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*****I**

REPORT

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

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Dimitrios Droutsas

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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

(COM(2012)0010 – C7-0024/2012 – 2012/0010(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0010),
 - having regard to Article 294(2) and Article 16(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0024/2012),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the German Bundesrat and the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to the opinion of the European Data Protection Supervisor of 7 March 2012,
 - having regard to the opinion of the European Union Agency for Fundamental Rights of 1 October 2012,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Legal Affairs (A7-0403/2013),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive

Recital 1

Text proposed by the Commission

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

Amendment

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

Amendment 2

Proposal for a directive

Recital 4

Text proposed by the Commission

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

Amendment

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

Amendment 3

Proposal for a directive

Recital 7

Text proposed by the Commission

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

Amendment

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

Amendment 4

Proposal for a directive

Recital 8

Text proposed by the Commission

(8) Article 16(2) of the Treaty on the Functioning of the European Union provides that the European Parliament and

Amendment

(8) Article 16(2) of the Treaty on the Functioning of the European Union provides that the European Parliament and

the Council should lay down the rules relating to the protection of individuals with regard to the processing of personal data and the rules relating to the free movement of personal data.

the Council should lay down the rules relating to the protection of individuals with regard to the processing of personal data and the rules relating to the free movement of ***their*** personal data ***and privacy***.

Amendment 5

Proposal for a directive Recital 11

Text proposed by the Commission

(11) Therefore a ***distinct*** Directive should meet the specific nature of these fields and lay down the rules relating to the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties.

Amendment

(11) Therefore a ***specific*** Directive should meet the specific nature of these fields and lay down the rules relating to the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties.

Amendment 6

Proposal for a directive Recital 15

Text proposed by the Commission

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

Amendment

(15) The protection of individuals should be technological neutral and not depend on the techniques used; otherwise this would create a serious risk of circumvention. The protection of individuals should apply to processing of personal data by automated means, as well as to manual processing if the data are contained or are intended to be contained in a filing system. Files or sets of files as well as their cover pages, which are not structured according to specific criteria, should not fall within the scope of this Directive. This Directive should not apply to the processing of personal data in the course of an activity which falls outside the scope of Union law. ***Regulation (EC) No***

concerning national security, or to data processed by the Union institutions, bodies, offices and agencies, such as Europol or Eurojust.

45/2001 of the European Parliament and of the Council¹ and specific legal instruments applicable to Union agencies, bodies or offices should be brought in line with this Directive and applied in accordance with this Directive.

¹ *Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).*

Amendment 7

Proposal for a directive Recital 16

Text proposed by the Commission

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

Amendment

(16) The principles of protection should apply to any information concerning an identified or identifiable natural person. To determine whether a natural person is identifiable, account should be taken of all the means likely reasonably to be used either by the controller or by any other person to identify **or single out** the individual. The principles of data protection should not apply to data rendered anonymous in such a way that the data subject is no longer identifiable. ***This Directive should not apply to anonymous data, meaning any data that can not be related, directly or indirectly, alone or in combination with associated data, to a natural person. Given the importance of the developments under way in the framework of the information society, of the techniques used to capture, transmit, manipulate, record, store or communicate location data relating to natural persons, which may be used for different purposes including surveillance or creating***

profiles, this Directive should be applicable to processing involving such personal data.

Amendment 8

Proposal for a directive Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) Any processing of personal data must be lawful, fair and transparent in relation to the individuals concerned. In particular, the specific purposes for which the data are processed should be explicit and legitimate and determined at the time of the collection of the personal data. The personal data should be adequate, relevant and limited to the minimum necessary for the purposes for which the personal data are processed. This requires in particular limiting the data collected and the period for which the data are stored to a strict minimum. Personal data should only be processed if the purpose of the processing could not be fulfilled by other means. Every reasonable step should be taken to ensure that personal data which are inaccurate should be rectified or deleted. In order to ensure that the data are kept no longer than necessary, time limits should be established by the controller for erasure or periodic review.

Amendment 9

Proposal for a directive Recital 18

Text proposed by the Commission

Amendment

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

deleted

processed should be explicit.

Amendment 10

Proposal for a directive Recital 19

Text proposed by the Commission

Amendment

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

Amendment 11

Proposal for a directive Recital 20

Text proposed by the Commission

Amendment

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

Amendment 12

Proposal for a directive Recital 20 a (new)

Text proposed by the Commission

Amendment

(20a) The simple fact that two purposes both relate to the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties does not necessarily mean that they are compatible. However, there are cases in which further processing for incompatible purposes should be possible if necessary to comply with a legal obligation to which the controller is subject, in order to protect the vital interests of the data subject or another person, or for the prevention of an immediate and serious threat to public security. Member States should therefore be able to adopt national laws providing for such derogations to the extent strictly necessary. Such national laws should contain adequate safeguards.

Amendment 13

Proposal for a directive Recital 22

Text proposed by the Commission

Amendment

(22) In the interpretation and application of the general principles relating to personal data processing by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, account should be taken of the specificities of the sector, including the specific objectives pursued.

deleted

Amendment 14

Proposal for a directive Recital 23

Text proposed by the Commission

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

Amendment

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

Amendment 15

Proposal for a directive Recital 25

Text proposed by the Commission

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

Amendment

(25) In order to be lawful, the processing of personal data should be ***only allowed when*** necessary for compliance with a legal obligation to which the controller is subject, for the performance of a task carried out in the public interest by a competent authority based on ***Union or Member State law which should contain explicit and detailed provisions at least as to the objectives, the personal data, the specific purposes and means, designate or***

allow to designate the controller, the procedures to be followed, the use and limitations of the scope of any discretion conferred to the competent authorities in relation to the processing activities.

Amendment 16

Proposal for a directive Recital 25 a (new)

Text proposed by the Commission

Amendment

(25a) Personal data should not be processed for purposes incompatible with the purpose for which it was collected. Further processing by competent authorities for a purpose falling within the scope of this Directive which is not compatible with the initial purpose should only be authorised in specific cases where such processing is necessary for compliance with a legal obligation, based on Union or national law, to which the controller is subject, or in order to protect the vital interests of the data subject or of another person or for the prevention of an immediate and serious threat to public security. The fact that data are processed for a law enforcement purpose does not necessarily imply that this purpose is compatible with the initial purpose. The concept of compatible use is to be interpreted restrictively.

Amendment 17

Proposal for a directive Recital 25 b (new)

Text proposed by the Commission

Amendment

(25b) Personal data processed in breach of the national provisions adopted pursuant to this Directive should not be longer processed.

Amendment 18

Proposal for a directive

Recital 26

Text proposed by the Commission

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

Amendment

(26) Personal data which are, by their nature, particularly sensitive ***and vulnerable*** in relation to fundamental rights or privacy deserve specific protection. Such data should not be processed, unless processing is specifically ***necessary for the performance of a task carried out in the public interest, on the basis of Union or national law*** which provides for suitable measures to safeguard the data subject's ***fundamental rights and*** legitimate interests; or processing is necessary to protect the vital interests of the data subject or of another person; or the processing relates to data which are manifestly made public by the data subject. ***Sensitive personal data should be processed only if they supplement other personal data already processed for law enforcement purposes. Any derogation to the prohibition of processing of sensitive data should be interpreted restrictively and not lead to frequent, massive or structural processing of sensitive personal data.***

Amendment 19

Proposal for a directive

Recital 26 a (new)

Text proposed by the Commission

Amendment

(26a) The processing of genetic data should only be allowed if there is a genetic link which appears in the course of a criminal investigation or a judicial procedure. Genetic data should only be stored as long as strictly necessary for the

purpose of such investigations and procedures, while Member States can provide for longer storage under the conditions set out in this Directive.

Amendment 20

Proposal for a directive

Recital 27

Text proposed by the Commission

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

Amendment

(27) Every natural person should have the right not to be subject to a measure which is based on *partially or fully profiling by means of* automated processing. *Such processing which* produces *a* legal effect for that person, *or significantly affects them should be prohibited*, unless authorised by law and subject to suitable measures to safeguard the data subject's *fundamental rights and* legitimate interests, *including the right to be provided with meaningful information about the logic used in the profiling. Such processing should in no circumstances contain, generate, or discriminate based on special categories of data.*

Amendment 21

Proposal for a directive

Recital 28

Text proposed by the Commission

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

Amendment

(28) In order to exercise their rights, any information to the data subject should be easily accessible and easy to understand, including the use of clear and plain language. *This information should be adapted to the needs of the data subject in particular when information is addressed specifically to a child.*

Amendment 22

Proposal for a directive Recital 29

Text proposed by the Commission

(29) Modalities should be provided for facilitating the data subject's exercise of their rights under this Directive, including mechanisms to request, free of charge, in particular access to data, rectification and erasure. The controller should be obliged to respond to requests of the data subject without **undue** delay.

Amendment

(29) Modalities should be provided for facilitating the data subject's exercise of their rights under this Directive, including mechanisms to request, free of charge, in particular access to data, rectification and erasure. The controller should be obliged to respond to requests of the data subject without delay **and within one month of receipt of the request. Where personal data are processed by automated means the controller should provide means for requests to be made electronically.**

Amendment 23

Proposal for a directive Recital 30

Text proposed by the Commission

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

Amendment

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

Amendment 24

Proposal for a directive Recital 32

Text proposed by the Commission

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

Amendment

(32) Any person should have the right of access to data which has been collected concerning them, and to exercise this right easily, in order to be aware of and verify the lawfulness of the processing. Every data subject should therefore have the right to know about and obtain communication in particular of the purposes for which the data are processed, ***the legal basis***, for what period, which recipients receive the data, including in third countries, ***the intelligible information about the logic involved in any automated processing and its significant and envisaged consequences if applicable, and the right to lodge a complaint to the supervisory authority and its contact details***. Data subjects should be allowed to receive a copy of their personal data which are being processed.

Amendment 25

Proposal for a directive Recital 33

Text proposed by the Commission

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

Amendment

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

prosecution of criminal offences or for the execution of criminal penalties, to protect public security or national security, or, to protect the data subject or the rights and freedoms of others.

investigation and prosecution of criminal offences or for the execution of criminal penalties, to protect public security or national security, or, to protect the data subject or the rights and freedoms of others. ***The controller should assess by way of concrete and individual examination of each case if partial or complete restriction of the right of access should apply.***

Amendment 26

Proposal for a directive Recital 34 a (new)

Text proposed by the Commission

Amendment

(34a) Any restriction of the data subject's rights must be in compliance with the Charter of Fundamental Rights of the European Union and with the European Convention on Human Rights, as clarified by the case law of the Court of Justice of the European Union and the European Court of Human Rights, and in particular respect the essence of the rights and freedoms.

Amendment 27

Proposal for a directive Recital 35

Text proposed by the Commission

Amendment

(35) Where Member States have adopted legislative measures restricting wholly or partly the right to access, the data subject should have the right to request that the competent national supervisory authority checks the lawfulness of the processing. The data subject should be informed of this right. When access is exercised by the supervisory authority on behalf of the data subject, the data subject should be informed by the supervisory authority at

(35) Where Member States have adopted legislative measures restricting wholly or partly the right to access, the data subject should have the right to request that the competent national supervisory authority checks the lawfulness of the processing. The data subject should be informed of this right. When access is exercised by the supervisory authority on behalf of the data subject, the data subject should be informed by the supervisory authority at

least that all necessary verifications by the supervisory authority have taken place and of the result as regards to the lawfulness of the processing in question.

least that all necessary verifications by the supervisory authority have taken place and of the result as regards to the lawfulness of the processing in question. ***The supervisory authority should also inform the data subject of the right to seek a judicial remedy.***

Amendment 28

Proposal for a directive Recital 36

Text proposed by the Commission

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

Amendment

(36) Any person should have the right to have inaccurate ***or unlawfully processed*** personal data concerning them rectified and the right of erasure where the processing of such data is not in compliance with the ***provisions*** laid down in this Directive. ***Such rectification, completion or erasure should be communicated to recipients to whom the data has been disclosed and to the third parties from which the inaccurate data originated. The controllers should also abstain from further dissemination of such data.*** Where the personal data are processed in the course of a criminal investigation and proceedings, rectification, the rights of information, access, erasure and restriction of processing may be carried out in accordance with national rules on judicial proceedings.

Amendment 29

Proposal for a directive Recital 37

Text proposed by the Commission

(37) Comprehensive responsibility and liability of the controller for any processing of personal data carried out by the

Amendment

(37) 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 *the* compliance of processing *operations* with the rules adopted pursuant to this Directive.

controller or on the controller's behalf should be established. In particular, the controller should ensure *and be obliged to be able to demonstrate* compliance of *each* processing *operation* with the rules adopted pursuant to this Directive.

Amendment 30

Proposal for a directive Recital 39

Text proposed by the Commission

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

Amendment

(39) The protection of the rights and freedoms of data subjects as well as the responsibility and liability of controllers and processors requires a clear attribution of the responsibilities under this Directive, including where a controller determines the purposes, conditions and means of the processing jointly with other controllers or where a processing operation is carried out on behalf of a controller. *The data subject should have the right to exercise his or her rights under this Directive in respect of and against each of the joint controllers.*

Amendment 31

Proposal for a directive Recital 40 a (new)

Text proposed by the Commission

Amendment

(40a) Every processing operation of personal data should be recorded in order to enable the verification of the lawfulness of the data processing, self-monitoring and ensuring proper data integrity and security. This record should be made available upon request to the supervisory authority for the purpose of monitoring compliance with the rules laid down in this Directive.

Amendment 32

Proposal for a directive Recital 40 b (new)

Text proposed by the Commission

Amendment

(40b) A data protection impact assessment should be carried out by the controller or processor, where the processing operations are likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, which should include in particular the envisaged measures, safeguards and mechanisms to ensure the protection of personal data and for demonstrating compliance with this Directive. Impact assessments should concern relevant systems and processes of personal data processing operations, but not individual cases.

Amendment 33

Proposal for a directive Recital 41

Text proposed by the Commission

Amendment

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

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

in the course of the preparation either of a measure of the national parliament or of a measure based on such legislative measure which defines the nature of the processing and lays down appropriate safeguards.

Amendment 34

Proposal for a directive Recital 41 a (new)

Text proposed by the Commission

Amendment

(41a) In order to maintain security and to prevent processing in breach of this Directive, the controller or processor should evaluate the risks inherent to the processing and implement measures to mitigate those risks. These measures should ensure an appropriate level of security, taking into account the state of the art and the costs of their implementation in relation to the risks and the nature of the personal data to be protected. When establishing technical standards and organisational measures to ensure security of processing, technological neutrality should be promoted.

Amendment 35

Proposal for a directive Recital 42

Text proposed by the Commission

Amendment

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

(42) A personal data breach may, if not addressed in an adequate and timely manner, result in **a 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, it should notify the breach to the competent national authority. The

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

individuals whose personal data or privacy could be adversely affected by the breach should be notified without delay in order to allow them to take the necessary precautions. A breach should be considered as adversely affecting the personal data or privacy of an individual where it could result in, for example, identity theft or fraud, physical harm, significant humiliation or damage to reputation in connection with the processing of personal data. ***The notification should include information about measures taken by the provider to address the breach, as well as recommendations for the subscriber or individual concerned. Notifications to data subject should be made as soon as feasible and in close cooperation with the supervisory authority and respecting guidance provided by it.***

Amendment 36

Proposal for a directive Recital 44

Text proposed by the Commission

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

Amendment

(44) The controller or the processor should designate a person who would assist the controller or processor to monitor ***and demonstrate*** compliance with the provisions adopted pursuant to this Directive. ***Where several competent authorities are acting under the supervision of a central authority, at least this central authority should designate such data protection officer.*** The data protection officers must be in a position to perform their duties and tasks independently and effectively, ***in particular by establishing rules that avoid conflict of interest with other tasks performed by the data protection officer.***

Amendment 37

Proposal for a directive Recital 45

Text proposed by the Commission

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

Amendment

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

Amendment 38

Proposal for a directive Recital 45 a (new)

Text proposed by the Commission

Amendment

(45a) Further onward transfers from competent authorities in third countries or international organisations to which personal data have been transferred should only be allowed if the onward transfer is necessary for the same specific purpose as the original transfer and the second recipient is also a competent public authority. Further onward transfers should not be allowed for general law-enforcement purposes. The

competent authority that carried out the original transfer should have agreed to the onward transfer.

Amendment 39

Proposal for a directive Recital 48

Text proposed by the Commission

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

Amendment

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

Amendment 40

Proposal for a directive Recital 49

Text proposed by the Commission

(49) Transfers not based on such an adequacy decision should only be allowed where appropriate safeguards have been adduced in a legally binding instrument, which ensure the protection of the personal data ***or where the controller or processor has assessed all the circumstances surrounding the data transfer operation***

Amendment

(49) Transfers not based on such an adequacy decision should only be allowed where appropriate safeguards have been adduced in a legally binding instrument, which ensure the protection of the personal data.

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

Amendment 41

Proposal for a directive Recital 49 a (new)

Text proposed by the Commission

Amendment

(49a) In cases where no grounds for allowing a transfer exist, derogations should be allowed if necessary in order to protect the vital interests of the data subject or another person, or to safeguard legitimate interests of the data subject where the law of the Member State transferring the personal data so provides, or where it is essential for the prevention of an immediate and serious threat to the public security of a Member State or a third country, or in individual cases for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, or in individual cases for the establishment, exercise or defence of legal claims. These derogations should be

interpreted restrictively and should not allow frequent, massive and structural transfer of personal data and should not allow wholesale transfer of data which should be limited to data strictly necessary. Moreover, the decision for transfer should be made by a duly authorised person and this transfer must be documented and should be made available to the supervisory authority on request in order to monitor the lawfulness of the transfer.

(Part of Recital 49 in the Commission proposal has become Recital 49a in Parliament's amendment)

Amendment 42

Proposal for a directive Recital 51

Text proposed by the Commission

(51) The establishment of supervisory authorities in Member States, exercising their functions with complete independence, is an essential component of the protection of individuals with regard to the processing of their personal data. The supervisory authorities should monitor the application of the provisions pursuant to this Directive and contribute to its consistent application throughout the Union, in order to protect natural persons in relation to the processing of their personal data. For that purpose, the supervisory authorities should co-operate with each other *and the Commission*.

Amendment

(51) The establishment of supervisory authorities in Member States, exercising their functions with complete independence, is an essential component of the protection of individuals with regard to the processing of their personal data. The supervisory authorities should monitor the application of the provisions pursuant to this Directive and contribute to its consistent application throughout the Union, in order to protect natural persons in relation to the processing of their personal data. For that purpose, the supervisory authorities should co-operate with each other.

Amendment 43

Proposal for a directive Recital 53

Text proposed by the Commission

(53) Member States should be allowed to

Amendment

(53) Member States should be allowed to

establish more than one supervisory authority to reflect their constitutional, organisational and administrative structure. Each supervisory authority should be provided with adequate financial and human resources, premises and infrastructure, which are necessary for the effective performance of their tasks, including for the tasks related to mutual assistance and co-operation with other supervisory authorities throughout the Union.

establish more than one supervisory authority to reflect their constitutional, organisational and administrative structure. Each supervisory authority should be provided with adequate financial and human resources, premises and infrastructure, ***including technical capabilities, experience and skills***, which are necessary for the effective performance of their tasks, including for the tasks related to mutual assistance and cooperation with other supervisory authorities throughout the Union.

Amendment 44

Proposal for a directive Recital 54

Text proposed by the Commission

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

Amendment

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

Amendment 45

Proposal for a directive Recital 56

Text proposed by the Commission

(56) In order to ensure consistent monitoring and enforcement of this Directive throughout the Union, the supervisory authorities should have the same duties and effective powers in each Member State, including powers of investigation, legally binding intervention,

Amendment

(56) In order to ensure consistent monitoring and enforcement of this Directive throughout the Union, the supervisory authorities should have the same duties and effective powers in each Member State, including ***effective*** powers of investigation, ***power to access all***

decisions and sanctions, particularly in cases of complaints from individuals, and to engage in legal proceedings.

personal data and all information necessary for the performance of each supervisory function, power to access any of the premises of the data controller or the processor including data processing requirements, and legally binding intervention, decisions and sanctions, particularly in cases of complaints from individuals, and to engage in legal proceedings.

Amendment 46

Proposal for a directive Recital 58

Text proposed by the Commission

(58) The supervisory authorities should assist one another in performing their duties and provide mutual assistance, so as to ensure the consistent application and enforcement of the provisions adopted pursuant to this Directive.

Amendment

(58) The supervisory authorities should assist one another in performing their duties and provide mutual assistance, so as to ensure the consistent application and enforcement of the provisions adopted pursuant to this Directive. *Each supervisory authority should be ready to participate in joint operations. The requested supervisory authority should be obliged to respond in a defined time period to the request.*

Amendment 47

Proposal for a directive Recital 59

Text proposed by the Commission

(59) The European Data Protection Board established by Regulation (EU).../2012 should contribute to the consistent application of this Directive throughout the Union, including advising the **Commission** and promoting the co-operation of the supervisory authorities throughout the Union.

Amendment

(59) The European Data Protection Board established by Regulation (EU).../2013 should contribute to the consistent application of this Directive throughout the Union, including advising the **Union institutions**, promoting the co-operation of the supervisory authorities throughout the Union, *and give its opinion to the Commission in the preparation of delegated and implementing acts based on*

this Directive.

Amendment 48

Proposal for a directive Recital 61

Text proposed by the Commission

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

Amendment

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

Amendment 49

Proposal for a directive Recital 64

Text proposed by the Commission

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

Amendment

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

Amendment 50

Proposal for a directive

Recital 65 a (new)

Text proposed by the Commission

Amendment

(65a) Transmission of personal data to other authorities or private parties in the Union is prohibited unless the transmission is in compliance with law, and the recipient is established in a Member State, and no legitimate specific interests of the data subject prevent transmission, and the transmission is necessary in a specific case for the controller transmitting the data for either the performance of a task lawfully assigned to it, or the prevention of an immediate and serious danger to public security, or the prevention of serious harm to the rights of individuals. The controller should inform the recipient of the purpose of the processing and the supervisory authority of the transmission. The recipient should also be informed of processing restrictions and ensure that they are met.

Amendment 51

Proposal for a directive

Recital 66

Text proposed by the Commission

Amendment

(66) In order to fulfil the objectives of this Directive, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free exchange of personal data by competent authorities within the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. In particular, delegated acts should be

(66) In order to fulfil the objectives of this Directive, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free exchange of personal data by competent authorities within the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. In particular, delegated acts should be

adopted *in respect of notifications of a personal data breach to the supervisory authority*. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

adopted *to further specify the criteria and conditions for reprocessing operations requiring a data protection impact assessment; the criteria and requirements of a data breach and as regards 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*. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, *in particular with the European Data Protection Board*. 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 *to the* Council.

Amendment 52

Proposal for a directive Recital 67

Text proposed by the Commission

(67) In order to ensure uniform conditions for the implementation of this Directive as regards *documentation by controllers and processors*, security of processing, notably in relation to encryption standards, notification of a personal data breach to the supervisory authority, *and the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an international organisation*, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council *of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of*

Amendment

(67) In order to ensure uniform conditions for the implementation of this Directive as regards security of processing, notably in relation to encryption standards *and* notification of a personal data breach to the supervisory authority, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council³⁷.

*implementing powers*³⁷.

³⁷ OJ L 55, 28.2.2011, p. 13.

³⁷ *Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers* (OJ L 55, 28.2.2011, p. 13).

Amendment 53

Proposal for a directive Recital 68

Text proposed by the Commission

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

Amendment

(68) The examination procedure should be used for the adoption of measures as regards security of processing ***and*** notification of a personal data breach to the supervisory authority, given that those acts are of general scope.

Amendment 54

Proposal for a directive Recital 69

Text proposed by the Commission

(69) ***The Commission should adopt immediately applicable implementing acts where, in duly justified cases relating to a third country or a territory or a processing sector within that third country or an international organisation which does not ensure an adequate level of protection, imperative grounds of urgency so require.***

Amendment

deleted

Amendment 55

Proposal for a directive

Recital 70

Text proposed by the Commission

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

Amendment

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

Amendment 56

Proposal for a directive

Recital 72

Text proposed by the Commission

(72) Specific provisions with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties in acts of the Union which were adopted prior to the date of the adoption of this Directive, regulating the processing of personal data between Member States or the access of designated authorities of Member States to

Amendment

(72) Specific provisions with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties in acts of the Union which were adopted prior to the date of the adoption of this Directive, regulating the processing of personal data between Member States or the access of designated authorities of Member States to

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

information systems established pursuant to the Treaties, should remain unaffected. ***Since Article 8 of the Charter of Fundamental Rights and Article 16 TFEU imply that the fundamental right to the protection of personal data should be ensured in a consistent and homogeneous manner through the Union,*** the Commission should, ***within two years after the entry into force of this Directive,*** evaluate the situation with regard to the relation between this Directive and the acts adopted prior to the date of adoption of this Directive regulating the processing of personal data between Member States or the access of designated authorities of Member States to information systems established pursuant to the Treaties, ***and should present appropriate proposals with a view to ensuring consistent and homogeneous legal rules relating to the processing of personal data by competent authorities or the access of designated authorities of Member States to information systems established pursuant to the Treaties as well as the processing of personal data by Union institutions, bodies, offices and agencies for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties within the scope of this*** Directive.

Amendment 57

Proposal for a directive Recital 73

Text proposed by the Commission

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

Amendment

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

amended in line with this Directive.

this Directive.

Amendment 58

Proposal for a directive Recital 76

Text proposed by the Commission

(76) In accordance with Articles 2 and 2a of the Protocol on the position of Denmark, as annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not bound by this Directive or subject to its application. ***Given that this Directive builds upon the Schengen acquis, under Title V of Part Three of the Treaty on the Functioning of the European Union, Denmark shall, in accordance with Article 4 of that Protocol, decide within six months after adoption of this Directive whether it will implement it in its national law.***

Amendment

(76) In accordance with Articles 2 and 2a of the Protocol on the position of Denmark, as annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not bound by this Directive or subject to its application.

Amendment 59

Proposal for a directive Article 1

Text proposed by the Commission

Subject matter and objectives

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

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

Amendment

Subject matter and objectives

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

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

- (a) protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data; and
- (b) ensure that the exchange of personal data by competent authorities within the Union is neither restricted nor prohibited for reasons connected with the protection of individuals with regard to the processing of personal data.

- (a) protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of ***their*** personal data ***and privacy***; and
- (b) ensure that the exchange of personal data by competent authorities within the Union is neither restricted nor prohibited for reasons connected with the protection of individuals with regard to the processing of personal data.

2a. This Directive shall not preclude Member States from providing higher safeguards than those established in this Directive.

Amendment 60

Proposal for a directive Article 2

Text proposed by the Commission

Scope

1. This Directive applies to the processing of personal data by competent authorities for the purposes referred to in Article 1(1).
2. This Directive applies to the processing of personal data wholly or partly by automated means, and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.
3. This Directive shall not apply to the processing of personal data:
 - (a) in the course of an activity which falls outside the scope of Union law, ***in particular concerning national security***;
 - (b) by the Union institutions, bodies, offices and agencies.***

Amendment

Scope

1. This Directive applies to the processing of personal data by competent authorities for the purposes referred to in Article 1(1).
2. This Directive applies to the processing of personal data wholly or partly by automated means, and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.
3. This Directive shall not apply to the processing of personal data
 - in the course of an activity which falls outside the scope of Union law.

Amendment 61

Proposal for a directive Article 3

Definitions

For the purposes of this Directive:

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

(2) 'personal data' means any information relating to **a** data subject;

(3) 'processing' means any operation or set of operations which is performed upon personal data or sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

Definitions

For the purposes of this Directive:

(2) 'personal data' means any information relating to **an identified or identifiable natural person ('data subject');** **an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, unique identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social or gender identity of that person;**

(2a) 'pseudonymous data' means personal data that cannot be attributed to a specific data subject without the use of additional information, as long as such additional information is kept separately and subject to technical and organisational measures to ensure non-attribution;

(3) 'processing' means any operation or set of operations which is performed upon personal data or sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

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

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

(5) 'filing system' means any structured set of personal data which are accessible according to specific criteria, whether centralized, decentralized or dispersed on a functional or geographical basis;

(6) 'controller' means the competent public authority 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;

(7) 'processor' means a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller;

(8) 'recipient' means a natural or legal person, public authority, agency or any other body to which the personal data are disclosed;

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

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

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

(5) 'filing system' means any structured set of personal data which are accessible according to specific criteria, whether centralized, decentralized or dispersed on a functional or geographical basis;

(6) 'controller' means the competent public authority which alone or jointly with others determines the purposes and means of the processing of personal data; where the purposes 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;

(7) 'processor' means a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller;

(8) 'recipient' means a natural or legal person, public authority, agency or any other body to which the personal data are disclosed;

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

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

development;

(11) 'biometric data' means any data relating to the physical, physiological or behavioural characteristics of an individual which allow their unique identification, such as facial images, or dactyloscopic data;

(12) 'data concerning health' means any **information** which relates to the physical or mental health of an individual, or to the provision of health services to the individual;

(13) 'child' means any person below the age of 18 years;

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

(15) 'supervisory authority' means a public authority which is established by a Member State in accordance with Article 39.

development;

(11) 'biometric data' means any **personal** data relating to the physical, physiological or behavioural characteristics of an individual which allow their unique identification, such as facial images, or dactyloscopic data;

(12) 'data concerning health' means any **personal data** which relates to the physical or mental health of an individual, or to the provision of health services to the individual;

(13) 'child' means any person below the age of 18 years;

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

(15) 'supervisory authority' means a public authority which is established by a Member State in accordance with Article 39.

Amendment 62

Proposal for a directive Article 4

Text proposed by the Commission

Principles relating to personal data processing

Member States shall provide that personal data must be:

(a) processed ***fairly and*** lawfully;

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

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

Amendment

Principles relating to personal data processing

Member States shall provide that personal data must be:

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

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

(c) adequate, relevant, and ***limited to the minimum necessary*** in relation to the

processed;

(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;

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

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

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;***

(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;

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

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

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

(fb) processed in a way that protects against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures;

(fc) processed by only those duly authorised staff of the competent authorities who need them for the performance of their tasks.

Amendment 63

Proposal for a directive Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4a

Access to data initially processed for purposes other than those referred to in Article 1(1)

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

(a) access is allowed only by duly authorised staff of the competent authorities in the performance of their tasks where, in a specific case, reasonable grounds give reason to believe that the processing of the personal data will substantially contribute to the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties;

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

(c) the written request must be documented; and

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

2. Personal data held by private parties or other public authorities shall only be accessed to investigate or prosecute criminal offences in accordance with necessity and proportionality requirements to be defined by Union law by each Member State in its national law, in full compliance with Article 7a.

Amendment 64

Proposal for a directive

Article 4 b (new)

Text proposed by the Commission

Amendment

Article 4b

Time limits of storage and review

1. Member States shall provide that personal data processed pursuant to this Directive shall be deleted by the competent authorities where they are no longer necessary for the purposes for which they were processed.

2. Member States shall provide that the competent authorities put mechanisms in place to ensure that time-limits, pursuant to Article 4, are established for the erasure of personal data and for a periodic review of the need for the storage of the data, including fixing storage periods for the different categories of personal data. Procedural measures shall be established to ensure that those time-limits or the periodic review intervals are observed.

Amendment 65

Proposal for a directive

Article 5

Text proposed by the Commission

Amendment

Distinction between different categories of data subjects

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

(a) persons with regard to whom there are ***serious*** grounds for believing that they

Different categories of data subjects

1. Member States shall provide that ***the competent authorities, for the purposes referred to in Article 1(1), may process personal data of the following different categories of data subjects, and the controller shall make*** a clear distinction between ***such categories:***

(a) persons with regard to whom there are ***reasonable*** grounds for believing that they

have committed or are about to commit a criminal offence;

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

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

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

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

have committed or are about to commit a criminal offence;

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

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

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

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

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

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

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

Amendment 66

Proposal for a directive

Article 6

Text proposed by the Commission

Different degrees of accuracy and reliability of personal data

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

Amendment

Different degrees of accuracy and reliability of personal data

1. Member States shall ***provide*** that ***accuracy and reliability*** of personal data undergoing processing are ***ensured***.
2. Member States shall ensure that personal data based on facts are distinguished from personal data based on personal assessments, ***in accordance with their degree of accuracy and reliability***.
 - 2a. ***Member States shall ensure that personal data which are inaccurate, incomplete or no longer up to date are not transmitted or made available. To this end, the competent authorities shall assess the quality of personal data before they are transmitted or made available. As far as possible, in all transmissions of data, available information shall be added which enables the receiving Member State to assess the degree of accuracy, completeness, up-to-dateness and reliability. Personal data shall not be transmitted without request from a competent authority, in particular data originally held by private parties.***
 - 2b. ***If it emerges that incorrect data have been transmitted or data have been transmitted unlawfully, the recipient must be notified without delay. The recipient shall be obliged to rectify the data without delay in accordance with paragraph 1 and Article 15 or to erase them in accordance with Article 16.***

Amendment 67

Proposal for a directive

Article 7

Text proposed by the Commission

Lawfulness of processing

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

- (a) for the performance of a task carried out by a competent authority, ***based on law for the purposes set out in Article 1(1)***; or
- (b) for compliance with a legal obligation to which the controller is subject; or***
- (c) in order to protect the vital interests of the data subject or of another person; or
- (d) for the prevention of an immediate and serious threat to public security.

Amendment

Lawfulness of processing

1. Member States shall provide that the processing of personal data is lawful only if and to the extent that processing is based on Union or Member State law for the purposes set out in Article 1(1) and it is necessary:

- (a) for the performance of a task carried out by a competent authority; or
 - (c) in order to protect the vital interests of the data subject or of another person; or
 - (d) for the prevention of an immediate and serious threat to public security.
- 1a. Member State law regulating the processing of personal data within the scope of this Directive shall contain explicit and detailed provisions specifying at least:***
- (a) the objectives of the processing;***
 - (b) the personal data to be processed;***
 - (c) the specific purposes and means of processing;***
 - (d) the appointment of the controller, or of the specific criteria for the appointment of the controller;***
 - (e) the categories of duly authorised staff of the competent authorities for the processing of personal data;***
 - (f) the procedure to be followed for the processing;***
 - (g) the use that may be made of the personal data obtained;***
 - (h) limitations on the scope of any discretion conferred on the competent authorities in relation to the processing***

activities.

Amendment 68

Proposal for a directive

Article 7 a (new)

Text proposed by the Commission

Amendment

Article 7a

Further processing for incompatible purposes

1. Member States shall provide that personal data may only be further processed for another purpose set out in Article 1(1) which is not compatible with the purposes for which the data were initially collected if and to the extent that:

(a) the purpose is strictly necessary and proportionate in a democratic society and required by Union or Member State law for a legitimate, well-defined and specific purpose;

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

(c) any further use for other purposes is prohibited.

Prior to any processing, the Member State shall consult the data protection supervisor and conduct a data protection impact assessment.

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

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

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

contribute substantially to the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties; and

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

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

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

Amendment 69

Proposal for a directive Article 8

Text proposed by the Commission

Processing of special categories of personal data

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

2. Paragraph 1 shall not apply where:

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

Amendment

Processing of special categories of personal data

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

2. Paragraph 1 shall not apply where:

(a) the processing is *strictly necessary and proportionate for the performance of a task carried out by the competent authorities for the purposes set out in Article 1(1), on the basis of Union or Member State law which shall provide for specific and suitable measures to safeguard the data subject's legitimate*

- (b) the processing is necessary to protect the vital interests of the data subject or of another person; or
- (c) the processing relates to data which are manifestly made public by the data subject.

Amendment 70

Proposal for a directive Article 8 a (new)

Text proposed by the Commission

interests, including specific authorisation from a judicial authority, if required by national law; or

- (b) the processing is necessary to protect the vital interests of the data subject or of another person; or
- (c) the processing relates to data which are manifestly made public by the data subject, *provided that they are relevant and strictly necessary for the purpose pursued in a specific case.*

Amendment

Article 8a

Processing of genetic data for the purpose of a criminal investigation or a judicial procedure

1. Member States shall ensure that genetic data may only be used to establish a genetic link within the framework of adducing evidence, preventing a threat to public security or preventing the commission of a specific criminal offence. Genetic data may not be used to determine other characteristics which may be linked genetically.

2. Member States shall provide that genetic data or information derived from their analysis may only be retained as long as necessary for the purposes for which data are processed and where the individual concerned has been convicted of serious offences against the life, integrity or security of persons, subject to strict storage periods to be determined by Member State law.

3. Member States shall ensure that genetic data or information derived from their analysis is only stored for longer periods when the genetic data cannot be

attributed to an individual, in particular when it is found at the scene of a crime.

Amendment 71

Proposal for a directive

Article 9

Text proposed by the Commission

Measures based on profiling and automated processing

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

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

Amendment

Measures based on profiling and automated processing

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

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

2a. Automated processing of personal data intended to single out a data subject without an initial suspicion that the data subject might have committed or will be committing a criminal offence shall only be lawful if and to the extent that it is strictly necessary for the investigation of a serious criminal offence or the prevention of a clear and imminent danger, established on factual indications, to public security, the existence of the State, or the life of persons.

2b. Profiling that, whether intentionally or otherwise, has the effect of discriminating against individuals on the basis of race or ethnic origin, political opinions, religion or beliefs, trade union membership, gender or sexual

orientation, or that, whether intentionally or otherwise, results in measures which have such effect, shall be prohibited in all cases.

Amendment 72

Proposal for a directive Article 9 a (new)

Text proposed by the Commission

Amendment

Article 9a

General principles for the rights of the data subject

1. Member States shall ensure that the basis of data protection is clear and with unambiguous rights for the data subject which shall be respected by the data controller. The provisions of this Directive aim to strengthen, clarify, guarantee and where appropriate, codify those rights.

2. Member States shall ensure that such rights include, inter alia, the provision of clear and easily understandable information regarding the processing of his or her personal data, the right of access, rectification and erasure of his or her data, the right to obtain data, the right to lodge a complaint with the competent data protection authority and to bring legal proceedings as well as the right to compensation and damages resulting from an unlawful processing operation. Such rights shall in general be exercised free of charge. The data controller shall respond to requests from the data subject within a reasonable period of time.

Amendment 73

Proposal for a directive Article 10

Text proposed by the Commission

Amendment

Modalities for exercising the rights of the

Modalities for exercising the rights of the

data subject

1. Member States shall provide that the controller ***takes all reasonable steps to have*** transparent and easily accessible policies with regard to the processing of personal data and for the exercise of the data ***subjects'*** rights.
2. Member States shall provide that any information and any communication relating to the processing of personal data are to be provided by the controller to the data subject in an intelligible form, using clear and plain language.
3. Member States shall provide that the controller ***takes all reasonable steps to establish*** procedures for providing the information referred to in Article 11 and for the exercise of the rights of data ***subjects*** referred to in Articles 12 to 17.
4. Member States shall provide that the controller informs the data subject about the follow-up given to ***their*** request without ***undue*** delay.
5. Member States shall provide that the information and any action taken by the controller following a request referred to in paragraphs 3 and 4 are free of charge. Where requests are ***vexatious***, in particular because of their repetitive character, ***or the size or volume of the request***, the controller may charge a fee for providing the information or taking the action requested, ***or the controller may not take the action requested***. In that case, the controller shall bear the burden of proving

data subject

1. Member States shall provide that the controller ***has concise, transparent, clear*** and easily accessible policies with regard to the processing of personal data and for the exercise of the data ***subject's*** rights.
2. Member States shall provide that any information and any communication relating to the processing of personal data are to be provided by the controller to the data subject in an intelligible form, using clear and plain language, ***in particular where that information is addressed specifically to a child***.
3. Member States shall provide that the controller ***establishes*** procedures for providing the information referred to in Article 11 and for the exercise of the rights of ***the*** data ***subject*** referred to in Articles 12 to 17. ***Where personal data are processed by automated means, the controller shall provide means for requests to be made electronically***.
4. Member States shall provide that the controller informs the data subject about the follow-up given to ***his or her*** request without delay, ***and in any event at the latest within one month of receipt of the request. 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***.
5. Member States shall provide that the information and any action taken by the controller following a request referred to in paragraphs 3 and 4 are free of charge. Where requests are ***manifestly excessive***, in particular because of their repetitive character, the controller may charge a ***reasonable*** fee, ***taking into account the administrative costs***, for providing the information or taking the action requested. In that case, the controller shall bear the burden of proving the ***manifestly excessive***

the *vexatious* character of the request.

character of the request.

5a. Member States may provide that the data subject may assert his or her rights directly against the controller or through the intermediary of the competent national supervisory authority. Where the supervisory authority has acted on the request of the data subject, the supervisory authority shall inform the data subject of the verifications carried out.

Amendment 74

Proposal for a directive Article 11

Text proposed by the Commission

Information to the data subject

1. Where personal data relating to a data subject are collected, Member States shall ensure that the controller ***takes all appropriate measures to provide*** the data subject with at least the following information:

- (a) the identity and the contact details of the controller and of the data protection officer;
- (b) the purposes of the processing for which the personal data are intended;
- (c) the period for which the personal data will be stored;
- (d) the existence of the right to request from the controller access to and rectification, erasure or restriction of processing of the personal data concerning the data subject;
- (e) the right to lodge a complaint to the supervisory authority referred to in Article 39 and its contact details;
- (f) the recipients ***or categories of recipients*** of the personal data, including in third countries or international

Amendment

Information to the data subject

1. Where personal data relating to a data subject are collected, Member States shall ensure that the controller ***provides*** the data subject with at least the following information:

- (a) the identity and the contact details of the controller and of the data protection officer;
- (b) ***the legal basis and*** the purposes of the processing for which the personal data are intended;
- (c) the period for which the personal data will be stored;
- (d) the existence of the right to request from the controller access to and rectification, erasure or restriction of processing of the personal data concerning the data subject;
- (e) the right to lodge a complaint to the supervisory authority referred to in Article 39 and its contact details;
- (f) the recipients of the personal data, including in third countries or international organisations ***and who is authorised to***

organisations;

(g) any further information in so far as such further information is necessary to guarantee fair processing in respect of the data subject, having regard to the specific circumstances in which the personal data are processed.

2. Where the personal data are collected from the data subject, the controller shall inform the data subject, in addition to the information referred to in paragraph 1, whether the provision of personal data is obligatory or voluntary, as well as the possible consequences of failure to provide such data.

3. The controller shall provide the information referred to in paragraph 1:

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

(b) where the personal data are not collected from the data subject, at the time of the recording or within a reasonable period after the collection having regard to the specific circumstances in which the data are processed.

4. Member States may adopt legislative measures delaying, restricting **or omitting**

access this data under the laws of that third country or the rules of that international organisation, the existence or absence of an adequacy decision by the Commission or in case of transfers referred to in Article 35 or Article 36, the means to obtain a copy of the appropriate safeguards used for the transfer;

(fa) where the controller processes personal data as described in Article 9(1), information about the existence of processing for a measure of the kind referred to in Article 9(1) and the intended effects of such processing on the data subject, information about the logic used in the profiling and the right to obtain human assessment;

(fb) information regarding security measures taken to protect personal data;

(g) any further information in so far as such further information is necessary to guarantee fair processing in respect of the data subject, having regard to the specific circumstances in which the personal data are processed.

2. Where the personal data are collected from the data subject, the controller shall inform the data subject, in addition to the information referred to in paragraph 1, whether the provision of personal data is obligatory or voluntary, as well as the possible consequences of failure to provide such data.

3. The controller shall provide the information referred to in paragraph 1:

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

(b) where the personal data are not collected from the data subject, at the time of the recording or within a reasonable period after the collection having regard to the specific circumstances in which the data are processed.

4. Member States may adopt legislative measures delaying **or** restricting the

the provision of the information to the data subject to the extent that, and as long as, such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the legitimate interests of the person concerned:

- (a) to avoid obstructing official or legal inquiries, investigations or procedures;
- (b) to avoid prejudicing the prevention, detection, investigation and prosecution of criminal offences or for the execution of criminal penalties;
- (c) to protect public security;
- (d) to protect national security;
- (e) to protect the rights and freedoms of others.

5. Member States may determine categories of data processing which may wholly or partly fall under the exemptions of paragraph 4.

provision of the information to the data subject, ***in a specific case***, to the extent that, and as long as, such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the ***fundamental rights and the*** legitimate interests of the person concerned:

- (a) to avoid obstructing official or legal inquiries, investigations or procedures;
- (b) to avoid prejudicing the prevention, detection, investigation and prosecution of criminal offences or for the execution of criminal penalties;
- (c) to protect public security;
- (d) to protect national security;
- (e) to protect the rights and freedoms of others.

5. Member States shall provide that the controller shall assess, in each specific case, by means of a concrete and individual examination, whether a partial or complete restriction for one of the reasons referred to in paragraph 4 applies. Member States may by law also determine categories of data processing which may wholly or partly fall under the exemptions under points (a), (b), (c) and (d) of paragraph 4.

Amendment 75

Proposal for a directive Article 12

Text proposed by the Commission

Right of access for the data subject

1. Member States shall provide for the right of the data subject to obtain from the controller confirmation as to whether or not personal data relating to ***them*** are being processed. Where such personal data are being processed, the controller shall provide the following information:

Amendment

Right of access for the data subject

1. Member States shall provide for the right of the data subject to obtain from the controller confirmation as to whether or not personal data relating to ***him or her*** are being processed. Where such personal data are being processed, the controller shall provide the following information, ***if it has***

- (a) the purposes of the processing;
- (b) the categories of personal data concerned;
- (c) the recipients *or categories of recipients* to whom the personal data have been disclosed, in particular the recipients in third countries;
- (d) the period for which the personal data will be stored;
- (e) the existence of the right to request from the controller rectification, erasure or restriction of processing of personal data concerning the data subject;
- (f) the right to lodge a complaint to the supervisory authority and the contact details of the supervisory authority;
- (g) communication of the personal data undergoing processing and of any available information as to their source.**

2. Member States shall provide for the right of the data subject to obtain from the controller a copy of the personal data undergoing processing.

(Point (g) of paragraph 1 in the Commission text has become part of point (-aa) of paragraph 1 in Parliament's amendment)

not already been provided:

(- a) communication of the personal data undergoing processing and of any available information as to their source, and if applicable, intelligible information about the logic involved in any automated processing;

(- aa) the significance and envisaged consequences of such processing, at least in the case of the measures referred to in Article 9;

- (a) the purposes of the processing ***as well as the legal basis for the processing;***
- (b) the categories of personal data concerned;
- (c) the recipients to whom the personal data have been disclosed, in particular the recipients in third countries;
- (d) the period for which the personal data will be stored;
- (e) the existence of the right to request from the controller rectification, erasure or restriction of processing of personal data concerning the data subject;
- (f) the right to lodge a complaint to the supervisory authority and the contact details of the supervisory authority;

2. Member States shall provide for the right of the data subject to obtain from the controller a copy of the personal data undergoing processing. ***Where the data subject makes the request in electronic form, the information shall be provided in electronic form, unless otherwise requested by the data subject.***

Amendment 76

Proposal for a directive

Article 13

Text proposed by the Commission

Limitations to the right of access

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

- (a) to avoid obstructing official or legal inquiries, investigations or procedures;
- (b) to avoid prejudicing the prevention, detection, investigation and prosecution of criminal offences or the execution of criminal penalties;
- (c) to protect public security;
- (d) to protect national security;
- (e) to protect the rights and freedoms of others.

2. Member States may determine by law categories of data processing which may wholly or partly fall under the exemptions of paragraph 1.

3. In cases referred to in paragraphs 1 and 2, Member States shall provide that the controller informs the data subject in writing on any refusal or restriction of access, on the **reasons** for the refusal and on the possibilities of lodging a complaint to the supervisory authority and seeking a judicial remedy. The information on

Amendment

Limitations to the right of access

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

- (a) to avoid obstructing official or legal inquiries, investigations or procedures;
- (b) to avoid prejudicing the prevention, detection, investigation and prosecution of criminal offences or the execution of criminal penalties;
- (c) to protect public security;
- (d) to protect national security;
- (e) to protect the rights and freedoms of others.

2. Member States shall provide that the controller assesses, in each specific case by means of a concrete and individual examination whether a partial or complete restriction for one of the reasons referred to in paragraph 1 applies.

Member States may ***also*** determine by law categories of data processing which may wholly or partly fall under the exemptions ***under points (a) to (d)*** of paragraph 1.

3. In cases referred to in paragraphs 1 and 2, Member States shall provide that the controller informs the data subject, ***without undue delay***, in writing on any refusal or restriction of access, on the ***reasoned justification*** for the refusal and on the possibilities of lodging a complaint to the supervisory authority and seeking a judicial

factual or legal reasons on which the decision is based may be omitted where the provision of such information would undermine a purpose under paragraph 1.

4. Member States shall ensure that the controller documents the grounds for **omitting** the communication of the factual or legal reasons on which the decision is based.

Amendment 77

Proposal for a directive Article 14

Text proposed by the Commission

Modalities for exercising the right of access

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

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

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

remedy. The information on factual or legal reasons on which the decision is based may be omitted where the provision of such information would undermine a purpose under paragraph 1.

4. Member States shall ensure that the controller documents ***the assessment referred to in paragraph 2 as well as*** the grounds for ***restricting*** the communication of the factual or legal reasons on which the decision is based. ***That information shall be made available to the national supervisory authorities.***

Amendment

Modalities for exercising the right of access

1. Member States shall provide for the right of the data subject to request, ***at all times***, in particular in cases referred to in ***Articles 12 and 13***, that the supervisory authority checks the lawfulness of the processing.

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

3. When the right referred to in paragraph 1 is exercised, the supervisory authority shall inform the data subject at least that all necessary verifications by the supervisory authority have taken place, and of the result as regards the lawfulness of the processing in question. ***The supervisory authority shall also inform the data subject of his or her right to seek a judicial remedy.***

3a. Member States may provide that the data subject may assert this right directly against the controller or through the

intermediary of the competent national supervisory authority.

3b. Member States shall ensure that there are reasonable time limits for the controller to respond to requests of the data subject regarding the exercise of his or her right of access.

Amendment 78

Proposal for a directive Article 15

Text proposed by the Commission

Right to rectification

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

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

Amendment

Right to rectification ***and completion***

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

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

2a. Member States shall provide that the controller shall communicate any rectification carried out to each recipient to whom the data have been disclosed, unless to do so proves impossible or involves a disproportionate effort.

2b. Member States shall provide that the controller communicates the rectification of inaccurate personal data to the third party from which the inaccurate personal data originates.

2c. Member States shall provide that the data subject may assert this right also through the intermediary of the competent

Amendment 79

Proposal for a directive Article 16

Text proposed by the Commission

Right to erasure

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

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

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

(a) their accuracy is contested by the data subject, for a period enabling the controller to verify the accuracy of the data;

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

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

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

Amendment

Right to erasure

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

2. The controller shall carry out the erasure without delay. **The controller shall also abstain from further dissemination of such data.**

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

(a) their accuracy is contested by the data subject, for a period enabling the controller to verify the accuracy of the data;

(b) the personal data have to be maintained for purposes of proof **or for the protection of vital interests of the data subject or another person.**

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

4. Member States shall provide that the controller informs the data subject in writing **with a reasoned justification**, of any refusal of erasure or **restriction** of the processing, **on** reasons for the refusal and **on** the possibilities of lodging a complaint

seeking a judicial remedy.

to the supervisory authority and seeking a judicial remedy.

4a. Member States shall provide that the controller notifies recipients to whom these data have been sent of any erasure or restriction made pursuant to paragraph 1, unless to do so proves impossible or involves a disproportionate effort. The controller shall inform the data subject about those third parties.

4b. Member States may provide that the data subject may assert this right directly against the controller or through the intermediary of the competent national supervisory authority.

Amendment 80

Proposal for a directive Article 18

Text proposed by the Commission

Responsibility of the controller

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

2. The measures referred to in paragraph 1 shall in particular include:

(a) keeping the documentation referred to in Article 23;

(b) complying with the requirements for prior consultation pursuant to Article 26;

(c) implementing the data security requirements laid down in Article 27;

Amendment

Responsibility of the controller

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

2. The measures referred to in paragraph 1 shall in particular include:

(a) keeping the documentation referred to in Article 23;

(aa) performing a data protection impact assessment pursuant to Article 25a;

(b) complying with the requirements for prior consultation pursuant to Article 26;

(c) implementing the data security requirements laid down in Article 27;

(d) designating a data protection officer pursuant to Article 30.

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

Amendment 81

Proposal for a directive Article 19

Text proposed by the Commission

Data protection by design and by default

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

(d) designating a data protection officer pursuant to Article 30;

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

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

Amendment

Data protection by design and by default

1. Member States shall provide that, having regard to the state of the art, ***current technical knowledge, international best practices and the risks represented by the data processing***, the controller ***and the processor if any*** shall, ***both at the time of the determination of the purposes and means for processing and at the time of the processing itself***, implement appropriate ***and proportionate*** technical and organisational measures and procedures in such a way that the processing will meet the requirements of provisions adopted pursuant to this Directive and ensure the protection of the rights of the data subject, ***in particular with regard to the principles laid out in Article 4. Data protection by design shall have particular regard to the entire lifecycle management of personal data from collection to processing to deletion, systematically focusing on comprehensive procedural safeguards regarding the accuracy, confidentiality, integrity, physical security and deletion of personal***

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

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

2. The controller shall **ensure** that, by default, only those personal data are processed which are necessary **for each specific purpose of the processing and are especially not collected, 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 and that data subjects are able to control the distribution of their personal data.**

Amendment 82

Proposal for a directive Article 20

Text proposed by the Commission

Joint controllers

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

Amendment

Joint controllers

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

2. Unless the data subject has been informed which of the joint controllers is responsible pursuant to paragraph 1, the data subject may exercise his or her rights under this Directive in respect of and against each of any two or more joint controllers.

Amendment 83

Proposal for a directive

Article 21

Text proposed by the Commission

Processor

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

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

Amendment

Processor

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

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

(a) act only on instructions from the controller;

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

(c) take all required measures pursuant to Article 27;

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

(e) insofar as it is possible given the

nature of the processing, adopt in agreement with controller the necessary technical and organisational requirements for the fulfilment of the controller's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III;

(f) assist the controller in ensuring compliance with the obligations pursuant to Articles 25a to 29;

(g) return all results to the controller after the end of the processing and not otherwise process the personal data and delete existing copies unless Union or Member State law requires its storage;

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

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

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

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

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

Amendment 84

Proposal for a directive Article 22 - paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Where the processor is or becomes the determining party in relation to the purposes, means, or methods of data processing or does not act exclusively on the instructions of the controller, it shall be considered a joint controller pursuant

Amendment 85

Proposal for a directive Article 23

Text proposed by the Commission

Documentation

1. Member States shall provide that each controller and processor maintains documentation of all processing systems and procedures under their responsibility.
2. The documentation shall contain at least the following information:
 - (a) the name and contact details of the controller, or any joint controller or processor;
 - (b) the purposes of the processing;
 - (c) the recipients or categories of recipients of the personal data;
 - (d) transfers of data to a third country or an international organisation, including the identification of that third country or international organisation.

Amendment

Documentation

1. Member States shall provide that each controller and processor maintains documentation of all processing systems and procedures under their responsibility.
2. The documentation shall contain at least the following information:
 - (a) the name and contact details of the controller, or any joint controller or processor;
 - (aa) a legally binding agreement, where there are joint controllers; a list of processors and activities carried out by processors;*
 - (b) the purposes of the processing;
 - (ba) an indication of the parts of the controller's or processor's organisation entrusted with the processing of personal data for a particular purpose;*
 - (bb) a description of the category or categories of data subjects and of the data or categories of data relating to them;*
 - (c) the recipients or categories of recipients of the personal data;
 - (ca) where applicable, information about the existence of profiling, of measures based on profiling, and of mechanisms to object to profiling;*
 - (cb) intelligible information about the logic involved in any automated processing;*
 - (d) transfers of data to a third country or an international organisation, including the identification of that third country or international organisation **and the legal**

grounds on which the data are transferred; a substantive explanation shall be given when a transfer is based on Articles 35 or 36 of this Directive;

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

(db) the results of the verifications of the measures referred to in Article 18(1);

(dc) an indication of the legal basis of the processing operation for which the data are intended.

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

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

Amendment 86

Proposal for a directive Article 24

Text proposed by the Commission

Keeping of records

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

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

Amendment

Keeping of records

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

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

2a. The controller and the processor shall make the records available, on request, to the supervisory authority.

Amendment 87

Proposal for a directive Article 25

Text proposed by the Commission

Cooperation with the supervisory authority

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

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

Amendment 88

Proposal for a directive Article 25 a (new)

Text proposed by the Commission

Amendment

Cooperation with the supervisory authority

1. Member States shall provide that the controller and the processor shall co-operate, on request, with the supervisory authority in the performance of its duties, in particular by providing ***the*** information ***referred to in Article 46(2)(a) and by granting access as provided in Article 46(2)(b).***

2. In response to the supervisory authority's exercise of its powers under points (a) and (b) of Article 46(1), 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

Article 25a

Data Protection impact assessment

1. Member States shall provide that the controller or the processor, acting on the controller's behalf, shall carry out an assessment of the impact of the envisaged processing systems and procedures on the protection of personal data, where the processing operations are likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, prior to new processing operations or the earliest as

possible in case of existing processing operations.

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

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

(b) processing of special categories of personal data as referred to in Article 8, of personal data related to children and of biometric and location data for the purposes of the prevention, detection, investigation or prosecution of criminal offences and the execution of criminal penalties;

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

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

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

3. The assessment shall contain at least:

(a) a systematic description of the envisaged processing operations,

(b) an assessment of the necessity and proportionality of the processing operations in relation to the purposes;

(c) an assessment of the risks to the rights and freedoms of data subjects and the measures envisaged to address those risks and minimise the volume of personal data

which is processed;

(d) security measures and mechanisms to ensure the protection of personal data and to demonstrate the compliance with the provisions adopted pursuant to this Directive, taking into account the rights and legitimate interests of the data subjects and other persons concerned;

(e) a general indication of the time limits for erasure of the different categories of data;

(f) where applicable, a list of the intended 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 Article 36(2), the documentation of appropriate safeguards.

4. If the controller or the processor has designated a data protection officer, he or she shall be involved in the impact assessment proceeding.

5. Member States shall provide that the controller consults the public on the intended processing, without prejudice to the protection of the public interest or the security of the processing operations.

6. Without prejudice to the protection of the public interest or the security of the processing operations, the assessment shall be made easily accessible to the public.

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

Amendment 89

Proposal for a directive

Article 26

Text proposed by the Commission

Prior consultation of the supervisory authority

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

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

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

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

Amendment

Prior consultation of the supervisory authority

1. Member States shall ensure that the controller or the processor consults the supervisory authority prior to the processing of personal data ***in order to ensure the compliance of the intended processing with the provisions adopted pursuant to this Directive and in particular to mitigate the risks involved for the data subjects*** where:

(a) ***a data protection impact assessment as provided for in Article 25a indicates that processing operations by virtue of their nature, their scope and/or their purposes, are likely to present a high degree of specific risks; or***

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

1a. Where the supervisory authority determines in accordance with its power that the intended processing does not comply with the provisions adopted pursuant to this Directive, in particular where risks are insufficiently identified or mitigated, it shall prohibit the intended processing and make appropriate proposals to remedy such non-compliance.

2. Member States ***shall*** provide that the supervisory authority, ***after consulting the European Data Protection Board, shall establish*** a list of the processing operations which are subject to prior consultation

pursuant to *point (b) of* paragraph 1.

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

2b. If the supervisory authority is of the opinion that the intended processing does not comply with the provisions adopted pursuant to this Directive or that the risks are insufficiently identified or mitigated, it shall make appropriate proposals to remedy such non-compliance.

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

Amendment 90

Proposal for a directive Article 27

Text proposed by the Commission

Security of processing

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

Amendment

Security of processing

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

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

- (a) deny unauthorised persons access to data-processing equipment used for processing personal data (equipment access control);
- (b) prevent the unauthorised reading, copying, modification or removal of data media (data media control);
- (c) prevent the unauthorised input of data and the unauthorised inspection, modification or deletion of stored personal data (storage control);
- (d) prevent the use of automated data-processing systems by unauthorised persons using data communication equipment (user control);
- (e) ensure that persons authorised to use an automated data-processing system only have access to the data covered by their access authorisation (data access control);
- (f) ensure that it is possible to verify and establish to which bodies personal data have been or may be transmitted or made available using data communication equipment (communication control);
- (g) ensure that it is subsequently possible to verify and establish which personal data have been input into automated data-processing systems and when and by whom the data were input (input control);
- (h) prevent the unauthorised reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of data media (transport control);
- (i) ensure that installed systems may, in case of interruption, be restored (recovery);
- (j) ensure that the functions of the system perform, that the appearance of faults in

their implementation.

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

- (a) deny unauthorised persons access to data-processing equipment used for processing personal data (equipment access control);
- (b) prevent the unauthorised reading, copying, modification or removal of data media (data media control);
- (c) prevent the unauthorised input of data and the unauthorised inspection, modification or deletion of stored personal data (storage control);
- (d) prevent the use of automated data-processing systems by unauthorised persons using data communication equipment (user control);
- (e) ensure that persons authorised to use an automated data-processing system only have access to the data covered by their access authorisation (data access control);
- (f) ensure that it is possible to verify and establish to which bodies personal data have been or may be transmitted or made available using data communication equipment (communication control);
- (g) ensure that it is subsequently possible to verify and establish which personal data have been input into automated data-processing systems and when and by whom the data were input (input control);
- (h) prevent the unauthorised reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of data media (transport control);
- (i) ensure that installed systems may, in case of interruption, be restored (recovery);
- (j) ensure that the functions of the system perform, that the appearance of faults in

the functions is reported (reliability) and that stored personal data cannot be corrupted by means of a malfunctioning of the system (integrity).

the functions is reported (reliability) and that stored personal data cannot be corrupted by means of a malfunctioning of the system (integrity);

(ja) ensure that in case of sensitive personal data processing according to Article 8, additional security measures have to be in place, in order to guarantee situation awareness of risks and the ability to take preventive, corrective and mitigating action in near real time against vulnerabilities or incidents detected that could pose a risk to the data.

2a. Member States shall provide that processors may be appointed only if they guarantee that they observe the requisite technical and organisational measures under paragraph 1 and comply with the instructions under Article 21(2)(a). The competent authority shall monitor the processor in those respects.

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

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

Amendment 91

Proposal for a directive Article 28

Text proposed by the Commission

Notification of a personal data breach to the supervisory authority

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

Amendment

Notification of a personal data breach to the supervisory authority

1. Member States shall provide that in the case of a personal data breach, the controller notifies, without undue delay and, where feasible, not later than 24 hours, the personal data breach to the supervisory authority. The controller shall provide, on request, to the supervisory authority a reasoned justification in cases

reasoned justification in cases *where the notification is not made within 24 hours*.

2. The processor shall alert and inform the controller *immediately* after *having become aware* of a personal data breach.

3. The notification referred to in paragraph 1 shall at least:

(a) describe the nature of the personal data breach including the categories and number of data subjects concerned and the categories and number of data records concerned;

(b) communicate the identity and contact details of the data protection officer referred to in Article 30 or other contact point where more information can be obtained;

(c) recommend measures to mitigate the possible adverse effects of the personal data breach;

(d) describe the possible consequences of the personal data breach;

(e) describe the measures proposed or taken by the controller to address the personal data breach.

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

5. The Commission shall be empowered to

of any delay.

2. The processor shall alert and inform the controller *without undue delay* after *the establishment* of a personal data breach.

3. The notification referred to in paragraph 1 shall at least:

(a) describe the nature of the personal data breach including the categories and number of data subjects concerned and the categories and number of data records concerned;

(b) communicate the identity and contact details of the data protection officer referred to in Article 30 or other contact point where more information can be obtained;

(c) recommend measures to mitigate the possible adverse effects of the personal data breach;

(d) describe the possible consequences of the personal data breach;

(e) describe the measures proposed or taken by the controller to address the personal data breach *and mitigate its effects*.

In case all information cannot be provided without undue delay, the controller can complete the notification in a second phase.

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

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

5. The Commission shall be empowered to

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

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

Amendment 92

Proposal for a directive Article 29

Text proposed by the Commission

Communication of a personal data breach to the data subject

1. Member States shall provide that when the personal data breach is likely to adversely affect the protection of the personal data *or* privacy of the data subject, the controller shall, after the notification referred to in Article 28, communicate the personal data breach to the data subject without undue delay.
2. The communication to the data subject referred to in paragraph 1 shall describe the nature of the personal data breach and contain at least the information and the recommendations provided for in points (b) *and* (c) of Article 28(3).

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

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

Amendment

Communication of a personal data breach to the data subject

1. Member States shall provide that when the personal data breach is likely to adversely affect the protection of the personal data, *the* privacy, *the rights or the legitimate interests* of the data subject, the controller shall, after the notification referred to in Article 28, communicate the personal data breach to the data subject without undue delay.
2. The communication to the data subject referred to in paragraph 1 shall *be comprehensive and use clear and plain language. It shall* describe the nature of the personal data breach and contain at least the information and the recommendations provided for in points (b), (c) *and (d)* of Article 28(3) *and*

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

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

Amendment 93

Proposal for a directive Article 30

Text proposed by the Commission

Designation of the data protection officer

1. Member States shall provide that the controller or the processor designates a data protection officer.
2. The data protection officer shall be designated 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 32.

information about the rights of the data subject, including redress.

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

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

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

Amendment

Designation of the data protection officer

1. Member States shall provide that the controller or the processor designates a data protection officer.
2. The data protection officer shall be designated 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 32. ***The necessary level of expert knowledge shall be determined in particular according by the data processing carried out and the protection required for the personal data***

processed by the controller or the processor.

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

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

2c. Member States shall provide the data subject with the right to contact the data protection officer on all issues related to the processing of his or her personal data.

3. The data protection officer may be designated for several entities, taking account of the organisational structure of the competent authority.

3. The data protection officer may be designated for several entities, taking account of the organisational structure of the competent authority.

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

Amendment 94

Proposal for a directive Article 31 - paragraph 2 a (new)

Text proposed by the Commission

Amendment

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

maintain his or her professional knowledge.

Amendment 95

Proposal for a directive Article 32

Text proposed by the Commission

Tasks of the data protection officer

Member States shall provide that the controller or the processor entrusts the data protection officer at least with the following tasks:

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

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

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

(d) to ensure that the documentation referred to in Article 23 is maintained;

(e) to monitor the documentation, notification and communication of personal data breaches pursuant to Articles 28 and 29;

(f) to monitor the application for prior

Amendment

Tasks of the data protection officer

Member States shall provide that the controller or the processor entrusts the data protection officer at least with the following tasks:

(a) ***to raise awareness***, to inform and advise the controller or the processor of their obligations in accordance with the provisions adopted pursuant to this Directive, ***in particular with regard to technical and organisational measures and procedures*** and to document this activity and the responses received;

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

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

(d) to ensure that the documentation referred to in Article 23 is maintained;

(e) to monitor the documentation, notification and communication of personal data breaches pursuant to Articles 28 and 29;

(f) to monitor ***the application of the data***

consultation to the supervisory authority, if required pursuant to **Article 26**;

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

(h) to act as the contact point for the supervisory authority on issues related to the processing and consult with the supervisory authority, if appropriate, on the data protection officer's own initiative.

Amendment 96

Proposal for a directive Article 33

Text proposed by the Commission

General principles for transfers of personal data

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

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

protection impact assessment by the controller or processor and the application for prior consultation to the supervisory authority, if required pursuant to Article 26(1);

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

(h) to act as the contact point for the supervisory authority on issues related to the processing and consult with the supervisory authority, if appropriate, on the data protection officer's own initiative.

Amendment

General principles for transfers of personal data

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

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

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

(ab) the conditions laid down in this Chapter are complied with by the

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

controller and the processor, including for onward transfers of personal data from the third country or an international organisation to another third country or to another international organisation; and

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

(ba) the level of protection of the personal data individuals guaranteed in the Union by this Directive is not undermined; and

(bb) the Commission has decided under the conditions and procedure referred to in Article 34 that the third country or international organisation in question ensures an adequate level of protection; or

(bc) appropriate safeguards with respect to the protection of personal data have been adduced in a legally binding instrument as referred to in Article 35.

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

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

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

Amendment 97

Proposal for a directive Article 34

Text proposed by the Commission

Transfers with an adequacy decision

1. Member States shall provide that a transfer of personal data to a third country or an international organisation may take

Amendment

Transfers with an adequacy decision

1. Member States shall provide that a transfer of personal data to a third country or an international organisation may take

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

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

(a) the rule of law, relevant legislation in force, ***both general and sectoral***, including concerning public security, defence, national security and criminal law as well as the security measures which are complied with in that country or by that international organisation; as well as effective and enforceable rights including effective administrative and judicial redress for data subjects, in particular for those data subjects residing in the Union whose personal data are being transferred;

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

(c) the international commitments the third country or international organisation in question has entered into.

3. The Commission ***may*** decide, within the

place where the Commission has decided in accordance with paragraph 3 of this Article that the third country, or a territory or a processing sector within that third country, or the international organisation in question ensures an adequate level of protection. Such transfer shall not require any ***specific*** authorisation.

2. When assessing the adequacy of the level of protection, the Commission shall give consideration to the following elements:

(a) the rule of law, relevant legislation in force, including concerning public security, defence, national security and criminal law as well as the ***implementation of this legislation and the*** security measures which are complied with in that country or by that international organisation; ***jurisprudential precedents*** as well as effective and enforceable rights including effective administrative and judicial redress for data subjects, in particular for those data subjects residing in the Union whose personal data are being transferred;

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

(c) the international commitments the third country or international organisation in question has entered into, ***in particular any legally binding conventions or instruments with respect to the protection of personal data***.

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

scope of this Directive, that a third country or a territory or a processing sector within that third country or an international organisation ensures an adequate level of protection within the meaning of paragraph 2.

2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).

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

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

6. Member States shall ensure that where the Commission decides pursuant to paragraph 5, **that** any transfer of personal

adopt, after requesting an opinion of the European Data Protection Board, delegated acts in accordance with Article 56 to decide, within the scope of this Directive, that a third country or a territory or a processing sector within that third country or an international organisation ensures an adequate level of protection within the meaning of paragraph 2.

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

4a. The Commission shall, on an on-going basis, monitor developments that could affect the fulfilment of the elements listed in paragraph 2 in third countries and international organisations in relation to which a delegated act pursuant to paragraph 3 has been adopted.

5. The Commission **shall be empowered to adopt delegated acts in accordance with Article 56** to decide within the scope of this Directive that a third country, or a territory or a processing sector within that third country, or an international organisation does not ensure an adequate level of protection within the meaning of paragraph 2, in particular in cases where the relevant legislation in force in the third country or international organisation, does not guarantee effective and enforceable rights including effective administrative and judicial redress for data subjects, in particular for those data subjects whose personal data are being transferred.

6. Member States shall ensure that where the Commission decides pursuant to paragraph 5, any transfer of personal data

data to the third country or a territory or a processing sector within that third country, or the international organisation in question shall be prohibited, ***this decision shall be without prejudice to transfers under Article 35(1) or in accordance with Article 36.*** At the appropriate time, the Commission shall enter into consultations with the third country or international organisation with a view to remedying the situation resulting from the Decision made pursuant to paragraph 5 of this Article.

7. The Commission shall publish in the *Official Journal of the European Union* a list of those third countries, territories and processing sectors within a third country or an international organisation where it has decided that an adequate level of protection is or is not ensured.

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

Amendment 98

Proposal for a directive Article 35

Text proposed by the Commission

Transfers by way of appropriate safeguards

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

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

to the third country, or a territory or a processing sector within that third country, or the international organisation in question shall be prohibited. 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.

7. The Commission shall publish in the *Official Journal of the European Union* a list of those third countries, territories and processing sectors within a third country or an international organisation where it has decided that an adequate level of protection is or is not ensured.

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

Amendment

Transfers by way of appropriate safeguards

1. Where the Commission has taken no decision pursuant to Article 34, ***or decides that a third country, or a territory within that third country, or an international organisation does not ensure an adequate level of protection in accordance with Article 34(5), a controller or processor may not transfer personal data to a third country, or a territory within that third country, or an international organisation unless the controller or processor has adduced appropriate safeguards with respect to the protection of personal data in a legally binding instrument.***

*adduced in a legally binding instrument;
or*

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

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

2. These transfers must be authorised by the supervisory authority prior to the transfer.

Amendment 99

Proposal for a directive Article 36

Text proposed by the Commission

Derogations

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

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

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

Amendment

Derogations

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

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

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

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

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

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

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

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

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

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

2a. Processing based on paragraph 2 must have a legal basis in Union law, or the law of the Member State to which the controller is subject; that law must meet public interest objective or the need to protect the rights and freedoms of others, respects the essence of the right to the protection of personal data and be proportionate to the legitimate aim pursued.

2b. All transfers of personal data decided on the basis of derogations shall be duly justified and shall be limited to what is strictly necessary, and frequent massive transfers of data shall not be allowed.

2c. The decision for transfers under paragraph 2 must be made by duly authorised staff. These transfers must be documented and the documentation must be made available to the supervisory authority on request, including the date and time of the transfer, information about the recipient authority, the justification for the transfer and the data transferred.

Amendment 100

Proposal for a directive Article 37

Text proposed by the Commission

Specific conditions for the transfer of personal data

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

Amendment

Specific conditions for the transfer of personal data

Member States shall provide that the controller informs the recipient of the personal data of any processing restrictions and takes all reasonable steps to ensure that these restrictions are met. ***The controller shall also notify the recipient of the personal data of any update, rectification or erasure of data, and the recipient shall in turn make the corresponding notification in the event that the data has subsequently been transferred.***

Amendment 101

**Proposal for a directive
Article 38 - paragraph 1 - point a**

Text proposed by the Commission

(a) develop effective international co-operation mechanisms to ***facilitate*** the enforcement of legislation for the protection of personal data;

Amendment

(a) develop effective international co-operation mechanisms to ***ensure*** the enforcement of legislation for the protection of personal data;

Amendment 102

**Proposal for a directive
Article 38 - paragraph 1 - point d a (new)**

Text proposed by the Commission

Amendment

(da) clarify and consult on jurisdictional conflicts with third countries.

Amendment 103

**Proposal for a directive
Article 38 a (new)**

Text proposed by the Commission

Amendment

Article 38a

Report by the Commission

The Commission shall submit a report on the application of Articles 33 to 38 to the European Parliament and to the Council at regular intervals. The first report shall be submitted no later than four years after the entry into force of this Directive. For that purpose, the Commission may request information from the Member States and supervisory authorities, which shall supply this information without undue delay. The report shall be made public.

Amendment 104

Proposal for a directive Article 40 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the supervisory authority acts with complete independence in exercising the duties and powers entrusted to it.

Amendment

1. Member States shall ensure that the supervisory authority acts with complete independence in exercising the duties and powers entrusted to it, ***notwithstanding co-operation arrangements pursuant to Chapter VII of this Directive.***

Amendment 105

Proposal for a directive Article 40 – paragraph 2

Text proposed by the Commission

2. Each Member State shall provide that the members of the supervisory authority, in the performance of their duties, neither seek nor take instructions from anybody.

Amendment

2. Each Member State shall provide that the members of the supervisory authority, in the performance of their duties, neither seek nor take instructions from anybody, ***and maintain complete independence and impartiality.***

Amendment 106

Proposal for a directive Article 43

Text proposed by the Commission

Professional secrecy

Member States shall provide that the members and the staff of the supervisory authority are 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

Professional secrecy

Member States shall provide that the members and the staff of the supervisory authority are subject, both during and after their term of office ***and in conformity with national legislation and practice***, 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, ***whilst conducting their duties with independence and transparency as set out in this Directive***.

Amendment 107

Proposal for a directive Article 44 – paragraph 1

Text proposed by the Commission

Competence

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

Amendment

Competence

1. Member States shall provide that each supervisory authority ***is competent to perform the duties and to exercise***, on the territory of its own Member State, the powers conferred on it in accordance with this Directive.

Amendment 108

Proposal for a directive Article 45

Text proposed by the Commission

Duties

Member States shall provide that the supervisory authority:

Amendment

Duties

1. Member States shall provide that the supervisory authority:

- (a) monitors and ensures the application of the provisions adopted pursuant to this Directive and its implementing measures;
- (b) hears complaints lodged by any data subject, or by an association ***representing and duly mandated by that data subject*** in accordance with Article 50, investigates, to the extent appropriate, the matter and informs the data subject the association of the progress and the outcome of the complaint within a reasonable period, in particular where further investigation or coordination with another supervisory authority is necessary;
- (c) checks the lawfulness of data processing pursuant to Article 14, and informs the data subject within a reasonable period on the outcome of the check or on the reasons why the check has not been carried out;
- (d) provides mutual assistance to other supervisory authorities and ensures the consistency of application and enforcement of the provisions adopted pursuant to this Directive;
- (e) conducts investigations either on its own initiative or on the basis of a complaint, or on request of another supervisory authority, and informs the data subject concerned, if the data subject has addressed a complaint, of the outcome of the investigations within a reasonable period;
- (f) monitors relevant developments, insofar as they have an impact on the protection of personal data, in particular the development of information and communication technologies;
- (g) is consulted by Member State institutions and bodies on legislative and administrative measures relating to the protection of individuals' rights and freedoms with regard to the processing of personal data;
- (h) is consulted on processing operations

- (a) monitors and ensures the application of the provisions adopted pursuant to this Directive and its implementing measures;
- (b) hears complaints lodged by any data subject, or by an association in accordance with Article 50, investigates, to the extent appropriate, the matter and informs the data subject ***or*** the association of the progress and the outcome of the complaint within a reasonable period, in particular where further investigation or coordination with another supervisory authority is necessary;
- (c) checks the lawfulness of data processing pursuant to Article 14, and informs the data subject within a reasonable period on the outcome of the check or on the reasons why the check has not been carried out;
- (d) provides mutual assistance to other supervisory authorities and ensures the consistency of application and enforcement of the provisions adopted pursuant to this Directive;
- (e) conducts investigations, ***inspections and audits***, either on its own initiative or on the basis of a complaint, or on request of another supervisory authority, and informs the data subject concerned, if the data subject has addressed a complaint, of the outcome of the investigations within a reasonable period;
- (f) monitors relevant developments, insofar as they have an impact on the protection of personal data, in particular the development of information and communication technologies;
- (g) is consulted by Member State institutions and bodies on legislative and administrative measures relating to the protection of individuals' rights and freedoms with regard to the processing of personal data;
- (h) is consulted on processing operations

pursuant to Article 26;

(i) participates in the activities of the European Data Protection Board.

2. Each supervisory authority shall promote the awareness of the public on risks, rules, safeguards and rights in relation to the processing of personal data. Activities addressed specifically to children shall receive specific attention.

3. The supervisory authority shall, upon request, advise any data subject in exercising the rights laid down in provisions adopted pursuant to this Directive, and, if appropriate, co-operate with the supervisory authorities in other Member States to this end.

4. For complaints referred to in point (b) of paragraph 1, the supervisory authority shall provide a complaint submission form, which can be completed electronically, without excluding other means of communication.

5. Member States shall provide that the performance of the duties of the supervisory authority shall be free of charge for the data subject.

6. Where requests are *vexatious*, in particular due to their repetitive character, the supervisory authority may charge a fee ***or not take the action required by the data subject***. The supervisory authority shall bear the burden of proving of the *vexatious* character of the request.

Amendment 109

Proposal for a directive Article 46

Text proposed by the Commission

Powers

Member States shall provide that each supervisory authority ***must in particular be***

pursuant to Article 26;

(i) participates in the activities of the European Data Protection Board.

2. Each supervisory authority shall promote the awareness of the public on risks, rules, safeguards and rights in relation to the processing of personal data. Activities addressed specifically to children shall receive specific attention.

3. The supervisory authority shall, upon request, advise any data subject in exercising the rights laid down in provisions adopted pursuant to this Directive, and, if appropriate, co-operate with the supervisory authorities in other Member States to this end.

4. For complaints referred to in point (b) of paragraph 1, the supervisory authority shall provide a complaint submission form, which can be completed electronically, without excluding other means of communication.

5. Member States shall provide that the performance of the duties of the supervisory authority shall be free of charge for the data subject.

6. Where requests are ***manifestly excessive***, in particular due to their repetitive character, the supervisory authority may charge a ***reasonable*** fee. ***Such a fee shall not exceed the costs of taking the action requested***. The supervisory authority shall bear the burden of proving of the ***manifestly excessive*** character of the request.

Amendment

Powers

1. Member States shall provide that each

endowed with:

(a) investigative powers, such as powers of access to data forming the subject matter of processing operations and powers to collect all the information necessary for the performance of its supervisory duties;

(b) effective powers of intervention, such as the delivering of opinions before processing is carried out, and ensuring appropriate publication of such opinions, ordering the restriction, erasure or destruction of data, imposing a temporary or definitive ban on processing, warning or admonishing the controller, or referring the matter to national parliaments or other political institutions;

(c) the power to engage in legal proceedings where the provisions adopted pursuant to this Directive have been infringed or to bring this infringement to the attention of the judicial authorities.

supervisory authority *has the power:*

(a) to notify the controller or the processor of an alleged breach of the provisions governing the processing of personal data, and, where appropriate, order the controller or the processor to remedy that breach, in a specific manner, in order to improve the protection of the data subject;

(b) to order the controller to comply with the data subject's requests to exercise his or her rights under this Directive, including those provided by Articles 12 to 17 where such requests have been refused in breach of those provisions;

(c) to order the controller or the processor to provide information pursuant to Article 10(1) and (2) and Articles 11, 28 and 29;

(d) to ensure compliance with opinions on prior consultations referred to in Article 26;

(e) to warn or admonish the controller or the processor;

(f) to order the rectification, erasure or destruction of all data when they have been processed in breach of the provisions adopted pursuant to this Directive and the notification of such actions to third parties to whom the data have been disclosed;

(g) to impose a temporary or definitive ban on processing;

(h) to suspend data flows to a recipient in a third country or to an international organisation;

(i) to inform national parliaments, the government or other public institutions as well as the public on the matter.

2. Each supervisory authority shall have

the investigative power to obtain from the controller or the processor:

(a) access to all personal data and to all information necessary for the performance of its supervisory duties,

(b) access to any of its premises, including to any data processing equipment and means, in accordance with national law, where there are reasonable grounds for presuming that an activity in violation of the provisions adopted pursuant to this Directive is being carried out there, without prejudice to a judicial authorisation if required by national law.

3. Without prejudice to Article 43, Member States shall provide that no additional secrecy requirements shall be issued at the request of supervisory authorities.

4. Member States may provide that additional security screening in line with national law is required for access to information classified at a level similar to EU CONFIDENTIAL or higher. If no additional security screening is required under the law of the Member State of the relevant supervisory authority, this must be recognised by all other Member States.

5. Each supervisory authority shall have the power to bring violations of the provisions adopted pursuant to this Directive to the attention of the judicial authorities and to engage in legal proceedings and bring an action to the competent court pursuant to Article 53(2).

6. Each supervisory authority shall have the power to impose penalties in respect of administrative offences.

Amendment 110

Proposal for a directive Article 46 a (new)

Text proposed by the Commission

Amendment

Article 46a

Reporting of violations

1. Member States shall provide that the supervisory authorities take into account guidance issued by the European Data Protection Board pursuant to Article 66(4b) of Regulation (EU)/2013 and shall put in place effective mechanisms to encourage confidential reporting of breaches of this Directive.

2. Member States shall provide that the competent authorities shall put in place effective mechanisms to encourage confidential reporting of breaches of this Directive.

Amendment 111

**Proposal for a directive
Article 47**

Text proposed by the Commission

Member States shall provide that each supervisory authority draws up ***an annual*** report on its activities. The report shall be made available to the Commission and the European Data Protection Board.

Amendment

Member States shall provide that each supervisory authority draws up ***a*** report on its activities, ***at least every two years***. The report shall be made available to ***the public, the respective Parliament,*** the Commission and the European Data Protection Board. ***It shall include information on the extent to which competent authorities in their jurisdiction have accessed data held by private parties to investigate or prosecute criminal offences.***

Amendment 112

Proposal for a directive Article 48

Text proposed by the Commission

Mutual assistance

1. Member States shall provide that supervisory authorities provide each other with mutual assistance in order to implement and apply the provisions pursuant to this Directive in a consistent manner, and shall put in place measures for effective co-operation with one another. Mutual assistance shall cover, in particular, information requests and supervisory measures, such as requests to carry out prior consultations, inspections and investigations.
2. Member States shall provide that a supervisory authority takes all appropriate measures required to reply to the request of another supervisory authority.

3. The requested supervisory authority

Amendment

Mutual assistance

1. Member States shall provide that supervisory authorities provide each other with mutual assistance in order to implement and apply the provisions pursuant to this Directive in a consistent manner, and shall put in place measures for effective co-operation with one another. Mutual assistance shall cover, in particular, information requests and supervisory measures, such as requests to carry out prior consultations, inspections and investigations.
2. Member States shall provide that a supervisory authority takes all appropriate measures required to reply to the request of another supervisory authority. ***Such measures may include, in particular, the transmission of relevant information or enforcement measures to bring about the cessation or prohibition of processing operations contrary to this Directive without delay and not later than one month after having received the request.***
 - 2a. The request for assistance shall contain all the necessary information, including the purpose of the request, and reasons for the request. Information exchanged shall be used only in respect of the matter for which it was requested.***
 - 2b. A supervisory authority to which a request for assistance is addressed may not refuse to comply with it unless:***
 - (a) it is not competent to deal with the request; or***
 - (b) compliance with the request would be incompatible with the provisions adopted pursuant to this Directive.***

3. The requested supervisory authority

shall inform the requesting supervisory authority of the results or, as the case may be, of the progress or the measures taken in order to meet the request by the requesting supervisory authority.

shall inform the requesting supervisory authority of the results or, as the case may be, of the progress or the measures taken in order to meet the request by the requesting supervisory authority.

3a. Supervisory authorities shall supply the information requested by other supervisory authorities by electronic means and within the shortest possible period of time, using a standardised format.

3b. No fee shall be charged for any action taken following a request for mutual assistance.

Amendment 113

Proposal for a directive Article 48 a (new)

Text proposed by the Commission

Amendment

Article 48a

Joint operations

1. Member States shall provide that, in order to step up cooperation and mutual assistance, the supervisory authorities may carry out joint enforcement measures and other joint operations in which designated members or staff from supervisory authorities of other Member States participate in operations within a Member State's territory.

2. Member States shall provide that in cases where data subjects in another Member State or other Member States are likely to be affected by processing operations, the competent supervisory authority may be invited to participate in the joint operations. The competent supervisory authority may invite the supervisory authority of each of those Member States to take part in the respective operation and in case where it is invited, respond to the request of a supervisory authority to participate in the

operations without delay.

3. Member States shall lay down the practical aspects of specific co-operation actions.

Amendment 114

Proposal for a directive Article 49

Text proposed by the Commission

Tasks of the European Data Protection Board

1. The European Data Protection Board established by Regulation (EU)..../**2012** shall exercise the following tasks in relation to processing within the scope of this Directive:

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

(b) examine, **on** request of the Commission or on its own initiative or of one of its members, any question covering the application of the provisions adopted pursuant to this Directive and issue guidelines, recommendations and best practices addressed to the supervisory authorities in order to encourage consistent application of those provisions;

(c) review the practical application of guidelines, recommendations and best practices referred to in point (b) and report regularly to the Commission on these;

(d) give the Commission an opinion on the level of protection in third countries or international organisations;

(e) promote the co-operation and the effective bilateral and multilateral exchange of information and practices

Amendment

Tasks of the European Data Protection Board

1. The European Data Protection Board established by Regulation (EU)..../**2013** shall exercise the following tasks in relation to processing within the scope of this Directive:

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

(b) examine, **at the** request of the Commission, **the European Parliament or the Council** or on its own initiative or of one of its members, any question covering the application of the provisions adopted pursuant to this Directive and issue guidelines, recommendations and best practices addressed to the supervisory authorities in order to encourage consistent application of those provisions, **including on the use of enforcement powers**;

(c) review the practical application of guidelines, recommendations and best practices referred to in point (b) and report regularly to the Commission on these;

(d) give the Commission an opinion on the level of protection in third countries or international organisations;

(e) promote the co-operation and the effective bilateral and multilateral exchange of information and practices between the supervisory authorities,

between the supervisory authorities;

(f) promote common training programmes and facilitate personnel exchanges between the supervisory authorities, as well as, where appropriate, with the supervisory authorities of third countries or of international organisations;

(g) promote the exchange of knowledge and documentation with data protection supervisory authorities worldwide, including data protection legislation and practice.

2. Where the Commission requests advice from the European Data Protection Board, it may lay out a time limit within which the European Data Protection Board shall provide such advice, taking into account the urgency of the matter.

3. The European Data Protection Board shall forward its opinions, guidelines, recommendations, and best practices to the Commission and to the committee referred to in Article 57(1) and make them public.

4. The Commission shall inform the European Data Protection Board of the action it has taken following opinions, guidelines, recommendations and best practices issued by the European Data Protection Board.

Amendment 115

Proposal for a directive Article 50 – paragraph 2

Text proposed by the Commission

2. Member States shall provide for the

including the coordination of joint operations and other joint activities where it so decides at the request of one or more supervisory authorities;

(f) promote common training programmes and facilitate personnel exchanges between the supervisory authorities, as well as, where appropriate, with the supervisory authorities of third countries or of international organisations;

(g) promote the exchange of knowledge and documentation with data protection supervisory authorities worldwide, including data protection legislation and practice;

(ga) give its opinion to the Commission in the preparation of delegated and implementing acts under this Directive.

2. Where ***the European Parliament, the Council or*** the Commission requests advice from the European Data Protection Board, it may lay out a time limit within which the European Data Protection Board shall provide such advice, taking into account the urgency of the matter.

3. The European Data Protection Board shall forward its opinions, guidelines, recommendations, and best practices to the Commission and to the committee referred to in Article 57(1) and make them public.

4. The Commission shall inform the European Data Protection Board of the action it has taken following opinions, guidelines, recommendations and best practices issued by the European Data Protection Board.

Amendment

2. Member States shall provide for the

right of any body, organisation or association which *aims to protect data subjects' rights and interests concerning the protection of their personal data and is being* properly constituted according to the law of a Member State to lodge a complaint with a supervisory authority in any Member State on behalf of one or more data subjects, if it considers that a data subject's rights under this Directive have been infringed as a result of the processing of personal data. *The organisation or association must be duly mandated by the data subject(s).*

Amendment 116

Proposal for a directive Article 51

Text proposed by the Commission

Right to a judicial remedy against a supervisory authority

1. Member States shall provide for the right to a judicial remedy against decisions of a supervisory authority.

2. Each data subject shall have the right to a judicial remedy for obliging the supervisory authority to act on a complaint, in the absence of a decision which is 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 45(1).

3. Member States shall provide that proceedings against a supervisory authority shall be brought before the courts of the Member State where the supervisory authority is established.

right of any body, organisation or association *acting in the public interest* which *has been* properly constituted according to the law of a Member State to lodge a complaint with a supervisory authority in any Member State on behalf of one or more data subjects, if it considers that a data subject's rights under this Directive have been infringed as a result of the processing of personal data.

Amendment

Right to a judicial remedy with a supervisory authority

1. Member States shall provide for the right *for each natural or legal person* to a judicial remedy against decisions of a supervisory authority *concerning them*.

2. *Member States shall provide that* each data subject shall have the right to a judicial remedy for obliging the supervisory authority to act on a complaint, in the absence of a decision which is necessary to protect *his or her* 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 45(1).

3. Member States shall provide that proceedings against a supervisory authority shall be brought before the courts of the Member State where the supervisory authority is established.

3a. Member States shall ensure that final decisions by the court referred to in this

Article will be enforced.

Amendment 117

Proposal for a directive

Article 52 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall ensure that final decisions by the court referred to in this Article will be enforced.

Amendment 118

Proposal for a directive

Article 53 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall provide for the right of any body, organisation or association referred to in Article 50(2) to exercise the rights referred to in Articles 51 **and 52 on behalf of** one or more data subjects.

1. Member States shall provide for the right of any body, organisation or association referred to in Article 50(2) to exercise the rights referred to in Articles 51, 52 **and 54 when mandated by** one or more data subjects.

Amendment 119

Proposal for a directive

Article 53 – paragraph 2

Text proposed by the Commission

Amendment

2. Each supervisory authority shall have the right to engage in legal proceedings and bring an action to court, in order to enforce the provisions adopted pursuant to this Directive or to ensure consistency of the protection of personal data within the Union.

2. ***Member States shall provide that*** each supervisory authority shall have the right to engage in legal proceedings and bring an action to court, in order to enforce the provisions adopted pursuant to this Directive or to ensure consistency of the protection of personal data within the Union.

Amendment 120

Proposal for a directive Article 54 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 121

Proposal for a directive Article 55 a (new)

Text proposed by the Commission

Amendment

Chapter VIIIa

Transmission of personal data to other parties

Article 55a

Transmission of personal data to other authorities or private parties in the Union

1. Member States shall ensure that the controller does not transmit or instruct the processor to transmit personal data to a natural or legal person not subject to the provisions adopted pursuant to this Directive, unless:

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

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

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

(d) the transmission is necessary in a specific case for the controller

transmitting the personal data for:

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

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

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

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

3. The controller shall inform the supervisory authority of such transmissions.

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

Amendment 122

Proposal for a directive Article 56

Text proposed by the Commission

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The ***delegation of power*** referred to in Article 28(5) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Directive.

3. The delegation of power referred to in Article 28(5) may be revoked at any time by the European Parliament or by the Council. A decision ***of revocation*** shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified

Amendment

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The ***power to adopt delegated acts*** referred to in ***Article 25a(7)***, Article 28(5), ***Article 34(3) and Article 34(5)*** shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Directive.

3. The delegation of power referred to in ***Article 25a(7)***, Article 28(5), ***Article 34(3) and Article 34(5)*** may be revoked at any time by the European Parliament or by the Council. A decision ***to revoke*** shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the*

therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 28(5) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of **2 months** of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by **2 months** at the initiative of the European Parliament or the Council.

European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to **Article 25a(7)**, Article 28(5), **Article 34(3) and Article 34(5)** shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of **six 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 **six months** at the initiative of the European Parliament or **of** the Council.

Amendment 123

Proposal for a directive Article 56 a (new)

Text proposed by the Commission

Amendment

Article 56a

Deadline for the adoption of delegated acts

1. The Commission shall adopt the delegated acts under Article 25a(7) and Article 28(5) by [six months before the date referred to in Article 62(1)]. The Commission may extend the deadline referred to in this paragraph by six months.

Justification

In order to ensure the proper implementation of the Directive and legal certainty it is necessary that the delegated act relating to the notification of data breaches is adopted before the date of application of the Directive.

Amendment 124

Proposal for a directive Article 57 – paragraph 3

Text proposed by the Commission

3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

Amendment

deleted

Amendment 125

Proposal for a directive Article 61

Text proposed by the Commission

Evaluation

1. The Commission shall evaluate the application of this Directive.

2. The Commission shall review within **three** years after the entry into force of this Directive other acts adopted by the European Union which regulate the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, in particular those acts adopted by the Union referred to in Article 59, **in order to assess the need to align them with this Directive and make, where appropriate, the necessary proposals to amend these acts to ensure a consistent approach on the protection of personal data** within the scope of this Directive.

Amendment

Evaluation

1. The Commission shall, **after requesting an opinion of the European Data Protection Board**, evaluate the application **and implementation** of this Directive. **It shall coordinate in close cooperation with the Member States and shall include announced and unannounced visits. The European Parliament and the Council shall be kept informed throughout the process and shall have access to the relevant documents.**

2. The Commission shall review within **two** years after the entry into force of this Directive other acts adopted by the European Union which regulate the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, in particular those acts adopted by the Union referred to in Article 59, **and shall make appropriate proposals with a view to ensuring consistent and homogeneous legal rules relating to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of**

criminal offences or the execution of criminal penalties within the scope of this Directive.

2a. The Commission shall present within two years of the entry into force of this Directive appropriate proposals for the revision of the legal framework applicable to the processing of personal data by Union institutions, bodies, offices and agencies, for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties with a view to ensuring consistent and homogeneous legal rules relating to the fundamental right to the protection of personal data in the Union.

3. The Commission shall submit reports on the evaluation and review of this Directive pursuant to paragraph 1 to the European Parliament and the Council at regular intervals. The first reports shall be submitted no later than four years after the entry into force of this Directive. Subsequent reports shall be submitted every four years thereafter. The Commission shall submit, if necessary, appropriate proposals with a view of amending this Directive and aligning other legal instruments. The report shall be made public.

3. The Commission shall submit reports on the evaluation and review of this Directive pursuant to paragraph 1 to the European Parliament and ***to*** the Council at regular intervals. The first reports shall be submitted no later than four years after the entry into force of this Directive. Subsequent reports shall be submitted every four years thereafter. The Commission shall submit, if necessary, appropriate proposals with a view of amending this Directive and aligning other legal instruments. The report shall be made public.

EXPLANATORY STATEMENT

Context of the proposal

The rapporteur is of the opinion that an efficient data protection framework in Europe can majorly contribute to achieving a good level of data protection for every single European citizen. The content of the Commission's proposal 2012/0010 (COD) was amended by the rapporteur for the purpose of raising the standards of protection to a level similar to that of the proposed Regulation, and providing at the same time clear justifications for the proposed solutions.

The existing Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters does not provide a comprehensive framework of data protection by law enforcement and judicial authorities in criminal matters, as it addresses only cross-border situations and does not address the issue of parallel existing provisions on data protection in other EU instruments on law enforcement and criminal law.

The rapporteur is convinced that rapid technological developments have brought new challenges for the protection of personal data. The scale of data sharing and collecting has increased dramatically. Technology allows both public authorities, including law enforcement authorities as well as private entities to make use of personal data on an unprecedented scale. Individuals increasingly make personal information available publicly and globally. Technology has transformed both the economy and social life.

In a globalised and interconnected world built around communications online, personal data are available, stored, used and evaluated on a daily basis and on an unprecedented scale. The next few years, the next decades, Europe has to decide how to make use of all this information, especially as regards in the law enforcement sector and the prevention and fight against crime without betraying the fundamental rights and norms we have struggled so much to develop. It is a unique chance to develop two high standard and well balanced legal instruments.

The rapporteur strongly welcomes the efforts undertaken by the Commission to create a unified data protection framework and harmonise the different systems between EU Member States, and hopes that also the Council will fully meet its obligations.

Proposed changes by the rapporteur

The rapporteur is of the view that several specific issues had to be further clarified in the proposed directive referring, inter alia, to the following:

- Every exception to the principle had to be duly justified, as data protection is a fundamental right. It has to be equally protected in all circumstances and Article 52 of the Charter allowing limitations fully applies. Such limitations should be an exception to the general rule, and cannot become the rule itself. Therefore open blanket and broad exceptions could not be accepted;

- Clear definition of the data protection principles, such as elements on data retention, transparency, keeping data up to date, adequate, relevant and not excessive. Moreover, provisions requiring the data controller to demonstrate compliance were also missing;
- The processing of personal data must be lawful, fair and transparent in relation towards the individuals concerned. The specific purposes for which the data are processed should be explicit and legitimate and determined at the time of the collection of the personal data. Moreover, the personal data should be adequate, relevant and limited to the minimum necessary for the purposes for which the personal data are processed. Personal data should only be processed if the purpose of the processing could not be fulfilled by other means. Furthermore, under the proposed system, in order to ensure that the data are kept no longer than necessary. Time limits should be established by the controller for erasure or periodic review.
- Personal data should not be processed for purposes incompatible with the purpose for which it was collected. The fact that data are processed for a law enforcement purpose does not necessarily imply that this purpose is compatible with the initial purpose. The concept of compatible use has to be interpreted restrictively.
- It is essential that transmission of personal data to other authorities or private parties in the Union is prohibited unless the transmission is in compliance with law, and the recipient is established in a Member State. Furthermore, no legitimate specific interests of the data subject should prevent transmission, and the transmission is necessary in a specific case for the controller transmitting the data for either the performance of a task lawfully assigned to it, or the prevention of an immediate and serious danger to public security, or the prevention of serious harm to the rights of individuals. The controller should inform the recipient of the purpose of the processing and the supervisory authority of the transmission, while the recipient should also be informed of processing restrictions and ensure that they are met.
- An evaluation mechanism was lacking regarding a proper evaluation of necessity and proportionality. This question is essential to evaluate if certain data processing is necessary at all and fulfils its goal. Such an evaluation would furthermore prevent the establishment of a kind of "Orwellian" society where at the end all data will be processed and analysed. The collection of data must be necessary in order to justify a goal, taking into account that the goal can not be achieved by other means and the core of the private sphere of the individual is well preserved. Proportionality is also connected with the question on the re- use of data for a purpose other than it was initially legitimately processed to prevent an overall creation of profiles of the population;
- The creation of a data protection impact assessment is desired, that should be carried out by the controller or processors, which should include in particular the envisaged measures, safeguards and mechanisms to ensure the protection of personal data and for demonstrating compliance with this Directive. Impact assessments should concern relevant systems and processes of a personal data processing operations, but not individual cases Moreover where a data protection impact assessment indicates that processing operations are likely to present a high degree of specific risks to the rights and freedoms of data subjects, the supervisory authority should be in a position to prevent, prior to the start of operations, a risky processing which is not in compliance with this Directive, and to make proposals to remedy such situation. Such consultation may equally take place in the course of the preparation either of a

measure of the national parliament or of a measure based on such legislative measure which defines the nature of the processing and lays down appropriate safeguards.

- A clear definition on profiling was missing. Any such definition should be in line with the Council of Europe Recommendation CM/Rec(2010)13. Profiling in law enforcement has to be provided by law, which lays down measures to safeguard data subjects' legitimate interests, particularly by allowing them to put forward their point of view. Any negative consequences have to be assessed through human intervention. At the same time profiling should not become a boxing area of purely innocent individuals without any justified personal trigger- it should not lead to the so called general Rasterfahndung.

- The proposed regime for transferring personal data to third countries was weak and did not provide all the necessary safeguards to ensure the protection of the rights of individuals whose data will be transferred. This system provided lower protection than the proposed Regulation. For example, the Commission proposal would allow the transfer to a third country authority or an international organisation that was not competent for law enforcement purposes. Moreover, when the transfer was based on the assessment made by the data controller (Article 35(1)(b)), the Directive could possibly allow massive and bulk transfer of personal data.

- It is of utmost importance that in cases where no grounds for allowing a transfer exist, derogations should be allowed if necessary in order to protect the vital interests of the data subject or another person, or to safeguard legitimate interests of the data subject. Derogations, such as public security of a Member State or a third country should be interpreted restrictively and should not allow frequent, massive and structural transfer of personal data and should not allow wholesale transfer of data which should be limited to data strictly necessary. Moreover the decision for transfer should be made by a duly authorised person and this transfer must be documented and should be made available to the supervisory authority on request in order to monitor the lawfulness of the transfer.

- The power of the DPAs to monitor and ensure compliance with data protection rules were not properly defined. Compared to the proposed Regulation the competences of the DPAs were less clear. It was not evident that the DPA could access the premises of the data controller, as provided under the Regulation. Also the sanctions and enforcement measures appeared to be less precise.

- A new article was introduced concerning genetic data. The processing of genetic data should only be allowed if there is a genetic link which appears in the course of a criminal investigation or a judicial procedure. Genetic data should only be stored as long as strictly necessary for the purpose of such investigations and procedures, while Member States can provide for longer storage under the conditions set out in this Directive.

- The rapporteur believes that that the proposed Directive, in many aspects, did not meet the requirements of a high level of data protection, described by the Commission as 'crucial' (see recital 7) and was not legally aligned to the provisions of the proposed Regulation. Moreover, he thinks it is paramount that the two legal instruments (Data Protection Regulation and Directive) are considered a package regarding the time table and the eventual adoption.

After a period where national law enforcement authorities had to adapt the level of data protection according to the situation they were dealing with (internal or cross- border

situation, Prum, Europol, Eurojust), finally a sustainable and coherent instrument can provide legal certainty and can be at the same time internationally competitive and a model for data protection in the 21st century.

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

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

Rapporteur: Axel Voss

SHORT JUSTIFICATION

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

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

Consequently, the European Parliament has always taken the view that the fundamental rights to data protection and privacy include the protection of persons from possible surveillance and abuse of their data by the state itself. The Commission proposal for a directive on 'the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data' is consistent with this view, and the rapporteur essentially welcomes it.

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

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

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

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

The draft directive proposed by the Commission includes the exchange of data at domestic level within the scope of the directive, whereas Article 16(2) TFEU gives the EU competence only within the scope of Union law. This does not include domestic processing of data in the police area (Article 87 TFEU).

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

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

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

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

Chapter I

- Averting risks is included in the scope (Article 1).
- The Member States are clearly permitted to set higher standards (Article 1). The objective is not harmonisation but setting minimum standards.

- The scope is expanded to include the Union institutions, bodies, offices and agencies (Article 2).

Chapter II

- The text of the key section on 'principles of data processing' is brought into line with the General Data Protection Regulation. The package approach means that these principles should tally (Article 4).
- Article 5 is deleted, since it represents an increase in bureaucracy and costs for the Member States and the legal effects have not been analysed.
- Purpose limitation in respect of the processing of data is a key principle of data protection. Articles 6 and 7 have been thoroughly reworked and expanded on the basis of Framework Decision 2008/977/JHA (here: Article 8 (accuracy), Article 3 (purpose limitation) and Article 13 (purpose limitation in respect of data from other EU countries)).

Chapter III

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

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

Chapter IV

- Article 20 'Joint controllers' is deleted, since it lowers the standard of data protection. In the context of external cooperation, both controllers should remain jointly liable vis-à-vis the data subject.
- Article 23 'Documentation' has been tightened up in line with Article 10 of Framework Decision 2008/977/JHA. As a result, Article 24 'Keeping of records' is deleted.
- Article 27 'Security of processing' has been brought into line with the text of Article 22 of the Framework Decision.
- Prior consultation/privacy impact assessment is introduced in the shape of new Article 28a, which has been taken from Article 23 of Framework Decision 2008/977/JHA.

- 'Data breaches' are to be notified only to the supervisory authority and not to the data subject (Articles 28 and 29).

Chapter V

- Article 35b incorporates the provisions of Article 13 of the Framework Decision and lays down specific rules on the handling of data from other Member States.
- Article 36 has been reworded; it should be possible to transfer data to third countries in spite of a negative decision on the adequacy of protection, in a very limited number of individual cases and subject to strict conditions, in order to protect vital interests, e.g. where lives are at risk.

Chapter VIII

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

Delegated and implementing acts

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

Non-contractual liability

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

AMENDMENTS

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

Amendment 1 **Proposal for a directive** **Recital 7**

Text proposed by the Commission

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

Amendment 2
Proposal for a directive
Recital 15

Text proposed by the Commission

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

Amendment

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

Amendment

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

course of an activity which falls outside the scope of Union law, in particular concerning national security, *or to data processed by the Union institutions, bodies, offices and agencies, such as Europol or Eurojust.*

course of an activity which falls outside the scope of Union law, in particular concerning national security.

Amendment 3
Proposal for a directive
Recital 16

Text proposed by the Commission

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

Amendment

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

Amendment 4
Proposal for a directive
Recital 23

Text proposed by the Commission

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

Amendment

deleted

convicted criminals.

Amendment 5
Proposal for a directive
Recital 24

Text proposed by the Commission

Amendment

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

deleted

Amendment 6
Proposal for a directive
Recital 43

Text proposed by the Commission

Amendment

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

deleted

Amendment 7
Proposal for a directive
Recital 45

Text proposed by the Commission

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

Amendment 8
Proposal for a directive
Recital 55

Text proposed by the Commission

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

Amendment 9
Proposal for a directive
Recital 70

Text proposed by the Commission

(70) Since the objectives of this Directive, namely to protect the fundamental rights

Amendment

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

Amendment

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

Amendment

deleted

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

Amendment 10
Proposal for a directive
Recital 73

Text proposed by the Commission

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

Amendment

deleted

Amendment 11
Proposal for a directive
Article 1 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 12

Proposal for a directive

Article 1 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

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

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

Justification

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

Amendment 13

Proposal for a directive

Article 1 – paragraph 2 – point b

Text proposed by the Commission

Amendment

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

deleted

Amendment 14

Proposal for a directive

Article 2 – paragraph 3 – point b

Text proposed by the Commission

Amendment

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

deleted

Justification

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

Amendment 15

Proposal for a directive

Article 3 – paragraph 1 – point 1

Text proposed by the Commission

Amendment

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

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

Amendment 16

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

Justification

This amendment tightens up the concept of the data subject's consent. Even if in principle citizens and the State cannot be on equal footing, consent may serve as a justification in

individual cases, for example with DNA mass tests.

Amendment 17

Proposal for a directive

Article 3 – paragraph 1 – point 14

Text proposed by the Commission

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

Amendment

(14)) 'competent authorities' means any public authority competent for **risk** prevention, **the** investigation, detection or prosecution of criminal offences or the execution of criminal penalties, **including the European Union institutions, bodies, offices and agencies**;

Amendment 18

Proposal for a directive

Article 4 – paragraph 1 – point a

Text proposed by the Commission

(a) processed **fairly and** lawfully;

Amendment

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

Amendment 19

Proposal for a directive

Article 4 – point c

Text proposed by the Commission

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

Amendment

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

Amendment 20
Proposal for a directive
Article 4 – point e

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 21
Proposal for a directive
Article 4 – point f

Text proposed by the Commission

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

Amendment

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

Amendment 22
Proposal for a directive
Article 4 – point f

Text proposed by the Commission

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

Amendment

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

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

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

Amendment 24
Proposal for a directive
Article 6 – title

Text proposed by the Commission

Amendment

Different degrees of accuracy and reliability of personal data

Factual accuracy

Amendment 25
Proposal for a directive
Article 6 – paragraph 1

Text proposed by the Commission

Amendment

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

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

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

Text proposed by the Commission

Amendment

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

2. ***The competent authorities*** shall ensure that personal data ***which are inaccurate, incomplete or no longer up to date are not transmitted or made available. To that***

end, the competent authorities shall, as far as practicable, verify the quality of personal data before they are transmitted or made available. As far as possible, in all transmissions of data, available information shall be added which enables the receiving Member State to assess the degree of accuracy, completeness, up-to-dateness and reliability. If personal data were transmitted without request the receiving authority shall verify without delay whether these data are necessary for the purpose for which they were transmitted.

2a. If it emerges that incorrect data have been transmitted or data have been unlawfully transmitted, the recipient must be notified without delay. The recipient shall be obliged to rectify the data without delay in accordance with paragraph 1 and Article 15 or to erase them in accordance with Article 16.

Justification

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

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

Text proposed by the Commission

Amendment

Article 7a

Lawfulness of processing; purpose limitation

1. The processing of personal data is only lawful if carried out in accordance with the following principles.

2. Personal data may be collected by the responsible authorities as part of their work for specified, explicit and legitimate purposes. Legitimate purposes are served by data collection in particular if it is

- (a) for the performance of a task carried out by a competent authority, based on law for the purposes set out in Article 1(1); or*
- (b) for compliance with a legal obligation to which the controller is subject; or*
- (c) in order to safeguard the data subject's legitimate interests; or*
- (d) in order to safeguard the legitimate interests of another person, unless it is clearly in the legitimate interest of the data subject that the data processing does not take place;*
- (e) for the prevention of a threat to public security.*

3. The processing of personal data must fulfil the purpose for which they were collected. Further processing for another purpose shall be permitted in so far as it

- (a) serves lawful purposes (paragraph 2);*
- (b) is necessary for this other purpose;*
- (c) is not incompatible with the purpose for which the data were collected.*

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

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

Text proposed by the Commission

Amendment

Article 7b

Special provisions for personal data from other Member States

Further to the general principles of data processing, the following arrangements shall be applicable to personal data transmitted or made available by the

competent authorities of another Member State:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Justification

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

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

Text proposed by the Commission

Amendment

Article 7c

Establishment of time limits for erasure and review

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

Justification

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

Amendment 30
Proposal for a directive
Article 8

Text proposed by the Commission

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

2. Paragraph 1 shall not apply where:

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

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

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

Amendment

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

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

(Does not affect English version.)

(Does not affect English version.)

Justification

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

Amendment 31
Proposal for a directive
Article 9 – paragraph 1

Text proposed by the Commission

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

Amendment

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

prohibited unless authorised by a law which also lays down measures to safeguard the data subject's legitimate interests.

which also lays down measures to safeguard the data subject's legitimate interests.

Justification

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

Amendment 32
Proposal for a directive
Article 9 – paragraph 2

Text proposed by the Commission

Amendment

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

Justification

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

Amendment 33
Proposal for a directive
Article 10 – paragraph 1

Text proposed by the Commission

Amendment

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

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

Amendment 34
Proposal for a directive
Article 10 – paragraph 2

Text proposed by the Commission

Amendment

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

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

Amendment 35
Proposal for a directive
Article 10 – paragraph 4

Text proposed by the Commission

Amendment

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

deleted

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

Text proposed by the Commission

Amendment

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

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

Text proposed by the Commission

Amendment

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

deleted

Justification

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

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

Text proposed by the Commission

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

Amendment

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

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

Text proposed by the Commission

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

Amendment

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

Amendment 40
Proposal for a directive
Article 13 – paragraph 1 – point e

Text proposed by the Commission

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

Amendment

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

Amendment 41
Proposal for a directive
Article 13 – paragraph 2

Text proposed by the Commission

2. Member States may determine by law categories of data processing which may wholly or partly fall under the exemptions

Amendment

deleted

of paragraph 1.

Justification

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

Amendment 42

Proposal for a directive

Article 14 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 43

Proposal for a directive

Article 14 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 44

Proposal for a directive

Article 14 – paragraph 3 – subparagraph 1 a

Text proposed by the Commission

Amendment

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

Justification

This provides for a system of indirect subject access requests, using the wording from the

Amendment 45
Proposal for a directive
Article 15 – paragraph 1

Text proposed by the Commission

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

Amendment

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

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

Text proposed by the Commission

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

Amendment

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

2a. If the data subject asserts their rights against the controller and the latter refuses the rectification or completion, the controller must inform the data subject in writing on the refusal of rectification, on the reasons for the refusal and on the possibilities of lodging a complaint to the supervisory authority and seeking a judicial remedy

Justification

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

Amendment 47
Proposal for a directive
Article 16 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Justification

The amendment broadens the scope and strengthens individual rights.

Amendment 48
Proposal for a directive
Article 16 – paragraph 2 and paragraph 2 a (new)

Text proposed by the Commission

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

Amendment

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

2a. If the data subject asserts their rights against the controller and the latter refuses the rectification or completion, the controller must inform the data subject in writing on the refusal of rectification, on the reasons for the refusal and on the possibilities of lodging a complaint to the supervisory authority and seeking a judicial remedy.

Amendment 49
Proposal for a directive
Article 16 – paragraph 3 – introductory part

Text proposed by the Commission

3. Instead of erasure, the controller shall

Amendment

3. Instead of erasure, the controller shall

mark the personal data where:

restrict the processing of the personal data where:

Amendment 50

Proposal for a directive

Article 16 – paragraph 3 – point c

Text proposed by the Commission

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

Amendment

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

Amendment 51

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

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

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

Amendment 52

Proposal for a directive

Article 16 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

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

Justification

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

Amendment 53 **Proposal for a directive** **Article 16 – paragraph 4**

Text proposed by the Commission

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

Amendment

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

Amendment 54 **Proposal for a directive** **Article 17 – paragraph 1**

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 55 **Proposal for a directive** **Article 18 – paragraph 3**

Text proposed by the Commission

3. The controller shall implement

Amendment

deleted

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

Justification

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

Amendment 56
Proposal for a directive
Article 21 – paragraph 1

Text proposed by the Commission

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

Amendment

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

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

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

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

Justification

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

Amendment 57
Proposal for a directive
Article 21 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 58
Proposal for a directive
Article 23 – paragraph 1 and paragraphs 1 a and 1 b (new)

Text proposed by the Commission

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

Amendment

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

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

1b. The logs and documents so produced must be made available to the supervisory authority upon request. The supervisory authority shall use this information only for the purpose of checking the lawfulness of the data processing and ensuring proper data integrity and

security.

Justification

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

Amendment 59

Proposal for a directive

Article 27 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Member States shall provide that the controller implements technical and organisational measures to ***prevent:***

(a) the unintentional or unlawful destruction,

(b) accidental loss,

(c) unauthorised alteration,

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

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

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

Justification

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

Amendment 60

Proposal for a directive

Article 27 – paragraph 2 – introductory part

Text proposed by the Commission

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

Amendment

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

Amendment 61

Proposal for a directive

Article 27 – paragraph 2 – point j

Text proposed by the Commission

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

Amendment

(Does not affect English version.)

Translator's note

The German amendment would bring the text more closely into line with the wording of Article 22(2)(j) of Council Framework Decision 2008/977/JHA by replacing the word 'beschädigt' with the word 'verfälscht'. The English version of this part of the present proposal is already in line with the wording of the Framework Decision.

Amendment 62

Proposal for a directive

Article 27 – paragraph 3

Text proposed by the Commission

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

Amendment

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

notably encryption standards. *Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).*

encryption standards.

Amendment 63
Proposal for a directive
Article 28 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Justification

Requesting that data controllers notifies all breaches no later than 24 hours after having become aware of it, and also requesting a reasoned justification is overly bureaucratic.

Amendment 64
Proposal for a directive
Article 28 – paragraph 5

Text proposed by the Commission

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

Amendment

deleted

Justification

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

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

Amendment 65
Proposal for a directive
Article 28 a (new)

Text proposed by the Commission

Amendment

Article 28a

Prior consultation

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

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

(b) the type of processing, in particular using new technologies, mechanism or procedures, holds otherwise specific risks for the fundamental rights and freedoms, and in particular the privacy, of the data subject.

Justification

The wording is taken from Article 13 of Framework Decision 2088/977/JI

Amendment 66
Proposal for a directive
Article 31 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The data protection officer shall not be penalised for performing his tasks. The data protection officer may not be dismissed while he is employed in that capacity or in the course of the next year thereafter unless facts emerge which provide sufficiently important grounds for the controller to dismiss him.

Amendment 67
Proposal for a directive
Article 33 – point a

Text proposed by the Commission

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

Amendment

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

Amendment 68
Proposal for a directive
Article 33 – point b

Text proposed by the Commission

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

Amendment

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

Amendment 69
Proposal for a directive
Article 34 – paragraph 2 – introductory part

Text proposed by the Commission

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

Amendment

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

Amendment 70
Proposal for a directive
Article 34 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission ***may decide, within the scope of this Directive, that a third country or a territory or a processing sector within that third country or an international organisation ensures an adequate level of protection*** within the meaning of paragraph 2. ***Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).***

3. The Commission ***shall be empowered to adopt delegated acts in accordance with Article 56 to supplement the list in Annex [x] of third countries, territories or processing sectors within third countries or international organisations which ensure an adequate level of protection*** within the meaning of paragraph 2. ***When determining the level of protection, the Commission must consider whether the relevant legislation, both general and sectoral, in force in the third country or international organisation, guarantees effective and enforceable rights including effective administrative and judicial redress for data subjects, in particular for those data subjects whose personal data are being transferred.***

Justification

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

Amendment 71

Proposal for a directive

Article 34 – paragraph 4

Text proposed by the Commission

Amendment

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

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

Justification

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

Amendment 72

Proposal for a directive

Article 34 – paragraph 5

Text proposed by the Commission

Amendment

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

Amendment 73

Proposal for a directive

Article 34 – paragraph 6

Text proposed by the Commission

Amendment

6. Member States shall ensure that where the Commission decides pursuant to paragraph 5, that any transfer of personal data to the third country or a territory or a processing sector within that third **deleted**

country, or the international organisation in question shall be prohibited, this decision shall be without prejudice to transfers under Article 35(1) or in accordance with Article 36. At the appropriate time, the Commission shall enter into consultations with the third country or international organisation with a view to remedying the situation resulting from the Decision made pursuant to paragraph 5 of this Article.

Amendment 74
Proposal for a directive
Article 34 – paragraph 8

Text proposed by the Commission

Amendment

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

Amendment 75
Proposal for a directive
Article 35

Text proposed by the Commission

Amendment

Article 35 *deleted*

Transfers by way of appropriate safeguards

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

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

(b) the controller or processor has assessed all the circumstances surrounding the transfer of personal data and concludes that appropriate

safeguards exist with respect to the protection of personal data.

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

Amendment 76
Proposal for a directive
Article 35 a (new)

Text proposed by the Commission

Amendment

Article 35a

Transfers with appropriate safeguards

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

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

(b) the controller or processor has assessed all the circumstances generally surrounding the transfer of personal data (Article 43(2)) and concludes that appropriate safeguards exist with respect to the protection of personal data, or

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

Amendment 77
Proposal for a directive
Article 35 b (new)

Article 35b

Transfer of personal data originating in other Member States

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

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

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

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

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

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

provides on the grounds of:

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

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

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

Justification

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

Amendment 78 **Proposal for a directive** **Article 36**

Text proposed by the Commission

Amendment

Article 36

deleted

Derogations

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

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

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

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

(d) the transfer is necessary in individual

cases for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties; or

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

Amendment 79
Proposal for a directive
Article 36 a (new)

Text proposed by the Commission

Amendment

Article 36a

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

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

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

(a) the nature of the data that are to be transferred,

(b) the purpose(s) served by transferring

it, and

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

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

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

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

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

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

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

Justification

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

Amendment 80
Proposal for a directive
Article 37

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 81
Proposal for a directive
Article 38 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 82
Proposal for a directive
Article 41 – paragraph 5

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 83

Proposal for a directive

Article 44 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 84

Proposal for a directive

Article 45 – paragraph 1 – point a

Text proposed by the Commission

(a) monitors and ensures the application of the provisions adopted pursuant to this Directive and its implementing measures;

Amendment

(a) monitors and ensures the application of, ***at least***, the provisions adopted pursuant to this Directive and its implementing measures;

Amendment 85

Proposal for a directive

Article 45 – paragraph 1 – point b

Text proposed by the Commission

(b) hears complaints lodged by any data subject, ***or by an association representing and duly mandated by that data subject in***

Amendment

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

accordance with Article 50, investigates, to the extent appropriate, the matter and informs the data subject *the association* of the progress and the outcome of the complaint within a reasonable period, in particular where further investigation or coordination with another supervisory authority is necessary;

data subject of the progress and the outcome of the complaint within a reasonable period, in particular where further investigation or coordination with another supervisory authority is necessary;

Justification

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

Amendment 86 **Proposal for a directive** **Article 45 – paragraph 1 – point e**

Text proposed by the Commission

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

Amendment

(e) conducts investigations on the basis of a complaint, or on request of another supervisory authority, and informs the data subject concerned, if the data subject has addressed a complaint, of the outcome of the investigations within a reasonable period; *the supervisory authority may also conduct such investigations on its own initiative, within the limits of national legislation;*

Amendment 87 **Proposal for a directive** **Article 46 – point c**

Text proposed by the Commission

(c) the power to engage in legal proceedings where the provisions adopted pursuant to this Directive have been infringed or to bring this infringement to the attention of the judicial authorities.

Amendment

(c) the power to engage in legal proceedings where the provisions adopted pursuant to this Directive have been infringed or to bring this infringement to the attention of the judicial authorities.
Decisions by the supervisory authority which give rise to complaints may be

appealed against through the courts.

Justification

The inclusion of a guaranteed right to appeal through the courts is clearly necessary; the wording is taken directly from Article 25(2)(c) of Framework Decision 2008/977/JI.

Amendment 88

Proposal for a directive

Article 49 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

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

Amendment 89

Proposal for a directive

Article 52 – paragraph 1

Text proposed by the Commission

Without prejudice to any available administrative remedy, including the right to lodge a complaint with a supervisory authority, Member States shall provide for the right of every natural person to a judicial remedy if **they consider that that** their rights laid down in provisions adopted pursuant to this Directive have been infringed as a result of the processing of their personal data in non-compliance with these provisions.

Amendment

Without prejudice to any available administrative remedy, including the right to lodge a complaint with a supervisory authority, Member States shall provide for the right of every natural person to a judicial remedy if their rights laid down in provisions adopted pursuant to this Directive have been infringed as a result of the processing of their personal data in non-compliance with these provisions.

Amendment 90

Proposal for a directive

Article 54 – paragraph 1

Text proposed by the Commission

1. Member States shall provide that any person who has suffered damage as a result of an unlawful processing operation or of

Amendment

1. Member States shall provide that any person who has suffered damage as a result of an unlawful processing operation or of

an action incompatible with the provisions adopted pursuant to this Directive shall have the right to receive compensation from the controller or the processor for the damage suffered.

an action incompatible with the provisions adopted pursuant to this Directive shall have the right to receive compensation from the controller or the processor for the damage suffered *in line with national law*.

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

Text proposed by the Commission

Amendment

1 a. Where a competent authority of a Member State has transmitted personal data, the recipient cannot, in the context of its liability vis-à-vis the injured party in accordance with national law, cite in its defence that the data transmitted were inaccurate. If the recipient pays compensation for damage caused by the use of incorrectly transmitted data, the transmitting competent authority shall refund to the recipient the amount paid in damages, taking into account any fault that may lie with the recipient.

Justification

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

Amendment 92
Proposal for a directive
Article 55

Text proposed by the Commission

Amendment

Member States shall lay down the rules on penalties, applicable to infringements of the provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

Member States shall ***adopt suitable measures to ensure the full implementation of the provisions of this Directive and shall in particular*** lay down the rules on penalties, applicable to infringements of the provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and

dissuasive.

Justification

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

Amendment 93
Proposal for a directive
Article 56 – paragraph 2

Text proposed by the Commission

2. The delegation of power referred to in Article **28(5)** shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Directive.

Amendment

2. The delegation of power referred to in Article **34(3)** shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Directive.

Justification

Consequential amendment because of the deletion of the delegation in Article 28(5) and the change from implementing to delegated acts in Article 34(3).

Amendment 94
Proposal for a directive
Article 56 – paragraph 3

Text proposed by the Commission

3. The delegation of power referred to in Article **28(5)** may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Amendment

3. The delegation of power referred to in Article **34(3)** may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Justification

Consequential amendment because of the deletion of the delegation in Article 28(5) and the change from implementing to delegated acts in Article 34(3).

Amendment 95
Proposal for a directive
Article 56 – paragraph 5

Text proposed by the Commission

5. A delegated act adopted pursuant to Article **28(5)** shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

Amendment

5. A delegated act adopted pursuant to Article **34(3)** shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

Justification

Consequential amendment because of the deletion of the delegation in Article 28(5) and the change from implementing to delegated acts in Article 34(3).

Amendment 96
Proposal for a directive
Article 57 – paragraph 2

Text proposed by the Commission

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Amendment

deleted

Justification

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

Amendment 97
Proposal for a directive
Article 60

Text proposed by the Commission

International agreements concluded by Member States prior to the entry force of this Directive shall be amended, where necessary, within **five** years after the entry into force of this Directive.

Amendment

1. International agreements concluded by Member States prior to the entry force of this Directive shall be amended, where necessary, within **ten** years after the entry into force of this Directive ***except where they are in any case subject to separate controls.***

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

Justification

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

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

Text proposed by the Commission

Amendment

Annex [x]

List of third countries, territories or processing sectors within third countries or international organisations which ensure an adequate level of protection within the meaning of Article 34(2)

Justification

Consequential amendment because of changes made to Article 34.

PROCEDURE

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

PROCEDURE

Title	Protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data (Directive)			
References	COM(2012)0010 – C7-0024/2012 – 2012/0010(COD)			
Date submitted to Parliament	25.1.2012			
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Committee(s) asked for opinion(s) Date announced in plenary	JURI 14.6.2012			
Rapporteur(s) Date appointed	Dimitrios Droutsas 25.4.2012			
Discussed in committee	27.2.2012	31.5.2012	9.7.2012	19.9.2012
	5.11.2012	10.1.2013	21.1.2013	20.3.2013
	7.5.2013	9.7.2013	21.10.2013	
Date adopted	21.10.2013			
Result of final vote	+: 29 -: 20 0: 3			
Members present for the final vote	Jan Philipp Albrecht, Roberta Angelilli, Edit Bauer, Rita Borsellino, Emine Bozkurt, Arkadiusz Tomasz Bratkowski, Salvatore Caronna, Philip Claeys, Carlos Coelho, Agustín Díaz de Mera García Consuegra, Ioan Enciu, Cornelia Ernst, Tanja Fajon, Kinga Gál, Kinga Göncz, Sylvie Guillaume, Salvatore Iacolino, Sophia in 't Veld, Juan Fernando López Aguilar, Baroness Sarah Ludford, Clemente Mastella, Véronique Mathieu Houillon, Anthea McIntyre, Nuno Melo, Roberta Metsola, Louis Michel, Claude Moraes, Georgios Papanikolaou, Carmen Romero López, Judith Sargentini, Birgit Sippel, Wim van de Camp, Axel Voss, Josef Weidenholzer, Cecilia Wikström, Tatjana Ždanoka, Auke Zijlstra			
Substitute(s) present for the final vote	Alexander Alvaro, Silvia Costa, Dimitrios Droutsas, Evelynne Gebhardt, Monika Hohlmeier, Jan Mulder, Raúl Romeva i Rueda, Carl Schlyter, Marco Scurria			
Substitute(s) under Rule 187(2) present for the final vote	Jean-Pierre Audy, Pilar Ayuso, Miloslav Ransdorf, Britta Reimers, Kay Swinburne, Rafał Trzaskowski			
Date tabled	22.11.2013			