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*Committee on Civil Liberties, Justice and Home Affairs*

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**2012/0010(COD)**

6.3.2013

## **AMENDMENTS (1)**

### **170 - 429**

**Draft report**  
**Dimitrios Droutsas**  
(PE501.928v02-00)

on the proposal for a directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data

Proposal for a directive  
(COM(2012)0010 – C7-0024/2012 – 2012/0010(COD))

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PE506.127v01-00



**Amendment 170**  
**Sonia Alfano, Gianni Vattimo**

**Proposal for a directive**  
**Title 1**

*Text proposed by the Commission*

Proposal for a  
***DIRECTIVE*** OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL  
on the protection of individuals with regard  
to the processing of personal data by  
competent authorities for the purposes of  
prevention, investigation, detection or  
prosecution of criminal offences or the  
execution of criminal penalties, and the  
free movement of such data

*Amendment*

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 by  
competent authorities for the purposes of  
prevention, investigation, detection or  
prosecution of criminal offences or the  
execution of criminal penalties, and the  
free movement of such data

Or. en

**Amendment 171**  
**Birgit Sippel, Josef Weidenholzer**

**Proposal for a directive**  
**Citation 1**

*Text proposed by the Commission*

– Having regard to the Treaty on the  
Functioning of the European Union, and in  
particular Article 16(2) thereof,

*Amendment*

– Having regard to the Treaty on the  
Functioning of the European Union, and in  
particular Article 16(1) ***and Article 16(2)***  
thereof, ***as well as to Article 82(2)(b) and***  
***Article 82(2)(c) thereof as well as to***  
***Article (7) of the Charter of Fundamental***  
***Rights of the European Union as well to***  
***Articles 8(2)(3) thereof,***

Or. en

**Amendment 172**  
**Birgit Sippel, Josef Weidenholzer**

**Proposal for a directive**  
**Recital 1**

*Text proposed by the Commission*

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

*Amendment*

(1) The protection of natural persons in relation to the processing of personal data is fundamental right. Article 8(1) of the Charter of Fundamental Rights of the European Union and Article 16(1) of the Treaty of the Functioning of the European Union lay down that everyone has the right to the protection of personal data concerning him or her. ***Article 8(2) of the Charter of Fundamental Rights of the European Union lays down that such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law and that everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.***

Or. en

**Amendment 173**  
**Birgit Sippel, Josef Weidenholzer**

**Proposal for a directive**  
**Recital 4**

*Text proposed by the Commission*

(4) This requires facilitating the free flow of data between competent authorities within the Union and the transfer to third countries and international organisations, while ensuring a high level of protection of personal data. These developments require building a strong and more coherent data protection framework in the Union, backed by strong enforcement.

*Amendment*

(4) ***Wherever necessary and proportionate*** this requires facilitating the free flow of data between competent authorities within the Union and the transfer to third countries and international organisations, while ensuring a high level of protection of personal data. These developments require building a strong and more coherent data protection framework in the Union, backed by strong enforcement.

Or. en

## Amendment 174

Axel Voss

### Proposal for a directive

#### Recital 7

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

(7) Ensuring a consistent and high level of protection of the personal data of individuals and facilitating the exchange of personal data between competent authorities of Member States is crucial in order to ensure effective judicial co-operation in criminal matters and police cooperation. To that aim, ***the level of protection of the rights and freedoms of individuals*** with regard to ***the*** processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties ***must be equivalent in all Member States. Effective protection of personal data throughout the Union requires strengthening the rights of data subjects and the obligations of those who process personal data, but also equivalent powers for monitoring and ensuring compliance with the rules for the protection of personal data in the Member States.***

##### *Amendment*

(7) Ensuring a consistent and high level of protection of the personal data of individuals and facilitating the exchange of personal data between competent authorities of Member States is crucial in order to ensure effective judicial co-operation in criminal matters and police cooperation. To that aim, ***minimum standards must be ensured in all Member States*** with regard to ***any*** processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties.

Or. de

## Amendment 175

Jan Philipp Albrecht

### Proposal for a directive

#### Recital 7

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

(7) Ensuring a consistent and high level of protection of the personal data of

##### *Amendment*

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individuals and facilitating the exchange of personal data between competent authorities of Member States is crucial in order to ensure effective judicial co-operation in criminal matters and police cooperation. To that aim, ***the level of protection of the rights and freedoms of individuals*** with regard to ***the*** processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties ***must be equivalent in all Member States***. Effective protection of personal data throughout the Union requires strengthening the rights of data subjects and the obligations of those who process personal data, but also equivalent powers for monitoring and ensuring compliance with the rules for the protection of personal data in the Member States.

individuals and facilitating the exchange of personal data between competent authorities of Member States is crucial in order to ensure effective judicial co-operation in criminal matters and police cooperation. To that aim, ***minimum standards must be ensured in all Member States*** with regard to ***any*** processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties. Effective protection of personal data throughout the Union requires strengthening the rights of data subjects and the obligations of those who process personal data, but also equivalent powers for monitoring and ensuring compliance with the rules for the protection of personal data in the Member States.

Or. en

#### *Justification*

*The aim of the Directive should be to create a pan-European minimum standard of protection and not to replace existing national rules. Member States must therefore be explicitly allowed to adopt more stringent provisions. Cross reference to draft JURI opinion.*

#### **Amendment 176**

**Birgit Sippel, Josef Weidenholzer**

#### **Proposal for a directive**

#### **Recital 7**

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

(7) Ensuring a consistent and high level of protection of the personal data of individuals and facilitating the exchange of personal data between competent authorities of Member States is crucial in order to ensure effective judicial co-operation in criminal matters and police

##### *Amendment*

(7) Ensuring a consistent and high level of protection of the personal data of individuals and ***thus*** facilitating the exchange of personal data between competent authorities of Member States is crucial in order to ensure effective judicial co-operation in criminal matters and police

cooperation. To that aim, the level of protection of the rights and freedoms of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties must be equivalent in all Member States. Effective protection of personal data throughout the Union requires strengthening the rights of data subjects and the obligations of those who process personal data, but also equivalent powers for monitoring and ensuring compliance with the rules for the protection of personal data in the Member States.

cooperation. To that aim, the level of protection of the rights and freedoms of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties must be equivalent in all Member States. ***Consistent and homogenous application of the rules for the protection of the fundamental rights and freedoms of natural persons with regard to the processing of personal data should be ensured throughout the Union.*** Effective protection of personal data throughout the Union requires strengthening the rights of data subjects and the obligations of those who process personal data, but also equivalent powers for monitoring and ensuring compliance with the rules for the protection of personal data in the Member States.

Or. en

#### **Amendment 177**

**Axel Voss**

#### **Proposal for a directive**

#### **Recital 12**

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

(12) In order to ensure ***the same*** level of protection for individuals through legally enforceable rights throughout the Union and to prevent divergences hampering the exchange of personal data between competent authorities, the Directive should provide ***harmonised rules for*** the protection and the free movement of personal data in the areas of judicial co-operation in criminal matters and police co-operation.

##### *Amendment*

(12) In order to ensure ***a minimum*** level of protection for individuals through legally enforceable rights throughout the Union and to prevent divergences hampering the exchange of personal data between competent authorities, the Directive should provide ***a minimum level of harmonisation concerning*** the protection and the free movement of personal data in the areas of judicial co-operation in criminal matters and police co-operation.

Or. de

**Amendment 178**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Recital 12**

*Text proposed by the Commission*

(12) In order to ensure **the same** level of protection for individuals through legally enforceable rights throughout the Union and to prevent divergences hampering the exchange of personal data between competent authorities, the Directive should provide **harmonised rules for** the protection and the free movement of personal data in the areas of judicial co-operation in criminal matters and police co-operation.

*Amendment*

(12) In order to ensure **a minimum** level of protection for individuals through legally enforceable rights throughout the Union and to prevent divergences hampering the exchange of personal data between competent authorities, the Directive should provide **a minimum level of harmonisation concerning** the protection and the free movement of personal data in the areas of judicial co-operation in criminal matters and police co-operation.

Or. en

*Justification*

*The aim of the Directive should be to create a pan-European minimum standard of protection and not to replace existing national rules. Member States must therefore be explicitly allowed to adopt more stringent provisions. Cross reference to draft JURI opinion.*

**Amendment 179**  
**Axel Voss**

**Proposal for a directive**  
**Recital 15**

*Text proposed by the Commission*

(15) The protection of individuals should be technological neutral and not depend on the techniques used; otherwise this would create a serious risk of circumvention. The protection of individuals should apply to processing of personal data by automated means, as well as to manual processing if the data are contained or are intended to be contained in a filing system. Files or sets of

*Amendment*

(15) The protection of individuals should be technological neutral and not depend on the techniques used; otherwise this would create a serious risk of circumvention. The protection of individuals should apply to processing of personal data by automated means, as well as to manual processing if the data are contained or are intended to be contained in a filing system. Files or sets of



files as well as their cover pages, which are not structured according to specific criteria, should not fall within the scope of this Directive. This Directive should not apply to the processing of personal data in the course of an activity which falls outside the scope of Union law, in particular concerning national security, ***or to data processed by the Union institutions, bodies, offices and agencies, such as Europol or Eurojust.***

files as well as their cover pages, which are not structured according to specific criteria, should not fall within the scope of this Directive. This Directive should not apply to the processing of personal data in the course of an activity which falls outside the scope of Union law, in particular concerning national security.

Or. de

**Amendment 180**  
**Cornelia Ernst**

**Proposal for a directive**  
**Recital 15**

*Text proposed by the Commission*

(15) The protection of individuals should be technological neutral and not depend on the techniques used; otherwise this would create a serious risk of circumvention. The protection of individuals should apply to processing of personal data by automated means, as well as to manual processing if the data are contained or are intended to be contained in a filing system. Files or sets of files as well as their cover pages, which are not structured according to specific criteria, should not fall within the scope of this Directive. This Directive should not apply to the processing of personal data in the course of an activity which falls outside the scope of Union law, ***in particular concerning national security***, or to data processed by the Union institutions, bodies, offices and agencies, such as Europol or Eurojust.

*Amendment*

(15) The protection of individuals should be technological neutral and not depend on the techniques used; otherwise this would create a serious risk of circumvention. The protection of individuals should apply to processing of personal data by automated means, as well as to manual processing if the data are contained or are intended to be contained in a filing system. Files or sets of files as well as their cover pages, which are not structured according to specific criteria, should not fall within the scope of this Directive. This Directive should not apply to the processing of personal data in the course of an activity which falls outside the scope of Union law, or to data processed by the Union institutions, bodies, offices and agencies, such as Europol or Eurojust.

Or. en

**Amendment 181**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Recital 15**

*Text proposed by the Commission*

(15) The protection of individuals should be technological neutral and not depend on the techniques used; otherwise this would create a serious risk of circumvention. The protection of individuals should apply to processing of personal data by automated means, as well as to manual processing if the data are contained or are intended to be contained in a filing system. Files or sets of files as well as their cover pages, which are not structured according to specific criteria, should not fall within the scope of this Directive. This Directive should not apply to the processing of personal data in the course of an activity which falls outside the scope of Union law, ***in particular concerning national security***, or to data processed by the Union institutions, bodies, offices and agencies, such as Europol or Eurojust.

*Amendment*

(15) The protection of individuals should be technological neutral and not depend on the techniques used; otherwise this would create a serious risk of circumvention. The protection of individuals should apply to processing of personal data by automated means, as well as to manual processing if the data are contained or are intended to be contained in a filing system. Files or sets of files as well as their cover pages, which are not structured according to specific criteria, should not fall within the scope of this Directive. This Directive should not apply to the processing of personal data in the course of an activity which falls outside the scope of Union law, or to data processed by the Union institutions, bodies, offices and agencies, such as Europol or Eurojust.

Or. en

*Justification*

*The term “national security” is understood differently in different Member States. For clarity, reference should simply be made to “outside the scope of Union law” to avoid a situation in which Member States could claim the national security exemption for processing that should be subject to this Directive. See wording of Article 2(3)(a) (Amendment by Jan Philipp Albrecht).*

**Amendment 182**  
**Louis Michel**

**Proposal for a directive**  
**Recital 15**

*Text proposed by the Commission*

(15) The protection of individuals should be technological neutral and not depend on the techniques used; otherwise this would create a serious risk of circumvention. The protection of individuals should apply to processing of personal data by automated means, as well as to manual processing if the data are contained or are intended to be contained in a filing system. Files or sets of files as well as their cover pages, which are not structured according to specific criteria, should not fall within the scope of this Directive. This Directive should not apply to the processing of personal data in the course of an activity which falls outside the scope of Union law, in particular concerning national security, or to data processed by the Union institutions, bodies, offices and agencies, such as Europol or Eurojust.

*Amendment*

(15) The protection of individuals should be technological neutral and not depend on the techniques used; otherwise this would create a serious risk of circumvention. The protection of individuals should apply to processing of personal data by automated means, as well as to manual processing if the data are contained or are intended to be contained in a filing system. Files or sets of files as well as their cover pages, which are not structured according to specific criteria, should not fall within the scope of this Directive. This Directive should not apply to the processing of personal data in the course of an activity which falls outside the scope of Union law, in particular concerning national security, or to data processed by the Union institutions, bodies, offices and agencies, such as Europol or Eurojust ***or to data processed by competent organisations contributing to the fight against manipulation in sport.***

Or. en

**Amendment 183**

**Axel Voss**

**Proposal for a directive**

**Recital 16**

*Text proposed by the Commission*

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

*Amendment*

(16) The principles of protection should apply to any information concerning an identified or identifiable natural person. To determine whether a natural person is identifiable, account should be taken of all the means likely reasonably to be used either by the controller or by any other person ***working together with the controller*** to identify the individual. The principles of data protection should not apply to data rendered anonymous in such

identifiable.

a way that the data subject is no longer identifiable.

Or. de

**Amendment 184**  
**Cornelia Ernst**

**Proposal for a directive**  
**Recital 16**

*Text proposed by the Commission*

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

*Amendment*

(16) The principles of protection should apply to any information concerning an identified or identifiable natural person. To determine whether a natural person is identifiable, account should be taken of all the means likely to be used either by the controller or by any other person to identify the individual. The principles of data protection should not apply to data rendered anonymous in such a way that the data subject is no longer identifiable ***taking full account of the technological "state of the art" and technological trends.***

Or. en

**Amendment 185**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Recital 16**

*Text proposed by the Commission*

(16) The principles of protection should apply to any information concerning an identified or identifiable natural person. To determine whether a natural person is identifiable, account should be taken of all the means likely reasonably to be used either by the controller or by any other person to identify ***the individual. The***

*Amendment*

(16) The principles of protection should apply to any information concerning an identified or identifiable natural person. To determine whether a natural person is identifiable, account should be taken of all the means likely reasonably to be used either by the controller or by any other person to identify ***or single out the***

*principles of data protection* should not apply to *data rendered anonymous in* such a way that the data subject is no longer identifiable.

*individual. This Directive* should not apply to *anonymous data, meaning any data that can not be related, directly or indirectly, alone or in combination with associated data, to a natural person or where establishing* such a relation would require a disproportionate amount of time, expense, and effort, taking into account the state of the art in technology at the time of the processing and the possibilities for development during the period for which the data will be processed.

Or. en

#### *Justification*

*The Directive should clearly apply to data that only allow "singling out". This wording and the clarification on anonymous data ensures coherence with the data protection Regulation.*

#### **Amendment 186** **Jan Philipp Albrecht**

#### **Proposal for a directive** **Recital 18**

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

(18) Any processing of personal data must be fair and lawful in relation to the individuals concerned. In particular, the specific purposes for which the data are processed should be explicit.

##### *Amendment*

(18) Any processing of personal data must be fair and lawful in relation to the individuals concerned. In particular, the specific purposes for which the data are processed should be explicit ***and comprehensible to the data subject.***

Or. en

#### **Amendment 187** **Cornelia Ernst**

#### **Proposal for a directive** **Recital 19**

*Text proposed by the Commission*

*Amendment*

***(19) For the prevention, investigation and prosecution of criminal offences, it is necessary for competent authorities to retain and process personal data, collected in the context of the prevention, investigation, detection or prosecution of specific criminal offences beyond that context to develop an understanding of criminal phenomena and trends, to gather intelligence about organised criminal networks, and to make links between different offences detected.***

***deleted***

Or. en

**Amendment 188**  
**Jan Mulder**

**Proposal for a directive**  
**Recital 20**

*Text proposed by the Commission*

*Amendment*

(20) Personal data should not be processed for purposes incompatible with the purpose for which it was collected. Personal data should be adequate, relevant ***and not excessive*** for the purposes for which the personal data are processed. Every reasonable step should be taken to ensure that personal data which are inaccurate should be rectified or erased.

(20) Personal data should not be processed for purposes incompatible with the purpose for which it was collected. Personal data should be adequate ***and*** relevant for the purposes for which the personal data are processed. Every reasonable step should be taken to ensure that personal data which are inaccurate should be rectified or erased.

Or. en

**Amendment 189**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Recital 20**

*Text proposed by the Commission*

(20) Personal data should not be processed for purposes incompatible with the purpose for which it was collected. Personal data should be adequate, relevant and ***not excessive*** for the purposes for which the personal data are processed. Every reasonable step should be taken to ensure that personal data which are inaccurate should be rectified or erased.

*Amendment*

(20) Personal data should not be processed for purposes incompatible with the purpose for which it was collected. Personal data should be adequate, relevant and ***limited to the minimum necessary*** for the purposes for which the personal data are processed. Every reasonable step should be taken to ensure that personal data which are inaccurate should be rectified or erased.

Or. en

**Amendment 190**  
**Cornelia Ernst**

**Proposal for a directive**  
**Recital 20 a (new)**

*Text proposed by the Commission*

*Amendment*

***(20a) The simple fact that two purposes both relate to the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties does not necessarily mean that they are compatible. For example, information about victims of crime should not be used for investigating them for unrelated crimes they might have committed. However, there are cases in which further processing for incompatible purposes should be possible if necessary to comply with a legal obligation to which the controller is subject, in order to protect the vital interests of the data subject or another person, or for the prevention of an immediate and serious threat to public security. Member States should therefore be able to adopt national laws providing for such derogations to the extent strictly necessary. Such national laws should contain a requirement of an individual assessment taking into account all***

*circumstances of the case and provide for adequate safeguards, such as for example judicial authorisation.*

Or. en

**Amendment 191**

**Axel Voss**

**Proposal for a directive**

**Recital 23**

*Text proposed by the Commission*

*Amendment*

*(23) It is inherent to the processing of personal data in the areas of judicial co-operation in criminal matters and police co-operation that personal data relating to different categories of data subjects are processed. Therefore a clear distinction should as far as possible be made between personal data of different categories of data subjects such as suspects, persons convicted of a criminal offence, victims and third parties, such as witnesses, persons possessing relevant information or contacts and associates of suspects and convicted criminals.*

*deleted*

Or. de

*Justification*

*Results from the deletion of Article 5.*

**Amendment 192**

**Cornelia Ernst**

**Proposal for a directive**

**Recital 23**

*Text proposed by the Commission*

*Amendment*

(23) It is inherent to the processing of

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personal data in the areas of judicial co-operation in criminal matters and police co-operation that personal data relating to different categories of data subjects are processed. Therefore a clear distinction should be made between personal data of different categories of data subjects such as suspects, persons convicted of a criminal offence, victims and third parties, such as witnesses, persons possessing relevant information or contacts and associates of suspects and convicted criminals.

Or. en

**Amendment 193**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Recital 23**

*Text proposed by the Commission*

(23) It is inherent to the processing of personal data in the areas of judicial co-operation in criminal matters and police co-operation that personal data relating to different categories of data subjects are processed. Therefore a clear distinction should *as far as possible* be made between personal data of different categories of data subjects such as suspects, persons convicted of a criminal offence, victims and third parties, such as witnesses, persons possessing relevant information or contacts and associates of suspects and convicted criminals.

*Amendment*

(23) It is inherent to the processing of personal data in the areas of judicial co-operation in criminal matters and police co-operation that personal data relating to different categories of data subjects are processed. Therefore a clear distinction should be made between personal data of different categories of data subjects such as suspects, persons convicted of a criminal offence, victims and third parties, such as witnesses, persons possessing relevant information or contacts and associates of suspects and convicted criminals. ***Specific rules on the consequences of this categorisation should be provided by the Member States, taking into account the different purposes for which data are collected and providing specific safeguards for persons who are not suspect or have not been convicted of a criminal offence.***

Or. en

## *Justification*

*Law enforcement authorities need a specified purpose when collecting data, they should always be able to give a prima facie opinion in which category a data subject they belongs. If there are doubts, the “other” category can be used (and adjusted over time). It should also be considered to add a category of specifically “non-suspected persons”, see EDPS opinion, points 349 to 354. This would mirror wording in the Europol Decision, Article 14. As the EDPS stated, the consequences of these categorisations should also be spelled out, especially as regards data subject rights – restrictions on the right of access for suspects can be justified more easily than for witnesses, for example.*

### **Amendment 194**

**Axel Voss**

#### **Proposal for a directive**

##### **Recital 24**

*Text proposed by the Commission*

*Amendment*

*(24) As far as possible personal data should be distinguished according to the degree of their accuracy and reliability. Facts should be distinguished from personal assessments, in order to ensure both the protection of individuals and the quality and reliability of the information processed by the competent authorities.*

*deleted*

Or. de

## *Justification*

*Results from the deletion of Article 5.*

### **Amendment 195**

**Cornelia Ernst**

#### **Proposal for a directive**

##### **Recital 24**

*Text proposed by the Commission*

*Amendment*

*(24) As far as possible personal data should be distinguished according to the degree of their accuracy and reliability.*

*(24) Personal data should be distinguished according to the degree of their accuracy and reliability. Facts should be*

Facts should be distinguished from personal assessments, in order to ensure both the protection of individuals and the quality and reliability of the information processed by the competent authorities.

distinguished from personal assessments, in order to ensure both the protection of individuals and the quality and reliability of the information processed by the competent authorities.

Or. en

**Amendment 196**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Recital 24**

*Text proposed by the Commission*

(24) ***As far as possible*** personal data should be distinguished according to the degree of their accuracy and reliability. Facts should be distinguished from personal assessments, in order to ensure both the protection of individuals and the quality and reliability of the information processed by the competent authorities.

*Amendment*

(24) Personal data should be distinguished according to the degree of their accuracy and reliability. Facts should be distinguished from personal assessments, in order to ensure both the protection of individuals and the quality and reliability of the information processed by the competent authorities. ***The recipient should be informed if data have been unlawfully transmitted or are incorrect. The recipient shall correct the data without delay.***

Or. en

*Justification*

*The obligation to distinguish according to the reliability of data should be unconditional.*

**Amendment 197**  
**Cornelia Ernst**

**Proposal for a directive**  
**Recital 25**

*Text proposed by the Commission*

(25) In order to be lawful, the processing of

*Amendment*

(25) In order to be lawful, the processing of

personal data should be necessary for ***compliance with a legal obligation to which the controller is subject, for the performance of a task carried out in the public interest by a competent authority based on law or in order to protect the vital interests of the data subject or of another person, or for the prevention of an immediate and serious threat to public security.***

personal data should be necessary for the performance of a task carried out in the public interest by a competent authority based on law.

Or. en

#### *Justification*

*Mirroring the proposed changes to Article 7 and the proposed new Article 7a, this recital should be adapted accordingly to clarify that all other reasons for processing should be seen as exceptions.*

#### **Amendment 198**

**Axel Voss**

#### **Proposal for a directive**

#### **Recital 25 a (new)**

*Text proposed by the Commission*

*Amendment*

***(25a) Consent should explicitly take the form of a freely given specific and informed clear statement by the data subject which ensures that he or she is aware that he or she is giving agreement to the processing of personal data. Silence or inactivity should therefore not constitute consent. Consent should cover all processing activities carried out for the same purpose or purposes.***

Or. de

#### *Justification*

*New recital in the light of the introduction of consent in Article 7.*

**Amendment 199**  
**Cornelia Ernst**

**Proposal for a directive**  
**Recital 25 a (new)**

*Text proposed by the Commission*

*Amendment*

***(25a) In single and exceptional cases and based on law, the processing of personal data may be allowed for other purposes as well, where such processing is necessary for compliance with a legal obligation to which the controller is subject, in order to protect the vital interests of the data subject or of another natural person, or for the prevention of an immediate and serious threat to public security.***

Or. en

**Amendment 200**  
**Axel Voss**

**Proposal for a directive**  
**Recital 26**

*Text proposed by the Commission*

*Amendment*

(26) Personal data which are, by their nature, particularly sensitive in relation to fundamental rights or privacy, ***including genetic data***, deserve specific protection. Such data should not be processed, unless processing is specifically authorised by a law which provides for suitable measures to safeguard the data subject's legitimate interests; or processing is necessary to protect the vital interests of the data subject or of another person; or the processing relates to data which are manifestly made public by the data subject.

(26) Personal data which are, by their nature, particularly sensitive in relation to fundamental rights or privacy deserve specific protection. Such data should not be processed, unless processing is specifically authorised by a law which provides for suitable measures to safeguard the data subject's legitimate interests; or processing is necessary to protect the vital interests of the data subject or of another person; or the processing relates to data which are manifestly made public by the data subject.

Or. de

**Amendment 201**  
**Cornelia Ernst**

**Proposal for a directive**  
**Recital 26**

*Text proposed by the Commission*

(26) Personal data which are, by their nature, particularly sensitive in relation to fundamental rights or privacy, including genetic data, deserve specific protection. Such data should not be processed, unless processing is specifically authorised by a law which provides for suitable measures to safeguard the data subject's legitimate interests; or processing is necessary to protect the vital interests of the data subject or of another person; or the processing relates to data which are manifestly made public by the data subject.

*Amendment*

(26) Personal data which are, by their nature, particularly sensitive in relation to fundamental rights or privacy, including genetic data, deserve specific protection. Such data should not be processed, unless processing is specifically authorised by a law which provides for suitable measures to safeguard the data subject's ***fundamental rights and*** legitimate interests; or processing is necessary to protect the vital interests of the data subject or of another ***natural*** person; or the processing relates to data which are manifestly made public by the data subject.

Or. en

**Amendment 202**  
**Nathalie Griesbeck**

**Proposal for a directive**  
**Recital 26 a (new)**

*Text proposed by the Commission*

*Amendment*

***(26a) Children deserve specific protection of their personal data, as they may be less aware of risks, consequences, safeguards and their rights in relation to the processing of personal data. To determine when an individual is a child, this Directive should take over the definition laid down by the UN Convention on the Rights of the Child. The particular nature of children must be taken into account in the data processing security safeguards, among other things. Particular attention must be paid to the accuracy of identification data concerning children,***

*their continuing reliability over time and the period for which they are stored.*

Or. fr

*Justification*

*The proposal for a directive, unlike the proposal for a regulation, practically ignores children; this amendment aims to bring the directive more in line with the regulation. The fact that much data concerning children, such as their facial appearance and fingerprints, are particularly liable to change over time must also be taken into consideration.*

**Amendment 203**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Recital 27**

*Text proposed by the Commission*

(27) Every natural person should have the right not to be subject to a measure which is based ***solely on*** automated processing if it produces an adverse legal effect for that person, unless authorised by law and subject to suitable measures to safeguard the data subject's legitimate interests.

*Amendment*

(27) Every natural person should have the right not to be subject to a measure which is based ***on partially or fully*** automated processing if it produces an adverse legal effect for that person, ***or significantly affects them***, unless authorised by law and subject to suitable measures to safeguard the data subject's legitimate interests.

Or. en

**Amendment 204**  
**Jan Mulder**

**Proposal for a directive**  
**Recital 27**

*Text proposed by the Commission*

(27) Every natural person should have the right not to be subject to a measure which is based ***solely on*** automated processing if it produces an adverse legal effect for that person, unless authorised by law and

*Amendment*

(27) Every natural person should have the right not to be subject to a measure which is based ***partially or fully*** on automated processing if it produces an adverse legal effect for ***that person or significantly***

subject to suitable measures to safeguard the data subject's legitimate interests.

*affects* that person, unless authorised by law and subject to suitable measures to safeguard the data subject's legitimate interests.

Or. en

**Amendment 205**  
**Cornelia Ernst**

**Proposal for a directive**  
**Recital 27**

*Text proposed by the Commission*

(27) Every natural person should have the right not to be subject to a measure which is based ***solely on automated*** processing ***if it*** produces ***an adverse*** legal effect for that person, unless authorised by law and subject to suitable measures to safeguard the data subject's legitimate interests.

*Amendment*

(27) Every natural person should have the right not to be subject to a measure which is based ***on profiling***. Processing ***which*** produces ***a*** legal effect for that person ***or otherwise affects him or her should be prohibited***, unless ***strictly necessary in a democratic society, proportionate to the legitimate aim pursued, explicitly*** authorised by law and subject to suitable measures to safeguard the data subject's ***fundamental rights and*** legitimate interests, ***including the right to be provided with meaningful information about the logic used in the profiling. Such processing should in no circumstances contain, generate, or discriminate based on special categories of data.***

Or. en

**Amendment 206**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Recital 27**

*Text proposed by the Commission*

(27) Every natural person should have the right not to be subject to a measure which

*Amendment*

(27) Every natural person should have the right not to be subject to a measure which



is based solely on automated processing if it produces an adverse **legal** effect for that person, unless authorised by law and subject to suitable measures to safeguard the data subject's legitimate interests.

is based solely on automated processing if it produces an adverse effect for that person, unless authorised by law and subject to suitable measures to safeguard the data subject's legitimate interests.

Or. en

### *Justification*

*(See wording Article 9, paragraph 1, Amendment Jan Philipp Albrecht.)*

## **Amendment 207**

**Cornelia Ernst**

### **Proposal for a directive**

#### **Recital 28**

#### *Text proposed by the Commission*

(28) In order to exercise their rights, any information to the data subject should be easily accessible and easy to understand, including the use of clear and plain language.

#### *Amendment*

(28) In order to exercise their rights, any information to the data subject should be easily accessible and easy to understand, including the use of clear and plain language. ***This information shall be adapted to the data subject, if necessary through the use of simple language and/or foreign language.***

Or. en

## **Amendment 208**

**Jan Philipp Albrecht**

### **Proposal for a directive**

#### **Recital 28**

#### *Text proposed by the Commission*

(28) In order to exercise their rights, any information to the data subject should be easily accessible and easy to understand, including the use of clear and plain language.

#### *Amendment*

(28) In order to exercise their rights, any information to the data subject should be easily accessible and easy to understand, including the use of clear and plain language, ***especially when the data subject***

*is a child.*

Or. en

**Amendment 209**  
**Nathalie Griesbeck**

**Proposal for a directive**  
**Recital 28**

*Text proposed by the Commission*

(28) In order to exercise their rights, any information to the data subject should be easily accessible and easy to understand, including the use of clear and plain language.

*Amendment*

(28) In order to exercise their rights, any information to the data subject should be easily accessible and easy to understand, including the use of clear and plain language. ***Data subjects who are children must be provided with information tailored to suit their ability to understand it. Personalised assistance may also be provided in addition to it.***

Or. fr

**Amendment 210**  
**Anna Maria Corazza Bildt, Carlos Coelho**

**Proposal for a directive**  
**Recital 28**

*Text proposed by the Commission*

(28) In order to exercise their rights, any information to the data subject should be easily accessible and easy to understand, including the use of clear and plain language.

*Amendment*

(28) In order to exercise their rights, any information to the data subject should be easily accessible and easy to understand, including the use of clear and plain language. ***In particular, when the data subject is a child, that information should be provided in a child-friendly way.***

Or. en

**Amendment 211**  
**Axel Voss**

**Proposal for a directive**  
**Recital 30**

*Text proposed by the Commission*

*Amendment*

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

***deleted***

Or. de

*Justification*

*Results from the amendment to Article 11.*

**Amendment 212**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Recital 30**

*Text proposed by the Commission*

*Amendment*

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

**(30) The principle of fair *and transparent* processing requires that the data subjects should be informed in particular of the existence of the processing operation and its purposes, *its legal ground*, how long the data will be stored, on the existence of the right of access, rectification or erasure and on the right to lodge a complaint. Where the data are collected from the data subject, the data subject should also be informed whether they are obliged to provide the data and of the consequences, in cases they**

provide such data.

do not provide such data.

Or. en

**Amendment 213**  
**Jan Mulder**

**Proposal for a directive**  
**Recital 30**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 214**  
**Cornelia Ernst**

**Proposal for a directive**  
**Recital 30**

*Text proposed by the Commission*

(30) The principle of fair processing requires that the data subjects should be informed in particular of the existence of the processing operation and its purposes, how long the data will be stored, on the existence of the right of access, rectification or erasure and on the right to lodge a complaint. Where the data are

*Amendment*

(30) The principle of fair ***and transparent*** processing requires that the data subjects should be informed in particular of the existence of the processing operation and its purposes, how long the data will be stored, on the existence of the right of access, rectification or erasure and on the right to lodge a complaint. Where the data

collected from the data subject, the data subject should also be informed whether they are obliged to provide the data and of the consequences, in cases they do not provide such data.

are collected from the data subject, the data subject should also be informed whether they are obliged to provide the data and of the consequences, in cases they do not provide such data.

Or. en

**Amendment 215**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Recital 30**

*Text proposed by the Commission*

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

*Amendment*

(30) The principle of fair **and transparent** processing requires that the data subjects should be informed in particular of the existence of the processing operation, **its legal basis** and its purposes, how long the data will be stored, on the existence of the right of access, rectification or erasure and on the right to lodge a complaint. **Furthermore the data subject shall be informed if profiling takes place and its intended consequences.** Where the data are collected from the data subject, the data subject should also be informed whether they are obliged to provide the data and of the consequences, in cases they do not provide such data.

Or. en

*Justification*

*Data subjects should be informed about the legal basis of the collection of their personal data. This also ensures that the data controller is always aware of the legal basis for its activities when collecting personal data. Information should be provided on profiling if it takes place.*

**Amendment 216**  
**Jan Mulder**

**Proposal for a directive**  
**Recital 32**

*Text proposed by the Commission*

(32) Any person should have the right of access to data which has been collected concerning them, and to exercise this right easily, in order to be aware of and verify the lawfulness of the processing. Every data subject should therefore have the right to know about and obtain communication in particular of the purposes for which the data are processed, for what period, which recipients receive the data, including in third countries Data subjects should be allowed to receive a copy of their personal data which are being processed.

*Amendment*

(32) Any person should have the right of access to data which has been collected concerning them, and to exercise this right easily, in order to be aware of and verify the lawfulness of the processing. Every data subject should therefore have the right, ***when possible in advance***, to know about and obtain communication in particular of the purposes for which the data are processed, for what period, which recipients receive the data, including in third countries Data subjects should be allowed to receive a copy of their personal data which are being processed.

Or. en

**Amendment 217**  
**Cornelia Ernst**

**Proposal for a directive**  
**Recital 33**

*Text proposed by the Commission*

(33) Member States should be allowed to adopt legislative measures delaying, ***restricting or omitting the*** information of data subjects or the access to their personal data to the extent that and as long as such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the legitimate interests of the person concerned, to avoid obstructing official or legal inquiries, investigations or procedures, to avoid prejudicing the prevention, detection, investigation and prosecution of criminal offences or for the execution of criminal penalties, to protect public security ***or national security, or, to***

*Amendment*

(33) Member States should be allowed to adopt legislative measures delaying ***or restricting*** information of data subjects or the access to their personal data to the extent that and as long as such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the ***fundamental rights and*** legitimate interests of the person concerned, to avoid obstructing official or legal inquiries, investigations or procedures, to avoid prejudicing the prevention, detection, investigation and prosecution of criminal offences or for the execution of criminal penalties, to protect public security, ***or to***

protect the data subject or the rights and freedoms of others.

protect the data subject or the rights and freedoms of others.

Or. en

## **Amendment 218**

**Jan Philipp Albrecht**

### **Proposal for a directive**

#### **Recital 33**

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

(33) Member States should be allowed to adopt legislative measures delaying, ***restricting or omitting*** the information of data subjects or the access to their personal data to the extent that and as long as such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the legitimate interests of the person concerned, to avoid obstructing official or legal inquiries, investigations or procedures, to avoid prejudicing the prevention, detection, investigation and prosecution of criminal offences or for the execution of criminal penalties, to protect public security or national security, or, to protect the data subject or the rights and freedoms of others.

##### *Amendment*

(33) Member States should be allowed to adopt legislative measures delaying ***or restricting*** the information of data subjects or the access to their personal data to the extent that and as long as such partial or complete restriction constitutes a ***strictly*** necessary and proportionate measure in a democratic society with due regard for ***fundamental rights and*** the legitimate interests of the person concerned, to avoid obstructing official or legal inquiries, investigations or procedures, to avoid prejudicing the prevention, detection, investigation and prosecution of criminal offences or for the execution of criminal penalties, to protect public security or national security, or, to protect the data subject or the rights and freedoms of others.

Or. en

##### *Justification*

*Clarification on the limits to the right to information. (See new wording Article 11, paragraph 4, introductory part.)*

## **Amendment 219**

**Cornelia Ernst**

**Proposal for a directive**  
**Recital 36**

*Text proposed by the Commission*

(36) Any person should have the right to have inaccurate personal data concerning them rectified and the right of erasure where the processing of such data is not in compliance with the *main* principles laid down in this Directive. Where the personal data are processed in the course of a criminal investigation and proceedings, rectification, the rights of information, access, erasure and restriction of processing may be carried out in accordance with national rules on judicial proceedings.

*Amendment*

(36) Any person should have the right to have inaccurate personal data concerning them rectified and the right of erasure where the processing of such data is not in compliance with the principles laid down in this Directive. Where the personal data are processed in the course of a criminal investigation and proceedings, rectification, the rights of information, access, erasure and restriction of processing may be carried out in accordance with national rules on judicial proceedings.

Or. en

**Amendment 220**  
**Nuno Melo**

**Proposal for a directive**  
**Recital 38**

*Text proposed by the Commission*

(38) The protection of the rights and freedoms of data subjects with regard to the processing of personal data requires that appropriate technical and organisational measures be taken to ensure that the requirements of the Directive are met. In order to ensure compliance with the provisions adopted pursuant to this Directive, the controller should adopt policies and implement appropriate measures, which meet in particular the principles of data protection by design and data protection by default.

*Amendment*

*(Does not affect English version.)*

Or. pt



**Amendment 221**

**Axel Voss**

**Proposal for a directive**

**Recital 39**

*Text proposed by the Commission*

*Amendment*

***(39) The protection of the rights and freedoms of data subjects as well as the responsibility and liability of controllers and processors requires a clear attribution of the responsibilities under this Directive, including where a controller determines the purposes, conditions and means of the processing jointly with other controllers or where a processing operation is carried out on behalf of a controller.***

***deleted***

Or. de

*Justification*

*Results from the deletion of Article 20.*

**Amendment 222**

**Sophia in 't Veld**

**Proposal for a directive**

**Recital 40 a (new)**

*Text proposed by the Commission*

*Amendment*

***(40a) A data protection impact assessment should be carried out by the controller or processor, where the processing operations are likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, which should include in particular the envisaged measures, safeguards and mechanisms to ensure the protection of personal data and for demonstrating compliance with this Directive.***

**Amendment 223**  
**Jan Philipp Albrecht**

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

*Text proposed by the Commission*

*Amendment*

***(40a) Processing of personal data in this sensitive field should only be done after a data protection impact assessment. Member states should therefore carry out before devising new systems for the processing of personal data, an assessment of the impact of the envisaged processing operations on the protection of personal data.***

Or. en

**Amendment 224**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Recital 41**

*Text proposed by the Commission*

*Amendment*

(41) In order to ensure effective protection of the rights and freedoms of data subjects by way of preventive actions, the controller or processor should consult with the supervisory authority in certain cases prior to the processing.

(41) In order to ensure effective protection of the rights and freedoms of data subjects by way of preventive actions, the controller or processor should consult with the supervisory authority in certain cases prior to the processing. ***Moreover, where a data protection impact assessment indicates that processing operations are likely to present a high degree of specific risks to the rights and freedoms of data subjects, the supervisory authority should be in a position to prevent, prior to the start of operations, a risky processing which is not in compliance with this Directive.***

**Amendment 225****Jan Mulder****Proposal for a directive****Recital 41***Text proposed by the Commission*

(41) In order to ensure effective protection of the rights and freedoms of data subjects by way of preventive actions, the controller or processor should consult with the supervisory authority in certain cases prior to the processing.

*Amendment*

(41) In order to ensure effective protection of the rights and freedoms of data subjects by way of preventive actions, the controller or processor should consult with the supervisory authority in certain cases prior to the processing. ***Where processing operations are likely to present a high degree of specific risks to the rights and freedoms of data subjects, the supervisory authority should be in a position to prevent, prior to the start of operations, a processing which is not in compliance with this Directive, and to make proposals to remedy such situation.***

**Amendment 226****Jan Mulder****Proposal for a directive****Recital 42***Text proposed by the Commission*

(42) A personal data breach may, if not addressed in an adequate and timely manner, result in harm, including reputational damage to the individual concerned. Therefore, as soon as the controller becomes aware that such a breach has occurred, it should notify the breach to the competent national authority. The individuals whose personal data or privacy could be adversely affected by the

*Amendment*

(42) A personal data breach may, if not addressed in an adequate and timely manner, result in harm, including reputational damage to the individual concerned. Therefore, as soon as the controller becomes aware that such a breach has occurred, it should notify the breach to the competent national authority. The individuals whose personal data or privacy could be adversely affected by the

breach should be notified without undue delay in order to allow them to take the necessary precautions. A breach should be considered as adversely affecting the personal data or privacy of an individual where it could result in, for example, identity theft or fraud, physical harm, significant humiliation or damage to reputation in connection with the processing of personal data.

breach should be notified without undue delay in order to allow them to take the necessary precautions. A breach should be considered as adversely affecting the personal data or privacy of an individual where it could result in, for example, identity theft or fraud, physical harm, significant humiliation or damage to reputation ***or economic or social loss*** in connection with the processing of personal data.

Or. en

**Amendment 227**  
**Cornelia Ernst**

**Proposal for a directive**  
**Recital 42**

*Text proposed by the Commission*

(42) A personal data breach may, if not addressed in an adequate and timely manner, result in harm, including reputational damage to the individual concerned. Therefore, as soon as the controller becomes aware that such a breach has occurred, it should notify the breach to the competent national authority. The individuals whose personal data or privacy could be adversely affected by the breach should be notified without undue delay in order to allow them to take the necessary precautions. A breach should be considered as adversely affecting the personal data or privacy of an individual where it could result in, for example, identity theft or fraud, physical harm, significant humiliation or damage to reputation ***in connection with the processing of personal data.***

*Amendment*

(42) A personal data breach may, if not addressed in an adequate and timely manner, result in harm, including reputational damage to the individual concerned. Therefore, as soon as the controller becomes aware that such a breach has occurred, it should notify the breach to the competent national authority. The individuals whose personal data or privacy could be adversely affected by the breach should be notified without undue delay in order to allow them to take the necessary precautions. A breach should be considered as adversely affecting the personal data or privacy of an individual where it could result in, for example, identity theft or fraud, physical harm, significant humiliation or damage to reputation.

Or. en

## Amendment 228

Axel Voss

### Proposal for a directive

#### Recital 43

*Text proposed by the Commission*

*Amendment*

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

***deleted***

Or. de

*Justification*

*Results from the amendment to Articles 28 and 29.*

## Amendment 229

Cornelia Ernst

### Proposal for a directive

#### Recital 43

*Text proposed by the Commission*

*Amendment*

(43) In setting detailed rules concerning the format and procedures applicable to the notification of personal data breaches, due consideration should be given to the circumstances of the breach, including whether or not personal data had been protected by appropriate technical protection measures, effectively limiting

(43) In setting detailed rules concerning the format and procedures applicable to the notification of personal data breaches, due consideration should be given to the circumstances of the breach, including whether or not personal data had been protected by appropriate technical protection measures, effectively limiting

the likelihood of misuse. Moreover, such rules and procedures should take into account the legitimate interests of competent authorities in cases where early disclosure could unnecessarily hamper the investigation of the circumstances of a breach.

the likelihood of misuse. Moreover, such rules and procedures should take into account the legitimate interests of competent authorities in cases where early disclosure could unnecessarily hamper the investigation of the circumstances of a breach. ***Encryption should not be considered unbreakable.***

Or. en

**Amendment 230**  
**Cornelia Ernst**

**Proposal for a directive**  
**Recital 43 a (new)**

*Text proposed by the Commission*

*Amendment*

***(43a) Some forms of processing, such as profiling, the processing of sensitive categories of data, the monitoring of publicly accessible spaces (including video surveillance), as well as the processing of genetic and biometric data or of data on children, present special risks. In order to address these risks, controllers should carry out an assessment of the impact on fundamental rights if they are planning to put such processing operations in place. This assessment should explain the risks and the measures taken to address them, especially as regards discrimination. Controllers should also seek the view of data subjects or their representatives in this context.***

Or. en

**Amendment 231**  
**Cornelia Ernst**

**Proposal for a directive**  
**Recital 44**

*Text proposed by the Commission*

(44) The controller or the processor should designate a person who would assist the controller or processor to monitor compliance with the provisions adopted pursuant to this Directive. *A data protection officer may be appointed jointly by several entities of the competent authority. The data protection officers must be in a position to perform their duties and tasks independently and effectively.*

*Amendment*

(44) The controller or the processor should designate a person who would assist the controller or processor to monitor compliance with the provisions adopted pursuant to this Directive. ***The data protection officers must be in a position to perform their duties and tasks independently and effectively. This includes rules avoiding conflicts of interests, providing an adequate amount of resources and an appropriate administrative attachment to avoid interference by controllers.***

Or. en

**Amendment 232**

**Axel Voss**

**Proposal for a directive**

**Recital 45**

*Text proposed by the Commission*

(45) Member States should ensure that a transfer to a third country only takes place if it is necessary for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the controller in the third country or international organisation is an authority competent within the meaning of this Directive. ***A transfer may take place in cases where the Commission has decided that the third country or international organisation in question ensures an adequate level of protection, or when appropriate safeguards have been adduced.***

*Amendment*

(45) Member States should ensure that a transfer to a third country only takes place if it is necessary for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the controller in the third country or international organisation is an authority competent within the meaning of this Directive.

Or. de

**Amendment 233**  
**Cornelia Ernst**

**Proposal for a directive**  
**Recital 45**

*Text proposed by the Commission*

(45) Member States should ensure that a transfer to a third country only takes place if it is necessary for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the controller in the third country or international organisation is ***an*** authority competent within the meaning of this Directive. A transfer may take place in cases where the Commission has decided that the third country or international organisation in question ensures an adequate level of protection, ***or when appropriate safeguards have been adduced.***

*Amendment*

(45) Member States should ensure that a transfer to a third country only takes place if it is necessary for the prevention, investigation, detection or prosecution of ***one or more specific*** criminal offences or the execution of criminal penalties, and the controller in the third country or international organisation is ***a public*** authority competent within the meaning of this Directive. A transfer may take place in cases where the Commission has decided that the third country or international organisation in question ensures an adequate level of protection. ***Data transferred to competent public authorities in third countries should not be further processed for purposes other than the one they were transferred for.***

Or. en

**Amendment 234**  
**Cornelia Ernst**

**Proposal for a directive**  
**Recital 45 a (new)**

*Text proposed by the Commission*

*Amendment*

***(45a) Further onward transfers from competent authorities in third countries or international organisations to which personal data have been transferred should only be allowed if the onward transfer is necessary for the same specific purpose as the original transfer and the second recipient is also a competent public authority. This could for example be the case in case the onward transfer is***



*necessary for the prevention, investigation, detection or prosecution of the same criminal offence that justified the original transfer or for the execution of the same criminal penalty that justified the original transfer. Further onward transfers should not be allowed for general law-enforcement purposes. Additionally, the competent authority that carried out the original transfer should have agreed to the onward transfer.*

Or. en

**Amendment 235**  
**Cornelia Ernst**

**Proposal for a directive**  
**Recital 46**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 236**  
**Louis Michel**

**Proposal for a directive**  
**Recital 46**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 237**  
**Cornelia Ernst**

**Proposal for a directive**  
**Recital 48**

*Text proposed by the Commission*

(48) The Commission should equally be able to recognise that a third country, or a territory or a processing sector within a third country, or an international organisation, does not offer an adequate level of data protection. Consequently the transfer of personal data to that third country should be prohibited except when they are based on an international agreement, ***appropriate safeguards*** or a derogation. Provision should be made for procedures for consultations between the Commission and such third countries or international organisations. ***However, such a Commission decision shall be without prejudice to the possibility to undertake transfers on the basis of appropriate safeguards or on the basis of a derogation***

*Amendment*

(48) The Commission should equally be able to recognise that a third country, or a territory or a processing sector within a third country, or an international organisation, does not offer an adequate level of data protection. Consequently the transfer of personal data to that third country should be prohibited except when they are based on an international agreement ***which ensures the minimum level of protection set out in this Directive***, or a derogation. Provision should be made for procedures for consultations between the Commission and such third countries or international organisations.

*laid down in the Directive.*

Or. en

**Amendment 238**

**Nuno Melo**

**Proposal for a directive**

**Recital 48**

*Text proposed by the Commission*

(48) The Commission should equally be able to recognise that a third country, or a territory or a processing sector within a third country, or an international organisation, does not offer an adequate level of data protection. Consequently the transfer of personal data to that third country should be prohibited except when they are based on an international agreement, appropriate safeguards or a derogation. Provision should be made for procedures for consultations between the Commission and such third countries or international organisations. However, such a Commission decision shall be without prejudice to the possibility to undertake transfers on the basis of appropriate safeguards or on the basis of a derogation laid down in the Directive.

*Amendment*

*(Does not affect English version.)*

Or. pt

**Amendment 239**

**Cornelia Ernst**

**Proposal for a directive**

**Recital 49**

*Text proposed by the Commission*

(49) Transfers not based on such an adequacy decision should only be allowed where appropriate safeguards have been

*Amendment*

(49) Transfers not based on such an adequacy decision should only be allowed where appropriate safeguards have been

adduced in a legally binding instrument, which ensure the protection of the personal data ***or 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, considers that appropriate safeguards with respect to the protection of personal data exist.*** In cases where no grounds for allowing a transfer exist, derogations should be allowed if necessary in order to protect the vital interests of the data subject or another person, or to safeguard legitimate interests of the data subject where the law of the Member State transferring the personal data so provides, or where it is essential for the prevention of an immediate and serious threat to the public security of a Member State or a third country, or in individual cases for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, or in individual cases for the establishment, exercise or defence of legal claims.

adduced in a legally binding instrument, which ensure the protection of the personal data. In cases where no grounds for allowing a transfer exist, derogations should be allowed if necessary in order to protect the vital interests of the data subject or another ***natural*** person, or to safeguard legitimate interests of the data subject where the law of the Member State transferring the personal data so provides, or where it is essential for the prevention of an immediate and serious threat to the public security of a Member State or a third country, or in individual cases for the purposes of prevention, investigation, detection or prosecution of ***specific*** criminal offences or the execution of criminal penalties, or in individual cases for the establishment, exercise or defence of legal claims. ***Where the Commission has issued a negative adequacy decision, the use of derogations should be restricted to cases where the transfer is necessary in order to protect the vital interests of the data subject or another person or where it is essential for the prevention of an immediate and serious threat to the public security of a Member State or a third country. In any case, these derogations should be interpreted restrictively. In particular, derogations should not be used to allow frequent, massive, or structural transfers. Also when transferring data on individual cases, the amount of data should be limited to what is strictly necessary. Additionally, any transfer based on a derogation should be comprehensively documented. This documentation should be made available to the supervisory authority on request.***

Or. en

**Amendment 240**  
**Cornelia Ernst**

**Proposal for a directive**  
**Recital 54**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 241**  
**Axel Voss**

**Proposal for a directive**  
**Recital 55**

*Text proposed by the Commission*

(55) While this Directive applies also to the activities of national courts, the competence of the supervisory authorities should not cover the processing of personal data when they are acting in their judicial capacity, in order to safeguard the independence of judges in the performance of their judicial tasks. ***However, this exemption should be limited to genuine judicial activities in court cases and not apply to other activities where judges might be involved in accordance with national law.***

*Amendment*

(55) While this Directive applies also to the activities of national courts, the competence of the supervisory authorities should not cover the processing of personal data when they are acting in their judicial capacity, in order to safeguard the independence of judges in the performance of their judicial tasks.

Or. de

**Amendment 242**  
**Axel Voss**

**Proposal for a directive**  
**Recital 56**

*Text proposed by the Commission*

*Amendment*

**(56) In order to ensure consistent monitoring and enforcement of this Directive throughout the Union, the supervisory authorities should have the same duties and effective powers in each Member State, including powers of investigation, legally binding intervention, decisions and sanctions, particularly in cases of complaints from individuals, and to engage in legal proceedings.**

***deleted***

Or. de

**Amendment 243**  
**Axel Voss**

**Proposal for a directive**  
**Recital 57**

*Text proposed by the Commission*

*Amendment*

(57) Each supervisory authority should hear complaints lodged by any data subject and should investigate the matter. ***The investigation following a complaint should be carried out, subject to judicial review, to the extent that is appropriate in the specific case.*** The supervisory authority should inform the data subject of the progress and the outcome of the complaint within a reasonable period. If the case requires further investigation or coordination with another supervisory authority, intermediate information should be given to the data subject.

(57) Each supervisory authority should hear complaints lodged by any data subject and should investigate the matter. The supervisory authority should inform the data subject of the progress and the outcome of the complaint within a reasonable period. If the case requires further investigation or coordination with another supervisory authority, intermediate information should be given to the data subject.

Or. de

*Justification*

*Results from the deletion of the right to lodge a complaint for associations and DPAs in*

Article 50.

**Amendment 244**

**Axel Voss**

**Proposal for a directive**

**Recital 61**

*Text proposed by the Commission*

*Amendment*

***(61) Any body, organisation or association which aims to protect the rights and interests of data subjects in relation to the protection of their data and is constituted according to the law of a Member State should have the right to lodge a complaint or exercise the right to a judicial remedy on behalf of data subjects if duly mandated by them, or to lodge, independently of a data subject's complaint, its own complaint where it considers that a personal data breach has occurred.***

***deleted***

Or. de

*Justification*

*Results from the deletion of the right to lodge a complaint for associations and DPAs in Article 50.*

**Amendment 245**

**Cornelia Ernst**

**Proposal for a directive**

**Recital 61**

*Text proposed by the Commission*

*Amendment*

***(61) Any body, organisation or association which aims to protect the rights and interests of **data subjects in relation to the protection of their data** and is constituted according to the law of a Member State should have the right to lodge a complaint***

***(61) Any body, organisation or association which aims to protect the rights and interests of **natural persons** and is constituted according to the law of a Member State should have the right to lodge a complaint or exercise the right to a***

or exercise the right to a judicial remedy on behalf of data subjects ***if duly mandated by them***, or to lodge, independently of a data subject's complaint, its own complaint where it considers that a personal data breach has occurred.

judicial remedy on behalf of data subjects, or to lodge, independently of a data subject's complaint, its own complaint where it considers that a personal data breach has occurred ***or where it considers that a controller has not complied with the principles of data protection by design and by default.***

Or. en

**Amendment 246**  
**Cornelia Ernst**

**Proposal for a directive**  
**Recital 64**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 247**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Recital 65 a (new)**

*Text proposed by the Commission*

*Amendment*

***(65a) Transmission of personal data to other authorities or private parties in the Union is prohibited unless the transmission is in compliance with law, and the recipient is established in a Member State, and no legitimate specific***



*interests of the data subject prevent transmission, and the transmission is necessary in a specific case for the controller transmitting the data for either the performance of a task lawfully assigned to it, or the prevention of an immediate and serious danger to public security, or the prevention of serious harm to the rights of individuals. The controller should inform the recipient of the purpose of the processing. The recipient should also be informed of processing restrictions and ensure that they are met.*

Or. en

**Amendment 248**  
**Jan Mulder**

**Proposal for a directive**  
**Recital 65 a (new)**

*Text proposed by the Commission*

*Amendment*

*(65a) Transmission of personal data to other authorities or private parties in the Union is prohibited unless there is the prevention of an immediate and serious danger to public security, or the prevention of serious harm to the rights of individuals. The controller should inform the recipient of the purpose of the processing. The recipient should also be informed of processing restrictions and ensure that they are met.*

Or. en

**Amendment 249**  
**Axel Voss**

**Proposal for a directive**  
**Recital 66**

*Text proposed by the Commission*

*Amendment*

*(66) In order to fulfil the objectives of this Directive, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free exchange of personal data by competent authorities within the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. In particular, delegated acts should be adopted in respect of notifications of a personal data breach to the supervisory authority. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.*

*deleted*

Or. de

#### **Amendment 250**

**Axel Voss**

#### **Proposal for a directive**

#### **Recital 67**

*Text proposed by the Commission*

*Amendment*

*(67) In order to ensure uniform conditions for the implementation of this Directive as regards documentation by controllers and processors, security of processing, notably in relation to encryption standards, notification of a personal data breach to the supervisory authority, and the adequate level of protection afforded by a third country or a*

*deleted*

***territory or a processing sector within that third country or an international organisation, implementing powers should be conferred on the Commission.***

Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers.

Or. de

#### **Amendment 251**

**Axel Voss**

#### **Proposal for a directive**

#### **Recital 68**

*Text proposed by the Commission*

(68) The examination procedure should be used for the adoption of measures as regards documentation by controllers and processors, security of processing, ***notification of a personal data breach to the supervisory authority***, and the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an international organisation, given that those acts are of general scope.

*Amendment*

(68) The examination procedure should be used for the adoption of measures as regards documentation by controllers and processors, security of processing and the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an international organisation, given that those acts are of general scope.

Or. de

#### **Amendment 252**

**Axel Voss**

#### **Proposal for a directive**

#### **Recital 70**

*Text proposed by the Commission*

*Amendment*

***(70) Since the objectives of this Directive, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free exchange of personal data by competent authorities within the Union, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective***

***deleted***

Or. de

#### **Amendment 253**

**Axel Voss**

**Proposal for a directive**

**Recital 72**

*Text proposed by the Commission*

*Amendment*

***(72) Specific provisions with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties in acts of the Union which were adopted prior to the date of the adoption of this Directive, regulating the processing of personal data between Member States or the access of designated authorities of Member States to information systems established pursuant to the Treaties, should remain unaffected. The Commission should evaluate the***

***deleted***

*situation with regard to the relation between this Directive and the acts adopted prior to the date of adoption of this Directive regulating the processing of personal data between Member States or the access of designated authorities of Member States to information systems established pursuant to the Treaties, in order to assess the need for alignment of these specific provisions with this Directive.*

Or. de

**Amendment 254**  
**Axel Voss**

**Proposal for a directive**  
**Recital 73**

*Text proposed by the Commission*

*Amendment*

*(73) In order to ensure a comprehensive and coherent protection of personal data in the Union, international agreements concluded by Member States prior to the entry force of this Directive should be amended in line with this Directive.*

*deleted*

Or. de

**Amendment 255**  
**Cornelia Ernst**

**Proposal for a directive**  
**Recital 73**

*Text proposed by the Commission*

*Amendment*

(73) In order to ensure a comprehensive and coherent protection of personal data in the Union, international agreements concluded by Member States prior to the entry force of this Directive should be amended in line with this Directive.

(73) In order to ensure a comprehensive and coherent protection of personal data in the Union, international agreements concluded by ***the Union or by the*** Member States prior to the entry force of this Directive should be amended in line with

this Directive.

Or. en

## **Amendment 256**

**Axel Voss**

### **Proposal for a directive**

#### **Article 1 – paragraph 1**

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

1. This Directive lays down the rules relating to the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties.

##### *Amendment*

1. This Directive lays down the rules relating to the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of ***protection against and prevention of risks to public security, preparedness for subsequent prosecution***, the prevention, investigation, detection or prosecution of criminal offences and the execution of criminal penalties.

Or. de

##### *Justification*

*There are problems in the area of risk prevention by the police in defining the scope of the Directive and Regulation. If the risk to be prevented is not punishable as a crime and the police are not therefore preventing a criminal offence in the sense of Article 1(1) of the proposal for a Directive, the Directive cannot be applied (e.g. missing persons files, suicides). The provisions of the General Data Protection Regulation are completely inappropriate for risk prevention.*

## **Amendment 257**

**Axel Voss**

### **Proposal for a directive**

#### **Article 1 – paragraph 2 – introductory part**

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

2. ***In accordance with*** this Directive, ***Member States*** shall:

##### *Amendment*

2. ***The minimum requirements of*** this Directive shall ***be no impediment to***

***Member States retaining or introducing provisions on the protection of personal data that ensure a higher level of protection.***

Or. de

*Justification*

*The aim of the Directive should be to create a pan-European minimum standard of protection and not to replace existing national rules. Member States must therefore be explicitly allowed to adopt more stringent provisions.*

**Amendment 258**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Article 1 – paragraph 2 – introductory part**

*Text proposed by the Commission*

2. In accordance with this Directive, Member States shall:

*Amendment*

***2. The minimum requirements of this Directive shall be no impediment to Member States retaining or introducing provisions on the protection of personal data that ensure a higher level of protection. At least*** in accordance with this Directive, Member States shall:

Or. en

*Justification*

*The aim of the Directive should be to create a pan-European minimum standard of protection and not to replace existing national rules. Member States must therefore be explicitly allowed to adopt more stringent provisions. Reference to draft JURI opinion.*

**Amendment 259**  
**Axel Voss**

**Proposal for a directive**  
**Article 1 – paragraph 2 – point a**

*Text proposed by the Commission*

*Amendment*

*(a) protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data; and*

*deleted*

Or. de

**Amendment 260**  
**Carlos Coelho**

**Proposal for a directive**  
**Article 1 – paragraph 2 – point a**

*Text proposed by the Commission*

*Amendment*

(a) protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data; and

(a) protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of ***their*** personal data ***and privacy***; and

Or. pt

**Amendment 261**  
**Nuno Melo**

**Proposal for a directive**  
**Article 1 – paragraph 2 – point a**

*Text proposed by the Commission*

*Amendment*

(a) protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data; and

(a) protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data, ***and prevent any discrimination based on sex, racial or ethnic origin, religion or belief, disability or illness, age or sexual orientation***; and

Or. pt



**Amendment 262**

**Axel Voss**

**Proposal for a directive**

**Article 1 – paragraph 2 – point b**

*Text proposed by the Commission*

*(b) ensure that the exchange of personal data by competent authorities within the Union is neither restricted nor prohibited for reasons connected with the protection of individuals with regard to the processing of personal data.*

*Amendment*

*deleted*

Or. de

**Amendment 263**

**Carlos Coelho**

**Proposal for a directive**

**Article 1 – paragraph 2 – point b**

*Text proposed by the Commission*

(b) ensure that the exchange of personal data by competent authorities within the Union is neither restricted nor prohibited for reasons connected with the protection of individuals with regard to the processing of personal data.

*Amendment*

(b) ensure that the exchange of personal data by competent authorities within the Union is neither restricted nor prohibited for reasons connected with the protection of individuals with regard to the processing of personal data, *in line with the free movement of data provided for in Article 16 TFEU. The free movement of data shall not apply in relation to Member States which do not commit themselves to this legislative act.*

Or. pt

**Amendment 264**

**Nuno Melo**

**Proposal for a directive**

**Article 1 – paragraph 2 – point b**

*Text proposed by the Commission*

(b) ensure that the exchange of personal data by competent authorities within the Union is neither restricted nor prohibited for reasons connected with the protection ***of individuals with regard to the processing of personal data.***

*Amendment*

(b) ensure that the exchange of personal data by competent authorities within the Union is neither restricted nor prohibited for reasons connected with the protection ***provided for pursuant to point (a).***

Or. pt

**Amendment 265**

**Axel Voss**

**Proposal for a directive**

**Article 2 – paragraph 2**

*Text proposed by the Commission*

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

*Amendment*

2. This Directive applies to the processing of personal data wholly or partly by automated means, and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system. ***The Directive shall not apply if the personal data are stored, or are intended to be stored, in paper files or sets of files.***

Or. de

**Amendment 266**

**Jan Philipp Albrecht**

**Proposal for a directive**

**Article 1 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. The processing or exchange of personal data by competent authorities within the Union needs a legal basis in Union or member state law. This directive does not provide such a legal basis in***

*itself.*

Or. en

*Justification*

*Clarification: For processing and exchange of personal data, there still needs to be an extra legal ground. This Directive only harmonises the data protection rules for such cases.*

**Amendment 267**

**Cornelia Ernst**

**Proposal for a directive**

**Article 2 – paragraph 3 – point a**

*Text proposed by the Commission*

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

*Amendment*

(a) in the course of an activity which falls outside the scope of Union law;

Or. en

*Justification*

*The term “national security” is understood differently in different Member States. For clarity, reference should simply be made to “outside the scope of Union law” to avoid a situation in which Member States could claim the national security exemption for processing that should be subject to this Directive.*

**Amendment 268**

**Jan Philipp Albrecht**

**Proposal for a directive**

**Article 2 – paragraph 3 – point a**

*Text proposed by the Commission*

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

*Amendment*

(a) in the course of an activity which falls outside the scope of Union law;

Or. en

### *Justification*

*The term “national security” is understood differently in different Member States. For clarity, reference should simply be made to “outside the scope of Union law” to avoid a situation in which Member States could claim the national security exemption for processing that should be subject to this Directive.*

#### **Amendment 269**

**Axel Voss**

#### **Proposal for a directive**

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

*Text proposed by the Commission*

*Amendment*

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

Or. de

#### **Amendment 270**

**Sophia in 't Veld**

#### **Proposal for a directive**

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

*Text proposed by the Commission*

*Amendment*

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

Or. en

#### **Amendment 271**

**Jan Mulder**

#### **Proposal for a directive**

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

*Text proposed by the Commission*

*Amendment*

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

**Amendment 272**

**Birgit Sippel, Josef Weidenholzer**

**Proposal for a directive**

**Article 2 – paragraph 3 – point b**

*Text proposed by the Commission*

*Amendment*

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

***deleted***

Or. en

*Justification*

*A comprehensive approach to data protection also means to include the Union institutions, bodies, offices and agencies in the scope of the Directive.*

**Amendment 273**

**Axel Voss**

**Proposal for a directive**

**Article 3 – paragraph 1 – point 1**

*Text proposed by the Commission*

*Amendment*

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

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

Or. de

## Amendment 274

Sophia in 't Veld

### Proposal for a directive

#### Article 3 – paragraph 1 – point 1

*Text proposed by the Commission*

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

*Amendment*

(1) ‘data subject’ means an identified natural person or a natural person who can be identified **or singled out**, directly or indirectly, **alone or in combination with associated data**, by means reasonably likely to be used by the controller or by any other natural or legal person, in particular by reference to **a unique identifier**, an identification **code**, location data, online identifiers or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, **social or gender** identity **or sexual orientation** of that person;

Or. en

## Amendment 275

Cornelia Ernst

### Proposal for a directive

#### Article 3 – paragraph 1 – point 1

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 276**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Article 3 – paragraph 1 – point 1**

*Text proposed by the Commission*

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

*Amendment*

(1) 'data subject' means an identified natural person or a natural person who can be identified **or singled out**, directly or indirectly, **alone or in combination with associated data**, by means reasonably likely to be used by the controller or by any other natural or legal person, in particular by reference to **unique identifier**, location data, online **or offline identifier** or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, **social or gender identity or sexual orientation** of that person;

Or. en

*Justification*

*To ensure good protection, it is important that the terms "personal data" and "data subject" are not defined too narrowly. The Directive should clearly apply to data that only allow "singling out" and it should be clear that online or offline identifiers should in most cases be considered personal data. Having wide definitions of "personal data" and "data subject" is important for future-proof protection. This definition ensures coherence with the data protection Regulation.*

**Amendment 277**  
**Axel Voss**

**Proposal for a directive**  
**Article 3 – paragraph 1 – point 1 a (new)**

*Text proposed by the Commission*

*Amendment*

**(1a) 'criminal offence' also means an offence which is punishable under the national law of Member States by virtue of being an infringement of the rules of**

*law, where the decision may give rise to proceedings before a criminal court.*

Or. de

*Justification*

*Based on Article 3 of the European Convention on Mutual Assistance in Criminal Matters.*

**Amendment 278**

**Cornelia Ernst**

**Proposal for a directive**

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

*Text proposed by the Commission*

*Amendment*

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

Or. en

**Amendment 279**

**Nuno Melo**

**Proposal for a directive**

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

*Text proposed by the Commission*

*Amendment*

*(3a) 'profiling' means an automated data processing technique consisting in categorising an individual, in particular for the purpose of taking decisions in relation to that individual or to analyse or predict their personal preferences, behaviour and attitudes;*



**Amendment 280**

**Axel Voss**

**Proposal for a directive**

**Article 3 – paragraph 1 – point 4**

*Text proposed by the Commission*

(4) '**restriction of processing**' means the marking of stored personal data with the aim of limiting their processing in the future;

*Amendment*

(4) '**blocking**' means the marking of stored personal data with the aim of limiting their processing in the future;

Or. de

**Amendment 281**

**Cornelia Ernst**

**Proposal for a directive**

**Article 3 – paragraph 1 – point 9**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 282**

**Jan Philipp Albrecht**

**Proposal for a directive**

**Article 3 – paragraph 1 – point 9**

*Text proposed by the Commission*

(9) 'personal data breach' means **a breach**

*Amendment*

(9) 'personal data breach' means the

*of security leading to* the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;

accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;

Or. en

*Justification*

*It does not matter what causes a personal data breach. Instead of a security breach, it could also happen by accident, negligence or for other reasons.*

**Amendment 283**  
**Carlos Coelho**

**Proposal for a directive**  
**Article 3 – paragraph 1 – point 14**

*Text proposed by the Commission*

(14) 'competent authorities' means any public authority competent for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties;

*Amendment*

(14) 'competent authorities' means any public authority competent, ***in accordance with the corresponding legislation in each Member State***, for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties;

Or. pt

**Amendment 284**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 3 – paragraph 1 – point 15 a (new)**

*Text proposed by the Commission*

*Amendment*

***(15a) 'marking' means the marking of stored personal data without the aim of limiting their processing in future;***

Or. nl

### *Justification*

*Aligns the text of the proposal for a directive with that of the framework decision on data protection (Article 2(j)). Article 16 lays down that the controller must mark data. However, the term ‘marking’ is not defined. This amendment makes good this omission.*

#### **Amendment 285**

**Carmen Romero López**

#### **Proposal for a directive**

#### **Article 3 – paragraph 1 – point 15 a (new)**

*Text proposed by the Commission*

*Amendment*

***(15a) ‘data protection by design’ means integrating data protection into the entire life cycle of the technology, from the initial design stage, right through to its deployment, use and ultimate withdrawal from the market;***

Or. es

### *Justification*

*This amendment adds a definition of data protection by design, since it is a concept referred to in the directive.*

#### **Amendment 286**

**Carmen Romero López**

#### **Proposal for a directive**

#### **Article 3 – paragraph 1 – point 15 b (new)**

*Text proposed by the Commission*

*Amendment*

***(15b) ‘data protection by default’ means setting the privacy options in relation to services and products in such a way as to comply with the general principles of data protection, such as transparency, data minimisation, purpose limitation, integrity of data, minimisation of data storage periods, scope for action by data subjects***

*and accountability;*

Or. es

*Justification*

*This amendment adds a definition of data protection by default, since it is a concept referred to in the directive.*

**Amendment 287**

**Axel Voss**

**Proposal for a directive**

**Article 3 – paragraph 1 – point 15 a (new)**

*Text proposed by the Commission*

*Amendment*

***(15a) ‘to make anonymous’ means to modify personal data in such a way that information can no longer or only with disproportionate investment of time, cost and labour be attributed to an identified or identifiable individual;***

Or. de

**Amendment 288**

**Axel Voss**

**Proposal for a directive**

**Article 3 – paragraph 1 – point 15 b (new)**

*Text proposed by the Commission*

*Amendment*

***(15b) ‘European Union information systems’ means only those information systems that have been established under Chapter 4 or 5 of Title V of Part Three of the Treaty on the Functioning of the European Union or under the Treaty establishing the European Community;***

Or. de

**Amendment 289**

**Axel Voss**

**Proposal for a directive**

**Article 3 – paragraph 1 – point 15 c (new)**

*Text proposed by the Commission*

*Amendment*

***(15c) ‘the data subject’s consent’ means any freely given specific, informed, and explicit indication of his or her wishes by which the data subject, either by a statement or by a clear gesture in the affirmative, signifies his or her agreement to personal data relating to him or her being processed;***

Or. de

*Justification*

*The amendment places the data subject’s consent on a strictly defined footing. Even though, intrinsically, citizens and the State cannot meet on equal terms, consent can serve as a justification in particular cases, for example mass DNA tests.*

**Amendment 290**

**Axel Voss**

**Proposal for a directive**

**Article 3 – paragraph 1 – point 15 d (new)**

*Text proposed by the Commission*

*Amendment*

***(15d) ‘competent authorities’ means any authority responsible for the prevention of risks, for investigation, detection, or prosecution of criminal offences, or for the execution of criminal penalties, including institutions, bodies, offices, and agencies of the European Union.***

Or. de

**Amendment 291**

**Axel Voss**

**Proposal for a directive**

**Article 4 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

(a) processed *fairly and lawfully*;

(a) processed *lawfully, fairly, and in a transparent and verifiable manner*;

Or. de

*Justification*

*Brings the directive into line with the text of the Data Protection Regulation. The package approach implies that the data processing principles should be the same in both acts.*

**Amendment 292**

**Sophia in 't Veld**

**Proposal for a directive**

**Article 4 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

(a) processed fairly and *lawfully*;

(a) processed *lawfully*, fairly and *in a transparent manner in relation to the data subject*;

Or. en

*Justification*

*Similar to the equivalent amendment of the proposal for a General Data Protection Regulation*

**Amendment 293**

**Jan Mulder**

**Proposal for a directive**

**Article 4 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) processed fairly and lawfully;

*Amendment*

(a) processed fairly and lawfully ***and in a transparent manner***;

Or. en

**Amendment 294**

**Jan Philipp Albrecht**

**Proposal for a directive**

**Article 4 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) processed fairly and lawfully;

*Amendment*

(a) processed fairly and lawfully ***and in a transparent manner in relation to the data subject***;

Or. en

**Amendment 295**

**Carlos Coelho**

**Proposal for a directive**

**Article 4 – paragraph 1 – point b**

*Text proposed by the Commission*

(b) collected for specified, explicit and legitimate purposes and not further ***processed in a way incompatible with those purposes***;

*Amendment*

(b) collected for specified, explicit and legitimate purposes and not further ***used for a different purpose, even where it is compatible, unless provided for by law***;

Or. pt

**Amendment 296**

**Axel Voss**

**Proposal for a directive**

**Article 4 – paragraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

(c) adequate, relevant, and **not excessive** in relation to the purposes for which they are processed;

(c) adequate, relevant, and **limited to the minimum necessary** in relation to the purposes for which they are processed; **they shall be processed only where anonymous processing is not sufficient for the given purpose;**

Or. de

*Justification*

*Brings the directive into line with the text of the Data Protection Regulation. The package approach implies that the data processing principles should be the same in both acts.*

**Amendment 297**

**Jan Mulder**

**Proposal for a directive**

**Article 4 – paragraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

(c) adequate, relevant, and **not excessive in relation to** the purposes for which they are processed;

(c) adequate, relevant, and **as much as possible limited to** the purposes for which they are processed;

Or. en

**Amendment 298**

**Jan Philipp Albrecht**

**Proposal for a directive**

**Article 4 – paragraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

(c) adequate, relevant, and **not excessive** in relation to the purposes for which they are processed;

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



*does not involve personal data; personal data held by private parties or other public authorities shall only be accessed to investigate or prosecute criminal offences in accordance with necessity and proportionality requirements to be defined by each Member State in its national law, subject to the relevant provisions of European Union law or public international law, and in particular the ECHR as interpreted by the European Court of Human Rights;*

Or. en

#### *Justification*

*Important clarification to bridge the gap between the data protection Directive and Regulation and ensure that a transfer of personal data from the scope of the Regulation to the scope of the Directive is covered.*

#### **Amendment 299** **Sophia in 't Veld**

#### **Proposal for a directive** **Article 4 – paragraph 1 – point c**

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

(c) adequate, relevant, and ***not excessive*** in relation to the purposes for which they are processed;

##### *Amendment*

(c) adequate, relevant, and ***limited to the minimum necessary*** in relation to the purposes for which they are processed; ***they shall only be processed if, and as long as, the purpose could not be achieved by less intrusive means;***

Or. en

#### **Amendment 300** **Sophia in 't Veld**

#### **Proposal for a directive** **Article 4 – paragraph 1 – point d**

*Text proposed by the Commission*

(d) accurate and, ***where necessary***, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay;

*Amendment*

(d) accurate and kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay;

Or. en

**Amendment 301**

**Carlos Coelho**

**Proposal for a directive**

**Article 4 – paragraph 1 – point d**

*Text proposed by the Commission*

(d) accurate and, where necessary, kept up to date; every ***reasonable*** step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay;

*Amendment*

(d) accurate, ***subject to regular quality verification*** and, where necessary, kept up to date; every step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay;

Or. pt

**Amendment 302**

**Jan Philipp Albrecht**

**Proposal for a directive**

**Article 4 – paragraph 1 – point d**

*Text proposed by the Commission*

(d) accurate and, ***where necessary***, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, ***having regard to the purposes for which they are processed***, are erased or rectified without delay;

*Amendment*

(d) accurate and kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate are erased or rectified without delay;

**Amendment 303**

**Axel Voss**

**Proposal for a directive**

**Article 4 – paragraph 1 – point e**

*Text proposed by the Commission*

(e) kept in a form which permits identification of data subjects for no longer than *it* is necessary for the purposes for which the personal data are processed;

*Amendment*

(e) kept in a form which permits identification of data subjects **but** for no longer than is necessary for the purposes for which the personal data are processed;

Or. de

*Justification*

*Brings the directive into line with the text of the Data Protection Regulation. The package approach implies that the data processing principles should be the same in both acts.*

**Amendment 304**

**Sophia in 't Veld**

**Proposal for a directive**

**Article 4 – paragraph 1 – point e**

*Text proposed by the Commission*

(e) kept in a form which permits identification of data subjects for no longer than it is necessary for the purposes for which the personal data are processed;

*Amendment*

(e) kept in a form which permits identification, **or the singling out**, of data subjects for no longer than it is necessary for the purposes for which the personal data are processed;

Or. en

**Amendment 305**

**Axel Voss**

**Proposal for a directive**

**Article 4 – paragraph 1 – point f**

*Text proposed by the Commission*

(f) processed ***under the responsibility and liability of the controller, who shall ensure compliance with the provisions adopted pursuant to this Directive.***

*Amendment*

(f) processed ***and used in the performance of their duties only by the appropriate staff of competent authorities.***

Or. de

**Amendment 306**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 4 – paragraph 1 – point f – introductory part**

*Text proposed by the Commission*

(f) processed under the responsibility and liability of the controller, who shall ensure compliance with the provisions adopted pursuant to this Directive.

*Amendment*

(f) processed under the responsibility and liability of the controller, who shall ensure ***and be able to demonstrate, for each processing operation,*** compliance with the provisions adopted pursuant to this Directive.

Or. en

**Amendment 307**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Article 4 – paragraph 1 – point f – introductory part**

*Text proposed by the Commission*

(f) processed under the responsibility and liability of the controller, who shall ensure compliance with the provisions adopted pursuant to this Directive.

*Amendment*

(f) processed under the responsibility and liability of the controller, who shall ensure ***and be able to demonstrate, for each processing operation,*** compliance with the provisions adopted pursuant to this Directive.

Or. en

*Justification*

*Amendment in line with the draft report on the data protection Regulation*

**Amendment 308**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Article 4 – paragraph 1 – point f a (new)**

*Text proposed by the Commission*

*Amendment*

*(fa) processed in a way that effectively allows the data subject to exercise his or her rights as described in Articles 10 to 17.*

Or. en

*Justification*

*Amendment in line with the draft report on the data protection Regulation*

**Amendment 309**  
**Carlos Coelho**

**Proposal for a directive**  
**Article 4 – paragraph 1 – point f a (new)**

*Text proposed by the Commission*

*Amendment*

*(fa) accessed by or made available only to those duly authorised staff in competent authorities who need them for the performance of their tasks, whereby a rigorous user profile management policy must be implemented.*

Or. pt

**Amendment 310**  
**Jan Mulder**

**Proposal for a directive**  
**Article 4 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*Data initially processed for purposes other than those referred to in Article 1(1) may only be used for the purposes of prevention, investigation, detection or prosecution of criminal offences granted they are processed on a valid legal basis that ensures sufficient guarantees for the data subject.*

Or. en

**Amendment 311**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 4 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*Member States shall provide that competent authorities may only have access to personal data initially processed for purposes other than those referred to in Article 1(1) if they are specifically authorised by Union or national law which must meet the requirements set out in Article 7(1a) and must provide that:*

*(a) access is allowed only by duly authorised staff of the competent authorities in the performance of their tasks where, in a specific case, the competent authority can demonstrate that the processing of the personal data is necessary and proportionate for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties;*

*(b) requests for access must be in writing, reasoned and refer to the legal ground for the request; and*

*(c) the written request must documented;  
and*

*(d) appropriate safeguards are  
implemented to ensure the protection of  
fundamental rights and freedoms in  
relation to the processing of personal  
data. Those safeguards shall be without  
prejudice to and complementary to  
specific conditions of access to personal  
data such as judicial authorisation in  
accordance with national law.*

Or. en

**Amendment 312**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 4 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*Personal data which were originally  
collected for a different purpose may only  
be used to prevent, investigate and detect  
crimes, and to prosecute offenders, on the  
basis of a statutory instrument which  
provides adequate safeguards for the  
protection of the privacy of the data  
subject.*

Or. nl

*Justification*

*Use of data for a different purpose requires an adequate statutory basis in national  
legislation.*

**Amendment 313**  
**Carlos Coelho**

**Proposal for a directive**  
**Article 4 a (new)**

***Article 4a***

***Time-limits of storage and review***

***1. Member States shall take all necessary steps to ensure that personal data processed pursuant to this Directive shall be eliminated by the competent authorities where they are no longer necessary for the purposes for which they were collected and subsequently processed.***

***2. Member States shall provide that the competent authorities put the necessary mechanisms in place to ensure that time-limits are established for the elimination of personal data and for a periodic review of the need for the storage of those data, including fixing storage periods for the different categories of personal data subjects. Procedural measures shall be established to ensure that these time-limits and the periodic review intervals are observed.***

Or. pt

**Amendment 314**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 5**

***Article 5***

***deleted***

***Distinction between different categories of data subjects***

***1. Member States shall provide that, as far as possible, the controller makes a clear distinction between personal data of different categories of data subjects, such as:***

***(a) persons with regard to whom there are***



*serious grounds for believing that they have committed or are about to commit a criminal offence;*

*(b) persons convicted of a criminal offence;*

*(c) victims of a criminal offence, or persons with regard to whom certain facts give reasons for believing that he or she could be the victim of a criminal offence;*

*(d) third parties to the criminal offence, such as persons who might be called on to testify in investigations in connection with criminal offences or subsequent criminal proceedings, or a person who can provide information on criminal offences, or a contact or associate to one of the persons mentioned in (a) and (b); en*

*(e) persons who do not fall within any of the categories referred to above.*

Or. nl

**Amendment 315**  
**Monika Hohlmeier**

**Proposal for a directive**  
**Article 5**

*Text proposed by the Commission*

*Amendment*

*Article 5*

*deleted*

***Distinction between different categories of data subjects***

***1. Member States shall provide that, as far as possible, the controller makes a clear distinction between personal data of different categories of data subjects, such as:***

***(a) persons with regard to whom there are serious grounds for believing that they have committed or are about to commit a criminal offence;***

***(b) persons convicted of a criminal***

*offence;*

*(c) victims of a criminal offence, or persons with regard to whom certain facts give reasons for believing that he or she could be the victim of a criminal offence;*

*(d) third parties to the criminal offence, such as persons who might be called on to testify in investigations in connection with criminal offences or subsequent criminal proceedings, or a person who can provide information on criminal offences, or a contact or associate to one of the persons mentioned in (a) and (b); and*

*(e) persons who do not fall within any of the categories referred to above.*

Or. de

**Amendment 316**  
**Jan Mulder**

**Proposal for a directive**  
**Article 5**

*Text proposed by the Commission*

*Amendment*

*Article 5*

*deleted*

*Distinction between different categories of data subjects*

*1. Member States shall provide that, as far as possible, the controller makes a clear distinction between personal data of different categories of data subjects, such as:*

*(a) persons with regard to whom there are serious grounds for believing that they have committed or are about to commit a criminal offence;*

*(b) persons convicted of a criminal offence;*

*(c) victims of a criminal offence, or persons with regard to whom certain facts give reasons for believing that he or she*

*could be the victim of a criminal offence;*

*(d) third parties to the criminal offence, such as persons who might be called on to testify in investigations in connection with criminal offences or subsequent criminal proceedings, or a person who can provide information on criminal offences, or a contact or associate to one of the persons mentioned in (a) and (b); and*

*(e) persons who do not fall within any of the categories referred to above.*

Or. en

**Amendment 317**  
**Axel Voss**

**Proposal for a directive**  
**Article 5 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

*1. Member States shall provide that, as far as possible, the controller makes a clear distinction between personal data of different categories of data subjects, such as:*

*deleted*

*(a) persons with regard to whom there are serious grounds for believing that they have committed or are about to commit a criminal offence;*

*(b) persons convicted of a criminal offence;*

*(c) victims of a criminal offence, or persons with regard to whom certain facts give reasons for believing that he or she could be the victim of a criminal offence;*

*(d) third parties to the criminal offence, such as persons who might be called on to testify in investigations in connection with criminal offences or subsequent criminal proceedings, or a person who can provide information on criminal offences, or a contact or associate to one of the persons*

*mentioned in (a) and (b); and  
(e) persons who do not fall within any of  
the categories referred to above.*

Or. de

*Justification*

*The need for across-the-board obligations to distinguish between categories of data subjects is not obvious, their practicability is open to question, and the red tape and expenditure involved would be substantial. Given that there are no provisions on that point, it is uncertain what legal consequences would be entailed in making such distinctions.*

**Amendment 318**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 5 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. Member States shall provide that, ***as far as possible***, the controller makes a clear distinction between personal data of different categories of data subjects, such as:

*Amendment*

1. Member States shall provide that the controller makes a clear distinction between personal data of different categories of data subjects, such as:

Or. en

**Amendment 319**  
**Cornelia Ernst**

**Proposal for a directive**  
**Article 5 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. Member States shall provide that, ***as far as possible***, the controller makes a clear distinction between personal data of different categories of data subjects, such as:

*Amendment*

1. Member States shall provide that the controller makes a clear distinction between personal data of different categories of data subjects, such as:

Or. en

**Amendment 320**  
**Nuno Melo**

**Proposal for a directive**  
**Article 5 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) persons with regard to whom there are serious grounds for believing that they have committed ***or are about to commit*** a criminal offence;

*Amendment*

(a) persons with regard to whom there are serious grounds for believing that they have committed a criminal offence;

Or. pt

**Amendment 321**  
**Carlos Coelho**

**Proposal for a directive**  
**Article 5 – paragraph 1 – point c**

*Text proposed by the Commission*

(c) victims of a criminal offence, or persons with regard to whom ***certain facts*** give reasons for believing that he or she could be the victim of a criminal offence;

*Amendment*

(c) victims of a criminal offence, or persons with regard to whom ***there are factual indications that*** give reasons for believing that he or she could be the victim of a criminal offence;

Or. pt

**Amendment 322**  
**Nuno Melo**

**Proposal for a directive**  
**Article 5 – paragraph 1 – point c**

*Text proposed by the Commission*

(c) victims of a criminal offence, ***or persons with regard to whom certain facts give reasons for believing that he or she could be the victim of a criminal offence;***

*Amendment*

(c) victims of a criminal offence;

**Amendment 323**

**Sophia in 't Veld**

**Proposal for a directive**

**Article 5 – paragraph 1 – point d**

*Text proposed by the Commission*

(d) third parties to the criminal offence, such as persons who might be called on to testify in investigations in connection with criminal offences or subsequent criminal proceedings, or a person who can provide information on criminal offences, or a contact or associate to one of the persons mentioned in (a) and (b); **and**

*Amendment*

(d) third parties to the criminal offence, such as persons who might be called on to testify in investigations in connection with criminal offences or subsequent criminal proceedings, or a person who can provide information on criminal offences, or a contact or associate to one of the persons mentioned in (a) and (b);

Or. en

**Amendment 324**

**Cornelia Ernst**

**Proposal for a directive**

**Article 5 – paragraph 1 – point d**

*Text proposed by the Commission*

(d) ***third parties to the criminal offence, such as*** persons who might be called on to testify in investigations in connection with criminal offences or subsequent criminal proceedings, ***or a person who can provide information on criminal offences, or a contact or associate to one of the persons mentioned in (a) and (b); and***

*Amendment*

(d) persons who might be called on to testify in investigations in connection with criminal offences or subsequent criminal proceedings;

Or. en

**Amendment 325**

**Cornelia Ernst**

**Proposal for a directive**  
**Article 5 – paragraph 1 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

***(da) persons who can provide information  
on criminal offences;***

Or. en

**Amendment 326**  
**Cornelia Ernst**

**Proposal for a directive**  
**Article 5 – paragraph 1 – point d b (new)**

*Text proposed by the Commission*

*Amendment*

***(db) contacts or associates to one of the  
persons mentioned in (a) and (b); and***

Or. en

**Amendment 327**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 5 – paragraph 1 – point e**

*Text proposed by the Commission*

*Amendment*

***(e) persons who do not fall within any of  
the categories referred to above.***

***deleted***

Or. en

**Amendment 328**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 5a***

***Authorisation***

***1. Member States shall provide that the controller must maintain an authorisation system which complies with the requirements of carefulness and proportionality.***

***2. Personal data shall be processed only by persons who have been authorised for the purpose by the controller with a view to the proper performance of their task and within the limits of the authorisation.***

***3. The authorisation shall include a clear description of the ways in which the person concerned is authorised to process the data and the elements of the task for the performance of which the processing is to be carried out.***

Or. nl

*Justification*

*With the aid of the authorisations, it can be ensured that personal data used in investigations and prosecutions are processed only by persons whom the controller has authorised to process them with a view to the proper performance of their task. Restricting the circle of people who have access to personal data is preferable to distinguishing between categories of the persons concerned.*

**Amendment 329**

**Jan Mulder**

**Proposal for a directive**

**Article 5 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Member States shall restrict the access to the personal data to a restricted group of duly authorised personnel.***



**Amendment 330**

**Cornelia Ernst**

**Proposal for a directive**

**Article 5 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Member States shall provide specific rules on the consequences of this categorisation, taking into account the different purposes for which data are collected. These specific rules shall include conditions for collecting data, time limits for retention, possible limitations to data subject's rights of access and information and the modalities of access to data by competent authorities.***

Or. en

**Amendment 331**

**Jan Philipp Albrecht**

**Proposal for a directive**

**Article 5 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Member States shall provide specific rules on the consequences of this categorisation, taking into account the different purposes for which data are collected and providing specific safeguards for persons who are not suspect or have not been convicted of a criminal offence. These specific rules shall include conditions for collecting data, time limits for retention, possible limitations to data subject's rights of access and information and the modalities of access to data by competent authorities***

*Justification*

*Given that law enforcement authorities need a specified purpose when collecting data, they should always be able to give a prima facie opinion in which category a data subject they belongs. If there are doubts, the “other” category can be used (and adjusted over time). It should also be considered to add a category of specifically “non-suspected persons”, see EDPS opinion, points. 349 to 354. This would mirror wording in the Europol Decision, Article 14. As the EDPS stated, the consequences of these categorisations should also be spelled out, especially as regards data subject rights – restrictions on the right of access for suspects can be justified more easily than for witnesses, for example.*

**Amendment 332**

**Carlos Coelho, Anna Maria Corazza Bildt**

**Proposal for a directive****Article 5 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. The categories of data subjects referred to in points (c), (d) and (e) of paragraph 1, i.e. data relating to people who are not suspects and in particular to children, shall be subject to specific conditions and safeguards that guarantee that these data are used proportionately and provide for significantly more limited storage periods and periodic reviews of the need to conserve those data.***

Or. pt

**Amendment 333**

**Jan Mulder**

**Proposal for a directive****Article 5 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***1b. Personal data may only be processed by personnel duly authorised by the responsible authority with the aim of the***

*sound execution of their tasks and only as far as this authorisation extends.*

Or. en

**Amendment 334**

**Jan Mulder**

**Proposal for a directive**

**Article 5 – paragraph 1 c (new)**

*Text proposed by the Commission*

*Amendment*

***1c. The authorisation shall contain a sound description of the tasks and processes of the processing operation for which the personnel concerned is authorised.***

Or. en

**Amendment 335**

**Axel Voss**

**Proposal for a directive**

**Article 6 – title**

*Text proposed by the Commission*

*Amendment*

***Different degrees of accuracy and reliability of personal data***

***Factual** accuracy*

Or. de

**Amendment 336**

**Axel Voss**

**Proposal for a directive**

**Article 6 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

**1. Member States** shall ensure that, as far

**1. The competent authorities** shall ensure

as possible, *the different categories of* personal data *undergoing processing* are *distinguished in accordance with their degree of accuracy and reliability*.

that, as far as possible, personal data are *factually accurate, complete, and, if necessary, up to date*.

Or. de

**Amendment 337**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 6 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall ensure that, as far as possible, *the different categories of* personal data *undergoing processing* are distinguished in accordance with their degree of accuracy and reliability.

*Amendment*

1. Member States shall ensure that, as far as possible, *in processing soft data on the involvement of individuals in planning or committing serious offences, other than as a suspect*, data are distinguished in accordance with their degree of accuracy and reliability.

Or. nl

*Justification*

*The police process data concerning individuals in connection with the planning or commission of an offence. In this context it is not appropriate to distinguish between degrees of reliability of personal data, as this is ultimately a matter for the courts to rule on. However, some Member States have rules regarding the quality of the data on so-called non-suspects who it is thought may possibly have been involved in serious crime (individuals on whom criminal intelligence data are held). With a view to the exchange of such data, it is important that common rules should apply regarding the accuracy and reliability of the data.*

**Amendment 338**  
**Jan Mulder**

**Proposal for a directive**  
**Article 6 – paragraph 1**

*Text proposed by the Commission*

1. Member States *shall ensure that, as far*

*Amendment*

1. Member States *should provide for*

*as possible, the different categories of personal data undergoing processing are distinguished in accordance with their degree of accuracy and reliability.*

*specific safeguards for the processing of personal data relating of persons who have not been convicted of a criminal offence, or in relation to persons of whom there is no serious ground for believing that they have committed a criminal offence.*

Or. en

## **Amendment 339**

**Axel Voss**

### **Proposal for a directive**

#### **Article 6 – paragraph 2**

*Text proposed by the Commission*

2. *Member States* shall ensure that, *as far as possible*, personal data *based on facts are distinguished from* personal data *based on personal assessments*.

*Amendment*

2. *The competent authorities* shall ensure that personal data *which are inaccurate, incomplete, or no longer up to date are not transmitted or made available. To that end, the competent authorities shall, as far as practicable, verify the quality of* personal data *before they are transmitted or made available. As far as possible, in all transmissions of data, available information shall be added which enables the receiving Member State to assess the degree of accuracy, completeness, up-to-dateness, and reliability. If personal data were transmitted without request the receiving authority shall verify without delay whether those data are necessary for the purpose for which they were transmitted.*

*If it emerges that incorrect data have been transmitted or data have been transmitted unlawfully, the recipient must be notified without delay. The recipient shall be obliged to rectify the data without delay in accordance with paragraph 1 and Article 15 or to erase them in accordance with Article 16.*

Or. de

### *Justification*

*The text proposed is based on Article 8 of Framework Decision 2008/977/JHA and prohibits the transmission of factually inaccurate data.*

#### **Amendment 340**

**Jan Philipp Albrecht**

#### **Proposal for a directive Article 6 – paragraph 2**

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

2. Member States shall ensure that, ***as far as possible***, personal data based on facts are distinguished from personal data based on personal assessments.

##### *Amendment*

2. Member States shall ensure that ***personal data which are inaccurate, incomplete or no longer up to date are not transmitted or made available, and that*** personal data based on facts are distinguished from personal data based on personal assessments. ***To this end, the competent authorities shall verify the quality of personal data before they are transmitted or made available. As far as possible, in all transmissions of data, available information shall be added which enables the receiving Member State to assess the degree of accuracy, completeness, up-to-dateness and reliability. Personal data shall not be transmitted without request from a competent authority, in particular data originally held by private parties.***

Or. en

### *Justification*

*The obligation to distinguish the categories of data according to their degree of reliability and accuracy should be unconditional. This is very important in the context of information sharing between law-enforcement agencies – information might be used far from their source, so indicating the level of reliability is important to avoid situations in which actions are taken based on a misunderstanding of the reliability of a piece of information. See EDPS opinion, points 355-358.*

**Amendment 341**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 6 – paragraph 2**

*Text proposed by the Commission*

2. Member States shall ensure that, as far as possible, personal data based on facts **are distinguished from** personal data based on personal assessments.

*Amendment*

2. Member States shall ensure that, **in the data processing referred to in paragraph 1**, as far as possible, **a distinction is made between** personal data based on facts **and** personal data based on personal assessments.

Or. nl

*Justification*

*The police process data concerning individuals in connection with the planning or commission of an offence. In this context it is not appropriate to distinguish between degrees of reliability of personal data, as this is ultimately a matter for the courts to rule on. However, some Member States have rules regarding the quality of the data on so-called non-suspects who it is thought may possibly have been involved in serious crime (individuals on whom criminal intelligence data are held). With a view to the exchange of such data, it is important that common rules should apply regarding the accuracy and reliability of the data.*

**Amendment 342**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Article 6 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 6a**

***If it emerges that incorrect data have been transmitted or data have been unlawfully transmitted, the recipient shall be notified without delay. The recipient shall be obliged to rectify the data without delay in accordance with paragraph 1 and Article 15 or to erase them in accordance with Article 16.***

Or. en

**Amendment 343**

**Axel Voss**

**Proposal for a directive**

**Article 7**

*Text proposed by the Commission*

*Amendment*

**Article 7**

**deleted**

***Lawfulness of processing***

***Member States shall provide that the processing of personal data is lawful only if and to the extent that processing is necessary:***

***(a) for the performance of a task carried out by a competent authority, based on law for the purposes set out in Article 1(1); or***

***(b) for compliance with a legal obligation to which the controller is subject; or***

***(c) in order to protect the vital interests of the data subject or of another person; or***

***(d) for the prevention of an immediate and serious threat to public security.***

Or. de

**Amendment 344**

**Cornelia Ernst**

**Proposal for a directive**

**Article 7 – paragraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

Member States shall provide that the processing of personal data is lawful only if and to the extent that processing is necessary:

Member States shall provide that the processing of personal data is lawful only if and to the extent that processing is necessary for the performance of a task carried out by a competent authority, based on ***Union or national*** law for the purposes set out in Article 1(1) ***and not further processed in a way that is incompatible***



*with these purposes.*

*(a) for the performance of a task carried out by a competent authority, based on law for the purposes set out in Article 1(1); or*

*(b) for compliance with a legal obligation to which the controller is subject; or*

*(c) in order to protect the vital interests of the data subject or of another person; or*

*(d) for the prevention of an immediate and serious threat to public security.*

Or. en

#### **Amendment 345**

**Louis Michel**

#### **Proposal for a directive**

#### **Article 7 – paragraph 1 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

*(da) for safeguarding the public interest threatened by criminal networks active in e.g. doping, match fixing or money laundering.*

Or. en

#### **Amendment 346**

**Salvatore Iacolino**

#### **Proposal for a directive**

#### **Article 7 – paragraph 1 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

*(da) for the prevention and detection of criminal offences.*

Or. it

### *Justification*

*The need to protect the data subject's interests must be weighed against the public interest in maintaining security and protecting the legal economy.*

#### **Amendment 347**

**Cornelia Ernst**

#### **Proposal for a directive**

#### **Article 7 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 7a**

#### ***Further processing for incompatible purposes***

***1. Member States may adopt legislative measures allowing further processing for incompatible purposes if such processing is strictly necessary:***

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

***(b) in order to protect the vital interests of the data subject or of another person; or***

***(c) for the prevention of an immediate and serious threat to public security.***

***2. Legislative measures referred to in paragraph 1 shall provide for:***

***(a) an individual assessment taking into account all relevant circumstances of the case; and***

***(b) adequate safeguards for the rights of the data subject.***

Or. en

#### **Amendment 348**

**Axel Voss**

#### **Proposal for a directive**

#### **Article 7 a (new)**

***Article 7a***

***Lawfulness of processing: purpose limitation***

- 1. The processing of personal data is lawful only if carried out in accordance with the following principles.***
- 2. Personal data may be collected by the competent authorities as part of their work for specified, explicit, and legitimate purposes. Legitimate purposes are served by data collection in particular if it is***
  - (a) for the performance of a task carried out by a competent authority, based on law for the purposes set out in Article 1(1); or***
  - (b) for compliance with a legal obligation to which the controller is subject; or***
  - (c) carried out with the data subject's consent to the processing of personal data relating to him or her for one or more clearly defined purposes; or***
  - (d) intended to safeguard the data subject's legitimate interests; or***
  - (e) intended to safeguard the legitimate interests of another person, unless it is clearly in the legitimate interest of the data subject that the data processing does not take place; or***
  - (f) for the prevention of a threat to public security.***
- 3. The processing of personal data must fulfil the purpose for which they were collected. Further processing for another purpose shall be permitted in so far as it***
  - (a) serves lawful purposes (paragraph 2);***
  - (b) is necessary for that other purpose; and***
  - (c) is not incompatible with the purpose for which the data were collected.***

***4. Personal data may be further processed for historical, statistical, or scientific purposes, by way of derogation from paragraph 3, if Member States provide for appropriate safeguards, for instance by making data anonymous.***

Or. de

#### *Justification*

*The amendment is based on Article 3 of Framework Decision 2008/977/JHA and sets out purpose limitation in more detail. Paragraph 4 allows data to be processed for research purposes whilst also protecting data subjects. The Commission's draft directive does not contain any provision of this kind. The reference to data which have been made anonymous, as provided for in Article 3, likewise serves the above end. The further option of obtaining the data subject's consent has been added.*

**Amendment 349**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 7 a (new)**

*Text proposed by the Commission*

*Amendment*

#### ***Article 7a***

***Member States shall prohibit the processing of personal data of other persons than those referred to in paragraph 1 when such processing is done for preventive purposes or in order to have data available for possible further use, unless:***

***(a) the purpose is indispensable for a legitimate, well-defined and specific purpose;***

***(b) the processing is strictly limited to a period not exceeding the time needed for the specific data processing operation;***

***(c) any further use for other purposes is prohibited;***

***(d) the controller is able to demonstrate the fulfilment of the requirements set out***

*in (a) and (b) of this paragraph; and  
(e) the purpose cannot be achieved by less intrusive means.*

Or. en

**Amendment 350**  
**Dimitrios Droutsas**

**Proposal for a directive**  
**Article 7 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 7a**

***Further processing***

***1. Member States shall provide that personal data may only be further processed for another purpose set out in Article 1(1) which is not compatible with the purposes for which the data were initially collected if and to the extent that such further processing is necessary and proportionate in a democratic society and specifically required by Union or national law. Prior to any processing, the Member State shall consult the data protection supervisor and conduct a data protection impact assessment.***

***2. In addition to the requirements set out in Article 7(1a), Union or national law authorising further processing as referred to in paragraph 1 shall contain explicit and detailed provisions specifying at least as to:***

***(a) the specific purposes and means of that particular processing;***

***(b) that access is allowed only by the duly authorised staff of the competent authorities in the performance of their tasks where in a specific case there are reasonable grounds for believing that the processing of the personal data will contribute substantially to the prevention,***

*investigation, detection or prosecution of criminal offences or the execution of criminal penalties; and*

*(c) that appropriate safeguards are established to ensure the protection of fundamental rights and freedoms in relation to the processing of personal data.*

*Member States may require that access to the personal data is subject to additional conditions such as judicial authorisation, in accordance with their national law.*

*3. Member States may also allow further processing for historical, statistical or scientific purposes provided that they establish appropriate safeguards, such as making the data anonymous.*

Or. en

**Amendment 351**  
**Dimitrios Droutsas**

**Proposal for a directive**  
**Article 7 b (new)**

*Text proposed by the Commission*

*Amendment*

**Article 7b**

***Different categories of data subjects***

***1. Member States shall provide that the competent authorities, for the purposes referred to in Article 1(1), may only process personal data of the following different categories of data subjects:***

***(a) persons with regard to whom there are reasonable grounds for believing that they have committed or are about to commit a criminal offence;***

***(b) persons convicted of a crime;***

***(c) victims of a criminal offence, or persons with regard to whom certain facts give reasons for believing that he or she***

*could be the victim of a criminal offence;*

*(d) third parties to the criminal offence, such as persons who might be called on to testify in investigations in connection with criminal offences or subsequent criminal proceedings, or a person who can provide information on criminal offences, or a contact or associate to one of the persons mentioned in (a) and (b).*

**2. Personal data of other data subjects than those referred to under paragraph 1 may only be processed:**

*(a) as long as necessary for the investigation or prosecution of a specific criminal offence in order to assess the relevance of the data for one of the categories indicated in paragraph 1; or*

*(b) when such processing is indispensable for targeted, preventive purposes or for the purposes of criminal analysis, if and as long as this purpose is legitimate, well-defined and specific and the processing is strictly limited to assess the relevance of the data for one of the categories indicated in paragraph 1. This is the subject to regular review at least every six months, any further use is prohibited.*

**3. Member States shall provide that additional limitations and safeguards, according to national law, apply to the further processing of personal data relating to data subjects referred to in paragraph 1(c) and (d).**

Or. en

**Amendment 352**

**Axel Voss**

**Proposal for a directive**

**Article 7 b (new)**

***Article 7b***

***Special provisions for personal data from other Member States***

***1. In addition to the general principles of data processing, the arrangements below, as set out in paragraphs 2 to 4 of this Article, shall be applicable to personal data transmitted or made available by the competent authorities of another Member State.***

***2. Personal data may be forwarded to private parties only if***

***(a) the competent authority of the Member State from which the data were obtained has consented to transmission in compliance with its national law;***

***(b) no legitimate specific interests of the data subject prevent transmission; and***

***(c) transfer is essential in particular cases for the competent authority transmitting the data to a private party for:***

***(i) the performance of a task lawfully assigned to it;***

***(ii) the prevention, investigation, detection, or prosecution of criminal offences or the execution of criminal penalties;***

***(iii) the prevention of an immediate and serious threat to public security; or***

***(iv) the prevention of serious harm to the rights of individuals.***

***The competent authority transmitting the data to a private party shall inform the latter of the purposes for which the data may exclusively be used.***

***3. Personal data may be further processed under the provisions of Article 7(3) only for the following purposes other than those for which they were transmitted or made available:***



*(a) the prevention, investigation, detection, or prosecution of criminal offences or the execution of criminal penalties other than those for which they were transmitted or made available;*

*(b) other judicial and administrative proceedings directly related to the prevention, investigation, detection, or prosecution of criminal offences or the execution of criminal penalties;*

*(c) the prevention of an immediate and serious threat to public security; or*

*(d) any other purpose only with the prior consent of the transmitting Member State or with the consent of the data subject, given in accordance with national law.*

*This exemption shall be without prejudice to Article 7(4).*

*4. Where, under the law of the transmitting Member State, specific processing restrictions apply in specific circumstances to data exchanges between competent authorities within that Member State, the transmitting authority shall inform the recipient of such restrictions. The recipient shall ensure that these processing restrictions are observed.*

Or. de

#### *Justification*

*The revised text above reproduces the arrangements set out in Article 13 of Framework Decision 2008/977/JHA for the treatment of data from other Member States and provides for special protection. Article 7a also protects Member States from which data originate and thereby establishes the basis of trust necessary for data exchange within the EU, ensuring that data transmitted will not be further processed by recipient states simply as they please.*

#### **Amendment 353**

**Axel Voss**

#### **Proposal for a directive Article 7 c (new)**

*Text proposed by the Commission*

*Amendment*

**Article 7c**

***Establishment of time limits for erasure and review***

***Appropriate time limits shall be established for the erasure of personal data or for a periodic review of the need for the storage of the data. Procedural measures shall ensure that these time limits are observed.***

Or. de

*Justification*

*The addition is taken word for word from Article 5 of Framework Decision 2008/977/JHA.*

**Amendment 354**

**Axel Voss**

**Proposal for a directive  
Article 8 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. ***Member States shall prohibit*** the processing of personal data revealing race or ethnic origin, political opinions, ***religion*** or beliefs, trade-union membership, ***of genetic data*** or of data concerning health or sex life.

1. The processing of personal data revealing racial or ethnic origin, political opinions, ***religious or philosophical*** beliefs or trade-union membership or of data concerning health or sex life ***shall be permitted only if***

Or. de

*Justification*

*This article has been reworded along the lines of Article 6 of Framework Decision 2008/977/JHA. Even though the resulting text is less sweeping, in terms of prohibition, than the draft directive, the processing of sensitive data will still be permitted only under stringent conditions. In view of the significance of DNA evidence trails, the ban on the processing of genetic data, a provision newly introduced by the Commission, has been removed.*

**Amendment 355**  
**Cornelia Ernst**

**Proposal for a directive**  
**Article 8 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall prohibit the processing of personal data revealing race or ethnic origin, political opinions, religion or beliefs, trade-union membership, of genetic data or of data concerning health or sex life.

*Amendment*

1. Member States shall prohibit the processing of personal data revealing race or ethnic origin, political opinions, religion or ***philosophical*** beliefs, ***sexual orientation or gender identity***, trade-union membership ***and activities***, of genetic data or of data concerning health or sex life.

Or. en

*Justification*

*Original list of categories is too narrow. Aligning with Regulation.*

**Amendment 356**  
**Carlos Coelho**

**Proposal for a directive**  
**Article 8 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall prohibit the processing of personal data revealing race or ethnic origin, political opinions, religion or beliefs, trade-union membership, of genetic data or of data concerning health or sex life.

*Amendment*

1. Member States shall prohibit the processing of personal data revealing ***private life***, race or ethnic origin, political opinions, religion or beliefs, trade-union membership, of genetic data or of data concerning health or sex life.

Or. pt

**Amendment 357**  
**Axel Voss**

**Proposal for a directive**  
**Article 8 – paragraph 2 – point a**

*Text proposed by the Commission*

(a) the processing is authorised by a law providing appropriate safeguards;

*Amendment*

(a) the processing is ***absolutely necessary*** ***and*** authorised by a law providing appropriate safeguards; or

Or. de

**Amendment 358**  
**Axel Voss**

**Proposal for a directive**  
**Article 8 – paragraph 2 – point b**

*Text proposed by the Commission*

(b) the processing is necessary ***to protect the vital interests of*** the data subject ***or of another person; or***

*Amendment*

(b) the processing ***relates to data which are manifestly made public by*** the data subject.

Or. de

**Amendment 359**  
**Carlos Coelho**

**Proposal for a directive**  
**Article 8 – paragraph 2 – point c**

*Text proposed by the Commission*

(c) the processing relates to data which are manifestly made public by the data subject.

*Amendment*

(c) the processing relates to data which are manifestly made public by the data subject, ***provided that they are relevant and strictly necessary for the purpose pursued.***

Or. pt

**Amendment 360**  
**Axel Voss**

**Proposal for a directive**  
**Article 9 – paragraph 1**

*Text proposed by the Commission*

1. **Member States shall provide that** measures which produce an adverse legal effect for the data subject or significantly affect them and which are based solely on automated processing of personal data intended to evaluate certain personal aspects relating to the data subject shall be ***prohibited unless*** authorised by a law which also lays down measures to safeguard the data subject's legitimate interests.

*Amendment*

1. Measures which produce an adverse legal effect for the data subject or significantly affect them and which are based solely on automated processing of personal data intended to evaluate certain personal aspects relating to the data subject shall be ***permitted only if*** authorised by a law which also lays down measures to safeguard the data subject's legitimate interests.

Or. de

*Justification*

*The revised text of this article reverts to the wording of the framework decision (2008/977/JHA, Article 7). Profiling will still be subject to strict conditions, but not wholly prohibited.*

**Amendment 361**  
**Cornelia Ernst**

**Proposal for a directive**  
**Article 9 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall provide that measures which produce ***an adverse*** legal effect for the data subject or significantly affect them and which are based ***solely on automated processing of personal data intended to evaluate certain personal aspects relating to the data subject shall be prohibited unless authorised by a law which also lays down measures to safeguard the data subject's legitimate interests.***

*Amendment*

1. Member States shall provide that measures which produce ***a*** legal effect for the data subject or significantly affect them and which are based on ***profiling shall be prohibited unless authorised by a law which also lays down measures to safeguard the data subject's legitimate interests, including the right to be provided with meaningful information about the logic used in the profiling, and the right to obtain human intervention, including an explanation of the decision reached after such intervention.***

Or. en

## *Justification*

*Persons subjected to profiling should be informed about it, including being provided with meaningful information about the logic used in the profiling measure.*

### **Amendment 362**

**Jan Mulder**

#### **Proposal for a directive**

#### **Article 9 – paragraph 1**

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

1. Member States shall provide that measures which produce an adverse legal effect for the data subject or significantly affect them and which are based ***solely*** on automated processing of personal data intended to evaluate certain personal aspects relating to the data subject shall be prohibited unless authorised by a law which also lays down measures to safeguard the data subject's legitimate interests.

##### *Amendment*

1. Member States shall provide that measures which produce an adverse legal effect for the data subject or significantly affect them and which are based ***partially or fully*** on automated processing of personal data intended to evaluate certain personal aspects relating to the data subject shall be prohibited unless authorised by a law which also lays down measures to safeguard the data subject's legitimate interests.

Or. en

### **Amendment 363**

**Jan Philipp Albrecht**

#### **Proposal for a directive**

#### **Article 9 – paragraph 1**

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

1. Member States shall provide that measures which produce an adverse ***legal*** effect for the data subject or significantly affect them and which are based solely on automated processing of personal data intended to evaluate certain personal aspects relating to the data subject shall be prohibited ***unless authorised by a law which also lays down measures to safeguard the data subject's legitimate***

##### *Amendment*

1. Member States shall provide that measures which produce an adverse effect for the data subject or significantly affect them and which are based solely on automated processing of personal data intended to evaluate certain personal aspects relating to the data subject shall be prohibited.

*interests.*

Or. en

*Justification*

*Profiling measures that can have an adverse effect on the data subject should always include a human element.*

**Amendment 364**

**Sophia in 't Veld**

**Proposal for a directive**

**Article 9 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall provide *that measures* which *produce an adverse* legal effect *for the data subject* or significantly *affect them* and which *are* based *solely on* automated processing of personal data intended to evaluate certain personal aspects relating to *the data subject shall be prohibited unless authorised by a law which also lays down measures to safeguard the data subject's legitimate interests.*

*Amendment*

1. Member States shall provide *that every data subject has the right not to be subject to a measure* which *produces a* legal effect *concerning this natural person*, or significantly *affects this natural person*, and which *is* based *on partially or fully* automated processing of personal data intended to evaluate certain personal aspects relating to *this natural person.*

Or. en

**Amendment 365**

**Birgit Sippel, Josef Weidenholzer**

**Proposal for a directive**

**Article 9 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall provide that measures which produce an adverse legal effect for the data subject or *significantly* affect them and which are based *solely* on automated processing of personal data

*Amendment*

1. Member States shall provide that measures which produce an adverse legal effect for the data subject or *relevantly* affect them and which are based *primarily* on automated processing of personal data

intended to evaluate certain personal aspects relating to the data subject shall be prohibited unless authorised by a law which also lays down measures to safeguard the data subject's legitimate interests.

intended to evaluate certain personal aspects relating to the data subject shall be prohibited unless authorised by a law which also lays down measures to safeguard the data subject's legitimate interests.

Or. en

**Amendment 366**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 9 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Subject to the other provisions of this Directive, a natural person may be subjected to a measure of the kind referred to in paragraph 1 only if the processing is expressly authorized by a Union or Member State law which also lays down suitable measures to safeguard the data subject's legitimate interest.***

Or. en

**Amendment 367**  
**Axel Voss**

**Proposal for a directive**  
**Article 9 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

***2. Automated processing of personal data intended to evaluate certain personal aspects relating to the data subject shall not be based solely on special categories of personal data referred to in Article 8.***

***deleted***

Or. de



### *Justification*

*Paragraph 2 would give rise to particularly extensive profiling and could easily be circumvented.*

#### **Amendment 368**

**Cornelia Ernst**

#### **Proposal for a directive**

#### **Article 9 – paragraph 2**

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

2. Automated processing of personal data intended to evaluate certain personal aspects relating to the data subject shall not ***be based solely on*** special categories of personal data referred to in Article 8.

##### *Amendment*

2. Automated processing of personal data intended to evaluate certain personal aspects relating to the data subject shall not ***include or generate*** special categories of personal data referred to in Article 8.

Or. en

### *Justification*

*The protections against the use of special categories of data should be strengthened.*

#### **Amendment 369**

**Jan Philipp Albrecht**

#### **Proposal for a directive**

#### **Article 9 – paragraph 2**

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

2. Automated processing of personal data intended to ***evaluate certain personal aspects relating to*** the data subject shall ***not be based solely on*** special categories of personal data referred to in Article 8.

##### *Amendment*

2. Automated processing of personal data intended to ***single out a data subject without an initial suspicion that*** the data subject ***might have committed or will be committing a criminal offence*** shall ***only be lawful if and to the extent that it is strictly necessary for the investigation of a serious criminal offence or the prevention of a clear and imminent danger, established on factual indications, to public security, the existence of the state, or the life of persons. It shall not include***

**or generate** special categories of personal data referred to in Article 8.

Or. en

*Justification*

*A dragnet investigation intended to identify potential suspects without an initial suspicion against them must have an extremely high threshold. The Amendment is based on the German Constitutional Court decision BVerfG BvR 518/02, 4.4.2006.*

**Amendment 370**

**Cornelia Ernst**

**Proposal for a directive**

**Article 9 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Profiling that, whether intentionally or otherwise, has the effect of discriminating against individuals on the basis of race or ethnic origin, socio-economic status, political opinions, religion or philosophical beliefs, trade union membership, or sexual orientation or gender identity, or that, whether intentionally or otherwise, result in measures which have such effect, shall be prohibited in all cases.***

Or. en

*Justification*

*The provisions against discriminating profiling should be strengthened.*

**Amendment 371**

**Jan Philipp Albrecht**

**Proposal for a directive**

**Article 9 – paragraph 2 a (new)**

***2a. Profiling that (whether intentionally or otherwise) has the effect of discriminating against individuals on the basis of race or ethnic origin, political opinions, religion or beliefs, trade union membership, gender or sexual orientation, or that (whether intentionally or otherwise) results in measures which have such effect, shall be prohibited in all cases.***

Or. en

*Justification*

*Profiling can entail serious risks for data subjects. It is prone to reinforcing discriminations, making decisions less transparent and carries an unavoidable risk of wrong decisions. For these reasons, it should be tightly regulated: its use should be clearly limited, and in those cases where it can be used, there should be safeguards against discrimination. Profiling tends to be useless for very rare characteristics, due to the risk of false positives. Further, there is a serious risk of unreliable and (in effect) discriminatory profiles being widely used.*

**Amendment 372**

**Axel Voss**

**Proposal for a directive**

**Article 10 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Member States shall provide that the controller takes ***all*** reasonable steps to have transparent and easily accessible policies with regard to the processing of personal data and for the exercise of the data subjects' rights.

1. Member States shall provide that the controller takes ***appropriate and*** reasonable steps to have transparent and easily accessible policies with regard to the processing of personal data and for the exercise of the data subjects' rights.

Or. de

**Amendment 373**

**Axel Voss**

**Proposal for a directive**  
**Article 10 – paragraph 2**

*Text proposed by the Commission*

2. Member States shall provide that any information and any communication relating to the processing of personal data are to be provided by the controller to the data subject in **an** intelligible form, using clear and plain language.

*Amendment*

2. Member States shall provide that any information and any communication relating to the processing of personal data are to be provided by the controller to the data subject in **as** intelligible **a** form **as possible**, using clear and plain language.

Or. de

**Amendment 374**  
**Cornelia Ernst**

**Proposal for a directive**  
**Article 10 – paragraph 2**

*Text proposed by the Commission*

2. Member States shall provide that any information and any communication relating to the processing of personal data are to be provided by the controller to the data subject in an intelligible form, using clear and plain language.

*Amendment*

2. Member States shall provide that any information and any communication relating to the processing of personal data are to be provided by the controller to the data subject in an intelligible form, using clear and plain language. ***This communication shall be adapted to the data subject, if necessary through the use of simple language and/or foreign language.***

Or. en

**Amendment 375**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Article 10 – paragraph 2**

*Text proposed by the Commission*

2. Member States shall provide that any

*Amendment*

2. Member States shall provide that any

information and any communication relating to the processing of personal data are **to be** provided by the controller to the data subject in an intelligible form, using clear and plain language.

information and any communication relating to the processing of personal data are provided by the controller to the data subject in an intelligible form, using clear and plain language, ***adapted to the data subject, in particular where that information is addressed specifically to a child.***

Or. en

#### **Amendment 376**

**Anna Maria Corazza Bildt, Carlos Coelho**

#### **Proposal for a directive Article 10 – paragraph 2**

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

2. Member States shall provide that any information and any communication relating to the processing of personal data are to be provided by the controller to the data subject in an intelligible form, using clear and plain language.

##### *Amendment*

2. Member States shall provide that any information and any communication relating to the processing of personal data are to be provided by the controller to the data subject in an intelligible form, using clear and plain language. ***If the data subject is a child that information should be provided in a child-friendly way.***

Or. en

#### **Amendment 377**

**Jan Mulder**

#### **Proposal for a directive Article 10 – paragraph 3**

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

3. Member States shall provide that the controller takes all ***reasonable*** steps to establish procedures for providing the information referred to in Article 11 and for the exercise of the rights of data subjects referred to in Articles 12 to 17.

##### *Amendment*

3. Member States shall provide that the controller takes all steps to establish procedures for providing the information referred to in Article 11 and for the exercise of the rights of data subjects referred to in Articles 12 to 17.

**Amendment 378**

**Axel Voss**

**Proposal for a directive**

**Article 10 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

**4. Member States shall provide that the controller informs the data subject about the follow-up given to their request without undue delay.**

**deleted**

Or. de

**Amendment 379**

**Cornelia Ernst**

**Proposal for a directive**

**Article 10 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

5. Member States shall provide that the information and any action taken by the controller following a request referred to in paragraphs 3 and 4 are free of charge. Where requests are **vexatious**, in particular because of their repetitive character, **or the size or volume of the request**, the controller may charge a fee for providing the information or taking the action requested, **or the controller may not take the action requested**. In that case, the controller shall bear the burden of proving the **vexatious** character of the request.

5. Member States shall provide that the information and any action taken by the controller following a request referred to in paragraphs 3 and 4 are free of charge. Where requests are **manifestly excessive**, in particular because of their repetitive character, the controller may charge a fee for providing the information or taking the action requested. In that case, the controller shall bear the burden of proving the **manifestly excessive** character of the request.

Or. en

**Amendment 380**

**Jan Mulder**

**Proposal for a directive**  
**Article 10 – paragraph 5**

*Text proposed by the Commission*

5. Member States shall provide that the information and any action taken by the controller following a request referred to in paragraphs 3 and 4 are free of charge. Where requests are vexatious, in particular because of their repetitive character, or the size or volume of the request, the controller may charge a fee for providing the information or taking the action requested, or the controller may not take the action requested. In that case, the controller shall bear the burden of proving the vexatious character of the request.

*Amendment*

5. Member States shall provide that the information and any action taken by the controller following a request referred to in paragraphs 3 and 4 are free of charge **and in written form**. Where requests are vexatious, in particular because of their repetitive character, or the size or volume of the request, the controller may charge a fee for providing the information or taking the action requested, or the controller may not take the action requested. In that case, the controller shall bear the burden of proving the vexatious character of the request.

Or. en

**Amendment 381**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Article 10 – paragraph 5**

*Text proposed by the Commission*

5. Member States shall provide that the information and any action taken by the controller following a request referred to in paragraphs 3 and 4 are free of charge. Where requests are **vexatious**, in particular because of their repetitive character, **or the size or volume of the request**, the controller may charge a fee for providing the information or taking the action requested, **or the controller may not take the action requested**. In that case, the controller shall bear the burden of proving the **vexatious** character of the request.

*Amendment*

5. Member States shall provide that the information and any action taken by the controller following a request referred to in paragraphs 3 and 4 are free of charge. Where requests are **manifestly excessive**, in particular because of their repetitive character, the controller may charge a **reasonable** fee for providing the information or taking the action requested. In that case, the controller shall bear the burden of proving the **excessive** character of the request.

Or. en

*Justification*

*Aligned with the draft report on the data protection Regulation. The controller should never be able to refuse to take action or provide information that is based on a data subject's right.*

**Amendment 382**

**Birgit Sippel, Josef Weidenholzer**

**Proposal for a directive**

**Article 10 – paragraph 5**

*Text proposed by the Commission*

5. Member States shall provide that the information and any action taken by the controller following a request referred to in paragraphs 3 and 4 are free of charge.

*Where requests are vexatious, in particular because of their repetitive character, or the size or volume of the request, the controller may charge a fee for providing the information or taking the action requested, or the controller may not take the action requested. In that case, the controller shall bear the burden of proving the vexatious character of the request.*

*Amendment*

5. Member States shall provide that the information and any action taken by the controller following a request referred to in paragraphs 3 and 4 are free of charge.

Or. en

**Amendment 383**

**Cornelia Ernst**

**Proposal for a directive**

**Article 10 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 10a**

***Rights in relation to recipients***

***Member States shall provide that the controller shall communicate any change, rectification or erasure, carried out in accordance with Articles 15 and 16 of this Directive or for other reasons, to each***



*recipient to whom the data have been disclosed and obtain information on the actions taken following this communication, unless this proves impossible or involves a disproportionate effort.*

Or. en

**Amendment 384**

**Axel Voss**

**Proposal for a directive**

**Article 11**

*Text proposed by the Commission*

*Amendment*

***1. Where personal data relating to a data subject are collected, Member States shall ensure that the controller takes all appropriate measures to provide the data subject with at least the following information:***

***deleted***

***(a) the identity and the contact details of the controller and of the data protection officer;***

***(b) the purposes of the processing for which the personal data are intended;***

***(c) the period for which the personal data will be stored;***

***(d) the existence of the right to request from the controller access to and rectification, erasure or restriction of processing of the personal data concerning the data subject;***

***(e) the right to lodge a complaint to the supervisory authority referred to in Article 39 and its contact details;***

***(f) the recipients or categories of recipients of the personal data, including in third countries or international organisations;***

***(g) any further information in so far as such further information is necessary to***

*guarantee fair processing in respect of the data subject, having regard to the specific circumstances in which the personal data are processed.*

*2. Where the personal data are collected from the data subject, the controller shall inform the data subject, in addition to the information referred to in paragraph 1, whether the provision of personal data is obligatory or voluntary, as well as the possible consequences of failure to provide such data.*

*3. The controller shall provide the information referred to in paragraph 1:*

*(a) at the time when the personal data are obtained from the data subject, or*

*(b) where the personal data are not collected from the data subject, at the time of the recording or within a reasonable period after the collection having regard to the specific circumstances in which the data are processed.*

*4. Member States may adopt legislative measures delaying, restricting or omitting the provision of the information to the data subject to the extent that, and as long as, such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the legitimate interests of the person concerned:*

*(a) to avoid obstructing official or legal inquiries, investigations or procedures;*

*(b) to avoid prejudicing the prevention, detection, investigation and prosecution of criminal offences or for the execution of criminal penalties;*

*(c) to protect public security;*

*(d) to protect national security;*

*(e) to protect the rights and freedoms of others.*

*5. Member States may determine categories of data processing which may wholly or partly fall under the exemptions*

*of paragraph 4.*

Or. de

*Justification*

*The only entitlement being curtailed here relates to information not requested at the time of data collection, which should instead be subject to Member States' rules. The data subject's right to the information set out in Article 12 will not be affected.*

**Amendment 385**

**Jan Philipp Albrecht**

**Proposal for a directive**

**Article 11 – paragraph 1 – point b**

*Text proposed by the Commission*

(b) the purposes of the processing for which the personal data are intended;

*Amendment*

(b) ***the legal basis and*** the purposes of the processing for which the personal data are intended;

Or. en

*Justification*

*Data subjects should be informed about the legal basis of the collection of their personal data. This also ensures that the data controller is always aware of the legal basis for its activities when collecting personal data.*

**Amendment 386**

**Cornelia Ernst**

**Proposal for a directive**

**Article 11 – paragraph 1 – point f**

*Text proposed by the Commission*

(f) the recipients ***or categories of recipients*** of the personal data, including in third countries or international organisations;

*Amendment*

(f) the recipients of the personal data, including in third countries or international organisations ***and on potential access to the data under the rules of that third country or international organisation;***

**Amendment 387**

**Cornelia Ernst**

**Proposal for a directive**

**Article 11 – paragraph 1 – point f a (new)**

*Text proposed by the Commission*

*Amendment*

*(fa) where the controller processes personal data as described in Article 9(1), information about the existence of processing for a measure of the kind referred to in Article 9(1) and the intended effects of such processing on the data subject;*

Or. en

**Amendment 388**

**Jan Philipp Albrecht**

**Proposal for a directive**

**Article 11 – paragraph 1 – point f a (new)**

*Text proposed by the Commission*

*Amendment*

*(fa) where the controller processes personal data as described in Article 9(1), information about the existence of processing for a measure of the kind referred to in Article 9(1) and the intended effects of such processing on the data subject;*

Or. en

*Justification*

*Information should be provided on profiling if it takes place.*

**Amendment 389**

**Cornelia Ernst**

**Proposal for a directive**

**Article 11 – paragraph 1 – point f b (new)**

*Text proposed by the Commission*

*Amendment*

***(fb) information regarding specific security measures taken to protect personal data;***

Or. en

**Amendment 390**

**Jan Philipp Albrecht**

**Proposal for a directive**

**Article 11 – paragraph 1 – point f b (new)**

*Text proposed by the Commission*

*Amendment*

***(fb) information regarding specific security measures taken to protect personal data;***

Or. en

**Amendment 391**

**Cornelia Ernst**

**Proposal for a directive**

**Article 11 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Where the personal data are not collected from the data subject, the controller shall inform the data subject, in addition to the information referred to in paragraph 1, from which source the data originate.***

Or. en

**Amendment 392**  
**Jan Philipp Albrecht**

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

*Text proposed by the Commission*

*Amendment*

***2a. Where the personal data are not collected from the data subject, the controller shall inform the data subject, in addition to the information referred to in paragraph 1, from which source the data originate.***

Or. en

**Amendment 393**  
**Nuno Melo**

**Proposal for a directive**  
**Article 11 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

***4. Member States may adopt legislative measures delaying, restricting or omitting the provision of the information to the data subject to the extent that, and as long as, such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the legitimate interests of the person concerned:***

***deleted***

***(a) to avoid obstructing official or legal inquiries, investigations or procedures;***

***(b) to avoid prejudicing the prevention, detection, investigation and prosecution of criminal offences or the execution of criminal penalties;***

***(c) to protect public security;***

***(d) to protect national security;***

***(e) to protect the rights and freedoms of***

*others.*

Or. pt

#### **Amendment 394**

**Cornelia Ernst**

#### **Proposal for a directive**

#### **Article 11 – paragraph 4 – introductory part**

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

4. Member States may adopt legislative measures delaying, restricting ***or omitting*** the provision of the information to the data subject to the extent that, and as long as, such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the legitimate interests of the person concerned:

##### *Amendment*

4. Member States may adopt legislative measures delaying ***or*** restricting the provision of the information to the data subject to the extent that, and as long as, such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the ***fundamental rights and*** legitimate interests of the person concerned, ***based on a concrete and individual examination of each specific case***:

Or. en

#### **Amendment 395**

**Carlos Coelho**

#### **Proposal for a directive**

#### **Article 11 – paragraph 4 – introductory part**

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

4. Member States may adopt legislative measures delaying, restricting ***or omitting*** the provision of the information to the data subject to the extent that, and as long as, such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the ***legitimate interests*** of the person concerned:

##### *Amendment*

4. Member States may adopt legislative measures delaying ***or*** restricting the provision of the information to the data subject to the extent that, and as long as, such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the ***rights and guarantees*** of the person concerned:

**Amendment 396**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Article 11 – paragraph 4 – introductory part**

*Text proposed by the Commission*

4. Member States may adopt legislative measures delaying, ***restricting or omitting*** the provision of the information to the data subject to the extent that, and as long as, such partial or complete restriction ***constitutes a*** necessary and proportionate ***measure*** in a democratic society with due regard for the legitimate interests of the person concerned:

*Amendment*

4. Member States may adopt legislative measures delaying ***or restricting*** the provision of the information to the data subject to the extent that, and as long as, such partial or complete restriction ***is strictly*** necessary and proportionate in a democratic society with due regard for ***the fundamental rights and*** the legitimate interests of the person concerned:

Or. en

**Amendment 397**  
**Cornelia Ernst**

**Proposal for a directive**  
**Article 11 – paragraph 4 – point d**

*Text proposed by the Commission*

***(d) to protect national security;***

*Amendment*

***deleted***

Or. en

**Amendment 398**  
**Cornelia Ernst**

**Proposal for a directive**  
**Article 11 – paragraph 5**

*Text proposed by the Commission*

***5. Member States may determine***

*Amendment*

***deleted***



*categories of data processing which may wholly or partly fall under the exemptions of paragraph 4.*

Or. en

**Amendment 399**

**Nuno Melo**

**Proposal for a directive**

**Article 11 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

*5. Member States may determine categories of data processing which may wholly or partly fall under the exemptions of paragraph 4.*

*deleted*

Or. pt

**Amendment 400**

**Sophia in 't Veld**

**Proposal for a directive**

**Article 11 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

*5. Member States may determine categories of data processing which may wholly or partly fall under the exemptions of paragraph 4.*

*5. Member States shall provide that the controller shall assess, in each specific case, by means of a concrete and individual examination, whether a partial or complete restriction for one of the reasons referred to in paragraph 4 applies.*

Or. en

**Amendment 401**

**Jan Mulder**

**Proposal for a directive**

**Article 11 – paragraph 5**

*Text proposed by the Commission*

5. Member States may determine categories of data processing which may wholly or partly fall under the exemptions of paragraph 4.

*Amendment*

**5. Member States shall provide that the controller shall assess, in each specific case, by means of a concrete and individual examination, whether a partial or complete restriction for one of the reasons referred to in paragraph 4 applies.** Member States may *also* determine categories of data processing which may wholly or partly fall under the exemptions of paragraph 4(a), (b), (c) and(d).

Or. en

**Amendment 402**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Article 11 – paragraph 5**

*Text proposed by the Commission*

5. Member States *may* determine categories of data processing which may wholly or partly fall under the exemptions of paragraph 4.

*Amendment*

5. Member States **shall provide that the controller shall assess, in each specific case, by means of a concrete and individual examination, whether a partial or complete restriction for one of the reasons referred to in paragraph 4 applies.** Member State law may also determine categories of data processing which may wholly or partly fall under the exemptions of paragraph 4(a), (b), (c) and (d).

Or. en

**Amendment 403**  
**Axel Voss**

**Proposal for a directive**  
**Article 11 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 11a**

***Information to the data subject***

***1. Member States shall ensure that the data subject is informed regarding the collection or processing of personal data by the controller, in accordance with national law.***

***2. Where personal data have been transmitted or made available between Member States, each Member State may, in accordance with its national law as referred to in paragraph 1, request the other Member State not to inform the data subject. In that event the latter Member State shall refrain from informing the data subject without the prior consent of the other Member State.***

Or. de

*Justification*

*The only entitlement being curtailed here relates to information not requested at the time of data collection, which should instead be subject to Member States' rules. The data subject's right to the information set out in Article 12 will not be affected.*

**Amendment 404**

**Birgit Sippel, Josef Weidenholzer**

**Proposal for a directive**

**Article 12 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

(a) the purposes of the processing;

(a) the purposes of the processing ***as well as the legal grounds for processing;***

Or. en

**Amendment 405**  
**Cornelia Ernst**

**Proposal for a directive**  
**Article 12 – paragraph 1 – point c**

*Text proposed by the Commission*

(c) the recipients *or categories of recipients* to whom the personal data have been disclosed, *in particular* the recipients in third countries;

*Amendment*

(c) the recipients to whom the personal data have been disclosed, *including all* the recipients in third countries;

Or. en

**Amendment 406**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Article 12 – paragraph 1 – point c**

*Text proposed by the Commission*

(c) the recipients *or categories of recipients* to whom the personal data have been disclosed, in particular the recipients in third countries;

*Amendment*

(c) the recipients to whom the personal data have been disclosed, in particular the recipients in third countries;

Or. en

*Justification*

*The data subject needs to know exactly to whom its data was transferred to, in order to guarantee that the rights under this Directive can also be exercised towards further data controllers.*

**Amendment 407**  
**Carlos Coelho**

**Proposal for a directive**  
**Article 12 – paragraph 1 – point g**

*Text proposed by the Commission*

(g) communication of the personal data

*Amendment*

(g) communication of the personal data

undergoing processing and of any  
**available** information as to their source.

undergoing processing and of any  
information as to their source.

Or. pt

**Amendment 408**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Article 12 – paragraph 1 – point g**

*Text proposed by the Commission*

(g) communication of the personal data  
undergoing processing and of any available  
information as to their source.

*Amendment*

(g) communication of the personal data  
undergoing processing and of any available  
information as to their source, **and if  
applicable, intelligible information about  
the logic involved in any automated  
processing.**

Or. en

**Amendment 409**  
**Cornelia Ernst**

**Proposal for a directive**  
**Article 12 – paragraph 1 – point g a (new)**

*Text proposed by the Commission*

*Amendment*

**(ga) the significance and envisaged  
consequences of the processing, at least in  
the case of profiling;**

Or. en

**Amendment 410**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 12 – paragraph 1 – point g a (new)**

*Text proposed by the Commission*

*Amendment*

***(ga) the significance and envisaged consequences of such processing, at least in the case of the measures referred to in Article 9.***

Or. en

*Justification*

*Refers to profiling, similar to the proposal for the general data protection Regulation.*

#### **Amendment 411**

**Cornelia Ernst**

#### **Proposal for a directive**

#### **Article 12 – paragraph 1 – point g b (new)**

*Text proposed by the Commission*

*Amendment*

***(gb) in the case of measures based on profiles, meaningful information about the logic used in the profiling.***

Or. en

#### **Amendment 412**

**Cornelia Ernst**

#### **Proposal for a directive**

#### **Article 12 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. Member States shall provide for the right of the data subject to obtain from the controller a copy of the personal data undergoing processing.

2. Member States shall provide for the right of the data subject to obtain from the controller a copy of the personal data undergoing processing. ***Where the data subject makes the request in electronic form, the information shall be provided in electronic form, unless otherwise requested by the data subject.***

**Amendment 413**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Article 12 – paragraph 2**

*Text proposed by the Commission*

2. Member States shall provide for the right of the data subject to obtain from the controller a copy of the personal data undergoing processing.

*Amendment*

2. Member States shall provide for the right of the data subject to obtain from the controller a copy of the personal data undergoing processing. ***Where the data subject makes the request in electronic form, the information shall be provided in an electronic and interoperable format allowing unhindered further use by the data subject, unless otherwise requested by the data subject.***

Or. en

*Justification*

*In the 21st century, a data subject can reasonably expect to receive the copy its personal data in an electronic format. This format must be interoperable so the data subject can use the data further.*

**Amendment 414**  
**Axel Voss**

**Proposal for a directive**  
**Article 13 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. Member States may adopt legislative measures restricting, wholly or partly, the data subject's right of access to the extent that such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the legitimate interests of the

*Amendment*

1. Member States may adopt legislative measures restricting, wholly or partly, ***depending on the individual case***, the data subject's right of access to the extent that such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the legitimate interests of the

person concerned:

person concerned:

Or. de

*Justification*

*The crucial right of access should invariably depend on the particular circumstances.*

**Amendment 415**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 13 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. Member States may adopt legislative measures restricting, wholly or partly, the data subject's right of access to the extent that such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the legitimate interests of the person concerned:

*Amendment*

1. Member States may adopt legislative measures restricting, wholly or partly, the data subject's right of access to the extent that such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the ***fundamental rights and*** legitimate interests of the person concerned:

Or. en

**Amendment 416**  
**Carlos Coelho**

**Proposal for a directive**  
**Article 13 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. Member States may adopt legislative measures restricting, wholly or partly, the data subject's right of access to the extent that such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the ***legitimate interests*** of the person concerned:

*Amendment*

1. Member States may adopt legislative measures restricting, wholly or partly, the data subject's right of access to the extent that such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the ***rights and guarantees*** of the person concerned:



**Amendment 417**

**Nuno Melo**

**Proposal for a directive**

**Article 13 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. Member States may adopt legislative measures restricting, wholly or partly, the data subject's right of access to the extent that such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society ***with due regard for the legitimate interests*** of the person concerned:

*Amendment*

1. Member States may adopt legislative measures restricting, wholly or partly, the data subject's right of access to the extent that such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society, ***respecting the essence of the rights and fundamental freedoms*** of the person concerned ***under Article 52 of the Charter of Fundamental Rights of the European Union***:

**Amendment 418**

**Jan Mulder**

**Proposal for a directive**

**Article 13 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. Member States may adopt legislative measures restricting, wholly or partly, the data subject's right of access to the extent that such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the legitimate interests of the person concerned:

*Amendment*

1. Member States may adopt legislative measures restricting, wholly or partly, the data subject's right of access to the extent that such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the legitimate interests ***and fundamental rights*** of the person concerned:

**Amendment 419**  
**Cornelia Ernst**

**Proposal for a directive**  
**Article 13 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. Member States may adopt legislative measures restricting, wholly or partly, the data subject's right of access to the extent that such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the legitimate interests of the person concerned:

*Amendment*

1. Member States may adopt legislative measures restricting, wholly or partly, the data subject's right of access to the extent ***and for the period*** that such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the ***fundamental rights and*** legitimate interests of the person concerned, ***based on a concrete and individual examination of each specific case:***

Or. en

**Amendment 420**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Article 13 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. Member States may adopt legislative measures restricting, wholly or partly, the data subject's right of access to the extent that such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the legitimate interests of the person concerned:

*Amendment*

1. Member States may adopt legislative measures restricting, wholly or partly, the data subject's right of access to the extent ***and for the period*** that such partial or complete restriction constitutes a necessary and ***strictly*** proportionate measure in a democratic society with due regard for the legitimate interests ***and fundamental rights*** of the person concerned, ***based on a concrete and individual examination of each specific case:***

Or. en

*Justification*

*Limitations to the right to data access have to be decided on a case-by-case basis.*

**Amendment 421**

**Axel Voss**

**Proposal for a directive**

**Article 13 – paragraph 1 – point b**

*Text proposed by the Commission*

(b) to avoid prejudicing the prevention, detection, investigation and prosecution of criminal offences or the execution of criminal penalties;

*Amendment*

(b) to avoid prejudicing the prevention *of risks*, the detection, investigation and prosecution of criminal offences or the execution of criminal penalties;

Or. de

**Amendment 422**

**Jan Philipp Albrecht**

**Proposal for a directive**

**Article 13 – paragraph 1 – point c**

*Text proposed by the Commission*

*(c) to protect public security;*

*Amendment*

*deleted*

Or. en

**Amendment 423**

**Cornelia Ernst**

**Proposal for a directive**

**Article 13 – paragraph 1 – point d**

*Text proposed by the Commission*

*(d) to protect national security;*

*Amendment*

*deleted*

Or. en

**Amendment 424**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Article 13 – paragraph 1 – point d**

*Text proposed by the Commission*

***(d) to protect national security;***

*Amendment*

***deleted***

Or. en

**Amendment 425**  
**Axel Voss**

**Proposal for a directive**  
**Article 13 – paragraph 1 – point e**

*Text proposed by the Commission*

***(e) to protect the rights and freedoms of others.***

*Amendment*

***(e) to protect **the data subject or** the rights and freedoms of others.***

Or. de

**Amendment 426**  
**Nuno Melo**

**Proposal for a directive**  
**Article 13 – paragraph 1 – point e**

*Text proposed by the Commission*

***(e) to protect the rights and freedoms of **others**.***

*Amendment*

***(e) to protect the rights and freedoms of **third parties**.***

Or. pt

**Amendment 427**  
**Axel Voss**

**Proposal for a directive**  
**Article 13 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

**2. Member States may determine by law categories of data processing which may wholly or partly fall under the exemptions of paragraph 1.**

**deleted**

Or. de

*Justification*

*Refusal of access must invariably depend on the particular circumstances.*

**Amendment 428**  
**Nuno Melo**

**Proposal for a directive**  
**Article 13 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. Member States may determine by law categories of data processing which may wholly or partly fall under the exemptions of paragraph 1.

2. Member States may determine by law categories of data processing which may wholly or partly fall under the exemptions of **points (a) to (d)** of paragraph 1.

Or. pt

**Amendment 429**  
**Cornelia Ernst**

**Proposal for a directive**  
**Article 13 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

**2. Member States may determine by law categories of data processing which may wholly or partly fall under the exemptions of paragraph 1.**

**deleted**

Or. en

