ioana Vălean, Jürgen Creutzmann

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

Text proposed by the Commission

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

Amendment

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

Amendment 756 Amelia Andersdotter

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

Text proposed by the Commission

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

#### Amendment

(c) to monitor the implementation and application of this Regulation, in particular as to the requirements related to data protection by design *and* data protection by default *according to Article 23*, data security *according to Articles 30 to 32*, *and* the information of data subjects and their requests in exercising their rights *according to Articles 11 to 20* under this Regulation;

Or en

Amendment 757 Amelia Andersdotter

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 758 Amelia Andersdotter

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

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### Text proposed by the Commission

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

#### Amendment

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

Or. en

## Amendment 759 Amelia Andersdotter

# Proposal for a regulation Article 37 – paragraph 1 – point g

Text proposed by the Commission

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

#### Amendment

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

Or. en

# Amendment 760 Seán Kelly, Adina-Ioana Vălean

## Proposal for a regulation Article 39 – paragraph 1

Text proposed by the Commission

1. The Member States and the Commission shall encourage, in particular at European level, the establishment of data protection certification mechanisms and of data protection seals and marks, allowing data subjects to quickly assess the level of data protection provided by controllers and processors. The data protection

#### Amendment

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

certifications mechanisms shall contribute to the proper application of this Regulation, taking account of the specific features of the various sectors and different processing operations. protection provided by controllers and processors. The data protection certifications mechanisms shall contribute to the proper application of this Regulation, taking account of the specific features of the various sectors and different processing operations.

Or. en

## Justification

It is important to have stakeholder input into the design and implementation of certification mechanisms.

Amendment 761 Seán Kelly, Adina-Ioana Vălean

Proposal for a regulation Article 39 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

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

Or. en

## Justification

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

# Amendment 762 Adina-Ioana Vălean, Jürgen Creutzmann

# Proposal for a regulation Article 39 – paragraph 2

Text proposed by the Commission

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the data protection certification mechanisms referred to in paragraph 1, including conditions for granting and withdrawal, and requirements for recognition within the Union and in third countries.

#### Amendment

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the data protection certification mechanisms referred to in paragraph 1, including conditions for granting and withdrawal, and requirements for recognition within the Union and in third countries, provided such measures are technology neutral.

Or. en

Amendment 763 Adina-Ioana Vălean, Jürgen Creutzmann

Proposal for a regulation Article 39 – paragraph 3

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 764 Amelia Andersdotter, Silvia-Adriana Țicău

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# Proposal for a regulation Article 40 – paragraph 1

Text proposed by the Commission

Any transfer of personal data which are undergoing processing or are intended for processing after transfer to a third country or to an international organisation *may only take place if*, subject to the other provisions of this Regulation, the conditions laid down in this Chapter are complied with by the controller and processor, including for onward transfers of personal data from the third country or an international organisation to another third country or to another international organisation.

#### Amendment

Any transfer of personal data which are undergoing processing or are intended for processing after transfer to a third country or to an international organisation *shall be prohibited unless* subject to the other provisions of this Regulation, the conditions laid down in this Chapter are complied with by the controller and processor, including for onward transfers of personal data from the third country or an international organisation to another third country or to another international organisation.

Or. en

## Justification

Transfers to third countries should be tightly regulated, as they often do not provide for an appropriate level of protection. This package of amendments provides improved rules for adequacy decisions and appropriate safeguards. It should be clear that while "adequacy" does not mean that the rules are identical, such decisions should still guarantee a high standard of protection. Similarly, appropriate safeguards should not offer loopholes for circumventing data protection standards. With technological process, it has become easier to outsource processing operations to third countries. However, controllers should not be able to use this to avoid European data protection standards, so the rules for third-country transfers should provide for good protection. Adequacy decisions are one way for legitimising third-country transfers, but should be improved by including a role for the EDPB and an assessment of the practical application of data protection law in the third country, as well as constant monitoring of any changes. Appropriate safeguards should confer enforceable rights on data subjects and should make sure that the principles of data protection are obeyed. This amendment clarifies that the starting point is the prohibition of transfers to third countries, unless the exceptions in this Chapter are applicable.

Amendment 765 Silvia-Adriana Ticău

Proposal for a regulation Article 40 – paragraph 1 a (new)

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#### Amendment

Not later than [5 years] after the entry into force of this Regulation, any international agreement shall be revised in order to align with the Regulation.

Or. en

## Justification

EU signed already some international agreements regarding the transfer of personal data to third countries. They have to be aligned with this regulation in a transitional period of not more than 5 years from the date of the entry into force of the regulation.

Amendment 766 Amelia Andersdotter

Proposal for a regulation Article 41 – paragraph 1

Text proposed by the Commission

1. A transfer may take place where the Commission has decided that the third country, or a territory or a processing sector within that third country, or the international organisation in question ensures an adequate level of protection. Such transfer shall not require any further authorisation.

### Amendment

1. A transfer may take place where the Commission has decided that the third country, or a territory or a processing sector within that third country, or the international organisation in question ensures an adequate level of protection. Such transfer shall not require any further authorisation. Such decisions shall not affect the level of protection under this Regulation.

Or. en

Amendment 767 Amelia Andersdotter

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

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## Text proposed by the Commission

(a) the rule of law, relevant legislation in force, both general and sectoral, including concerning public security, defence, national security and criminal law, the professional rules and security measures which are complied with in that country or by that international organisation, as well as effective and enforceable rights including effective administrative and judicial redress for data subjects, in particular for those data subjects residing in the Union whose personal data are being transferred:

#### Amendment

(a) the rule of law, relevant legislation in force, both general and sectoral, including concerning public security, defence, national security and criminal law, *as well as the implementation of this legislation*, the professional rules and security measures which are complied with in that country or by that international organisation, as well as effective and enforceable rights including effective administrative and judicial redress for data subjects, in particular for those data subjects residing in the Union whose personal data are being transferred;

Or. en

Amendment 768 Amelia Andersdotter

Proposal for a regulation Article 41 – paragraph 2 – point a a (new)

Text proposed by the Commission

### Amendment

(aa) The Commission shall request the European Data Protection Board to provide an opinion on the adequacy of the level of protection. To this end, the Commission shall provide the European Data Protection Board with all necessary documentation, including correspondence with the government of the third country or the international organisation;

Or. en

Amendment 769 Amelia Andersdotter

# Proposal for a regulation Article 41 – paragraph 3

Text proposed by the Commission

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

### Amendment

3. The Commission may decide that a third country, or a territory or a processing sector within that third country, or an international organisation ensures an adequate level of protection within the meaning of paragraph 2, taking the opinion of the European Data Protection Board into utmost account. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

Or. en

Amendment 770 Amelia Andersdotter

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

Text proposed by the Commission

Amendment

(4a) The Commission shall, on an ongoing basis, monitor developments that could affect the fulfilment of the elements listed in paragraph 2 in third countries and international organisations concerning which a decision pursuant to paragraph 3 has been adopted.

Or. en

Amendment 771 Amelia Andersdotter

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

#### Amendment

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

Or. en

Amendment 772 Paul Rübig

Proposal for a regulation Article 41 – paragraph 5

Text proposed by the Commission

5. The Commission may decide that a third country, or a territory or a processing sector within that third country, or an international organisation does not ensure an adequate level of protection within the meaning of paragraph 2 of this Article, in particular in cases where the relevant legislation, both general and sectoral, in force in the third country or international organisation, does not guarantee effective and enforceable rights including effective administrative and judicial redress for data subjects, in particular for those data subjects residing in the Union whose personal data are being transferred. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2), or, in cases of extreme urgency for individuals with respect to their right to personal data protection, in accordance with the procedure referred to in Article 87(3).

#### Amendment

5. The Commission may decide that a third country, or a territory or a processing sector within that third country, or an international organisation does not ensure an adequate level of protection within the meaning of paragraph 2 of this Article, in particular in cases where the relevant legislation, both general and sectoral, in force in the third country or international organisation, does not guarantee effective and enforceable rights including effective administrative and judicial redress for data subjects, in particular for those data subjects residing in the Union whose personal data are being transferred. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2), or, in cases of extreme urgency for *natural or legal* persons with respect to their right to personal data protection, in accordance with the procedure referred to in Article 87(3).

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## Amendment 773 Amelia Andersdotter

# Proposal for a regulation Article 41 – paragraph 6

Text proposed by the Commission

6. Where the Commission decides pursuant to paragraph 5, any transfer of personal data to the third country, or a territory or a processing sector within that third country, or the international organisation in question shall be prohibited, *without prejudice* to Articles 42 *to* 44. At the appropriate time, the Commission shall enter into consultations with the third country or international organisation with a view to remedying the situation resulting from the Decision made pursuant to paragraph 5 of this Article.

### Amendment

6. Where the Commission decides pursuant to paragraph 5, any transfer of personal data to the third country, or a territory or a processing sector within that third country, or the international organisation in question shall be prohibited, *unless it is subject to adequate safeguards pursuant* to Articles 42 *or falls under the derogations in Article* 44. At the appropriate time, the Commission shall enter into consultations with the third country or international organisation with a view to remedying the situation resulting from the Decision made pursuant to paragraph 5 of this Article.

Or. en

# Amendment 774 Adina-Ioana Vălean, Jürgen Creutzmann

# Proposal for a regulation Article 42 – paragraph 1

Text proposed by the Commission

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

## Amendment

1. Where the Commission has taken no decision pursuant to Article 41, or decides that a third country, or a territory or a processing sector within that third country, or an international organisation does not ensure an adequate level of protection in accordance with Article 41(5), a controller or processor may transfer personal data to a third country or

an international organisation only if the controller or processor has adduced appropriate safeguards with respect to the protection of personal data in a legally binding instrument.

Or. en

## Amendment 775 Giles Chichester

# Proposal for a regulation Article 42 – paragraph 1

Text proposed by the Commission

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

## Amendment

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

Or. en

## Justification

Aims to incentivise controllers to have high standards of data protection by encouraging them to undertake an impact assessment.

Amendment 776 Amelia Andersdotter

Proposal for a regulation Article 42 – paragraph 1

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### Text proposed by the Commission

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

#### Amendment

1. Where the Commission has taken no decision pursuant to Article 41, a controller or processor may transfer personal data to a third country or an international organisation only if the controller or processor has adduced appropriate safeguards with respect to the protection of personal data in a legally binding instrument. These safeguards shall, at least, guarantee the observance of the principles of personal data processing as established in Article 5 and guarantee data subject rights as established in Chapter III.

Or. en

Amendment 777 Seán Kelly, Adina-Ioana Vălean

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

Text proposed by the Commission

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

## Amendment

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

Or. en

### Justification

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

# Amendment 778 Seán Kelly, Adina-Ioana Vălean

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

Text proposed by the Commission

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

#### Amendment

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

Or en

## Justification

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

Amendment 779 Adina-Ioana Vălean, Jürgen Creutzmann

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

Text proposed by the Commission

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

Amendment

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

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Amendment 780 Adina-Ioana Vălean, Jürgen Creutzmann

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

Text proposed by the Commission

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

### Amendment

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

Or. en

Amendment 781 Seán Kelly, Adina-Ioana Vălean

Proposal for a regulation Article 42 – paragraph 2 – point d a (new)

Text proposed by the Commission

### Amendment

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

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 782** Adina-Ioana Vălean, Jürgen Creutzmann, Seán Kelly

Proposal for a regulation Article 42 – paragraph 2 – point d a (new)

Text proposed by the Commission

Amendment

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

Or. en

**Amendment 783 Amelia Andersdotter** 

Proposal for a regulation Article 42 – paragraph 3

Text proposed by the Commission

Amendment

3. A transfer based on standard data protection clauses or binding corporate rules as referred to in points (a), (b) or (c) of paragraph 2 shall not require any further authorisation.

deleted

Or. en

**Amendment 784** Adina-Ioana Vălean, Jürgen Creutzmann, Seán Kelly

Proposal for a regulation Article 42 – paragraph 3

Text proposed by the Commission

3. A transfer based on *standard data* protection clauses or binding corporate rules as referred to in points (a), (b) or (c) of paragraph 2 shall not require any further authorisation.

Amendment

3. A transfer based on points (a), (b), (c) or (e) of paragraph 2 shall not require any further authorisation.

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## Justification

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

Amendment 785 Amelia Andersdotter

Proposal for a regulation Article 42 – paragraph 4

Text proposed by the Commission

4. Where a transfer is based on contractual clauses as referred to in point (d) of paragraph 2 of this Article the controller or processor shall obtain prior authorisation of the contractual clauses according to point (a) of Article 34(1) from the supervisory authority. If the transfer is related to processing activities which concern data subjects in another Member State or other Member States, or substantially affect the free movement of personal data within the Union, the supervisory authority shall apply the consistency mechanism referred to in Article 57.

#### Amendment

4. The controller or processor shall obtain prior authorisation of the contractual clauses according to point (a) of Article 34(1) from the supervisory authority *for transfers according to this Article*. If the transfer is related to processing activities which concern data subjects in another Member State or other Member States, or substantially affect the free movement of personal data within the Union, the supervisory authority shall apply the consistency mechanism referred to in Article 57.

Or. en

Amendment 786 Seán Kelly, Adina-Ioana Vălean

Proposal for a regulation Article 42 – paragraph 4

Text proposed by the Commission

4. Where a transfer is based on contractual clauses as referred to in point (d) of

#### Amendment

4. Where a transfer is based on contractual clauses as referred to in point (d) *or (e)* of

paragraph 2 of this Article the controller or processor shall obtain prior authorisation of the contractual clauses according to point (a) of Article 34(1) from the supervisory authority. If the transfer is related to processing activities which concern data subjects in another Member State or other Member States, or substantially affect the free movement of personal data within the Union, the supervisory authority shall apply the consistency mechanism referred to in Article 57.

paragraph 2 of this Article the controller or processor shall obtain prior authorisation of the contractual clauses according to point (a) of Article 34(1) from the *competent* supervisory authority. If the transfer is related to processing activities which concern data subjects in another Member State or other Member States, or substantially affect the free movement of personal data within the Union, the *competent* supervisory authority shall apply the consistency mechanism referred to in Article 57.

Or. en

## Justification

Linked to Article 42, paragraph 4 (a) (new) on incentivising supplemental regimes to ensure security of international data transfers.

Amendment 787 Adina-Ioana Vălean, Jürgen Creutzmann

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

Text proposed by the Commission

Amendment

(4a) A controller or processor may choose to base transfers on standard data protection clauses as referred to in points (b) and (c) of paragraph 2 of this Article, and to offer in addition to these standard clauses supplemental, legally binding commitments that apply to transferred data. In such cases, these additional commitments shall be subject to prior consultation with the competent supervisory authority and shall supplement and not contradict, directly or indirectly, the standard clauses. Member States, supervisory authorities and the Commission shall encourage the use of supplemental and legally binding

commitments by offering a data protection seal, mark or mechanism, adopted pursuant to Article 39, to controllers and processors who adopt these heightened safeguards.

Or. en

## Justification

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

Amendment 788 Seán Kelly, Adina-Ioana Vălean

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

Text proposed by the Commission

Amendment

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

Or. en

# Justification

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

Amendment 789 Amelia Andersdotter

# Proposal for a regulation Article 42 – paragraph 5

Text proposed by the Commission

5. Where the appropriate safeguards with respect to the protection of personal data are not provided for in a legally binding instrument, the controller or processor shall obtain prior authorisation for the transfer, or a set of transfers, or for provisions to be inserted into administrative arrangements providing the basis for such transfer. Such authorisation by the supervisory authority shall be in accordance with point (a) of Article 34(1). If the transfer is related to processing activities which concern data subjects in another Member State or other Member States, or substantially affect the free movement of personal data within the Union, the supervisory authority shall apply the consistency mechanism referred to in Article 57. Authorisations by a supervisory authority on the basis of Article 26(2) of Directive 95/46/EC shall remain valid, until amended, replaced or repealed by that supervisory authority.

### Amendment

5. Authorisations by a supervisory authority on the basis of Article 26(2) of Directive 95/46/EC shall remain valid, until amended, replaced or repealed by that supervisory authority.

Or. en

Amendment 790 Adina-Ioana Vălean, Jürgen Creutzmann

Proposal for a regulation Article 43 – paragraph 1 – introductory part

*Text proposed by the Commission* 

1. A supervisory authority shall in accordance with the consistency mechanism set out in Article 58 approve binding corporate rules, provided that they:

### Amendment

1. *One* supervisory authority shall in accordance with the consistency mechanism set out in Article 58 *and* through a single act of approval authorize binding corporate rules for a group of undertakings. Those rules will allow multiple intercompany international

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*transfers in and out of Europe*, provided that they:

Or. en

Amendment 791 Adina-Ioana Vălean, Jürgen Creutzmann, Seán Kelly

Proposal for a regulation Article 43 – paragraph 1 – point a

Text proposed by the Commission

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

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

Or. en

## Justification

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

Amendment 792 Amelia Andersdotter

Proposal for a regulation Article 43 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) expressly confer enforceable rights on data subjects;

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

Or. en

# Amendment 793 Adina-Ioana Vălean, Jürgen Creutzmann, Seán Kelly

# Proposal for a regulation Article 43 – paragraph 2 – point a

Text proposed by the Commission

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

#### Amendment

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

Or. en

Amendment 794 Amelia Andersdotter

Proposal for a regulation Article 43 – paragraph 2 – point d

Text proposed by the Commission

(d) the general data protection principles, in particular purpose limitation, data quality, legal basis for the processing, processing of sensitive personal data; measures to ensure data security; and the requirements for onward transfers to organisations which are not bound by the policies;

### Amendment

(d) the general data protection principles, in particular purpose limitation, data *minimisation, limited retention periods, data* quality, legal basis for the processing, processing of sensitive personal data; measures to ensure data security; and the requirements for onward transfers to organisations which are not bound by the policies;

Or. en

Amendment 795 Amelia Andersdotter

Proposal for a regulation Article 43 – paragraph 3

Text proposed by the Commission

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

#### Amendment

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

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Article 86 for the purpose of further specifying the criteria and requirements for binding corporate rules within the meaning of this Article, in particular as regards the criteria for their approval, the application of points (b), (d), (e) and (f) of paragraph 2 to binding corporate rules adhered to by processors and on further necessary requirements to ensure the protection of personal data of the data subjects concerned.

Article 86 for the purpose of further specifying the criteria and requirements for binding corporate rules within the meaning of this Article, in particular as regards the criteria for their approval, *including transparency for data subjects*, the application of points (b), (d), (e) and (f) of paragraph 2 to binding corporate rules adhered to by processors and on further necessary requirements to ensure the protection of personal data of the data subjects concerned.

Or. en

Amendment 796 Adina-Ioana Vălean, Jürgen Creutzmann

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

Text proposed by the Commission

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

#### Amendment

1. In the absence of an adequacy decision pursuant to Article 41; or where the Commission decides that a third country, or a territory or a processing sector within that third country, or an international organisation does not ensure an adequate level of protection in accordance with Article 41(5); or in the absence of appropriate safeguards pursuant to Article 42, a transfer or a set of transfers of personal data to a third country or an international organisation may take place only on condition that:

Or. en

Amendment 797 Amelia Andersdotter

Proposal for a regulation Article 44 – paragraph 1 – point g

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### *Text proposed by the Commission*

(g) the transfer is made from a register which according to Union or Member State law is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can demonstrate legitimate interest, to the extent that the conditions laid down in Union or Member State law for consultation are fulfilled in the particular case; or

#### Amendment

(g) the transfer is made from a register which according to Union or Member State law is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can demonstrate legitimate interest, to the extent that the conditions laid down in Union or Member State law for consultation are fulfilled in the particular case and the controller or processor has obtained prior authorisation for the transfer or set of transfers by the supervisory authority in accordance with Article 34;

Or. en

Amendment 798 Amelia Andersdotter

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

Text proposed by the Commission

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

Amendment

deleted

Or. en

# **Amendment 799** Seán Kelly, Adina-Ioana Vălean

# Proposal for a regulation Article 44 – paragraph 1 – point h

Text proposed by the Commission

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

#### Amendment

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

Or. en

## Justification

In the era of cloud computing it is not feasible to rule "frequent or massive" transfers of data to be qualitatively different to smaller transfers of data. The important element is that there be appropriate safeguards in place.

Amendment 800 **Amelia Andersdotter** 

Proposal for a regulation Article 44 – paragraph 3

Text proposed by the Commission

3. Where the processing is based on point (h) of paragraph 1, the controller or processor shall give particular consideration to the nature of the data, the purpose and duration of the proposed processing operation or operations, as well as the situation in the country of origin, the third country and the country

Amendment

deleted

AM\923501EN.doc 59/120 PE502.174v02-00 of final destination, and adduced appropriate safeguards with respect to the protection of personal data, where necessary.

Or. en

Amendment 801 Amelia Andersdotter

Proposal for a regulation Article 44 – paragraph 4

Text proposed by the Commission

4. Points (b), (c) and (h) of paragraph 1 shall not apply to activities carried out by public authorities in the exercise of their public powers.

#### Amendment

4. Points (b) and (c) of paragraph 1 shall not apply to activities carried out by public authorities in the exercise of their public powers.

Or. en

Amendment 802 Amelia Andersdotter

Proposal for a regulation Article 44 – paragraph 5

*Text proposed by the Commission* 

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

### Amendment

5. The public interest referred to in point (d) of paragraph 1 must be recognised in Union law or in the law of the Member State to which the controller is subject. This derogation shall only be used for occasional transfers. In each and every case, a careful assessment of all circumstances of the transfer needs to be carried out.

Or. en

Amendment 803 Amelia Andersdotter

Proposal for a regulation Article 44 – paragraph 6

Text proposed by the Commission

6. The controller or processor shall document the assessment as well as the appropriate safeguards adduced referred to in point (h) of paragraph 1 of this Article in the documentation referred to in Article 28 and shall inform the supervisory authority of the transfer.

deleted

Or. en

Amendment 804 Amelia Andersdotter

Proposal for a regulation Article 44 a (new)

Text proposed by the Commission

Amendment

Amendment

### Article 44 a

## Disclosures not authorised by Union law

- 1. No judgment of a court or tribunal and no decision of an administrative authority of a third country requiring a controller or processor to disclose personal data shall be recognised or be enforceable in any manner, without prejudice to a mutual assistance treaty or an international agreement in force between the requesting third country and the Union or a Member State.
- 2. Where a judgment of a court or tribunal or a decision of an administrative authority of a third country requests a controller or processor to disclose personal data, the controller or processor and, if any, the controller's representative, shall notify the supervisory authority of

- the request without undue delay and must obtain prior authorisation for the transfer by the supervisory authority in accordance with point (d) of Article 34(1).
- 3. The supervisory authority shall assess the compliance of the requested disclosure with the Regulation and in particular whether the disclosure is necessary and legally required in accordance with points (d) and (e) of paragraph 1 and paragraph 5 of Article 44.
- 4. The supervisory authority shall inform the competent national authority of the request. The controller or processor shall also inform the data subject of the request and of the authorisation by the supervisory authority.
- 5. The Commission may lay down the standard format of the notifications to the supervisory authority referred to in paragraph 2 and the information of the data subject referred to in paragraph 4 as well as the procedures applicable to the notification and information. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

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.

Amendment 805 Paul Rübig

Proposal for a regulation Article 46 – paragraph 1

### Text proposed by the Commission

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

#### Amendment

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

Or. de

Amendment 806 Silvia-Adriana Țicău

Proposal for a regulation Article 47 – paragraph 6

Text proposed by the Commission

6. Each Member State shall ensure that the supervisory authority has its own staff which shall be appointed by and be subject to the direction of the head of the supervisory authority.

#### Amendment

6. Each Member State shall ensure that the supervisory authority has its own staff, selected on the basis of the experience and skills required to perform their duties notably in the area of protection of personal data, which shall be appointed by and be subject to the direction of the head of the supervisory authority.

Or. ro

## Justification

The staff of the supervisory authority must be selected on the basis of the experience and skills required to perform their duties, notably in the area of protection of personal data.

## Amendment 807 Amelia Andersdotter

# Proposal for a regulation Article 48 – paragraph 1

Text proposed by the Commission

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

#### Amendment

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

Or. en

Amendment 808 Adina-Ioana Vălean, Jürgen Creutzmann, Jens Rohde, Seán Kelly

# Proposal for a regulation Article 51 – paragraph 2

Text proposed by the Commission

2. Where the processing of personal data takes place in the context of the activities of an establishment of a controller or a processor in the Union, and the controller or processor is established in more than one Member State, the supervisory authority of the main establishment of the controller or processor shall be competent for the supervision of the processing activities of the controller or the processor in all Member States, without prejudice to the provisions of Chapter VII of this Regulation.

#### Amendment

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

Or. en

Amendment 809 Adina-Ioana Vălean, Jürgen Creutzmann, Jens Rohde, Seán Kelly

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 810 Ivailo Kalfin

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 811 Adina-Ioana Vălean, Jürgen Creutzmann, Jens Rohde, Seán Kelly

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

Text proposed by the Commission

Amendment

(2b) Where the Regulation applies to several controllers or/and processors within the same group of undertakings by

virtue of both Article 3(1) and 3(2), only one supervisory authority will be competent and it will be determined in accordance with Article 51(2).

Or. en

Amendment 812 Paul Rübig

Proposal for a regulation Article 52 – paragraph 1 – point f

Text proposed by the Commission

(f) be consulted by Member State institutions and bodies on legislative and administrative measures relating to the protection of *individuals'* rights and freedoms with regard to the processing of personal data;

Amendment

(f) be consulted by Member State institutions and bodies on legislative and administrative measures relating to the protection of *natural and legal persons'* rights and freedoms with regard to the processing of personal data;

Or. de

Amendment 813 Amelia Andersdotter

Proposal for a regulation Article 52 – paragraph 1 – point j a (new)

Text proposed by the Commission

Amendment

(ja) develop guidelines on the use of enforcement powers, where necessary coordinated at the level of the European Data Protection Board.

Or. en

Amendment 814 Adina-Ioana Vălean, Jürgen Creutzmann, Jens Rohde, Seán Kelly

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# Proposal for a regulation Article 52 – paragraph 3

Text proposed by the Commission

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

## Amendment

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

Or. en

Amendment 815 Adina-Ioana Vălean, Jürgen Creutzmann, Jens Rohde, Seán Kelly

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

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 816 Adina-Ioana Vălean, Jürgen Creutzmann, Jens Rohde, Seán Kelly

Proposal for a regulation Article 53 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

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

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

Or. en

# Amendment 817 Adina-Ioana Vălean, Jürgen Creutzmann, Jens Rohde, Seán Kelly

# Proposal for a regulation Article 53 – paragraph 3

Text proposed by the Commission

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

#### Amendment

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

Or. en

Amendment 818 Adina-Ioana Vălean, Jürgen Creutzmann, Jens Rohde, Seán Kelly

# Proposal for a regulation Article 53 – paragraph 4

Text proposed by the Commission

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

### Amendment

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

Or. en

Amendment 819 Adina-Ioana Vălean, Jürgen Creutzmann

# Proposal for a regulation Article 55 – paragraph 1

Text proposed by the Commission

1. Supervisory authorities shall provide each other relevant information and mutual assistance in order to implement and apply this Regulation in a consistent manner, and

#### Amendment

1. Supervisory authorities shall provide each other relevant information and mutual assistance in order to implement and apply this Regulation in a consistent manner, and

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shall put in place measures for effective cooperation with one another. Mutual assistance shall cover, in particular, information requests and supervisory measures, such as requests to carry out prior authorisations and consultations, inspections and prompt information on the opening of cases and ensuing developments where data subjects in several Member States are likely to *be affected by processing operations*. shall put in place measures for effective cooperation with one another. Mutual assistance shall cover, in particular, information requests and supervisory measures, such as requests to carry out prior authorisations and consultations, inspections and prompt information on the opening of cases and ensuing developments where data subjects in several Member States are likely to *cause legal effects to the detriment of the data subjects*.

Or. en

Amendment 820 Adina-Ioana Vălean, Jürgen Creutzmann, Jens Rohde

Proposal for a regulation Article 55 – paragraph 2

Text proposed by the Commission

2. Each supervisory authority shall take all appropriate measures required to reply to the request of another supervisory authority without delay and no later than one month after having received the request. Such measures may include, in particular, the transmission of relevant information on the course of an investigation or enforcement measures to bring about the cessation or prohibition of processing operations contrary to this Regulation.

#### Amendment

2. Each supervisory authority shall take all appropriate measures required to reply to the request of another supervisory authority without delay and no later than one month after having received the request. Such measures may include, in particular, the transmission of relevant information on the course of an investigation or enforcement measures to bring about the cessation or prohibition of processing operations *that have been proven* contrary to this Regulation.

Or. en

Amendment 821 Amelia Andersdotter

Proposal for a regulation Article 56 – paragraph 2

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## Text proposed by the Commission

2. In cases where data subjects in several Member States are likely to be affected by processing operations, a supervisory authority of each of those Member States shall *have the right to* participate in the joint investigative tasks or joint operations, as appropriate. The competent supervisory authority shall invite the supervisory authority of each of those Member States to take part in the respective joint investigative tasks or joint operations and respond to the request of a supervisory authority to participate in the operations without delay.

#### Amendment

2. In cases where data subjects in several Member States are likely to be affected by processing operations, a supervisory authority of each of those Member States shall participate in the joint investigative tasks or joint operations, as appropriate. The competent supervisory authority shall invite the supervisory authority of each of those Member States to take part in the respective joint investigative tasks or joint operations and respond to the request of a supervisory authority to participate in the operations without delay.

Or. en

### Justification

Strengthening the obligation of DPAs to cooperate with their peers in cross-border cases can help to ensure that smaller DPAs are not excessively burdened by cases where large companies fall under their jurisdiction. In addition, it would help to prevent the danger of forum shopping when it comes to the enforcement of the new data protection standards, i.e. choosing the place of establishment for the sake of being under the authority of a DPA that does not have the capacity to undertake large-scale investigations on its own.

# Amendment 822 Adina-Ioana Vălean, Jürgen Creutzmann, Jens Rohde, Seán Kelly

# Proposal for a regulation Article 58 – paragraph 1

Text proposed by the Commission

1. Before *a* supervisory authority adopts a measure referred to in paragraph 2, this supervisory authority shall communicate the draft measure to the European Data Protection Board and the Commission.

#### Amendment

1. Before *the competent* supervisory authority adopts a measure referred to in paragraph 2, this *competent* supervisory authority shall communicate the draft measure to the European Data Protection Board and the Commission.

Or. en

## Amendment 823 Ivailo Kalfin

# Proposal for a regulation Article 58 – paragraph 1

Text proposed by the Commission

1. Before *a supervisory* authority adopts a measure referred to in paragraph 2, this supervisory authority shall communicate the draft measure to the European Data Protection Board and the Commission.

#### Amendment

1. Before *the competent* authority adopts a measure referred to in paragraph 2, this supervisory authority shall communicate the draft measure to the European Data Protection Board and the Commission.

Or. en

Amendment 824 Seán Kelly, Adina-Ioana Vălean

Proposal for a regulation Article 58 – paragraph 2 – point a

Text proposed by the Commission

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

## Amendment

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

Or. en

### Justification

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

Amendment 825 Seán Kelly, Adina-Ioana Vălean

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Proposal for a regulation Article 58 – paragraph 2 – point b

Text proposed by the Commission

Amendment

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

Or. en

Amendment 826 Seán Kelly, Adina-Ioana Vălean

Proposal for a regulation Article 58 – paragraph 2 – point c

Text proposed by the Commission

Amendment

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

deleted

Or. en

## Justification

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

Amendment 827 Jens Rohde, Adina-Ioana Vălean

Proposal for a regulation Article 58 – paragraph 2 – point c

Text proposed by the Commission

Amendment

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

Or. en

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deleted

Amendment 828 Seán Kelly, Adina-Ioana Vălean

Proposal for a regulation Article 58 – paragraph 2 – point d

Text proposed by the Commission

Amendment

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

Or. en

Amendment 829 Seán Kelly, Adina-Ioana Vălean

Proposal for a regulation Article 58 – paragraph 2 – point e

Text proposed by the Commission

Amendment

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

deleted

deleted

Or. en

Amendment 830 Seán Kelly, Adina-Ioana Vălean

Proposal for a regulation Article 58 – paragraph 2 – point f

Text proposed by the Commission

Amendment

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

deleted

### Justification

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

Amendment 831 Amelia Andersdotter

Proposal for a regulation Article 58 – paragraph 2 – point f a (new)

Text proposed by the Commission

Amendment

(fa) permits processing for research purposes in accordance with Article 81(3) and/or Article 83(3). permits processing for research purposes in accordance with Article 81(3) and/or Article 83(3).

Or. en

Amendment 832 Ivailo Kalfin

Proposal for a regulation Article 58 – paragraph 3

Text proposed by the Commission

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

### Amendment

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

# Amendment 833 Adina-Ioana Vălean, Jürgen Creutzmann

# Proposal for a regulation Article 58 – paragraph 4

Text proposed by the Commission

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

#### Amendment

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

Or. en

### Justification

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

Amendment 834 Amelia Andersdotter

Proposal for a regulation Article 58 – paragraph 6

Text proposed by the Commission

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

#### Amendment

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

# Amendment 835 Alejo Vidal-Quadras

# Proposal for a regulation Article 58 – paragraph 6

Text proposed by the Commission

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

#### Amendment

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

Or. en

# Amendment 836 Amelia Andersdotter

# Proposal for a regulation Article 58 – paragraph 7

Text proposed by the Commission

7. The European Data Protection Board shall issue an opinion on the matter, if the European Data Protection Board so decides by simple majority of its members or any supervisory authority or the Commission so requests within one week after the relevant information has been provided according to paragraph 5. The opinion shall be adopted within *one month* by simple majority of the members of the European Data Protection Board. The chair of the European Data Protection Board shall inform, without undue delay, the supervisory authority referred to, as the case may be, in paragraphs 1 and 3, the

### Amendment

7. The European Data Protection Board shall issue an opinion on the matter, if the European Data Protection Board so decides by simple majority of its members or any supervisory authority or the Commission so requests within one week after the relevant information has been provided according to paragraph 5. The opinion shall be adopted within *two months* by simple majority of the members of the European Data Protection Board. The chair of the European Data Protection Board shall inform, without undue delay, the supervisory authority referred to, as the case may be, in paragraphs 1 and 3, the

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Commission and the supervisory authority competent under Article 51 of the opinion and make it public.

Commission and the supervisory authority competent under Article 51 of the opinion and make it public.

Or en

**Amendment 837** Jens Rohde

Proposal for a regulation Article 58 – paragraph 8

Text proposed by the Commission

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

#### Amendment

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

Or. en

**Amendment 838** Seán Kelly, Adina-Ioana Vălean

Proposal for a regulation Article 59

Text proposed by the Commission

Article 59

Opinion by the Commission

1. Within ten weeks after a matter has been raised under Article 58, or at the Amendment

deleted

latest within six weeks in the case of Article 61, the Commission may adopt, in order to ensure correct and consistent application of this Regulation, an opinion in relation to matters raised pursuant to Articles 58 or 61.

- 2. Where the Commission has adopted an opinion in accordance with paragraph 1, the supervisory authority concerned shall take utmost account of the Commission's opinion and inform the Commission and the European Data Protection Board whether it intends to maintain or amend its draft measure.
- 3. During the period referred to in paragraph 1, the draft measure shall not be adopted by the supervisory authority.
- 4. Where the supervisory authority concerned intends not to follow the opinion of the Commission, it shall inform the Commission and the European Data Protection Board thereof within the period referred to in paragraph 1 and provide a justification. In this case the draft measure shall not be adopted for one further month.

Or. en

Amendment 839 Amelia Andersdotter

Proposal for a regulation Article 59 – paragraph 2

Text proposed by the Commission

2. Where the Commission has adopted an opinion in accordance with paragraph 1, the supervisory authority concerned shall take *utmost* account of the Commission's opinion and inform the Commission and the European Data Protection Board whether it intends to maintain or amend its

#### Amendment

2. Where the Commission has adopted an opinion in accordance with paragraph 1, the supervisory authority concerned shall take account of the Commission's opinion and inform the Commission and the European Data Protection Board whether it intends to maintain or amend its draft

draft measure. measure.

Or. en

Amendment 840 Seán Kelly, Adina-Ioana Vălean

Proposal for a regulation Article 60

Text proposed by the Commission

Amendment

deleted

Article 60

Suspension of a draft measure

- 1. Within one month after the communication referred to in Article 59(4), and where the Commission has serious doubts as to whether the draft measure would ensure the correct application of this Regulation or would otherwise result in its inconsistent application, the Commission may adopt a reasoned decision requiring the supervisory authority to suspend the adoption of the draft measure, taking into account the opinion issued by the European Data Protection Board pursuant to Article 58(7) or Article 61(2), where it appears necessary in order to:
- (a) reconcile the diverging positions of the supervisory authority and the European Data Protection Board, if this still appears to be possible; or
- (b) adopt a measure pursuant to point (a) of Article 62(1).
- 2. The Commission shall specify the duration of the suspension which shall not exceed 12 months.
- 3. During the period referred to in paragraph 2, the supervisory authority may not adopt the draft measure.

# Amendment 841 Jens Rohde, Adina-Ioana Vălean

# Proposal for a regulation Article 61 – paragraph 1

Text proposed by the Commission

1. In exceptional circumstances, where a supervisory authority considers that there is an urgent need to act in order to protect the interests of data subjects, in particular when the danger exists that the enforcement of a right of a data subject could be considerably impeded by means of an alteration of the existing state or for averting major disadvantages or for other reasons, by way of derogation from the procedure referred to in Article 58, it may immediately adopt provisional measures with a specified period of validity. The supervisory authority shall, without delay, communicate those measures, with full reasons, to the European Data Protection Board and to the Commission.

#### Amendment

1. In exceptional circumstances, where a supervisory authority considers that there is an urgent need to act in order to protect the interests of data subjects within their territory, when the danger exists that the enforcement of a right of a data subject could be considerably impeded by means of an alteration of the existing state or for averting major disadvantages, by clear breach or unjustified inaction of the competent supervisory authority, by way of derogation from the procedure referred to in Article 58, it may immediately adopt provisional measures with a specified period of validity. The supervisory authority shall, without delay, communicate those measures, with full reasons, to the *competent supervisory* authority, the European Data Protection Board, the Commission and the controller or processor.

Or. en

Amendment 842 Adina-Ioana Vălean, Jürgen Creutzmann

# Proposal for a regulation Article 61 – paragraph 1

Text proposed by the Commission

1. In exceptional circumstances, where a supervisory authority considers that there is an urgent need to act in order to protect the interests of data subjects, in particular

### Amendment

1. In exceptional circumstances, where a supervisory authority considers that there is an urgent need to act in order to protect the interests of data subjects, in particular

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when the danger exists that the enforcement of a right of a data subject could be considerably impeded by means of an alteration of the existing state or for averting major disadvantages *or for other reasons*, by way of derogation from the procedure referred to in Article 58, it may immediately adopt provisional measures with a specified period of validity. The supervisory authority shall, without delay, communicate those measures, with full reasons, to the European Data Protection Board and to the Commission.

when the danger exists that the enforcement of a right of a data subject could be considerably impeded by means of an alteration of the existing state or for averting major disadvantages, by way of derogation from the procedure referred to in Article 58, it may immediately adopt provisional measures with a specified period of validity. The supervisory authority shall, without delay, communicate those measures, with full reasons, to the *competent supervisory authority, the* European Data Protection Board and to the Commission.

Or. en

Amendment 843 Jens Rohde

Proposal for a regulation Article 61 – paragraph 2

Text proposed by the Commission

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

### Amendment

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

Or. en

Amendment 844 Amelia Andersdotter

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

### Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 845 Adina-Ioana Vălean, Jürgen Creutzmann

Proposal for a regulation Article 66 – paragraph 1 – introductory part

*Text proposed by the Commission* 

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

### Amendment

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

Or. en

Amendment 846 Amelia Andersdotter

Proposal for a regulation Article 66 – paragraph 1 – point a

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#### Text proposed by the Commission

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

#### Amendment

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

Or. en

Amendment 847 Adina-Ioana Vălean, Jürgen Creutzmann

Proposal for a regulation Article 66 – paragraph 1 – point b

Text proposed by the Commission

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

#### Amendment

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

Or. en

Amendment 848 Amelia Andersdotter

Proposal for a regulation Article 66 – paragraph 1 – point e

Text proposed by the Commission

(e) promote the co-operation and the effective bilateral and multilateral exchange of information and practices between the supervisory authorities;

#### Amendment

(e) promote the co-operation and the effective bilateral and multilateral exchange of information and practices between the supervisory authorities, *including the coordination of joint* 

operations and other common activities, where it so decides upon request of one or several supervisory authorities;

Or. en

## Justification

Given that Article 49(d) specifies only a minimum term length of four years for members of national DPAs. This will make it unlikely that all Member States adopt term lengths of five years or more, so mandating a term length that exceeds the length at national level would make it unlikely for members to serve out a full term. Similarly, it should be clarified that the terms of EDPB chairs are tied to their function at the national level.

Amendment 849 Adina-Ioana Vălean, Jürgen Creutzmann, Seán Kelly

Proposal for a regulation Article 66 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

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

Or. en

# Justification

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

Amendment 850 Paul Rübig

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# Proposal for a regulation Article 67 – paragraph 1 – subparagraph 1

Text proposed by the Commission

The European Data Protection Board shall regularly and timely inform the Commission about the outcome of its activities. It shall draw up an annual report on the situation regarding the protection of natural persons with regard to the processing of personal data in the Union and in third countries.

### Amendment

The European Data Protection Board shall regularly and timely inform the Commission about the outcome of its activities. It shall draw up an annual report on the situation regarding the protection of natural *and legal* persons with regard to the processing of personal data in the Union and in third countries.

Or. de

**Amendment 851 Jean-Pierre Audy** 

Proposal for a regulation Article 69 – paragraph 2

Text proposed by the Commission

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

#### Amendment

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

Or. fr

Amendment 852 Paul Rübig

Proposal for a regulation Article 73 – paragraph 2

Text proposed by the Commission

2. Any body, organisation or association

Amendment

2. Any body, organisation or association

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

which aims to protect data subjects' rights and interests concerning the protection of their personal data and has been properly constituted according to the law of a Member State shall have the right to lodge a complaint with a supervisory authority in any Member State on behalf of one or more data subjects *from among its membership* if it considers that a data subject's rights under this Regulation have been infringed as a result of the processing of personal data *and it has minimum funding of EUR 80 000 and representative membership with a corresponding membership structure*.

Or. de

### Justification

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

Amendment 853 Amelia Andersdotter

Proposal for a regulation Article 73 – paragraph 3

Text proposed by the Commission

3. Independently of a data subject's complaint, any body, organisation or association referred to in paragraph 2 shall have the right to lodge a complaint with a supervisory authority in any Member State, if it considers that a personal data breach has occurred.

#### Amendment

3. Independently of a data subject's complaint, any body, organisation or association referred to in paragraph 2 shall have the right to lodge a complaint with a supervisory authority in any Member State, if it considers that a personal data breach has occurred *or when it considers that a controller has breached its obligations under Article 23*.

# Amendment 854 Paul Rübig

# Proposal for a regulation Article 75 – paragraph 1

Text proposed by the Commission

1. Without prejudice to any available administrative remedy, including the right to lodge a complaint with a supervisory authority as referred to in Article 73, every natural person shall have the right to a judicial remedy if they consider that their rights under this Regulation have been infringed as a result of the processing of their personal data in non-compliance with this Regulation.

#### Amendment

1. Without prejudice to any available administrative remedy, including the right to lodge a complaint with a supervisory authority as referred to in Article 73, every natural *and legal* person shall have the right to a judicial remedy if they consider that their rights under this Regulation have been infringed as a result of the processing of their personal data in non-compliance with this Regulation.

Or. de

Amendment 855 Silvia-Adriana Țicău

# Proposal for a regulation Article 75 – paragraph 2

Text proposed by the Commission

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

### Amendment

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

## Amendment 856 Amelia Andersdotter

# Proposal for a regulation Article 75 – paragraph 2

Text proposed by the Commission

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

#### Amendment

2. Proceedings against a controller or a processor *can be whether* brought before the courts of the Member State where the controller or processor has an establishment, *or* before the courts of the Member State where the data subject has its habitual residence, unless the controller is a public authority *of a Member State* acting in the exercise of its public powers.

Or. en

# Amendment 857 Bernd Lange

# Proposal for a regulation Article 76 – paragraph 1

Text proposed by the Commission

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

### Amendment

1. Any body, organisation or association referred to in Article 73(2) shall have the right to exercise the rights referred to in Articles 74 on behalf of one or more data subjects. Claims according to Article 77 may not be exercised by bodies, organisations or associations within the meaning of Article 73(2).

Or. en

Amendment 858 Paul Rübig

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# Proposal for a regulation Article 76 – paragraph 1

Text proposed by the Commission

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

#### Amendment

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

Or. de

## Justification

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

Amendment 859 Amelia Andersdotter

Proposal for a regulation Article 76 – paragraph 1

Text proposed by the Commission

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

### Amendment

1. Any body, organisation or association referred to in Article 73(2) shall have the right to exercise the rights referred to in Articles 74, 75 and 77 on behalf of one or more data subjects.

Or. en

Amendment 860 Amelia Andersdotter

Proposal for a regulation Article 77 – paragraph 1

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#### Text proposed by the Commission

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

#### Amendment

1. Any person who has suffered *monetary* damage *or non-monetary damages such* as distress or time loss as a result of an unlawful processing operation or of an action incompatible with this Regulation shall have the right to receive compensation from the controller or the processor for the damage suffered.

Or. en

Amendment 861 Adina-Ioana Vălean, Jürgen Creutzmann, Jens Rohde, Seán Kelly

# Proposal for a regulation Article 77 – paragraph 1

Text proposed by the Commission

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

#### Amendment

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

Or. en

### Justification

Liability should be maintained on the data controller as it is currently the case in the Directive. The controller is the one who has the direct link with the data subject and is the one responsible vis-à-vis the data subject. The controller and the processor normally establish the liability relationship in the contractual arrangements, for cases where the processor does not act as requested by the data controller.

Amendment 862 Pilar del Castillo Vera

# Proposal for a regulation Article 77 – paragraph 1

Text proposed by the Commission

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

#### Amendment

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

Or. en

Amendment 863 Amelia Andersdotter

Proposal for a regulation Article 77 – paragraph 2

Text proposed by the Commission

2. Where more than one controller or processor is involved in the processing, each controller or processor shall be jointly and severally liable for the entire amount of the damage.

#### Amendment

2. Where more than one controller or processor is involved in the processing, each controller or processor shall be jointly and severally liable for the entire amount of the damage. In the case of a group of undertakings, the entire group shall be liable as a single economic entity.

Or. en

Amendment 864 Adina-Ioana Vălean, Jürgen Creutzmann, Seán Kelly

Proposal for a regulation Article 77 – paragraph 2

Text proposed by the Commission

2. Where more than one controller *or processor* is involved in the processing, each controller *or processor* shall be jointly and severally liable for the entire

### Amendment

2. Where more than one controller is involved in the processing, each controller shall be jointly and severally liable for the entire amount of the damage *to the extent* 

amount of the damage.

that the joint controllers' respective liability has not been determined in the legal arrangement referred to in Article 24.

Or. en

### Justification

Joint controllers should be allowed to contractually allocate their respective liability, thereby reflecting their respective roles and direct or indirect relationships with data subjects. The joint and several liability would only apply to joint controllers where they have not determined their responsibilities and liabilities in a legal arrangement, as required by Article 24.

Amendment 865 Pilar del Castillo Vera

Proposal for a regulation Article 77 – paragraph 2

Text proposed by the Commission

2. Where more than one controller *or processor* is involved in the processing, each controller *or processor* shall be jointly and severally liable for the entire amount of the damage.

#### Amendment

2. Where more than one controller is involved in the processing, each controller shall be jointly and severally liable for the entire amount of the damage.

Or. en

Amendment 866 Pilar del Castillo Vera

Proposal for a regulation Article 77 – paragraph 3

Text proposed by the Commission

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

#### Amendment

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

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Or. en

Amendment 867 Adina-Ioana Vălean, Jürgen Creutzmann, Jens Rohde, Seán Kelly

# Proposal for a regulation Article 77 – paragraph 3

Text proposed by the Commission

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

#### Amendment

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

Or. en

Amendment 868 Adina-Ioana Vălean, Jürgen Creutzmann, Jens Rohde, Seán Kelly

Proposal for a regulation Article 79 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 869 Adina-Ioana Vălean, Jürgen Creutzmann

Proposal for a regulation Article 79 – paragraph 2

### Text proposed by the Commission

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

#### Amendment

2. The administrative sanction shall be in each individual case effective. proportionate and dissuasive. The amount of the administrative fine shall be fixed with due regard to the nature, gravity and duration of the breach, the sensitivity of the personal data at issue, the intentional or negligent character of the infringement, the degree of harm or risk of significant harm created by the violation, the degree of responsibility of the natural or legal person and of previous breaches by this person, the technical and organisational measures and procedures implemented pursuant to Article 23 and the degree of co-operation with the supervisory authority in order to remedy the breach. While some discretion is granted in the imposition of such sanctions to take into account the circumstances outlined above and other facts specific to the situation, divergences in the application of administrative sanctions may be subject to review pursuant to the consistency mechanism.

Or. en

## Amendment 870 Giles Chichester

# Proposal for a regulation Article 79 – paragraph 2

### Text proposed by the Commission

2. The administrative sanction shall be in each individual case effective, proportionate and dissuasive. The amount of the administrative fine shall be fixed with due regard to the nature, gravity and duration of the breach, the intentional or negligent character of the infringement, the degree of responsibility of the natural or

### Amendment

2. The administrative sanction shall be in each individual case effective, proportionate and dissuasive. The amount of the administrative fine shall be fixed with due regard to the nature, gravity and duration of the breach, the *sensitivity of the data in issue, the* intentional or negligent character of the infringement, the degree of

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

Or. en

### Justification

This AM aims to ensure that deliberate or reckless violations merit more substantial penalties than merely negligent violations aiming at ensuring that the penalty is proportionate to the conduct, and the most punitive sanctions are reserved for the most serious misconduct.

Amendment 871 Giles Chichester

Proposal for a regulation Article 79 – paragraph 2 a (new)

Text proposed by the Commission

#### Amendment

- (2a) Aggravating factors that support administrative fines at the upper limits established in paragraphs 4 to 6 shall include in particular:
- (i) repeated violations committed in reckless disregard of applicable law;
- (ii) refusal to co-operate with or obstruction of an enforcement process;
- (iii) violations that are deliberate, serious and likely to cause substantial damage;
- (iv) a data protection impact assessment has not been undertaken;
- (v) a data protection officer has not been

**Amendment 872 Giles Chichester** 

Proposal for a regulation Article 79 – paragraph 2 b (new)

Text proposed by the Commission

#### Amendment

- (2b) Mitigating factors which support administrative fines at the lower limits established in paragraphs 4 to 6 shall include:
- (i) measures having been taken by the natural or legal person to ensure compliance with relevant obligations;
- (ii) genuine uncertainty as to whether the activity constituted a violation of the relevant obligations;
- (iii) immediate termination of the violation upon knowledge;
- (iv) co-operation with any enforcement processes;
- (v) a data protection impact assessment has been undertaken;
- (vi) a data protection officer has been appointed.

Or. en

Amendment 873 Adina-Ioana Vălean, Jürgen Creutzmann

Proposal for a regulation Article 79 – paragraph 3 – introductory part

### Text proposed by the Commission

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

#### Amendment

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

Or. en

Amendment 874 Adina-Ioana Vălean, Jürgen Creutzmann

Proposal for a regulation Article 79 – paragraph 3 – point a

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 875 Adina-Ioana Vălean, Jürgen Creutzmann

Proposal for a regulation Article 79 – paragraph 3 – point b

Text proposed by the Commission

Amendment

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

Or. en

Amendment 876 Amelia Andersdotter

# Proposal for a regulation Article 79 – paragraph 6 – introductory part

Text proposed by the Commission

6. The supervisory authority shall impose a fine up to 1 000 000 EUR or, in case of an enterprise up to 2 % of its annual worldwide turnover, to anyone who, intentionally or negligently:

#### Amendment

6. The supervisory authority shall impose a fine up to 1 000 000 EUR or, in case of an enterprise up to 5 % of its annual worldwide turnover, to anyone who, intentionally or negligently:

Or. en

### Justification

The administrative sanctions need to be dissuasive in order to protect our fundamental rights.

Amendment 877 Amelia Andersdotter, Silvia-Adriana Țicău

# Proposal for a regulation Article 80 – paragraph 1

Text proposed by the Commission

1. Member States shall provide for exemptions or derogations from the provisions on the general principles in Chapter II, the rights of the data subject in Chapter III, on controller and processor in Chapter IV, on the transfer of personal data to third countries and international organisations in Chapter V, the independent supervisory authorities in Chapter VI and on co-operation and consistency in Chapter VII for the processing of personal data carried out solely for journalistic purposes or the purpose of artistic or literary expression in order to reconcile the right to the protection of personal data with the rules governing freedom of expression.

### Amendment

1. Member States shall provide for exemptions or derogations from the provisions on the general principles in Chapter II, the rights of the data subject in Chapter III, on controller and processor in Chapter IV, on the transfer of personal data to third countries and international organisations in Chapter V, the independent supervisory authorities in Chapter VI and on co-operation and consistency in Chapter VII whenever this is necessary in order to reconcile the right to the protection of personal data with the rules governing freedom of expression.

# Amendment 878 Angelika Niebler

# Proposal for a regulation Article 80 – paragraph 1

Text proposed by the Commission

1. Member States shall provide for exemptions or derogations from the provisions on the general principles in Chapter II, the rights of the data subject in Chapter III, on controller and processor in Chapter IV, on the transfer of personal data to third countries and international organisations in Chapter V, the independent supervisory authorities in Chapter VI and on co-operation and consistency in Chapter VII for the processing of personal data carried out solely for journalistic purposes or the purpose of artistic or literary expression in order to reconcile the right to the protection of personal data with the rules governing freedom of expression.

#### Amendment

1. Member States shall provide for exemptions or derogations from the provisions on the general principles in Chapter II, the rights of the data subject in Chapter III, on controller and processor in Chapter IV, on the transfer of personal data to third countries and international organisations in Chapter V, the independent supervisory authorities in Chapter VI and on co-operation and consistency in Chapter VII for the processing of personal data carried out for journalistic purposes or the purpose of artistic or literary expression in order to reconcile the right to the protection of personal data with the rules governing freedom of expression.

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 879 Amelia Andersdotter

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

Text proposed by the Commission

Amendment

(1a) The European Data Protection Board shall issue guidance on when such

exemptions or derogations may be necessary, after consultation with representatives of the press, authors and artists, data subjects and relevant civil society organisations.

Or. en

Amendment 880 Amelia Andersdotter

Proposal for a regulation Article 80 a (new)

Text proposed by the Commission

Amendment

Article 80 a

Processing of personal data and the principle of public access to official documents

Personal data in documents held by a public authority or a public body may be disclosed by this authority or body in accordance with Member State legislation regarding public access to official documents, which reconciles the right to the protection of personal data with the principle of public access to official documents.

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 881 Marita Ulvskog

# Proposal for a regulation Article 80 a (new)

Text proposed by the Commission

Amendment

#### Article 80 a

Personal data in documents held by a public authority or a public body may be disclosed by this authority or body in accordance with Member State legislation regarding public access to official documents, which reconciles the right to the protection of personal data with the principle of public access to official documents.

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 882 Amelia Andersdotter

Proposal for a regulation Article 81 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

1. Without prejudice to this Regulation and in accordance with point (h) of Article 9(2), processing of personal data concerning health must be on the basis of Union law or Member State law which shall provide for suitable and specific measures to safeguard the data subject's legitimate interests, and be necessary for:

# Amendment 883 Silvia-Adriana Ticău

# Proposal for a regulation Article 81 – paragraph 1 – introductory part

Text proposed by the Commission

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

#### Amendment

1. Without prejudice to this Regulation and in accordance with point (h) of Article 9(2), processing of personal data concerning health must be on the basis of Union law or Member State law which shall provide for suitable and specific measures to safeguard the data subject's legitimate interests, and be necessary for:

Or. en

Amendment 884 Jens Rohde

Proposal for a regulation Article 81 – paragraph 1 – point c

Text proposed by the Commission

(c) other reasons of public interest in areas such as social protection, 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.

#### Amendment

(c) other reasons of public interest in areas such as social protection to ensure *its* mission as defined in national member state legislation

Or. en

Amendment 885 Jens Rohde

Proposal for a regulation Article 81 – paragraph 3

Amendment

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

deleted

Or. en

Amendment 886 Jens Rohde, Bendt Bendtsen

Proposal for a regulation Article 82 – paragraph 1

Text proposed by the Commission

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

#### Amendment

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

# Amendment 887 Silvia-Adriana Țicău

# Proposal for a regulation Article 82 – paragraph 1

Text proposed by the Commission

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

#### Amendment

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

Or. en

Amendment 888 Jens Rohde, Bendt Bendtsen

Proposal for a regulation Article 82 – paragraph 3

Text proposed by the Commission

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1.

Amendment

deleted

### Justification

It is of utmost importance that the Commission recognises that the labour market is regulated very differently in the different Member States. Some Member States have a tradition with legislation and other Member States have a high degree of regulation that stems from collective agreements on the labour market thus collective agreements made by the parties on the labour market should have same legal standing as legislation with regards to processing personal data. In this area it would not be acceptable that the Commission could adopt delegated acts since this would influence the freedom of the parties on the labour market to create collective agreements.

Amendment 889 Marita Ulvskog

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

Text proposed by the Commission

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

Amendment

1. Within the limits of this Regulation *Member States shall adopt regulations on the processing of personal data* for historical, statistical or scientific research purposes.

Each Member State shall notify to the Commission those provisions of its law which it adopts pursuant to this paragraph and any subsequent amendment affecting them.

Or. en

Amendment 890 Adina-Ioana Vălean, Jürgen Creutzmann, Seán Kelly

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

Text proposed by the Commission

Amendment

1. Within the limits of this Regulation,

1. Within the limits of this Regulation,

personal data may be processed for historical, statistical or scientific *research purposes* only if:

personal data may be processed for historical, statistical or scientific *purposes* under paragraph 2 of Article 6 and point (i) of Article 9(2) only if:

Or. en

### Justification

Article 83 establishes an independent legal basis for the processing of personal data for scientific purposes, provided the criteria therein are met. This amendment makes clear that the other legal bases for processing of personal data in Articles 6 and 9 (e.g., the consent of the data subject) remain unaffected and researchers may rely on those provisions to process personal data in lieu of reliance on paragraph 1 of Article 83.

Amendment 891 Amelia Andersdotter

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

Text proposed by the Commission

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

Amendment

1. Within the limits of this Regulation, personal data *not falling within the* categories of data covered by Articles 8 and 9 of the Regulation may be processed for historical, statistical or scientific research purposes only if:

Or. en

Amendment 892 Silvia-Adriana Țicău

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

Text proposed by the Commission

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

Amendment

1. *Without prejudice to* this Regulation, personal data may be processed for historical, statistical or scientific research

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Or. en

**Amendment 893 Giles Chichester** 

# Proposal for a regulation Article 83 – paragraph 1 – introductory part

Text proposed by the Commission

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

#### Amendment

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

Or. en

Amendment 894 Adina-Ioana Vălean, Jürgen Creutzmann

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

Text proposed by the Commission

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

#### Amendment

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

Or. en

Amendment 895 Marita Ulvskog

Proposal for a regulation Article 83 – paragraph 1 – point a Text proposed by the Commission

Amendment

(a) these purposes cannot be otherwise fulfilled by processing data which does not permit or not any longer permit the identification of the data subject;

deleted

Or. en

Amendment 896 Giles Chichester

Proposal for a regulation Article 83 – paragraph 1 – point a

Text proposed by the Commission

(a) these purposes cannot *be otherwise fulfilled* by processing data which does not permit or not any longer permit the identification of the data subject;

Amendment

(a) these purposes cannot *reasonably be achieved* by processing data which does not permit or not any longer permit the identification of the data subject;

Or. en

Amendment 897 Adina-Ioana Vălean, Jürgen Creutzmann

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

*Text proposed by the Commission* 

Amendment

- (1a) Further processing of data for historical, statistical or scientific purposes shall not be considered as incompatible under point (b) of Article 5(1) provided that the processing:
- (a) is subject to the conditions and safeguards of this Article; and
- (b) complies with all other relevant legislation.

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Amendment 898 Amelia Andersdotter

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

Text proposed by the Commission

Amendment

(aa) Subject only to the exception in paragraph (3), data falling within the categories of data covered by Articles 8 and 9 of the Regulation may be processed for historical, statistical or scientific research only with the consent of the data subjects, given in accordance with Article 4(8).

Or. en

Amendment 899 Marita Ulvskog

Proposal for a regulation Article 83 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) data enabling the attribution of information to an identified or identifiable data subject is kept separately from the other information as long as these purposes can be fulfilled in this manner.

deleted

Or. en

Amendment 900 Amelia Andersdotter

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

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## Text proposed by the Commission

## Amendment

(ba) Member States may by law provide for exceptions to the requirement of consent for research, stipulated in paragraph (2), with regard to research that serves exceptionally high public interests, if that research cannot possibly be carried out otherwise. The data in question shall be anonymised or pseudonymised to the highest possible standards, and all possible measures shall be taken to prevent re-identification of the data subjects. Such processing shall be subject to prior authorisation of the relevant national supervisory authority or authorities, in accordance with Article 34(1) of this Regulation, and to the Consistency Mechanism provided for in Chapter VII, Section 2, of this Regulation.

Or. en

Amendment 901 Giles Chichester

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

Text proposed by the Commission

## Amendment

- (1a) Further processing of data for historical, statistical or scientific purposes shall not be considered as incompatible under point (b) of Article 5(1) provided that the processing:
- (a) is subject to the conditions and safeguards of this Article; and
- (b) complies with all other relevant legislation.

Or. en

## Justification

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

Amendment 902 Jens Rohde

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

Text proposed by the Commission

Amendment

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

Or. en

## Justification

Data protection rules at Member State-level are complex and nuanced also with regard to public health research. Member States legislators should be empowered to maintain or adopt concrete measures on ethical review of public health research, carried out without the need for the data subject's consent. Ethical review at Member State level offers data subjects a guarantee that the use and reuse of their personal data for research purposes is in line with societal values at the given point in time.

Amendment 903 Marita Ulvskog

Proposal for a regulation Article 83 – paragraph 2

Text proposed by the Commission

Amendment

2. Bodies conducting historical, statistical or scientific research may publish or otherwise publicly disclose personal data only if:

deleted

- (a) the data subject has given consent, subject to the conditions laid down in Article 7;
- (b) the publication of personal data is necessary to present research findings or to facilitate research insofar as the interests or the fundamental rights or freedoms of the data subject do not override these interests; or
- (c) the data subject has made the data public.

Or. en

Amendment 904 Amelia Andersdotter

Proposal for a regulation Article 83 – paragraph 2 – introductory part

Text proposed by the Commission

2. Bodies conducting historical, statistical or scientific research may publish or otherwise publicly disclose personal data only *if*:

Amendment

2. Bodies conducting historical, statistical or scientific research may publish or otherwise publicly disclose personal data only with the consent of the data subjects, given in accordance with Article 4(8).

Or. en

Amendment 905 Adina-Ioana Vălean, Jürgen Creutzmann, Seán Kelly

Proposal for a regulation Article 83 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(ca) the personal data is processed for the purpose of generating aggregate data reports, wholly composed of either anonymous data, pseudonymous data or both.

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### Justification

The purpose of such reports is not to identify or go back to individuals. To create such reports, individual data sets are pooled together in an anonymous way and have no privacy impact. Web Analytics are an example of Aggregate Data Reports.

Amendment 906 Adina-Ioana Vălean, Jürgen Creutzmann, Seán Kelly

Proposal for a regulation Article 83 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

- (2a) A controller or processor may transfer personal data to a third country or an international organisation for historical, statistical or scientific purposes if:
- (a) these purposes cannot be otherwise fulfilled by processing data which does not permit or not any longer permit the identification of the data subject;
- (b) the recipient does not reasonably have access to data enabling the attribution of information to an identified or identifiable data subject; and
- (c) contractual clauses between the controller or processor and the recipient of the data prohibit re-identification of the data subject and limit processing in accordance with the conditions and safeguards laid down in this Article.

Or. en

### Justification

A recipient of key-coded data, transferred for scientific research purposes has no means to reidentify subjects, and under this amendment, does not have access to the key and is contractually precluded from re-identifying data subjects. This amendment would formalize a

process for reasonably ensuring that key-coded data cannot and will not be re-identified by recipients located in third countries, allowing for the transfer of such data without further burdens.

Amendment 907 Jens Rohde

Proposal for a regulation Article 83 – paragraph 3

Text proposed by the Commission

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

### Amendment

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

Or. en

Amendment 908 Amelia Andersdotter

Proposal for a regulation Article 83 a (new)

Text proposed by the Commission

Amendment

Article 83 a

Processing of criminal convictions data for the purpose of the prevention of financial crime

Within all the limits of this Regulation, and in accordance with point (j) of Article 9(2), for the purpose of exercising the specific rights of controllers expressed in

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point (b) of Article 9(2) where the criteria of public interest from point (g) of Article 9(2) are fulfilled, processing of personal data concerning criminal convictions or related security measures shall be permitted if it provides for appropriate measures to protect the data subject's fundamental rights and freedoms and the aim of the processing can be demonstrated to significantly derogate from the exception already established in Article 21(d) of this regulation, and:

- a) assist in the prevention, investigation or detection of financial crime by public authorities, or
- b) provide support to public authorities engaged in the prevention of financial crime of a cross-border nature,

and will, in these cases and subject to prior approval by a competent data protection authority, be carried out based on historical consent of the data subject even after such consent may have been withdrawn and without prejudice to the right to erasure codified in Article 17. Where a data controller has obtained permission from the competent public authority for such processing, the data subject shall be informed that a permission is obtained in accordance with the obligations laid down in Article 14. The right of rectification will prevail in these circumstances.

Or. en

## Justification

Public authorities are the authorities vested with the powers to conduct investigations of criminal activity. It would be unwise to use the Data Protection Regulation to make derogations from the principle that criminal investigations and crime fighting is done by public authorities.

## Amendment 909 Amelia Andersdotter

# Proposal for a regulation Article 84 – paragraph 1

Text proposed by the Commission

1. Within the limits of this Regulation, Member States may adopt specific rules to set out the investigative powers by the supervisory authorities laid down in Article 53(2) in relation to controllers or processors that are subjects under national law or rules established by national competent bodies to an obligation of professional secrecy or other equivalent obligations of secrecy, where this is necessary and proportionate to reconcile the right of the protection of personal data with the obligation of secrecy. These rules shall only apply with regard to personal data which the controller or processor has received from or has obtained in an activity covered by this obligation of secrecy.

### Amendment

1. Without prejudice to this Regulation, Member States may adopt specific rules to set out the investigative powers by the supervisory authorities laid down in Article 53(2) in relation to controllers or processors that are subjects under national law or rules established by national competent bodies to an obligation of professional secrecy or other equivalent obligations of secrecy, where this is necessary and proportionate to reconcile the right of the protection of personal data with the obligation of secrecy. These rules shall only apply with regard to personal data which the controller or processor has received from or has obtained in an activity covered by this obligation of secrecy.

Or. en

Amendment 910 Silvia-Adriana Ticău

Proposal for a regulation Article 84 – paragraph 1

Text proposed by the Commission

1. Within the limits of this Regulation, Member States may adopt specific rules to set out the investigative powers by the supervisory authorities laid down in Article 53(2) in relation to controllers or processors that are subjects under national law or rules established by national competent bodies to an obligation of professional secrecy or other equivalent obligations of secrecy, where this is

# Amendment

1. Without prejudice to this Regulation, Member States may adopt specific rules to set out the investigative powers by the supervisory authorities laid down in Article 53(2) in relation to controllers or processors that are subjects under national law or rules established by national competent bodies to an obligation of professional secrecy or other equivalent obligations of secrecy, where this is

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necessary and proportionate to reconcile the right of the protection of personal data with the obligation of secrecy. These rules shall only apply with regard to personal data which the controller or processor has received from or has obtained in an activity covered by this obligation of secrecy. necessary and proportionate to reconcile the right of the protection of personal data with the obligation of secrecy. These rules shall only apply with regard to personal data which the controller or processor has received from or has obtained in an activity covered by this obligation of secrecy.

Or. en

# Amendment 911 Paul Rübig

# Proposal for a regulation Article 85 – paragraph 1

Text proposed by the Commission

1. Where in a Member State, churches and religious associations or communities apply, at the time of entry into force of this Regulation, comprehensive rules relating to the protection of *individuals* with regard to the processing of personal data, such rules may continue to apply, provided that they are brought in line with the provisions of this Regulation.

### Amendment

1. Where in a Member State, churches and religious associations or communities apply, at the time of entry into force of this Regulation, comprehensive rules relating to the protection of *natural and legal persons* with regard to the processing of personal data, such rules may continue to apply, provided that they are brought in line with the provisions of this Regulation.

Or. de

## Amendment 912 Amelia Andersdotter

# Proposal for a regulation Article 85 – paragraph 2

Text proposed by the Commission

2. Churches and religious associations which apply comprehensive rules in accordance with paragraph 1 shall *provide for the establishment of* an independent supervisory authority in accordance with Chapter VI of this Regulation.

### Amendment

2. Churches and religious associations which apply comprehensive rules in accordance with paragraph 1 shall *be subject to supervision by* an independent supervisory authority in accordance with Chapter VI of this Regulation.

# Amendment 913 Jean-Pierre Audy

# Proposal for a regulation Article 86 – paragraph 2

Text proposed by the Commission

2. The delegation of power referred to in *Article 6(5)*, Article 8(3), Article 9(3), Article 12(5), Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 22(4), Article 23(3), Article 26(5), Article 28(5), Article 30(3), Article 31(5), Article 32(5), Article 336), Article 34(8), Article 35(11), Article 37(2), Article 39(2), Article 43(3), Article 44(7), Article 79(6), Article 81(3), Article 82(3) and Article 83(3) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

### Amendment

2. The delegation of power referred to in Article 8(3), Article 9(3), Article 12(5), Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 22(4), Article 23(3), Article 26(5), Article 28(5), Article 30(3), Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11), Article 37(2), Article 39(2), Article 43(3), Article 44(7), Article 79(6), Article 81(3), Article 82(3) and Article 83(3) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

Or fr

# Amendment 914 Bernd Lange

# Proposal for a regulation Article 89 – paragraph 1

Text proposed by the Commission

1. This Regulation shall not impose additional obligations on natural or legal persons in relation to the processing of personal data in connection with the provision of publicly available electronic communications services in public communication networks in the Union in relation to matters for which they are subject to specific obligations with the same objective set out in Directive

#### Amendment

1. This Regulation shall not *apply, insofar* as the Directive 2002/58/EC provides for data processing.

Amendment 915 Franck Proust

Proposal for a regulation Article 89 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Article 1(2), *Article 2(b) and (c)*, *Article 4(3),(4) and (5)*, *and Articles 6 and 9* of Directive 2002/58/EC shall be deleted.

Or. fr

Amendment 916 Bernd Lange

Proposal for a regulation Article 89 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Article 1(2) of Directive 2002/58/EC shall be deleted. *The remainder of Directive 2002/58/EC shall remain unaffected.* 

Or. en

Amendment 917 Jens Rohde, Bendt Bendtsen

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

Text proposed by the Commission

Amendment

(1a) Delegated acts and Implementing

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

Or. en