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Committee on Legal Affairs

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OPINION

of the Committee on Legal Affairs

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a directive of the European Parliament and of the Council on protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data
(COM(2012)0010 – C7-0024/2012 – 2012/0010(COD))

Rapporteur: Axel Voss

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SHORT JUSTIFICATION

The EU is rightly seeking to equip itself with a comprehensive, coherent, modern, high-level framework for data protection, since the challenges facing data protection are numerous. They include globalisation, technological development, enhanced online activity, uses related to more and more criminal activities, and security concerns.

The relevant European rules (Article 16 TFEU and the recognition in Article 8 of the Charter of Fundamental Rights of the right to protection of personal data as an autonomous right) must therefore provide individual citizens with legal certainty and confidence in the behaviour of data controllers, and in particular of prosecution and enforcement authorities, since violations of data protection provisions can lead to serious risks for the fundamental rights and freedoms of individuals and the values of the Member States.

Consequently, the European Parliament has always taken the view that the fundamental rights to data protection and privacy include the protection of persons from possible surveillance and abuse of their data by the state itself. The Commission proposal for a directive 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' is consistent with this view, and the rapporteur essentially welcomes it.

Nevertheless, data protection in the field of criminal investigation and enforcement must be adapted to other considerations relating to the rule of law and deriving from the state monopoly on the use of force. Data protection legislation in relation to averting risk, establishing and safeguarding public security and investigating crimes and executing criminal penalties must match the tasks to be performed by the state and ensure that it is still able to perform these tasks effectively, in the interests of all its citizens.

Data protection legislation at European level is generally characterised by differing levels of competence. What used to be known as the first pillar is characterised by extremely far-reaching competence deriving from the internal market. What used to be known as the third pillar is defined by cooperation rather than communitisation. Thus Framework Decision 2008/977/JHA went furthest in setting minimum standards in this area.

It should also be borne in mind, in the field of police and judicial cooperation, that legal traditions have developed very differently in the EU Member States in the course of the centuries, and any alteration to well-established national structures and traditions in this sensitive area through European rules should therefore be introduced cautiously and gradually.

The situation regarding the scope of Article 16 TFEU in relation to European data protection law is also controversial and is yet to be clarified through case-law. This creates legal uncertainty which the rapporteur considers should be resolved through pragmatism:

The draft directive proposed by the Commission includes the exchange of data at domestic level within the scope of the directive, whereas Article 16(2) TFEU gives the EU competence

only within the scope of Union law. This does not include domestic processing of data in the police area (Article 87 TFEU).

A peculiarity of data protection is that it has horizontal effects and is liable to have an impact in areas that are not designated as falling within the unrestricted competence of the EU, thereby possibly breaching the subsidiarity principle.

In light of these considerations, the rapporteur takes the view that the directive should do no more than set minimum standards. In practice, this renders obsolete the question of 'only cross-border' or 'also domestic' data protection, and a higher level of data protection may in any case be maintained.

However, in order to preserve the balance with data protection as a fundamental right, the directive must at the same time strengthen and give a clear definition of individual rights. The principles of transparency and scrutiny must be enshrined, but they should not run counter to the purpose of averting risks and prosecuting crimes.

The rapporteur considers the following amendments necessary in order to safeguard this balance between preserving the state monopoly on the use of force and guaranteeing public order and security and the physical integrity of the individual, on the one hand, and the right to data protection on the other:

Chapter I

- Averting risks is included in the scope (Article 1).
- The Member States are clearly permitted to set higher standards (Article 1). The objective is not harmonisation but setting minimum standards.
- The scope is expanded to include the Union institutions, bodies, offices and agencies (Article 2).

Chapter II

- The text of the key section on 'principles of data processing' is brought into line with the General Data Protection Regulation. The package approach means that these principles should tally (Article 4).
- Article 5 is deleted, since it represents an increase in bureaucracy and costs for the Member States and the legal effects have not been analysed.
- Purpose limitation in respect of the processing of data is a key principle of data protection. Articles 6 and 7 have been thoroughly reworked and expanded on the basis of Framework Decision 2008/977/JHA (here: Article 8 (accuracy), Article 3 (purpose

limitation) and Article 13 (purpose limitation in respect of data from other EU countries).

Chapter III

The amendments to Chapter III focus on the individual concern requirement and an actual individual request for stored information.

- The possibility to limit the right to information (Article 12) is restricted to individual cases on examination, thereby strengthening individual rights.
- The right to information at the time when the data are obtained without any request being made is cut back in favour of national rules.
- The right to erasure and rectification has been reworded and strengthened. At the same time, exceptions to the right to erasure have been introduced, such as the legal obligation to retain data.

Chapter IV

- Article 20 'Joint controllers' is deleted, since it lowers the standard of data protection. In the context of external cooperation, both controllers should remain jointly liable vis-à-vis the data subject.
- Article 23 'Documentation' has been tightened up in line with Article 10 of Framework Decision 2008/977/JHA. As a result, Article 24 'Keeping of records' is deleted.
- Article 27 'Security of processing' has been brought into line with the text of Article 22 of the Framework Decision.
- Prior consultation/privacy impact assessment is introduced in the shape of new Article 28a, which has been taken from Article 23 of Framework Decision 2008/977/JHA.
- 'Data breaches' are to be notified only to the supervisory authority and not to the data subject (Articles 28 and 29).

Chapter V

- Article 35b incorporates the provisions of Article 13 of the Framework Decision and lays down specific rules on the handling of data from other Member States.
- Article 36 has been reworded; it should be possible to transfer data to third countries in spite of a negative decision on the adequacy of protection, in a very limited number

of individual cases and subject to strict conditions, in order to protect vital interests, e.g. where lives are at risk.

Chapter VIII

- The right to bring class actions in Article 50 is deleted. Any complaint should be based on individual concern and individual cases.

Delegated and implementing acts

- The Commission proposal has been reworked to ensure that uniform rules apply to the adoption of delegated and implementing acts and prevent any drift of competence. As with the planned amendments to the draft General Data Protection Regulation (COM (2012) 11), preference is given to delegated acts or decisions at national level.

Non-contractual liability

- It is possible that the Commission could take the wrong decision regarding the adequacy of data protection in a third country or an international organisation and that this could result in harm. Such cases should be mentioned in the directive.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive

Recital 7

Text proposed by the Commission

(7) Ensuring a consistent and high level of protection of the personal data of individuals and facilitating the exchange of personal data between competent authorities of Member States is crucial in order to ensure effective judicial co-operation in criminal matters and police cooperation. To that aim, ***the level of protection of the rights and freedoms of individuals*** with regard to ***the*** processing of personal data by competent authorities

Amendment

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

for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties ***must be equivalent in all Member States. Effective protection of personal data throughout the Union requires strengthening the rights of data subjects and the obligations of those who process personal data, but also equivalent powers for monitoring and ensuring compliance with the rules for the protection of personal data in the Member States.***

Amendment 2
Proposal for a directive
Recital 15

Text proposed by the Commission

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

Amendment 3
Proposal for a directive
Recital 16

the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties.

Amendment

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

Text proposed by the Commission

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

Amendment

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

Amendment 4
Proposal for a directive
Recital 23

Text proposed by the Commission

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

Amendment

deleted

Amendment 5
Proposal for a directive
Recital 24

Text proposed by the Commission

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

Amendment

deleted

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

Amendment 6
Proposal for a directive
Recital 43

Text proposed by the Commission

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

Amendment

deleted

Amendment 7
Proposal for a directive
Recital 45

Text proposed by the Commission

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

Amendment

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

ensures an adequate level of protection, or when appropriate safeguards have been adduced.

Amendment 8

Proposal for a directive

Recital 55

Text proposed by the Commission

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

Amendment

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

Amendment 9

Proposal for a directive

Recital 70

Text proposed by the Commission

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

Amendment

deleted

Article, this Directive does not go beyond what is necessary in order to achieve that objective

Amendment 10
Proposal for a directive
Recital 73

Text proposed by the Commission

Amendment

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

deleted

Amendment 11
Proposal for a directive
Article 1 – paragraph 1

Text proposed by the Commission

Amendment

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

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

Justification

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

Amendment 12
Proposal for a directive
Article 1 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

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

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

Justification

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

Amendment 13

Proposal for a directive

Article 1 – paragraph 2 – point b

Text proposed by the Commission

Amendment

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

deleted

Amendment 14

Proposal for a directive

Article 2 – paragraph 3 – point b

Text proposed by the Commission

Amendment

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

deleted

Justification

The EU institutions and authorities should also be covered by the scope of the Directive.

Amendment 15

Proposal for a directive

Article 3 – paragraph 1 – point 1

Text proposed by the Commission

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

Amendment

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

Amendment 16

Proposal for a directive

Article 3 – paragraph 1 – point 9 a (new)

Text proposed by the Commission

Amendment

(9a) 'the data subject's consent' means any freely given specific, informed and explicit indication of his or her wishes by which the data subject, either by a statement or by a clear affirmative action, signifies agreement to personal data relating to him or her being processed;

Justification

This amendment tightens up the concept of the data subject's consent. Even if in principle citizens and the State cannot be on equal footing, consent may serve as a justification in individual cases, for example with DNA mass tests.

Amendment 17

Proposal for a directive

Article 3 – paragraph 1 – point 14

Text proposed by the Commission

Amendment

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

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

execution of criminal penalties;

the European Union institutions, bodies, offices and agencies;

Amendment 18

Proposal for a directive

Article 4 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) processed *fairly and* lawfully;

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

Amendment 19

Proposal for a directive

Article 4 – point c

Text proposed by the Commission

Amendment

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

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

Amendment 20

Proposal for a directive

Article 4 – point e

Text proposed by the Commission

Amendment

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

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

Justification

Brings Directive in line with the text of the Data Protection Regulation. For the purposes of the package approach, the same principles concerning data processing should apply to both legal acts.

Amendment 21
Proposal for a directive
Article 4 – point f

Text proposed by the Commission

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

Amendment

(f) processed *and used in the course of their duties only by competent staff working in competent authorities;*

Amendment 22
Proposal for a directive
Article 4 – point f

Text proposed by the Commission

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

Amendment

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

Amendment 23
Proposal for a directive
Article 5 – paragraph 1a (new)

Text proposed by the Commission

Amendment

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

Amendment 24
Proposal for a directive
Article 6 – title

Text proposed by the Commission

Amendment

Different degrees of accuracy and reliability of personal data

Factual accuracy

Amendment 25
Proposal for a directive
Article 6 – paragraph 1

Text proposed by the Commission

Amendment

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

1. ***The competent authorities*** shall ensure that, as far as possible, personal data are ***factually accurate, complete and, if necessary, up to date.***

Amendment 26
Proposal for a directive
Article 6 – paragraph 2 and paragraph 2 a (new)

Text proposed by the Commission

Amendment

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

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

2a. If it emerges that incorrect data have been transmitted or data have been unlawfully transmitted, the recipient must be notified without delay. The recipient

shall be obliged to rectify the data without delay in accordance with paragraph 1 and Article 15 or to erase them in accordance with Article 16.

Justification

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

Amendment 27
Proposal for a directive
Article 7 a (new)

Text proposed by the Commission

Amendment

Article 7a

Lawfulness of processing; purpose limitation

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

collected. Further processing for another purpose shall be permitted in so far as it
(a) serves lawful purposes (paragraph 2);
(b) is necessary for this other purpose;
(c) is not incompatible with the purpose for which the data were collected.

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

Amendment 28
Proposal for a directive
Article 7 b (new)

Text proposed by the Commission

Amendment

Article 7b

Special provisions for personal data from other Member States

Further to the general principles of data processing, the following arrangements shall be applicable to personal data transmitted or made available by the competent authorities of another Member State:

1. Personal data may be forwarded to private parties only if

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

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

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

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

(ii) the prevention, investigation, detection

or prosecution of criminal offences or the execution of criminal penalties;

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

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

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

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

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

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

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

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

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

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

Justification

The revision undertaken in this article adopts the rules of Article 13 of Framework Decision 2008/977/JI on the policy for data from other Member States and affords them special protection. Article 7a serves to protect the Member State in which data originate and thereby creates the necessary confidence for internal Union data exchange, according to which transmitted data will not be further processed by host states simply as they choose.

Amendment 29 **Proposal for a directive** **Article 7 c (new)**

Text proposed by the Commission

Amendment

Article 7c

Establishment of time limits for erasure and review

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

Justification

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

Amendment 30 **Proposal for a directive** **Article 8**

Text proposed by the Commission

Amendment

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

2. Paragraph 1 shall not apply where:

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

(b) the processing is necessary to protect

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

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

(Does not affect English version.)

the vital interests of the data subject or of another person;

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

(Does not affect English version.)

Justification

This Article has been reworded along the lines of Article 6 of Framework Decision 2008/977/JI. Even if it deviates from the prohibition rule of the draft directive, the processing of sensitive data remains permissible only under stringent conditions. In view of the significance of DNA evidence trails, the prohibition of the processing of genetic data introduced by the Commission has been deleted.

Amendment 31

Proposal for a directive

Article 9 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Justification

The revision undertaken in this article reverts to the wording of the Framework Decision (Article 7 of 2008/977/JI). Profiling remains permissible only under strict conditions, even when the prohibition rule is not adhered to.

Amendment 32

Proposal for a directive

Article 9 – paragraph 2

Text proposed by the Commission

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

Amendment

deleted

of personal data referred to in Article 8.

Justification

Paragraph 2 gives rise to particularly extensive profiling and could easily be avoided.

Amendment 33

Proposal for a directive

Article 10 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 34

Proposal for a directive

Article 10 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 35

Proposal for a directive

Article 10 – paragraph 4

Text proposed by the Commission

4. Member States shall provide that the controller informs the data subject about the follow-up given to their request without undue delay.

Amendment

deleted

Amendment 36
Proposal for a directive
Article 12 – paragraph 1 – point a (new)

Text proposed by the Commission

Amendment

(a) all personal data undergoing processing and any available information as to their source

Amendment 37
Proposal for a directive
Article 12 – paragraph 1 – point g

Text proposed by the Commission

Amendment

(g) communication of the personal data undergoing processing and of any available information as to their source. ***deleted***

Justification

This relates to the main subject access right so should be considered at the top of the list.

Amendment 38
Proposal for a directive
Article 13 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. Member States may adopt legislative measures restricting, wholly or partly, the data subject's right of access to the extent that such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the legitimate interests of the person concerned:

1. Member States may adopt legislative measures restricting, wholly or partly, ***depending on the individual case,*** the data subject's right of access to the extent ***and for the period*** that such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the legitimate interests of the person concerned:

Amendment 39
Proposal for a directive
Article 13 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) to avoid prejudicing the prevention, detection, investigation and prosecution of criminal offences or the execution of criminal penalties;

(b) to avoid prejudicing the prevention *of risks, the* detection, investigation and prosecution of criminal offences or the execution of criminal penalties;

Amendment 40

Proposal for a directive

Article 13 – paragraph 1 – point e

Text proposed by the Commission

Amendment

(e) to protect the rights and freedoms of others.

(e) to protect the *data subject or the* rights and freedoms of others.

Amendment 41

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

Justification

Refusal of access must always be considered on a case-by-case basis.

Amendment 42

Proposal for a directive

Article 14 – paragraph 1

Text proposed by the Commission

Amendment

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.

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.

Amendment 43
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 State 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.

Amendment 44
Proposal for a directive
Article 14 – paragraph 3 – subparagraph 1 a

Text proposed by the Commission

Amendment

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.

Justification

This provides for a system of indirect subject access requests, using the wording from the Framework Decision 2008.

Amendment 45
Proposal for a directive
Article 15 – 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 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.

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.

Amendment 46
Proposal for a directive
Article 15 – paragraph 2 and paragraph 2 a (new)

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 these rights directly against the controller or through the intermediary of the competent national supervisory authority.**

2a. If the data subject asserts their rights 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

Justification

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

Amendment 47

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 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.

Justification

The amendment broadens the scope and strengthens individual rights.

Amendment 48

Proposal for a directive

Article 16 – paragraph 2 and paragraph 2 a (new)

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.*

2a. If the data subject asserts their rights 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.

Amendment 49

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:

Amendment 50

Proposal for a directive

Article 16 – paragraph 3 – point c

Text proposed by the Commission

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

Amendment

(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.

Amendment 51

Proposal for a directive

Article 16 – paragraph 3 – points c a to c c(new)

(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;

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

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

Amendment 52

Proposal for a directive

Article 16 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Restricted 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.

Justification

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

Amendment 53

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.

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.

Amendment 54
Proposal for a directive
Article 17 – paragraph 1

Text proposed by the Commission

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**.

Amendment

Member States may provide that the information, access, rectification, erasure and restriction of processing referred to 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**.

Justification

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

Amendment 55
Proposal for a directive
Article 18 – paragraph 3

Text proposed by the Commission

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.

Amendment

deleted

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 56
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 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.

Justification

The revision of this article follows Framework Decision 2008/977/JI, which should not be changed. Part of paragraph one in the Commission text has become points (a) and (b) in Parliament's amendment.

Amendment 57

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.

Justification

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

Amendment 58

Proposal for a directive

Article 23 – paragraph 1 and paragraphs 1 a and 1 b (new)

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. All competent authorities shall maintain detailed documentation of all processing systems and procedures under their responsibility.

1a. 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.

1b. 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.

Justification

Based on Article 10 of Framework Decision 2008/977/JHA. This amendment deletes national-level responsibilities and only refers to cross-border transmissions, which defeats the purpose of this Directive, removes it further away from the Regulation and the whole so-called harmonised package. The amendment above at least ensures some national level provision, though re-instatement of the original to harmonise with the Regulation would be desirable.

Amendment 59

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

Amendment

1. Member States shall provide that the controller implements technical and

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.*

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 personal data.

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

Justification

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

Amendment 60

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:

Amendment 61

Proposal for a directive

Article 27 – paragraph 2 – point j

Text proposed by the Commission

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 **corrupted** by means of a malfunctioning of the system (integrity).

(Does not affect English version.)

Amendment 62

Proposal for a directive

Article 27 – paragraph 3

Text proposed by the Commission

Amendment

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).**

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.

Amendment 63

Proposal for a directive

Article 28 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall provide that in the case of a personal data breach, the controller notifies, without undue delay and, **where feasible, not later than 24 hours** after having become aware of it, the personal data breach to the supervisory authority. **The controller** shall provide, **on request**, to the supervisory authority **a reasoned justification in cases where the notification is not made within 24 hours.**

1. Member States shall provide that in the case of a personal data breach, the controller notifies, without undue delay and after having become aware of it, the personal data breach to the supervisory authority. **For the most serious breaches, Member States** shall provide **that the controller notifies the breach** to the supervisory authority **not later than 24 hours after having become aware of it.**

Justification

Requesting that data controllers notifies all breaches no later than 24 hours after having

became aware of it, and also requesting a reasoned justification is overly bureaucratic.

Amendment 64
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***

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 65
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, mechanism or procedures, holds otherwise specific risks for the fundamental rights and freedoms,

and in particular the privacy, of the data subject.

Justification

The wording is taken from Article 13 of Framework Decision 2008/977/JI

Amendment 66

Proposal for a directive

Article 31 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. 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.

Amendment 67

Proposal for a directive

Article 33 – point a

Text proposed by the Commission

Amendment

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

(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

Amendment 68

Proposal for a directive

Article 33 – point b

Text proposed by the Commission

Amendment

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

(b) the conditions laid down in this Chapter are complied with.

Amendment 69
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:

Amendment 70
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 procedure referred to in Article 57(2).***

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 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.***

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 71
Proposal for a directive
Article 34 – paragraph 4

Text proposed by the Commission

Amendment

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.

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.

Justification

The non-contractual liability of the Union in cases where incorrect determinations are made on the basis of the criteria in paragraphs 2 and 3 should furthermore be made explicit.

Amendment 72
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 ensures 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

deleted

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).

Amendment 73

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 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. *deleted*

Amendment 74

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*

Amendment 75

Proposal for a directive

Article 35

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.

Amendment 76

Proposal for a directive

Article 35 a (new)

Article 35a

Transfers with 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 43(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.

Amendment 77
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 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 Articles 7(a) and 7(b).

Justification

Article 35b corresponds to Article 13 of Framework Decision 2008/977/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 78 **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.

Amendment 79
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 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.

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 80
Proposal for a directive
Article 37

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).***

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 EU to be transferred within the EU.

Amendment 81
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

Amendment

2. For the purposes of paragraph 1, the Commission shall take appropriate steps,

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).

within the scope of application of this Directive, 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.***

Amendment 82
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, ***if so requested***, continue to exercise their duties until a new member is appointed.

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 83
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, ***at least*** the powers conferred on it in accordance with this Directive.

Amendment 84
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;

Amendment 85
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 **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 necessary;

Amendment

(b) hears complaints lodged by any data subject, investigates, to the extent appropriate, the matter and informs the data subject 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 necessary;

Justification

Amendment required in consequence of the deletion of the right of associations to lodge complaints (Article 50).

Amendment 86
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

Amendment

(e) conducts investigations 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**

period;

conduct such investigations on its own initiative, within the limits of national legislation;

Amendment 87
Proposal for a directive
Article 46 – 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.

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 88
Proposal for a directive
Article 49 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

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

Amendment 89
Proposal for a directive
Article 52 – paragraph 1

Text proposed by the Commission

Without prejudice to any available

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 *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 90
Proposal for a directive
Article 54 – paragraph 1

Text proposed by the Commission

1. Member States shall provide that any person who has suffered damage as a result of an unlawful processing operation or of an action incompatible with the provisions adopted pursuant to this Directive shall have the right to receive compensation from the controller or the processor for the damage suffered.

Amendment 91
Proposal for a directive
Article 54 – paragraph 1 a (new)

Text proposed by the Commission

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 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

1. Member States shall provide that any person who has suffered damage as a result of an unlawful processing operation or of an action incompatible with the provisions adopted pursuant to this Directive shall have the right to receive compensation from the controller or the processor for the damage suffered *in line with national law*.

Amendment

1 a. 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.

Justification

Cf. Article 19(1) and (2) of Framework Decision 2008/977/JHA

Amendment 92 **Proposal for a directive** **Article 55**

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 ***adopt suitable measures to ensure the full implementation of the provisions of this Directive and shall in particular*** 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.

Justification

Cf. Article 24 of Framework Decision 2008/977/JHA.

Amendment 93 **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.

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 94 **Proposal for a directive** **Article 56 – paragraph 3**

Text proposed by the Commission

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.

Amendment

3. The delegation of power referred to in 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.

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 95

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.

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 96
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**

Justification

Consequential amendment because of changes made to Article 34(5).

Amendment 97
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 amended, where necessary, within *ten* years after the entry into force of this Directive *except where they are in any case subject to separate controls.*

2. Notwithstanding paragraph 1, the provisions of Article 36 shall apply by analogy, in the event of a negative adequacy decision, to international agreements concluded before the entry into force of this Directive..

Justification

In view of the number and complexity of the existing international agreements, an adjustment period of five years seems inappropriately short. The Article 36 rules cannot apply only between the Member States but must also apply by analogy to existing international agreements.

Amendment 98
Proposal for a directive
Annex [x] (new)

Text proposed by the Commission

Amendment

Annex [x]

***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)***

Justification

Consequential amendment because of changes made to Article 34.

PROCEDURE

Title	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 (Directive)
References	COM(2012)0010 – C7-0024/2012 – 2012/0010(COD)
Committee responsible Date announced in plenary	LIBE 16.2.2012
Opinion by Date announced in plenary	JURI 14.6.2012
Rapporteur Date appointed	Axel Voss 14.6.2012
Discussed in committee	18.12.2012 21.2.2013
Date adopted	19.3.2013
Result of final vote	+: 14 -: 9 0: 0
Members present for the final vote	Raffaele Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Marielle Gallo, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Klaus-Heiner Lehne, Jiří Maštálka, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Rebecca Taylor, Alexandra Thein, Rainer Wieland, Cecilia Wikström, Tadeusz Zwiefka
Substitute(s) present for the final vote	Piotr Borys, Eva Lichtenberger, Axel Voss
Substitute(s) under Rule 187(2) present for the final vote	Ricardo Cortés Lastra