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Committee on Civil Liberties, Justice and Home Affairs

2012/0011(COD)

6.3.2013

AMENDMENTS (7)

2091 - 2350

Draft report
Jan Philipp Albrecht
(PE501.927v04-00)

on the proposal for a regulation of the European Parliament and of the Council
on the protection of individual with regard to the processing of personal data
and on the free movement of such data (General Data Protection Regulation)

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

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PE506.168v02-00

Amendment 2091
Alexander Alvaro

Proposal for a regulation
Article 34 – title

Text proposed by the Commission

Amendment

Prior authorisation and prior consultation

Prior consultation

Or. en

Amendment 2092
Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation
Article 34 – title

Text proposed by the Commission

Amendment

Prior authorisation and prior consultation

Prior consultation

Or. en

Amendment 2093
Alexander Alvaro

Proposal for a regulation
Article 34 – paragraph 1

Text proposed by the Commission

Amendment

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

deleted

as referred to in Article 42(5) for the transfer of personal data to a third country or an international organisation.

Or. en

Justification

As Recital 70 rightly mentions that the general obligation to notify processing of personal data to the supervisory authorities produces administrative and financial burdens, it should not be replaced by a similar obligation. Data controllers shall rather take part in consultations and produce detailed impact assessments which need to be provided only on request to the supervisory authority.

Amendment 2094
Nils Torvalds

Proposal for a regulation
Article 34 – paragraph 1

Text proposed by the Commission

Amendment

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

Amendment 2095
Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation
Article 34 – paragraph 1

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 2096
Timothy Kirkhope
on behalf of the ECR Group

Proposal for a regulation
Article 34 – paragraph 1

Text proposed by the Commission

Amendment

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

deleted

Amendment 2097

Sarah Ludford

Proposal for a regulation

Article 34 – paragraph 1

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

This does not usefully add to the requirements of the Regulation.

Amendment 2098

Jan Philipp Albrecht

Proposal for a regulation

Article 34 – paragraph 1

Text proposed by the Commission

Amendment

1. The controller or the processor as the case may be shall obtain an authorisation from the supervisory authority prior to the processing of personal data, in order to ensure the compliance of the intended

1. The controller or the processor as the case may be shall obtain an authorisation from the supervisory authority prior to the processing of personal data **according to Chapter V or if ordered by any other**

processing with this Regulation and in particular to mitigate the risks involved for the data subjects where a controller or processor adopts contractual clauses as provided for in point (d) of Article 42(2) or does not provide for the appropriate safeguards in a legally binding instrument as referred to in Article 42(5) for the transfer of personal data to a third country or an international organisation.

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

Or. en

Justification

Clarification that prior authorisation is only necessary for certain data transfers to third countries or if ordered by other provisions. The original text could have been read as if all data processing would need prior authorisation.

Amendment 2099

Agustín Díaz de Mera García Consuegra

Proposal for a regulation

Article 34 – paragraph 1

Text proposed by the Commission

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

Amendment

1. The controller or the processor as the case may be shall, ***if they have not recruited a data protection officer for their organisation or obtained or adequate and valid certification for the processing of high-risk data***, obtain an authorisation from the supervisory authority prior to the processing of personal data, in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where a controller or processor adopts contractual clauses as provided for in point (d) of Article 42(2) or does not provide for the appropriate safeguards in a legally binding instrument as referred to in Article 42(5) for the

transfer of personal data to a third country
or an international organisation.

Or. es

Justification

The issues raised here should be dealt with in the context of international data transfers.

Amendment 2100
Dimitrios Droutsas

Proposal for a regulation
Article 34 – paragraph 1

Text proposed by the Commission

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

Amendment

1. The controller or the processor as the case may be shall obtain an authorisation from the supervisory authority prior to the processing of personal data, in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where a controller or processor adopts contractual clauses as provided for in point (d) of Article 42(2) or ***where it transfers*** personal data to a third country or an international organisation ***based on the derogations in Article 44.***

Or. en

Amendment 2101
Louis Michel

Proposal for a regulation
Article 34 – paragraph 1

Text proposed by the Commission

1. The controller ***or the processor as the***

Amendment

1. The controller shall obtain an

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

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

Or. en

Amendment 2102
Sarah Ludford

Proposal for a regulation
Article 34 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Where an impact assessment has been undertaken in accordance with Article 33, the controller must consult the supervisory authority in accordance with this Article if, despite the measures envisaged in the impact assessment to ensure protection of personal data, the controller considers that it is likely that the intended processing would result in serious harm to fundamental rights and freedoms of data subjects.

Or. en

Justification

There are cases where the risks of a particular processing operation are such that a

controller should consult the supervisory authority before deciding whether to carry it out. If a data protection impact assessment has been conducted, this should be taken in account.

Amendment 2103
Louis Michel

Proposal for a regulation
Article 34 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States may submit by law the processing of personal data by public or private institutions who execute a task of public interest, such as the contribution to the application of the social security or to the execution of public health, to the prior authorization, in order to avoid processing which gravely affects the data subject's fundamental rights.

Or. en

Amendment 2104
Sarah Ludford

Proposal for a regulation
Article 34 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. In making that assessment, the controller must have regard to factors including: the nature, scope and purposes of the intended processing; the measures envisaged in the impact assessment to address those risks; the state of the art and the costs of implementation.

Or. en

Justification

This amendment should aid controllers in the judgement of whether prior consultation is

required.

Amendment 2105

Timothy Kirkhope

on behalf of the ECR Group

Proposal for a regulation

Article 34 – paragraph 2

Text proposed by the Commission

Amendment

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

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

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

Or. en

Amendment 2106

Louis Michel

Proposal for a regulation

Article 34 – paragraph 2

Text proposed by the Commission

Amendment

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

deleted

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

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

Or. en

Amendment 2107

Alexander Alvaro

Proposal for a regulation

Article 34 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

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

2. The controller shall consult the supervisory authority prior to the processing of personal data in order to ensure the compliance of the intended processing with this Regulation where:

Or. en

Justification

The responsibility to consult the supervisory authority should be clearly divided.

Amendment 2108

Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation

Article 34 – paragraph 2 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 2109

Agustín Díaz de Mera García Consuegra

Proposal for a regulation

Article 34 – paragraph 2 – introductory part

Text proposed by the Commission

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

Amendment

2. The controller or processor acting on the controller's behalf shall, ***if they have not recruited a data protection officer for their organisation or obtained or adequate and valid certification for the processing of high-risk data***, consult the supervisory authority prior to the processing of personal data in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where:

Or. es

Amendment 2110

Alexander Alvaro

Proposal for a regulation

Article 34 – paragraph 2 – point a

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

As Recital 70 rightly mentions that the general obligation to notify processing of personal data to the supervisory authorities produces administrative and financial burdens, it should not be replaced by a similar obligation. Data controllers shall rather take part in consultations and produce detailed impact assessments which need to be provided only on request to the supervisory authority.

Amendment 2111

Alexander Alvaro

Proposal for a regulation

Article 34 – paragraph 2 – point b

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 2112

Alexander Alvaro

Proposal for a regulation

Article 34 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) a controller adopts contractual clauses as provided for in point (d) of Article 42(2) or does not provide for the appropriate safeguards in a legally binding instrument as referred to in Article 42(5) for the transfer of personal data to a third country or an international organisation.

Or. en

Justification

Moved here from Article 34 paragraph 1.

Amendment 2113

Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation

Article 34 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) a controller adopts contractual clauses as provided for in point (d) of Article 42(2) or does not provide for the appropriate safeguards in a legally binding instrument as referred to in Article 42(5) for the transfer of personal data to a third country or an international organisation.

Or. en

Amendment 2114

Timothy Kirkhope

on behalf of the ECR Group

Proposal for a regulation
Article 34 – paragraph 3

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 2115
Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation
Article 34 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 2116
Axel Voss

Proposal for a regulation
Article 34 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 2117
Louis Michel

Proposal for a regulation
Article 34 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 2118
Sarah Ludford

Proposal for a regulation
Article 34 – paragraph 3

Text proposed by the Commission

Amendment

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

3. Where the supervisory authority is of the opinion that the intended processing **referred to in paragraph 2 would** not comply with this Regulation **it shall within a maximum period of 6 weeks following the request for consultation make appropriate recommendations to the data controller. This period may be extended for a further month, taking into account the complexity of the intended processing. Where the extended period applies, the controller of processor shall be informed within one month of receipt of the request of the reasons for the delay.**

Or. en

Justification

This is a more workable procedure.

Amendment 2119

Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation

Article 34 – paragraph 4

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 2120

Louis Michel

Proposal for a regulation
Article 34 – paragraph 4

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 2121
Timothy Kirkhope
on behalf of the ECR Group

Proposal for a regulation
Article 34 – paragraph 4

Text proposed by the Commission

Amendment

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

4. The supervisory authority shall establish and make public a list of the processing operations which *may be referred for a high degree of specific risks, in such cases, processing shall be prohibited and data processors shall make appropriate proposals to remedy such compliance where the supervisory authority is of the opinion that the intended processing does not comply with this Regulation.*

Or. en

Amendment 2122
Sarah Ludford

Proposal for a regulation
Article 34 – paragraph 4

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

Prior consultation is one way for a data controller to comply with the proposed Regulation but it is not the only way. Prior consultation should not be compulsory and it should be for the data controller in the first instance to decide on the measures he/she will take to ensure compliance.

Amendment 2123
Dimitrios Droutsas

Proposal for a regulation
Article 34 – paragraph 5

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 2124
Louis Michel

Proposal for a regulation
Article 34 – paragraph 5

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 2125
Sarah Ludford

Proposal for a regulation
Article 34 – paragraph 5

Text proposed by the Commission

Amendment

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

5. Where the list provided for in paragraph 4 involves processing activities which are related to the offering of goods or services to data subjects in several Member States, or to the monitoring of their behaviour, or may substantially affect the free movement of personal data within the Union, the **European Data Protection Board shall produce guidance to ensure consistent application, taking into account the specific circumstances of Member States.**

Or. en

Justification

The supervisory authority is in the best position to assess individual processing operations. The EDPB can be helpful in the production of guidance on equal application of the proposed

Regulation but it is vital that specific circumstances of Member States are considered.

Amendment 2126

Timothy Kirkhope

on behalf of the ECR Group

Proposal for a regulation

Article 34 – paragraph 6

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 2127

Louis Michel

Proposal for a regulation

Article 34 – paragraph 6

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 2128

Alexander Alvaro

Proposal for a regulation

Article 34 – paragraph 6

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

As Recital 70 rightly mentions that the general obligation to notify processing of personal data to the supervisory authorities produces administrative and financial burdens, it should not be replaced by a similar obligation. Data controllers shall rather take part in consultations and produce detailed impact assessments which need to be provided only on request to the supervisory authority.

Amendment 2129

Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation

Article 34 – paragraph 6

Text proposed by the Commission

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

Amendment

6. The controller shall provide the supervisory authority, **on request**, with the data protection impact assessment **pursuant to** Article 33 and 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.

personal data of the data subject and of the related safeguards.

Or. en

Amendment 2130

Agustín Díaz de Mera García Consuegra

Proposal for a regulation

Article 34 – paragraph 7

Text proposed by the Commission

Amendment

7. 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 with this Regulation and in particular to mitigate the risks involved for the data subjects.

deleted

Or. es

Justification

While the inclusion in the legislative process of consultations regarding the nature and suitability of the projected measures is to be welcomed, an EU regulation is not a suitable instrument for provisions of this nature affecting legislative procedures in the Member States.

Amendment 2131

Timothy Kirkhope

on behalf of the ECR Group

Proposal for a regulation

Article 34 – paragraph 7

Text proposed by the Commission

Amendment

7. Member States **shall** consult the supervisory authority in the preparation of

7. Member States **may** 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 with this Regulation and in particular to mitigate the risks involved for the data subjects.

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 with this Regulation and in particular to mitigate the risks involved for the data subjects.

Or. en

Amendment 2132

Louis Michel

Proposal for a regulation

Article 34 – paragraph 7

Text proposed by the Commission

7. 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 with this Regulation and in particular to mitigate the risks involved for the data subjects.

Amendment

7. 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 **demonstrate** the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects.

Or. en

Amendment 2133

Alexander Alvaro

Proposal for a regulation

Article 34 – paragraph 8

Text proposed by the Commission

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for determining the high degree of

Amendment

deleted

specific risk referred to in point (a) of paragraph 2.

Or. en

Amendment 2134
Dimitrios Droutsas

Proposal for a regulation
Article 34 – paragraph 8

Text proposed by the Commission

Amendment

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for determining the high degree of specific risk referred to in point (a) of paragraph 2. **deleted**

Or. en

Amendment 2135
Axel Voss

Proposal for a regulation
Article 34 – paragraph 8

Text proposed by the Commission

Amendment

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for determining the high degree of specific risk referred to in point (a) of paragraph 2. **deleted**

Or. en

Amendment 2136
Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation
Article 34 – paragraph 8

Text proposed by the Commission

Amendment

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for determining the high degree of specific risk referred to in point (a) of paragraph 2.

deleted

Or. en

Amendment 2137
Louis Michel

Proposal for a regulation
Article 34 – paragraph 8

Text proposed by the Commission

Amendment

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for determining the high degree of specific risk referred to in point (a) of paragraph 2.

deleted

Or. en

Amendment 2138
Alexander Alvaro

Proposal for a regulation
Article 34 – paragraph 9

Text proposed by the Commission

Amendment

9. The Commission *may set* out standard forms and procedures for prior *authorisations and* consultations referred

9. The Commission *shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of setting* out

to in *paragraphs 1 and 2*, and standard forms and procedures for informing the supervisory authorities pursuant to paragraph 6. ***Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).***

standard forms and procedures for prior consultations referred to in *paragraph 2*, and standard forms and procedures for informing the supervisory authorities pursuant to paragraph 6.

Or. en

Amendment 2139
Dimitrios Droutsas

Proposal for a regulation
Article 34 – paragraph 9

Text proposed by the Commission

9. The Commission may set out standard forms ***and procedures*** for prior authorisations and consultations referred to in paragraphs 1 and 2, and standard forms ***and procedures*** for informing the supervisory authorities pursuant to paragraph 6. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

Amendment

9. The Commission may set out standard forms for prior authorisations and consultations referred to in paragraphs 1 and 2, and standard forms for informing the supervisory authorities pursuant to paragraph 6. Those implementing acts shall be adopted, ***after requesting an opinion of the European Data Protection Board***, in accordance with the examination procedure referred to in Article 87(2).

Or. en

Amendment 2140
Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation
Article 34 – paragraph 9

Text proposed by the Commission

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

Amendment

9. The Commission may set out standard forms and procedures for prior consultations referred to in *paragraph 2*, and standard forms and procedures for informing the supervisory authorities pursuant to paragraph 6. Those

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

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

Or. en

Amendment 2141
Louis Michel

Proposal for a regulation
Article 34 – paragraph 9

Text proposed by the Commission

9. The Commission may set out standard forms and procedures for prior authorisations *and consultations referred to in paragraphs 1 and 2, and standard forms and procedures for informing the supervisory authorities pursuant to paragraph 6*. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

Amendment

9. The Commission may set out ***non mandatory*** standard forms and procedures for prior authorisations. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

Or. en

Amendment 2142
Axel Voss

Proposal for a regulation
Article 35 – title

Text proposed by the Commission

Designation of the data protection officer

Amendment

Designation of the data protection ***organisation or data protection*** officer

Or. en

Amendment 2143
Jan Mulder

Proposal for a regulation
Article 35 – paragraph 1

Text proposed by the Commission

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

- (a) the processing is carried out by a public authority or body; or
- (b) the processing is carried out by an enterprise employing 250 persons or more; or
- (c) the core activities of the controller or the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects.

Amendment

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

- (a) the processing is carried out by a public authority or body; or
- (b) the processing is carried out by an enterprise employing 250 persons or more; or
- (c) the core activities of the controller or the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects.

The data protection officer can already be employed by the enterprise and fulfil his duties part time and will report to the board of an enterprise, organization or public authority which bears ultimate responsibility and is accountable.

Or. en

Amendment 2144
Louis Michel

Proposal for a regulation
Article 35 – paragraph 1

Text proposed by the Commission

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

Amendment

1. ***Member States shall encourage the designation of a data protection officer by the data controller and the data processor and may require such designation in some cases provided for in their national legislation.***

- (a) the processing is carried out by a public authority or body; or*
- (b) the processing is carried out by an enterprise employing 250 persons or more; or*
- (c) the core activities of the controller or the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects.*

Or. en

Amendment 2145
Salvador Sedó i Alabart

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

Text proposed by the Commission

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

Amendment

1. The controller and the processor shall designate a data protection officer ***only*** where:

Or. en

Amendment 2146
Adina-Ioana Vălean, Jens Rohde

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 2147
Agustín Díaz de Mera García Consuegra

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

Text proposed by the Commission

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

Amendment

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

Or. es

Justification

The most effective way of achieving this is not mandatory enforcement, but awareness-raising and offering incentives. The appointment of a data protection officer should therefore be voluntary rather than obligatory.

Amendment 2148
Axel Voss

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 2149
Wim van de Camp

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

Text proposed by the Commission

1. The controller **and the processor** shall designate a data protection officer in any

Amendment

1. The controller shall designate a data protection officer in any case where:

case where:

Or. en

Justification

The proposed amendment to Article 33(1) also means that the obligation to appoint a DPO cannot apply to the processor. Therefore, the processor has been deleted. Nevertheless, the processor may opt to appoint a DPO.

Amendment 2150

Sarah Ludford

Proposal for a regulation

Article 35 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

1. The controller and processor shall **consider whether to** designate a data protection officer in any case where:

Or. en

Justification

A Data Protection Authority is not necessary in all cases.

Amendment 2151

Nils Torvalds

Proposal for a regulation

Article 35 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

1. The controller and the processor shall, **unless such tasks are already being carried out,** designate a data protection officer **as outlined in Article 4** in any case where:

Or. en

Amendment 2152

Birgit Sippel, Josef Weidenholzer, Jutta Steinruck

Proposal for a regulation

Article 35 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

1. The controller and the processor shall designate **at least one** data protection officer **after obtaining the approval of the representatives of the business's employees** in any case where:

Or. de

Amendment 2153

Sophia in 't Veld

Proposal for a regulation

Article 35 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 2154

Anna Hedh, Marita Ulvskog

Proposal for a regulation

Article 35 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

1. The controller and the processor shall **together with the worker representatives** designate a data protection officer in any case where:

Amendment 2155

Timothy Kirkhope

on behalf of the ECR Group

Proposal for a regulation

Article 35 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

1. The controller and the processor shall designate a data protection officer ***responsible for data protection oversight and compliance*** in any case where:

Or. en

Amendment 2156

Janusz Wojciechowski

Proposal for a regulation

Article 35 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. pl

Amendment 2157

Timothy Kirkhope

on behalf of the ECR Group

Proposal for a regulation

Article 35 – paragraph 1 – point a

Text proposed by the Commission

(a) the processing is carried out by a public authority or body; or

Amendment

deleted

Amendment 2158

Agustín Díaz de Mera García Consuegra

Proposal for a regulation

Article 35 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) the processing is carried out by a public authority or body; o

deleted

Or. es

Amendment 2159

Jan Mulder

Proposal for a regulation

Article 35 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) where risks as mentioned in Article 33(2) are not negligible even though the company's main activity is not data processing;

Or. en

Amendment 2160

Sophia in 't Veld

Proposal for a regulation

Article 35 – paragraph 1 – point b

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 2161

Jan Mulder

Proposal for a regulation

Article 35 – paragraph 1 – point b

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

The number of personnel is not a criteria for determining the necessity of data processing.

Amendment 2162

Stanimir Ilchev

Proposal for a regulation

Article 35 – paragraph 1 – point b

Text proposed by the Commission

Amendment

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

deleted

Or. de

Amendment 2163

Agustín Díaz de Mera García Consuegra

Proposal for a regulation

Article 35 – paragraph 1 – point b

Text proposed by the Commission

Amendment

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

deleted

more; or

Or. es

Amendment 2164
Janusz Wojciechowski

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

Text proposed by the Commission

Amendment

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

deleted

Or. pl

Amendment 2165
Alexander Alvaro

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

Text proposed by the Commission

Amendment

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

(b) at least two of the risk factors referred to under Article 5b(1) to (10) exist.

Or. en

Justification

Article is amended in accordance with respect to context and risk principles pursuant to Articles 5a (new) and 5b (new).

Amendment 2166
Wim van de Camp

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

Text proposed by the Commission

Amendment

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

(b) the processing is carried out by an enterprise **and the outcome of any privacy impact assessment, as referred to in Article 33, on the processing related to its core activities, especially core activities which by virtue of their nature, scope or purposes require regular and systematic monitoring of data subjects, indicates a high degree of risk to the rights and freedoms of data subjects, especially their right to privacy, irrespective of the measures taken by the controller or processor to mitigate such risks. In all other cases, the designation of a data protection officer is optional;**

Or. en

Justification

The organisational size criterion (>250 employees) is not useful to differentiate between organisations with respect to the scope of this article. Instead, a risk-based approach in Article 35 would be better suited to achieve the goals of this Regulation. Therefore, the appointment of a data protection officer (DPO) should only be required if the data processing operation related to its core activities poses a high risk. Only in such high risk situation, the obligatory appointment of a DPO is justified. In any other case, the appointment of a DPO should be optional.

Amendment 2167

Françoise Castex, Sylvie Guillaume

Proposal for a regulation

Article 35 – paragraph 1 – point b

Text proposed by the Commission

Amendment

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

(b) the processing is carried out by an enterprise employing **50** persons or more, **or an enterprise processes personal data as its main activity or processing is carried out on special categories of personal data as referred to in Article 9 (1);**

Amendment 2168
Timothy Kirkhope
on behalf of the ECR Group

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

Text proposed by the Commission

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

Amendment

(b) the processing is carried out by an enterprise employing **500** persons or more; or

Or. en

Amendment 2169
Dimitrios Droutsas

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

Text proposed by the Commission

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

Amendment

(b) the processing is carried out by ***a legal person and relates to more than 500 data subjects per year, or by*** an enterprise employing 250 persons or more, ***or processing is carried out on special categories of personal data as referred to in Article 9(1);*** or

Or. en

Amendment 2170
Cornelia Ernst, Marie-Christine Vergiat

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

Text proposed by the Commission

Amendment

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

(b) the processing is carried out by ***a legal person and relates to more than 500 data subjects per year***; or

Or. en

Amendment 2171
Carmen Romero López

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

Text proposed by the Commission

Amendment

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

(b) the processing is carried out by an enterprise employing 250 persons or more ***or concerns any of the special categories of personal data referred to in Article 9(1), or personal data whose processing would pose an economic or labour-related risk to, or harm the reputation of, the interested party***;o

Or. es

Justification

A requirement concerning the notion of risk in data processing, regardless of the size of the business, has been introduced. Any processing of data falling within the aforementioned categories, or which could affect the assets, labour relations or reputation of the interested party could pose a significant risk to him.

Amendment 2172
Birgit Sippel, Josef Weidenholzer, Jutta Steinruck

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

Text proposed by the Commission

Amendment

(b) the processing is carried out by an

(b) the processing is carried out by an

enterprise employing **250** persons or more;

enterprise employing **50** persons or more;

Or. de

Amendment 2173
Marie-Christine Vergiat

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

Text proposed by the Commission

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

Amendment

(b) the processing is carried out by ***a legal person and concerns over 250 data subjects annually***; or

Or. fr

Amendment 2174
Ewald Stadler

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

Text proposed by the Commission

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

Amendment

(b) the processing is carried out by an enterprise employing **50** persons or more;

Or. de

Amendment 2175
Birgit Sippel, Josef Weidenholzer, Jutta Steinruck

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

Text proposed by the Commission

Amendment

(ba) the collection and processing of data relate to at least 250 data subjects per

year;

Or. de

Amendment 2176
Alexander Alvaro

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

Text proposed by the Commission

Amendment

(c) the core activities of the controller or the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects. *deleted*

Or. en

Justification

Article is deleted in accordance with the amendment of point b with respect to context and risk principles pursuant to Articles 5a (new) and 5b (new).

Amendment 2177
Wim van de Camp

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

Text proposed by the Commission

Amendment

(c) the core activities of the controller or the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects. *deleted*

Or. en

Justification

The organisational size criterion (>250 employees) is not useful to differentiate between organisations with respect to the scope of this article. Instead, a risk-based approach in Article 35 would be better suited to achieve the goals of this Regulation. Therefore, the appointment of a data protection officer (DPO) should only be required if the data processing operation related to its core activities poses a high risk. Only in such high risk situation, the obligatory appointment of a DPO is justified. In any other case, the appointment of a DPO should be optional

Amendment 2178

Agustín Díaz de Mera García Consuegra

Proposal for a regulation

Article 35 – paragraph 1 – point c

Text proposed by the Commission

Amendment

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

deleted

Or. es

Amendment 2179

Axel Voss

Proposal for a regulation

Article 35 – paragraph 1 – point c

Text proposed by the Commission

Amendment

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

(c) the core activities of the controller or the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects. ***Core activities should be defined as activities where 50% of the annual turnover resulting from the sale of data or revenue is gained from the use of this data. In relation to data protection,***

dataprocessing activities which do not represent more than 50% of companies' turnover shall be considered ancillary.

Or. en

Justification

Taken from ITRE opinion

Amendment 2180
Adina-Ioana Vălean, Jens Rohde

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

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 2181
Marie-Christine Vergiat

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

Text proposed by the Commission

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

Amendment

(c) the core activities of the controller or the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes ***or their volume***, require regular and systematic monitoring of data subjects.

Or. fr

Amendment 2182
Ewald Stadler

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

Text proposed by the Commission

(c) the core activities of the controller or the processor consist of processing operations ***which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects.***

Amendment

(c) the core activities of the controller or the processor consist of processing operations ***for transfer, anonymised transfer, market research or opinion polling purposes.***

Or. de

Amendment 2183
Sarah Ludford

Proposal for a regulation
Article 35 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. In considering whether to appoint a data protection officer, a controller or processor must have regard to factors including the nature, scope and purposes of the processing, the risks for the fundamental rights and freedoms of data subjects that may arise from it, the other measures it proposes to take in order to

comply with this Regulation and cost-effectiveness.

Or. en

Justification

It is the controller or processor who should bear the first and main duty to consider appointing a data protection officer.

Amendment 2184

Sarah Ludford

Proposal for a regulation

Article 35 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Member States may provide in national law for controllers or processors to be required to appoint a data protection officer for the purposes of this Regulation. In doing so, Member States must at least consider the factors referred to in paragraph 1a. Any such measures shall be notified to the European Commission.

Or. en

Justification

Member States, in accordance with their domestic law and regulatory practices, should be able to decide to require the appointment of data protection officer in all cases, or in those giving rise to particular risks.

Amendment 2185

Stanimir Ilchev

Proposal for a regulation

Article 35 – paragraph 2

Text proposed by the Commission

Amendment

2. In the case referred to in point (b) of paragraph 1, a group of undertakings may appoint a single data protection officer.

deleted

Or. de

Amendment 2186
Alexander Alvaro

Proposal for a regulation
Article 35 – paragraph 2

Text proposed by the Commission

Amendment

2. In the case referred to in point (b) of paragraph 1, a group of undertakings may appoint a single data protection officer.

2. A group of undertakings may appoint a single data protection officer.

Or. en

Justification

There is no justifiable reason to limit this possibility.

Amendment 2187
Nils Torvalds

Proposal for a regulation
Article 35 – paragraph 2

Text proposed by the Commission

Amendment

2. In the *case* referred to in *point (b) of* paragraph 1, a group of undertakings may appoint a *single* data protection officer.

2. In the *cases* referred to in paragraph 1, a group of undertakings may appoint a *joint* data protection officer.

Or. en

Amendment 2188

Axel Voss

Proposal for a regulation

Article 35 – paragraph 2

Text proposed by the Commission

2. In the case referred to in point (b) of paragraph 1, a group of undertakings may appoint a single data protection officer.

Amendment

2. In the case referred to in point (b) of paragraph 1, a group of undertakings may appoint a single data protection ***organisation or data protection*** officer.

Or. en

Amendment 2189

Jan Mulder

Proposal for a regulation

Article 35 – paragraph 2

Text proposed by the Commission

2. In the case referred to in point (b) of paragraph 1, a group of undertakings may appoint a single data protection officer.

Amendment

2. A group of undertakings may appoint a single data protection officer.

Or. en

Amendment 2190

Agustín Díaz de Mera García Consuegra

Proposal for a regulation

Article 35 – paragraph 2

Text proposed by the Commission

2. In the case referred to in point (b) of paragraph 1, a group of undertakings may appoint a single data protection officer.

Amendment

2. A group of undertakings may appoint a single data protection officer.

Or. es

Amendment 2191
Wim van de Camp

Proposal for a regulation
Article 35 – paragraph 2

Text proposed by the Commission

2. *In the case referred to in point (b) of paragraph 1, a* group of undertakings may appoint a single data protection officer.

Amendment

2. A group of undertakings may appoint a single data protection officer.

Or. en

Justification

Consequential amendment in view of the amendment to Article 35(1).

Amendment 2192
Louis Michel

Proposal for a regulation
Article 35 – paragraph 2

Text proposed by the Commission

2. *In the case referred to in point (b) of paragraph 1, a* group of undertakings may appoint a single data protection officer.

Amendment

2. A group of undertakings may appoint a single data protection officer.

Or. en

Amendment 2193
Véronique Mathieu Houillon, Axel Voss

Proposal for a regulation
Article 35 – paragraph 2

Text proposed by the Commission

2. In the case referred to in point (b) of paragraph 1, a group of undertakings may appoint a single data protection officer.

Amendment

2. In the case referred to in point (b) of paragraph 1, a group of undertakings may appoint a single data protection officer. *A corporate group may also appoint a single data protection officer for one or more*

*processing operations by several
organisations within it.*

Or. fr

Amendment 2194
Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation
Article 35 – paragraph 2

Text proposed by the Commission

2. In the case referred to in point (b) of paragraph 1, a group of undertakings may appoint a single data protection officer.

Amendment

2. A group of undertakings may appoint a single data protection *organisation or data protection* officer.

Or. en

Amendment 2195
Birgit Sippel, Josef Weidenholzer, Jutta Steinruck

Proposal for a regulation
Article 35 – paragraph 2

Text proposed by the Commission

2. In the case referred to in point (b) of paragraph 1, a group of undertakings may appoint a *single* data protection officer.

Amendment

2. In the case referred to in point (b) of paragraph 1, a group of undertakings may appoint a *chief* data protection officer *provided it is ensured that a data protection officer is easily accessible from each works location, and that there is at least one data protection officer per Member State.*

Or. de

Amendment 2196
Axel Voss

Proposal for a regulation
Article 35 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. In the case referred to in paragraph 1(b) Articles 33 and 34 do not apply.

Or. en

Amendment 2197
Axel Voss

Proposal for a regulation
Article 35 – paragraph 3

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 2198
Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation
Article 35 – paragraph 3

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 2199
Sari Essayah, Eija-Riitta Korhola

Proposal for a regulation
Article 35 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

The option to allow for several public authorities or bodies to jointly designate a data protection officer is of great value for small and mid-sized public authorities and bodies. In practice, public authorities often also cooperate in the field of data processing.

Amendment 2200
Nils Torvalds

Proposal for a regulation
Article 35 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 2201
Alexandra Thein

Proposal for a regulation
Article 35 – paragraph 3

Text proposed by the Commission

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

Amendment

3. Where the controller or the processor is a public authority or body, the data protection officer may be designated for several of its entities, taking account of the organisational structure of the public authority or body. ***Member States may adopt specific rules to provide for the designation of a data protection officer for groups of public-office holders.***

Or. en

Justification

The offices of public office-holders usually do not have the size and structure comparable to other public authorities. In many cases, the public authority may consist of only one competent person: the public office-holder himself. Therefore, Member States should at least have the possibility to provide for the designation of a joint data protection officer for a group of public office-holders (e.g. at the level of the professional supervisory body).

Amendment 2202
Sarah Ludford

Proposal for a regulation
Article 35 – paragraph 3

Text proposed by the Commission

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

Amendment

3. Where the controller or the processor is a public authority or body, ***a single*** data protection officer may be designated for several ***such authorities or bodies***, taking account of ***their*** organisational structure ***and size***.

Or. en

Justification

This is clearer drafting.

Amendment 2203

Marie-Christine Vergiat

Proposal for a regulation

Article 35 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Where the controller belongs to a professional body or a body of controllers from the same sector, he may appoint a data protection officer duly mandated by the body concerned.

Or. fr

Justification

Pooling has the undeniable advantage of providing a clear insight into the particular characteristics of a given profession in terms of data protection and raised awareness on the part of the controllers concerned. The proposed amendment would enable professional bodies to appoint shared data protection officers while leaving the professionals concerned free to decide whether or not to use the service.

Amendment 2204

Louis Michel

Proposal for a regulation

Article 35 – paragraph 4

Text proposed by the Commission

Amendment

4. In cases other than those referred to in paragraph 1, the controller or processor or associations and other bodies representing categories of controllers or processors may designate a data protection officer.

deleted

Amendment 2205

Axel Voss

Proposal for a regulation

Article 35 – paragraph 4

Text proposed by the Commission

4. In cases other than those referred to in paragraph 1, the controller or processor or associations and other bodies representing categories of controllers or processors may designate a data protection officer.

Amendment

4. In cases other than those referred to in paragraph 1, the controller or processor or associations and other bodies representing categories of controllers or processors may designate a data protection **organisation or a data protection** officer.

Or. en

Amendment 2206

Agustín Díaz de Mera García Consuegra

Proposal for a regulation

Article 35 – paragraph 4

Text proposed by the Commission

4. ***In cases other than those referred to in paragraph 1, the*** controller or processor or associations and other bodies representing categories of controllers or processors may designate a data protection officer.

Amendment

4. ***The*** controller or processor or associations and other bodies representing categories of controllers or processors may designate a data protection officer.

Or. es

Amendment 2207

Nils Torvalds

Proposal for a regulation

Article 35 – paragraph 4

Text proposed by the Commission

4. In cases other than those referred to in paragraph 1, the controller or processor or associations and other bodies representing categories of controllers or processors may designate a data protection officer.

Amendment

4. In cases other than those referred to in paragraph 1, the controller or processor or associations and other bodies representing categories of controllers or processors may designate a data protection officer ***or officers.***

Or. en

Amendment 2208

Véronique Mathieu Houillon, Axel Voss

Proposal for a regulation

Article 35 – paragraph 4 a(new)

Text proposed by the Commission

Amendment

4a. Where the controller belongs to a professional body or a body of controllers from the same sector, he may appoint a data protection officer duly mandated by the body concerned.

Or. fr

Amendment 2209

Sarah Ludford

Proposal for a regulation

Article 35 – paragraph 5

Text proposed by the Commission

Amendment

5. The controller or processor shall designate the data protection officer on the basis of professional qualities and, in particular, expert knowledge of data protection law and practices and ability to fulfil the tasks referred to in Article 37. The necessary level of expert knowledge shall be determined in particular

deleted

according to the data processing carried out and the protection required for the personal data processed by the controller or the processor.

Or. en

Amendment 2210
Axel Voss

Proposal for a regulation
Article 35 – paragraph 5

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 2211
Agustín Díaz de Mera García Consuegra

Proposal for a regulation
Article 35 – paragraph 5

Text proposed by the Commission

5. The controller or processor shall designate the data protection officer on the basis of professional qualities and, in particular, expert knowledge of data protection law and practices and ability to fulfil the tasks referred to in Article 37.

Amendment

5. The controller or processor shall designate the data protection officer on the basis of professional qualities and, in particular, expert knowledge of data protection law and practices and ability to fulfil the tasks referred to in Article 37, **in**

The necessary level of expert knowledge shall be determined in particular according to the data processing carried out and the protection required for the personal data processed by the controller or the processor.

accordance with strict professional standards. The necessary level of expert knowledge shall be determined in particular according to the data processing carried out and the protection required for the personal data processed by the controller or the processor.

Or. es

Amendment 2212
Nils Torvalds

Proposal for a regulation
Article 35 – paragraph 5

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 2213
Birgit Sippel, Josef Weidenholzer, Jutta Steinruck

Proposal for a regulation
Article 35 – paragraph 5

Text proposed by the Commission

5. The controller or processor shall designate the data protection officer on the basis of professional qualities and, in

Amendment

5. The controller or processor shall, *after obtaining the approval of the representatives of the business's*

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

employees, designate the data protection officer on the basis of professional qualities and, in particular, expert knowledge of data protection law and practices and ability to fulfil the tasks referred to in Article 37. The necessary level of expert knowledge shall be determined in particular according to the data processing carried out and the protection required for the personal data processed by the controller or the processor. ***The controller or processor shall ensure that the data protection officer has the opportunity for further training and in-service training at their expense.***

Or. de

Amendment 2214

Cornelia Ernst, Marie-Christine Vergiat

Proposal for a regulation

Article 35 – paragraph 5

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 2215
Sarah Ludford

Proposal for a regulation
Article 35 – paragraph 6

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

This is too prescriptive.

Amendment 2216
Axel Voss

Proposal for a regulation
Article 35 – paragraph 6

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 2217
Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation
Article 35 – paragraph 6

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 2218
Nils Torvalds

Proposal for a regulation
Article 35 – paragraph 6

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 2219
Axel Voss

Proposal for a regulation
Article 35 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. The data protection officer can either be an employee of the controller or processor or he/she can likewise be an external service provider.

Or. en

Amendment 2220

Nils Torvalds

Proposal for a regulation

Article 35 – paragraph 7

Text proposed by the Commission

Amendment

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

Or. en

Amendment 2221

Axel Voss

Proposal for a regulation

Article 35 – paragraph 7

Text proposed by the Commission

Amendment

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

Or. en

Justification

To be regulated in Art. 36

Amendment 2222

Timothy Kirkhope

on behalf of the ECR Group

Proposal for a regulation

Article 35 – paragraph 7

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 2223

Louis Michel

Proposal for a regulation

Article 35 – paragraph 7

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 2224

Sarah Ludford

Proposal for a regulation
Article 35 – paragraph 7

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

This is too prescriptive.

Amendment 2225
Cornelia Ernst

Proposal for a regulation
Article 35 – paragraph 7

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 2226
Jens Rohde, Adina-Ioana Vălean

Proposal for a regulation
Article 35 – paragraph 7

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 2227
Agustín Díaz de Mera García Consuegra

Proposal for a regulation
Article 35 – paragraph 7

Text proposed by the Commission

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

Amendment

7. During their term of office, the data protection officer may only be dismissed, if the data protection officer no longer fulfils the conditions required for the performance of their duties ***or for serious failure in this connection.***

Or. es

Amendment 2228
Dimitrios Droutsas

Proposal for a regulation
Article 35 – paragraph 7

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 2229
Véronique Mathieu Houillon, Axel Voss

Proposal for a regulation
Article 35 – paragraph 7

Text proposed by the Commission

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

Amendment

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

Or. fr

Amendment 2230
Jacek Protasiewicz, Rafał Trzaskowski, Arkadiusz Tomasz Bratkowski

Proposal for a regulation
Article 35 – paragraph 7

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 2231
Birgit Sippel, Josef Weidenholzer, Jutta Steinruck

Proposal for a regulation
Article 35 – paragraph 7

Text proposed by the Commission

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

Amendment

7. The controller or the processor shall, ***after obtaining the approval of the representatives of the business's employees,*** designate a data protection officer for a period of at least two years. The data protection officer may be reappointed for further terms. During their term of office, the data protection officer may only be dismissed, if the data protection officer no longer fulfils the conditions required for the performance of their duties. ***Notwithstanding the above, the data protection officer shall enjoy special protection against discrimination and dismissal, similar to the protection afforded to employees' representatives under national law, and may not be disadvantaged for carrying out his duties.***

Or. de

Amendment 2232
Anna Hedh, Marita Ulvskog

Proposal for a regulation
Article 35 – paragraph 7

Text proposed by the Commission

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

Amendment

7. The controller or the processor shall ***together with the worker representatives*** designate a data protection officer for a period of at least two years. The data protection officer may be reappointed for further terms. During their term of office, data protection ***officers should, when performing their duties, enjoy special protection against dismissal and discrimination, comparable to trade union or workers representatives under national law and practices.***

Or. en

Amendment 2233
Marie-Christine Vergiat

Proposal for a regulation
Article 35 – paragraph 7 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The supervisory authority shall be entitled to require justification for the early discharge of a data protection officer.

Or. fr

Amendment 2234
Axel Voss

Proposal for a regulation
Article 35 – paragraph 8

Text proposed by the Commission

Amendment

8. The data protection officer may be employed by the controller or processor, or fulfil his or her tasks on the basis of a service contract. *deleted*

Or. en

Justification

To be regulated in Art. 36.

Amendment 2235

Timothy Kirkhope

on behalf of the ECR Group

Proposal for a regulation

Article 35 – paragraph 8

Text proposed by the Commission

Amendment

8. The data protection officer may be employed by the controller or processor, or fulfil his or her tasks on the basis of a service contract. *deleted*

Or. en

Amendment 2236

Louis Michel

Proposal for a regulation

Article 35 – paragraph 8

Text proposed by the Commission

Amendment

8. The data protection officer may be employed by the controller or processor, or fulfil his or her tasks on the basis of a service contract. *deleted*

Or. en

Amendment 2237
Birgit Sippel, Josef Weidenholzer

Proposal for a regulation
Article 35 – paragraph 8

Text proposed by the Commission

8. The data protection officer may be employed by the controller or processor, ***or fulfil his or her tasks on the basis of a service contract.***

Amendment

8. The data protection officer may be employed by the controller or processor.

Or. en

Justification

The position of a data protection officer is not a merely technical one. It requires a permanent control of the internal organisation of the service provider and affects therefore all employees to a certain degree. An external service provider who is not present all the time cannot fulfil this requirement.

Amendment 2238
Jan Mulder

Proposal for a regulation
Article 35 – paragraph 9

Text proposed by the Commission

9. 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.

Amendment

deleted

Or. en

Amendment 2239
Louis Michel

Proposal for a regulation
Article 35 – paragraph 9

Text proposed by the Commission

Amendment

9. 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.

deleted

Or. en

Amendment 2240

Axel Voss

Proposal for a regulation

Article 35 – paragraph 9

Text proposed by the Commission

Amendment

9. 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.

9. The controller or the processor shall communicate the name and contact details of the data protection **organisation or the data protection** officer to the supervisory authority and to the public.

Or. en

Amendment 2241

Nils Torvalds

Proposal for a regulation

Article 35 – paragraph 9

Text proposed by the Commission

Amendment

9. 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.

9. The controller or the processor shall **make available** the name and contact details of the data protection officer to the supervisory authority and to the public.

Or. en

Amendment 2242

Axel Voss

Proposal for a regulation
Article 35 – paragraph 10

Text proposed by the Commission

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

Amendment

10. Data subjects shall have the right to contact the data protection ***organisation or 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 2243
Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation
Article 35 – paragraph 10

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 2244
Nils Torvalds

Proposal for a regulation
Article 35 – paragraph 10

Text proposed by the Commission

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

Amendment

10. Data subjects shall have the right to contact the data protection officer ***or data protection officers*** 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 2245
Timothy Kirkhope
on behalf of the ECR Group

Proposal for a regulation
Article 35 – paragraph 10

Text proposed by the Commission

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

Amendment

10. Data subjects shall have the right to contact the data protection officer on all issues related to the processing of the data subject's data and to request exercising the rights under this Regulation, ***and for them to take the first steps in rectifying the situation.***

Or. en

Amendment 2246
Sari Essayah

Proposal for a regulation
Article 35 – paragraph 11

Text proposed by the Commission

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

Amendment

deleted

Or. en

Justification

No need for delegated powers to this respect.

Amendment 2247

Nils Torvalds

Proposal for a regulation

Article 35 – paragraph 11

Text proposed by the Commission

Amendment

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

Or. en

Amendment 2248

Axel Voss

Proposal for a regulation

Article 35 – paragraph 11

Text proposed by the Commission

Amendment

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

Or. en

Amendment 2249

Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation

Article 35 – paragraph 11

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 2250

Agustín Díaz de Mera García Consuegra

Proposal for a regulation

Article 35 – paragraph 11

Text proposed by the Commission

Amendment

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

deleted

Or. es

Amendment 2251
Timothy Kirkhope
on behalf of the ECR Group

Proposal for a regulation
Article 35 – paragraph 11

Text proposed by the Commission

Amendment

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

Or. en

Amendment 2252
Sarah Ludford

Proposal for a regulation
Article 35 – paragraph 11

Text proposed by the Commission

Amendment

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

Or. en

Justification

Not necessary.

Amendment 2253

Axel Voss

Proposal for a regulation

Article 36 – title

Text proposed by the Commission

Position of the data protection officer

Amendment

Position of the data protection
organisation or the data protection officer

Or. en

Amendment 2254

Axel Voss

Proposal for a regulation

Article 36 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 2255

Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation

Article 36 – paragraph 1

Text proposed by the Commission

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

Amendment

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

of personal data.

Or. en

Amendment 2256
Nils Torvalds

Proposal for a regulation
Article 36 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 2257
Sophia in 't Veld

Proposal for a regulation
Article 36 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The data protection officer shall report directly to the company board, which is ultimately responsible and accountable for the compliance with the provisions of this Regulation.

Or. en

Amendment 2258
Louis Michel

Proposal for a regulation
Article 36 – paragraph 2

Text proposed by the Commission

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.

deleted

Or. en

Amendment 2259

Alexander Alvaro

Proposal for a regulation

Article 36 – paragraph 2

Text proposed by the Commission

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.

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 **executive** management of the controller or the processor.

Or. en

Justification

With regard to the high volume and importance of data protection the data protection officer shall report directly to the executive management.

Amendment 2260

Axel Voss

Proposal for a regulation

Article 36 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The controller or processor shall ensure that the data protection ***organisation or*** the data protection officer ***performs the duties and tasks independently.***

Or. en

Amendment 2261

Jan Mulder

Proposal for a regulation

Article 36 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The 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 ***which is responsible for protecting personal data in accordance with this regulation.***

Or. en

Amendment 2262

Jens Rohde, Adina-Ioana Vălean

Proposal for a regulation

Article 36 – paragraph 2

Text proposed by the Commission

2. The ***controller or processor shall ensure that the*** data protection officer ***performs***

Amendment

2. The ***data protection organisation or*** data protection officer ***shall perform his or***

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.

her tasks independently and shall directly report to the *executive* management of the controller or the processor.

Or. en

Amendment 2263

Agustín Díaz de Mera García Consuegra

Proposal for a regulation

Article 36 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The controller or processor shall ensure that the data protection officer performs the duties and tasks *in accordance with the provisions of this Regulation, and may not be given instructions affecting the functions specifically relating to his post.* The data protection officer shall directly report to the management of the controller or the processor.

Or. es

Amendment 2264

Nils Torvalds

Proposal for a regulation

Article 36 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The data protection officer *or* data protection *officers* shall *perform their duties and tasks independently.*

Amendment 2265
Dimitrios Droutsas

Proposal for a regulation
Article 36 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The 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 ***executive*** management of the controller or the processor.

Or. en

Amendment 2266
Timothy Kirkhope
on behalf of the ECR Group

Proposal for a regulation
Article 36 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The controller or processor shall ensure that the data protection officer performs the duties and tasks independently. The data protection officer shall directly report to the management of the controller or the processor.

Or. en

Amendment 2267
Birgit Sippel, Josef Weidenholzer, Evelyn Regner

Proposal for a regulation
Article 36 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The 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 ***and to the representatives of the business's employees.***

Or. de

Amendment 2268
Ewald Stadler

Proposal for a regulation
Article 36 – paragraph 2

Text proposed by the Commission

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

Amendment

Does not affect English version.. German original replaces 'Leitung' with 'Geschäftsführung', both meaning 'management'.

Or. de

Amendment 2269
Hélène Flautre

Proposal for a regulation
Article 36 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The 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 in ***each Member State be given procedural guarantees ensuring his or her independence and penalising any attempts to obstruct him in the full performance of his or her duties.*** The data protection officer shall directly report to the management of the controller or the processor.

Or. fr

Amendment 2270

Sarah Ludford

Proposal for a regulation

Article 36 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The 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.

Or. en

Justification

Too prescriptive.

Amendment 2271

Alexander Alvaro

Proposal for a regulation
Article 36 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 2272
Axel Voss

Proposal for a regulation
Article 36 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 2273
Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation
Article 36 – paragraph 3

Text proposed by the Commission

3. The controller or the processor shall support the data protection officer in performing the tasks and shall provide

Amendment

3. The controller or the processor shall support the data protection **organisation or data protection** officer in performing the

staff, premises, equipment and any other resources necessary to carry out the duties and tasks referred to in Article 37.

tasks and shall provide staff, premises, equipment and any other resources necessary to carry out the duties and tasks referred to in Article 37.

Or. en

Amendment 2274

Agustín Díaz de Mera García Consuegra

Proposal for a regulation Article 36 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. es

Amendment 2275

Nils Torvalds

Proposal for a regulation Article 36 – paragraph 3

Text proposed by the Commission

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

Amendment

3. The controller or the processor shall support the data protection officer in performing the tasks **by providing appropriate means** to carry out the duties and tasks referred to in Article 37.

Or. en

Amendment 2276
Dimitrios Droutsas

Proposal for a regulation
Article 36 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 2277
Birgit Sippel, Josef Weidenholzer, Evelyn Regner

Proposal for a regulation
Article 36 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. de

Amendment 2278
Marie-Christine Vergiat

Proposal for a regulation
Article 36 – paragraph 3

Text proposed by the Commission

3. The controller or the processor shall

Amendment

3. The controller or the processor shall

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

support the data protection officer in performing the tasks and shall provide ***all necessary resources, including*** staff, premises, equipment, ***access to information*** and any other resources necessary to carry out the duties and tasks referred to in Article 37 ***and update his or her professional knowledge.***

The right of data protection officers to training shall be guaranteed under the relevant statutory or contractual provisions of the Member State in which they are performing their tasks.

Or. fr

Amendment 2279
Hélène Flautre

Proposal for a regulation
Article 36 – paragraph 3

Text proposed by the Commission

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

Amendment

3. The controller or the processor shall support the data protection officer in performing the tasks and shall provide ***all necessary resources, including*** staff, premises, equipment, ***access to information*** and any other resources necessary to carry out the duties and tasks referred to in Article 37 ***and update his or her professional knowledge.***

Or. fr

Amendment 2280
Csaba Sógor

Proposal for a regulation
Article 36 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Data protection officers shall be bound by secrecy concerning the identity of data subjects and concerning circumstances enabling data subjects to be identified, unless they are released from that obligation by the data subject. Where in the course of their activities data protection officers become aware of data for which the head of the data controller or a person employed by the data controller has the right to refuse to give evidence, that right shall also apply to data protection officers and their subordinates.

Or. hu

Amendment 2281
Axel Voss

Proposal for a regulation
Article 36 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The controller or the processor shall designate a data protection organisation or a data protection officer for an initial period of at least two years in case of a data protection organisation and for an initial period of at least four years in case of a data protection officer, as long as he/she is not an external service provider. In the least case the period for data protection organisations shall apply. The data protection organisations or data protection officers may be reappointed for further terms. During their term of office, the data protection officer may only be dismissed, if the data protection officer no longer fulfils the conditions required for the performance of their duties.

These provisions do not apply in case of the voluntary engagement of a data protection organisation or a data protection officer as laid out in Article 38a of this Regulation.

Or. en

Justification

Taken from Article 35. Where Article 38a applies, the data controller or data processor should be able - given the voluntary nature of the involvement of a data protection organisation or data protection officer - to apply more flexible periods.

Amendment 2282
Dimitrios Droutsas

Proposal for a regulation
Article 36 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Data protection officers shall be bound by professional secrecy concerning the identity of data subjects and concerning circumstances enabling data subjects to be identified, unless they are released from that obligation by the data subject.

Or. en

Amendment 2283
Nathalie Griesbeck

Proposal for a regulation
Article 36 – paragraph 3 bis (new)

Text proposed by the Commission

Amendment

3a. The controller or processor shall guarantee the data protection officers entitlement to training in line with his or her duties.

Amendment 2284

Axel Voss

Proposal for a regulation

Article 36 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. The data protection organisation or the data protection officer may be employed by the controller or processor, or fulfil his or her tasks on the basis of a service contract.

The designation as a data protection organisation or a data protection officer does not necessarily require fulltime occupation of the respective organisation or employee.

Or. en

Justification

Taken from Article 35.

Amendment 2285

Sarah Ludford

Proposal for a regulation

Article 37

Text proposed by the Commission

Amendment

Article 37

deleted

Tasks of the data protection officer

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

(a) to inform and advise the controller or the processor of their obligations

pursuant to this Regulation and to document this activity and the responses received;

(b) to monitor the implementation and application of the policies of the controller or processor in relation to the protection of personal data, including the assignment of responsibilities, the training of staff involved in the processing operations, and the related audits;

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

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

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

(f) to monitor the performance of the data protection impact assessment by the controller or processor and the application for prior authorisation or prior consultation, if required pursuant Articles 33 and 34;

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

(h) to act as the contact point for the supervisory authority on issues related to the processing and consult with the supervisory authority, if appropriate, on his/her own initiative.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further

specifying the criteria and requirements for tasks, certification, status, powers and resources of the data protection officer referred to in paragraph 1.

Or. en

Justification

Too prescriptive.

Amendment 2286

Timothy Kirkhope

on behalf of the ECR Group

Proposal for a regulation

Article 37 – paragraph 1

Text proposed by the Commission

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

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

(b) to monitor the implementation and application of the policies of the controller or processor in relation to the protection of personal data, including the assignment of responsibilities, the training of staff involved in the processing operations, and the related audits;

(c) to monitor the implementation and application of this Regulation, in particular as to the requirements related to data protection by design, data

Amendment

1. The controller or the processor shall ***ensure*** the data protection officer ***has a clear job description and code of conduct which explicitly lays out their data protection duties which they are entrusted to carry out, particularly the implementation and application of this Regulation and their role as liaison*** with the ***supervisory authority***.

protection by default and data security and to the information of data subjects and their requests in exercising their rights under this Regulation;

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

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

(f) to monitor the performance of the data protection impact assessment by the controller or processor and the application for prior authorisation or prior consultation, if required pursuant Articles 33 and 34;

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

(h) to act as the contact point for the supervisory authority on issues related to the processing and consult with the supervisory authority, if appropriate, on his/her own initiative.

Or. en

Amendment 2287

Axel Voss

Proposal for a regulation

Article 37 – title

Text proposed by the Commission

Tasks of the data protection officer

Amendment

Tasks of the data protection **organisation**
or the data protection officer

Or. en

Amendment 2288

Axel Voss

Proposal for a regulation

Article 37 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 2289

Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation

Article 37 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 2290

Nils Torvalds

Proposal for a regulation

Article 37 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 2291

Louis Michel

Proposal for a regulation

Article 37 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

1. The controller or the processor shall **determine the tasks to be performed by the data protection organisation or the data protection officer in order to ensure compliance with this Regulation**:

Or. en

Amendment 2292

Nils Torvalds

Proposal for a regulation

Article 37 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 2293

Axel Voss

Proposal for a regulation

Article 37 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

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

and the responses received;

Or. en

Amendment 2294

Louis Michel

Proposal for a regulation

Article 37 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 2295

Agustín Díaz de Mera García Consuegra

Proposal for a regulation

Article 37 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

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

Or. es

Amendment 2296

Nils Torvalds

Proposal for a regulation

Article 37 – paragraph 1 – point b

Text proposed by the Commission

(b) to monitor the implementation and

Amendment

(b) to monitor the implementation and

application of the policies of the controller or processor in relation to the protection of personal data, ***including the assignment of responsibilities, the training of staff involved in the processing operations, and the related audits;***

application of the policies of the controller or processor in relation to the protection of personal data ***as outlined in Article 22;***

Or. en

Amendment 2297

Louis Michel

Proposal for a regulation

Article 37 – paragraph 1 – point b

Text proposed by the Commission

(b) to ***monitor the implementation and application of the policies of the controller or processor in relation to the protection of personal data, including the assignment of responsibilities, the training of staff involved in the processing operations, and the related audits;***

Amendment

(b) to ***develop, support and monitor the implementation of measures referred to in Article 22;***

Or. en

Amendment 2298

Anna Hedh, Marita Ulvskog

Proposal for a regulation

Article 37 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) to inform and consult the worker representatives regarding the personal data of workers;

Or. en

Amendment 2299

Axel Voss

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

Text proposed by the Commission

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

Amendment

(c) to monitor *incompliance with the Regulation*;

Or. en

Amendment 2300
Adina-Ioana Vălean, Jens Rohde

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 2301
Louis Michel

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

Text proposed by the Commission

(c) to monitor the *implementation and*

Amendment

(c) to monitor the *compliance* this

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

Regulation;

Or. en

Amendment 2302
Nils Torvalds

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

Text proposed by the Commission

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

Amendment

(c) to monitor **compliance with** this Regulation;

Or. en

Amendment 2303
Nils Torvalds

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

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 2304

Louis Michel

Proposal for a regulation

Article 37 – paragraph 1 – point d

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 2305

Agustín Díaz de Mera García Consuegra

Proposal for a regulation

Article 37 – paragraph 1 – point d

Text proposed by the Commission

Amendment

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

deleted

Or. es

Amendment 2306

Nils Torvalds

Proposal for a regulation

Article 37 – paragraph 1 – point e

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 2307

Louis Michel

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

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 2308
Axel Voss

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

Text proposed by the Commission

Amendment

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

(e) to develop processes to monitor, document, notify and communicate personal data breaches pursuant to Articles 31 and 32;

Or. en

Amendment 2309
Nils Torvalds

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

Text proposed by the Commission

Amendment

(f) to monitor the performance of the data protection impact assessment by the controller or processor and the application for prior authorisation or prior consultation, if required pursuant Articles 33 and 34;

deleted

Or. en

Amendment 2310

Louis Michel

Proposal for a regulation

Article 37 – paragraph 1 – point f

Text proposed by the Commission

Amendment

(f) to monitor the performance of the data protection impact assessment by the controller or processor and the application for prior authorisation or prior consultation, if required pursuant Articles 33 and 34; *deleted*

Or. en

Amendment 2311

Agustín Díaz de Mera García Consuegra

Proposal for a regulation

Article 37 – paragraph 1 – point f

Text proposed by the Commission

Amendment

(f) to monitor the performance of the data protection impact assessment by the controller or processor and the application for prior authorisation or prior consultation, if required pursuant Articles 33 and 34; *deleted*

Or. es

Amendment 2312

Alexander Alvaro

Proposal for a regulation

Article 37 – paragraph 1 – point f

Text proposed by the Commission

Amendment

(f) to monitor the performance of the data

(f) to monitor the performance of the data

protection impact assessment by the controller or processor and the application for **prior authorisation or** prior consultation, if required pursuant Articles 33 and 34;

protection impact assessment by the controller or processor and the application for prior consultation, if required pursuant Articles 33 and 34;

Or. en

Justification

Consequence of amendment of Article 34.

Amendment 2313

Axel Voss

Proposal for a regulation

Article 37 – paragraph 1 – point f

Text proposed by the Commission

(f) to monitor the performance of the data protection impact assessment by the controller or processor and the application for prior authorisation or prior consultation, if required pursuant Articles 33 and 34;

Amendment

(f) to **develop processes that** monitor the performance of the data protection impact assessment by the controller or processor and the application for prior authorisation or prior consultation, if required pursuant Articles 33 and 34;

Or. en

Amendment 2314

Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation

Article 37 – paragraph 1 – point f

Text proposed by the Commission

(f) to monitor the performance of the data protection impact assessment by the controller or processor and the application for prior **authorisation or prior** consultation, if required pursuant Articles 33 and 34;

Amendment

(f) to monitor the performance of the data protection impact assessment by the controller or processor and the application for prior consultation, if required pursuant Articles 33 and 34;

Amendment 2315

Nils Torvalds

Proposal for a regulation

Article 37 – paragraph 1 – point g

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 2316

Louis Michel

Proposal for a regulation

Article 37 – paragraph 1 – point g

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 2317

Axel Voss

Proposal for a regulation

Article 37 – paragraph 1 – point g

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 2318
Nils Torvalds

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

Text proposed by the Commission

Amendment

(h) to act as the contact point for the supervisory authority on issues related to the processing and consult with the supervisory authority, if appropriate, on his/her own initiative.

deleted

Or. en

Amendment 2319
Louis Michel

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

Text proposed by the Commission

Amendment

(h) to act as the contact point for the supervisory authority on issues related to the processing and consult with the supervisory authority, if appropriate, on his/her own initiative.

deleted

Amendment 2320
Dimitrios Droutsas

Proposal for a regulation
Article 37 – paragraph 1 – point h a (new)

Text proposed by the Commission

Amendment

***(ha) to inform the workers representatives
on data processing of the workers.***

Or. en

Amendment 2321
Birgit Sippel, Josef Weidenholzer, Evelyn Regner

Proposal for a regulation
Article 37 – paragraph 1 – point h a (new)

Text proposed by the Commission

Amendment

***(ha) to inform and consult the
representatives of the business's
employees about employee data.***

Or. de

Amendment 2322
Alexander Alvaro

Proposal for a regulation
Article 37 – paragraph 2

Text proposed by the Commission

Amendment

***2. The Commission shall be empowered to
adopt delegated acts in accordance with
Article 86 for the purpose of further
specifying the criteria and requirements
for tasks, certification, status, powers and
resources of the data protection officer
referred to in paragraph 1.***

deleted

Amendment 2323

Nils Torvalds

Proposal for a regulation

Article 37 – paragraph 2

Text proposed by the Commission

Amendment

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for tasks, certification, status, powers and resources of the data protection officer referred to in paragraph 1. **deleted**

Or. en

Amendment 2324

Axel Voss

Proposal for a regulation

Article 37 – paragraph 2

Text proposed by the Commission

Amendment

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for tasks, certification, status, powers and resources of the data protection officer referred to in paragraph 1. **deleted**

Or. en

Amendment 2325

Dimitrios Droutsas

Proposal for a regulation

Article 37 – paragraph 2

Text proposed by the Commission

Amendment

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for tasks, certification, status, powers and resources of the data protection officer referred to in paragraph 1. *deleted*

Or. en

Amendment 2326

Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation

Article 37 – paragraph 2

Text proposed by the Commission

Amendment

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for tasks, certification, status, powers and resources of the data protection officer referred to in paragraph 1. *deleted*

Or. en

Amendment 2327

Louis Michel

Proposal for a regulation

Article 37 – paragraph 2

Text proposed by the Commission

Amendment

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for tasks, certification, status, powers and resources of the data protection officer *deleted*

referred to in paragraph 1.

Or. en

Amendment 2328

Agustín Díaz de Mera García Consuegra

Proposal for a regulation

Article 37 – paragraph 2

Text proposed by the Commission

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for *tasks*, certification, status, *powers and resources* of the *data protection* officer referred to in paragraph 1.

Amendment

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for *the* certification and status of the officer.

Or. es

Amendment 2329

Sophia in 't Veld

Proposal for a regulation

Article 37 a (new)

Text proposed by the Commission

Amendment

Article 37a

COMPANY BOARD RESPONSABILITY

The controller and the processor shall designate a company board member who shall bear the final responsibility for the compliance with the provisions of this Regulation.

Or. en

Amendment 2330

Axel Voss

Proposal for a regulation
Chapter 4 – section 5 – title

Text proposed by the Commission

**CODES OF CONDUCT AND
CERTIFICATION**

Amendment

***SELF-REGULATION, BINDING
CORPORATE RULES*, CODES OF
CONDUCT AND CERTIFICATION**

Or. en

Amendment 2331
Axel Voss

Proposal for a regulation
Article 38

Text proposed by the Commission

Amendment

***1. The Member States, the supervisory
authorities and the Commission shall
encourage the drawing up of codes of
conduct intended to contribute to the
proper application of this Regulation,
taking account of the specific features of
the various data processing sectors, in
particular in relation to:***

deleted

- (a) fair and transparent data processing;***
- (b) the collection of data;***
- (c) the information of the public and of
data subjects;***
- (d) requests of data subjects in exercise of
their rights;***
- (e) information and protection of
children;***
- (f) transfer of data to third countries or
international organisations;***
- (g) mechanisms for monitoring and
ensuring compliance with the code by the
controllers adherent to it;***
- (h) out-of-court proceedings and other
dispute resolution procedures for
resolving disputes between controllers and***

data subjects with respect to the processing of personal data, without prejudice to the rights of the data subjects pursuant to Articles 73 and 75.

2. Associations and other bodies representing categories of controllers or processors in one Member State which intend to draw up codes of conduct or to amend or extend existing codes of conduct may submit them to an opinion of the supervisory authority in that Member State. The supervisory authority may give an opinion whether the draft code of conduct or the amendment is in compliance with this Regulation. The supervisory authority shall seek the views of data subjects or their representatives on these drafts.

3. Associations and other bodies representing categories of controllers in several Member States may submit draft codes of conduct and amendments or extensions to existing codes of conduct to the Commission.

4. The Commission may adopt implementing acts for deciding that the codes of conduct and amendments or extensions to existing codes of conduct submitted to it pursuant to paragraph 3 have general validity within the Union. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).

5. The Commission shall ensure appropriate publicity for the codes which have been decided as having general validity in accordance with paragraph 4.

Or. en

Amendment 2332

Agustín Díaz de Mera García Consuegra

Proposal for a regulation

Article 38 – paragraph 1 – introductory part

Text proposed by the Commission

1. The Member States, the supervisory authorities and the Commission shall encourage the drawing up of codes of conduct intended to contribute to the proper application of this Regulation, taking account of the specific features of the various data processing sectors, in particular in relation to:

Amendment

1. The Member States, the supervisory authorities and the Commission shall encourage ***participation in*** the drawing up of codes of conduct intended to contribute to the proper application of this Regulation, taking account of the specific features of the various data processing sectors, in particular in relation to:

Or. es

Amendment 2333

Timothy Kirkhope

on behalf of the ECR Group

Proposal for a regulation

Article 38 – paragraph 1 – introductory part

Text proposed by the Commission

1. The Member States, the supervisory authorities and the Commission shall encourage the drawing up of codes of conduct intended to contribute to the proper application of this Regulation, taking account of the specific features of the various data processing sectors, in particular in relation to:

Amendment

1. The Member States, the supervisory authorities and the Commission shall encourage the drawing up of codes of conduct ***or the adoption of a code of conduct drawn up by a Supervisory Authority*** intended to contribute to the proper application of this Regulation, taking account of the specific features of the various data processing sectors, in particular in relation to:

Or. en

Amendment 2334

Alexander Alvaro

Proposal for a regulation

Article 38 – paragraph 2

Text proposed by the Commission

2. Associations and other bodies

Amendment

2. Associations and other bodies

representing categories of controllers or processors in one Member State which intend to draw up codes of conduct or to amend or extend existing codes of conduct may submit them to an opinion of the supervisory authority in that Member State. The supervisory authority *may* give an opinion whether the draft code of conduct or the amendment is in compliance with this Regulation. The supervisory authority shall seek the views of data subjects or their representatives on these drafts.

representing categories of controllers or processors in one Member State which intend to draw up codes of conduct or to amend or extend existing codes of conduct may submit them to an opinion of the supervisory authority in that Member State. The supervisory authority *shall without undue delay* give an opinion whether the draft code of conduct or the amendment is in compliance with this Regulation. The supervisory authority shall seek the views of data subjects or their representatives on these drafts.

Or. en

Justification

Amendment necessary to guarantee legal certainty and to promote the use of codes of conduct.

Amendment 2335

Adina-Ioana Vălean, Jens Rohde

Proposal for a regulation

Article 38 – paragraph 2

Text proposed by the Commission

2. Associations and other bodies representing categories of controllers or processors in one Member State which intend to draw up codes of conduct or to amend or extend existing codes of conduct may submit them to an opinion of the supervisory authority in that Member State. The supervisory authority *may* give an opinion whether the draft code of conduct or the amendment is in compliance with this Regulation. The supervisory authority shall seek the views of data subjects or their representatives on these drafts.

Amendment

2. Associations and other bodies representing categories of controllers or processors in one Member State which intend to draw up codes of conduct or to amend or extend existing codes of conduct may submit them to an opinion of the supervisory authority in that Member State. The supervisory authority *shall without undue delay* give an opinion whether the draft code of conduct or the amendment is in compliance with this Regulation. The supervisory authority shall seek the views of data subjects or their representatives on these drafts.

Or. en

Amendment 2336

Sarah Ludford

Proposal for a regulation

Article 38 – paragraph 2

Text proposed by the Commission

2. Associations and other bodies representing categories of controllers or processors in one Member State which intend to draw up codes of conduct or to amend or extend existing codes of conduct may submit them to an opinion of the supervisory authority in that Member State. The supervisory authority may give an opinion whether the ***draft code of conduct or the amendment*** is in compliance with this Regulation. ***The supervisory authority shall seek the views of data subjects or their representatives on these drafts.***

Amendment

2. Associations and other bodies representing categories of controllers or processors in one Member State which intend to draw up codes of conduct or to amend or extend existing codes of conduct may submit them to an opinion of the supervisory authority in that Member State. The supervisory authority may give an opinion whether the ***processing under the code*** is in compliance with this Regulation.

Or. en

Justification

The Regulation regulates the processing, not the code.

Amendment 2337

Alexander Alvaro

Proposal for a regulation

Article 38 – paragraph 3

Text proposed by the Commission

3. Associations and other bodies representing categories of controllers in several Member States may submit draft codes of conduct and amendments or extensions to existing codes of conduct to the Commission.

Amendment

3. Associations and other bodies representing categories of controllers ***or processors*** in several Member States may submit draft codes of conduct and amendments or extensions to existing codes of conduct to the Commission.

Or. en

Amendment 2338
Timothy Kirkhope
on behalf of the ECR Group

Proposal for a regulation
Article 38 – paragraph 3

Text proposed by the Commission

3. Associations and other bodies representing categories of controllers in several Member States may submit draft codes of conduct and amendments or extensions to existing codes of conduct to the *Commission*.

Amendment

3. Associations and other bodies representing categories of controllers in several Member States may submit draft codes of conduct and amendments or extensions to existing codes of conduct to the *European Data Protection Board*.

Or. en

Amendment 2339
Louis Michel

Proposal for a regulation
Article 38 – paragraph 3

Text proposed by the Commission

3. Associations and other bodies representing categories of controllers in several Member States may submit draft codes of conduct and amendments or extensions to existing codes of conduct to the *Commission*.

Amendment

3. Associations and other bodies representing categories of controllers in several Member States may submit draft codes of conduct and amendments or extensions to existing codes of conduct to the *European Data Protection Board*.

Or. en

Amendment 2340
Axel Voss

Proposal for a regulation
Article 38 – paragraph 4

Text proposed by the Commission

Amendment

4. The Commission may adopt implementing acts for deciding that the codes of conduct and amendments or extensions to existing codes of conduct submitted to it pursuant to paragraph 3 have general validity within the Union. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).

deleted

Or. en

Amendment 2341

Agustín Díaz de Mera García Consuegra

Proposal for a regulation

Article 38 – paragraph 4

Text proposed by the Commission

Amendment

4. The Commission may adopt implementing acts for deciding that the codes of conduct and amendments or extensions to existing codes of conduct submitted to it pursuant to paragraph 3 have general validity within the Union. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).

deleted

Or. es

Amendment 2342

Louis Michel

Proposal for a regulation

Article 38 – paragraph 4

Text proposed by the Commission

Amendment

4. The Commission may adopt implementing acts for deciding that the

deleted

codes of conduct and amendments or extensions to existing codes of conduct submitted to it pursuant to paragraph 3 have general validity within the Union. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).

Or. en

Amendment 2343
Alexander Alvaro

Proposal for a regulation
Article 38 – paragraph 4

Text proposed by the Commission

4. The Commission *may* adopt ***implementing acts*** for deciding that the codes of conduct and amendments or extensions to existing codes of conduct submitted to it pursuant to paragraph 3 have general validity within the Union. ***Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).***

Amendment

4. The Commission ***shall be empowered to*** adopt ***delegated acts in accordance with Article 86 for the purpose of*** deciding that the codes of conduct and amendments or extensions to existing codes of conduct submitted to it pursuant to paragraph 3 have general validity within the Union.

Or. en

Justification

Horizontal amendment replacing all implementing acts with delegated acts in order to guarantee the full involvement of the European Parliament in the decision making process.

Amendment 2344
Dimitrios Droutsas

Proposal for a regulation
Article 38 – paragraph 4

Text proposed by the Commission

4. The Commission *may* adopt

Amendment

4. The Commission ***shall be empowered to***

implementing acts for deciding that the codes of conduct and amendments or extensions to existing codes of conduct submitted to it pursuant to paragraph 3 have general validity within the Union. ***Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).***

adopt, ***after requesting an opinion of the European Data Protection Board, delegated acts in accordance with Article 86*** for deciding that the codes of conduct and amendments or extensions to existing codes of conduct submitted to it pursuant to paragraph 3 ***are in line with this Regulation and*** have general validity within the Union. ***This delegated act shall confer enforceable rights on data subjects.***

Or. en

Amendment 2345
Timothy Kirkhope
on behalf of the ECR Group

Proposal for a regulation
Article 38 – paragraph 4

Text proposed by the Commission

4. The ***Commission*** may adopt implementing acts for deciding that the codes of conduct and amendments or extensions to existing codes of conduct submitted to it pursuant to paragraph 3 have general validity within the Union. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).

Amendment

4. The ***European Data Protection Board*** may adopt implementing acts for deciding that the codes of conduct and amendments or extensions to existing codes of conduct submitted to it pursuant to paragraph 3 have general validity within the Union. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).

Or. en

Amendment 2346
Agustín Díaz de Mera García Consuegra

Proposal for a regulation
Article 38 – paragraph 5

Text proposed by the Commission

5. The Commission shall ensure appropriate publicity for the codes which

Amendment

deleted

have been decided as having general validity in accordance with paragraph 4.

Or. es

Amendment 2347
Timothy Kirkhope
on behalf of the ECR Group

Proposal for a regulation
Article 38 – paragraph 5

Text proposed by the Commission

5. The **Commission** shall ensure appropriate publicity for the codes which have been decided as having general validity in accordance with paragraph 4.

Amendment

5. The **European Data Protection Board** shall ensure appropriate publicity for the codes which have been decided as having general validity in accordance with paragraph 4.

Or. en

Amendment 2348
Axel Voss

Proposal for a regulation
Article 38 a (new)

Text proposed by the Commission

Amendment

Article 38a

Promoting Self-Regulation

- 1. The Member States, the national and European supervisory authorities and the Commission shall encourage self-regulation instruments like binding corporate rules, code of conducts and certification or - in cases of companies which do not fall under the provision of Article 35 - the feature of the voluntarily designation of a data protection organisation or a data protection officer.**
- 2. Single undertakings, multibusiness enterprises, industries, professional associations and other associations of**

every kind which represent specific groups of controllers or processors may submit drafts of the self-regulation instruments in paragraph 1. If the self-regulation instrument should only apply in a Member State the national supervisory authority in that Member State can be asked to confirm the compliance with this regulation. If the self-regulation instrument should apply in all Member States of the EU the European Data Protection Board can be asked to confirm the compliance with this Regulation. The national supervisory authority or the European Data Protection Board shall examine the compatibility of the submitted drafts with the applicable law on this data protection Regulation. If there is no reaction in a 3-month-period the self-regulation instrument is classified as in compliance with this Regulation.

3. If the self-regulation instrument provides an adequate proceeding in data protection issues of this Regulation, Article 14 (Information to the data subject), Article 28 (documentation), Article 33 (data protection impact assessment) and Article 34 (prior authorisation and prior consultation) shall not apply.

Or. en

Amendment 2349
Axel Voss

Proposal for a regulation
Article 38 b (new)

Text proposed by the Commission

Amendment

Article 38b

Binding corporate rules

1. The competent supervisory authority shall authorize through a single act of

approval binding corporate rules for a group of undertakings. These rules will allow multiple intercompany international transfers in and out of Europe, provided that they:

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

(b) expressly confer enforceable rights on data subjects;

(c) fulfil the requirements laid down in paragraph 2.

2. The binding corporate rules shall at least specify:

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

(b) the data transfers or set of transfers, including the categories of personal data, the type of processing and its purposes, the type of data subjects affected and the identification of the third country or countries in question;

(c) their legally binding nature, both internally and externally;

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

(e) the rights of data subjects and the means to exercise these rights, including the right not to be subject to a measure based on profiling in accordance with Article 20, the right to lodge a complaint before the competent supervisory authority and before the competent courts of the Member States in accordance with Article 75, and to obtain redress and, where appropriate, compensation for a

breach of the binding corporate rules;

(f) the acceptance by the controller or processor established on the territory of a Member State of liability for any breaches of the binding corporate rules by any member of the group of undertakings not established in the Union; the controller or the processor may only be exempted from this liability, in whole or in part, if he proves that that member is not responsible for the event giving rise to the damage;

(g) how the information on the binding corporate rules, in particular on the provisions referred to in points (d), (e) and (f) of this paragraph is provided to the data subjects in accordance with Article 11;

(h) the tasks of the data protection officer designated in accordance with Article 35, including monitoring within the group of undertakings the compliance with the binding corporate rules, as well as monitoring the training and complaint handling;

(i) the mechanisms within the group of undertakings aiming at ensuring the verification of compliance with the binding corporate rules;

(j) the mechanisms for reporting and recording changes to the policies and reporting these changes to the supervisory authority;

(k) the co-operation mechanism with the supervisory authority to ensure compliance by any member of the group of undertakings, in particular by making available to the supervisory authority the results of the verifications of the measures referred to in point (i) of this paragraph.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for binding corporate rules within the meaning of this Article, in particular as regards the criteria for their approval, the

application of points (b), (d), (e) and (f) of paragraph 2 to binding corporate rules adhered to by processors and on further necessary requirements to ensure the protection of personal data of the data subjects concerned.

4. The Commission may specify the format and procedures for the exchange of information by electronic means between controllers, processors and supervisory authorities for binding corporate rules within the meaning of this Article. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).

Or. en

Amendment 2350

Axel Voss

Proposal for a regulation

Article 38 c (new)

Text proposed by the Commission

Amendment

Article 38c

Codes of conduct

1. The Member States, the supervisory authorities and the Commission shall encourage the drawing up of codes of conduct intended to contribute to the proper application of this Regulation, taking account of the specific features of the various data processing sectors, in particular in relation to:

- (a) fair and transparent data processing;*
- (b) the collection of data;*
- (c) the information of the public and of data subjects;*
- (d) requests of data subjects in exercise of their rights;*

(e) information and protection of children;

(f) transfer of data to third countries or international organisations;

(g) mechanisms for monitoring and ensuring compliance with the code by the controllers adherent to it;

(h) out-of-court proceedings and other dispute resolution procedures for resolving disputes between controllers and data subjects with respect to the processing of personal data, without prejudice to the rights of the data subjects pursuant to Articles 73 and 75.

2. Associations and other bodies representing categories of controllers or processors in one Member State which intend to draw up codes of conduct or to amend or extend existing codes of conduct may submit them to an opinion of the supervisory authority in that Member State. The supervisory authority may give an opinion whether the draft code of conduct or the amendment is in compliance with this Regulation. The supervisory authority shall seek the views of data subjects or their representatives on these drafts.

3. Associations and other bodies representing categories of controllers in several Member States may submit draft codes of conduct and amendments or extensions to existing codes of conduct to the Commission.

4. The Commission may adopt implementing acts for deciding that the codes of conduct and amendments or extensions to existing codes of conduct submitted to it pursuant to paragraph 3 have general validity within the Union. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).

5. The Commission shall ensure appropriate publicity for the codes which have been decided as having general

validity in accordance with paragraph 4.

Or. en