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Committee on Legal Affairs

2012/0011(COD)

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OPINION

of the Committee on Legal Affairs

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a regulation of the European Parliament and of the Council
on the protection of individuals with regard to the processing of personal data
and on the free movement of such data (General Data Protection Regulation)
(COM(2012)0011 – C7-0025/2012 – 2012/0011(COD))

Rapporteur: Marielle Gallo

PA_Legam

SHORT JUSTIFICATION

The proposal for a regulation maintains the principles of Directive 95/46/EC and strengthens citizens' rights concerning the protection of personal data. The rapporteur welcomes the Commission's work and would like to make the following comments.

In spite of the hesitation of some parties, the rapporteur would like to retain a broad definition of personal data and the principle of explicit consent as grounds for the lawfulness of processing. These are necessary conditions if this fundamental right is to be effectively protected and if we are to enjoy the trust of our fellow citizens, particularly in the digital world.

The rapporteur then proposes strengthening the protection of children by broadening the scope of Article 8 to include the sale of all goods and services rather than continue its restriction to services of the information society.

She also proposes deleting Article 18 introducing the right to data portability. This new right included in the proposal for a directive brings no added value to citizens concerning right of access, which is dealt with in Article 15 of the proposal and enables an individual to obtain a communication of the data which are being processed.

The rapporteur would like explicitly to introduce the general principle of the responsibility of the controller. The proposal for a regulation reinforces the obligations of controllers, thereby enabling the rights of the individual concerned to be effectively exercised. However, more measures are needed if this general principle of responsibility is to be established explicitly.

The 'right to be forgotten' should also be strengthened. Article 17(2) imposes an obligation of responsibility on the controller with regard to data processed by a third party. The rapporteur proposes introducing an obligation on the controller to inform the person concerned of the action taken by the third party in response to the request.

The provisions concerning the transfer of data to third countries or international organisations have been significantly developed and clarified. The rapporteur proposes introducing the system of mutual recognition of binding corporate rules already put in place by the Article 29 Working Party. The authority responsible should be that of the place of the main establishment of the controller or processor.

Regarding the competencies of the supervisory authorities, the rapporteur welcomes the adoption of the principle of the one-stop shop, which simplifies the task of economic operators based in more than one Member State. However, we must not lose sight of the fact that citizens generally contact the authority in their Member State of origin and wait for that authority to take the necessary steps to ensure their rights are complied with. Application of the one-stop shop principle must not mean that other supervisory authorities become simply 'letterboxes'. The rapporteur proposes specifying that the lead authority shall be obliged to cooperate with the other supervisory authorities involved and with the European Commission, pursuant to the provisions of Chapter 7 of the regulation.

Regarding administrative sanctions, the rapporteur welcomes the large sums provided for by the proposal for a regulation. However, the supervisory authorities must have considerable scope for manoeuvre when imposing fines. Article 8(3) of the Charter of Fundamental Rights of the European Union establishes the principle of the independence of supervisory authorities. The consistency mechanism might contribute to a harmonised policy within the EU regarding fines.

The proposal for a regulation also contains a large number of delegated and implementing acts. Some of these are necessary, as they add non-essential elements to the regulation. The rapporteur proposes that others simply be deleted. This might be investigated separately by the Committee on Legal Affairs. According to Rule 37(1) of the European Parliament's Rules of Procedure, the Committee on Legal Affairs is responsible for verification of the legal basis of every legislative initiative and can decide, either on its own initiative or at the request of the committee responsible, on what use is made of the delegated and implementing acts.

AMENDMENTS

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

Amendment 1 Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) The economic and social integration resulting from the functioning of the internal market has led to a substantial increase in cross-border *flows*. The exchange of data between economic and social, public and private actors across the Union increased. National authorities in the Member States are being called upon by Union law to co-operate and exchange personal data *so as to be able* to perform their duties or carry out tasks on behalf of an authority in another Member State.

Amendment

(4) The economic and social integration resulting from the functioning of the internal market has led to a substantial increase in cross-border *activities*. The exchange of data between economic and social, public and private actors across the Union increased. National authorities in the Member States are being called upon by Union law to co-operate and exchange personal data *in order* to perform their duties or carry out tasks on behalf of an authority in another Member State.

Amendment 2 Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) Rapid technological developments and globalisation have brought new challenges for the protection of personal data. The scale of data sharing and collecting has increased spectacularly. Technology allows both private companies and public authorities to make use of personal data on an unprecedented scale in order to **pursue** their activities. Individuals increasingly make personal information available publicly and globally. Technology has transformed both the economy and social life, **and requires to further** facilitate the free flow of data within the Union and **the** transfer to third countries and international organisations, **while ensuring an high** level of **the protection of** personal data.

Amendment

(5) Rapid technological developments and globalisation have brought new challenges for the protection of personal data. The scale of data sharing and collecting has increased spectacularly. Technology allows both private companies and public authorities to make use of personal data on an unprecedented scale in order to **carry out** their activities. Individuals increasingly make personal information available publicly and globally. Technology has transformed both the economy and social life, **which led to the need to** facilitate the free flow of data within the Union and **secure** transfer to third countries and international organisations **and ensure the highest** level of personal data **protection**.

Amendment 3

Proposal for a regulation
Recital 15

Text proposed by the Commission

(15) This Regulation should not apply to processing of personal data by a natural person, which are exclusively personal or domestic, such as correspondence and the holding of addresses, and without any gainful interest and thus without any connection with a professional or commercial activity. The exemption should also not apply to controllers or processors which provide the means for processing personal data for such personal or domestic activities.

Amendment

(15) This Regulation should not apply to processing of personal data by a person, which are exclusively personal or domestic, such as correspondence and the holding of addresses, and without any gainful interest and thus without any connection with a professional or commercial activity, **and which do not involve making such data accessible to an indefinite number of people**. The exemption should also not apply to controllers or processors which provide the means for processing personal data for such personal or domestic activities.

Justification

The scope of this exemption should be clarified, particularly in view of the development of social networks enabling information to be shared with hundreds of people. In cases C-101/01 and C-73/07, the ECJ advocates accessibility ‘by an indefinite number of people’ as a

criterion for application of this exception. The EDPS shares this view.

Amendment 4

Proposal for a regulation

Recital 24

Text proposed by the Commission

(24) When using online services, individuals may be associated with online identifiers provided by their devices, applications, tools and protocols, such as Internet Protocol addresses or cookie identifiers. This may leave traces which, combined with unique identifiers and other information received by the servers, may be used to create profiles of the individuals and identify them. It follows that identification numbers, location data, online identifiers or other specific factors as such need not necessarily be considered as personal data in all circumstances.

Amendment

(24) When using online services, individuals may be associated with online identifiers provided by their devices, applications, tools and protocols, such as Internet Protocol addresses or cookie identifiers. This may leave traces which, combined with unique identifiers and other information received by the servers, may be used to create profiles of the individuals and identify them. It follows that ***a study should be undertaken, on a case-by-case basis and in accordance with technological developments, of whether*** identification numbers, location data, online identifiers or other specific factors as such need not necessarily be considered as personal data in all circumstances.

Justification

With an increasing number of new on-line services and with constant technological development, there must be a higher level of protection of citizens' personal data. A case-by-case study would therefore seem indispensable.

Amendment 5

Proposal for a regulation

Recital 25

Text proposed by the Commission

(25) Consent should be given explicitly by any appropriate method enabling a freely given specific and informed indication of the data subject's wishes, either by a statement or by a clear affirmative action by the data subject, ensuring that individuals are aware that they give their

Amendment

(25) Consent should be given explicitly by any ***method appropriate to the media used*** enabling a freely given specific and informed indication of the data subject's wishes, either by a statement or by a clear affirmative action by the data subject, ensuring that individuals are aware that

consent to the processing of personal data, including by ticking a box when visiting an Internet website or by any other statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of their personal data. Silence or inactivity should therefore not constitute consent. Consent should cover all processing activities carried out for the same purpose or purposes. If the data subject's consent is to be given following an electronic request, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided.

they give their consent to the processing of personal data, including by ticking a box when visiting an Internet website or by any other statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of their personal data. Silence or inactivity should therefore not constitute consent.

This is notwithstanding the possibility to express consent to processing in accordance with Directive 2002/58/EC by using the appropriate settings of a browser or other application... Consent should cover all processing activities carried out for the same purpose or purposes. If the data subject's consent is to be given following an electronic request, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided.

Amendment 6

Proposal for a regulation

Recital 27

Text proposed by the Commission

(27) The main establishment of ***a controller in the Union*** should be ***determined*** according to objective criteria and should imply the effective and real exercise of ***management*** activities determining the main decisions as to the purposes, conditions and means of processing through stable arrangements. This criterion should not depend whether the processing of personal data is actually carried out at that location; the presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute such main establishment and are therefore no determining criteria for a main establishment. ***The main establishment of the processor should be the place of its***

Amendment

(27) The main establishment of ***an undertaking or groups of undertakings, whether controller or processor,*** should be ***designated*** according to objective criteria and should imply the effective and real exercise of ***data*** activities determining the main decisions as to the purposes, conditions and means of processing through stable arrangements. This criterion should not depend whether the processing of personal data is actually carried out at that location; the presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute such main establishment and are therefore no determining criteria for a main establishment.

Amendment 7

Proposal for a regulation

Recital 34

Text proposed by the Commission

(34) Consent should not provide a valid legal ground for the processing of personal data, where there is a clear imbalance between the data subject and the controller. This is especially the case where the data subject is in a situation of dependence from the controller, among others, where personal data are processed by the employer of employees' personal data in the employment context. Where the controller is a public authority, there would be an imbalance only in the specific data processing operations where the public authority can impose an obligation by virtue of its relevant public powers and the consent cannot be deemed as freely given, taking into account the interest of the data subject.

Amendment

(34) Consent should not provide a valid legal ground for the processing of personal data, where there is a clear imbalance between the data subject and the controller. This is especially the case where the data subject is in a situation of dependence from the controller, among others, where personal data are processed by the employer of employees' personal data in the employment context, ***or where a controller has a substantial market power with respect to certain products or services and where these products or services are offered on condition of consent to the processing of personal data, or where a unilateral and non-essential change in terms of service gives a data subject no option other than accept the change or abandon an online resource in which they have invested significant time.*** Where the controller is a public authority, there would be an imbalance only in the specific data processing operations where the public authority can impose an obligation by virtue of its relevant public powers and the consent cannot be deemed as freely given, taking into account the interest of the data subject.

Justification

Many social media sites lead users to invest significant time and energy in developing online profiles. There would be a clear imbalance, in the sense of the Commission's proposal, in any situation where the user was given the choice between accepting new and unnecessary data processing and abandoning the work they have already put into their profile. Another case of clear imbalance would be if the market for the service in question is monopolistic/oligopolistic, so that the data subject does not in fact have a real possibility to choose a privacy-respecting service provider. Data portability would not fully address this

issue, as it does not resolve the loss of the network effects in larger social networks.

Amendment 8

Proposal for a regulation

Recital 38

Text proposed by the Commission

(38) The legitimate interests of a **controller** may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding. This would need careful assessment in particular where the data subject is a child, given that children deserve specific protection. The data subject should have the right to object the processing, on grounds relating to their particular situation and free of charge. To ensure transparency, the controller should be obliged to explicitly inform the data subject on the legitimate interests pursued and on the right to object, and also be obliged to document these legitimate interests. Given that it is for the legislator to provide by law the legal basis for public authorities to process data, this legal ground should not apply for the processing by public authorities in the performance of their tasks.

Amendment

(38) The legitimate interests of a **person** may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding. This would need careful assessment in particular where the data subject is a child, given that children deserve specific protection. The data subject should have the right to object the processing, on grounds relating to their particular situation and free of charge. To ensure transparency, the controller **or the third parties to whom the data are sent** should be obliged to explicitly inform the data subject on the legitimate interests pursued and on the right to object, and also be obliged to document these legitimate interests. Given that it is for the legislator to provide by law the legal basis for public authorities to process data, this legal ground should not apply for the processing by public authorities in the performance of their tasks.

Justification

The wording of Directive 95/46/EC should be maintained. It is worth recalling that the Regulation concerns not only the digital world but will also apply to off-line activities. Some sectors such as newspaper publishing need, in order to finance their activities, to use external sources in order to contact possible new subscribers.

Amendment 9

Proposal for a regulation

Recital 45

Text proposed by the Commission

(45) If the data processed by a controller do not permit the controller to identify a natural person, the data controller should not be obliged to **acquire** additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation. In case of a request for access, the controller should be entitled to ask the data subject for further information to enable the data controller to locate the personal data which that person seeks.

Amendment

(45) If the data processed by a controller do not permit the controller to identify a natural person, the data controller should not be obliged to **make use of** additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation. In case of a request for access, the controller should be entitled to ask the data subject for further information to enable the data controller to locate the personal data which that person seeks.

Amendment 10

Proposal for a regulation
Recital 48

Text proposed by the Commission

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

Amendment

(48) The principles of fair and transparent processing require that the data subject should be informed in particular of the existence of the processing operation and its purposes, **the criteria enabling determination of** how long the data will be stored **for each purpose**, on the existence of the right of access, rectification or erasure and on the right to lodge a complaint. Where the data are collected from the data subject, the data subject should also be informed whether they are obliged to provide the data and of the consequences, in cases they do not provide such data.

Justification

It is not always possible to determine precisely how long personal data will be stored, particularly in the case of storage for different purposes.

Amendment 11

Proposal for a regulation

Recital 51

Text proposed by the Commission

(51) Any person should have the right of access to data which has been collected concerning them, and to exercise this right easily, in order to be aware and verify the lawfulness of the processing. Every data subject should therefore have the right to know and obtain communication in particular for what purposes the data are processed, for what period, which recipients receive the data, what is the logic of the data that are undergoing the processing and what might be, at least when based on profiling, the consequences of such processing. ***This*** right should not adversely affect the rights and freedoms of others, including trade secrets or intellectual property and in particular the copyright protecting the software. However, the result of these considerations should not be that all information is refused to the data subject.

Amendment

(51) Any person should have the right of access to data which has been collected concerning them, and to exercise this right easily, in order to be aware and verify the lawfulness of the processing. Every data subject should therefore have the right to know and obtain communication in particular for what purposes the data are processed, for what period, which recipients receive the data, what is the logic of the data that are undergoing the processing and what might be, at least when based on profiling, the consequences of such processing. ***Every data subject should furthermore have the right to communication of the personal data undergoing processing and, on electronic request, an electronic copy of the non-commercial data undergoing processing in an interoperable and structured format which allows for further use. These rights*** should not adversely affect the rights and freedoms of others, including trade secrets or intellectual property and in particular the copyright protecting the software. However, the result of these considerations should not be that all information is refused to the data subject.

Justification

It is not always possible to determine precisely how long personal data will be stored, particularly in the case of storage for different purposes.

Amendment 12

Proposal for a regulation

Recital 53

Text proposed by the Commission

(53) Any person should have the right to have personal data concerning them rectified and a ‘right to be forgotten’ where the retention of such data is not in compliance with this Regulation. In particular, data subjects should have the right that their personal data are erased and no longer processed, where the data are no longer necessary in relation to the purposes for which the data are collected or otherwise processed, where data subjects have withdrawn their consent for processing or where they object to the processing of personal data concerning them or where the processing of their personal data otherwise does not comply with this Regulation. This right is particularly relevant, when the data subject has given their consent as a child, when not being fully aware of the risks involved by the processing, and later wants to remove such personal data especially on the Internet. However, the further retention of the data should be allowed where it is necessary for historical, statistical and scientific research purposes, for reasons of public interest in the area of public health, for exercising the right of freedom of expression, when required by law or where there is a reason to restrict the processing of the data instead of erasing them.

Amendment

(53) Any person should have the right to have personal data concerning them rectified and a ‘right to be forgotten’ where the retention of such data is not in compliance with this Regulation. In particular, data subjects should have the right that their personal data are erased and no longer processed, where the data are no longer necessary in relation to the purposes for which the data are collected or otherwise processed, where data subjects have withdrawn their consent for processing or where they object to the processing of personal data concerning them or where the processing of their personal data otherwise does not comply with this Regulation. This right is particularly relevant, when the data subject has given their consent as a child, when not being fully aware of the risks involved by the processing, and later wants to remove such personal data especially on the Internet. However, the further retention of the data should be allowed where it is necessary for historical, statistical, ***aggregated*** and scientific research purposes, for reasons of public interest in the area of public health, ***for the purpose of processing health data for healthcare purposes***, for exercising the right of freedom of expression, when required by law or where there is a reason to restrict the processing of the data instead of erasing them.

Justification

It is in the vital interest of the data subject to keep a complete record of their health in order to receive the best care and treatment through their life. The right to be forgotten should not apply where data is processed for healthcare purposes as laid down in Article 81(a).

Amendment 13

Proposal for a regulation

Recital 55

Text proposed by the Commission

Amendment

(55) To further strengthen the control over their own data and their right of access, data subjects should have the right, where personal data are processed by electronic means and in a structured and commonly used format, to obtain a copy of the data concerning them also in commonly used electronic format. The data subject should also be allowed to transmit those data, which they have provided, from one automated application, such as a social network, into another one. This should apply where the data subject provided the data to the automated processing system, based on their consent or in the performance of a contract.

deleted

Justification

Data subjects have right of access, as established by Article 15 of the proposal for a regulation. The right of access gives every data subject the right to know which personal data are being processed. Article 18, which enables data subjects to obtain a copy of their data, brings no added value in terms of the protection of citizens' personal data and creates confusion regarding the exact scope of the right of access, which is a principal right.

Amendment 14

Proposal for a regulation

Recital 58

Text proposed by the Commission

Amendment

(58) Every **natural person** should have the right not to be subject to a **measure** which is based on profiling by means of automated processing. However, such **measure** should be allowed when expressly authorised by law, carried out in the course of entering or performance of a contract, or when the data subject has given his

(58) Every **data subject** should have the right not to be subject to a **decision** which is based on profiling by means of automated processing **and which produces adverse legal effects or adversely affects this data subject. This is not the case for measures relating to a commercial communication, for example in the field**

consent. In any case, such processing should be subject to suitable safeguards, including specific information of the data subject and the right to obtain human intervention and that such measure should not concern a child.

of customer relationship management or customer acquisition. However, such *decision* should be allowed when authorised by law, *or when processing is lawful under points (a) to (fa) of Article 6(1).* In any case, such processing should be subject to suitable safeguards, including specific information of the data subject and the right to obtain human intervention and that such measure should not concern a child. *Profiling should not have the effects of discriminating against individuals on the basis, for instance, of race or ethnic origin, religion or sexual orientation, without prejudice to Article 9, paragraph 2.*

Justification

The proposed Commission wording implies that all profiling has negative consequences, when some profiling can have many positive impacts; such as improving or customizing services for similar customers.

Amendment 15

Proposal for a regulation Recital 60

Text proposed by the Commission

(60) **Comprehensive** responsibility and liability of the controller for any processing of personal data carried out by the controller or on the controller's behalf should be established. In particular, the controller should ensure and be obliged to demonstrate the compliance of each processing operation with this Regulation.

Amendment

(60) **Overall** responsibility and liability of the controller for any processing of personal data carried out by the controller or on the controller's behalf should be established. In particular, the controller should ensure and be obliged to demonstrate the compliance of each processing operation with this Regulation.

Justification

Strengthens the protection of personal data. A general principle of responsibility on the part of the controller needs to be explicitly established.

Amendment 16

Proposal for a regulation Recital 62

Text proposed by the Commission

(62) The protection of the rights and freedoms of data subjects as well as the responsibility and liability of controllers and processor, also in relation to the monitoring by and measures of supervisory authorities, requires a clear attribution of the responsibilities under this Regulation, including where a controller determines the purposes, conditions and means of the processing jointly with other controllers or where a processing operation is carried out on behalf of a controller.

Amendment

(62) The protection of the rights and freedoms of data subjects as well as the responsibility and liability of controllers and processor, also in relation to the monitoring by and measures of supervisory authorities, requires a clear attribution of the responsibilities under this Regulation, including where a controller determines the purposes, conditions and means of the processing jointly with other controllers or where a processing operation is carried out on behalf of a controller. ***In the event of joint and several liability, a processor which has made amends for damage done to the data subject may appeal against the controller for reimbursement if it has acted in conformity with the legal act binding it to the controller.***

Justification

The processor is defined as the organisation acting on behalf of the controller. Therefore, if the processor complies exactly with the instructions it has received, it is the controller and not the processor which should be held responsible for any breach of personal data, without the remuneration of the data subject being affected.

Amendment 17

Proposal for a regulation Recital 65

Text proposed by the Commission

(65) In order to demonstrate compliance with this Regulation, the controller or processor should ***document each*** processing ***operation***. Each controller and processor should be obliged to co-operate with the supervisory authority and make this documentation, on request, available to it, so that it might serve for monitoring

Amendment

(65) In order to demonstrate compliance with this Regulation, the controller or processor should ***maintain relevant information on the main categories of*** processing ***undertaken***. Each controller and processor should be obliged to co-operate with the supervisory authority and make this documentation, on request,

those processing operations.

available to it, so that it might *assist the supervisory authority in evaluating the compliance of those main categories of processing with this Regulation*.

Amendment 18

Proposal for a regulation

Recital 67

Text proposed by the Commission

(67) A personal data breach may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud, to the individual concerned. Therefore, as soon as the controller becomes aware that ***such*** a breach has occurred, the controller should notify the breach to the supervisory authority without undue delay ***and, where feasible, within 24 hours. Where this cannot be achieved within 24 hours, an explanation of the reasons for the delay should accompany the notification.*** The individuals whose personal data could be adversely affected by the breach should be notified without undue delay in order to allow them to take the necessary precautions. A breach should be considered as adversely affecting the personal data or privacy of a data subject where it could result in, for example, identity theft or fraud, physical harm, significant humiliation or damage to reputation. The notification should describe the nature of the personal data breach as well as recommendations as well as recommendations for the individual concerned to mitigate potential adverse effects. Notifications to data subjects should be made as soon as reasonably feasible, and in close cooperation with the supervisory authority and respecting guidance provided by it or other relevant authorities (e.g. law enforcement authorities). For example, the chance for data subjects to mitigate an immediate risk

Amendment

(67) A personal data breach may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud, to the individual concerned. Therefore, as soon as the controller becomes aware that a breach ***which would have a significant impact on the data subject*** has occurred, the controller should notify the breach to the supervisory authority without undue delay. The individuals whose personal data could be ***significantly*** adversely affected by the breach should be notified without undue delay in order to allow them to take the necessary precautions. A breach should be considered as ***significantly*** adversely affecting the personal data or privacy of a data subject where it could result in, for example, identity theft or fraud, physical harm, significant humiliation or damage to reputation. The notification should describe the nature of the personal data breach as well as recommendations as well as recommendations for the individual concerned to mitigate potential adverse effects. Notifications to data subjects should be made as soon as reasonably feasible, and in close cooperation with the supervisory authority and respecting guidance provided by it or other relevant authorities (e.g. law enforcement authorities). For example, the chance for data subjects to mitigate an immediate risk of harm would call for a prompt notification of data subjects whereas the need to implement appropriate measures

of harm would call for a prompt notification of data subjects whereas the need to implement appropriate measures against continuing or similar data breaches may justify a longer delay.

against continuing or similar data breaches may justify a longer delay.

Justification

In the event of a breach, the controller must initially concentrate on putting into practice all appropriate measures to prevent it from continuing. An obligation to notify the competent supervisory authority within 24 hours together with sanctions for failing to do so might achieve just the opposite. In addition, as the Article 29 Working Party stated in its opinion of 23 March 2012, notification must not concern minor breaches, as otherwise the supervisory authorities would be over-burdened.

Amendment 19

Proposal for a regulation Recital 82

Text proposed by the Commission

(82) The Commission may equally recognise that a third country, or a territory or a processing sector within a third country, or an international organisation offers no adequate level of data protection. Consequently the transfer of personal data to that third country should be ***prohibited***. ***In that case, provision should be made for consultations between the Commission and such third countries or international organisations.***

Amendment

(82) The Commission may equally recognise that a third country, or a territory or a processing sector within a third country, or an international organisation offers no adequate level of data protection. Consequently the transfer of personal data to that third country should be ***authorised subject to appropriate guarantees or under the derogations set out in this Regulation.***

Justification

In line with the recommendation of the EPDS set out in its opinion of 7 March 2012 (point 220).

Amendment 20

Proposal for a regulation Recital 85 a (new)

Text proposed by the Commission

Amendment

(85a) A group of companies planning to

submit for approval binding corporate rules may propose a supervisory authority as the lead authority. This should be the supervisory authority of the Member State in which the main establishment of the controller or processor is situated.

Justification

The Article 29 Working Party established a system for mutual recognition of binding corporate rules (WP 107, 14 April 2005). This system should be incorporated into this Regulation. The criterion for designating the competent authority should be the place of the main establishment, as set out in Article 51(2) of the Regulation.

Amendment 21 **Proposal for a regulation**

Recital 87

Text proposed by the Commission

(87) These derogations should in particular apply to data transfers required and necessary for the protection of important grounds of public interest, for example in cases of international data transfers between competition authorities, tax or customs administrations, financial supervisory authorities, between services competent for social security matters, or to competent authorities for the prevention, investigation, detection and prosecution of criminal offences.

Amendment

(87) These derogations should in particular apply to data transfers required and necessary for the protection of important grounds of public interest, for example in cases of international data transfers between competition authorities, tax or customs administrations, financial supervisory authorities, between services competent for social security matters, ***between bodies responsible for fighting fraud in sports***, or to competent authorities for the prevention, investigation, detection and prosecution of criminal offences.

Amendment 22

Proposal for a regulation **Recital 115**

Text proposed by the Commission

(115) In situations where the competent supervisory authority established in another Member State does not act or has taken insufficient measures in relation to

Amendment

deleted

a complaint, the data subject may request the supervisory authority in the Member State of his or her habitual residence to bring proceedings against that supervisory authority to the competent court in the other Member State. The requested supervisory authority may decide, subject to judicial review, whether it is appropriate to follow the request or not.

Justification

This opportunity would bring no added value for citizens and might jeopardise the cooperation of the supervisory authorities in the consistency mechanism.

Amendment 23

Proposal for a regulation Recital 118

Text proposed by the Commission

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

Amendment

(118) Any damage which a person may suffer as a result of unlawful processing should be compensated by the controller or processor, who may be exempted from liability if they prove that they are not responsible for the damage, in particular where he establishes fault on the part of the data subject or in case of force majeure. ***In the event of joint and several liability, a processor which has made amends for damage done to the person concerned may appeal against the controller for reimbursement if it has acted in conformity with the legal act binding it to the controller.***

Justification

The proposal for a regulation introduces the overall principle of the responsibility of the controller (Articles 5f and 22), which must be retained and clarified. The processor is defined as the organisation acting on behalf of the controller. If the processor does not follow the instructions it has received, Article 26(4) states that it shall be considered to be a controller.

Amendment 24
Proposal for a regulation

Recital 121 a (new)

Text proposed by the Commission

Amendment

(121a) This Regulation allows the principle of public access to official documents to be taken into account when applying the provisions set out in this Regulation. Personal data in documents held by a public authority or a public body may be disclosed by this authority or body in accordance with Member State legislation to which the public authority or public body is subject. Such legislation shall reconcile the right to the protection of personal data with the principle of public access to official documents.

Amendment 25

Proposal for a regulation
Recital 129

Text proposed by the Commission

Amendment

(129) In order to fulfil the objectives of this Regulation, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. In particular, delegated acts should be adopted in respect of ***lawfulness of processing; specifying the criteria and conditions in relation to the consent of a child; processing of special categories of data; specifying the criteria and conditions for manifestly excessive requests and fees for exercising the rights of the data subject; criteria and requirements for the information to the***

(129) In order to fulfil the objectives of this Regulation, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. In particular, delegated acts should be adopted in respect of specifying the criteria and conditions in relation to the consent of a child; criteria and requirements for the information to the data subject and in relation to the right of access; criteria and requirements in relation to the responsibility of the controller; a processor; criteria and requirements for the documentation; designation and tasks of

data subject and in relation to the right of access; ***the right to be forgotten and to erasure; measures based on profiling;*** criteria and requirements in relation to the responsibility of the controller ***and to data protection by design and by default;*** a processor; criteria and requirements for the documentation ***and the security of processing;*** ***criteria and requirements for establishing a personal data breach and for its notification to the supervisory authority, and on the circumstances where a personal data breach is likely to adversely affect the data subject; the criteria and conditions for processing operations requiring a data protection impact assessment; the criteria and requirements for determining a high degree of specific risks which require prior consultation;*** designation and tasks of the data protection officer; codes of conduct; criteria and requirements for certification mechanisms; criteria and requirements for transfers by way of binding corporate rules; ***transfer derogations; administrative sanctions; processing for health purposes;*** processing in the employment context and processing for historical, statistical and scientific research purposes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

the data protection officer; codes of conduct; criteria and requirements for certification mechanisms; transfers by way of binding corporate rules; processing in the employment context and processing for historical, statistical and scientific research purposes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

Amendment 26

Proposal for a regulation

Recital 130

Text proposed by the Commission

(130) In order to ensure uniform conditions

Amendment

(130) In order to ensure uniform conditions

for the implementation of this Regulation, implementing powers should be conferred on the Commission for: specifying standard forms in relation to the processing of personal data of a child; standard procedures and forms for exercising the rights of data subjects; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access; the right to data portability; standard forms in relation to the responsibility of the controller to data protection by design and by default and to the documentation; specific requirements for the security of processing; ***the standard format and the procedures for the notification of a personal data breach to the supervisory authority and the communication of a personal data breach to the data subject; standards and procedures for a data protection impact assessment***; forms and procedures for prior authorisation and prior consultation; technical standards and mechanisms for certification; the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an international organisation; disclosures not authorized by Union law; mutual assistance; joint operations; decisions under the consistency mechanism. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers⁴⁶. In this context, the Commission should consider specific measures for micro, small and medium-sized enterprises.

for the implementation of this Regulation, implementing powers should be conferred on the Commission for: specifying standard forms in relation to the processing of personal data of a child; standard procedures and forms for exercising the rights of data subjects; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access; the right to data portability; standard forms in relation to the responsibility of the controller to data protection by design and by default and to the documentation; specific requirements for the security of processing; forms and procedures for prior authorisation and prior consultation; technical standards and mechanisms for certification; the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an international organisation; disclosures not authorized by Union law; mutual assistance; joint operations; decisions under the consistency mechanism. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers⁴⁶. In this context, the Commission should consider specific measures for micro, small and medium-sized enterprises.

Amendment 27

Proposal for a regulation

Recital 131

Text proposed by the Commission

(131) The examination procedure should be used for the adoption of specifying standard forms in relation to the consent of a child; standard procedures and forms for exercising the rights of data subjects; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access; ***the right to data portability***; standard forms in relation to the responsibility of the controller ***to data protection by design and by default and to the documentation***; specific requirements for the security of processing; the standard format and the procedures for the notification of a personal data breach to the supervisory authority and the communication of a personal data breach to the data subject; standards and procedures for a data protection impact assessment; forms and procedures for prior authorisation and prior consultation; technical standards and mechanisms for certification; ***the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an international organisation***; disclosures not authorized by Union law; mutual assistance; joint operations; decisions under the consistency mechanism, given that those acts are of general scope.

Amendment 28

Proposal for a regulation

Recital 139

Text proposed by the Commission

(139) In view of the fact that, as underlined

Amendment

(131) The examination procedure should be used for the adoption of specifying standard forms in relation to the consent of a child; standard procedures and forms for exercising the rights of data subjects; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access; standard forms in relation to the responsibility of the controller to the documentation; specific requirements for the security of processing; the standard format and the procedures for the notification of a personal data breach to the supervisory authority and the communication of a personal data breach to the data subject; standards and procedures for a data protection impact assessment; forms and procedures for prior authorisation and prior consultation; technical standards and mechanisms for certification; disclosures not authorized by Union law; mutual assistance; joint operations; decisions under the consistency mechanism, given that those acts are of general scope.

(139) In view of the fact that, as underlined

by the Court of Justice of the European Union, the right to the protection of personal data is not an absolute right, but must be considered in relation to its function in society and be balanced with other *fundamental* rights, in accordance with the principle of proportionality, this Regulation respects all fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union as enshrined in the Treaties, notably the right to respect for private and family life, home and communications, the right to the protection of personal data, the freedom of thought, conscience and religion, the freedom of expression and information, the freedom to conduct a business, the right to an effective remedy and to a fair trial as well as cultural, religious and linguistic diversity.

by the Court of Justice of the European Union, the right to the protection of personal data is not an absolute right, but must be considered in relation to its function in society and be balanced with other rights *established by the Charter of Fundamental Rights of the European Union*, in accordance with the principle of proportionality, this Regulation respects all fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union as enshrined in the Treaties, notably the right to respect for private and family life, home and communications, the right to the protection of personal data, the freedom of thought, conscience and religion, the freedom of expression and information, the freedom to conduct a business, the right to an effective remedy and to a fair trial as well as cultural, religious and linguistic diversity.

Amendment 29

Proposal for a regulation

Article 2 – paragraph 2 – point b

Text proposed by the Commission

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

Amendment

deleted

Amendment 30

Proposal for a regulation

Article 2 – paragraph 2 – point d

Text proposed by the Commission

(d) by a natural person without any gainful interest in the course of its own exclusively personal or household activity;

Amendment

(d) by a natural person without any gainful interest in the course of its own exclusively personal or household activity and on condition that no personal data are made accessible to an indefinite number of people;

Justification

The scope of this exemption should be clarified, particularly in view of the development of social networks enabling information to be shared with hundreds of people. In cases C-101/01 and C-73/07, the ECJ advocates accessibility 'by an indefinite number of people' as a criterion for application of this exception. The EDPS shares this view.

Amendment 31

Proposal for a regulation

Article 2 – paragraph 2 – point e a (new)

Text proposed by the Commission

Amendment

(ea) by competent authorities for the purposes of producing and disseminating official statistics entrusted to them;

Justification

To reduce the effort involved in responding to surveys, NSIs and the Commission should be allowed free access to, and entitled to use, the appropriate administrative registers belonging to government departments at whatever level, whenever this is necessary in order to develop, produce, and disseminate European statistics.

Amendment 32

Proposal for a regulation

Article 2 – paragraph 2 – point e b (new)

Text proposed by the Commission

Amendment

(eb) that has been rendered anonymous.

Justification

By definition anonymous data does not constitute personal data.

Amendment 33

Proposal for a regulation

Article 2 – paragraph 2 – point e c (new)

Text proposed by the Commission

Amendment

(ec) by competent authorities for the

purposes of drawing up electoral rolls.

Justification

To reduce the effort involved in responding to surveys, NSIs and the Commission should be allowed free access to, and entitled to use, the appropriate administrative registers belonging to government departments at whatever level, whenever this is necessary in order to develop, produce, and disseminate European statistics.

Amendment 34
Proposal for a regulation

Article 4 – point 1

Text proposed by the Commission

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

Amendment

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

Amendment 35
Proposal for a regulation

Article 4 – point 2 a (new)

Text proposed by the Commission

Amendment

(2a) ‘anonymous data’ shall mean information that has never related to a data subject or has been collected, altered or otherwise processed so that it cannot be attributed to a data subject;

Amendment 36
Proposal for a regulation

Article 4 – point 3 a (new)

(3a) 'pseudonymous data' means any personal data that has been collected, altered or otherwise processed so that it of itself cannot be attributed to a data subject without the use of additional data which is subject to separate and distinct technical and organisational controls to ensure such non attribution;

Amendment 37
Proposal for a regulation

Article 4 – point 3 b (new)

(3b) 'profiling' means any form of automated processing intended to evaluate, or generate data about, aspects relating to natural persons or to analyse or predict a natural person's performance at work, economic situation, location, health, preferences, reliability, behaviour or personality;

Justification

Profiling can entail serious risks for data subjects. It is prone to reinforcing discriminations, making decisions less transparent and carries an unavoidable risk of wrong decisions. For these reasons, it should be tightly regulated: its use should be clearly limited, and in those cases where it can be used, there should be safeguards against discrimination and data subjects should be able to receive clear and meaningful information on the logic of the profiling and its consequences. While some circles see profiling as a panacea for many problems, it should be noted that there is a significant body of research addressing its limitations. Notably, profiling tends to be useless for very rare characteristics, due to the risk of false positives. Also, profiles can be hard or impossible to verify. Profiles are based on complex and dynamic algorithms that evolve constantly and that are hard to explain to data subjects. Often, these algorithms qualify as commercial secrets and will not be easily provided to data subjects. However, when natural persons are subject to profiling, they should be entitled to information about the logic used in the measure, as well as an explanation of the final decision if human intervention has been obtained. This helps to reduce intransparency, which could undermine trust in data processing and may lead to loss or trust in especially online services. There is also a serious risk of unreliable and (in effect) discriminatory profiles being widely used, in matters of real importance to individuals and groups, which is the motivation behind several suggested changes in this Article that aim to

improve the protection of data subjects against discrimination. In relation to this, the use of sensitive data in generating profiles should also be restricted.

Amendment 38 **Proposal for a regulation**

Article 4 – point 5

Text proposed by the Commission

(5) ‘controller’ means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes, ***conditions and means*** of the processing of personal data; where the purposes, conditions and means of processing are determined by Union law or Member State law, the controller or the specific criteria for his nomination may be designated by Union law or by Member State law;

Amendment

(5) ‘controller’ means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes of the processing of personal data; where the purposes, conditions and means of processing are determined by Union law or Member State law, the controller or the specific criteria for his nomination may be designated by Union law or by Member State law;

Amendment 39 **Proposal for a regulation**

Article 4 – point 10

Text proposed by the Commission

(10) ‘genetic data’ means ***all data, of whatever type, concerning the characteristics of an individual which are inherited or acquired during early prenatal development;***

Amendment

(10) ‘genetic data’ means ***information on the hereditary characteristics, or alteration thereof, of an identified or identifiable person, obtained through nucleid acid analysis;***

Justification

The proposed definition is too broad and would turn inherited characteristics such as hair and eye colour into sensitive data needing higher protection. The proposed change is based on existing international standards.

Amendment 40 **Proposal for a regulation**

Article 4 – point 13

(13) ‘main establishment’ means ***as regards the controller***, the place of ***its*** establishment in the Union where the main decisions as to the purposes, conditions and means of the processing of personal data are taken; ***if no decisions as to the purposes, conditions and means of the processing of personal data are taken in the Union, the main establishment is the place where the main processing activities in the context of the activities of an establishment of a controller in the Union take place. As regards the processor, ‘main establishment’ means the place of its central administration in the Union;***

(13) ‘main establishment’ means the place of establishment ***of the undertaking or group of undertakings*** in the Union, ***whether controller or processor***, where the main decisions as to the purposes, conditions and means of the processing of personal data are taken.

The following objective criteria may be considered among others:

(1) The location of the controller or processor's headquarters;

(2) The location of the entity within a group of undertakings which is best placed in terms of management functions and administrative responsibilities to deal with and enforce the rules as set out in this Regulation; or

(3) The location where effective and real management activities are exercised determining the data processing through stable arrangements;

(a) The undertaking or group of undertakings in the Union, whether controller or processor, shall designate the main establishment for the purpose of data protection compliance and shall notify this to the relevant supervisory authority;

(b) The notified supervisory authority can in cases of disagreement on the designation of the main establishment request the opinion of the European Data Protection Board;

Amendment 41
Proposal for a regulation

Article 4 – point 19 a (new)

Text proposed by the Commission

Amendment

(19a) 'competent supervisory authority' means a supervisory authority with exclusive competence to supervise the processing activities of the controller or processor in accordance with Article 51(2);

Amendment 42
Proposal for a regulation

Article 4 – point 19 b (new)

Text proposed by the Commission

Amendment

(19b) 'official statistics' means representative aggregate quantitative and qualitative information characterising a collective phenomenon within a given population;

Amendment 43
Proposal for a regulation

Article 4 – point 19 c (new)

Text proposed by the Commission

Amendment

(19c) 'electoral rolls' means personal data, and data relating to the place of residence, of persons entitled to vote;

Amendment 44
Proposal for a regulation

Article 5 – point c

Text proposed by the Commission

Amendment

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

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

Justification

This change, which permits “not excessive” processing is more appropriate. It consists of a referral back to the wording of the original 95/46/EC Data Protection Directive and aims to avoid inconsistencies with other EU rules, such as the Consumer Credit Directive and the Capital Requirements Package, which also require, for example, lending institutions to process personal data.

Amendment 45
Proposal for a regulation

Article 5 – point d

Text proposed by the Commission

Amendment

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

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

Justification

Clearer, simpler, and more effective.

Amendment 46
Proposal for a regulation

Article 5 – point e

Text proposed by the Commission

Amendment

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

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

which the personal data are processed; personal data may be stored for longer periods insofar as the data will be processed solely for historical, statistical or scientific research purposes in accordance with the rules and conditions of **Article 83** and if a periodic review is carried out to assess the necessity to continue the storage;

which the personal data are processed; personal data may be stored for longer periods insofar as the data will be processed solely for historical, statistical, **aggregated** or scientific research purposes in accordance with the rules and conditions of **Articles 81 and 83** and if a periodic review is carried out to assess the necessity to continue the storage;

Amendment 47

Proposal for a regulation

Article 6 – paragraph 1 – point f

Text proposed by the Commission

(f) processing is necessary for the purposes of the legitimate interests pursued by a controller, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. This shall not apply to processing carried out by public authorities in the performance of their tasks.

Amendment

(f) processing is necessary for the purposes of the legitimate interests pursued by a controller **or by a third party or third parties to whom the data are communicated**, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. This shall not apply to processing carried out by public authorities in the performance of their tasks.

Justification

The rapporteur proposes maintaining the wording of Directive 95/46/EC. It is worth recalling that the Regulation concerns not only the digital world but will also apply to off-line activities. Some sectors such as newspaper publishing need, in order to finance their activities, to use external sources in order to contact possible new subscribers.

Amendment 48

Proposal for a regulation

Article 6 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) processing is necessary for fraud detection and prevention purposes according to applicable financial

regulation or established industry, or professional body, codes of practice.

Justification

Experience in practice has shown that a "legal obligation" doesn't include the domestic financial regulation or codes of conduct which are fundamental in fraud prevention and detection, of paramount importance for data controllers and to protect data subjects.

Amendment 49
Proposal for a regulation

Article 6 – paragraph 4

Text proposed by the Commission

4. Where the purpose of further processing is not compatible with the one for which the personal data have been collected, the processing must have a legal basis at least in one of the grounds referred to in points (a) to (e) of paragraph 1. This shall in particular apply to any change of terms and general conditions of a contract.

Amendment

4. Where the purpose of further processing is not compatible with the one for which the personal data have been collected, the processing must have a legal basis at least in one of the grounds referred to in points (a) to (f) of paragraph 1. This shall in particular apply to any change of terms and general conditions of a contract.

Justification

The reference should include point (f) of paragraph 1 because otherwise stricter conditions would apply for subsequent processing than for the collection of personal data.

Amendment 50

Proposal for a regulation
Article 6 – paragraph 5

Text proposed by the Commission

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the conditions referred to in point (f) of paragraph 1 for various sectors and data processing situations, including as regards the processing of personal data related to a child.

Amendment

deleted

Justification

The proposal for a regulation provides for a considerable number of delegated acts, which is not justified. More precisely, this area is covered in case law, and the matter of consent for the processing of personal data of children is dealt with in Article 8.

Amendment 51 **Proposal for a regulation**

Article 7 – paragraph 2

Text proposed by the Commission

2. If the data subject's consent is to be given in the context of a written declaration which also concerns another matter, the requirement to give consent must be presented distinguishable in its appearance from this other matter.

Amendment

2. If the data subject's consent is to be given in the context of a written declaration which also concerns another matter, the requirement to give consent must be presented distinguishable in its appearance from this other matter. ***The permission of the data subject may be sought electronically, particularly in the context of information society services.***

Amendment 52 **Proposal for a regulation**

Article 7 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. In the event that the data subject withdraws his consent, the controller may refuse to provide further services to the data subject if the processing of the data is vital for the provision of the service or for ensuring that the characteristics of the service are maintained.

Amendment 53 **Proposal for a regulation**

Article 7 – paragraph 4

Text proposed by the Commission

Amendment

4. Consent shall not provide a legal basis

4. Consent shall not provide a legal basis

for the processing, where there is a significant imbalance between the position of the data subject and the controller.

for the processing, where there is a significant, imbalance between the position of the data subject and the controller, ***which results in a lack of freedom in the provision of consent.***

Justification

Further legal certainty was needed as there are a number of situations where there is a significant imbalance between the data subject and the data controller; for example an employment relationship, a doctor-patient relationship etc. The importance here should focus on the lack of freedom when providing consent.

Amendment 54

Proposal for a regulation

Article 7 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The legislation of the Member State in which a person lacking the legal capacity to act resides shall apply when determining the conditions under which consent is given or authorised by that person.

Amendment 55

Proposal for a regulation

Article 8 – paragraph 1

Text proposed by the Commission

Amendment

1. For the purposes of this Regulation, ***in relation to the offering of information society services directly to a child***, the processing of personal data of a child below the age of 13 years ***shall only be lawful if and to the extent*** that consent is given or authorised by the child's parent or ***custodian***. The controller shall make reasonable efforts to obtain verifiable consent, taking into consideration available technology.

1. For the purposes of this Regulation, the processing of personal data of a child below the age of 13 years ***would normally require*** that consent is given or authorised by the child's parent or ***legal representative***. ***The appropriate form for obtaining consent should be based on any risk posed to the child by the amount of data, its type and the nature of the processing.*** The controller shall make reasonable efforts to obtain verifiable consent, taking into consideration available technology. ***The methods to obtain***

verifiable consent shall not lead to the further processing of personal data which would otherwise not be necessary.

Amendment 56
Proposal for a regulation

Article 8 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Paragraphs 1, 2 and 3 shall not apply where the processing of personal data of a child concerns health data and where the Member State law in the field of health and social care prioritises the competence of an individual over physical age.

Justification

In the context of health and social care authorisation from a child's parent or guardian should not be necessary where the child has the competence to make a decision for him or herself. In Child Protection Cases it is not always in the interests of the data subject for their parent or guardian to have access to their data, and this needs to be reflected in the legislation.

Amendment 57
Proposal for a regulation

Article 9 – paragraph 1

Text proposed by the Commission

Amendment

1. The processing of personal data, revealing race or ethnic origin, political opinions, religion or beliefs, trade-union membership, and the processing of genetic data or data concerning health or sex life or criminal convictions or related security measures shall be prohibited.

1. The processing of personal data, revealing race or ethnic origin, political opinions, religion or beliefs, trade-union membership ***and activities***, and the processing of genetic data or data concerning health or sex life or criminal convictions or related security measures shall be prohibited. ***In particular, this would include safeguards to prevent the blacklisting of workers, for example in relation to their trade union activities or health and safety representative roles.***

Justification

Further specification is needed that personal data will never be used against the data subject in an employment context. Furthermore, it is important to highlight that accessing workers' personal data should be banned in terms of their trade union membership but also in terms of any union activities in which they may take part.

Amendment 58

Proposal for a regulation

Article 9 – paragraph 2 – point f

Text proposed by the Commission

(f) processing is necessary for the establishment, exercise or defence of **legal** claims; or

Amendment

(f) processing is necessary for the establishment, exercise or defence of claims ***at issue in legal or administrative proceedings of any kind***; or

Justification

The text should be enlarged upon so as to make it clear that data of the type concerned may be processed when the object is to establish, exercise, or defend claims at issue in legal or administrative proceedings of any kind.

Amendment 59

Proposal for a regulation

Article 9 – paragraph 2 – point j

Text proposed by the Commission

(j) processing of data relating to criminal convictions or related security measures is carried out either under the control of official authority or when the processing is necessary for compliance with a legal or regulatory obligation to which a controller is subject, or for the performance of a task carried out for important public interest reasons, and in so far as authorised by Union law or Member State law providing for adequate safeguards. A **complete** register of criminal convictions shall be kept only under the control of official authority.

Amendment

(j) processing of data relating to criminal convictions or related security measures is carried out either under the control of official authority or when the processing is necessary for compliance with a legal or regulatory obligation to which a controller is subject, or for the performance of a task carried out for important public interest reasons, and in so far as authorised by Union law or Member State law providing for adequate safeguards. A register of criminal convictions, ***whether complete or not***, shall be kept only under the control of official authority.

Justification

Any register of this kind, complete or otherwise, has to be under the control of the authorities.

Amendment 60 **Proposal for a regulation**

Article 9 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria, conditions and appropriate safeguards for the processing of the special categories of personal data referred to in paragraph 1 and the exemptions laid down in paragraph 2. **deleted**

Justification

The delegation of power under paragraph 3 is too sweeping, as it allows the Commission to flesh out essential aspects of the regulation, and the area concerned is a particularly delicate one for the type of data involved. The most appropriate course, therefore, would be to develop these aspects in the regulation proper.

Amendment 61 **Proposal for a regulation**

Article 10

Text proposed by the Commission

Amendment

If the data processed by a controller do not permit the controller to identify a natural person, the controller shall not be obliged to **acquire** additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation.

If the data processed by a controller do not permit the controller to identify a natural person, the controller shall not be obliged to **make use of** additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation.

Amendment 62

Proposal for a regulation

Article 11 – paragraph 2

Text proposed by the Commission

2. The controller shall provide any information and any communication relating to the processing of personal data to the data subject in an intelligible form, using clear and plain language, ***adapted to the data subject***, in particular for any information addressed specifically to a child.

Amendment

2. The controller shall provide any information and any communication relating to the processing of personal data to the data subject in an intelligible form, using clear and plain language, in particular for any information addressed specifically to a child.

Justification

Information or communications concerning data processing must be clear and intelligible. Inclusion of 'adapted to the data subject' might give rise to legal uncertainty. It would seem proportionate to impose a particular obligation only with regard to children comprising a specific category.

Amendment 63

Proposal for a regulation

Article 12 – paragraph 2

Text proposed by the Commission

2. The controller shall inform the data subject without delay and, at the latest within ***one month*** of receipt of the request, whether or not any action has been taken pursuant to Article 13 and Articles 15 to 19 and shall provide the requested information. This period may be prolonged ***for a further month***, if several data subjects exercise their rights and their cooperation is necessary to a reasonable extent to prevent an unnecessary and disproportionate effort on the part of the controller. The information shall be given in writing. Where the data subject makes the request in electronic form, the information shall be provided in electronic form, unless otherwise requested by the data subject.

Amendment

2. The controller shall inform the data subject without delay and, at the latest within ***40 calendar days*** of receipt of the request, whether or not any action has been taken pursuant to Article 13 and Articles 15 to 19 and shall provide the requested information. This period may be prolonged further, if several data subjects exercise their rights ***resulting in a large and exceptional number of requests*** and their cooperation is necessary to a reasonable extent to prevent an unnecessary and disproportionate effort on the part of the controller. ***However, the controller must comply with the requests as soon as practicable and, if requested, should justify this extension to the supervisory authority.*** The information shall be given

in writing *or, where feasible, the data controller may provide access to a secure online platform which would provide the data subject with direct access their personal data*. Where the data subject makes the request in electronic form, the information shall be provided in electronic form, unless otherwise requested by the data subject *or not available in that format*.

Justification

The deletion of the fee could lead to an increase in requests for access to data, which added to a short time limit creates a heavy burden on companies as well as various organisations and public bodies. Data records are also not always available in electronic copy and adding this obligation would add to the administrative burden. Controllers should be allowed and encouraged to provide data on secure online platforms which would provide a direct and easy access for the data subject at very little cost for the controllers.

Amendment 64 **Proposal for a regulation**

Article 12 – paragraph 4

Text proposed by the Commission

4. The information and the actions taken on requests referred to in paragraph 1 shall be free of charge. Where requests are manifestly excessive, in particular *because of* their repetitive character, the controller may charge *a* fee for providing the information or taking the action requested, or the controller may *not* take the action requested. In that case, the controller shall bear the burden of proving the manifestly excessive character of the request.

Amendment

4. The information and the actions taken on requests referred to in paragraph 1 shall be free of charge. Where requests are manifestly excessive, in particular *owing to their high volume, complexity or* their repetitive character, the controller may charge *an appropriate, not for profit,* fee for providing the information or taking the action requested, or the controller may *decline to* take the action requested. In that case, the controller shall bear the burden of proving the manifestly excessive character of the request.

Justification

The provision of data held within a database has a cost. Requesting an appropriate, not for profit, contribution from data subjects for data access would help to limit frivolous requests and is critical in deterring fraudsters from obtaining high volumes of consumers' credit data which could be used for fraudulent purposes.

Amendment 65

Proposal for a regulation

Article 12 – paragraph 5

Text proposed by the Commission

Amendment

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for the manifestly excessive requests and the fees referred to in paragraph 4. **deleted**

Justification

There is no need for this provision to be further clarified by means of a delegated act. The Member States' supervisory authorities are better placed to resolve any difficulties which may arise.

Amendment 66

Proposal for a regulation

Article 12 – paragraph 6

Text proposed by the Commission

Amendment

6. The Commission may lay down standard forms and specifying standard procedures for the communication referred to in paragraph 2, including the electronic format. In doing so, the Commission shall take the appropriate measures for micro, small and medium-sized-enterprises. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2). **deleted**

Justification

The Member States' supervisory authorities are better placed to resolve any difficulties which may arise.

Amendment 67
Proposal for a regulation

Article 14 – paragraph 1 – point a

Text proposed by the Commission

(a) ***the identity and*** the contact details of the controller and, if any, of the controller's representative and of the data protection officer;

Amendment

(a) the contact details of the controller and, if any, of the controller's representative and of the data protection officer;

Amendment 68
Proposal for a regulation

Article 14 – paragraph 1 – point b

Text proposed by the Commission

(b) the purposes of the processing for which the personal data are intended, ***including the contract terms and general conditions where the processing is based on point (b) of Article 6(1)*** and the legitimate interests pursued by the controller where the processing is based on point (f) of Article 6(1);

Amendment

(b) the purposes of the processing for which the personal data are intended, and the legitimate interests pursued by the controller where the processing is based on point (f) of Article 6(1);

Amendment 69
Proposal for a regulation

Article 14 – paragraph 1 – point c

Text proposed by the Commission

(c) the period for which the personal data will be stored;

Amendment

(c) the period for which the personal data will be stored, ***or if this is not possible, the criteria used to determine this period;***

Amendment 70
Proposal for a regulation

Article 14 – paragraph 1 – point e

Text proposed by the Commission

Amendment

(e) the right to lodge a complaint to the supervisory authority **and the contact details of the supervisory authority**;

(e) the right to lodge a complaint to the supervisory authority;

Justification

A duty to specify the contact details of the supervisory authority associated with liability in respect of any misinformation would necessitate a continuous review of the relevant information, which would be disproportionate for small and medium-sized enterprises in particular.

Amendment 71

Proposal for a regulation

Article 14 – paragraph 1 – point g

Text proposed by the Commission

Amendment

(g) where applicable, that the controller intends to transfer to a third country or international organisation and **on the level of protection afforded by that third country or international organisation by reference to** an adequacy decision by the Commission;

(g) where applicable, that the controller intends to transfer to a third country or international organisation and **the existence or absence of** an adequacy decision by the Commission;

Justification

The provision of information on a decision or the absence of a decision by the Commission ensures that the data subject has sufficient information and clarifies the obligation of the controller.

Amendment 72

Proposal for a regulation

Article 14 – paragraph 1 – point h

Text proposed by the Commission

Amendment

(h) any further information necessary to guarantee fair processing in respect of the data subject, having regard to the specific circumstances in which the personal data are collected.

(h) any further information **which the controller considers** necessary to guarantee fair processing in respect of the data subject, having regard to the specific circumstances in which the personal data

are collected.

Justification

The scope of this provision needs to be made clear, and it should be specified that controllers can provide a greater degree of transparency.

Amendment 73

Proposal for a regulation

Article 14 – paragraph 4 – point a

Text proposed by the Commission

(a) at the time when the personal data are obtained from the data subject; or

Amendment

(a) ***in general*** at the time when the personal data are obtained from the data subject ***or as soon as possible where the above is not feasible, demands undue effort, or reduces the safeguards enjoyed by the data subject, or***

Justification

Some activities might require at least a degree of flexibility, and supervisory authorities would, moreover, easily be able to ascertain that this was being properly used. In addition, depending on the way in which data are collected, supplying information immediately after the event, in writing or online, might offer greater safeguards to a data subject, who would then be able to take exact note of the situation.

Amendment 74

Proposal for a regulation

Article 14 – paragraph 4 – point b

Text proposed by the Commission

(b) where the personal data are not collected from the data subject, at the time of the recording or within a reasonable period after the collection, having regard to the specific circumstances in which the data are collected or otherwise processed, or, if a disclosure to another recipient is envisaged, and at the latest when the data are first disclosed.

Amendment

(b) where the personal data are not collected from the data subject, at the time of the recording or within a reasonable period after the collection, having regard to the specific circumstances in which the data are collected or otherwise processed, or, if a disclosure to another recipient is envisaged, and at the latest when the data are first disclosed, ***or, if the data shall be used for communication with the person concerned, at the latest at the time of the***

first communication to that person.

Amendment 75

Proposal for a regulation

Article 14 – paragraph 5 – point b

Text proposed by the Commission

(b) the data are not collected from the data subject and the provision of such information proves impossible or would involve a disproportionate effort; or

Amendment

(b) the data are not collected from the data subject and the provision of such information proves impossible or would involve a disproportionate effort **and generate excessive administrative burden, especially when the processing is carried out by a SME as defined in Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises¹**; or

¹ *OJ L 124, 20.5.2003, p. 36.*

Justification

This amendment is aimed at ensuring that SMEs are not placed under unnecessary administrative strain by the Regulation.

Amendment 76

Proposal for a regulation

Article 14 – paragraph 7

Text proposed by the Commission

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria for categories of recipients referred to in point (f) of paragraph 1, the requirements for the notice of potential access referred to in point (g) of paragraph 1, the criteria for the further information necessary referred to in point (h) of paragraph 1 for specific sectors and situations, and the conditions and appropriate safeguards for

Amendment

deleted

the exceptions laid down in point (b) of paragraph 5. In doing so, the Commission shall take the appropriate measures for micro, small and medium-sized-enterprises.

Justification

The delegated acts provided for in paragraph 7 to beyond the limits generally imposed on the use of this arrangement, given that their intended subject matter is such that it should be dealt with in the text of the regulation itself.

Amendment 77 **Proposal for a regulation**

Article 15 – paragraph 1 – point d

Text proposed by the Commission

(d) the period for which the personal data will be stored;

Amendment

(d) the period for which the personal data will be stored, ***or if this is not possible, the criteria used to determine this period;***

Amendment 78 **Proposal for a regulation**

Article 15 – paragraph 2

Text proposed by the Commission

2. The data subject shall have the right to obtain from the controller communication of the personal data undergoing processing. ***Where the data subject makes the request in electronic form, the information shall be provided in electronic form, unless otherwise requested by the data subject.***

Amendment

2. The data subject shall have the right to obtain from the controller communication of the personal data undergoing processing ***and, on electronic request, an electronic copy of the non-commercial data undergoing processing in an interoperable and structured format which allows for further use. The controller shall verify the identity of a data subject requesting access to data within the limits of Articles 5 to 10 of this Regulation.***

Amendment 79
Proposal for a regulation

Article 17 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Credit institutions that retain data for the following grounds shall be exempt from the requirements of this Article:

- risk management purposes;***
- fulfilment of EU and international supervisory and compliance requirements;***
- market abuse purposes.***

Amendment 80
Proposal for a regulation

Article 17 – paragraph 2

Text proposed by the Commission

Amendment

2. Where the controller referred to in paragraph 1 has made the personal data public, it shall take all reasonable steps, including technical measures, in relation to data for the publication of which the controller is responsible, to inform third parties which are processing such data, that a data subject requests them to erase any links to, or copy or replication of that personal data. Where the controller has authorised a third party publication of personal data, the controller shall be considered responsible for that publication.

deleted

Justification

Given the nature of the internet and the possibilities to post information on various sites globally this provision is unworkable.

Amendment 81
Proposal for a regulation

Article 17 – paragraph 3 – point a

Text proposed by the Commission

(a) for exercising the right of freedom of expression in accordance with Article 80;

Amendment

(a) for exercising the right of freedom of expression in accordance with Article 80
or when providing an information society service to facilitate the accessing of such expression;

Justification

The provision proposed by the Commission does provide media with enough to defend the rights of media in a digital age.

Amendment 82
Proposal for a regulation

Article 17 – paragraph 3 – point b

Text proposed by the Commission

(b) for reasons of public interest in the area of public health in accordance with Article 81;

Amendment

(b) ***for healthcare purposes or*** for reasons of public interest in the area of public health in accordance with Article 81;

Justification

It is in the vital interests of the data subject to keep a complete record of their health in order to receive the best care and treatment through their life. The right to be forgotten should not apply where data is processed for healthcare purposes as laid down in Article 81(a).

Amendment 83
Proposal for a regulation

Article 17 – paragraph 3 – point d

Text proposed by the Commission

(d) for compliance with a legal obligation to retain the personal data by Union or Member State law to which the controller is subject; Member State laws shall meet an objective of public interest, respect the essence of the right to the protection of

Amendment

(d) for compliance with a legal obligation to retain the personal data by Union or Member State law to which the controller is subject ***under Union law***; Member State laws shall meet an objective of public interest, respect the essence of the right to

personal data and be proportionate to the legitimate aim pursued;

the protection of personal data and be proportionate to the legitimate aim pursued;

Amendment 84

Proposal for a regulation

Article 17 – paragraph 9

Text proposed by the Commission

Amendment

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

deleted

(a) the criteria and requirements for the application of paragraph 1 for specific sectors and in specific data processing situations;

(b) the conditions for deleting links, copies or replications of personal data from publicly available communication services as referred to in paragraph 2;

(c) the criteria and conditions for restricting the processing of personal data referred to in paragraph 4.

Justification

With regard to delegated acts, we cannot accept paragraph 9 of this article, since it makes provision for the regulation of aspects which are essential if the legislation is to be correctly understood. If it is held that these aspects must be covered, this should be done in the Regulation itself.

Amendment 85

Proposal for a regulation

Article 19 – paragraph 3

Text proposed by the Commission

Amendment

3. Where an objection is upheld pursuant to paragraphs 1 and 2, the controller shall no longer use or otherwise process the personal data concerned.

3. Where an objection is upheld pursuant to paragraph 1, the controller shall *inform the data subject of the compelling legitimate grounds which apply in accordance with paragraph 1 or, if he*

does not do so, he shall no longer use or otherwise process the personal data concerned; where the objection is upheld pursuant to paragraph 2, the controller shall no longer use or otherwise process the personal data concerned.

Justification

If the controller may adduce compelling legitimate grounds in response to the right to object, there appears to be no reason why merely lodging an objection should have the consequences laid down in paragraph 3.

Amendment 86 **Proposal for a regulation**

Article 20 – paragraph 1

Text proposed by the Commission

1. Every ***natural person*** shall have the right not to be subject to a ***measure which produces legal effects concerning this natural person or significantly affects this natural person***, and which is based solely on automated processing intended to evaluate certain personal aspects relating to this ***natural person or to analyse or predict in particular the natural person's performance at work, economic situation, location, health, personal preferences, reliability or behaviour.***

Amendment

1. Every ***data subject*** shall have the right not to be subject to a ***decision that produces adverse legal effects or adversely affects this data subject***, and which is based solely ***or predominantly*** on automated processing intended to evaluate certain personal aspects relating to this ***data subject.***

Justification

It is important to consider that some profiling activities have considerable benefits for consumers and can be a good basis for good customer service. The wide definition of profiling does not differentiate routine data processing activities that are positive in nature with more negative profiling. Positive profiling is often used to tailor services to consumers by recording their needs and preferences.

Amendment 87 **Proposal for a regulation**

Article 20 – paragraph 2

Text proposed by the Commission

2. Subject to the other provisions of this Regulation, a **person** may be **subjected** to a **measure** of the kind referred to in paragraph 1 **only** if the processing:

(a) is *carried out in the course of the entering into, or performance of, a contract, where the request for the entering into or the performance of the contract, lodged by the data subject, has been satisfied or where suitable measures to safeguard the data subject's legitimate interests have been adduced, such as the right to obtain human intervention; or*

(b) is *expressly authorized by a Union or Member State law which also lays down suitable measures to safeguard the data subject's legitimate interests; or*

(c) is *based on the data subject's consent, subject to the conditions laid down in Article 7 and to suitable safeguards.*

Amendment

2. Subject to the other provisions of this Regulation, a **data subject** may be **subject** to a **decision** of the kind referred to in paragraph 1 if the processing:

(a) is *authorized by a Union or Member State law which also lays down suitable measures to safeguard the data subject's legitimate interests; or*

(b) is *lawful pursuant to points (a) to (fa) of Article 6(1) of this Regulation;*

With due regard to Article 9, paragraph 2, profiling shall not have the effect of discriminating against individuals on the basis, for instance, of race or ethnic origin, religion or sexual orientation.

(Point (b) in the Commission text has become point (a) in Parliament's amendment and is also amended)

Amendment 88

Proposal for a regulation

Article 20 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. Automated processing of personal data intended to evaluate certain personal aspects relating to a natural person shall not be used to identify or individualise children.

Justification

Profiling can entail serious risks for data subjects. It is prone to reinforcing discriminations, making decisions less transparent and carries an unavoidable risk of wrong decisions. For these reasons, it should be tightly regulated: its use should be clearly limited, and in those cases where it can be used, there should be safeguards against discrimination and data subjects should be able to receive clear and meaningful information on the logic of the profiling and its consequences. While some circles see profiling as a panacea for many problems, it should be noted that there is a significant body of research addressing its limitations. Notably, profiling tends to be useless for very rare characteristics, due to the risk of false positives. Also, profiles can be hard or impossible to verify. Profiles are based on complex and dynamic algorithms that evolve constantly and that are hard to explain to data subjects. Often, these algorithms qualify as commercial secrets and will not be easily provided to data subjects. However, when natural persons are subject to profiling, they should be entitled to information about the logic used in the measure, as well as an explanation of the final decision if human intervention has been obtained. This helps to reduce intransparency, which could undermine trust in data processing and may lead to loss or trust in especially online services. There is also a serious risk of unreliable and (in effect) discriminatory profiles being widely used, in matters of real importance to individuals and groups, which is the motivation behind several suggested changes in this Article that aim to improve the protection of data subjects against discrimination. In relation to this, the use of sensitive data in generating profiles should also be restricted.

Amendment 89

Proposal for a regulation

Article 20 – paragraph 5

Text proposed by the Commission

Amendment

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for suitable measures to safeguard the data subject's legitimate interests referred to in paragraph 2. **deleted**

Amendment 90

Proposal for a regulation

Article 21 – paragraph 2

Text proposed by the Commission

Amendment

2. In particular, any legislative measure referred to in paragraph 1 shall contain

2. In particular, any legislative measure referred to in paragraph 1 shall contain

specific provisions at least as to the objectives to be pursued by the processing and the determination of the controller.

specific provisions at least as to ***the aim of the processing***, the objectives to be pursued by the processing and the determination of the controller.

Justification

In order to ensure a higher degree of protection, the legislation should, in the event of limitation, also mention the aims of processing personal data.

Amendment 91

Proposal for a regulation
Article 22 – title

Text proposed by the Commission

Amendment

Responsibility of the controller

Overall principle of responsibility of the controller.

Justification

The principle of responsibility which is implicitly introduced by Chapter 4 of the proposal for a regulation must be mentioned explicitly in order to ensure a higher degree of protection.

Amendment 92

Proposal for a regulation

Article 22 – paragraph 2 – introductory wording

Text proposed by the Commission

Amendment

2. The measures provided for in paragraph 1 **shall** in particular include:

2. The measures provided for in paragraph 1 **could** in particular include:

Justification

It is better to promote these measures as good practice, especially as otherwise this creates an unrealistic obligation from a regulatory perspective.

Amendment 93

Proposal for a regulation

Article 22 – paragraph 2 – point e

Text proposed by the Commission

(e) designating a data protection officer pursuant to Article 35(1).

Amendment

(e) designating a data protection officer pursuant to Article 35(1), ***or the obligation and maintenance of certification in accordance with the certification policies defined by the Commission.***

Amendment 94

Proposal for a regulation

Article 22 – paragraph 4

Text proposed by the Commission

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of specifying any further criteria and requirements for appropriate measures referred to in paragraph 1 other than those already referred to in paragraph 2, the conditions for the verification and auditing mechanisms referred to in paragraph 3 and as regards the criteria for proportionality under paragraph 3, and considering specific measures for micro, small and medium-sized-enterprises.

Amendment

deleted

Amendment 95

Proposal for a regulation

Article 23 – paragraph 1

Text proposed by the Commission

1. Having regard to the state of the art and the cost of implementation, the controller shall, both at the time of the determination of the means for processing and at the time of the processing itself, implement ***appropriate*** technical and organisational measures and procedures in such a way that the processing will meet the requirements of this Regulation and ensure the protection of the rights of the data

Amendment

1. Having regard to the state of the art, ***current technical knowledge*** and the cost of implementation, the controller shall, both at the time of the determination of the means for processing and at the time of the processing itself, implement technical and organisational measures and procedures ***appropriate to the activities and their purposes***, in such a way that the processing will meet the requirements of this

subject.

Regulation and ensure the protection of the rights of the data subject.

Amendment 96
Proposal for a regulation

Article 23 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 97

Proposal for a regulation
Article 23 – paragraph 3

Text proposed by the Commission

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of specifying any further criteria and requirements for appropriate measures and mechanisms referred to in paragraph 1 and 2, in particular for data protection by design requirements applicable across sectors, products and services.

Amendment

deleted

Justification

The proposal for a regulation applies to all sectors, both online and offline. It is not the Commission's task to adopt delegated acts on data protection from the very beginning and by default which might undermine technological innovation. Member States' supervisory authorities and the European Data Protection Board are better placed to resolve any

difficulties which might arise.

Amendment 98

Proposal for a regulation Article 23 – paragraph 4

Text proposed by the Commission

Amendment

4. The Commission may lay down technical standards for the requirements laid down in paragraph 1 and 2. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).

deleted

Justification

The proposal for a regulation applies to all sectors, both online and offline. It is not the Commission's task to establish technical standards which might undermine technological innovation. Member States' supervisory authorities and the European Data Protection Board are better placed to resolve any difficulties which might arise.

Amendment 99

Proposal for a regulation

Article 24

Text proposed by the Commission

Amendment

Where a controller determines the purposes, **conditions and means** of the processing of personal data jointly with others, the joint controllers shall determine their respective responsibilities for compliance with the obligations under this Regulation, in particular as regards the procedures and mechanisms for exercising the rights of the data subject, by means of an arrangement between them.

Where a controller determines the purposes of the processing of personal data jointly with others, the joint controllers shall determine their respective responsibilities for compliance with the obligations under this Regulation, in particular as regards the procedures and mechanisms for exercising the rights of the data subject, by means of an arrangement between them.

Amendment 100

Proposal for a regulation

Article 25 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) an enterprise employing fewer than 250 persons; or

(b) an enterprise employing fewer than 250 persons, ***unless the processing carried out by that enterprise is considered high risk by the supervisory authorities, taking account of its characteristics, the type of data or the number of people affected;*** or

Amendment 101
Proposal for a regulation

Article 26 – paragraph 5

Text proposed by the Commission

Amendment

5. 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 responsibilities, duties and tasks in relation to a processor in line with paragraph 1, and conditions which allow facilitating the processing of personal data within a group of undertakings, in particular for the purposes of control and reporting.

deleted

Justification

We consider the powers granted to the Commission here to be excessive. If these aspects are considered essential, they should be covered in the text of the Regulation itself.

Amendment 102
Proposal for a regulation

Article 28 – paragraph 1

Text proposed by the Commission

Amendment

1. Each controller and processor and, if any, the controller's representative, shall maintain documentation of ***all processing operations*** under its responsibility.

1. Each controller and processor and, if any, the controller's representative, shall maintain documentation of ***the main categories of processing*** under its responsibility.

Amendment 103
Proposal for a regulation

Article 28 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The obligation provided for in paragraph 1 shall not apply to SMEs who process data only as an activity ancillary to the sale of goods and services.

Justification

The application of the 'Think Small First' principle needs to apply here and consideration should be taken into account for SMEs on which this obligation would be a heavy burden. SMEs whose data processing activities do not represent more than 50% of the company's turnover is to be considered ancillary.

Amendment 104

Proposal for a regulation
Article 28 – paragraph 2 – points d and e

Text proposed by the Commission

Amendment

(d) a description of categories of data subjects and of the categories of personal data relating to them;

(d) where applicable, transfers of data to a third country or an international organisation, including the identification of that third country or international organisation and, in case of transfers referred to in point (h) of Article 44(1), the documentation of appropriate safeguards;

(e) recipients or categories of recipients of the personal data, including the controllers to whom personal data are disclosed for the legitimate interest pursued by them;

(e) the description of the mechanisms referred to in Article 22(3).

Justification

Stricter accountability criteria need to be established for organisations which do not have a data protection officer or sufficient certification, which means that a specific model should be drawn up and a minimum amount of documentation should be maintained in the form required by law.

Amendment 105
Proposal for a regulation

Article 28 – paragraph 5

Text proposed by the Commission

5. 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 documentation referred to in paragraph 1, to take account of in particular the responsibilities of the controller and the processor and, if any, the controller's representative.

Amendment

5. The Commission shall adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the documentation referred to in paragraph 1, to take account of in particular the responsibilities of the controller and the processor and, if any, the controller's representative.

Amendment 106
Proposal for a regulation

Article 28 – paragraph 6

Text proposed by the Commission

6. The Commission ***may*** lay down standard forms for the documentation referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).

Amendment

6. The Commission ***shall*** lay down standard forms for the documentation referred to in paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).

Amendment 107
Proposal for a regulation

Article 29 – paragraph 1

Text proposed by the Commission

1. The controller and the processor and, if any, the representative of the controller, shall co-operate, on request, with the supervisory authority in the performance of its duties, in particular by providing the information referred to in point (a) of Article 53(2) and by granting access as provided in point (b) of that paragraph.

Amendment

1. The controller and, ***where appropriate,*** the processor and, if any, the representative of the controller, shall co-operate, on request, with the supervisory authority in the performance of its duties, in particular by providing the information referred to in point (a) of Article 53(2) and by granting access as provided in point (b) of that paragraph.

Justification

The wording of the first paragraph should make it clear that, unlike the controller, the processor will be called on where appropriate and not as a general rule.

Amendment 108

Proposal for a regulation

Article 29 – paragraph 2

Text proposed by the Commission

2. In response to the supervisory authority's exercise of its powers under Article 53(2), the controller and the processor shall reply to the supervisory authority within a reasonable period to be specified by the supervisory authority. The reply shall include a description of the measures taken and the results achieved, in response to the remarks of the supervisory authority.

Amendment

In response to the supervisory authority's exercise of its powers under Article 53(2), the controller, ***either in person or through his representative*** and the processor shall reply to the supervisory authority within a reasonable period to be specified by the supervisory authority. The reply shall include a description of the measures taken and the results achieved, in response to the remarks of the supervisory authority.

Justification

The second paragraph makes no reference to representatives in the case of controllers not established in the Union.

Amendment 109

Proposal for a regulation

Article 30 – paragraph 3

Text proposed by the Commission

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for the technical and organisational measures referred to in paragraphs 1 and 2, including the determinations of what constitutes the state of the art, for specific sectors and in specific data processing situations, in particular taking account of developments in technology and solutions for privacy by design and data protection

Amendment

deleted

by default, unless paragraph 4 applies.

Justification

The proposal for a regulation provides for a considerable number of delegated acts, which is not justified. More precisely, if the Commission adopted technical measures concerning the security of processing operations, this might undermine technical innovation. In addition, paragraph 4 of the same Article provides for the adoption of implementing acts to specify the requirements set out in paragraphs 1 and 2.

Amendment 110

Proposal for a regulation

Article 30 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Amendment

4. The Commission may adopt, where necessary, implementing acts for specifying the requirements laid down in paragraphs 1 and 2 to various situations, in particular to: **deleted**

(a) prevent any unauthorised access to personal data;

(b) prevent any unauthorised disclosure, reading, copying, modification, erasure or removal of personal data;

(c) ensure the verification of the lawfulness of processing operations.

Amendment 111

Proposal for a regulation

Article 31 – paragraph 1

Text proposed by the Commission

Amendment

1. In the case of a personal data breach, the controller shall, without undue delay *and, where feasible, not later than 24 hours after having become aware of it*, notify the personal data breach to the supervisory authority. *The notification to the supervisory authority shall be accompanied by a reasoned justification in cases where it is not made within 24*

1. In the case of a personal data breach *which has a considerable effect on the data subject*, the controller shall, without undue delay notify the personal data breach to the supervisory authority.

hours.

Amendment 112
Proposal for a regulation

Article 31 – paragraph 2

Text proposed by the Commission

2. Pursuant to point (f) of Article 26(2), the processor shall alert and inform the controller immediately after the establishment of a personal data breach.

Amendment

2. Pursuant to point (f) of Article 26(2), the processor shall alert and inform the controller immediately after the establishment of a personal data breach ***referred to in paragraph 1.***

Amendment 113
Proposal for a regulation

Article 31 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The communication of a personal data breach to the data subject shall not be required if the controller has implemented appropriate protection measures, and if those measures were applied to the data concerned by the personal data breach. Such technological protection measures shall render the data unintelligible to any person who is not authorised to access it.

Amendment 114
Proposal for a regulation

Article 31 – paragraph 5

Text proposed by the Commission

Amendment

5. 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 establishing the data breach referred

deleted

to in paragraphs 1 and 2 and for the particular circumstances in which a controller and a processor is required to notify the personal data breach.

Justification

Delegated acts adopted by the Commission should in this case be limited to establishing a standard format for incident notification and the recording of previous breaches and their consequences.

Amendment 115

Proposal for a regulation

Article 33 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. The following processing operations ***in particular*** present specific risks referred to in paragraph 1:

2. The following processing operations present specific risks referred to in paragraph 1:

Justification

The list of processing operations which must be subjected to an impact assessment, set out in Article 33(2), has been drawn up in a general way. It must be limiting in order to comply with the principle of proportionality and in order to ensure legal certainty.

Amendment 116

Proposal for a regulation

Article 33 – paragraph 4

Text proposed by the Commission

Amendment

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

deleted

Justification

It would seem disproportionate to impose an overall obligation on controllers to seek the views of data subjects, whatever the sector, before any data processing had been done.

Amendment 117
Proposal for a regulation

Article 33 – paragraph 5

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 118
Proposal for a regulation

Article 33 – paragraph 6

Text proposed by the Commission

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

Amendment

deleted

the Commission shall consider specific measures for micro, small and medium-sized enterprises.

Justification

Delegated acts are not justified here, since they would be concerned with basic aspects of the rule itself, which should, in our opinion, contain provisions specifically establishing its scope.

Amendment 119

Proposal for a regulation
Article 34 – title

Text proposed by the Commission

Amendment

Prior authorisation and prior consultation

Prior consultation

Justification

Article 34(1) should be moved to Chapter 5, which concerns the transfer of personal data to a third country or an international organisation. The title of the Article should therefore be changed.

Amendment 120

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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Amendment 121
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**

Justification

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

Amendment 122
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**

Amendment 123
Proposal for a regulation

Article 35 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. SME controllers and processors shall designate a data protection officer only where the SMEs' core activities consist of data processing operations which, by

virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects.

Justification

The appointment of a data protection officer should not be linked to the number of employees but should be a risk based approach focusing on the processing activities, as well as the number of data subjects whose data the organisation processes.

Amendment 124
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.

Amendment 125
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.

Amendment 126
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

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

fulfil the tasks referred to in Article 37, ***in 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.

Justification

While it is true that the data protection officer must act in accordance with strict professional standards (amendment to paragraph 5), by the same token one of the reasons justifying dismissal must be serious failure to do so (see amendment to paragraph 7).

Amendment 127 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.***

Justification

This safeguard could, in our opinion, undermine freedom of public service contracting and detract from market competition. The stipulated period could run counter to certain labour law provisions or public service statutes, thereby giving rise to problems. Safeguards and guarantees regarding the position of data protection officer should accordingly be sought through channels other than a statutory minimum period of employment.

Amendment 128 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

Amendment 129

Proposal for a regulation

Article 36 – paragraph 3

Text proposed by the Commission

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.

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 necessary to carry out the duties and tasks referred to in Article 37.

Justification

The wording of this article, in our opinion, relates fundamentally to data protection officers as employees or servants of the company or institution concerned, while failing to allow properly for the outsourcing in the form of service contracts.

Amendment 130

Proposal for a regulation

Article 37 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(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***;

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

Amendment 131
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 data protection officer.

Justification

The Commission's work should be focused here on the certification and status of the data protection officer so that such positions, when they exist, are filled by people with the necessary skills and protected by the appropriate guarantees.

Amendment 132
Proposal for a regulation

Article 38 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

aa) respect for consumer rights;

Amendment 133
Proposal for a regulation

Article 39 – paragraph 1

Text proposed by the Commission

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

Amendment

1. The Member States and the Commission shall encourage, in particular at European level, the establishment of data protection certification **policies** and of data protection seals and marks, allowing data subjects to quickly assess the level of data protection provided by controllers and processors. The data protection **certification policies** shall contribute to the proper application of this Regulation, **and to achieving the**

taking account of the specific features of the various sectors and different processing operations.

actions and benefits mentioned therein, taking account of the specific features of the various sectors and different processing operations.

Certification policies at Union level shall be designed by the European Data Protection Board with the involvement of other stakeholders, and shall be officially approved by the Commission. These policies shall not just be aimed at the institutions but especially at operators in the field.

The certification policies shall address the specific needs of actors in different sectors of activity, with particular regard to the needs of micro, small and medium-sized enterprises, and to the key aspect of cost containment so that they can become an effective instrument. The acquisition, renewal and loss of certificates will involve the consequences laid down throughout this Regulation.

Justification

Certification should be linked by a rigorous capacity building procedure which must be given a life of its own life and be upgradable. Certificates should thus be subject to renewal and upgrading in specific cases and it should be possible to annul them in the event of serious violations. This should lead to the immediate loss of the benefits they may confer.

Amendment 134

Proposal for a regulation Article 40 a (new)

Text proposed by the Commission

Amendment

Article 40 a

Prior authorisation

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 135
Proposal for a regulation

Article 41 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Justification

By using the expression ‘further authorisation’, paragraph 1 of this Article seems to indicate that initial authorisation for the transfer is needed even if an adequacy decision exists. We do not think so. Adequacy decisions are specifically intended to make it possible to carry out transfers without any specific prior authorisation. We therefore propose to amend the wording by replacing ‘further authorisation’ with ‘specific authorisation’.

Amendment 136

Proposal for a regulation
Article 41 – paragraph 3

Text proposed by the Commission

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

Amendment

3. The Commission may decide that a third country, or a territory or a processing sector within that third country, or an international organisation ensures an adequate level of protection within the meaning of paragraph 2.

accordance with the examination procedure set out in Article 87(2).

Justification

The Commission's decisions should not be adopted solely in accordance with the examination procedure. In addition, the European Data Protection Board should be consulted in this context.

Amendment 137
Proposal for a regulation

Article 41 – paragraph 6

Text proposed by the Commission

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

Amendment

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

Justification

The term 'restricted' should be used instead of 'prohibited'.

Amendment 138

Proposal for a regulation
Article 42 – paragraph 1

Text proposed by the Commission

1. Where the Commission has taken no decision pursuant to Article 41, a controller or processor may transfer personal data to a third country or an international organisation only if the controller or processor has adduced appropriate

Amendment

1. Where the Commission has taken no decision pursuant to Article 41, ***or if it finds that a third country, a region or a data processing sector in a third country, or an international organisation, does not offer a sufficient level of data protection,***

safeguards with respect to the protection of personal data in a legally binding instrument.

a controller or processor may transfer personal data to a third country or an international organisation only if the controller or processor has adduced appropriate safeguards with respect to the protection of personal data in a legally binding instrument, ***and where appropriate pursuant to an impact assessment, where the controller or processor has ensured that the recipient of data in a third country maintains high standards of data protection.***

Amendment 139

Proposal for a regulation

Article 43 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The supervisory authority which approves the binding corporate rules shall be that of the place of the main establishment of the controller or processor.

Justification

The Article 29 Working Party established a system for mutual recognition of binding corporate rules (WP 107, 14 April 2005, and WP 195, 6 June 2012 for processors). This system should be incorporated into this Regulation. The criterion for designating the competent authority should be the place of the main establishment, as set out in Article 51(2) of the Regulation.

Amendment 140

Proposal for a regulation

Article 44 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) the transfer is necessary for important grounds of public interest; or

(d) the transfer is necessary for important grounds of public interest ***for example in cases of international data transfers between competition authorities, tax or customs administrations, financial supervisory authorities, between services***

competent for social security matters, or to competent authorities for the prevention, investigation, detection and prosecution of criminal offences; or

Amendment 141
Proposal for a regulation

Article 44 – paragraph 1 – point e

Text proposed by the Commission

Amendment

(e) the transfer is necessary for the establishment, exercise or defence of legal claims; or

(e) the transfer is necessary for the establishment, exercise or defence of legal **or administrative** claims; or

Justification

It seems appropriate to also include administrative procedures, as these are in many cases the initial means of exercising or defending individual rights.

Amendment 142
Proposal for a regulation

Article 44 – paragraph 7

Text proposed by the Commission

Amendment

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying 'important grounds of public interest' within the meaning of point (d) of paragraph 1 as well as the criteria and requirements for appropriate safeguards referred to in point (h) of paragraph 1.

deleted

Justification

The delegated acts provided for in paragraph 7 seem excessive to us, as they relate to key aspects of the rule rather than just developing it. If there is considered to be a need to supplement key aspects of the rules contained in this Article, this should be done in the provision itself.

Amendment 143
Proposal for a regulation

Article 47 – paragraph 1

Text proposed by the Commission

1. The supervisory **authority** shall act with complete independence in exercising the duties and powers entrusted to **it**.

Amendment

1. The supervisory **authorities** shall act with complete independence in exercising the duties and powers entrusted to **them**.

Amendment 144
Proposal for a regulation

Article 47 – paragraph 2

Text proposed by the Commission

2. The members of the supervisory **authority** shall, in the performance of their duties, neither seek nor take instructions from anybody.

Amendment

2. The members of the supervisory **authorities** shall, in the performance of their duties, neither seek nor take instructions from anybody.

Amendment 145
Proposal for a regulation

Article 47 – paragraph 5

Text proposed by the Commission

5. Each Member State shall ensure that the supervisory **authority is** provided with the adequate human, technical and financial resources, premises and infrastructure necessary for the effective performance of its duties and powers, including those to be carried out in the context of mutual assistance, co-operation and participation in the European Data Protection Board.

Amendment

5. Each Member State shall, **in line with its internal distribution of competencies**, ensure that the supervisory **authorities are** provided with the adequate human, technical and financial resources, premises and infrastructure necessary for the effective performance of its duties and powers, including those to be carried out in the context of mutual assistance, co-operation and participation in the European Data Protection Board.

Amendment 146
Proposal for a regulation

Article 47 – paragraph 6

Text proposed by the Commission

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

Amendment

6. Each Member State shall, **in line with its internal distribution of competencies**, ensure that the supervisory **authorities have their** own staff which shall be appointed by and be subject to the direction of the head of the supervisory authority.

Amendment 147
Proposal for a regulation

Article 47 – paragraph 7

Text proposed by the Commission

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

Amendment

7. Member States shall, **in line with their internal distribution of competencies**, ensure that the supervisory **authorities are** subject to financial control which shall not affect **their** independence. Member States shall, **in line with their internal distribution of competencies**, ensure that the supervisory **authorities have** separate annual budgets. The budgets shall be made public.

Amendment 148
Proposal for a regulation

Article 48 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 149
Proposal for a regulation

Article 48 – paragraph 3

Text proposed by the Commission

3. The duties of a member shall end in the event of the expiry of the term of office, resignation or compulsory retirement ***in accordance with paragraph 5.***

Amendment

3. The duties of a member shall end in the event of the expiry of the term of office ***or in the event of incapacity to hold office, incompatibility, resignation, dismissal, final conviction of an intentional crime*** or compulsory retirement.

Amendment 150
Proposal for a regulation

Article 48 – paragraph 4

Text proposed by the Commission

4. A member may be dismissed or ***deprived of the right to a pension or other benefits in its stead*** by the ***competent national court***, if the member no longer fulfils the conditions required for the performance of the duties or is guilty of serious ***misconduct.***

Amendment

4. A member may be dismissed ***or his appointment terminated*** by the ***body which appointed him***, if the member no longer fulfils the conditions required for the performance of the duties or is guilty of serious ***failure to discharge the obligations relating to his office.***

Amendment 151
Proposal for a regulation

Article 49 – point a

Text proposed by the Commission

(a) the establishment and status of the supervisory ***authority***;

Amendment

(a) the establishment and status of the supervisory ***authorities***;

Amendment 152
Proposal for a regulation

Article 49 – point b

Text proposed by the Commission

(b) the qualifications, experience and skills required to perform the duties of the members of the supervisory ***authority***;

Amendment

(b) the qualifications, experience and skills required to perform the duties of the members of the supervisory ***authorities***;

Amendment 153
Proposal for a regulation

Article 49 – point c

Text proposed by the Commission

(c) the rules and procedures for the appointment of the members of the supervisory **authority**, as well the rules on actions or occupations incompatible with the duties of the office;

Amendment

(c) the rules and procedures for the appointment of the members of the supervisory **authorities**, as well *as* the rules on actions or occupations incompatible with the duties of the office;

Amendment 154
Proposal for a regulation

Article 49 – point d

Text proposed by the Commission

(d) the duration of the term of the members of the supervisory **authority** which shall be no less than four years, except for the first appointment after entry into force of this Regulation, part of which may take place for a shorter period where this is necessary to protect the independence of the supervisory **authority** by means of a staggered appointment procedure;

Amendment

(d) the duration of the term of the members of the supervisory **authorities** which shall be no less than four years, except for the first appointment after entry into force of this Regulation, part of which may take place for a shorter period where this is necessary to protect the independence of the supervisory **authorities** by means of a staggered appointment procedure;

Amendment 155
Proposal for a regulation

Article 49 – point e

Text proposed by the Commission

(e) whether the members of the supervisory **authority** shall be eligible for reappointment;

Amendment

(e) whether the members of the supervisory **authorities** shall be eligible for reappointment;

Amendment 156
Proposal for a regulation

Article 49 – point f

Text proposed by the Commission

(f) the regulations and common conditions governing the duties of the members and staff of the supervisory **authority**;

Amendment

(f) the regulations and common conditions governing the duties of the members and staff of the supervisory **authorities**;

Amendment 157
Proposal for a regulation

Article 49 – point g

Text proposed by the Commission

g) the rules and procedures on the termination of the duties of the members of the supervisory **authority**, including in case that they no longer fulfil the conditions required for the performance of their duties or if they are guilty of serious misconduct.

Amendment

(g) the rules and procedures on the termination of the duties of the members of the supervisory **authorities**, including in case that they no longer fulfil the conditions required for the performance of their duties or if they are guilty of serious misconduct.

Amendment 158
Proposal for a regulation

Article 50

Text proposed by the Commission

The members and the staff of the supervisory **authority** shall be subject, both during and after their term of office, to a duty of professional secrecy with regard to any confidential information which has come to their knowledge in the course of the performance of their official duties.

Amendment

The members and the staff of the supervisory **authorities** shall be subject, both during and after their term of office, to a duty of professional secrecy with regard to any confidential information which has come to their knowledge in the course of the performance of their official duties.

Amendment 159

Proposal for a regulation

Article 51 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. In the event of a complaint by a data subject or a body or organisation or association referred to in Article 73(2), the supervisory authority responsible for taking action on the complaint shall be that of the Member State in which the complaint is made.

Amendment 160

Proposal for a regulation

Article 51 – paragraph 2

Text proposed by the Commission

Amendment

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

2. In the context of the activities of a controller or a processor established in more than one Member State, the supervisory authority of ***the Member State where*** the main establishment ***is situated*** shall be competent for the supervision of the processing activities of the controller or processor, ***including the adoption of decisions under this Regulation,*** in all Member States.

The competent supervisory authority shall cooperate with the other supervisory authorities and with the Commission, pursuant to the provisions of Chapter VII of this Regulation.

In cases of disagreement based on the application of the Regulation, any supervisory authority can request the opinion of the European Data Protection Board.

Amendment 161
Proposal for a regulation

Article 52 – paragraph 1 – point d

Text proposed by the Commission

(d) conduct investigations either on its own initiative **or** on the basis of a complaint **or** on request of another supervisory authority, and inform the data subject concerned, if the data subject has addressed a complaint to this supervisory authority, of the outcome of the investigations within a reasonable period;

Amendment

(d) conduct investigations either on its own initiative, on the basis of a complaint, on request of another supervisory authority **or following a police complaint**, and inform the data subject concerned, if the data subject has addressed a complaint to this supervisory authority, of the outcome of the investigations within a reasonable period;

Justification

A complaint filed with the police should also constitute grounds for launching investigations when relevant information emerges during the course of police activities demonstrating that people's right to privacy may have been infringed.

Amendment 162
Proposal for a regulation

Article 52 – paragraph 1 – point j a (new)

Text proposed by the Commission

Amendment

(ja) coordinate certification policies in the territory for which it is responsible, in accordance with the provisions of Article 39.

Justification

In the light of our position's emphasis on the strengthening of certification policies, reference should be made to the scope of the powers of the supervisory authority/-ies in connection with those policies.

Amendment 163
Proposal for a regulation

Article 53 – paragraph 1 – point j b (new)

Text proposed by the Commission

Amendment

(jb) carry out personal data protection audits or audit plans.

Amendment 164
Proposal for a regulation

Article 54

Text proposed by the Commission

Amendment

Each supervisory authority must draw up an annual report on its activities. The report shall be presented to the ***national*** parliament and shall be made *be* available to the public, the Commission and the European Data Protection Board.

Each supervisory authority must draw up an annual report on its activities. The report shall be presented to the parliament ***concerned and/or the other authorities specified under national legislation*** and shall be made available to the public, the Commission and the European Data Protection Board.

Justification

The amendment has been tabled to ensure that countries which have more than one supervisory authority within their territory are covered by the proposal.

Amendment 165

Proposal for a regulation
Article 59 – paragraph 4

Text proposed by the Commission

Amendment

4. Where the supervisory authority concerned intends not to follow the opinion of the Commission, it shall inform the Commission and the European Data Protection Board thereof within the period referred to in paragraph 1 and provide a justification. ***In this case the draft measure shall not be adopted for one further month.***

4. Where the supervisory authority concerned intends not to follow the opinion of the Commission, it shall inform the Commission and the European Data Protection Board thereof within the period referred to in paragraph 1 and provide a justification.

Justification

This additional time period seems unreasonable.

Amendment 166

Proposal for a regulation Article 62 – paragraph 2

Text proposed by the Commission

Amendment

2. On duly justified imperative grounds of urgency relating to the interests of data subjects in the cases referred to in point (a) of paragraph 1, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 87(3). Those acts shall remain in force for a period not exceeding 12 months. **deleted**

Justification

This Commission prerogative would undermine the independence of the supervisory authorities.

Amendment 167

Proposal for a regulation

Article 66 – paragraph 1 – point g a (new)

Text proposed by the Commission

Amendment

(ga) propose the concepts on which European certification policy should be based, monitor and assess implementation, and submit its conclusions to the Commission.

Amendment 168

Proposal for a regulation

Article 69 – paragraph 1

Text proposed by the Commission

Amendment

1. The European Data Protection Board shall elect a chair and two deputy chairpersons from amongst its members.

1. The European Data Protection Board shall elect a chair and two deputy chairpersons from amongst its members.

One deputy chairperson shall be the European Data Protection Supervisor, unless he or she has been elected chair.

Justification

There is no legitimate reason why the EDPS should have more of a right than any other authority to hold permanently the position of deputy chair.

Amendment 169
Proposal for a regulation

Article 73 – paragraph 1

Text proposed by the Commission

1. Without prejudice to any other administrative or judicial remedy, every data subject shall have the right to lodge a complaint with ***a*** supervisory authority in ***any*** Member State if they consider that the processing of personal data relating to them does not comply with this Regulation.

Amendment

1. Without prejudice to any other administrative or judicial remedy, every data subject shall have the right to lodge a complaint with ***the*** supervisory authority in ***the Member State of his habitual residence or in the*** Member State ***where the data controller has its main establishment***; if they consider that the processing of personal data relating to them does not comply with this Regulation.

Amendment 170
Proposal for a regulation

Article 73 – paragraph 3

Text proposed by the Commission

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

Amendment

deleted

Amendment 171
Proposal for a regulation

Article 74 – paragraph 2

Text proposed by the Commission

Amendment

2. Each data subject shall have the right to a judicial remedy obliging the supervisory authority to act on a complaint in the absence of a decision necessary to protect their rights, or where the supervisory authority does not inform the data subject within three months on the progress or outcome of the complaint pursuant to point (b) of Article 52(1).

2. The claim shall be understood to have been rejected if, three months after the complaint was lodged by the subject, the supervisory authority has not informed the subject of the progress of the complaint. The claim shall also be understood to have been rejected if, six months after the complaint was lodged, the authority has not definitively resolved the complaint.

Justification

In the interests of legal certainty, a maximum period of six months should be established within which decisions on complaints have to be taken. A longer deadline could apply in exceptional cases. In any event, supervisory authorities should also be required to inform the data subject about the progress on his/her complaint within a maximum time period. If the authorities fail to do so, the claim should be understood to have been rejected.

Amendment 172

**Proposal for a regulation
Article 74 – paragraph 4**

Text proposed by the Commission

Amendment

4. A data subject which is concerned by a decision of a supervisory authority in another Member State than where the data subject has its habitual residence, may request the supervisory authority of the Member State where it has its habitual residence to bring proceedings on its behalf against the competent supervisory authority in the other Member State.

deleted

Justification

This opportunity would bring no added value for citizens and might jeopardise the cooperation of the supervisory authorities in the consistency mechanism.

Amendment 173

Proposal for a regulation

Article 75 – paragraph 3

Text proposed by the Commission

Amendment

3. Where proceedings are pending in the consistency mechanism referred to in Article 58, which concern the same measure, decision or practice, a court may suspend the proceedings brought before it, except where the urgency of the matter for the protection of the data subject's rights does not allow to wait for the outcome of the procedure in the consistency mechanism.

3. Where proceedings are pending in the consistency mechanism referred to in Article 58, which concern the same measure, decision or practice, a court may, ***at the request of any of the parties and after hearing all the parties***, suspend the proceedings brought before it, except where the urgency of the matter for the protection of the data subject's rights does not allow to wait for the outcome of the procedure in the consistency mechanism.

Justification

Proceedings should, in our opinion, only be suspended at the request of one of the parties and after hearing all the parties, this being the most appropriate course of action in cases of this nature.

Amendment 174
Proposal for a regulation

Article 76 – paragraph 1

Text proposed by the Commission

Amendment

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

deleted

Justification

There is no practical need for such a mechanism.

Amendment 175
Proposal for a regulation

Article 77 – paragraph 2

Text proposed by the Commission

Amendment

2. Where more than one controller or processor is involved in the processing,

2. Where more than one controller or processor is involved in the processing,

each controller or processor shall be jointly and severally liable for the entire amount of the damage.

each controller or processor shall be jointly and severally liable for the entire amount of the damage. ***In the event of joint and several liability, a processor which has made amends for damage done to the person concerned may appeal against the controller for reimbursement if it has acted in conformity with the legal act referred to in Article 26(2).***

Amendment 176
Proposal for a regulation

Article 79 – paragraph 1

Text proposed by the Commission

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

Amendment

1. ***The*** supervisory authority ***competent under Article 51(2)*** shall be empowered to impose administrative sanctions in accordance with this Article.

Amendment 177

Proposal for a regulation
Article 79 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The administrative sanction shall be in each individual case effective, proportionate and dissuasive. The amount of the administrative fine shall be fixed with due regard to ***among other things:***

(a) the nature, gravity, and duration of the breach,

- (b) the sensitivity of the data in issue,*
- (c) the intentional or negligent character of the infringement,*
- (d) the degree of cooperation or refusal or obstruction to cooperate with any enforcement process,*
- (e) the measures having been taken by the natural or legal person to ensure compliance with relevant obligations,*
- (f) the degree of harm or risk of harm created by the violation,*
- (g) the degree of responsibility of the natural or legal person and of previous breaches by this person,*
- (h) the technical and organisational measures and procedures implemented pursuant to Article 23 and the degree of cooperation with the supervisory authority in order to remedy the breach.*

(Part of paragraph 2 in the Commission text has become points (a), (c), (g) and (h) in Parliament's amendment)

Amendment 178

Proposal for a regulation Article 79 – paragraph 2 a

Text proposed by the Commission

Amendment

2a. The supervisory authority may give a written warning without imposing a sanction. The supervisory authority may impose a fine of up to EUR 1 000 000 for repeated, deliberate breaches or, in the case of a company, of up to 2 % of its annual worldwide turnover.

Justification

The maximum amount of the fine which can be imposed by a supervisory authority, which may be as much as EUR 1 million and, for companies, 2 % of their annual worldwide turnover, must be retained. However, the independence of supervisory authorities established by Article 8(3) of the Charter of Fundamental Rights of the European Union must be maintained. In addition, the consistency mechanism, and in particular Article 58(3) and (4), could contribute to a harmonised policy in the EU for administrative sanctions.

Amendment 179
Proposal for a regulation

Article 79 – paragraph 3 – points a and b

Text proposed by the Commission

- (a) a natural person is processing personal data without a commercial interest; or*
- (b) an enterprise or an organisation employing fewer than 250 persons is processing personal data only as an activity ancillary to its main activities.*

Amendment

- (a) an enterprise or an organisation employing fewer than 250 persons is willing to cooperate with the supervisory authority for the introduction of corrective measures designed to avoid similar cases of non-compliance in future. Cooperation in this area shall be governed by binding agreements with the supervisory authority. Failure to collaborate with the duly accredited supervisory authority within six months from the beginning of the proceedings shall incur the fine which would originally have been imposed.*
- (b) a public administration collaborates with a supervisory authority to establish ways of avoiding similar infringements in future. Collaboration in this area shall be determined on the basis of the agreements or decisions adopted by the administration concerned, which shall be referred to at the outset with regard to the measures taken. Failure to collaborate with the duly accredited supervisory authority within one year from the beginning of the proceedings shall incur the fine which would originally have been imposed.*
- For the purpose of this article, the record of previous unappealable sanctions for infringements through negligence shall be expunged within the following periods:*
- two years if the sanctions are accompanied by fines up to 250 000 EUR, or in case of an enterprise up to 0,5 % of its annual worldwide turnover; four years if the sanctions are accompanied by fines up to 500 000 EUR, or in case of an enterprise up to 1 % of its annual worldwide turnover; six years if the*

sanctions are accompanied by fines up to 1 000 000 EUR or, in case of an enterprise up to 2 % of its annual worldwide turnover.

For the purpose of this article, the record of previous unappealable sanctions for infringements committed through serious negligence or with intent shall be expunged within the following periods:

five years if the sanctions are accompanied by fines up to 250 000 EUR, or in case of an enterprise up to 0,5 % of its annual worldwide turnover; ten years if the sanctions are accompanied by fines up to 500 000 EUR, or in case of an enterprise up to 1 % of its annual worldwide turnover; fifteen years if the sanctions are accompanied by fines up to 1 000 000 EUR or, in case of an enterprise up to 2 % of its annual worldwide turnover.

(Part of point (b) in the Commission text has become part of point (a) in Parliament's amendment)

Justification

The objective is to introduce a wider range of alternative sanctions focusing on a strategy designed to prevent future infringements. Most of the alternative sanctions envisaged seek to establish agreement on ways of avoiding future infringements. The corrective measures are established on the basis of agreements with the supervisory authority or of acts or decisions adopted by the administration concerned.

Amendment 180

Proposal for a regulation Article 79 – paragraphs 4 to 7

Text proposed by the Commission

Amendment

4. The supervisory authority shall impose a fine up to 250.000 EUR or, in case of an enterprise up to 0,5 % of its annual worldwide turnover, to anyone who,

deleted

intentionally or negligently:

a) does not provide the mechanisms for requests by data subjects or does not respond promptly or not in the required format to data subjects pursuant to Articles 12(1) and (2);

b) charges a fee for the information or for responses to the requests of data subjects in violation of Article 12(4).

5. The supervisory authority shall impose a fine up to 500.000 EUR or, in case of an enterprise up to 1 % of its annual worldwide turnover, to anyone who, intentionally or negligently:

a) does not provide the information, or does provide incomplete information, or does not provide the information in a sufficiently transparent manner, to the data subject pursuant to Article 11, Article 12(3) and Article 14;

b) does not provide access for the data subject or does not rectify personal data pursuant to Articles 15 and 16 or does not communicate the relevant information to a recipient pursuant to Article 13;

c) does not comply with the right to be forgotten or to erasure, or fails to put mechanisms in place to ensure that the time limits are observed or does not take all necessary steps to inform third parties that a data subjects requests to erase any links to, or copy or replication of the personal data pursuant Article 17;

d) does not provide a copy of the personal data in electronic format or hinders the data subject to transmit the personal data to another application in violation of Article 18;

e) does not or not sufficiently determine the respective responsibilities with co-controllers pursuant to Article 24;

f) does not or not sufficiently maintain the documentation pursuant to Article 28, Article 31(4), and Article 44(3);

g) does not comply, in cases where special categories of data are not involved, pursuant to Articles 80, 82 and 83 with rules in relation to freedom of expression or with rules on the processing in the employment context or with the conditions for processing for historical, statistical and scientific research purposes.

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

a) processes personal data without any or sufficient legal basis for the processing or does not comply with the conditions for consent pursuant to Articles 6, 7 and 8;

b) processes special categories of data in violation of Articles 9 and 81;

c) does not comply with an objection or the requirement pursuant to Article 19;

d) does not comply with the conditions in relation to measures based on profiling pursuant to Article 20;

e) does not adopt internal policies or does not implement appropriate measures for ensuring and demonstrating compliance pursuant to Articles 22, 23 and 30;

f) does not designate a representative pursuant to Article 25;

g) processes or instructs the processing of personal data in violation of the obligations in relation to processing on behalf of a controller pursuant to Articles 26 and 27;

h) does not alert on or notify a personal data breach or does not timely or completely notify the data breach to the supervisory authority or to the data subject pursuant to Articles 31 and 32;

i) does not carry out a data protection impact assessment pursuant or processes personal data without prior authorisation or prior consultation of the supervisory

authority pursuant to Articles 33 and 34;

j) does not designate a data protection officer or does not ensure the conditions for fulfilling the tasks pursuant to Articles 35, 36 and 37;

k) misuses a data protection seal or mark in the meaning of Article 39;

l) carries out or instructs a data transfer to a third country or an international organisation that is not allowed by an adequacy decision or by appropriate safeguards or by a derogation pursuant to Articles 40 to 44;

m) does not comply with an order or a temporary or definite ban on processing or the suspension of data flows by the supervisory authority pursuant to Article 53(1);

n) does not comply with the obligations to assist or respond or provide relevant information to, or access to premises by, the supervisory authority pursuant to Article 28(3), Article 29, Article 34(6) and Article 53(2);

o) does not comply with the rules for safeguarding professional secrecy pursuant to Article 84.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of updating the amounts of the administrative fines referred to in paragraphs 4, 5 and 6, taking into account the criteria referred to in paragraph 2.

Amendment 181

Proposal for a regulation

Article 80 – paragraph 1

Text proposed by the Commission

1. Member States shall provide for exemptions or derogations from the provisions on the general principles in

Amendment

1. Chapter II (General principles), Chapter III (Rights of the data subject), Chapter IV (Controller and processor), Chapter V

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

(Transfer of personal data to third countries and international organisations), Chapter **VI**, (Independent supervisory authorities), Chapter **VII** (*Co-operation and consistency*) *as well as Articles 73, 74, 76 and 79 of Chapter VIII (Remedies, liability and sanctions)* *shall not apply to the* processing of personal data carried out for journalistic purposes or the purpose of artistic or literary expression in order to reconcile the right to the protection of personal data with the rules governing freedom of expression.

Justification

The new draft legislation on data protection takes the form of a regulation and thus is directly applicable. If data protection law applies directly, the freedom of the press exception must also be directly applicable. An implementation by Member States should not lower down the current level of protection. Furthermore, the exemption should be extended to Articles 73, 74, 76 and 79 of Chapter VIII (on Remedies, Liabilities and Sanctions) because these Articles include new elements which go far beyond what is foreseen in the current directive and are not suitable for journalistic activities or pose a serious threat to press freedom. The word "solely" undermines legal certainty as it provides for a potentially significant loophole which undermines the provision set by this article.

Amendment 182

Proposal for a regulation

Article 80 – paragraph 2

Text proposed by the Commission

Amendment

2. Each Member State shall notify to the Commission those provisions of its law which it has adopted pursuant to paragraph 1 by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment law or amendment affecting them.

deleted

Amendment 183

Proposal for a regulation

Article 80 a (new)

Text proposed by the Commission

Amendment

Article 80a

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

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

Justification

It is essential to ensure that public oversight of public affairs is not unduly hampered by data protection rules. As expressed in opinions by the EDPS, the Article 29 Working Party and the FRA, the principle of public access to official documents should therefore be guaranteed in an article and not merely in a recital.

Amendment 184

Proposal for a regulation

Article 81 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 87 for the purpose of further specifying other reasons of public interest in the area of public health as referred to in point (b) of paragraph 1, as well as criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1. ***deleted***

Justification

Our only current objection to this provision concerns the delegation of power to the Commission under paragraph 3. This, in our opinion, goes beyond acceptable limits for legislative delegation and the matters referred to should accordingly be dealt with in this

instrument, either now or in the form of subsequent amendments which may be necessary to ensure its future effectiveness.

Amendment 185
Proposal for a regulation

Article 82 – paragraph 3

Text proposed by the Commission

Amendment

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

Justification

The delegation of power to the Commission under paragraph 3 is excessive and the measures referred to should accordingly be taken under existing terms of reference.

Amendment 186
Proposal for a regulation

Article 83 – paragraph 1 – introductory wording

Text proposed by the Commission

Amendment

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

1. Within the limits of this Regulation, personal data may be processed for historical, statistical or scientific research purposes, **as well as for preliminary official or administrative investigations to determine natural filiation** only if:

Justification

In order to facilitate investigations to determine natural filiation following the theft or abduction of infants, we propose an addition to the first paragraph to clearly establish the legitimacy of the procedures followed for the purpose of such inquiries.

Amendment 187
Proposal for a regulation

Article 83 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

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

Amendment 188
Proposal for a regulation

Article 83 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Personal data processed as part of a preliminary official or administrative investigation for the determination of natural filiation shall only be disclosed to those concerned as and when appropriate and without prejudice to any statutory criminal proceedings.

Justification

In order to facilitate investigations to determine natural filiation following the theft or abduction of infants, this final paragraph should be added to the first section to ensure adequate protection of the confidentiality of personal data being used for the purposes of preliminary judicial or administrative investigations, so as to ensure that they are only disclosed as and when legally admissible.

Amendment 189
Proposal for a regulation

Article 83 – paragraph 2 – introductory wording

Text proposed by the Commission

Amendment

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

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

Amendment 190

Proposal for a regulation

Article 83 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Further processing of data for historical, statistical, aggregated or scientific research purposes shall not be considered as incompatible under point (b) of Article 5 provided that the processing

(a) is subject to the conditions and safeguards of this Article; and

(b) complies with all other relevant legislations.

Justification

The current proposal for Article 83 appears to allow processing of health data, in identifiable form, for research purposes without reference to consent. The only safeguards (that identifiable data must be kept separate and that researchers can use identifiable data only if research cannot be fulfilled by using non-identifiable data) significantly lowers the protection of health data. There is a risk that the current proposal will allow for researchers to use identifiable data without consent.

Amendment 191

Proposal for a regulation

Article 83 – paragraph 3

Text proposed by the Commission

Amendment

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

deleted

purposes referred to in paragraph 1 and 2 as well as any necessary limitations on the rights of information to and access by the data subject and detailing the conditions and safeguards for the rights of the data subject under these circumstances.

Amendment 192

Proposal for a regulation

Article 85 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Churches and religious associations which apply comprehensive rules in accordance with paragraph 1 shall provide for the establishment of an independent supervisory authority in accordance with Chapter VI of this Regulation ***or alternatively obtain the certification necessary for the procedures required under Article 39.***

Justification

As an alternative to the provision requiring an independent supervisory authority, a certification requirement might also be appropriate, particularly in respect of the less wealthy denominations.

Amendment 193

Proposal for a regulation

Article 86 – paragraph 2

Text proposed by the Commission

2. The ***delegation of*** power referred to in ***Article 6(5)***, Article 8(3), Article 9(3), ***Article 12(5)***, Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 22(4), Article 23(3), Article 26(5), Article 28(5), Article 30(3), Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11), Article 37(2), Article 39(2), Article 43(3), Article 44(7), ***Article 79(6)***, Article 81(3),

Amendment

2. The power ***to adopt delegated acts*** referred to in Article 8(3), Article 9(3), Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 22(4), Article 23(3), Article 26(5), Article 28(5), Article 30, Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11), Article 37(2), Article 39(2), Article 43(3), Article 44(7), Article 81(3), Article 82(3) and Article

Article 82(3) and Article 83(3) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

83(3) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

Amendment 194

Proposal for a regulation Article 86 – paragraph 3

Text proposed by the Commission

3. The delegation of power referred to in **Article 6(5)**, Article 8(3), Article 9(3), **Article 12(5)**, Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 22(4), Article 23(3), Article 26(5), Article 28(5), **Article 30(3)**, Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11), Article 37(2), Article 39(2), Article 43(3), Article 44(7), **Article 79(6)**, Article 81(3), Article 82(3) and Article 83(3) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Amendment

3. The delegation of power referred to in Article 8(3), Article 9(3), Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 22(4), Article 23(3), Article 26(5), Article 28(5), Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11), Article 37(2), Article 39(2), Article 43(3), Article 44(7), Article 81(3), Article 82(3) and Article 83(3) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Amendment 195

Proposal for a regulation Article 86 – paragraph 5

Text proposed by the Commission

5. A delegated act adopted pursuant to **Article 6(5)**, Article 8(3), Article 9(3), **Article 12(5)**, Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 22(4), Article 23(3), Article 26(5), Article 28(5), **Article 30(3)**, Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11),

Amendment

5. A delegated act adopted pursuant to Article 8(3), Article 9(3), Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 22(4), Article 23(3), Article 26(5), Article 28(5), Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11), Article 37(2), Article 39(2), Article 43(3),

Article 37(2), Article 39(2), Article 43(3), Article 44(7), **Article 79(6)**, Article 81(3), Article 82(3) and Article 83(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

Article 44(7), Article 81(3), Article 82(3) and Article 83(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

Amendment 196

Proposal for a regulation

Article 86 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. The Commission will promote technological neutrality on adoption of the acts referred to in this Article.

PROCEDURE

Title	Protection of individuals with regard to the processing of personal data, and the free movement of such data (General Data Protection Regulation)		
References	COM(2012)0011 – C7-0025/2012 – 2012/0011(COD)		
Committee responsible Date announced in plenary	LIBE 16.2.2012		
Opinion by Date announced in plenary	JURI 14.6.2012		
Rapporteur Date appointed	Marielle Gallo 14.6.2012		
Discussed in committee	10.7.2012	6.11.2012	21.2.2013
Date adopted	19.3.2013		
Result of final vote	+: 14 -: 6 0: 4		
Members present for the final vote	Raffaele Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Marielle Gallo, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Klaus-Heiner Lehne, Jiří Maštálka, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Rebecca Taylor, Alexandra Thein, Rainer Wieland, Cecilia Wikström, Zbigniew Ziobro, Tadeusz Zwiefka		
Substitute(s) present for the final vote	Piotr Borys, Eva Lichtenberger, Axel Voss		
Substitute(s) under Rule 187(2) present for the final vote	Ricardo Cortés Lastra		