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*Committee on Civil Liberties, Justice and Home Affairs*

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**2012/0010(COD)**

8.3.2013

## **AMENDMENTS (2)**

### **430 - 673**

**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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PE506.128v02-00



**Amendment 430**  
**Jan Philipp Albrecht**

**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

*Justification*

*The right to data subject access must not be restricted for whole categories of processing. Limitations to this right can only be legitimate in individual cases.*

**Amendment 431**  
**Jan Mulder**

**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 paragraph 1. ***These exemptions, however, shall not be applied in a general way but only in specific circumstances and accompanied by a reasoned justification. The controller shall be responsible for these individual, reasoned assessments.***

Or. en

**Amendment 432**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 13 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Member States shall apply the exemptions of paragraphs 1 and 2 in a restrictive way, allowing the right of access to be applied to the fullest in each specific restrictive measure. The exceptions set out in paragraph 1 shall not be applied in a general way, but shall be invoked specifically and accompanied by a reasoned justification.***

Or. en

**Amendment 433**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 13 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***2b. Member States shall provide that the controller assesses, in each specific case, by means of an individual, concrete and reasoned examination whether a partial or complete restriction on the basis of paragraph 1 or 2 applies.***

Or. en

**Amendment 434**  
**Jan Mulder**

**Proposal for a directive**  
**Article 13 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

3. In cases referred to in paragraphs 1 and 2, Member States shall provide that the

3. In cases referred to in paragraphs 1 and 2, Member States shall provide that the

controller informs the data subject in writing on any refusal or restriction of access, on the reasons for the refusal and on the possibilities of lodging a complaint to the supervisory authority and seeking a judicial remedy. The information on factual or legal reasons on which the decision is based may be omitted where the provision of such information would undermine a purpose under paragraph 1.

controller informs the data subject ***with undue delay*** in writing on any refusal or restriction of access, on the reasons for the refusal and on the possibilities of lodging a complaint to the supervisory authority and seeking a judicial remedy. The information on factual or legal reasons on which the decision is based may be omitted where the provision of such information would undermine a purpose under paragraph 1.

Or. en

**Amendment 435**  
**Cornelia Ernst**

**Proposal for a directive**  
**Article 13 – paragraph 3**

*Text proposed by the Commission*

3. In cases referred to in ***paragraphs 1 and 2***, Member States shall provide that the controller informs the data subject in writing on any refusal or restriction of access, on the reasons for the refusal and on the possibilities of lodging a complaint to the supervisory authority and seeking a judicial remedy. The information on factual or legal reasons on which the decision is based may be omitted where the provision of such information would undermine a purpose under paragraph 1.

*Amendment*

3. In ***the*** cases referred to in ***paragraph 1***, Member States shall provide that the controller informs the data subject in writing on any refusal or restriction of access, on the reasons for the refusal and on the possibilities of lodging a complaint to the supervisory authority and seeking a judicial remedy. The information on factual or legal reasons on which the decision is based may be omitted where the provision of such information would undermine a purpose under paragraph 1.

Or. en

**Amendment 436**  
**Carlos Coelho**

**Proposal for a directive**  
**Article 13 – paragraph 4**

*Text proposed by the Commission*

4. Member States shall ensure that the

*Amendment*

4. Member States shall ensure that the

controller documents the grounds for **omitting** the communication of the factual or legal reasons on which the decision is based.

controller documents, **on a case-by-case basis**, the grounds for **restricting** the communication of the factual or legal reasons on which the decision is based.  
***That information shall be made available to the national supervisory authorities in the event of a complaint.***

Or. pt

**Amendment 437**  
**Axel Voss**

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

*Text proposed by the Commission*

1. Member States shall provide for the right of the data subject to request, **in particular in cases referred to in Article 13**, that the supervisory authority checks the lawfulness of the processing.

*Amendment*

1. Member States shall provide for the right of the data subject to request, **within the bounds of what is set out in Articles 12 and 13**, that the supervisory authority checks the lawfulness of the processing.

Or. de

**Amendment 438**  
**Sophia in 't Veld**

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

*Text proposed by the Commission*

1. Member States shall provide for the right of the data subject to request, in particular in cases referred to in Article 13, that the supervisory authority checks the lawfulness of the processing.

*Amendment*

1. Member States shall provide for the right of the data subject to request, **at all times**, in particular in cases referred to in Article 13, that the supervisory authority checks the lawfulness of the processing.

Or. en

**Amendment 439**

**Axel Voss**

**Proposal for a directive  
Article 14 – paragraph 2**

*Text proposed by the Commission*

2. Member *State* shall provide that the controller informs the data subject of the right to request the intervention of the supervisory authority pursuant to paragraph 1.

*Amendment*

2. Member *States* shall provide that the controller informs the data subject, ***at the request of the latter***, of the right to request the intervention of the supervisory authority pursuant to paragraph 1.

Or. de

**Amendment 440**

**Cornelia Ernst**

**Proposal for a directive  
Article 14 – paragraph 2**

*Text proposed by the Commission*

2. Member ***State*** shall provide that the controller informs the data subject of the right to request the intervention of the supervisory authority pursuant to paragraph 1.

*Amendment*

2. Member ***States*** shall provide that the controller informs the data subject of the right to request the intervention of the supervisory authority pursuant to paragraph 1.

Or. en

**Amendment 441**

**Sophia in 't Veld**

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

*Text proposed by the Commission*

3. When the right referred to in paragraph 1 is exercised, the supervisory authority shall inform the data subject at least that all necessary verifications by the supervisory authority have taken place, and of the

*Amendment*

3. When the right referred to in paragraph 1 is exercised, the supervisory authority shall inform the data subject at least that all necessary verifications by the supervisory authority have taken place, and of the

result as regards the lawfulness of the processing in question.

result as regards the lawfulness of the processing in question. ***The supervisory authority shall also inform the data subject of the conditions of his or her right to seek a judicial remedy.***

Or. en

**Amendment 442**  
**Axel Voss**

**Proposal for a directive**  
**Article 15 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall provide for the right of the data subject to obtain ***from the controller*** the rectification of personal data relating to them which are inaccurate. The data subject shall have the right to obtain completion of incomplete personal data, in particular by way of a corrective statement.

*Amendment*

1. Member States shall provide for the right of the data subject to obtain the rectification of personal data relating to them which are inaccurate. The data subject shall have the right to obtain completion of incomplete personal data, in particular by way of a corrective statement.

Or. de

**Amendment 443**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 15 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall provide for the right of the data subject to obtain from the controller the rectification of personal data relating to them which are inaccurate. The data subject shall have the right to obtain completion of ***incomplete*** personal data, in particular by way of a corrective statement.

*Amendment*

1. Member States shall provide for the right of the data subject to obtain from the controller the rectification ***or completion*** of personal data relating to them which are inaccurate ***or incomplete***. The data subject shall have the right to obtain ***rectification or completion of inaccurate or incomplete*** personal data, in particular by way of a corrective ***or completing*** statement.

Or. en



**Amendment 444**

**Cornelia Ernst**

**Proposal for a directive**

**Article 15 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall provide for the right of the data subject to obtain from the controller the rectification of personal data relating to them which are inaccurate. The data subject shall have the right to obtain completion of incomplete personal data, in particular by way of a corrective statement.

*Amendment*

1. Member States shall provide for the right of the data subject to obtain from the controller the rectification of personal data relating to them which are inaccurate. The data subject shall have the right to obtain completion of incomplete personal data, in particular by way of a corrective statement.  
***The controller shall not be able to refuse the rectification request if the personal data contained therein are factually correct.***

Or. en

**Amendment 445**

**Sophia in 't Veld**

**Proposal for a directive**

**Article 15 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Member States shall ensure that if a controller refuses the rectification or completion of personal data, the burden of proof of the necessity and proportionality of this refusal lies with the controller.***

Or. en

**Amendment 446**

**Jan Philipp Albrecht**

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

*Text proposed by the Commission*

*Amendment*

**2. Member States shall provide that the controller informs the data subject in writing on any refusal of rectification, on the reasons for the refusal and on the possibilities of lodging a complaint to the supervisory authority and seeking a judicial remedy.**

**deleted**

Or. en

*Justification*

*The right to rectification should always be available. It is also hard to understand which interest law enforcement authorities should have in keeping incorrect data.*

**Amendment 447**  
**Nuno Melo**

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

*Text proposed by the Commission*

*Amendment*

**2. Member States shall provide that the controller informs the data subject in writing on any refusal of rectification, on the reasons for the refusal and on the possibilities of lodging a complaint to the supervisory authority and seeking a judicial remedy.**

**(Does not affect English version.)**

Or. pt

**Amendment 448**  
**Axel Voss**

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

*Text proposed by the Commission*

2. Member States shall **provide that** the controller **informs** the data subject in writing on any refusal of rectification, on the reasons for the refusal and on the possibilities of lodging a complaint to the supervisory authority and seeking a judicial remedy.

*Amendment*

2. Member States shall **lay down whether the data subject may assert this right directly against the controller or through the intermediary of the competent national supervisory authority.**

**3. If the data subject asserts their rights directly against the controller and the latter refuses the rectification or completion, the controller must inform** the data subject in writing on the refusal of rectification, on the reasons for the refusal and on the possibilities of lodging a complaint to the supervisory authority and seeking a judicial remedy.

Or. de

*Justification*

*The Member States should be left to make these arrangements themselves.*

**Amendment 449**  
**Carlos Coelho**

**Proposal for a directive**  
**Article 15 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2a. Member States shall provide that the controller notifies recipients to whom these data have been sent of any rectification made pursuant to paragraph 1.**

Or. pt

**Amendment 450**  
**Cornelia Ernst**

**Proposal for a directive**  
**Article 15 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. The controller shall communicate any rectification carried out to each recipient to whom the data have been disclosed, unless it proves impossible to do so.***

Or. en

**Amendment 451**  
**Axel Voss**

**Proposal for a directive**  
**Article 16 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Member States shall provide for the right of the data subject to obtain from the controller the erasure of personal data relating to them where the processing does not comply with the provisions adopted pursuant to **Articles 4 (a) to (e)**, 7 and 8 of this Directive.

1. Member States shall provide for the right of the data subject to obtain from the controller the erasure of personal data relating to them where the processing does not comply with the provisions adopted pursuant to **Articles 4, 6, 7** and 8 of this Directive.

Or. de

*Justification*

*The amendment broadens the scope and strengthens individual rights.*

**Amendment 452**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 16 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Member States shall provide for the right of the data subject to obtain from the

1. Member States shall provide for the right of the data subject to obtain from the

controller the erasure of personal data relating to them where the processing does not comply with the provisions adopted pursuant to Articles 4 (a) to (e), 7 and 8 of this Directive.

controller the erasure of personal data relating to them ***and the abstention from further dissemination of such data*** where the processing does not comply with the provisions adopted pursuant to Articles 4 (a) to (e), 7 and 8 of this Directive.

Or. en

#### **Amendment 453**

**Jan Mulder**

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

#### **Article 16 – paragraph 1**

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

1. Member States shall provide for the right of the data subject to obtain from the controller the erasure of personal data relating to them where the processing does not comply with the provisions adopted pursuant to Articles 4 (a) to (e), 7 and 8 of this Directive.

##### *Amendment*

1. Member States shall provide for the right of the data subject to obtain from the controller the erasure ***and abstention of further processing*** of personal data relating to them where the processing does not comply with the provisions adopted pursuant to Articles 4 (a) to (e), 7 and 8 of this Directive. ***The controller should take all reasonable steps, including technical measures, to inform third parties.***

Or. en

#### **Amendment 454**

**Axel Voss**

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

#### **Article 16 – paragraph 2**

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

***2. The controller shall carry out the erasure without delay.***

##### *Amendment*

***2. Member States shall lay down whether the data subject may assert this right directly against the controller or through the intermediary of the competent national supervisory authority.***

***If the data subject asserts their rights directly against the controller and the***

*latter refuses the rectification or completion, the controller must inform the data subject in writing on the refusal of rectification, on the reasons for the refusal and on the possibilities of lodging a complaint to the supervisory authority and seeking a judicial remedy.*

Or. de

**Amendment 455**  
**Axel Voss**

**Proposal for a directive**  
**Article 16 – paragraph 3 – introductory part**

*Text proposed by the Commission*

**3. Instead of erasure, the controller shall mark the personal data where:**

*Amendment*

**3. If the provisions of this Directive state that personal data should be erased, blocking shall be sufficient where:**

Or. de

**Amendment 456**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 16 – paragraph 3 – introductory part**

*Text proposed by the Commission*

**3. Instead of erasure, the controller shall mark the personal data where:**

*Amendment*

**3. Instead of erasure, the controller shall mark *and restrict the processing of* the personal data where:**

Or. en

*Justification*

*The data needs to be marked for the data can still be processed for limited purposes. In those cases it still needs to be clear that the personal data is contested.*

**Amendment 457**

**Jan Mulder**

**Proposal for a directive**

**Article 16 – paragraph 3 – introductory part**

*Text proposed by the Commission*

3. Instead of erasure, the controller shall mark ***the*** personal data where:

*Amendment*

3. Instead of erasure, the controller shall mark ***and restrict as far as possible the use of*** personal data where:

Or. en

**Amendment 458**

**Cornelia Ernst**

**Proposal for a directive**

**Article 16 – paragraph 3 – introductory part**

*Text proposed by the Commission*

3. Instead of erasure, the controller shall ***mark*** the personal data where:

*Amendment*

3. Instead of erasure, the controller shall ***restrict the processing of*** the personal data where:

Or. en

**Amendment 459**

**Jan Philipp Albrecht**

**Proposal for a directive**

**Article 16 – paragraph 3 – introductory part**

*Text proposed by the Commission*

3. Instead of erasure, the controller shall ***mark the personal data*** where:

*Amendment*

3. Instead of erasure, the controller shall ***restrict processing of personal data in such a way that it is not subject to the normal data access and processing operations of the controller and can not be changed anymore,*** where:

Or. en

*Justification*

*Necessary for aligning with the draft report on the data protection regulation.*

**Amendment 460**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Article 16 – paragraph 3 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

***(aa) personal data referred to in this paragraph may, with the exception of storage, only be processed when necessary for purposes of proof, or for the protection of vital interests of the data subject or another person;***

Or. en

**Amendment 461**  
**Salvatore Iacolino**

**Proposal for a directive**  
**Article 16 – paragraph 3 – point b**

*Text proposed by the Commission*

*Amendment*

(b) the personal data have to be maintained for purposes of proof;

(b) the personal data have to be maintained for purposes of proof ***or of preventing or detecting 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 462**  
**Jan Philipp Albrecht**



**Proposal for a directive**  
**Article 16 – paragraph 3 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

***(ba) where processing of personal data is restricted pursuant to this paragraph, the controller shall inform the data subject before lifting the restriction;***

Or. en

**Amendment 463**  
**Axel Voss**

**Proposal for a directive**  
**Article 16 – paragraph 3 – point c**

*Text proposed by the Commission*

*Amendment*

(c) the data subject opposes their erasure and requests the restriction of their use instead.

***(c) erasure would affect the data subject's legitimate interests or*** the data subject opposes their erasure and requests the restriction of their use instead.

Or. de

**Amendment 464**  
**Axel Voss**

**Proposal for a directive**  
**Article 16 – paragraph 3 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

***(ca) obligations to document or keep data laid down by law are a barrier to erasure; in this case the data shall be handled in accordance with the obligations to document or keep data laid down by law;***

Or. de

**Amendment 465**

**Axel Voss**

**Proposal for a directive**

**Article 16 – paragraph 3 – point c b (new)**

*Text proposed by the Commission*

*Amendment*

***(cb) they are stored only for the purpose of data conservation or monitoring of data protection;***

Or. de

**Amendment 466**

**Axel Voss**

**Proposal for a directive**

**Article 16 – paragraph 3 – point c c (new)**

*Text proposed by the Commission*

*Amendment*

***(cc) erasure is possible only by means of a disproportionate technical effort, for example as a result of a special storage method.***

Or. de

**Amendment 467**

**Axel Voss**

**Proposal for a directive**

**Article 16 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. Blocked data may be used only for the purpose for which erasure was not carried out. They may also be used if they are essential to discharge the burden of proof.***

Or. de

*Justification*

*The amendment makes clear the legal consequences which blocking should give rise to.*

**Amendment 468**

**Cornelia Ernst**

**Proposal for a directive**

**Article 16 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. Personal data referred to in paragraph 3 may, with the exception of storage, only be processed when necessary for purposes of proof, or the protection of vital interests of the data subject or another person.***

Or. en

**Amendment 469**

**Sophia in 't Veld**

**Proposal for a directive**

**Article 16 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. The personal data referred to in paragraph 3 may only be processed for purposes of proof. The processing of contested personal data for the purposes of proof is only allowed on the condition that the markation is maintained as long as the accuracy of the personal data is contested.***

Or. en

**Amendment 470**

**Sophia in 't Veld**

**Proposal for a directive**  
**Article 16 – paragraph 3 b (new)**

*Text proposed by the Commission*

*Amendment*

***3b. Where processing of personal data is marked and restricted pursuant to paragraph 3, the controller shall inform the data subject before lifting the marking of, and restriction on, the processing of this personal data.***

Or. en

**Amendment 471**  
**Cornelia Ernst**

**Proposal for a directive**  
**Article 16 – paragraph 3 b (new)**

*Text proposed by the Commission*

*Amendment*

***3b. Where processing of personal data is restricted pursuant to paragraph 3, the controller shall inform the data subject before lifting the restriction.***

Or. en

**Amendment 472**  
**Axel Voss**

**Proposal for a directive**  
**Article 16 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

***4. Member States shall provide that the controller informs the data subject in writing of any refusal of erasure or marking of the processing, the reasons for the refusal and the possibilities of lodging a complaint to the supervisory authority and seeking a judicial remedy.***

***deleted***

**Amendment 473**

**Cornelia Ernst**

**Proposal for a directive**

**Article 16 – paragraph 4**

*Text proposed by the Commission*

4. Member States shall provide that the controller informs the data subject in writing of any refusal of erasure or **marking** of the processing, the reasons for the refusal and the possibilities of lodging a complaint to the supervisory authority and seeking a judicial remedy.

*Amendment*

4. Member States shall provide that the controller informs the data subject in writing of any refusal of erasure or **restriction** of the processing, the reasons for the refusal and the possibilities of lodging a complaint to the supervisory authority and seeking a judicial remedy.

Or. en

**Amendment 474**

**Carlos Coelho**

**Proposal for a directive**

**Article 16 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. Member States shall provide that the controller notifies recipients to whom these data have been sent of any erasure made pursuant to paragraph 1.***

Or. pt

**Amendment 475**

**Cornelia Ernst**

**Proposal for a directive**

**Article 16 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. Member States shall provide that the controller shall implement mechanisms to ensure that the time limits established for the erasure of personal data and/or for a periodic review of the need for the storage of the data are observed.***

Or. en

**Amendment 476**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 16 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. The controller shall communicate any erasure or markation carried out to each recipient to whom the data have been disclosed.***

Or. en

**Amendment 477**  
**Cornelia Ernst**

**Proposal for a directive**  
**Article 16 – paragraph 4 b (new)**

*Text proposed by the Commission*

*Amendment*

***4b. The controller shall communicate any restriction on processing or any erasure carried out to each recipient to whom the data have been disclosed, unless it proves impossible to do so.***

Or. en

**Amendment 478**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Article 16 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 16a**

***Rights in relation to recipients***

***The controller shall communicate any rectification or erasure carried out in accordance with Articles 15 and 16 to each recipient to whom the data have been transferred, unless this proves impossible or involves a disproportionate effort. The controller shall inform the data subject about those third parties.***

Or. en

*Justification*

*Aligning with the provisions in the data protection regulation.*

**Amendment 479**  
**Axel Voss**

**Proposal for a directive**  
**Article 17 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

Member States may provide that the ***rights of*** information, access, rectification, erasure and ***restriction of processing referred to*** in Articles 11 to 16 are ***carried out in accordance*** with national ***rules on judicial proceedings*** where the personal data are contained in a judicial decision or record ***processed in the course of criminal investigations and proceedings.***

Member States may provide that the information, access, rectification, erasure and ***blocking provided for*** in Articles 11 to 16 are in ***harmony*** with national ***procedural law*** where the personal data are contained in a judicial decision or record ***which is bound to the taking of a court decision.***

Or. de

### *Justification*

*The article should have broader application to cover all courts and should apply not only to criminal proceedings.*

#### **Amendment 480**

**Sophia in 't Veld**

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

#### **Article 18 – paragraph 1**

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

1. Member States shall provide that the controller adopts policies and implements appropriate measures to ensure that the processing of personal data is performed in compliance with the provisions adopted pursuant to this Directive.

##### *Amendment*

1. Member States shall provide that the controller adopts policies and implements appropriate measures to ensure ***and be able to demonstrate, for each processing operation***, that the processing of personal data is performed in compliance with the provisions adopted pursuant to this Directive.

Or. en

#### **Amendment 481**

**Nathalie Griesbeck**

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

#### **Article 18 – paragraph 2 – point d a (new)**

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

##### *Amendment*

***(da) drawing up and implementing specific safeguards in respect of the treatment of personal data relating to children, where appropriate.***

Or. fr

#### **Amendment 482**

**Axel Voss**



**Proposal for a directive**  
**Article 18 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

**3. The controller shall implement mechanisms to ensure the verification of the effectiveness of the measures referred to in paragraph 1 of this Article. If proportionate, this verification shall be carried out by independent internal or external auditors.**

**deleted**

Or. de

*Justification*

*Article 18(3) has been deleted and not replaced, as there would otherwise be a danger of excessive verification. Data protection officers and supervisory authorities should be sufficient in terms of guaranteeing data protection; additional external or internal assessors are not desirable and would merely cause confusion.*

**Amendment 483**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 19 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Member States shall provide that, having regard to the state of the art and the cost of implementation, the controller shall implement appropriate technical and organisational measures and procedures in such a way that the processing will meet the requirements of provisions adopted pursuant to this Directive and ensure the protection of the rights of the data subject.

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

Or. en

**Amendment 484**  
**Cornelia Ernst**

**Proposal for a directive**  
**Article 19 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall provide that, having regard to the state of the art ***and the cost of implementation, the controller shall*** implement appropriate technical and organisational measures and procedures in such a way that the processing will meet the requirements of provisions adopted pursuant to this Directive and ensure the protection of the rights of the data subject.

*Amendment*

1. Member States shall provide that, having regard to the state of the art, ***the controller shall, both at the time of the determination of the means for processing and at the time of the processing itself,*** implement appropriate technical and organisational measures and procedures in such a way that the processing will meet the requirements of provisions adopted pursuant to this Directive and ensure the protection of the rights of the data subject.  
***This shall include both:***

***(a) technical measures relating to the technical design and architecture of the product or service; and***

***(b) organisational measures which relate to operational policies of the controller.***

Or. en

**Amendment 485**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Article 19 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall provide that, having regard to the state of the art and the cost of implementation, the controller shall implement appropriate technical and organisational measures and procedures in such a way that the processing will meet the requirements of provisions adopted pursuant to this Directive and ensure the protection of the rights of the data subject.

*Amendment*

1. Member States shall provide that, having regard to the state of the art and the cost of implementation, the controller shall, ***both at the time of the determination of the purposes and means for processing and at the time of the processing itself,*** implement appropriate technical and organisational measures and procedures in such a way that the processing will meet the requirements of provisions adopted

pursuant to this Directive and ensure the protection of the rights of the data subject.  
***Where the controller has carried out a data protection impact assessment pursuant to Article 25a, the results shall be taken into account when developing those measures and procedures.***

Or. en

**Amendment 486**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 19 – paragraph 2**

*Text proposed by the Commission*

2. The controller shall implement mechanisms for ensuring that, by default, only those personal data which are necessary for ***the purposes*** of the processing are processed.

*Amendment*

2. The controller shall implement mechanisms for ensuring that, by default, only those personal data which are necessary for ***each specific purpose*** of the processing are processed.

Or. en

**Amendment 487**  
**Cornelia Ernst**

**Proposal for a directive**  
**Article 19 – paragraph 2**

*Text proposed by the Commission*

2. The controller shall implement mechanisms for ensuring that, by default, only those personal data which are necessary for the purposes of the processing are processed.

*Amendment*

2. The controller shall implement mechanisms for ensuring that, by default; only those personal data which are necessary for the purposes of the processing are processed ***and are especially not collected or retained beyond the minimum necessary for those purposes, both in terms of the amount of the data and the time of their storage. This shall be ensured using technical and/or organisational measures, as***

*appropriate. In particular, those mechanisms shall ensure that by default personal data are not made accessible to an indefinite number of individuals.*

Or. en

**Amendment 488**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Article 19 – paragraph 2**

*Text proposed by the Commission*

2. The controller shall implement mechanisms for ensuring that, by default, only those personal data which are necessary for the purposes of the processing are processed.

*Amendment*

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

Or. en

**Amendment 489**  
**Jan Mulder**

**Proposal for a directive**  
**Article 19 – paragraph 2**

*Text proposed by the Commission*

2. The controller shall implement mechanisms for ensuring that, by default, only those personal data which are necessary for the purposes of the processing are processed.

*Amendment*

2. The controller shall implement mechanisms for ensuring that, by default, only those personal data which are necessary for the purposes of the processing are processed ***as well as stored no longer then deemed necessary by the***

*responsible investigation authority.*

Or. en

**Amendment 490**

**Sophia in 't Veld**

**Proposal for a directive**

**Article 19 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. The controller shall implement mechanisms for ensuring that personal data are not collected or retained beyond the minimum necessary for those purposes, both in terms of the volume of the data and the time during which they are stored. Those mechanisms shall, by default, ensure that the access to personal data is limited.***

Or. en

**Amendment 491**

**Axel Voss**

**Proposal for a directive**

**Article 20**

*Text proposed by the Commission*

*Amendment*

***Article 20***

***deleted***

***Joint controllers***

***Member States shall provide that where a controller determines the purposes, conditions and means of the processing of personal data jointly with others, the joint controllers must determine the respective responsibilities for compliance with the provisions adopted pursuant to this Directive, in particular as regards the procedures and mechanisms for exercising the rights of the data subject,***

*by means of an arrangement between them.*

Or. de

*Justification*

*Article 20 lowers the data protection standard and was therefore deleted without being replaced. It should be left to joint controllers to decide whether to make an arrangement internally for a division of responsibilities. Externally there should be joint liability between both parties, to the benefit of the data subject.*

**Amendment 492**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 20 – paragraph 1**

*Text proposed by the Commission*

Member States shall provide that where a controller determines the purposes, conditions and means of the processing of personal data jointly with others, the joint controllers must determine the respective responsibilities for compliance with the provisions adopted pursuant to this Directive, in particular as regards the procedures and mechanisms for exercising the rights of the data subject, by means of *an arrangement between them.*

*Amendment*

Member States shall provide that where a controller determines the purposes, conditions and means of the processing of personal data jointly with others, the joint controllers must determine the respective responsibilities for compliance with the provisions adopted pursuant to this Directive, in particular as regards the procedures and mechanisms for exercising the rights of the data subject, by means of *a written arrangement or a legal act.*

Or. en

**Amendment 493**  
**Carlos Coelho**

**Proposal for a directive**  
**Article 20 – paragraph 1**

*Text proposed by the Commission*

Member States shall provide that where a controller determines the purposes,

*Amendment*

Member States shall provide that where a controller determines the purposes,

conditions and means of the processing of personal data jointly with others, the joint controllers must determine the respective responsibilities for compliance with the provisions adopted pursuant to this Directive, in particular as regards the procedures and mechanisms for exercising the rights of the data subject, by means of **an** arrangement between them.

conditions and means of the processing of personal data jointly with others, the joint controllers must determine the respective responsibilities for compliance with the provisions adopted pursuant to this Directive, in particular as regards the procedures and mechanisms for exercising the rights of the data subject, by means of **a binding written** arrangement between them.

Or. pt

**Amendment 494**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 20 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***Member States shall provide that the data subject may exercise his or her rights in respect of, and against, each of the joint controllers.***

Or. en

**Amendment 495**  
**Carlos Coelho**

**Proposal for a directive**  
**Article 20 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***Any controller involved in the processing of data must be a competent authority within the meaning of Article 3.***

Or. pt

**Amendment 496**  
**Axel Voss**

**Proposal for a directive**  
**Article 21 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall provide that where a processing operation is carried out on behalf of a controller, the controller must choose a processor providing sufficient guarantees to implement ***appropriate*** technical and organisational measures ***and procedures in such a way*** that the processing will meet the requirements of the provisions adopted pursuant to this Directive and ensure the protection of the rights of the data subject.

*Amendment*

1. Member States shall provide that where a processing operation is carried out on behalf of a controller, the controller must choose a processor providing sufficient guarantees

***(a)*** to implement ***the*** technical and organisational measures ***set out in Article 27(1)***;

***(b)*** that the processing will ***also in other respects*** meet the requirements of the provisions adopted pursuant to this Directive and ensure the protection of the rights of the data subject; ***and***

***(c) that the data subject will follow the instructions of the controller.***

Or. de

*Justification*

*The revision of this article follows Framework Decision 2008/977/JHA, which should not be changed.*

**Amendment 497**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 21 – paragraph 1**



*Text proposed by the Commission*

1. Member States shall provide that where a processing operation is carried out on behalf of a controller, the controller **must** choose a processor providing sufficient guarantees to implement appropriate technical and organisational measures and procedures in such a way that the processing will meet the requirements of the provisions adopted pursuant to this Directive and ensure the protection of the rights of the data subject.

*Amendment*

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

Or. en

*Justification*

*Alignment with the GDPR.*

**Amendment 498**

**Carlos Coelho**

**Proposal for a directive**

**Article 21 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall provide that where a processing operation is carried out on behalf of a controller, the controller must choose a processor providing sufficient guarantees to implement appropriate technical and organisational measures and procedures in such a way that the processing will meet the requirements of the provisions adopted pursuant to this Directive and ensure the protection of the rights of the data subject.

*Amendment*

1. Member States shall provide that where a processing operation is carried out on behalf of a controller, the controller must choose a processor providing sufficient guarantees to implement appropriate technical and organisational measures and procedures in such a way that the processing will meet the requirements of the provisions adopted pursuant to this Directive and ensure the protection of the rights of the data subject. ***Responsibility for ensuring that these conditions are met shall rest with the controller.***

**Amendment 499**

**Axel Voss**

**Proposal for a directive**

**Article 21 – paragraph 2**

*Text proposed by the Commission*

2. **Member States shall provide that** the carrying out of processing by a processor must be governed by a legal act ***binding the processor to the controller and stipulating in particular*** that the processor shall act only on instructions from the controller, ***in particular, where the transfer of the personal data used is prohibited.***

*Amendment*

2. The carrying out of processing by a processor must be governed by a legal act ***or a written agreement*** stipulating that the processor shall act only on instructions from the controller.

Or. de

*Justification*

*The revision of this article follows Framework Decision 2008/977/JHA, which should not be changed.*

**Amendment 500**

**Sophia in 't Veld**

**Proposal for a directive**

**Article 21 – paragraph 2**

*Text proposed by the Commission*

2. Member States shall provide that the carrying out of processing by a processor must be governed by a legal act binding the processor to the controller and stipulating in particular that the processor shall act only on instructions from the controller, ***in particular, where the transfer of the personal data used is prohibited.***

*Amendment*

2. Member States shall provide that the carrying out of processing by a processor must be governed by a legal act binding the processor to the controller and stipulating in particular that the processor shall:

***(a)*** act only on instructions from the

*controllers;*

*(b) employ only staff who have agreed to be bound by an obligation of confidentiality or are under a statutory obligation of confidentiality;*

*(c) take all required measures pursuant to Article 28;*

*(d) engage another processor only with the permission of the controller and therefore inform the controller of the intention to engage another processor in such a timely fashion that the controller has the possibility to object;*

*(e) insofar as it is possible given the nature of the processing, adopt in agreement with controller the necessary technical and organisational requirements for the fulfilment of the controller's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III;*

*(f) assist the controller in ensuring compliance with the obligations pursuant to Articles 28 to 32;*

*(g) hand all results over to the controller after the end of the processing and not otherwise process the personal data;*

*(h) make available to the controller and the supervisory authority all the information necessary to verify compliance with the obligations laid down in this Article;*

*(i) take into account the principle of data protection by design and default.*

Or. en

**Amendment 501**  
**Cornelia Ernst**

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

*Text proposed by the Commission*

2. Member States shall provide that the carrying out of processing by a processor must be governed by a legal act binding the processor to the controller ***and stipulating*** in particular that the processor shall ***act only on instructions from the controller, in particular, where the transfer of the personal data used is prohibited.***

*Amendment*

2. Member States shall provide that the carrying out of processing by a processor must be governed by a legal act binding the processor to the controller. ***These acts shall*** in particular ***stipulate*** that the processor shall:

***(a) act only on instructions from the controller;***

***(b) employ only staff who are under a statutory obligation of confidentiality;***

***(c) take all required measures to comply with the provisions adopted pursuant to Article 27;***

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

***(e) insofar as this is possible given the nature of the processing, create in agreement with the controller the necessary technical and organisational requirements for the fulfilment of the controller's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III;***

***(f) assist the controller in ensuring compliance with the provisions adopted pursuant to Articles 27 to 32;***

***(g) hand over all results to the controller after the end of the processing and not process the personal data otherwise;***

***(h) make available to the controller and the supervisory authority all information necessary to control compliance with the obligations laid down in this Article.***

***(i) take into account the principle of data protection by design and default.***

Or. en

**Amendment 502**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 21 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. The controller and the processor need to be able to demonstrate compliance with the obligations as referred to in paragraph 2.***

Or. en

**Amendment 503**  
**Cornelia Ernst**

**Proposal for a directive**  
**Article 21 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. The controller and the processor shall document in writing the controller's instructions and the processor's obligation referred to in paragraph 2.***

Or. en

**Amendment 504**  
**Carlos Coelho**

**Proposal for a directive**  
**Article 21 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

***3. If a processor processes personal data other than as instructed by the controller, the processor shall be considered to be a controller in respect of that processing and shall be subject to the rules on joint controllers laid down in Article 20.***

***deleted***

**Amendment 505**

**Axel Voss**

**Proposal for a directive**

**Article 21 – paragraph 3**

*Text proposed by the Commission*

3. If a processor processes personal data ***other than as instructed by*** the controller, the processor shall be ***considered to be a controller in respect of that processing and shall be subject to the rules on joint controllers laid down in Article 20.***

*Amendment*

3. If a processor processes personal data ***without or in contravention of an instruction from*** the controller ***and in the absence of an appropriate legal obligation***, the processor shall be ***liable for the processing as if he or she were a controller.***

Or. de

*Justification*

*Follows from the deletion of Article 20.*

**Amendment 506**

**Sophia in 't Veld**

**Proposal for a directive**

**Article 21 – paragraph 3**

*Text proposed by the Commission*

3. If a processor ***processes personal data other than as instructed by the controller***, the processor shall be considered to be a controller in respect of that processing and shall be subject to the rules on joint controllers laid down in Article 20.

*Amendment*

3. If a processor ***is instructed by the controller to make certain independent decisions regarding the personal data***, the processor shall be considered to be a controller in respect of that processing and shall be subject to the rules on joint controllers laid down in Article 20.

Or. en

**Amendment 507**

**Axel Voss**

**Proposal for a directive**

**Article 22 – paragraph 1**

*Text proposed by the Commission*

Member States shall provide that the processor and any person acting under the authority of the controller or of the processor, who has access to personal data, may only process them on instructions from the controller or where ***required by Union or Member State law***.

*Amendment*

Member States shall provide that the processor and any person acting under the authority of the controller or of the processor, who has access to personal data, may only process them on instructions from the controller or where ***there is a legal obligation to do so***.

Or. de

**Amendment 508**

**Carlos Coelho**

**Proposal for a directive**

**Article 22 – paragraph 1**

*Text proposed by the Commission*

Member States shall provide that the processor and any person acting under the authority of the controller or of the processor, who has access to personal data, may only process them on instructions from the controller or where required by Union or Member State law.

*Amendment*

Member States shall provide that the processor and any person acting under the authority of the controller or of the processor, who has access to personal data, may only process them on instructions from the controller or where required by Union or Member State law ***and shall be bound by a duty of professional secrecy***.

Or. pt

**Amendment 509**

**Sophia in 't Veld**

**Proposal for a directive**

**Article 22 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***Where the processor is or becomes the determining part in relation to the purposes, means, or methods of data processing or does not act exclusively on the instructions, it shall be considered as a joint controller pursuant to Article 20.***

Or. en

**Amendment 510**

**Jan Mulder**

**Proposal for a directive**

**Article 22 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 22a***

***Where the processor is or becomes the determining part in relation to the purposes, means, or methods of data processing or does not act exclusively on the instructions of the controller, it shall be considered as a joint controller pursuant to Article 20.***

Or. en

**Amendment 511**

**Axel Voss**

**Proposal for a directive**

**Article 23**

*Text proposed by the Commission*

*Amendment*

***Article 23***

***deleted***

***Documentation***

***1. Member States shall provide that each controller and processor maintains documentation of all processing systems***



*and procedures under their responsibility.*

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

***(a) the name and contact details of the controller, or any joint controller or processor;***

***(b) the purposes of the processing;***

***(c) the recipients or categories of recipients of the personal data;***

***(d) transfers of data to a third country or an international organisation, including the identification of that third country or international organisation.***

**3. The controller and the processor shall make the documentation available, on request, to the supervisory authority.**

Or. de

#### **Amendment 512**

**Jan Philipp Albrecht**

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

#### **Article 23 – paragraph 1**

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

1. Member States shall provide that each controller and processor maintains documentation of all processing systems and procedures under their responsibility.

##### *Amendment*

1. Member States shall provide that each controller and processor maintains **detailed** documentation of all processing systems and procedures under their responsibility.

Or. en

#### **Amendment 513**

**Sophia in 't Veld**

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

#### **Article 23 – paragraph 2 – point a**

*Text proposed by the Commission*

(a) the name and contact details of the controller, **or** any joint controller or processor;

*Amendment*

(a) the name and contact details of the controller **and its data protection officer, and those of** any joint controller or processor;

Or. en

**Amendment 514**  
**Carlos Coelho**

**Proposal for a directive**  
**Article 23 – paragraph 2 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

***(aa) a binding written agreement, where there are joint controllers; a list of processors and activities carried out by processors;***

Or. pt

**Amendment 515**  
**Carlos Coelho**

**Proposal for a directive**  
**Article 23 – paragraph 2 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

***(ba) a description of the category or categories of data subjects and of the data or categories of data processed;***

Or. pt

**Amendment 516**  
**Carlos Coelho**

**Proposal for a directive**  
**Article 23 – paragraph 2 – point b b (new)**

*Text proposed by the Commission*

*Amendment*

***(bb) a description of the internal rules on the exercise of data subjects' rights in accordance with Article 10.***

Or. pt

**Amendment 517**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 23 – paragraph 2 – point d**

*Text proposed by the Commission*

*Amendment*

(d) transfers of data to a third country or an international organisation, including the identification of ***that*** third country or international organisation.

(d) transfers of data to a third country or an international organisation, including the identification of ***the requesting competent authority of a*** third country or international organisation ***and the legal grounds on which the data are transferred;***

Or. en

**Amendment 518**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 23 – paragraph 2 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

***(da) the time limits for erasure of the different categories of data;***

Or. en

**Amendment 519**  
**Cornelia Ernst**

**Proposal for a directive**  
**Article 23 – paragraph 2 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

***(da) the description of the measures referred to in Article 18(3).***

Or. en

**Amendment 520**  
**Axel Voss**

**Proposal for a directive**  
**Article 23 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 23a***

***Documentation***

***1. All transmissions of personal data are to be logged or documented for the purposes of verification of the lawfulness of the data processing, self-monitoring and ensuring proper data integrity and security.***

***2. The logs and documents so produced must be made available to the supervisory authority upon request. The supervisory authority shall use this information only for the purpose of checking the lawfulness of the data processing and ensuring proper data integrity and security.***

Or. de

*Justification*

*Based on Article 10 of Framework Decision 2008/977/JHA.*

## **Amendment 521**

**Axel Voss**

### **Proposal for a directive**

#### **Article 24**

*Text proposed by the Commission*

*Amendment*

#### **Article 24**

*deleted*

#### **Keeping of records**

**1. Member States shall ensure that records are kept of at least the following processing operations: collection, alteration, consultation, disclosure, combination or erasure. The records of consultation and disclosure shall show in particular the purpose, date and time of such operations and as far as possible the identification of the person who consulted or disclosed personal data.**

**2. The records shall be used solely for the purposes of verification of the lawfulness of the data processing, self-monitoring and for ensuring data integrity and data security.**

Or. de

## **Amendment 522**

**Sophia in 't Veld**

### **Proposal for a directive**

#### **Article 24 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Member States shall ensure that records are kept of at least the following processing operations: collection, alteration, consultation, disclosure, combination or erasure. The records of consultation and disclosure shall show in particular the purpose, date and time of such operations and as far as possible the identification of the person who consulted or disclosed

1. Member States shall ensure that records are kept of at least the following processing operations: collection, alteration, consultation, disclosure, combination or erasure. The records of consultation and disclosure shall show in particular the purpose, date and time of such operations and as far as possible the identification of the person who consulted or disclosed personal data, **and the identity of the**

personal data.

*recipients of such data.*

Or. en

### **Amendment 523**

**Carlos Coelho**

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

#### **Article 24 – paragraph 1**

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

1. Member States shall ensure that records are kept of ***at least the following*** processing operations: ***collection, alteration, consultation, disclosure, combination or erasure***. The records of consultation and disclosure shall show in particular the purpose, date and time of such operations and ***as far as possible*** the identification of the person who consulted or disclosed personal data.

##### *Amendment*

1. Member States shall ensure that records are kept of ***all*** processing operations, ***including all transmissions of data***. The records of consultation and disclosure shall show in particular the purpose, date and time of such operations and the identification of the person who consulted or disclosed personal data, ***and the identity of the recipient of such data***.

Or. pt

### **Amendment 524**

**Jan Mulder**

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

#### **Article 24 – paragraph 1**

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

1. Member States shall ensure that records are kept of at least the following processing operations: collection, alteration, consultation, disclosure, combination or erasure. The records of consultation and disclosure shall show in particular the purpose, date and time of such operations and ***as far as possible*** the identification of the person who consulted or disclosed personal data.

##### *Amendment*

1. Member States shall ensure that records are kept of at least the following processing operations: collection, alteration, consultation, disclosure, combination or erasure. The records of consultation and disclosure shall show in particular the purpose, date and time of such operations and the identification of the person who consulted or disclosed personal data.

Or. en

**Amendment 525**

**Cornelia Ernst**

**Proposal for a directive**

**Article 24 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall ensure that records are kept of at least the following processing operations: collection, alteration, consultation, disclosure, combination or erasure. The records of consultation and disclosure shall show in particular the purpose, date and time of such operations and *as far as possible* the identification of the person who consulted or disclosed personal data.

*Amendment*

1. Member States shall ensure that records are kept of at least the following processing operations: collection, alteration, consultation, disclosure, combination or erasure. The records of consultation and disclosure shall show in particular the purpose, date and time of such operations and the identification of the person who consulted or disclosed personal data.

Or. en

**Amendment 526**

**Sophia in 't Veld**

**Proposal for a directive**

**Article 24 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. The controller and the processor shall make the records available to the supervisory authority upon request.***

Or. en

**Amendment 527**

**Carlos Coelho**

**Proposal for a directive**

**Article 24 – paragraph 2**

*Text proposed by the Commission*

2. The records shall be used solely for the purposes of verification of the lawfulness of the data processing, self-monitoring and for ensuring data integrity and data security.

*Amendment*

2. The records shall be used solely for the purposes of verification of the lawfulness of the data processing, self-monitoring and for ensuring data integrity and data security, ***or for purposes of auditing, either by the data protection officer or by the data protection authority.***

Or. pt

**Amendment 528**  
**Carlos Coelho**

**Proposal for a directive**  
**Article 24 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. A regular analysis of records shall be carried out for the purpose of detecting any misuse, in accordance with good security practices.***

Or. pt

**Amendment 529**  
**Axel Voss**

**Proposal for a directive**  
**Article 25 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. ***Member States shall provide that*** the controller and the processor shall ***co-operate***, on request, with the supervisory authority in the performance of its duties, ***in particular by providing all information necessary for the supervisory authority to perform its duties.***

1. The controller and the processor shall ***work***, on request, with the supervisory authority in the performance of its duties, ***on the basis of Section 2 of Chapter VI of this Directive.***

Or. de



**Amendment 530**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 25 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. The Member States shall lay down that, in the case of a proposal for a law which provides for the processing of personal data which entails serious risks to the rights and freedoms of citizens on account of its nature, scope or purpose, an assessment of the impact of the proposed measure on the protection of personal data shall be performed.***

***The assessment shall at least include a general description of the proposed processing operations, an assessment of the risks to the rights and freedoms of the data subjects, the measures envisaged to address those risks, safeguards, security measures and procedures to ensure the protection of personal data and to demonstrate compliance with the provisions adopted pursuant to this Directive, taking into account the rights and justified expectations of the data subjects and other persons concerned.***

Or. nl

*Justification*

*A PIA concerning data processing by the forces of law and order is not readily compatible with the fact that data processing by the police and the judicial authorities is founded on an adequate legal basis. It is therefore reasonable to link the PIA requirement to new legislation.*

**Amendment 531**  
**Carlos Coelho**

**Proposal for a directive**  
**Article 25 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. The duty of cooperation shall also be ensured where the supervisory authority needs to examine information systems and the processing of personal data, whereby they shall be guaranteed access to the premises of the data controller or processor.***

Or. pt

**Amendment 532**

**Axel Voss**

**Proposal for a directive  
Article 25 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

***2. In response to the supervisory authority's exercise of its powers under points (a) and (b) of Article 46, the controller and the processor shall reply to the supervisory authority within a reasonable period. The reply shall include a description of the measures taken and the results achieved, in response to the remarks of the supervisory authority.***

***deleted***

Or. de

**Amendment 533**

**Cornelia Ernst**

**Proposal for a directive  
Article 25 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

**2. In response to the supervisory authority's exercise of its powers under points (a) and (b) of Article 46, the controller and the processor shall reply to the supervisory**

**2. In response to the supervisory authority's exercise of its powers under points (a) and (b) of Article 46, the controller and the processor shall reply to the supervisory**

authority within a reasonable period. The reply shall include a description of the measures taken and the results achieved, in response to the remarks of the supervisory authority.

authority within a reasonable period ***to be specified by the supervisory authority***. The reply shall include a description of the measures taken and the results achieved, in response to the remarks of the supervisory authority.

Or. en

**Amendment 534**  
**Jan Philipp Albrecht**

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

*Text proposed by the Commission*

*Amendment*

***Article 25a***

***Data protection impact assessment***

***1. Member States shall provide that, before devising new systems for the processing of personal data, the controller or the processor acting on the controller's behalf, or the entity deciding about the new system, shall carry out an assessment of the impact of the envisaged processing operations on the protection of personal data.***

***2. The assessment shall contain at least a systematic description of***

***(a) the envisaged processing operations and their necessity and proportionality in relation to the purpose,***

***(b) an assessment of the risks to the rights and freedoms of data subjects,***

***(c) the measures envisaged to address the risks and minimise the volume of personal data which is processed,***

***(d) safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Regulation, taking into account the rights and legitimate interests of data subjects and other***

*persons concerned.*

*3. The controller shall seek the views of data subjects or their representatives on the intended processing.*

*4. The assessment shall be made easily accessible to the public.*

*5. The Commission shall be empowered to adopt, after requesting an opinion of the European Data Protection Board, delegated acts in accordance with Article 56 for the purpose of further specifying the requirements for the assessment, referred to in paragraph 2, including conditions and procedures for scalability, verification and audit ability.*

Or. en

#### *Justification*

*Processing of personal data in this sensitive field should only be done after a data protection impact assessment. The provisions are based on the draft report for the data protection regulation in order to ensure consistency.*

**Amendment 535**  
**Cornelia Ernst**

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

*Text proposed by the Commission*

*Amendment*

#### *Article 25a*

##### *Data Protection impact assessment*

*1. Member States shall provide that, prior to the processing of personal data, the controller or the processor shall carry out an assessment of the impact of the envisaged processing systems and procedures on the protection of personal data, 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.*

***2. In particular the following processing operations are likely to present such specific risks as referred to in paragraph 1:***

***(a) processing of personal data in large scale filing systems for the purposes of the prevention, detection, investigation or prosecution of criminal offences and the execution of criminal penalties;***

***(b) processing of special categories of personal data within the meaning of Article 8, of personal data related to children, location data and of biometric data for the purposes of the prevention, detection, investigation or prosecution of criminal offences and the execution of criminal penalties.***

***(c) an evaluation of personal aspects relating to a natural person or for analysing or predicting in particular the natural person's behaviour, which is based on automated processing and likely to result in measures that produces legal effects concerning the individual or significantly affects the individual;***

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

***(e) other processing operations for which the consultation of the supervisory authority is required pursuant to Article 26(1).***

***3. The assessment shall contain a systematic and detailed description of the envisaged processing operations, an assessment of the risks to the rights and freedoms of data subjects, the measures envisaged to address those risks, safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate the compliance with the provisions adopted pursuant to this Directive, taking into account the fundamental rights and legitimate interests of the data subjects and other persons concerned.***

*4. Member States shall provide that the controller consults all relevant stakeholders, including representatives of data subjects, on the intended processing.*

*5. The assessment shall be made easily accessible to the public.*

*6. The Commission shall be empowered to adopt, after requesting an opinion of the European Data Protection Board, delegated acts in accordance with Article 56 for the purpose of specifying further the criteria and conditions for the processing operations likely to present specific risks referred to in paragraphs 1 and 2 and the requirements for the assessment referred to in paragraph 3, including conditions for scalability, verification and audit ability.*

Or. en

**Amendment 536**  
**Sophia in 't Veld**

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

*Text proposed by the Commission*

*Amendment*

*Article 25a*

*Data protection impact assessment*

*1. Member States shall ensure that, where processing operations present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, the controller or the processor acting on the controller's behalf shall carry out an assessment of the impact of the envisaged or current processing operations on the protection of personal data, prior to new processing operations or the earliest as possible in case of existing processing operations.*

*2. In particular the following processing operations are likely to present such*

*specific risks as referred to in paragraph 1:*

*(a) processing of personal data in large scale filing systems for the purposes of the prevention, detection, investigation or prosecution of criminal offences and the execution of criminal penalties;*

*(b) processing of special categories of personal data within the meaning of Article 8, of personal data related to children and of biometric data for the purposes of the prevention, detection, investigation or prosecution of criminal offences and the execution of criminal penalties.*

*(c) an evaluation of personal aspects relating to a natural person or for analysing or predicting in particular the natural person's behaviour, which is based on automated processing and potentially resulting in measures that produce legal effects concerning the individual or significantly affects the individual;*

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

*(e) other processing operations for which the consultation of the supervisory authority is required pursuant to Article 26(1).*

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

*4. Member States shall provide that the controller consults the public on the*

*intended processing, without prejudice to the protection of the public interests or the security of the processing operations.*

*5. Without prejudice to the protection of the public interests or the security of the processing operations, the assessment shall be made easily accessible to the public.*

*6. The Commission shall be empowered to adopt, in consultation with the European Data Protection Board, delegated acts in accordance with Article 56 for the purpose of specifying further the criteria and conditions for the processing operations likely to present specific risks referred to in paragraphs 1 and 2 and the requirements for the assessment referred to in paragraph 3, including conditions for scalability, verification and audit ability.*

Or. en

#### **Amendment 537**

**Carlos Coelho**

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

#### **Article 26 – paragraph 1 – introductory part**

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

1. Member States shall ensure that the controller *or the processor* consults the supervisory authority prior to the processing of personal data which will form part of a new filing system to be created where:

##### *Amendment*

1. Member States shall ensure that the controller consults the supervisory authority prior to the processing of personal data which will form part of a new filing system to be created where:

Or. pt

#### **Amendment 538**

**Jan Philipp Albrecht**



**Proposal for a directive**  
**Article 26 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. Member States shall ensure that the controller or the processor consults the supervisory authority prior to the processing of personal data which will form part of a new filing system to be created **where:**

*Amendment*

1. Member States shall ensure that the controller or the processor consults the supervisory authority prior to the processing of personal data which will form part of a new **type of** filing system to be created.

Or. en

**Amendment 539**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Article 26 – paragraph 1 – point a**

*Text proposed by the Commission*

***(a) special categories of data referred to in Article 8 are to be processed;***

***deleted***

*Amendment*

Or. en

**Amendment 540**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Article 26 – paragraph 1 – point b**

*Text proposed by the Commission*

***(b) the type of processing, in particular using new technologies, mechanisms or procedures, holds otherwise specific risks for the fundamental rights and freedoms, and in particular the protection of personal data, of data subjects.***

***deleted***

*Amendment*

Or. en

**Amendment 541**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 26 – paragraph 2**

*Text proposed by the Commission*

2. Member States may provide that the supervisory authority ***establishes*** a list of the processing operations which are subject to prior consultation pursuant to paragraph 1.

*Amendment*

2. Member States may provide that the supervisory authority ***shall establish*** a list of the processing operations which are subject to prior consultation pursuant to ***point (b) of*** paragraph 1. ***The supervisory authority shall publicly communicate that list and forward it to the European Data Protection Board. The European Data Protection Board shall work on the convergence of those lists.***

Or. en

**Amendment 542**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 26 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Member States ensure that the controller or processor shall provide the supervisory authority with the data protection impact assessment provided for in Article 25a and, on request, with any other information to allow the supervisory authority to make an assessment of the compliance of the processing and in particular of the risks for the protection of personal data of the data subject and of the related safeguards.***

Or. en

**Amendment 543**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 26 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***2b. Member States shall consult the supervisory authority in the preparation of a legislative measure to be adopted by the national parliament or of a measure based on such a legislative measure, which defines the nature of the processing, in order to ensure the compliance of the intended processing under this Directive, and in particular to mitigate the risks involved for the data subjects.***

Or. en

**Amendment 544**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Article 26 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. Member States ***may*** provide that the supervisory authority establishes a list of the processing operations which are subject to prior consultation pursuant to paragraph 1.

2. Member States ***shall*** provide that the supervisory authority establishes a list of the processing operations which are subject to prior consultation pursuant to paragraph 1.

Or. en

**Amendment 545**  
**Axel Voss**

**Proposal for a directive**  
**Article 27 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Member States shall provide that the

1. Member States shall provide that the

controller **and the processor** implements **appropriate** technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the data to be protected, having regard to the state of the art and the cost of their implementation.

controller implements technical and organisational measures to **prevent**:

**(a) the unintentional or unlawful destruction,**

**(b) accidental loss,**

**(c) unauthorised alteration,**

**(d) unauthorised disclosure or access, in particular where the processing involves transmission over a network or making available by granting direct automated access, and**

**(e) all other unlawful forms of processing of personal data.**

**These measures must** ensure a level of security appropriate to the risks represented by the processing and the nature of the data to be protected, having regard to the state of the art and the cost of their implementation.

Or. de

#### *Justification*

*The revision of this article follows Article 22(1) of the Framework Decision.*

#### **Amendment 546** **Sophia in 't Veld**

#### **Proposal for a directive** **Article 27 – paragraph 1**

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

1. Member States shall provide that the controller and the processor implements appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the data to be

##### *Amendment*

1. Member States shall provide that the controller and the processor implements appropriate technical and organisational measures **and procedures** to ensure a level of security appropriate to the risks represented by the processing and the

protected, having regard to the state of the art and the cost of their implementation.

nature of the data to be protected, having regard to the state of the art and the cost of their implementation.

Or. en

#### **Amendment 547**

**Jan Mulder**

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

#### **Article 27 – paragraph 1**

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

1. Member States shall provide that the controller and the processor implements appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the data to be protected, having regard to the state of the art and the cost of their implementation.

##### *Amendment*

1. Member States shall provide that the controller and the processor implements appropriate technical and organisational measures ***and procedures*** to ensure a level of security appropriate to the risks represented by the processing and the nature of the data to be protected, having regard to the state of the art and the cost of their implementation.

Or. en

#### **Amendment 548**

**Cornelia Ernst**

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

#### **Article 27 – paragraph 1**

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

1. Member States shall provide that the controller and the processor implements appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the data to be protected, having regard to the state of the art ***and the cost of their implementation***.

##### *Amendment*

1. Member States shall provide that the controller and the processor implements appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the data to be protected, having regard to the state of the art.

Or. en

**Amendment 549**

**Axel Voss**

**Proposal for a directive**

**Article 27 – paragraph 2 – introductory part**

*Text proposed by the Commission*

2. In respect of automated data processing, each Member State shall ***provide that the controller or processor, following an evaluation of the risks, implements*** measures designed to:

*Amendment*

2. In respect of automated data processing, each Member State shall ***take suitable*** measures to:

Or. de

**Amendment 550**

**Axel Voss**

**Proposal for a directive**

**Article 27 – paragraph 2 – point j**

*Text proposed by the Commission*

(j) ensure that the functions of the system perform, that the appearance of faults in the functions is reported (reliability) and that stored personal data cannot be ***corrupted*** by means of a malfunctioning of the system (integrity).

*Amendment*

(j) ensure that the functions of the system perform, that the appearance of faults in the functions is reported (reliability) and that stored personal data cannot be ***falsified*** by means of a malfunctioning of the system (integrity).

Or. de

**Amendment 551**

**Sophia in 't Veld**

**Proposal for a directive**

**Article 27 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Member States shall provide that processors may be appointed only if they***

*guarantee and are able to demonstrate that they observe the requisite technical and organisational measures under paragraph 1 and comply with the instructions under Article 21(2)(a). The competent authority shall monitor the processor in those respects.*

Or. en

#### **Amendment 552**

**Axel Voss**

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

#### **Article 27 – paragraph 3**

*Text proposed by the Commission*

3. The **Commission** may adopt, where necessary, **implementing acts** for specifying the requirements laid down in paragraphs 1 and 2 to various situations, notably encryption standards. **Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).**

*Amendment*

3. The **Member States** may adopt, where necessary, **provisions** for specifying the requirements laid down in paragraphs 1 and 2 to various situations, notably encryption standards.

Or. de

#### **Amendment 553**

**Jan Mulder**

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

#### **Article 28 – paragraph 4**

*Text proposed by the Commission*

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

*Amendment*

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

information necessary for that purpose.

information necessary for that purpose.  
***The supervisory authority shall keep a public record of the breaches notified.***

Or. en

#### **Amendment 554**

**Cornelia Ernst**

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

#### **Article 28 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. The supervisory authority shall keep a public register of the types of breaches notified.***

Or. en

#### **Amendment 555**

**Axel Voss**

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

#### **Article 28 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

***5. The Commission shall be empowered to adopt delegated acts in accordance with Article 56 for the purpose of specifying further the criteria and requirements for establishing the data breach referred to in paragraphs 1 and 2 and for the particular circumstances in which a controller and a processor is required to notify the personal data breach.***

***deleted***

Or. de

#### *Justification*

*The criteria and requirements for establishing a data breach are already sufficiently specified in paragraph 1. The proposed delegation of legislative powers would in any event touch upon*



*essential elements which can not be delegated, and they should be specified in the basic act. A corresponding change is also suggested in the General Data Protection Regulation.*

**Amendment 556**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 28 – paragraph 5**

*Text proposed by the Commission*

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 56 for the purpose of specifying further the criteria and requirements for establishing the data breach referred to in paragraphs 1 and 2 and for the particular circumstances in which a controller and a processor is required to notify the personal data breach.

*Amendment*

5. The Commission shall be empowered to adopt, ***after requesting an opinion of the European Data Protection Board,*** delegated acts in accordance with Article 56 for the purpose of specifying further the criteria and requirements for establishing the data breach referred to in paragraphs 1 and 2 and for the particular circumstances in which a controller and a processor is required to notify the personal data breach.

Or. en

**Amendment 557**  
**Jan Mulder**

**Proposal for a directive**  
**Article 28 – paragraph 5**

*Text proposed by the Commission*

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 56 for the purpose of specifying further the criteria and requirements for establishing the data breach referred to in paragraphs 1 and 2 and for the particular circumstances in which a controller and a processor is required to notify the personal data breach.

*Amendment*

5. The Commission, ***after consultation of the European Data Protection Board,*** shall be empowered to adopt delegated acts in accordance with Article 56 for the purpose of specifying further the criteria and requirements for establishing the data breach referred to in paragraphs 1 and 2 and for the particular circumstances in which a controller and a processor is required to notify the personal data breach.

Or. en

**Amendment 558**

**Jan Mulder**

**Proposal for a directive**

**Article 28 – paragraph 6**

*Text proposed by the Commission*

6. The Commission may lay down the standard format of such notification to the supervisory authority, the procedures applicable to the notification requirement and the form and the modalities for the documentation referred to in paragraph 4, including the time limits for erasure of the information contained therein. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).

*Amendment*

6. The Commission, ***after consultation of the European Data Protection Authority,*** may lay down the standard format of such notification to the supervisory authority, the procedures applicable to the notification requirement and the form and the modalities for the documentation referred to in paragraph 4, including the time limits for erasure of the information contained therein. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).

Or. en

**Amendment 559**

**Axel Voss**

**Proposal for a directive**

**Article 28 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 28a***

***Prior consultation***

***Member States shall ensure that the competent national supervisory authorities are consulted prior to the processing of personal data which will form part of a new filing system to be created where:***

***(a) special categories of data under Article 8 are to be processed, or***

***(b) the type of processing, in particular***

*using new technologies, mechanisms or procedures, holds otherwise specific risks for the fundamental rights and freedoms, and in particular the privacy, of the data subject.*

Or. de

*Justification*

*The wording is taken from Article 23 of Framework Decision 2008/977/JI*

**Amendment 560**

**Sophia in 't Veld**

**Proposal for a directive**

**Article 28 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 28a**

*The supervisory authority shall keep a public register of the types, scope and numbers of the breaches notified.*

Or. en

**Amendment 561**

**Axel Voss**

**Proposal for a directive**

**Article 29**

*Text proposed by the Commission*

*Amendment*

**Article 29**

**deleted**

***Communication of a personal data breach to the data subject***

***1. Member States shall provide that when the personal data breach is likely to adversely affect the protection of the personal data or privacy of the data subject, the controller shall, after the***

*notification referred to in Article 28, communicate the personal data breach to the data subject without undue delay.*

*2. The communication to the data subject referred to in paragraph 1 shall describe the nature of the personal data breach and contain at least the information and the recommendations provided for in points (b) and (c) of Article 28(3).*

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

*4. The communication to the data subject may be delayed, restricted or omitted on the grounds referred to in Article 11(4).*

Or. de

**Amendment 562**  
**Cornelia Ernst**

**Proposal for a directive**  
**Article 29 – paragraph 2**

*Text proposed by the Commission*

2. The communication to the data subject referred to in paragraph 1 shall describe the nature of the personal data breach and contain at least the information and the recommendations provided for in points (b) and (c) of Article 28(3).

*Amendment*

2. The communication to the data subject referred to in paragraph 1 shall describe the nature of the personal data breach and contain at least the information and the recommendations provided for in points (a) and (e) of Article 28(3).

Or. en

**Amendment 563**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 29 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. Without prejudice to the controller's obligation to notify the personal data breach to the data subject, if the controller has not already communicated the personal data breach to the data subject, the supervisory authority, having considered the likely adverse effects of the breach, may require it to do so.***

Or. en

**Amendment 564**  
**Cornelia Ernst**

**Proposal for a directive**  
**Article 29 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

4. The communication to the data subject may be delayed, ***restricted or omitted*** on the grounds referred to in Article 11(4).

4. The communication to the data subject may be delayed ***or restricted*** on the grounds referred to in Article 11(4).

Or. en

**Amendment 565**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Article 29 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

4. The communication to the data subject may be delayed, ***restricted or omitted*** on the grounds referred to in Article 11(4).

4. The communication to the data subject may be delayed ***or restricted*** on the grounds referred to in Article 11(4).

*Justification*

*Consequential amendment in line with amendment to Article 11(4).*

**Amendment 566**

**Nuno Melo**

**Proposal for a directive**

**Article 29 – paragraph 4**

*Text proposed by the Commission*

4. The communication to the data subject may be delayed, restricted or omitted on the grounds referred to in Article **11(4)**.

*Amendment*

4. The communication to the data subject may be delayed, restricted or omitted on the grounds referred to in Article **13(1)**.

Or. pt

**Amendment 567**

**Carlos Coelho**

**Proposal for a directive**

**Article 30 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall provide that the controller **or the processor** designates a data protection officer.

*Amendment*

1. Member States shall provide that the controller designates a data protection officer. ***That obligation shall be extended to processors where their intervention is such as to justify the designation of a data protection officer.***

Or. pt

**Amendment 568**

**Birgit Sippel, Josef Weidenholzer**

**Proposal for a directive**

**Article 30 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall provide that the controller or the processor designates **a** data protection officer.

*Amendment*

1. Member States shall provide that the controller or the processor designates **at least one** data protection officer.

Or. en

**Amendment 569**

**Axel Voss**

**Proposal for a directive**

**Article 30 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. The data protection officer shall not be penalised for performing his tasks. The data protection officer may not be dismissed while he is employed in that capacity or in the course of the next year thereafter unless facts emerge which provide sufficiently important grounds for the controller to dismiss him.***

Or. de

**Amendment 570**

**Sophia in 't Veld**

**Proposal for a directive**

**Article 30 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Member States shall provide that the controller or the processor ensures that any other professional duties of the data protection officer are compatible with that person's tasks and duties as data protection officer and do not result in a conflict of interests.***

Or. en

**Amendment 571**

**Carlos Coelho**

**Proposal for a directive**

**Article 30 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. The data protection officer shall be appointed for a period of at least four years. The data protection officer may be reappointed for a further four years. During the term of office, the data protection officer may only be dismissed from that function, if they no longer fulfil the conditions required for the performance of their duties. Controllers and processors shall be responsible for notifying the supervisory authority of the identity and contact details of the data protection officer, following their appointment, and of any changes that might occur.***

Or. pt

**Amendment 572**

**Sophia in 't Veld**

**Proposal for a directive**

**Article 30 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***2b. The data protection officer shall be appointed for a period of at least four years. The data protection officer may be reappointed for further terms. During the term of office, the data protection officer may only be dismissed from that function, if he or she no longer fulfils the conditions required for the performance of his or her duties, in particular ensuring the compliance with the provisions of this Directive.***



**Amendment 573**

**Cornelia Ernst**

**Proposal for a directive**

**Article 30 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. Member States shall provide that the controller or the processor shall communicate the name and contact details of the data protection officer to the supervisory authority and to the public.***

Or. en

**Amendment 574**

**Cornelia Ernst**

**Proposal for a directive**

**Article 30 – paragraph 3 b (new)**

*Text proposed by the Commission*

*Amendment*

***3b. Member States shall provide that data subjects shall have the right to contact the data protection officer on all issues related to the processing of the data subject's data and to request exercising the rights under this Regulation.***

Or. en

**Amendment 575**

**Sophia in 't Veld**

**Proposal for a directive**

**Article 31 – paragraph 2**

*Text proposed by the Commission*

2. The controller or processor shall ensure that the data protection officer ***is provided with the means to perform*** duties and tasks ***referred to under Article 32 effectively and*** independently, and does not receive any instructions as regards the exercise of the function.

*Amendment*

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

Or. en

**Amendment 576**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 31 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. The controller or the processor shall support the data protection officer in performing the tasks and shall provide all means, including staff, premises, equipment and any other resources necessary to carry out the duties and referred to in Article 32, and to maintain his or her professional knowledge.***

Or. en

**Amendment 577**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 32 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) to inform and advise the controller or the processor of their obligations in accordance with the provisions adopted pursuant to this Directive and to document

*Amendment*

(a) to inform and advise the controller or the processor of their obligations in accordance with the provisions adopted pursuant to this Directive, ***in particular***

this activity and the responses received;

*with regards to technical and organisational measures and procedures, and to document this activity and the responses received;*

Or. en

**Amendment 578**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 32 – paragraph 1 – point h a (new)**

*Text proposed by the Commission*

*Amendment*

*(ha) to monitor the performance of the data protection impact assessment by the controller or processor;*

Or. en

**Amendment 579**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 32 a (new)**

*Text proposed by the Commission*

*Amendment*

*Article 32a*

**BOARD RESPONSABILITY**

*1. The controller and the processor shall designate a board member responsible for data protection.*

*2. The board member referred to in paragraph 1 shall bear the final responsibility for the compliance with the provisions of this Directive as implemented by Member State law.*

Or. en

**Amendment 580**  
**Cornelia Ernst**

**Proposal for a directive**  
**Article 33**

*Text proposed by the Commission*

*Amendment*

**Article 33**

*deleted*

**General principles for transfers of  
personal data**

***Member States shall provide that any transfer of personal data by competent authorities that is undergoing processing or is intended for processing after transfer to a third country, or to an international organisation, including further onward transfer to another third country or international organisation, may take place only if:***

***(a) the transfer is necessary for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties; and***

***(b) the conditions laid down in this Chapter are complied with by the controller and processor.***

Or. en

**Amendment 581**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Article 33 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***Member States shall provide that further onward transfers referred to in paragraph 1 of this Article may only take place if, in addition to the conditions laid out in that paragraph:***

***(a) the onward transfer is necessary for the same specific purpose as the original***

*transfer; and*

*(b) the competent authority that carried out the original transfer authorises the onward transfer.*

Or. en

*Justification*

*Transfers should only be allowed to law enforcement authorities, and not to other recipients in third countries. This has been suggested both by the EDPS and the Article 29 Working Party, and follows from Recital 45. It should also be specified that onward transfers should be subject to additional conditions, as suggested by the Article 29 Working Party.*

**Amendment 582**

**Axel Voss**

**Proposal for a directive**

**Article 33 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) the transfer is necessary for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties; and

*Amendment*

(a) the transfer is necessary for the prevention *of risk, the* investigation, detection or prosecution of criminal offences or the execution of criminal penalties; and

Or. de

**Amendment 583**

**Sophia in 't Veld**

**Proposal for a directive**

**Article 33 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) the transfer is necessary for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties; and

*Amendment*

(a) the *specific* transfer is necessary for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties; and

Or. en

**Amendment 584**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 33 – paragraph 1 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

***(aa) the data are transferred to a controller in a third country or international organisation that is a public authority competent for the purposes referred in Article 1(1);***

Or. en

**Amendment 585**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 33 – paragraph 1 – point a b (new)**

*Text proposed by the Commission*

*Amendment*

***(ab) the conditions laid down in this Chapter are complied with by the controller and the processor, including for onward transfers of personal data from the third country or an international organisation to another third country or to another international organisation;***

Or. en

**Amendment 586**  
**Axel Voss**

**Proposal for a directive**  
**Article 33 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

(b) the conditions laid down in this Chapter

(b) the conditions laid down in this Chapter

are complied with *by the controller and processor*.

are complied with.

Or. de

**Amendment 587**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 33 – paragraph 1 – point b**

*Text proposed by the Commission*

(b) the *conditions laid down in this Chapter* are complied with by the controller and processor.

*Amendment*

(b) the *other provisions adopted pursuant to this Directive* are complied with by the controller and processor; *and*

Or. en

**Amendment 588**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 33 – paragraph 1 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

*(ba) the level of protection of the personal data guaranteed by this Directive is not undermined.*

Or. en

**Amendment 589**  
**Cornelia Ernst**

**Proposal for a directive**  
**Article 33 a (new)**

*Text proposed by the Commission*

*Amendment*

*Article 33a*

*Transfers to recipients not subject to the provisions implementing this Directive*

*Member States shall provide that transfers of personal data by competent authorities to recipients that are not subject to the provisions implementing this Directive may only take place if such transfers are:*

*(a) provided for in national law; such laws must be in compliance with the Charter of Fundamental Rights of the European Union and the Convention for the Protection of Human Rights and Fundamental Freedoms, and be in line with the case law of the Court of Justice of the European Union and the European Court of Human Rights; or*

*(b) necessary for the protection of the vital interests of the data subject or another natural person; or*

*(c) carried out upon request of the data subject.*

Or. en

**Amendment 590**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Article 33 a (new)**

*Text proposed by the Commission*

*Amendment*

*Article 33a*

*Transfers to recipients not subject to the provisions implementing this directive*

*Member States shall provide that transfers of personal data by competent authorities to recipients that are not subject to the provisions implementing this Directive may only take place if such transfers are:*

*(a) provided for in national law; such laws must be in compliance with the Charter of Fundamental Rights of the European Union and the Convention for*



*the Protection of Human Rights and Fundamental Freedoms, and be in line with the case law of the Court of Justice of the European Union and the European Court of Human Rights; or*

*(b) necessary for the protection of the vital interests of the data subject or another person; or*

*(c) carried out upon request of the data subject.*

Or. en

### *Justification*

*The Commission proposal does not contain specific guarantees for transfers of personal data to private parties and non-law-enforcement public authorities. Yet, according to Principle 5 of Council of Europe Recommendation No R(87)15, such transfers should only be permissible under specific and strict conditions. This proposed new Article adds specific provisions on such transfers, taking inspiration from the above-mentioned Council of Europe Recommendation.*

## **Amendment 591** **Cornelia Ernst**

### **Proposal for a directive** **Article 33 b (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 33b*

#### *General principles for transfers of personal data*

*1. Member States shall provide that any transfer of personal data by competent authorities that is undergoing processing or is intended for processing after transfer to a public competent authority in a third country, or to an international organisation, including further onward transfer to another public competent authority in a third country or international organisation, may take place only if:*

*(a) the specific transfer is necessary for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties;*

*(b) the data are transferred to a controller in a third country or international organisation that is an public authority competent for the purposes referred in Article 1(1);*

*(c) the conditions laid down in Articles 34 to 37 are complied with by the controller and the processor, including for onward transfers of personal data from the third country or an international organisation to another third country or to another international organisation;*

*(d) the other provisions adopted pursuant to this Directive are complied with by the controller and processor; and*

*(e) the level of protection of the personal data individuals guaranteed in the Union by this Directive is not undermined.*

*2. Member States shall provide that further onward transfers referred to in paragraph 1 of this Article may only take place if, in addition to the conditions laid out in that paragraph:*

*(a) the onward transfer is necessary for the same specific purpose as the original transfer; and*

*(b) the competent authority that carried out the original transfer authorises the onward transfer.*

Or. en

**Amendment 592**

**Axel Voss**

**Proposal for a directive  
Article 34 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall provide that a transfer of personal data to a third country or an international organisation may take place where the Commission has decided in accordance with Article 41 of Regulation (EU) ..../2012 or in accordance with paragraph 3 of this Article that the third country or a territory or a processing sector within that third country, or the international organisation in question ensures an adequate level of protection. Such transfer shall not require any further authorisation.

*Amendment*

1. Member States shall provide that a transfer of personal data to a third country or an international organisation may take place where the Commission has decided in accordance with Article 41 of Regulation (EU) ..../2012 or in accordance with paragraph 3 of this Article that the third country or a territory or a processing sector within that third country, or the international organisation in question ensures an adequate level of protection. Such transfer shall not require any further authorisation.

***International treaties and agreements between the EU or one of its Member States and a third country or international organisation shall be deemed to be evidence for an appropriate level of protection within the meaning of this article.***

Or. de

*Justification*

*Reflects the current state of the law under Directive 95/46.*

**Amendment 593**

**Axel Voss**

**Proposal for a directive**

**Article 34 – paragraph 2 – introductory part**

*Text proposed by the Commission*

2. Where no decision adopted in accordance with Article 41 of Regulation (EU) ..../2012 exists, the Commission shall assess the adequacy of the level of protection, giving consideration to the following elements:

*Amendment*

2. Where no decision adopted in accordance with Article 41 of Regulation (EU) ..../2012 exists, the Commission shall assess the adequacy of the level of protection, giving consideration to ***all the circumstances generally surrounding data transfers or categories of data transfer which can be assessed without reference***

*to specific transfer operations. The assessment shall give particular consideration to* the following elements:

Or. de

**Amendment 594**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 34 – paragraph 2 – point b**

*Text proposed by the Commission*

(b) the existence and effective functioning of one or more independent supervisory authorities in the third country or international organisation in question responsible for ensuring compliance with the data protection rules, for assisting and advising the data subject in exercising their rights and for co-operation with the supervisory authorities of the Union and of Member States; and

*Amendment*

(b) the existence and effective functioning of one or more independent supervisory authorities in the third country or international organisation in question responsible for ensuring compliance with the data protection rules, ***including sufficient sanctioning powers***, for assisting and advising the data subject in exercising their rights and for co-operation with the supervisory authorities of the Union and of Member States; and

Or. en

**Amendment 595**  
**Axel Voss**

**Proposal for a directive**  
**Article 34 – paragraph 3**

*Text proposed by the Commission*

3. The Commission ***may decide, within the scope of this Directive, that a third country or a territory or a processing sector within that third country or an international organisation ensures an adequate level of protection*** within the meaning of paragraph 2. ***Those implementing acts shall be adopted in accordance with the examination***

*Amendment*

3. The Commission ***shall be empowered to adopt delegated acts in accordance with Article 56 to supplement the list in Annex [x] of third countries, territories or processing sectors within third countries or international organisations which ensure an adequate level of protection*** within the meaning of paragraph 2. ***When determining the level of protection, the***

*procedure referred to in Article 57(2).*

*Commission must consider whether the relevant legislation, both general and sectoral, in force in the third country or international organisation, guarantees effective and enforceable rights including effective administrative and judicial redress for data subjects, in particular for those data subjects whose personal data are being transferred.*

Or. de

#### *Justification*

*Because of the far-reaching nature of the determinations involved, they go beyond what is required for uniform conditions for implementation, and these non-essential elements must therefore be the subject of a delegation of legislative power in accordance with Article 290 TFEU. A corresponding change is also suggested in the General Data Protection Regulation.*

#### **Amendment 596**

**Axel Voss**

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

#### **Article 34 – paragraph 4**

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

**4. The implementing act shall specify its geographical and sectoral application, and, where applicable, identify the supervisory authority mentioned in point (b) of paragraph 2.**

##### *Amendment*

**4. According to Article 340(2) TFEU and settled case-law of the Court of Justice, the Union shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions in the performance of their duties, including any damage due to wrongful use of personal data following an incorrect determination under paragraphs 2 and 3.**

Or. de

#### **Amendment 597**

**Axel Voss**

**Proposal for a directive**  
**Article 34 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

**5. The Commission may decide within the scope of this Directive that a third country or a territory or a processing sector within that third country or an international organisation does not ensure an adequate level of protection within the meaning of paragraph 2, in particular in cases where the relevant legislation, both general and sectoral, in force in the third country or international organisation, does not guarantee effective and enforceable rights including effective administrative and judicial redress for data subjects, in particular for those data subjects whose personal data are being transferred. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2), or, in cases of extreme urgency for individuals with respect to their right to personal data protection, in accordance with the procedure referred to in Article 57(3).**

**deleted**

Or. de

**Amendment 598**  
**Axel Voss**

**Proposal for a directive**  
**Article 34 – paragraph 6**

*Text proposed by the Commission*

*Amendment*

**6. Member States shall ensure that where the Commission decides pursuant to paragraph 5, that any transfer of personal data to the third country or a territory or a processing sector within that third country, or the international organisation in question shall be prohibited, this decision shall be without prejudice to**

**deleted**

*transfers under Article 35(1) or in accordance with Article 36. At the appropriate time, the Commission shall enter into consultations with the third country or international organisation with a view to remedying the situation resulting from the Decision made pursuant to paragraph 5 of this Article.*

Or. de

**Amendment 599**

**Axel Voss**

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

*Text proposed by the Commission*

*Amendment*

**8. The Commission shall monitor the application of the implementing acts referred to in paragraphs 3 and 5.** *deleted*

Or. de

**Amendment 600**

**Axel Voss**

**Proposal for a directive  
Article 35**

*Text proposed by the Commission*

*Amendment*

**Article 35** *deleted*

***Transfers by way of appropriate safeguards***

***1. Where the Commission has taken no decision pursuant to Article 34, Member States shall provide that a transfer of personal data to a recipient in a third country or an international organisation may take place where:***

***a) appropriate safeguards with respect to the protection of personal data have been***

*adduced in a legally binding instrument;  
or*

*(b) the controller or processor has  
assessed all the circumstances  
surrounding the transfer of personal data  
and concludes that appropriate  
safeguards exist with respect to the  
protection of personal data.*

*2. The decision for transfers under  
paragraph 1 (b) must be made by duly  
authorised staff. These transfers must be  
documented and the documentation must  
be made available to the supervisory  
authority on request.*

Or. de

**Amendment 601**  
**Sophia in 't Veld**

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

*Text proposed by the Commission*

1. **Where** the Commission has taken no decision pursuant to Article 34, Member States shall provide that a transfer of personal data to a recipient in a third country or an international organisation may take place where:

*Amendment*

1. the Commission has taken no decision pursuant to Article 34, Member States shall provide that a transfer of personal data to a recipient in a third country or an international organisation may **only** take place where:

Or. en

**Amendment 602**  
**Cornelia Ernst**

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

*Text proposed by the Commission*

1. Where the Commission has taken no decision pursuant to Article 34, Member

*Amendment*

1. Where the Commission has taken no decision pursuant to Article 34, Member



States shall provide that a transfer of personal data to a ***recipient*** in a third country or an international organisation may take place where:

***(a)*** appropriate safeguards with respect to the protection of personal data have been adduced in a legally binding instrument; ***or***

***(b) the controller or processor has assessed all the circumstances surrounding the transfer of personal data and concludes that appropriate safeguards exist with respect to the protection of personal data.***

States shall provide that a transfer of personal data to a ***competent public authority*** in a third country or an international organisation may take place where appropriate safeguards with respect to the protection of personal data have been adduced in a legally binding instrument.

Or. en

**Amendment 603**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 35 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) appropriate safeguards with respect to the protection of personal data have been adduced in a legally binding instrument; ***or***

*Amendment*

(a) appropriate safeguards with respect to the protection of personal data have been adduced in a legally binding instrument;  
***and***

Or. en

**Amendment 604**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 35 – paragraph 1 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

***(aa) the supervisory authority gave prior authorisation for the transfer.***

**Amendment 605**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 35 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

*(b) the controller or processor has  
assessed all the circumstances  
surrounding the transfer of personal data  
and concludes that appropriate  
safeguards exist with respect to the  
protection of personal data.*

*deleted*

Or. en

**Amendment 606**  
**Carlos Coelho**

**Proposal for a directive**  
**Article 35 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

*(b) the controller or processor has  
assessed all the circumstances  
surrounding the transfer of personal data  
and concludes that appropriate  
safeguards exist with respect to the  
protection of personal data.*

*deleted*

Or. pt

**Amendment 607**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Article 35 – paragraph 1 – point b**

*Text proposed by the Commission*

(b) the ***controller or processor*** has assessed ***all the circumstances*** surrounding the transfer of personal data ***and concludes*** that appropriate safeguards exist with respect to the protection of personal data.

*Amendment*

(b) the ***European Data Protection Board*** has assessed ***that the recipient controller or processor meets all legal requirements and best practices generally*** surrounding the transfer of personal data ***stipulated in this Directive, in particular regarding personal data originally collected by private parties, and has concluded*** that appropriate safeguards exist with respect to the protection of personal data, ***or***

Or. en

*Justification*

*Self-assessment by the controller or processor cannot be the basis for transfers to third countries. Such transfers must always be based on a legally binding instrument. See also pt 415 EDPS opinion.*

**Amendment 608**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Article 35 – paragraph 1 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

***(ba) Member State law allows for specific transfers of personal data which are strictly necessary and proportionate, subject to the relevant provisions of Union law or public international law, and in particular the ECHR as interpreted by the European Court of Human Rights.***

Or. en

**Amendment 609**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 35 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

***1. The decision for transfers under paragraph 1(b) must be made by duly authorised staff. These transfers must be documented and the documentation must be made available to the supervisory authority on request.***

***deleted***

Or. en

*(wrong numbering of the paragraphs in the Commission document)*

**Amendment 610**  
**Cornelia Ernst**

**Proposal for a directive**  
**Article 35 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

***2. The decision for transfers under paragraph 1 (b) must be made by duly authorised staff.*** These transfers must be documented and the documentation must be made available to the supervisory authority on request.

2. These transfers must be documented and the documentation must be made available to the supervisory authority on request.

Or. en

*(wrong numbering of the paragraphs in the Commission document)*

**Amendment 611**  
**Axel Voss**

**Proposal for a directive**  
**Article 35 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 35a***

***Transfers by way of appropriate***

*safeguards*

*1. Where the Commission has taken no decision pursuant to Article 34, a transfer of personal data to a recipient in a third country or an international organisation may take place where:*

*(a) appropriate safeguards with respect to the protection of personal data have been adduced in a legally binding instrument;*

*(b) the controller or processor has assessed all the circumstances generally surrounding the transfer of personal data (Article 34(2)) and concludes that appropriate safeguards exist with respect to the protection of personal data, or*

*(c) a specific transfer of personal data may take place (Article 36) despite the Commission having concluded that an adequate level of data protection does not exist.*

Or. de

**Amendment 612**

**Axel Voss**

**Proposal for a directive**

**Article 35 b (new)**

*Text proposed by the Commission*

*Amendment*

**Article 35b**

***Transfer of personal data originating in other Member States***

***1. Member States shall provide that, further to the above conditions, any transfer by competent authorities of personal data transmitted or provided by the responsible authorities of another Member State, including further onward transfer to a third country or international organisation, may take place only if:***

*(a) the recipient in the third country or the receiving international body is responsible for the prevention of risk or the investigation, detection or prosecution of criminal offences or the execution of criminal penalties;*

*(b) the Member State from which the data were transferred has given its consent to transfer in compliance with its national law, and*

*(c) in cases covered by paragraph 3 of Article 34(a) and Article 35(b) and (c), the Member State from which the data were transferred also considers that, in compliance with its national law, appropriate safeguards exist in respect of the protection of the data transferred.*

*2. Onward transfer without prior consent in accordance with paragraph 1(b) shall be permitted only if transfer of the data is essential for the prevention of an immediate and serious threat to public security of a Member State or a third State or to essential interests of a Member State and the prior consent cannot be obtained in good time. The authority responsible for giving consent shall be informed without delay.*

*3. By way of derogation from point (c) of paragraph 1, onward transfer of personal data may take place if the national law of the Member State transferring the data so provides on the grounds of:*

*(a) the compelling and legitimate interests of the data subject; or*

*(b) compelling and legitimate interests, in particular important public interests.*

*4. Personal data may be forwarded to private parties only under the conditions set out in paragraph 1 of Article 7(a).*

Or. de

## *Justification*

*Article 35b corresponds to Article 13 of Framework Decision 2088/977/JI; it introduces special rules on the handling of data from other Member States and affords them special protection. This provision serves to protect the Member State in which data originate and thereby creates the necessary confidence for internal Union data on the basis that transmitted data will not be further processed by host states as they choose.*

### **Amendment 613**

**Axel Voss**

### **Proposal for a directive**

#### **Article 36**

*Text proposed by the Commission*

*Amendment*

#### **Article 36**

***deleted***

#### ***Derogations***

***By way of derogation from Articles 34 and 35, Member States shall provide that a transfer of personal data to a third country or an international organisation may take place only on condition that:***

***a) the transfer is necessary in order to protect the vital interests of the data subject or another person;***

***b) the transfer is necessary to safeguard legitimate interests of the data subject where the law of the Member State transferring the personal data so provides; or***

***c) the transfer of the data is essential for the prevention of an immediate and serious threat to public security of a Member State or a third country; or***

***d) the transfer is necessary in individual cases for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties; or***

***e) the transfer is necessary in individual cases for the establishment, exercise or defence of legal claims relating to the prevention, investigation, detection or***

*prosecution of a specific criminal offence  
or the execution of a specific criminal  
penalty.*

Or. de

**Amendment 614**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 36**

*Text proposed by the Commission*

*Amendment*

**Article 36**

**deleted**

**Derogations**

*By way of derogation from Articles 34 and  
35, Member States shall provide that a  
transfer of personal data to a third  
country or an international organisation  
may take place only on condition that:*

*(a) the transfer is necessary in order to  
protect the vital interests of the data  
subject or another person; or*

*(b) the transfer is necessary to safeguard  
legitimate interests of the data subject  
where the law of the Member State  
transferring the personal data so  
provides; or*

*(c) the transfer of the data is essential for  
the prevention of an immediate and  
serious threat to public security of a  
Member State or a third country; or*

*(d) the transfer is necessary in individual  
cases for the purposes of prevention,  
investigation, detection or prosecution of  
criminal offences or the execution of  
criminal penalties; or*

*(e) the transfer is necessary in individual  
cases for the establishment, exercise or  
defence of legal claims relating to the  
prevention, investigation, detection or  
prosecution of a specific criminal offence  
or the execution of a specific criminal*



*penalty.*

Or. en

**Amendment 615**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Article 36 – title**

*Text proposed by the Commission*

***Derogation***

*Amendment*

***Derogations in the case of specific transfers***

Or. en

**Amendment 616**  
**Cornelia Ernst**

**Proposal for a directive**  
**Article 36 – paragraph 1 – introductory part**

*Text proposed by the Commission*

By way of derogation from Articles 34 and 35, Member States shall provide that a transfer of personal data to a third country or an international organisation may take place only on condition that:

*Amendment*

By way of derogation from Articles 34 and 35, Member States shall provide that a transfer of personal data to a ***competent public authority in a*** third country or an international organisation may take place only on condition that ***the controller has obtained prior authorisation in accordance with paragraph 1a and:***

Or. en

**Amendment 617**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Article 36 – paragraph 1 – introductory part**

*Text proposed by the Commission*

By way of derogation from **Articles 34 and 35**, Member States **shall** provide that a transfer of personal data to a third country or an international organisation may take place only on condition that:

*Amendment*

***Where the Commission concludes pursuant to Article 34(5) that an adequate level of protection does not exist, personal data may not be transferred to the third country or a territory or a processing sector within that third country, or the international organisation in question, if, in the case in question, the legitimate interests of the data subject in preventing any such transfer outweigh the public interest in transferring such data.***

By way of derogation from **Paragraph 1 and Article 35**, Member States **may** provide that a transfer of personal data to a third country or an international organisation may take place only on condition that:

Or. en

**Amendment 618**  
**Carlos Coelho**

**Proposal for a directive**  
**Article 36 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***All transfers of data decided on the basis of derogations shall be duly justified and shall be limited to what is strictly necessary, and frequent massive transfers of data shall not be allowed.***

Or. pt

**Amendment 619**  
**Cornelia Ernst**

**Proposal for a directive**  
**Article 36 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***Member States shall provide that prior to carrying out a transfer based on paragraph 1, the controller shall obtain prior authorisation from the supervisory authority, in order to ensure the compliance of the transfer with the provisions adopted pursuant to this Directive and to in particular to mitigate the risk involved for the data subject.***

Or. en

**Amendment 620  
Jan Philipp Albrecht**

**Proposal for a directive  
Article 36 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***Member States shall ensure that personal data is only transferred under the provisions of this Article if***

***(a) the controller has obtained prior authorisation from the supervisory authority; and***

***(b) the transfer is only comprising data strictly necessary to achieve the purpose for which it is transferred; and***

***(c) all transfers are fully documented, including date and time of the transfer, the recipient authority, the justification for the transfer and the data transferred. This documentation shall be made available to the supervisory authority on request.***

Or. en

**Amendment 621  
Cornelia Ernst**

**Proposal for a directive**  
**Article 36 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***Member States shall provide that when any of the derogations in paragraph 1 is invoked, the controller shall:***

***(a) only transfer the amount of personal data strictly necessary to achieve the aim of the transfer; and***

***(b) document these transfers, including the date and time of the transfer, information about the recipient authority, the justification for the transfer and the data transferred. This documentation shall be made available to the supervisory authority on request.***

Or. en

**Amendment 622**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Article 36 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

(a) the transfer is necessary ***in order to protect*** the vital interests of the data subject or another person; or

(a) the transfer is necessary ***to safeguard*** the vital interests of the data subject or another person, ***particularly in terms of their physical safety and well-being***; or

Or. en

**Amendment 623**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Article 36 – paragraph 1 – point c**

*Text proposed by the Commission*

(c) the transfer of the data is essential for the prevention of an immediate and serious threat to public security of a Member State or a third country; or

*Amendment*

(c) the transfer of the data is ***limited to a specific case and*** essential for the prevention of an immediate and serious threat to public security of a Member State or a third country; or

Or. en

**Amendment 624**

**Axel Voss**

**Proposal for a directive**

**Article 36 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 36a***

***Derogations in the case of specific data transfers after weighing the competing interests involved***

***1. Where the Commission concludes pursuant to Article 34(5) that an adequate level of protection does not exist, personal data may not be transferred to the third country or a territory or a processing sector within that third country, or the international organisation in question, if, in the case in question, the legitimate interests of the data subject in preventing any such transfer outweigh the public interest in transferring such data .***

***2. The adequacy of the level of protection in place in the case in question shall be one of the factors taken into account when the merits of the competing interests involved are compared. The assessment of the adequacy of the level of protection in the case in question shall give particular consideration to the circumstances surrounding the proposed data transfer, including in particular:***

***(a) the nature of the data that are to be***

*transferred,*

*(b) the purpose(s) served by transferring it, and*

*(c) the duration of the proposed processing operation in the third country.*

*3. By way of derogation from Articles 1 and 35, Member States may provide that a transfer of personal data to a third country or an international organisation may take place only on condition that:*

*(a) the transfer is necessary to safeguard the vital and legitimate interests of the data subject or of another person, particularly in terms of their physical safety and well-being;*

*(b) the transfer is necessary to safeguard legitimate interests of the data subject where the law of the Member State transferring the personal data so provides; or*

*(c) the transfer is necessary in individual cases for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties; or*

*(d) the transfer is necessary in individual cases for the establishment, exercise or defence of legal claims relating to the prevention, investigation, detection or prosecution of a specific criminal offence or the execution of a specific criminal penalty.*

*4. In individual cases an adequate standard of protection may exist if the third country or a territory, a processing sector or an interstate or supranational body within that third country, or the international organisation, guarantees that the transferred data will receive an adequate level of protection.*

Or. de

### *Justification*

*The rewording of Article 36 follows the logic of Articles 34 and 35. In strictly limited individual cases it must be possible for data to be transferred – subject to very strict conditions – to third countries whose data protection standards are judged to be inadequate in order to safeguard interests of paramount importance, such as life and limb.*

#### **Amendment 625**

**Axel Voss**

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

#### **Article 37 – paragraph 1**

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

Member States shall provide that the controller informs the recipient of the personal data of any processing restrictions and takes all reasonable steps to ensure that these restrictions are met.

##### *Amendment*

Member States shall provide that the controller informs the recipient of the personal data of any processing restrictions and takes all reasonable steps to ensure that these restrictions are met. ***The first sentence shall also apply to any processing restrictions with which the controller must comply pursuant to paragraph 3 of Article 7(a).***

Or. de

### *Justification*

*When data is transferred within the EU, any processing restrictions in place at national level must also apply when the data is transferred to a third country; otherwise, there would be insufficient confidence in the system to enable data to be transferred within the EU.*

#### **Amendment 626**

**Carlos Coelho**

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

#### **Article 37 – paragraph 1**

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

Member States shall provide that the controller informs the recipient of the personal data of any processing restrictions and takes all reasonable steps to ensure that these restrictions are met.

##### *Amendment*

Member States shall provide that the controller informs the recipient of the personal data of any processing restrictions and takes all reasonable steps to ensure that these restrictions are met. ***The controller shall also notify the recipient of the personal data of any update, rectification or erasure of data, and the recipient shall***

*in turn make the corresponding notification in the event that the data has subsequently been transferred.*

Or. pt

**Amendment 627**

**Axel Voss**

**Proposal for a directive**

**Article 38 – paragraph 2**

*Text proposed by the Commission*

2. For the purposes of paragraph 1, the Commission shall take appropriate steps to advance the relationship with third countries or with international organisations, and in particular their supervisory authorities, where the Commission has decided that they ensure an adequate level of protection within the meaning of Article 34(3).

*Amendment*

2. For the purposes of paragraph 1, the Commission shall, ***within the scope of this directive***, take appropriate steps to advance the relationship with third countries or with international organisations, and in particular their supervisory authorities, where the Commission has decided that they ensure an adequate level of protection within the meaning of Article 34(3). ***In so doing the Commission shall have due regard to the competences of the Member States and the legal or practical measures taken in connection with the exercise of those competences.***

Or. de

**Amendment 628**

**Sophia in 't Veld**

**Proposal for a directive**

**Article 38 a (new)**

*Text proposed by the Commission*

*Amendment*

***Chapter Va***

***Article 38a***

***1. Member States shall ensure that the controller does not transmit personal data to a natural or legal person not subject to***



*the provisions adopted pursuant to this Directive, unless:*

*(a) the transmission complies with Union or national law; and*

*(b) the recipient is established in a Member State of the European Union; and*

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

*(d) the transmission is necessary in a specific case for the controller transmitting the personal data for:*

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

*(ii) the prevention of an immediate and serious danger to public security; or*

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

*2. The controller shall inform the recipient of the purpose for which the personal data may exclusively be processed.*

*3. The controller shall inform the recipient of processing restrictions and ensure that these restrictions are met.*

Or. en

**Amendment 629**  
**Carlos Coelho**

**Proposal for a directive**  
**Article 40 – paragraph 7**

*Text proposed by the Commission*

7. Member States shall ensure that the supervisory authority is subject to financial control which shall not affect its independence. Member States shall ensure that the supervisory authority has separate annual budgets. The budgets shall be made public.

*Amendment*

7. Member States shall ensure that the supervisory authority is subject to financial control which shall not affect its independence. Member States shall ensure that the supervisory authority has separate annual budgets, *which shall be managed by that authority with complete autonomy.*

The budgets shall be made public.

Or. pt

**Amendment 630**

**Cornelia Ernst**

**Proposal for a directive**

**Article 41 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 631**

**Carlos Coelho**

**Proposal for a directive**

**Article 41 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

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

Or. pt

**Amendment 632**

**Axel Voss**

**Proposal for a directive**

**Article 41 – paragraph 5**

*Text proposed by the Commission*

5. Where the term of office expires or the member resigns, the member shall continue to exercise their duties until a new member is appointed.

*Amendment*

5. Where the term of office expires or the member resigns, the member shall, ***on request***, continue to exercise their duties until a new member is appointed.

Or. de

*Justification*

*If a member were dismissed on the grounds of serious misconduct, it might be inappropriate for him or her to remain in post until a successor was appointed. The member should only remain in post if so requested, therefore.*

**Amendment 633**

**Axel Voss**

**Proposal for a directive**

**Article 44 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall provide that each supervisory authority exercises, on the territory of its own Member State, the powers conferred on it in accordance with this Directive.

*Amendment*

1. Member States shall provide that each supervisory authority exercises, on the territory of its own Member State, ***a least*** the powers conferred on it in accordance with this Directive.

Or. de

**Amendment 634**

**Monika Hohlmeier**

**Proposal for a directive**

**Article 44 – paragraph 2**

*Text proposed by the Commission*

***2. Member States shall provide that the***

*Amendment*

***2. The supervisory authority shall not be***

*supervisory authority is not competent to supervise processing operations of courts when acting in their judicial capacity.*

*responsible for supervising tasks assigned to the independent jurisdiction of the courts. The same shall apply where processing operations are ordered, approved or declared admissible by the judiciary acting independently.*

Or. de

#### **Amendment 635**

**Axel Voss**

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

#### **Article 45 – paragraph 1 – point a**

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

(a) monitors and ensures the application of the provisions adopted pursuant to this Directive and its implementing measures;

##### *Amendment*

(a) monitors and ensures the application of ***at least*** the provisions adopted pursuant to this Directive and its implementing measures;

Or. de

#### **Amendment 636**

**Axel Voss**

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

#### **Article 45 – paragraph 1 – point b**

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

(b) hears complaints lodged by any data subject, ***or by an association representing and duly mandated by that data subject in accordance with Article 50***, investigates, to the extent appropriate, the matter and informs the data subject or the association of the progress and the outcome of the complaint within a reasonable period, in particular where further investigation or

##### *Amendment*

(b) hears complaints lodged by any data subject, investigates, to the extent appropriate, the matter and informs the data subject or the association of the progress and the outcome of the complaint within a reasonable period, in particular where further investigation or coordination with another supervisory authority is

coordination with another supervisory authority is necessary;

necessary;

Or. de

### *Justification*

*Amendment required in consequence of the deletion of the right of associations to lodge complaints (Article 50).*

## **Amendment 637**

**Axel Voss**

### **Proposal for a directive**

#### **Article 45 – paragraph 1 – point e**

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

(e) conducts investigations either on its own initiative or on the basis of a complaint, or on request of another supervisory authority, and informs the data subject concerned, if the data subject has addressed a complaint, of the outcome of the investigations within a reasonable period;

##### *Amendment*

(e) conducts investigations either on its own initiative or on the basis of a complaint, or on request of another supervisory authority, and informs the data subject concerned, if the data subject has addressed a complaint, of the outcome of the investigations within a reasonable period; ***the supervisory authority may also conduct such investigations on its own initiative, within the limits of national legislation;***

Or. de

## **Amendment 638**

**Axel Voss**

**Proposal for a directive**  
**Article 45 – paragraph 1 – point g**

*Text proposed by the Commission*

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

*Amendment*

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

Or. de

**Amendment 639**  
**Axel Voss**

**Proposal for a directive**  
**Article 45 – paragraph 2**

*Text proposed by the Commission*

2. Each supervisory authority shall promote the awareness of the public on risks, rules, safeguards and rights in relation to the processing of personal data. Activities addressed specifically to children shall receive specific attention.

*Amendment*

2. Each supervisory authority shall promote ***within the limits of the tasks and powers conferred on it and the constraints of national law***, the awareness of the public on risks, rules, safeguards and rights in relation to the processing of personal data. Activities addressed specifically to children shall receive specific attention. Activities addressed specifically to children shall receive specific attention.

Or. de

**Amendment 640**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 45 – paragraph 6**

*Text proposed by the Commission*

6. ***Where requests are vexatious, in***

*Amendment*

6. The supervisory authority may ***only***

*particular due to their repetitive character*, the supervisory authority may *charge a fee or not* take the action required by the data subject. The supervisory authority shall bear the burden of proving *of the vexatious* character of the request.

*refuse to* take the action required by the data subject *when the request is flagrantly excessive*. The supervisory authority shall bear the burden of proving *the flagrantly excessive* character of the request.

Or. en

#### **Amendment 641**

**Jan Mulder**

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

#### **Article 45 – paragraph 6**

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

6. Where requests are vexatious, in particular due to their repetitive character, the supervisory authority may charge a fee or not take the action required by the data subject. The supervisory authority shall bear the burden of proving of the vexatious character of the request.

##### *Amendment*

6. Where requests are **very** vexatious, in particular due to their repetitive character, the supervisory authority may charge a fee or not take the action required by the data subject. The supervisory authority shall bear the burden of proving of the **very** vexatious character of the request.

Or. en

#### **Amendment 642**

**Cornelia Ernst**

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

#### **Article 45 – paragraph 6**

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

6. Where requests are vexatious, in particular due to their repetitive character, the supervisory authority may charge a *fee or not take the action required by the data subject*. The supervisory authority shall bear the burden of proving of the vexatious character of the request.

##### *Amendment*

6. Where requests are vexatious, in particular due to their repetitive character, the supervisory authority may charge a **reasonable fee**. The supervisory authority shall bear the burden of proving of the vexatious character of the request.

Or. en

**Amendment 643**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Article 45 – paragraph 6**

*Text proposed by the Commission*

6. Where requests are **vexatious**, in particular due to their repetitive character, the supervisory authority may charge a **fee or not take the action required by the data subject**. The supervisory authority shall bear the burden of proving of the **vexatious** character of the request.

*Amendment*

6. Where requests are **manifestly excessive**, in particular due to their repetitive character, the supervisory authority may charge a **reasonable fee**. The supervisory authority shall bear the burden of proving of the **excessive** character of the request.

Or. en

*Justification*

*Amendment necessary in order to ensure coherence with the data protection regulation.*

**Amendment 644**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 46 – paragraph 1**

*Text proposed by the Commission*

**Member States shall provide that each supervisory authority must in particular be endowed with:**

**(a) investigative powers, such as powers of access to data forming the subject matter of processing operations and powers to collect all the information necessary for the performance of its supervisory duties;**

**(b) effective powers of intervention, such as the delivering of opinions before processing is carried out, and ensuring appropriate publication of such opinions, ordering the restriction, erasure or destruction of data, imposing a temporary**

*Amendment*

**deleted**



*or definitive ban on processing, warning or admonishing the controller, or referring the matter to national parliaments or other political institutions ;*

*(c) the power to engage in legal proceedings where the provisions adopted pursuant to this Directive have been infringed or to bring this infringement to the attention of the judicial authorities.*

Or. en

**Amendment 645**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 46 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1. Member States shall provide that each supervisory authority has the power:***

***(a) to notify the controller or the processor of an alleged breach of the provisions governing the processing of personal data, and, where appropriate, order the controller or the processor to remedy that breach, in a specific manner, in order to improve the protection of the data subject;***

***(b) to order the controller to comply with the data subject's requests to exercise his or her rights under this Directive, including those provided by Articles 12 to 17 where such requests have been refused in breach of those provisions;***

***(c) to order the controller or the processor to provide information pursuant to Article 10(1) and (2) and Articles 11, 28 and 29;***

***(d) to ensure compliance with opinions on prior consultations referred to in Article 26;***

***(e) to warn or admonish the controller or the processor;***

*(f) to order the rectification, erasure or destruction of all data when they have been processed in breach of the provisions adopted pursuant to this Directive and the notification of such actions to third parties to whom the data have been disclosed;*

*(g) to impose a temporary or definitive ban on processing;*

*(h) to suspend data flows to a recipient in a third country or to an international organisation;*

*(i) to inform national parliaments, the government or other public institutions as well as the public on the matter.*

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

*(a) access to all personal data, all documents and to all information necessary for the performance of its supervisory duties;*

*(b) access to any of its premises, including to any data processing equipment and means, in accordance with national law, where there are reasonable grounds for presuming that an activity in violation of the provisions adopted pursuant to this Directive is being carried out there, without prejudice to a judicial authorisation if required by national law.*

*3. Without prejudice to Article 43, Member States shall provide that no additional secrecy requirements shall be issued to the requests of supervisory authorities.*

*4. Member States may provide that additional security screening in line with national law is required for access to information classified at a level similar to EU CONFIDENTIAL or higher. If no additional security screening is required under the law of the Member State of the supervisory authority, this must be recognised by all other Member States.*

***5. Each supervisory authority shall have the power to bring violations of the provisions adopted pursuant to this Directive to the attention of the judicial authorities and to engage in legal proceedings and bring an action to the competent court pursuant to Article 53(2).***

***6. Each supervisory authority shall have the power to impose penalties in respect of administrative offences.***

Or. en

**Amendment 646**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Article 46 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) investigative powers, such as powers of access to ***data forming the subject matter of processing operations and powers to collect*** all the information necessary for the performance of its supervisory duties;

*Amendment*

(a) investigative powers, such as powers of access to ***all personal data and to*** all the information necessary for the performance of its supervisory duties ***and access to any of a data controller's premises, including to any data processing equipment and means.***

Or. en

**Amendment 647**  
**Axel Voss**

**Proposal for a directive**  
**Article 46 – paragraph 1 – point c**

*Text proposed by the Commission*

(c) the power to engage in legal proceedings where the provisions adopted pursuant to this Directive have been infringed or to bring this infringement to the attention of the judicial authorities.

*Amendment*

(c) the power to engage in legal proceedings where the provisions adopted pursuant to this Directive have been infringed or to bring this infringement to the attention of the judicial authorities.  
***Decisions by the supervisory authority***

*which give rise to complaints may be  
appealed against through the courts.*

Or. de

*Justification*

*The inclusion of a guaranteed right to appeal through the courts is clearly necessary; the wording is taken directly from Article 25(2)(c) of Framework Decision 2008/977/JI.*

**Amendment 648**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 46 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 46a**

**Whistleblower**

*The Commission shall bring forward a legislative proposal for the purpose of specifying the conditions and criteria to guarantee the legal protection of whistleblowers, reporting non-compliance with the provisions of this Directive by a controller or a processor, within one year after the entry into force of this Directive.*

Or. en

**Amendment 649**  
**Dimitrios Droutsas**

**Proposal for a directive**  
**Article 46 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 46a**

*1. Member States shall ensure that each supervisory authority shall have the investigative power to obtain from the controller or the processor access to any of its premises, including to any data processing equipment and means.*

*2. Member States shall ensure that each supervisory authority shall be provided with any information and all documents necessary for the exercise of their investigative powers. No secrecy requirements may be opposed to the requests of the supervisory authorities, except for the professional secrecy requirement referred to in Article 43.*

*3. Member States may provide that additional security screening in line with national law is required for access to information classified at a level similar to EU CONFIDENTIAL or higher. If no additional security screening is required under the law of the Member State of the supervisory authority, this must be recognized by all other Member States.*

Or. en

## Amendment 650

Axel Voss

### Proposal for a directive

#### Article 47 – paragraph 1

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

Member States shall provide that each supervisory authority draws up an annual report on its activities. The report shall be made available to the Commission and the European Data Protection Board.

##### *Amendment*

Member States shall provide that each supervisory authority draws up an annual report on its activities ***at regular intervals of not more than three years.***

Or. de

**Amendment 651**  
**Sophia in 't Veld**

**Proposal for a directive**  
**Article 47 – paragraph 1**

*Text proposed by the Commission*

Member States shall provide that each supervisory authority draws up an annual report on its activities. The report shall be made available to the Commission and the European Data Protection Board.

*Amendment*

Member States shall provide that each supervisory authority draws up an annual report on its activities. The report shall be made available to the ***public, the national parliament, the*** Commission and the European Data Protection Board.

Or. en

**Amendment 652**  
**Jan Mulder**

**Proposal for a directive**  
**Article 47 – paragraph 1**

*Text proposed by the Commission*

Member States shall provide that each supervisory authority draws up an annual report on its activities. The report shall be made available to the Commission and the European Data Protection Board.

*Amendment*

Member States shall provide that each supervisory authority draws up an annual report on its activities. The report shall be made ***public and*** available to the Commission and the European Data Protection Board.

Or. en

**Amendment 653**  
**Jan Philipp Albrecht**

**Proposal for a directive**  
**Article 47 – paragraph 1**

*Text proposed by the Commission*

Member States shall provide that each supervisory authority draws up ***an annual*** report on its activities. The report shall be

*Amendment*

Member States shall provide that each supervisory authority draws up ***a*** report on its activities ***at least every two years***. The

made available to the Commission *and* the European Data Protection Board.

report shall be ***presented to the national parliament, and be*** made available to the Commission, the European Data Protection Board, ***and the public. It shall include information on the extent to which competent authorities in their jurisdiction have accessed data held by private parties to investigate or prosecute criminal offences.***

Or. en

#### **Amendment 654**

**Axel Voss**

#### **Proposal for a directive Article 50 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

***2. Member States shall provide for the right of any body, organisation or association which aims to protect data subjects' rights and interests concerning the protection of their personal data and is being properly constituted according to the law of a Member State to lodge a complaint with a supervisory authority in any Member State on behalf of one or more data subjects, if it considers that a data subject's rights under this Directive have been infringed as a result of the processing of personal data. The organisation or association must be duly mandated by the data subject(s).***

***deleted***

Or. de

*Justification*Amendment to this Article provides for the complete deletion of the right to initiate class actions, as there is no rational requirement for such a right under data protection law. Police measures always relate to infringements of an individual's rights.

#### **Amendment 655**

**Cornelia Ernst**

**Proposal for a directive**  
**Article 50 – paragraph 2**

*Text proposed by the Commission*

2. Member States shall provide for the right of any body, organisation or association which aims to protect **data** subjects' rights and interests **concerning the protection of their personal data** and is being properly constituted according to the law of a Member State to lodge a complaint with a supervisory authority in any Member State on behalf of one or more data subjects, if it considers that a data subject's rights under this Directive have been infringed as a result of the processing of personal data. **The organisation or association must be duly mandated by the data subject(s).**

*Amendment*

2. Member States shall provide for the right of any body, organisation or association which aims to protect subjects' rights and interests and is being properly constituted according to the law of a Member State to lodge a complaint with a supervisory authority in any Member State on behalf of one or more data subjects, if it considers that a data subject's rights under this Directive have been infringed as a result of the processing of personal data.

Or. en

**Amendment 656**  
**Axel Voss**

**Proposal for a directive**  
**Article 50 – paragraph 3**

*Text proposed by the Commission*

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

*Amendment*

**deleted**

Or. de

**Amendment 657**  
**Axel Voss**



**Proposal for a directive**  
**Article 52 – paragraph 1**

*Text proposed by the Commission*

Without prejudice to any available administrative remedy, including the right to lodge a complaint with a supervisory authority, Member States shall provide for the right of every natural person to a judicial remedy if ***they consider that that*** their rights laid down in provisions adopted pursuant to this Directive have been infringed as a result of the processing of their personal data in non-compliance with these provisions.

*Amendment*

Without prejudice to any available administrative remedy, including the right to lodge a complaint with a supervisory authority, Member States shall provide for the right of every natural person to a judicial remedy if that their rights laid down in provisions adopted pursuant to this Directive have been infringed as a result of the processing of their personal data in non-compliance with these provisions.

Or. de

**Amendment 658**  
**Axel Voss**

**Proposal for a directive**  
**Article 53 – paragraph 1**

*Text proposed by the Commission*

***1. Member States shall provide for the right of any body, organisation or association referred to in Article 50(2) to exercise the rights referred to in Articles 51 and 52 on behalf of one or more data subjects.***

*Amendment*

***deleted***

Or. de

*Justification*Amendment required in consequence of the deletion of the right of associations to lodge complaints (Article 50).

**Amendment 659**  
**Cornelia Ernst**

**Proposal for a directive**  
**Article 53 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall provide for the right of any body, organisation or association referred to in Article 50(2) to exercise the rights referred to in Articles 51 **and 52** on behalf of one or more data subjects.

*Amendment*

1. Member States shall provide for the right of any body, organisation or association referred to in Article 50(2) to exercise the rights referred to in Articles 51, **52 and 54** on behalf of one or more data subjects.

Or. en

**Amendment 660**

**Axel Voss**

**Proposal for a directive  
Article 53 – paragraph 2**

*Text proposed by the Commission*

***2. Each supervisory authority shall have the right to engage in legal proceedings and bring an action to court, in order to enforce the provisions adopted pursuant to this Directive or to ensure consistency of the protection of personal data within the Union.***

*Amendment*

***deleted***

Or. de

*Justification*

*Proceedings should always relate to an individual case.*

**Amendment 661**

**Nathalie Griesbeck**

**Proposal for a directive  
Article 53 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. The Member States shall ensure that children enjoy the rights stipulated in Articles 50 to 52. In the event that children are involved in the procedures***

*stipulated in Articles 50 to 52, the Member States shall provide for specific safeguards, in particular with regard to legal aid.*

Or. fr

*Justification*

*If we are to pay due account of the specific nature of children, we must ensure that their rights are upheld in a suitable manner, including their right to appeal and redress.*

**Amendment 662**

**Axel Voss**

**Proposal for a directive**

**Article 54 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*1a. Where a competent authority of a Member State has transmitted personal data, the recipient cannot, in the context of its liability vis-à-vis the injured party in accordance with national law, cite in its defence that the data transmitted were inaccurate. If the recipient pays compensation for damage caused by the use of incorrectly transmitted data, the transmitting competent authority shall refund to the recipient the amount paid in damages, taking into account any fault that may lie with the recipient.*

Or. de

*Justification*

*Cf. Article 19(1) and (2) of Framework Decision 2008/977/JHA.*

**Amendment 663**

**Axel Voss**

**Proposal for a directive**  
**Article 55 – paragraph 1**

*Text proposed by the Commission*

Member States shall lay down the rules on penalties, applicable to infringements of the provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

*Amendment*

Member States shall lay down the rules on penalties, applicable to infringements of the provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

Or. de

*Justification*

*Cf. Article 24 of Framework Decision 2008/977/JHA.*

**Amendment 664**  
**Axel Voss**

**Proposal for a directive**  
**Article 56 – paragraph 2**

*Text proposed by the Commission*

2. The delegation of power referred to in Article **28(5)** shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Directive.

*Amendment*

2. The delegation of power referred to in Article **34(3)** shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Directive.

Or. de

**Amendment 665**  
**Axel Voss**

**Proposal for a directive**  
**Article 56 – paragraph 3**

*Text proposed by the Commission*

3. The delegation of power referred to in

*Amendment*

3. The delegation of power referred to in

Article **28(5)** may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Article **34(3)** may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Or. de

*Justification*

*Consequential amendment because of the deletion of the delegation in Article 28(5) and the change from implementing to delegated acts in Article 34(3).*

**Amendment 666**

**Axel Voss**

**Proposal for a directive**

**Article 56 – paragraph 5**

*Text proposed by the Commission*

5. A delegated act adopted pursuant to Article **28(5)** shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

*Amendment*

5. A delegated act adopted pursuant to Article **34(3)** shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

Or. de

*Justification*

*Consequential amendment because of the deletion of the delegation in Article 28(5) and the change from implementing to delegated acts in Article 34(3).*

**Amendment 667**

**Axel Voss**

**Proposal for a directive**

**Article 57 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

**2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.** **deleted**

Or. de

*Justification*

*Consequential amendment because of changes made to Article 34(5).*

**Amendment 668**

**Axel Voss**

**Proposal for a directive**

**Article 60**

*Text proposed by the Commission*

*Amendment*

International agreements concluded by Member States prior to the entry force of this Directive shall be **amended, where necessary**, within **five** years after the entry into force of this Directive.

**1. International agreements concluded by Member States prior to the entry force of this Directive shall be *brought into line with this Directive, since*, within *ten* years after the entry into force of this Directive, *they are in any case subject to special controls*.**

**2a. Notwithstanding paragraph 1, the provisions of Article 36a shall apply by analogy, in the event of a negative adequacy decision, to international agreements concluded before the entry into force of this Directive.**

Or. de

*Justification*

*In view of the number and complexity of the existing international agreements, an adjustment period of five years is inappropriately short and should apply only to agreements which are in*

*any case subject to controls. The Article 36a rules cannot apply only between the Member States but must also apply by analogy to existing international agreements.*

**Amendment 669**  
**Carlos Coelho**

**Proposal for a directive**  
**Article 61 – title**

*Text proposed by the Commission*

*Amendment*

Evaluation

Evaluation **and review**

Or. pt

**Amendment 670**  
**Carlos Coelho**

**Proposal for a directive**  
**Article 61 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. The Commission shall evaluate the application of this Directive.

1. The Commission shall evaluate the application of this Directive. ***Regular objective and impartial evaluations shall be made by the Commission and Member States in order to verify whether this Directive is being correctly implemented and applied. The Commission shall be responsible for coordinating these evaluations, in close cooperation with the Member States, and shall include announced and unannounced visits. The European Parliament and the Council shall be kept informed throughout the process and shall have access to the relevant documents.***

Or. pt

**Amendment 671**  
**Axel Voss**

**Proposal for a directive**  
**Article 61 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

***2. The Commission shall review within three years after the entry into force of this Directive other acts adopted by the European Union which regulate 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 particular those acts adopted by the Union referred to in Article 59, in order to assess the need to align them with this Directive and make, where appropriate, the necessary proposals to amend these acts to ensure a consistent approach on the protection of personal data within the scope of this Directive.***

***deleted***

Or. de

**Amendment 672**  
**Monika Hohlmeier**

**Proposal for a directive**  
**Article 62 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

They shall apply those provisions from xx.xx.201x [date/ ***two*** years after entry into force].

They shall apply ***the*** provisions ***adopted for the implementation of Article 23 and 24 at the latest*** from xx.xx.201x [date/ ***four*** years after entry into force].

Or. de

**Amendment 673**  
**Axel Voss**

**Proposal for a directive**  
**Annex 1 (new)**



*Text proposed by the Commission*

*Amendment*

***Annex 1***

***List of third countries, territories or  
processing sectors within third countries  
or international organisations which  
ensure an adequate level of protection  
within the meaning of Article 34(2)***

Or. de

*Justification*

*Consequential amendment because of changes made to Article 34(5).*