



EUROPSKI PARLAMENT

2009 - 2014

Dokument s plenarne sjednice

A7-0402/2013

21.11.2013

*****I**
IZVJEŠĆE

o prijedlogu Uredbe Europskog parlamenta i Vijeća o zaštiti pojedinaca pri obradi osobnih podataka i o slobodnom kretanju takvih podataka (Opća uredba o zaštiti podataka)
(COM(2012)0011 – C7-0025/2012 – 2012/0011(COD))

Odbor za građanske slobode, pravosuđe i unutarnje poslove

Izvjestitelj: Jan Philipp Albrecht

Oznake postupaka

- * Postupak savjetovanja
- *** Postupak suglasnosti
- ***I Redovni zakonodavni postupak (prvo čitanje)
- ***II Redovni zakonodavni postupak (drugo čitanje)
- ***III Redovni zakonodavni postupak (treće čitanje)

(Navedeni se postupak temelji na pravnoj osnovi predloženoj u nacrtu akta.)

Izmjene nacrta akta

U amandmanima Parlamenta izmjene nacrta akta označene su ***podebljanim kurzivom***. *Obični kurziv* naznaka je tehničkim službama da se radi o dijelovima nacrta akta za koje se predlaže ispravak prilikom izrade konačnog teksta (na primjer o očitim pogreškama ili izostavcima u danoj jezičnoj verziji). Za predložene ispravke potrebna je suglasnost dotičnih tehničkih službi.

Zaglavlje svakog amandmana na postojeći akt koji se želi izmijeniti nacrtom akta sadrži i treći redak u kojem se navodi postojeći akt te četvrti redak u kojem se navodi odredba akta na koju se izmjena odnosi. Dijelovi teksta odredbe postojećeg akta koju Parlament želi izmijeniti, a koja je u nacrtu akta ostala nepromijenjena, označeni su ***podebljanim slovima***. Za moguća brisanja u tim dijelovima teksta koristi se oznaka [...].

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NACRT ZAKONODAVNE REZOLUCIJE EUROPSKOG PARLAMENTA

o prijedlogu Uredbe Europskog parlamenta i Vijeća o zaštiti pojedinaca pri obradi osobnih podataka i o slobodnom kretanju takvih podataka (Opća uredba o zaštiti podataka)

(COM(2012)0011 – C7-0025/2012 – 2012/0011(COD))

(Redovni zakonodavni postupak: prvo čitanje)

Europski parlament,

- uzimajući u obzir prijedlog Komisije upućen Europskom parlamentu i Vijeću (COM(2012)0011),
 - uzimajući u obzir članak 294. stavak 2. i članke 16. Stavak 2. i 114. Stavak 1. Ugovora o funkcioniranju Europske unije, u skladu s kojima je Komisija podnijela prijedlog Parlamentu (C7-0025/2012),
 - uzimajući u obzir članak 294. stavak 3. Ugovora o funkcioniranju Europske unije,
 - uzimajući u obzir obrazložena mišljenja belgijskog Zastupničkog doma, njemačkog Saveznog vijeća – Bundesrata, francuskog Senata, talijanskog Zastupničkog doma i Švedskog parlamenta, podnesena u okviru protokola br. 2 o primjeni načela supsidijarnosti i proporcionalnosti, u kojima se izjavljuje da nacrt zakonodavnog akta nije u skladu s načelom supsidijarnosti,
 - uzimajući u obzir mišljenje Europskog gospodarskog i socijalnog odbora od 23. svibnja 2012¹,
 - nakon savjetovanja s Odborom regija,
 - uzimajući u obzir mišljenje Europskog nadzornika za zaštitu podataka od 7. ožujka 2012.,
 - uzimajući u obzir mišljenje Agencije Europske unije za temeljna prava od 1. listopada 2012.;
 - uzimajući u obzir članak 55. Poslovnika,
 - uzimajući u obzir izvješće Odbora za građanske slobode, pravosuđe i unutarnje poslove i mišljenja Odbora za zapošljavanje i socijalna pitanja, Odbora za industriju, istraživanje i energetiku i Odbora za unutarnje tržište i zaštitu potrošača (A7-0402/2013),
1. usvaja sljedeće stajalište u prvom čitanju;
 2. traži od Komisije da predmet ponovno uputi Parlamentu ako namjerava bitno izmijeniti svoj prijedlog ili ga zamijeniti drugim tekstom;

¹ SL C 229, 31.7.2012., str. 90.

3. nalaže svojem predsjedniku da stajalište Parlamenta proslijedi Vijeću, Komisiji i nacionalnim parlamentima.

Amandman 1

Prijedlog Uredbe Uvodna izjava 14.

Tekst koji je predložila Komisija

(14) U ovoj Uredbi ne obrađuju se pitanja zaštite temeljnih prava i sloboda ili slobodnog protoka podataka vezana uz aktivnosti koje nisu u području primjene zakonodavstva Unije, niti osobni podaci koje obrađuju institucije, tijela, uredi i agencije Unije, a za koje je mjerodavna Uredba (EZ) br. 45/2001¹⁴, niti osobni podaci koje obrađuju države članice pri obavljanju aktivnosti povezanih sa zajedničkom vanjskom i sigurnosnom politikom Unije.

SL L 8, 12. 1. 2001., str. 1.

Izmjena

(14) U ovoj Uredbi ne obrađuju se pitanja zaštite temeljnih prava i sloboda ili slobodnog protoka podataka vezana uz aktivnosti koje nisu u području primjene zakonodavstva Unije. Uredbu (EZ) br. 45/2001 ***Europskog parlamenta i Vijeća trebalo bi uskladiti s ovom Uredbom i primijeniti u skladu s ovom Uredbom.***

Uredba (EZ) br. 45/2001 Europskog parlamenta i Vijeća od 18. prosinca 2000. o zaštiti pojedinaca u vezi s obradom osobnih podataka u institucijama i tijelima Zajednice i o slobodnom protoku takvih podataka (SL L 8, 12.1.2001, str. 1).

Amandman 2

Prijedlog Uredbe Uvodna izjava 15.

Tekst koji je predložila Komisija

(15) Ova se Uredba ne bi trebala odnositi na obradu osobnih podataka koju provodi fizička osoba, koja je isključivo osobne ili obiteljske naravi, kao što je dopisivanje i vođenje evidencije adresata, bez financijskog interesa i koja stoga nije

Izmjena

(15) Ova se Uredba ne bi trebala odnositi na obradu osobnih podataka koju provodi fizička osoba, koja je isključivo osobne, ***porodične*** ili obiteljske naravi, kao što je dopisivanje i vođenje evidencije adresata ili ***privatna prodaja*** i koja nije povezana s

povezana s profesionalnom ili gospodarskom djelatnošću. ***Izuzeće se ne bi trebalo primjenjivati i na nadzornike ili obrađivače koji osiguravaju sredstva za obradu osobnih podataka za takve osobne ili obiteljske aktivnosti.***

profesionalnom ili gospodarskom djelatnošću. ***Međutim ova Uredba trebala bi se primjenjivati na nadzornike i obrađivače koji osiguravaju sredstva za obradu osobnih podataka za takve osobne ili obiteljske aktivnosti.***

Amandman 3

Prijedlog Uredbe Uvodna izjava 18.

Tekst koji je predložila Komisija

(18) Direktive. Ovom Uredbom omogućuje se poštovanje načela javnog pristupa službenim dokumentima kod primjene odredbi utvrđenih ovom Uredbom.

Izmjena

(18) Direktive. Ovom Uredbom omogućuje se poštovanje načela javnog pristupa službenim dokumentima kod primjene odredbi utvrđenih ovom Uredbom. ***Osobne podatke u dokumentima koje posjeduje javna ustanova ili javno tijelo ta ustanova ili to tijelo mogu otkriti u skladu sa zakonodavstvom Unije ili države članice o javnom pristupu službenim dokumentima koje usklađuje pravo na zaštitu podataka s pravom javnog pristupa službenim dokumentima i predstavlja poštenu ravnotežu različitih uključenih interesa.***

Amandman 4

Prijedlog Uredbe Uvodna izjava 20.

Tekst koji je predložila Komisija

(20) Kako bi se osiguralo da pojedinci nisu uskraćeni za zaštitu na koju imaju pravo u skladu s ovom Uredbom, obrada osobnih podataka osoba s boravištem u Uniji koju provodi nadzornik koji nema poslovni nastan u Uniji trebala bi biti utvrđena ovom Uredbom, ako su aktivnosti obrade povezane s ponudom proizvoda ili usluga dotičnim osobama ili s praćenjem njihova ponašanja.

Izmjena

(20) Kako bi se osiguralo da pojedinci nisu uskraćeni za zaštitu na koju imaju pravo u skladu s ovom Uredbom, obrada osobnih podataka osoba s boravištem u Uniji koju provodi nadzornik koji nema poslovni nastan u Uniji trebala bi biti utvrđena ovom Uredbom, ako su aktivnosti obrade povezane s ponudom proizvoda ili usluga, ***neovisno o tome jesu li povezane uz plaćanje ili ne***, dotičnim osobama ili s praćenjem njihova ponašanja. ***Kako bi se***

utvrdilo nudi li takav nadzornik robu ili usluge takvim osobama čiji se podaci obrađuju u Uniji, potrebno je provjeriti može li se zaključiti da nadzornik namjerava ponuditi usluge osobama čiji se podaci obrađuju koje imaju boravište u jednoj od država članica Unije ili u više njih.

Amandman 5

Prijedlog Uredbe Uvodna izjava 21.

Tekst koji je predložila Komisija

(21) Kako bi se ustanovilo može li se smatrati da se aktivnošću obrade „prati ponašanje osoba čiji se podaci obrađuju”, trebalo bi se provjeriti može li se pojedince pratiti na internetu tehnikama obrade podataka koje se sastoje od „profiliranja” pojedinca, pogotovo s ciljem donošenja odluka koje se tiču njega ili analize ili predviđanja njegovih sklonosti, ponašanja i stavova.

Izmjena

(21) Kako bi se ustanovilo može li se smatrati da se aktivnošću obrade „prate” osobe čiji se podaci obrađuju, trebalo bi se provjeriti može li se pojedince pratiti, **bez obzira na porijeklo podataka, ili jesu li o njima prikupljeni drugi podaci, uključujući one iz javnih evidencija i objava u Uniji kojima se može pristupiti i izvan Unije, uključujući one s namjerom upotrebe ili mogućnosti naknadne upotrebe** tehnika obrade podataka koje se sastoje od „profiliranja”, pogotovo s ciljem donošenja odluka koje se tiču dotičnog pojedinca ili analize ili predviđanja njegovih sklonosti, ponašanja i stavova.

Amandman 6

Prijedlog Uredbe Uvodna izjava 23.

Tekst koji je predložila Komisija

(23) Načela zaštite trebalo bi primjenjivati na bilo koju informaciju koja se odnosi na identificiranu osobu ili osobu koju se može identificirati. Kako bi se utvrdilo može li se osobu identificirati, trebalo bi uzeti u obzir sva sredstva koja nadzornik ili bilo koja druga osoba može opravdano koristiti da

Izmjena

(23) Načela zaštite **podataka** treba primjenjivati na bilo koju informaciju koja se odnosi na identificiranu fizičku osobu ili **fizičku** osobu koju se može identificirati. Kako bi se utvrdilo može li se osobu identificirati, trebalo bi uzeti u obzir sva sredstva koja nadzornik ili bilo koja druga

utvrđi identitet navedene osobe. Načela zaštite podataka ne bi trebalo primjenjivati na podatke koji su anonimni tako da se osoba čiji se podaci obrađuju više ne može identificirati.

osoba može opravdano koristiti da *izravno ili neizravno* utvrđi *ili izdvoji* identitet navedene osobe. ***Kako bi se provjerilo mogu li se sredstva opravdano koristiti da se utvrđi identitet navedene osobe, treba uzeti u obzir sve objektivne činitelje kao što su troškovi i vrijeme potrebni za utvrđivanje identiteta, uzimajući u obzir tehnologiju raspoloživu u trenutku obrade i tehnološki razvoj.*** Načela zaštite podataka *stoga* ne bi trebalo primjenjivati na *anonimne* podatke *koji su informacija koja se ne odnosi na identificiranu fizičku osobu ili fizičku osobu koju se može identificirati.* ***Ova Uredba stoga se ne odnosi na obradu takvih anonimnih podataka, uključujući obradu u statističke i istraživačke svrhe.***

Amandman 7

Prijedlog Uredbe Uvodna izjava 24.

Tekst koji je predložila Komisija

(24) Pri korištenju mrežnim uslugama pojedince se može povezati s mrežnim identifikatorima kao što su adrese internetskog protokola ili identifikatori kolačića, a koje sadrže njihovi uređaji, aplikacije, alati i protokoli. ***To može ostaviti tragove koji se, zajedno s jedinstvenim identifikatorima i drugim informacijama koje dostavljaju poslužitelji, mogu upotrijebiti za identificiranje i profiliranje pojedinaca. Iz stoga slijedi da identifikacijske brojeve, podatke o lokaciji, mrežne identifikatore ili druge posebne elemente kao takve ne treba nužno u svim okolnostima smatrati osobnim podacima.***

Izmjena

(24) ***Ova Uredba trebala bi biti primjenjiva na obradu koja uključuje identifikatore kao što su adrese internetskog protokola, identifikatori kolačića i tagovi za radiofrekventnu identifikaciju, a koje sadrže uređaji, aplikacije, alati i protokoli, osim ako se ti identifikatori ne odnose na neku identificiranu fizičku osobu ili fizičku osobu koju se može identificirati.***

Amandman 8

Prijedlog Uredbe Uvodna izjava 25.

Tekst koji je predložila Komisija

(25) Suglasnost bi izričito trebalo dati bilo kojom odgovarajućom metodom kojom se omogućava da osoba čiji se podaci obrađuju dobrovoljno i na temelju informacija da posebnu izjavu svoje volje, tj. kojom se osigurava da je pojedinac svjestan da svojom izjavom ili jasnim postupkom potvrde daje svoju suglasnost za obradu osobnih podataka, uključujući označavanjem polja na internetskoj stranici ili bilo kojom drugom izjavom ili ponašanjem kojim se jasno pokazuje da osoba čiji se podaci obrađuju prihvaća predloženu obradu svojih osobnih podataka. Šutnja ili neaktivnost stoga ne bi trebali značiti suglasnost. Suglasnost bi trebala obuhvaćati sve aktivnosti obrade koje se provode u istu svrhu ili svrhe. Ako osoba čiji se podaci obrađuju daje suglasnost na temelju elektroničkog zahtjeva, taj zahtjev mora biti jasan i sažet, tako da se njime ne ometa korištenje usluge za koju se on upotrebljava.

Amandman 9

Prijedlog Uredbe Uvodna izjava 29.

Tekst koji je predložila Komisija

(29) Djeci je potrebna posebna zaštita njihovih osobnih podataka, s obzirom na to da mogu biti manje svjesna rizika i posljedica te manje upoznata s mjerama zaštite i svojim pravima pri obradi osobnih podataka. ***Kako bi se utvrdilo kad se pojedinac smatra djetetom, u ovoj bi se***

Izmjena

(25) Suglasnost bi izričito trebalo dati bilo kojom odgovarajućom metodom kojom se omogućava da osoba čiji se podaci obrađuju dobrovoljno i na temelju informacija da posebnu izjavu svoje volje, tj. kojom se osigurava da je pojedinac svjestan da svojom izjavom ili jasnim postupkom potvrde ***koji je rezultat izbora*** daje svoju suglasnost za obradu osobnih podataka. ***Jasan postupak potvrde može uključivati*** označavanje polja na internetskoj stranici ili bilo koju drugu izjavu ili ponašanje kojim se jasno pokazuje da osoba čiji se podaci obrađuju prihvaća predloženu obradu svojih osobnih podataka. Šutnja, ***puko korištenje usluge*** ili neaktivnost stoga ne bi trebali značiti suglasnost. Suglasnost bi trebala obuhvaćati sve aktivnosti obrade koje se provode u istu svrhu ili svrhe. Ako osoba čiji se podaci obrađuju daje suglasnost na temelju elektroničkog zahtjeva, taj zahtjev mora biti jasan i sažet, tako da se njime ne ometa korištenje usluge za koju se on upotrebljava.

Izmjena

(29) Djeci je potrebna posebna zaštita njihovih osobnih podataka, s obzirom na to da mogu biti manje svjesna rizika i posljedica te manje upoznata s mjerama zaštite i svojim pravima pri obradi osobnih podataka. ***Ako se obrada podataka temelji na suglasnosti osobe čiji se podaci***

Uredbi trebala preuzeti definicija utvrđena Konvencijom UN-a o pravima djeteta.

obrađuju u odnosu na ponudu robe ili usluga izravno djetetu, suglasnost daje ili odobrava djetetov roditelj ili zakonski skrbnik ako dijete ima manje od 13 godina. Ako su ciljana publika djeca, koristi se jezik primjeren toj dobi. Drugi razlozi za zakonitu obradu kao što su razlozi od javnog interesa ostaju primjenjivi, primjerice za obradu u kontekstu preventivnih usluga ili usluga savjetovanja koje su ponuđene izravno djetetu.

Amandman 10

Prijedlog Uredbe Uvodna izjava 31.

Tekst koji je predložila Komisija

(31) Kako bi obrada bila zakonita, osobni podaci trebali bi se obrađivati na temelju suglasnosti dotične osobe ili na nekoj drugoj legitimnoj osnovi, zakonski utvrđenoj bilo ovom Uredbom ili drugim zakonodavstvom Unije ili države članice, kako je navedeno u ovoj Uredbi.

Izmjena

(31) Kako bi obrada bila zakonita, osobni podaci trebali bi se obrađivati na temelju suglasnosti dotične osobe ili na nekoj drugoj legitimnoj osnovi, zakonski utvrđenoj bilo ovom Uredbom ili drugim zakonodavstvom Unije ili države članice, kako je navedeno u ovoj Uredbi. ***U slučaju djeteta ili osobe koja nema pravnu sposobnost, relevantno zakonodavstvo Unije ili države članice određuje uvjete pod kojima ta osoba daje ili odobrava pristanak.***

Amandman 11

Prijedlog Uredbe Uvodna izjava 32.

Tekst koji je predložila Komisija

(32) Kada se obrada temelji na suglasnosti osobe čiji se podaci obrađuju, nadzornik bi trebao snositi odgovornost dokazivanja da je dotična osoba dala svoju suglasnost za postupak obrade. Osobito u slučaju pisane izjave o drugom pitanju, mjerama zaštite

Izmjena

(32) Kada se obrada temelji na suglasnosti osobe čiji se podaci obrađuju, nadzornik bi trebao snositi odgovornost dokazivanja da je dotična osoba dala svoju suglasnost za postupak obrade. Osobito u slučaju pisane izjave o drugom pitanju, mjerama zaštite

trebalo bi se osigurati da je osoba čiji se podaci obrađuju svjesna toga da daje svoju suglasnost i u kojoj mjeri to čini.

trebalo bi se osigurati da je osoba čiji se podaci obrađuju svjesna toga da daje svoju suglasnost i u kojoj mjeri to čini. *U skladu s načelom smanjenja količine podataka teret dokaza ne treba shvatiti kao zahtjev za pozitivnu identifikaciju osoba čiji se podaci obrađuju, osim ako to nije potrebno. Istovjetno odredbama građanskog prava (npr. Direktiva Vijeća 93/13/EEZ), politike zaštite podataka trebaju biti što je moguće jasnije i transparentnije. Ne bi trebale sadržavati skrivene ili nepogodne klauzule. Suglasnost se ne može dati za obradu osobnih podataka trećih osoba.*

Direktiva Vijeća 93/13/EEZ od 5. travnja 1993. o nepoštenim uvjetima u potrošačkim ugovorima (SL L 95, 21.4.1993., str. 29.).

Amandman 12

Prijedlog Uredbe Uvodna izjava 33.

Tekst koji je predložila Komisija

(33) Kako bi se osiguralo da je suglasnost dobrovoljna, trebalo bi pojasniti da suglasnost nije važeća pravna osnova za obradu ako pojedinac nema istinsku slobodu izbora te ako ne može odbiti ili povući suglasnost bez posljedica.

Izmjena

(33) Kako bi se osiguralo da je suglasnost dobrovoljna, trebalo bi pojasniti da suglasnost nije važeća pravna osnova za obradu ako pojedinac nema istinsku slobodu izbora te ako ne može odbiti ili povući suglasnost bez posljedica. *To je naročito slučaj ako je nadzornik javno tijelo koje na temelju svojih relevantnih javnih ovlasti može nametnuti obvezu i suglasnost se ne može smatrati dobrovoljno danom. Upotreba zadanih opcija koje osoba čiji se podaci obrađuju mora izmijeniti kako bi se usprotivila toj obradi, kao što su već označena polja, ne izražava suglasnost. Suglasnost za obradu dodatnih osobnih podataka koji nisu potrebni za pružanje usluge ne zahtijeva se za korištenje usluge. Ako je suglasnost povučena, to može omogućiti obustavu ili*

neizvršenje usluge koja ovisi o podacima. Ako je dovršenje predviđene svrhe nejasno, nadzornik u pravilnim razmacima osigurava osobi čiji se podaci obrađuju informacije o obradi te traži ponovnu potvrdu njezine suglasnosti.

Amandman 13

Prijedlog Uredbe Uvodna izjava 34.

Tekst koji je predložila Komisija

Izmjena

(34) Suglasnost ne bi trebala biti važeća pravna osnova za obradu osobnih podataka ako postoji jasna neravnoteža između osobe čiji se podaci obrađuju i nadzornika. To je posebno slučaj kad osoba čiji se podaci obrađuju ovisi o nadzorniku, između ostalog kad poslodavac pri zapošljavanju obrađuje osobne podatke zaposlenika. Ako je nadzornik javno tijelo, neravnoteža bi postojala samo u posebnim postupcima obrade podataka kad javno tijelo na temelju svojih relevantnih javnih ovlasti može nametnuti obvezu i suglasnost se, s obzirom na interes osobe čiji se podaci obrađuju, ne može smatrati dobrovoljno danom.

Briše se.

Amandman 14

Prijedlog Uredbe Uvodna izjava 36.

Tekst koji je predložila Komisija

Izmjena

(36) Ako se obrada provodi radi izvršavanja pravne obveze kojoj podliježe nadzornik ili ako je obrada potrebna za izvršavanje zadatka koji se provodi zbog javnog interesa ili pri izvršavanju javne ovlasti, obrada bi trebala imati pravnu osnovu u zakonodavstvu Unije ili države

(36) Ako se obrada provodi radi izvršavanja pravne obveze kojoj podliježe nadzornik ili ako je obrada potrebna za izvršavanje zadatka koji se provodi zbog javnog interesa ili pri izvršavanju javne ovlasti, obrada bi trebala imati pravnu osnovu u zakonodavstvu Unije ili države

članice, koje u pogledu bilo kakvog ograničenja prava i sloboda zadovoljava zahtjeve Povelje Europske unije o temeljnim pravima. U zakonodavstvu Unije ili nacionalnom zakonodavstvu također mora biti utvrđeno treba li nadzornik koji izvršava zadatak koji se provodi zbog javnog interesa ili pri izvršavanju javne ovlasti biti tijelo javne uprave ili druga pravna ili fizička osoba koja podliježe javnom pravu ili privatnom pravu, kao što je na primjer strukovno udruženje.

članice, koje u pogledu bilo kakvog ograničenja prava i sloboda zadovoljava zahtjeve Povelje Europske unije o temeljnim pravima. **To bi također trebalo uključivati kolektivne ugovore koji bi u skladu sa nacionalnim zakonodavstvom mogli biti priznati kao opće valjani.** U zakonodavstvu Unije ili nacionalnom zakonodavstvu također mora biti utvrđeno treba li nadzornik koji izvršava zadatak koji se provodi zbog javnog interesa ili pri izvršavanju javne ovlasti biti tijelo javne uprave ili druga pravna ili fizička osoba koja podliježe javnom pravu ili privatnom pravu, kao što je na primjer strukovno udruženje.

Amandman 15

Prijedlog Uredbe Uvodna izjava 38.

Tekst koji je predložila Komisija

(38) Legitimni interesi nadzornika mogu biti pravna osnova za obradu, pod uvjetom da interesi ili temeljna prava i slobode osobe čiji se podaci obrađuju nemaju prednost. To je posebno potrebno pažljivo ocijeniti ako je osoba čiji se podaci obrađuju dijete, s obzirom na to da je djeci potreba posebna zaštita. Osoba čiji se podaci obrađuju trebala bi imati pravo da na osnovi svoje posebne situacije besplatno uloži prigovor na obradu. Kako bi se osigurala transparentnost, nadzornik bi trebao biti dužan izričito obavijestiti osobu čiji se podaci obrađuju o postojanju legitimnih interesa te ih i dokumentirati, kao i obavijestiti dotičnu osobu o njezinu pravu na prigovor. Budući da je zakonodavac dužan zakonski odrediti pravnu osnovu za obradu podataka koju provode javna tijela, ova pravna osnova ne bi se trebala primjenjivati na obradu podataka koju provode javna tijela pri

Izmjena

(38) Legitimni interesi kontrolora ili, u slučaju otkrivanja, treće strane kojoj se podaci otkrivaju, mogu biti pravna osnova za obradu, pod uvjetom **da ispunjava razumna očekivanja osobe čiji se podaci obrađuju na temelju njezine veze s nadzornikom te** da interesi ili temeljna prava i slobode osobe čiji se podaci obrađuju nemaju prednost. To je posebno potrebno pažljivo ocijeniti ako je osoba čiji se podaci obrađuju dijete, s obzirom na to da je djeci potreba posebna zaštita. **Pod uvjetom da interesi ili temeljna prava i slobode osobe čiji se podaci obrađuju nemaju prednost, pretpostavlja se da obrada ograničena na pseudonimne podatke ispunjava razumna očekivanja osobe čiji se podaci obrađuju na temelju njezine veze s nadzornikom.** Osoba čiji se podaci obrađuju ima pravo na besplatno ulaganje prigovora na obradu. Kako bi se osigurala transparentnost, nadzornik bi trebao biti dužan izričito obavijestiti osobu

izvršavanju svojih zadataka.

čiji se podaci obrađuju o postojanju legitimnih interesa te ih i dokumentirati, kao i obavijestiti dotičnu osobu o njezinu pravu na prigovor. ***Interesi i temeljna prava osobe čiji se podaci obrađuju mogu naročito nadvladati interes nadzornika podataka ako se osobni podaci obrađuju u okolnostima u kojima osobe čiji se podaci obrađuju ne očekuju daljnju obradu.*** Budući da je zakonodavac dužan zakonski odrediti pravnu osnovu za obradu podataka koju provode javna tijela, ova pravna osnova ne bi se trebala primjenjivati na obradu podataka koju provode javna tijela pri izvršavanju svojih zadataka.

Amandman 16

Prijedlog Uredbe Uvodna izjava 39.

Tekst koji je predložila Komisija

(39) Obrada podataka u opsegu nužno potrebnom kako bi se osigurala sigurnost mreže i informacija, tj. sposobnost mreže ili informacijskog sustava da se, uz određeni stupanj pouzdanosti, obrani od neočekivanih događaja ili nezakonitih ili zlonamjernih radnji koje ugrožavaju dostupnost, autentičnost, cjelovitost i povjerljivost pohranjenih ili prenesenih podataka te sigurnost povezanih usluga koje pružaju ili koje su dostupne putem tih mreža i sustava, javnih tijela, središta za računalnu sigurnost (CERT), grupa za rješavanje računalnih sigurnosnih incidenata (CSIRT), operatera elektroničkih komunikacijskih mreža i pružatelja elektroničkih komunikacijskih usluga te pružatelja sigurnosnih tehnologija i usluga, legitiman je interes dotičnog nadzornika obrade. To bi, na primjer, moglo uključivati sprečavanje neovlaštenog pristupa elektroničkim komunikacijskim mrežama, širenja zlonamjernih kodova, zaustavljanje napada

Izmjena

(39) Obrada podataka u opsegu nužno potrebnom ***i razmjernom*** kako bi se osigurala sigurnost mreže i informacija, tj. sposobnost mreže ili informacijskog sustava da se obrani od neočekivanih događaja ili zlonamjernih radnji koje ugrožavaju dostupnost, autentičnost, cjelovitost i povjerljivost pohranjenih ili prenesenih podataka te sigurnost povezanih usluga koje pružaju te mreže i sustavi, javna tijela, središta za računalnu sigurnost (CERT), grupe za rješavanje računalnih sigurnosnih incidenata (CSIRT), operateri elektroničkih komunikacijskih mreža i pružatelji elektroničkih komunikacijskih usluga te pružatelji sigurnosnih tehnologija i usluga, legitiman je interes dotičnog nadzornika obrade. To bi, na primjer, moglo uključivati sprečavanje neovlaštenog pristupa elektroničkim komunikacijskim mrežama, širenja zlonamjernih kodova, zaustavljanje napada na temelju uskraćivanja usluge te sprečavanje štete na računalnim i

na temelju uskraćivanja usluge te sprečavanje štete na računalnim i elektroničkim komunikacijskim sustavima.

elektroničkim komunikacijskim sustavima. *To se načelo također primjenjuje na obradu osobnih podataka kako bi se ograničio nasilan pristup javno dostupnim mrežama ili informacijskim sustavima te njihova upotreba, kao što je crna lista elektroničkih identifikatora.*

Amandman 17

Prijedlog Uredbe Uvodna izjava 39.a (nova)

Tekst koji je predložila Komisija

Izmjena

(39.a) Pod uvjetom da interesi ili temeljna prava i slobode osobe čiji se podaci obrađuju nemaju prednost, smatra se da je sprečavanje ili ograničavanje štete na strani nadzornika podataka provedeno radi legitimnog interesa nadzornika podataka ili, u slučaju otkrivanja, treće osobe kojoj se podaci otkrivaju, te da ispunjava razumna očekivanja osobe čiji se podaci obrađuju na temelju njezine veze s nadzornikom. Jednako načelo primjenjuje se i na provedbu zakonskih potraživanja protiv osobe čiji se podaci obrađuju, kao što su naplata duga ili građanske odštete i pravni lijekovi.

Amandman 18

Prijedlog Uredbe Uvodna izjava 39.b (nova)

Tekst koji je predložila Komisija

Izmjena

(39.b) Pod uvjetom da interesi ili temeljna prava i slobode osobe čiji se podaci obrađuju nemaju prednost, smatra se da je obrada osobnih podataka u izravne marketinške svrhe za vlastite ili slične proizvode i usluge ili u izravne poštanske marketinške svrhe provedena radi legitimnog interesa nadzornika ili, u

slučaju otkrivanja, treće osobe kojoj se podaci otkrivaju, te da ispunjava razumna očekivanja osobe čiji se podaci obrađuju na temelju njezine veze s nadzornikom ako postoji veoma vidljiva informacija o pravu prigovora i o izvoru osobnih podataka. Općenito se smatra da se obrada poslovnih kontaktnih podataka provodi radi legitimnog interesa nadzornika ili, u slučaju otkrivanja, treće osobe kojoj se podaci otkrivaju, te da zadovoljava razumna očekivanja osobe čiji se podaci obrađuju na temelju njezine veze s nadzornikom. To se primjenjuje i na obradu osobnih podataka koje je objavila osoba čiji se podaci obrađuju.

Amandman 19

Prijedlog Uredbe Uvodna izjava 40.

Tekst koji je predložila Komisija

Izmjena

(40) Obrada osobnih podataka u druge svrhe trebala bi se dopustiti samo ako je obrada u skladu sa svrhom radi koje su podaci prethodno prikupljeni, a posebno ako je obrada potrebna u svrhe povijesnog, statističkog ili znanstvenog istraživanja. Ako je druga svrha nespojiva s prvotnom svrhom radi koje su podaci prikupljeni, nadzornik bi za tu drugu svrhu trebao dobiti suglasnost osobe čiji se podaci obrađuju ili bi obradu trebao temeljiti na drugoj legitimnoj osnovi za zakonitu obradu, pogotovo ako je ona utvrđena zakonodavstvom Unije ili države članice kojemu podliježe nadzornik. U svakom slučaju trebalo bi se osigurati da se primjenjuju načela utvrđena ovom Uredbom i posebno da je osoba čiji se podaci obrađuju obaviještena o tim drugim svrhama.

Briše se.

Amandman 20

Prijedlog Uredbe Uvodna izjava 41.

Tekst koji je predložila Komisija

(41) Osobni podaci koji su po svojoj prirodi osobito osjetljivi i ranjivi u pogledu temeljnih prava ili privatnosti zaslužuju posebnu zaštitu. Takve podatke ne bi trebalo obrađivati, osim ako osoba čiji se podaci obrađuju za to ne da svoju izričitu suglasnost. Međutim, kad je riječ o posebnim potrebama, trebalo bi izričito predvidjeti odstupanja od ove zabrane, pogotovo ako se obrada provodi u sklopu zakonitih aktivnosti određenih udruga ili zaklada čiji je cilj ostvarenje temeljnih sloboda.

Izmjena

Briše se.

Amandman 21

Prijedlog Uredbe Uvodna izjava 42.

Tekst koji je predložila Komisija

(42) Odstupanja od zabrane obrade osjetljivih kategorija podataka također bi se trebala dopustiti kad za to postoji zakonska osnova i – pod uvjetom da postoje odgovarajuće mjere za zaštitu osobnih podataka i drugih temeljnih prava – kad je to opravdano zbog javnog interesa, te posebno u zdravstvene svrhe, na područjima kao što je javno zdravlje i socijalna zaštita, upravljanje zdravstvenim službama, posebno kako bi se osigurala kvaliteta i isplativost postupaka koji se koriste za rješavanje zahtjeva za ostvarenje pogodnosti i usluga iz sustava zdravstvenog osiguranja ili u svrhe povijesnog, statističkog i znanstvenog istraživanja.

Izmjena

(42) Odstupanja od zabrane obrade osjetljivih kategorija podataka također bi se trebala dopustiti kad za to postoji zakonska osnova i – pod uvjetom da postoje odgovarajuće mjere za zaštitu osobnih podataka i drugih temeljnih prava – kad je to opravdano zbog javnog interesa, te posebno u zdravstvene svrhe, na područjima kao što je javno zdravlje i socijalna zaštita, upravljanje zdravstvenim službama, posebno kako bi se osigurala kvaliteta i isplativost postupaka koji se koriste za rješavanje zahtjeva za ostvarenje pogodnosti i usluga iz sustava zdravstvenog osiguranja ili u svrhe povijesnog, statističkog i znanstvenog istraživanja **ili za usluge arhiviranja.**

Amandman 22

Prijedlog Uredbe Uvodna izjava 45.

Tekst koji je predložila Komisija

(45) Ako nadzornik ne može utvrditi identitet fizičke osobe čije podatke obrađuje, on ne bi trebao biti obvezan prikupiti dodatne informacije kako bi utvrdio identitet osobe čiji se podaci obrađuju samo radi pridržavanja neke odredbe ove Uredbe. U slučaju zahtjeva za pristup podacima, nadzornik bi trebao imati pravo da od osobe čiji se podaci obrađuju zatraži daljnje informacije koje bi mu omogućile da nađe osobne podatke koje ta osoba traži.

Izmjena

(45) Ako nadzornik ne može utvrditi identitet fizičke osobe čije podatke obrađuje, on ne bi trebao biti obvezan prikupiti dodatne informacije kako bi utvrdio identitet osobe čiji se podaci obrađuju samo radi pridržavanja neke odredbe ove Uredbe. U slučaju zahtjeva za pristup podacima, nadzornik bi trebao imati pravo da od osobe čiji se podaci obrađuju zatraži daljnje informacije koje bi mu omogućile da nađe osobne podatke koje ta osoba traži. ***Ako osoba čiji se podaci obrađuju može pružiti takve podatke, nadzornici ne bi smjeli biti u mogućnosti da se pozovu na nedostatak informacija kako bi odbili zahtjev za pristup.***

Amandman 23

Prijedlog Uredbe Uvodna izjava 47.

Tekst koji je predložila Komisija

(47) Trebalo bi osigurati načine kojima se osobi čiji se podaci obrađuju olakšava ostvarivanje njezinih prava u okviru ove Uredbe, uključujući mehanizme za besplatan zahtjev posebno za pristup podacima, njihov ispravak i brisanje te za ostvarivanje prava na prigovor. Nadzornik bi trebao biti dužan da na zahtjev osobe čiji se podaci obrađuju odgovori u određenom roku ili da u slučaju odbijenog zahtjeva navede razloge za to.

Izmjena

(47) Trebalo bi osigurati načine kojima se osobi čiji se podaci obrađuju olakšava ostvarivanje njezinih prava u okviru ove Uredbe, uključujući mehanizme za ***dobivanje***, i to besplatno, naročito pristupa podacima, njihovom ispravku i brisanju te za ostvarivanje prava na prigovor. Nadzornik bi trebao biti dužan da na zahtjev osobe čiji se podaci obrađuju odgovori u ***razumnom*** roku ili da u slučaju odbijenog zahtjeva navede razloge za to.

Amandman 24

Prijedlog Uredbe Uvodna izjava 48.

Tekst koji je predložila Komisija

(48) Načelo poštene i transparentne obrade podataka zahtijeva da su osobe čiji se podaci obrađuju obaviještene osobito o postupku obrade i njezinoj svrsi, duljini pohrane podataka, postojanju prava pristupa, ispravka ili brisanja podataka te o pravu na podnošenje žalbe. Ako se podaci prikupljaju od osobe čiji se podaci obrađuju, osoba čiji se podaci obrađuju trebala bi biti obaviještena o tome je li ona dužna dostaviti takve podatke te o mogućim posljedicama u slučaju da ih ne dostavi.

Izmjena

(48) Načelo poštene i transparentne obrade podataka zahtijeva da su osobe čiji se podaci obrađuju obaviještene osobito o postupku obrade i njezinoj svrsi, **vjerojatnoj** duljini pohrane podataka **u svaku svrhu, o tome hoće li se podaci prenijeti trećim stranama ili u treće zemlje**, o postojanju **mjera prigovora i** prava pristupa, ispravka ili brisanja podataka te o pravu na podnošenje žalbe. Ako se podaci prikupljaju od osobe čiji se podaci obrađuju, osoba čiji se podaci obrađuju trebala bi biti obaviještena o tome je li ona dužna dostaviti takve podatke te o mogućim posljedicama u slučaju da ih ne dostavi. **Ta se obavijest osigurava, što može značiti i da je lako dostupna, osobi čiji se podaci obrađuju nakon davanja pojednostavljene obavijesti u obliku standardiziranih ikona. To također znači da se osobni podaci obrađuju na način koji učinkovito omogućuje da osoba čiji se podaci obrađuju ostvari svoja prava.**

Amandman 25

Prijedlog Uredbe Uvodna izjava 50.

Tekst koji je predložila Komisija

(50) Međutim, nije potrebno nametnuti tu obvezu ako osoba čiji se podaci obrađuju već ima tu informaciju ili ako je bilježenje ili otkrivanje izričito propisano zakonom ili ako se davanje informacija osobi čiji se podaci obrađuju pokaže nemogućim ili bi uključivalo nerazmjerni napor. **To bi mogao biti slučaj posebno ako se obrada provodi u svrhe povijesnog, statističkog ili**

Izmjena

(50) Međutim, nije potrebno nametnuti tu obvezu ako osoba čiji se podaci obrađuju već **zna** tu informaciju ili ako je bilježenje ili otkrivanje izričito propisano zakonom ili ako se davanje informacija osobi čiji se podaci obrađuju pokaže nemogućim ili bi uključivalo nerazmjerni napor.

znanstvenog istraživanja; u tome se smislu može uzeti u obzir broj osoba čiji se podaci obrađuju, starost podataka i sve donesene zamjenske mjere.

Amandman 26

Prijedlog Uredbe Uvodna izjava 51.

Tekst koji je predložila Komisija

(51) Svaka bi osoba trebala imati pravo na pristup podacima koji se o njoj prikupljaju i ostvarivanje toga prava na jednostavan način kako bi znala da je obrada zakonita i to mogla potvrditi. Svaka osoba čiji se podaci obrađuju trebala bi stoga imati pravo znati i primiti obavijest, osobito o svrhama u koje se podaci obrađuju, na koje razdoblje, o tome tko su primatelji podataka, o logici podataka koji se obrađuju te o posljedicama takve obrade, posebno u slučaju kad se obrada temelji na profiliranju. To pravo ne bi smjelo štetno utjecati na prava i slobode drugih, uključujući poslovne tajne ili intelektualno vlasništvo, te posebno na autorska prava kojima se štiti programska oprema. Ta pitanja međutim ne bi smjela dovesti do toga da se osobi čiji se podaci obrađuju uskrate bilo kakve informacije.

Izmjena

(51) Svaka bi osoba trebala imati pravo na pristup podacima koji se o njoj prikupljaju i ostvarivanje toga prava na jednostavan način kako bi znala da je obrada zakonita i to mogla potvrditi. Svaka osoba čiji se podaci obrađuju trebala bi stoga imati pravo znati i primiti obavijest, osobito o svrhama u koje se podaci obrađuju, na koje **predviđeno** razdoblje, o tome tko su primatelji podataka, o **općoj** logici podataka koji se obrađuju te o posljedicama takve obrade. To pravo ne bi smjelo štetno utjecati na prava i slobode drugih, uključujući poslovne tajne ili intelektualno vlasništvo, **kao što su ona** kojima se štiti programska oprema. Ta pitanja međutim ne bi smjela dovesti do toga da se osobi čiji se podaci obrađuju uskrate bilo kakve informacije.

Amandman 27

Prijedlog Uredbe Uvodna izjava 53.

Tekst koji je predložila Komisija

(53) Svaka osoba bi trebala imati pravo na ispravak osobnih podataka o sebi i „pravo na zaborav” ako pohrana takvih podataka nije u skladu s ovom Uredbom. Štoviše, osobe čiji se podaci obrađuju trebale bi imati pravo na to da se njihovi osobni

Izmjena

(53) Svaka osoba bi trebala imati pravo na ispravak osobnih podataka o sebi i „pravo na **brisanje podataka**” ako pohrana takvih podataka nije u skladu s ovom Uredbom. Štoviše, osobe čiji se podaci obrađuju trebale bi imati pravo na to da se njihovi

podaci obrišu i više ne obrađuju, ako podaci više nisu potrebni za svrhe radi kojih su prikupljeni ili na drugi način obrađivani, ako su osobe čiji se podaci obrađuju povukle svoju suglasnost za obradu ili ako se protive obradi osobnih podataka koji se odnose na njih ili ako obrada njihovih osobnih podataka iz drugih razloga nije u skladu s ovom Uredbom. **To je pravo posebno relevantno u slučajevima kad je osoba čiji se podaci obrađuju dala svoju suglasnost kao dijete, kad nije bila u potpunosti svjesna rizika vezanih uz obradu, i kasnije želi ukloniti takve osobne podatke, pogotovo one na internetu.** No daljnja pohrana podataka trebala bi se dopustiti ako je potrebna u svrhe povijesnog, statističkog i znanstvenog istraživanja, zbog javnog interesa na području javnog zdravlja, radi ostvarivanja prava na slobodu izražavanja, ako to zahtijeva zakon i ako postoji razlog za ograničenje obrade podataka umjesto njihova brisanja.

Amandman 28

Prijedlog Uredbe Uvodna izjava 54.

Tekst koji je predložila Komisija

(54) Kako bi se „pravo na zaborav” ojačalo u mrežnom okruženju, pravo brisanja trebalo bi proširiti tako da bi nadzornik koji je objavio osobne podatke trebao biti dužan obavijestiti treće strane koje obrađuju takve podatke da osoba čiji se podaci obrađuju zahtijeva da obrišu sve poveznice, kopije i replike tih osobnih podataka. **Kako bi osigurao obavještanje trećih strana, nadzornik bi trebao poduzeti sve opravdane korake, uključujući tehničke mjere, u odnosu na podatke za čije je objavljivanje odgovoran. U pogledu objave osobnih podataka koju je izvršila**

osobni podaci obrišu i više ne obrađuju, ako podaci više nisu potrebni za svrhe radi kojih su prikupljeni ili na drugi način obrađivani, ako su osobe čiji se podaci obrađuju povukle svoju suglasnost za obradu ili ako se protive obradi osobnih podataka koji se odnose na njih ili ako obrada njihovih osobnih podataka iz drugih razloga nije u skladu s ovom Uredbom. No daljnja pohrana podataka trebala bi se dopustiti ako je potrebna u svrhe povijesnog, statističkog i znanstvenog istraživanja, zbog javnog interesa na području javnog zdravlja, radi ostvarivanja prava na slobodu izražavanja, ako to zahtijeva zakon i ako postoji razlog za ograničenje obrade podataka umjesto njihova brisanja. **Osim toga pravo na brisanje podataka ne bi se trebalo primjenjivati ako je pohrana osobnih podataka potrebna za izvršenje ugovora s osobom čiji se podaci obrađuju ili ako postoji zakonska obveza pohrane tih podataka.**

Izmjena

(54) Kako bi se „pravo na brisanje podataka” ojačalo u mrežnom okruženju, pravo brisanja trebalo bi proširiti tako da bi nadzornik koji je objavio osobne podatke **bez pravnog obrazloženja** trebao biti dužan **poduzeti sve potrebne korake kako bi se podaci izbrisali, uključujući i brisanje koje provode treće strane, ne dovodeći u pitanje pravo osobe čiji se podaci obrađuju da traži naknadu štete.**

treća strana, nadzornik bi se trebao smatrati odgovornim za tu objavu ako je on ovlastio treću stranu da objavi osobne podatke.

Amandman 29

Prijedlog Uredbe Uvodna izjava 54.a (nova)

Tekst koji je predložila Komisija

Izmjena

(54.a) Podatke koje usporava osoba čiji se podaci obrađuju i čija se točnost ili netočnost ne može utvrditi treba blokirati dok se pitanje ne razjasni.

Amandman 30

Prijedlog Uredbe Uvodna izjava 55.

Tekst koji je predložila Komisija

Izmjena

(55) Osobe čiji se podaci obrađuju trebale bi radi jačanja nadzora nad vlastitim podacima i svog prava na pristup podacima imati pravo, ako se osobni podaci obrađuju elektroničkim putem te uz pomoć strukturiranog i uobičajenog formata, dobiti kopiju podataka koji se odnose na njih u uobičajenom elektroničkom formatu. Osoba čiji se podaci obrađuju također bi trebala imati pravo prenijeti osobne podatke koje je ustupila iz jedne automatizirane aplikacije, na primjer društvene mreže, u drugu. To bi se trebalo primjenjivati u slučajevima kad je osoba čiji se podaci obrađuju na temelju svoje suglasnosti ili pri izvršenju ugovora ustupila podatke automatiziranom sustavu obrade.

(55) Osobe čiji se podaci obrađuju trebale bi radi jačanja nadzora nad vlastitim podacima i svog prava na pristup podacima imati pravo, ako se osobni podaci obrađuju elektroničkim putem te uz pomoć strukturiranog i uobičajenog formata, dobiti kopiju podataka koji se odnose na njih u uobičajenom elektroničkom formatu. Osoba čiji se podaci obrađuju također bi trebala imati pravo prenijeti osobne podatke koje je ustupila iz jedne automatizirane aplikacije, na primjer društvene mreže, u drugu. ***Nadzornike podataka treba poticati na razvijanje interoperabilnih oblika koji omogućavaju prijenos podataka.*** To bi se trebalo primjenjivati u slučajevima kad je osoba čiji se podaci obrađuju na temelju svoje suglasnosti ili pri izvršenju ugovora ustupila podatke automatiziranom sustavu obrade. ***Pružatelji usluga informacijskog društva ne bi trebali prenositi podatke koji***

su obvezni za pružanje njihovih usluga.

Amandman 31
Prijedlog Uredbe
Uvodna izjava 56.

Tekst koji je predložila Komisija

(56) U slučajevima gdje se osobni podaci zakonito obrađuju radi zaštite vitalnih interesa osobe čiji se podaci obrađuju ili zbog javnog interesa, pri izvršavanju javne ovlasti ili zbog legitimnih interesa nadzornika, svaka osoba čiji se podaci obrađuju trebala bi unatoč tome imati pravo protivljenja obradi podataka koji se odnose na nju. Nadzornik bi trebao snositi odgovornost dokazivanja da njegovi legitimni interesi mogu imati prednost nad interesima ili temeljnim pravima i slobodama osobe čiji se podaci obrađuju.

Izmjena

(56) U slučajevima gdje se osobni podaci zakonito obrađuju radi zaštite vitalnih interesa osobe čiji se podaci obrađuju ili zbog javnog interesa, pri izvršavanju javne ovlasti ili zbog legitimnih interesa nadzornika, svaka osoba čiji se podaci obrađuju trebala bi unatoč tome imati pravo protivljenja obradi podataka koji se odnose na nju, **besplatno i na jednostavan i djelotvoran način** Nadzornik bi trebao snositi odgovornost dokazivanja da njegovi legitimni interesi mogu imati prednost nad interesima ili temeljnim pravima i slobodama osobe čiji se podaci obrađuju.

Amandman 32
Prijedlog Uredbe
Uvodna izjava 57.

Tekst koji je predložila Komisija

(57) Ako se osobni podaci obrađuju u izravne marketinške svrhe, osoba čiji se podaci obrađuju trebala bi imati pravo besplatno, na jednostavan i djelotvoran način protiviti se obradi svojih osobnih podataka za takav marketing.

Izmjena

(57) Ako osoba čiji se podaci obrađuju **ima** pravo protiviti se obradi, **nadzornik bi to pravo trebao izričito ponuditi osobi čiji se podaci obrađuju na razumljiv način i u razumljivom obliku, koristeći jasan i jednostavan jezik, te bi ga trebao jasno razlikovati od drugih informacija.**

Amandman 33

Prijedlog Uredbe Uvodna izjava 58.

Tekst koji je predložila Komisija

(58) Svaka fizička osoba trebala bi imati pravo da je se ne podvrgne mjeri koja se temelji na profiliranju automatiziranom obradom. No takva bi se mjera trebala dopustiti ako je izričito dopuštena zakonom, ako se provodi pri sklapanju ili izvršenju ugovora ili ako je osoba čiji se podaci obrađuju dala svoju suglasnost. U svakom slučaju za takve bi se obrade trebale primjenjivati odgovarajuće mjere zaštite kao što su posebno obavještanje osobe čiji se podaci obrađuju, pravo na izravno ljudsko posredovanje te jamstvo da se takva obrada ne bi smjela odnositi na dijete.

Izmjena

(58) ***Ne dovodeći u pitanje zakonitost obrade podataka***, svaka fizička osoba trebala bi imati pravo ***prigovora*** na profiliranje. ***Profiliranje koje rezultira mjerama s pravnim učinkom na osobu čiji se podaci obrađuju ili slično tomu uvelike utječu na interese, prava ili slobode predmetne osobe čiji se podaci obrađuju*** trebalo bi se dopustiti ***samo*** ako je izričito dopušteno zakonom, ako se provodi pri sklapanju ili izvršenju ugovora ili ako je osoba čiji se podaci obrađuju dala svoju suglasnost. U svakom slučaju za takve bi se obrade trebale primjenjivati odgovarajuće mjere zaštite kao što su posebno obavještanje osobe čiji se podaci obrađuju, pravo na izravnu ljudsku ***procjenu*** te jamstvo da se takva obrada ne bi smjela odnositi na dijete. ***Takve mjere ne bi trebale dovesti do diskriminacije pojedinaca na temelju rasnog ili etničkog porijekla, političkih mišljenja, vjere ili uvjerenja, članstva u sindikatu, spolne opredijeljenosti ili spolnog identiteta.***

Amandman 34

Prijedlog Uredbe Uvodna izjava 58.a (nova)

Tekst koji je predložila Komisija

Izmjena

(58.a) ***Pretpostavlja se da profiliranje koje se temelji isključivo na obradi pseudonimnih podataka ne utječe uvelike na interese, prava ili slobode osobe čiji se podaci obrađuju. Ako profiliranje, bilo da se temelji na jednom izvoru pseudonimnih podataka ili na grupi pseudonimnih podataka iz različitih izvora, omogućuje***

nadzorniku da poveže pseudonimne podatke s određenom osobom čiji se podaci obrađuju, smatra se da obrađeni podaci više nisu pseudonimni.

Amandman 35

Prijedlog Uredbe Uvodna izjava 59.

Tekst koji je predložila Komisija

(59) Ograničenja određenih načela i prava na informacije, pristup, ispravljanje, brisanje ili prava na prijenos podataka, prava prigovora, mjera koje se temelje na profiliranju, obavještavanja osobe čiji se podaci obrađuju o povredi njezinih osobnih podataka te određenih povezanih obveza nadzornika, mogu biti nametnuta zakonodavstvom Unije ili države članice ako je to u demokratskom društvu potrebno i razmjerno radi zaštite javne sigurnosti, što uključuje zaštitu ljudskih života osobito uslijed prirodnih katastrofa i katastrofa uzrokovanih ljudskim djelovanjem, sprečavanje, istragu i progon kaznenih djela ili kršenja etike u zakonski uređenim djelatnostima, druge javne interese Unije ili države članice, posebno važan gospodarski ili financijski interes Unije ili države članice ili zaštitu osobe čiji se podaci obrađuju ili prava i sloboda drugih. Ta bi ograničenja trebala biti u skladu sa zahtjevima iz Povelje Europske unije o temeljnim pravima i Europske konvencije o zaštiti ljudskih prava i temeljnih sloboda.

Izmjena

(59) Ograničenja određenih načela i prava na informacije, ispravljanje i brisanje ili prava na ***pristup i dobivanje*** podataka, prava prigovora, mjera koje se temelje na profiliranju, obavještavanja osobe čiji se podaci obrađuju o povredi njezinih osobnih podataka te određenih povezanih obveza nadzornika, mogu biti nametnuta zakonodavstvom Unije ili države članice ako je to u demokratskom društvu potrebno i razmjerno radi zaštite javne sigurnosti, što uključuje zaštitu ljudskih života osobito uslijed prirodnih katastrofa i katastrofa uzrokovanih ljudskim djelovanjem, sprečavanje, istragu i progon kaznenih djela ili kršenja etike u zakonski uređenim djelatnostima, druge ***specifične i jasno određene*** javne interese Unije ili države članice, posebno važan gospodarski ili financijski interes Unije ili države članice ili zaštitu osobe čiji se podaci obrađuju ili prava i sloboda drugih. Ta bi ograničenja trebala biti u skladu sa zahtjevima iz Povelje Europske unije o temeljnim pravima i Europske konvencije o zaštiti ljudskih prava i temeljnih sloboda.

Amandman 36

Prijedlog Uredbe Uvodna izjava 60.

Tekst koji je predložila Komisija

(60) Za bilo koju obradu osobnih podataka koju provodi nadzornik ili koja se provodi u njegovo ime nadzornik bi trebao snositi potpunu odgovornost. Nadzornik bi posebno trebao osigurati i biti dužan dokazati da je svaki postupak obrade u skladu s ovom Uredbom.

Izmjena

(60) Za bilo koju obradu osobnih podataka koju provodi nadzornik ili koja se provodi u njegovo ime nadzornik bi trebao snositi potpunu odgovornost, ***naročito s obzirom na dokumentaciju, sigurnost podataka, procjene učinka, službenika za zaštitu podataka i nadzor tijela za zaštitu podataka.*** Nadzornik bi posebno trebao osigurati i biti ***u mogućnosti*** dokazati da je svaki postupak obrade u skladu s ovom Uredbom. ***To bi trebali provjeriti nezavisni unutarnji ili vanjski revizori.***

Amandman 37

Prijedlog Uredbe Uvodna izjava 61.

Tekst koji je predložila Komisija

(61) Zaštita prava i sloboda osoba čiji se podaci obrađuju pri obradi osobnih podataka zahtijeva poduzimanje odgovarajućih tehničkih i organizacijskih mjera pri planiranju obrade i pri samoj obradi kako bi se osiguralo ispunjavanje zahtjeva ove Uredbe. Kako bi se osigurala i dokazala usklađenost s ovom Uredbom, nadzornik bi trebao usvojiti interne strategije i provoditi odgovarajuće mjere koje posebno zadovoljavaju načela zaštite podataka pomoću tehnike i integrirane zaštite.

Izmjena

(61) Zaštita prava i sloboda osoba čiji se podaci obrađuju pri obradi osobnih podataka zahtijeva poduzimanje odgovarajućih tehničkih i organizacijskih mjera pri planiranju obrade i pri samoj obradi kako bi se osiguralo ispunjavanje zahtjeva ove Uredbe. Kako bi se osigurala i dokazala usklađenost s ovom Uredbom, nadzornik bi trebao usvojiti interne strategije i provoditi odgovarajuće mjere koje posebno zadovoljavaju načela zaštite podataka pomoću tehnike i integrirane zaštite. ***Načelo tehničke zaštite podataka zahtijeva da se zaštita podataka ugradi u čitav životni ciklus tehnologije, od same rane faze dizajniranja do njezina krajnjeg razvijanja, korištenja i konačnog uklanjanja. To bi također trebalo uključiti odgovornost za proizvode i usluge koje koristi nadzornik ili obrađivač. Načelo***

integrirane zaštite podataka zahtijeva postavke privatnosti na uslugama i proizvodima koje bi automatski trebale biti u skladu s općim načelima zaštite podataka kao što su smanjenje količine podataka i ograničenje namjene.

Amandman 38
Prijedlog Uredbe
Uvodna izjava 62.

Tekst koji je predložila Komisija

(62) Zaštita prava i sloboda osoba čiji se podaci obrađuju te odgovornost nadzornika i obrađivača, također vezano uz nadzor i mjere nadzornih tijela, zahtijevaju jasnu raspodjelu odgovornosti u skladu s ovom Uredbom, uključujući i slučaj kada nadzornik zajedno s ostalim nadzornicima utvrđuje svrhe, uvjete i sredstva obrade ili kada se postupak obrade provodi u ime nadzornika.

Izmjena

(62) Zaštita prava i sloboda osoba čiji se podaci obrađuju te odgovornost nadzornika i obrađivača, također vezano uz nadzor i mjere nadzornih tijela, zahtijevaju jasnu raspodjelu odgovornosti u skladu s ovom Uredbom, uključujući i slučaj kada nadzornik zajedno s ostalim nadzornicima utvrđuje svrhe obrade ili kada se postupak obrade provodi u ime nadzornika. ***U međusobnom dogovoru zajedničkih nadzornika trebaju se ogledati stvarne uloge zajedničkih nadzornika i njihovi odnosi. Obrada osobnih podataka u skladu s ovom Uredbom treba uključivati dopuštenje za nadzornika da prenese podatke zajedničkom nadzorniku ili obrađivaču za obradu podataka u njihovo ime.***

Amandman 39
Prijedlog Uredbe
Uvodna izjava 63.

Tekst koji je predložila Komisija

(63) Kada nadzornik koji nema poslovni nastan u Uniji obrađuje osobne podatke osoba koje imaju boravište u Uniji, te ako su njegove aktivnosti obrade povezane s ponudom proizvoda ili usluga osobama čiji se podaci obrađuju ili s praćenjem njihova ponašanja, nadzornik bi trebao imenovati

Izmjena

(63) Kada nadzornik koji nema poslovni nastan u Uniji obrađuje osobne podatke osoba u Uniji, nadzornik bi trebao imenovati predstavnika, osim ako nadzornik nema poslovni nastan u trećoj zemlji koja osigurava odgovarajuću razinu zaštite ***ili se obrada odnosi na manje od***

predstavnik, osim ako nadzornik nema poslovni nastan u trećoj zemlji koja osigurava odgovarajuću razinu zaštite ili je nadzornik malo ili srednje poduzeće ili javno tijelo ili ako nadzornik samo povremeno nudi proizvode i usluge takvim osobama čiji se podaci obrađuju. Predstavnik bi trebao djelovati u ime nadzornika i biti osoba za kontakt s nadzornim tijelima.

Amandman 40

Prijedlog Uredbe Uvodna izjava 64.

Tekst koji je predložila Komisija

(64) Kako bi se utvrdilo nudi li nadzornik osobama čiji se podaci obrađuju i koje imaju boravište u Uniji proizvode i usluge samo povremeno, trebalo bi se provjeriti može li se iz cjelokupnih aktivnosti nadzornika zaključiti predstavlja li ponuda proizvoda i usluga takvim osobama samo sporednu aktivnost uz njegove glavne aktivnosti.

Amandman 41

Prijedlog Uredbe Uvodna izjava 65.

Tekst koji je predložila Komisija

(65) Kako bi se dokazala usklađenost s ovom Uredbom, nadzornik ili obrađivač trebali bi dokumentirati svaki postupak obrade. Svaki nadzornik i obrađivač trebao bi biti obavezan surađivati s nadzornim tijelima te im na zahtjev omogućiti pristup toj dokumentaciji kako bi se ti postupci obrade mogli pratiti.

5000 osoba čiji se podaci obrađuju u bilo kojem uzastopnom razdoblju od 12 mjeseci i ne provodi se na posebnim kategorijama osobnih podataka ili je nadzornik javno tijelo ili ako nadzornik samo povremeno nudi proizvode i usluge takvim osobama čiji se podaci obrađuju. Predstavnik bi trebao djelovati u ime nadzornika i biti osoba za kontakt s nadzornim tijelima.

Izmjena

(64) Kako bi se utvrdilo nudi li nadzornik osobama čiji se podaci obrađuju u Uniji proizvode i usluge samo povremeno, trebalo bi se provjeriti može li se iz cjelokupnih aktivnosti nadzornika zaključiti predstavlja li ponuda proizvoda i usluga takvim osobama samo sporednu aktivnost uz njegove glavne aktivnosti.

Izmjena

(65) Kako bi se **mogla** dokazati usklađenost s ovom Uredbom, nadzornik ili obrađivač trebao bi **voditi dokumentaciju potrebnu za ispunjavanje uvjeta utvrđenih ovom Uredbom**. Svaki nadzornik i obrađivač trebao bi biti obavezan surađivati s nadzornim tijelima te im na zahtjev omogućiti pristup toj dokumentaciji kako bi se **mogla ocijeniti usklađenost s ovom Uredbom. Međutim jednak naglasak i važnost treba staviti na**

dobru praksu i usklađenost, a ne samo na nadopunu dokumentacije.

Amandman 42

Prijedlog Uredbe Uvodna izjava 66.

Tekst koji je predložila Komisija

(66) Kako bi se očuvala sigurnost i spriječila obrada kojom se krši ova Uredba, nadzornik ili obrađivač trebali bi procijeniti rizike vezane uz obradu i provesti mjere za njihovo ublažavanje. Tim bi se mjerama, koje uzimaju u obzir razvoj tehnologije i trošak provedbe, trebala osigurati odgovarajuća razina zaštite u odnosu na rizike i vrstu osobnih podataka koji se trebaju zaštititi. Kod utvrđivanja tehničkih standarda i organizacijskih mjera za osiguranje sigurnosti obrade Komisija bi trebala poticati tehnološku neutralnost, interoperabilnost i inovacije te, ako je potrebno, surađivati s trećim zemljama.

Izmjena

(66) Kako bi se očuvala sigurnost i spriječila obrada kojom se krši ova Uredba, nadzornik ili obrađivač trebali bi procijeniti rizike vezane uz obradu i provesti mjere za njihovo ublažavanje. Tim bi se mjerama, koje uzimaju u obzir razvoj tehnologije i trošak provedbe, trebala osigurati odgovarajuća razina zaštite u odnosu na rizike i vrstu osobnih podataka koji se trebaju zaštititi. Kod utvrđivanja tehničkih standarda i organizacijskih mjera za osiguranje sigurnosti obrade ***trebalo bi promicati*** tehnološku neutralnost, interoperabilnost i inovacije te, ako je potrebno, ***poticati suradnju*** s trećim zemljama.

Amandman 43

Prijedlog Uredbe Uvodna izjava 67.

Tekst koji je predložila Komisija

(67) Povreda osobnih podataka može, ako se ne rješava pravovremeno i na odgovarajući način, dotičnom pojedincu prouzročiti znatan gospodarski gubitak i društvenu štetu, uključujući i zlouporabu identiteta. Stoga, čim nadzornik uoči da je došlo do takve povrede, trebao bi je bez nepotrebnog odgađanja i ako je moguće u roku od 24 sata prijaviti nadzornom tijelu. Ako to nije moguće učiniti u roku od 24 sata, uz obavijest bi trebalo priložiti obrazloženje razloga za kašnjenje.

Izmjena

(67) Povreda osobnih podataka može, ako se ne rješava pravovremeno i na odgovarajući način, dotičnom pojedincu prouzročiti znatan gospodarski gubitak i društvenu štetu, uključujući i zlouporabu identiteta. Stoga bi nadzornik trebao bez nepotrebnog odgađanja prijaviti povredu nadzornom tijelu, ***pretpostavlja se u roku ne dužem od 72 sata. Ako je potrebno***, uz obavijest bi trebalo priložiti obrazloženje razloga za kašnjenje. Pojedince na čije osobne podatke takva povreda može štetno

Pojedince na čije osobne podatke takva povreda može štetno utjecati trebalo bi bez nepotrebnog odgađanja o tome obavijestiti kako bi im se omogućilo poduzimanje potrebnih mjera opreza. Trebalo bi se smatrati da povreda ima štetan učinak na osobne podatke ili privatnost pojedinca u slučajevima kada bi na primjer mogla dovesti do krađe identiteta ili prijevare, fizičke povrede, velikog poniženja ili povrede ugleda. Obavijest bi trebala sadržavati opis prirode povrede osobnih podataka i preporuke za dotičnog pojedinca za ublažavanje možebitnih štetnih učinaka. Osobe čiji se podaci obrađuju trebalo bi obavijestiti što je prije razumno moguće, u tijesnoj suradnji s nadzornim tijelom i pridržavajući se smjernica koje je izdalo ono ili neko drugo nadležno tijelo (npr. tijela za prisilno provođenje zakona). Na primjer, kako bi osobe čiji se podaci obrađuju mogle umanjiti rizik od nastanka neposredne štete, potrebno je brzo ih obavijestiti, a duži rok obavješćavanja mogao bi se opravdati potrebom da se poduzmu odgovarajuće mjere za sprečavanje daljnjih i sličnih povreda podataka.

Amandman 44

Prijedlog Uredbe

Uvodna izjava 71.a (nova)

Tekst koji je predložila Komisija

Izmjena

(71.a) Procjene učinka ključni su dio svakog održivog okvira za zaštitu podataka jer osiguravaju da je poduzetništvo od početka svjesno svih mogućih posljedica postupaka obrade njegovih podataka. Ako su procjene učinka temeljite, moguće je bitno ograničiti vjerojatnost bilo kakve povrede osobnih podataka ili postupka koji narušava privatnost. Procjene učinka zaštite podataka trebale bi stoga uzeti u

obzir upravljanje cjelokupnim životnim ciklusom osobnih podataka, od prikupljanja preko obrade do brisanja, detaljno opisujući predviđene postupke obrade, rizike za prava i slobode osoba čiji se podaci obrađuju, predviđene mjere za rizike, jamstva, sigurnosne mjere i mehanizme kako bi se osigurala usklađenost s uredbom.

Amandman 45

Prijedlog Uredbe Uvodna izjava 71.b (nova)

Tekst koji je predložila Komisija

Izmjena

(71.b) Nadzornici bi se trebali usredotočiti na zaštitu osobnih podataka, od prikupljanja preko obrade do brisanja, od početka ulažući u održivi okvir za upravljanje podacima i nastavljajući ga sveobuhvatnim mehanizmom za usklađenost.

Amandman 46

Prijedlog Uredbe Uvodna izjava 73.

Tekst koji je predložila Komisija

Izmjena

(73) Procjene učinka zaštite podataka trebala bi provoditi javna ustanova ili javno tijelo, ako takva procjena već nije provedena u sklopu donošenja nacionalnog zakonodavstva na kojem se temelji izvršavanje zadaća tog javnog tijela i kojim se uređuje dotični postupak ili skup postupaka obrade.

Briše se.

Amandman 47

Prijedlog Uredbe Uvodna izjava 74.

Tekst koji je predložila Komisija

(74) U slučajevima kad procjena učinka zaštite podataka pokazuje da postupci obrade sadrže visoki stupanj određenih rizika za prava i slobode osoba čiji se podaci obrađuju, na primjer onemogućavanje pojedinca u ostvarivanju njegovih prava ili na temelju određenih novih tehnologija, prije početka postupka obrade trebalo bi se savjetovati s nadzornim tijelom o riskantnom postupku obrade koji možda nije u skladu s ovom Uredbom te sastaviti prijedloge za rješavanje takve situacije. Takvo savjetovanje trebalo bi se provesti tijekom pripreme zakonodavne mjere nacionalnog parlamenta ili mjere koja se temelji na takvoj zakonodavnoj mjeri i kojom se utvrđuje priroda obrade te predviđaju odgovarajuće mjere zaštite.

Izmjena

(74) U slučajevima kad procjena učinka zaštite podataka pokazuje da postupci obrade sadrže visoki stupanj određenih rizika za prava i slobode osoba čiji se podaci obrađuju, na primjer onemogućavanje pojedinca u ostvarivanju njegovih prava ili na temelju određenih novih tehnologija, prije početka postupka obrade trebalo bi se savjetovati **sa službenikom za zaštitu podataka ili s nadzornim tijelom** o riskantnom postupku obrade koji možda nije u skladu s ovom Uredbom te sastaviti prijedloge za rješavanje takve situacije. Savjetovanje s **nadzornim tijelom** trebalo bi se provesti tijekom pripreme zakonodavne mjere nacionalnog parlamenta ili mjere koja se temelji na takvoj zakonodavnoj mjeri i kojom se utvrđuje priroda obrade te predviđaju odgovarajuće mjere zaštite.

Amandman 48

Prijedlog Uredbe Uvodna izjava 74.a (nova)

Tekst koji je predložila Komisija

Izmjena

(74.a) Procjene učinka mogu biti od pomoći samo ako nadzornici osiguraju njihovu usklađenost s jamstvima koja su u njima izvorno utvrđena. Nadzornici podataka stoga bi trebali provoditi periodične provjere sukladnosti sa zaštitom podataka pokazujući da su mehanizmi za obradu podataka koji se koriste u skladu jamstvima danim u procjeni učinka zaštite podataka. Nadalje bi trebalo dokazati sposobnost usklađenosti nadzornika podataka sa

samostalnim izborom osoba čiji se podaci obrađuju. Osim toga ako provjera pokaže nedosljednost sukladnosti, potrebno ih je istaknuti i dati preporuke za postizanje potpune sukladnosti.

Amandman 49

Prijedlog Uredbe Uvodna izjava 75.

Tekst koji je predložila Komisija

(75) Ako se obrada provodi u javnom sektoru ili ako obradu u privatnom sektoru provodi veliko poduzeće ili ako osnovne djelatnosti poduzeća bez obzira na njegovu veličinu obuhvaćaju postupke obrade koji zahtijevaju redovito i sustavno praćenje, službenik bi trebao pomagati nadzorniku ili obrađivaču pri nadzoru unutarnje usklađenosti s ovom Uredbom. Takvi službenici za zaštitu podataka trebali bi biti u stanju obavljati svoje dužnosti i zadatke samostalno, bez obzira na to jesu li zaposleni kod nadzornika ili ne.

Izmjena

(75) Ako se obrada provodi u javnom sektoru ili ako se, u privatnom sektoru, ***obrađa odnosi na više od 5000 osoba čiji se podaci obrađuju tijekom 12 mjeseci*** ili ako osnovne djelatnosti poduzeća bez obzira na njegovu veličinu obuhvaćaju postupke obrade osjetljivih podataka ili postupke obrade koji zahtijevaju redovito i sustavno praćenje, službenik bi trebao pomagati nadzorniku ili obrađivaču pri nadzoru unutarnje usklađenosti s ovom Uredbom. ***Kada se utvrđuje jesu li obrađeni podaci o velikom broju osoba čiji se podaci obrađuju, ne treba uzeti u obzir arhivirane podatke koji su ograničeni na takav način da nisu podložni normalnom pristupu podacima i postupcima obrade nadzornika te se više ne mogu mijenjati.*** Takvi službenici za zaštitu podataka, bez obzira na to jesu li zaposleni kod nadzornika ili ne ***i bez obzira na to ispunjavaju li tu zadaću u punom radnom vremenu ili ne***, trebali bi biti u stanju obavljati svoje dužnosti i zadatke samostalno ***i biti posebno zaštićeni od otpuštanja s posla. Konačnu odgovornost trebala bi imati uprava organizacije. Sa službenikom za zaštitu podataka trebalo bi se posebno savjetovati prije dizajniranja, nabave, razvoja i uspostavljanja sustava za automatsku obradu osobnih podataka kako bi se osigurala načela tehničkih rješenja zaštite privatnosti i integrirane***

zaštite privatnosti.

Amandman 50

Prijedlog Uredbe

Uvodna izjava 75.a (nova)

Tekst koji je predložila Komisija

Izmjena

(75.a) Službenik za zaštitu podataka trebao bi imati barem sljedeće kvalifikacije: opsežno znanje o sadržaju i primjeni zakona o zaštiti podataka, uključujući tehničke i organizacijske mjere i postupke; vladanje tehničkim zahtjevima za tehnička rješenja zaštite privatnosti, integrirane zaštite privatnosti i sigurnosti podataka; znanje specifično za granu industrije u skladu s veličinom nadzornika ili obrađivača i osjetljivosti podataka koje treba obraditi; sposobnost provođenja pregleda, savjetovanja, dokumentacije i analiza log podataka; i sposobnost rada s predstavnicima zaposlenih. Nadzornik bi trebao omogućiti službeniku za zaštitu podataka da sudjeluje u naprednim mjerama obuke za održavanje specijaliziranog znanja koje mu je potrebno za obavljanje njegovih dužnosti. Imenovanje za službenika za zaštitu podataka ne zahtijeva nužno puno radno vrijeme dotičnog zaposlenika.

Amandman 51

Prijedlog Uredbe

Uvodna izjava 76.

Tekst koji je predložila Komisija

Izmjena

(76) Udruge ili druga tijela koja predstavljaju kategorije nadzornika trebalo bi poticati da u skladu s ovom Uredbom i uzimajući u obzir posebne značajke obrade koja se provodi u određenim sektorima izrade kodekse ponašanja kako bi se

(76) Udruge ili druga tijela koja predstavljaju kategorije nadzornika trebalo bi poticati, **nakon savjetovanja s predstavnicima zaposlenih**, da u skladu s ovom Uredbom i uzimajući u obzir posebne značajke obrade koja se provodi u

pospješila djelotvorna primjena ove Uredbe.

određenim sektorima izrade kodekse ponašanja kako bi se pospješila djelotvorna primjena ove Uredbe. ***Takvi kodeksi trebali bi industriji olakšati usklađenost s ovom Uredbom.***

Amandman 52

Prijedlog Uredbe Uvodna izjava 77.

Tekst koji je predložila Komisija

(77) Kako bi se povećala transparentnost i usklađenost s ovom Uredbom, trebalo bi se poticati uvođenje mehanizama certificiranja, pečata i oznaka za zaštitu podataka, što bi osobama čiji se podaci obrađuju omogućilo brzu procjenu razine zaštite podataka za relevantne proizvode i usluge.

Izmjena

(77) Kako bi se povećala transparentnost i usklađenost s ovom Uredbom, trebalo bi se poticati uvođenje mehanizama certificiranja, pečata i ***standardiziranih*** oznaka za zaštitu podataka, što bi osobama čiji se podaci obrađuju omogućilo brzu, ***pouzdanu i provjerljivu*** procjenu razine zaštite podataka za relevantne proizvode i usluge. ***„Europski pečat za zaštitu podataka” trebao bi biti uspostavljen na europskoj razini kako bi stvorio povjerenje među osobama čiji se podaci obrađuju i pravnu sigurnost za nadzornike te kako bi se istovremeno izvozili europski standardi zaštite podataka koji bi neeuropskim poduzećima omogućili da s pomoću certifikata lakše uđu na europska tržišta.***

Amandman 53

Prijedlog Uredbe Uvodna izjava 79.

Tekst koji je predložila Komisija

(79) Ovom se Uredbom ne dovode u pitanje međunarodni sporazumi sklopljeni između Unije i trećih zemalja kojima se uređuje prijenos osobnih podataka, uključujući i odgovarajuće mjere zaštite osoba čiji se podaci obrađuju.

Izmjena

(79) Ovom se Uredbom ne dovode u pitanje međunarodni sporazumi sklopljeni između Unije i trećih zemalja kojima se uređuje prijenos osobnih podataka, uključujući i odgovarajuća jamstva za osobe čiji se podaci obrađuju, ***osiguravajući primjerenu razinu zaštite***

Amandman 54

Prijedlog Uredbe Uvodna izjava 80.

Tekst koji je predložila Komisija

(80) Komisija može odlučiti s učinkom na cijelu Uniju da određene treće zemlje, ili teritorij ili sektor u kojem se vrši obrada u trećoj zemlji ili međunarodna organizacija pružaju odgovarajuću razinu zaštite podataka te na taj način pružaju pravnu sigurnost i ujednačenost u cijeloj Uniji kad je riječ o trećim zemljama ili međunarodnim organizacijama za koje se smatra da pružaju takvu razinu zaštite. ***U takvim slučajevima prijenosi osobnih podataka u ove zemlje mogu se obaviti bez bilo kakvog dodatnog odobrenja.***

Izmjena

(80) Komisija može odlučiti s učinkom na cijelu Uniju da određene treće zemlje, ili teritorij ili sektor u kojem se vrši obrada u trećoj zemlji ili međunarodna organizacija pružaju odgovarajuću razinu zaštite podataka te na taj način pružaju pravnu sigurnost i ujednačenost u cijeloj Uniji kad je riječ o trećim zemljama ili međunarodnim organizacijama za koje se smatra da pružaju takvu razinu zaštite. ***Komisija također može odlučiti da će povući takvu odluku, uz obavijest i potpuno obrazloženje trećoj zemlji.***

Amandman 55

Prijedlog Uredbe Uvodna izjava 82.

Tekst koji je predložila Komisija

(82) Komisija isto tako može prepoznati da treća zemlja, ili teritorij ili sektor u kojem se vrši obrada u toj trećoj zemlji ili međunarodna organizacija ne pružaju odgovarajuću razinu zaštite podataka. Prijenos osobnih podataka u tu treću zemlju trebalo bi stoga zabraniti. U tom bi slučaju trebalo predvidjeti postupke za savjetovanja između Komisije i takvih trećih zemalja ili međunarodnih organizacija.

Izmjena

(82) Komisija isto tako može prepoznati da treća zemlja, ili teritorij ili sektor u kojem se vrši obrada u toj trećoj zemlji ili međunarodna organizacija ne pružaju odgovarajuću razinu zaštite podataka. ***Svako zakonodavstvo kojim je predviđen izvanteritorijalni pristup osobnim podacima obrađenim u Uniji bez odobrenja u skladu sa zakonom Unije ili države članice treba smatrati pokazateljem nedostatka odgovarajuće razine zaštite.*** Prijenos osobnih podataka u tu treću zemlju trebalo bi stoga zabraniti. U tom bi slučaju trebalo predvidjeti postupke za savjetovanja između Komisije i takvih trećih zemalja ili međunarodnih

organizacija.

Amandman 56

Prijedlog Uredbe Uvodna izjava 83.

Tekst koji je predložila Komisija

(83) Ako se ne donese odluka o odgovarajućoj razini zaštite, nadzornik ili obrađivač trebali bi, kako bi se nadoknadilo pomanjkanje zaštite podataka u trećoj zemlji, poduzeti odgovarajuće mjere zaštite za osobu čiji se podaci obrađuju. Takve odgovarajuće mjere zaštite mogu obuhvaćati uporabu obvezujućih pravila poduzeća, standardne klauzule o zaštiti podataka koje je usvojila Komisija, standardne klauzule o zaštiti podataka koje je usvojilo nadzorno tijelo ili ugovorne klauzule koje je odobrilo nadzorno tijelo ili druge primjerene i razmjerne mjere koje su opravdane na temelju okolnosti postupka prijenosa podataka ili skupa postupaka prijenosa podataka i koje je odobrilo nadzorno tijelo.

Izmjena

(83) Ako se ne donese odluka o odgovarajućoj razini zaštite, nadzornik ili obrađivač trebali bi, kako bi se nadoknadilo pomanjkanje zaštite podataka u trećoj zemlji, poduzeti odgovarajuće mjere zaštite za osobu čiji se podaci obrađuju. Takve odgovarajuće mjere zaštite mogu obuhvaćati uporabu obvezujućih pravila poduzeća, standardne klauzule o zaštiti podataka koje je usvojila Komisija, standardne klauzule o zaštiti podataka koje je usvojilo nadzorno tijelo ili ugovorne klauzule koje je odobrilo nadzorno tijelo. ***Te odgovarajuće mjere zaštite trebale bi podupirati poštovanje prava osobe čiji se podaci obrađuju primjereno obradi unutar EU-a, a posebno u odnosu na ograničenje namjene, pravo pristupa, ispravljanje, brisanje i traženje naknade. Te mjere zaštite naročito bi trebale jamčiti poštovanje načela obrade osobnih podataka, štiti prava osobe čiji se podaci obrađuju i predvidjeti učinkovite mehanizme pravne zaštite, osigurati poštovanje načela tehničke i integrirane zaštite podataka, jamčiti postojanje službenika za zaštitu podataka.***

Amandman 57

Prijedlog Uredbe Uvodna izjava 84.

Tekst koji je predložila Komisija

(84) Mogućnost koju ima nadzornik ili

Izmjena

(84) Mogućnost koju ima nadzornik ili

obrađivač da koristi standardne klauzule o zaštiti podataka koje je usvojila Komisija ili nadzorno tijelo ne bi ga trebala sprečavati u tome da standardne klauzule o zaštiti podataka uključi i u opsežnije ugovore ili da dodaje druge klauzule, dokle god one izravno ili neizravno ne proturječe standardnim ugovornim klauzulama koje je usvojila Komisija ili nadzorno tijelo ili ne dovode u pitanje temeljna prava i slobode osoba čiji se podaci obrađuju.

obrađivač da koristi standardne klauzule o zaštiti podataka koje je usvojila Komisija ili nadzorno tijelo ne bi ga trebala sprečavati u tome da standardne klauzule o zaštiti podataka uključi i u opsežnije ugovore ili da dodaje druge klauzule *ili dodatne mjere zaštite*, dokle god one izravno ili neizravno ne proturječe standardnim ugovornim klauzulama koje je usvojila Komisija ili nadzorno tijelo ili ne dovode u pitanje temeljna prava i slobode osoba čiji se podaci obrađuju. ***Standardne klauzule o zaštiti podataka koje je usvojila Komisija mogle bi obuhvatiti različite situacije odnosno prijenose od nadzornika s poslovnim nastanom u Europskoj uniji do nadzornika s poslovnim nastanom izvan Europske unije i od nadzornika s poslovnim nastanom u Europskoj uniji do obrađivača, uključujući podobrađivače, s poslovnim nastanom izvan Europske unije. Nadzornike i obrađivače treba poticati da osiguraju još snažnije mjere zaštite preko dodatnih ugovornih obveza koje nadopunjuju standardne klauzule o zaštiti.***

Amandman 58

Prijedlog Uredbe Uvodna izjava 85.

Tekst koji je predložila Komisija

(85) Grupa poduzetnika bi za svoje međunarodne prijenose iz Unije u organizacije unutar iste grupe poduzetnika trebala moći primijeniti odobrena obvezujuća pravila poduzeća dokle god takva pravila poduzeća obuhvaćaju temeljna načela i ostvariva prava kojima se osiguravaju odgovarajuće mjere zaštite za prijenose ili skup prijenosa osobnih podataka.

Izmjena

(85) Grupa poduzetnika bi za svoje međunarodne prijenose iz Unije u organizacije unutar iste grupe poduzetnika trebala moći primijeniti odobrena obvezujuća pravila poduzeća dokle god takva pravila poduzeća obuhvaćaju *sva* temeljna načela i ostvariva prava kojima se osiguravaju odgovarajuća jamstva za prijenose ili skup prijenosa osobnih podataka.

Amandman 59

Prijedlog Uredbe Uvodna izjava 86.

Tekst koji je predložila Komisija

(86) Trebalo bi predvidjeti mogućnost prijenosa u određenim okolnostima ako je osoba čiji se podaci obrađuju dala svoju suglasnost, ako je prijenos potreban na temelju ugovora ili pravnog zahtjeva, ako je potreban radi važnog javnog interesa utvrđenog zakonodavstvom Unije države članice ili ako se obavlja iz evidencije koja je u skladu sa zakonom namijenjena uvidu javnosti ili osoba koje imaju legitimni interes. U potonjem slučaju takav prijenos ne bi smio uključivati cjelokupne podatke ili cjelokupne skupove podataka koje sadrži evidencija i, ako je evidencija namijenjena uvidu osoba koje imaju legitimni interes, prijenos bi se trebao obaviti samo na zahtjev tih osoba ili ako su te osobe primatelji.

Izmjena

(86) Trebalo bi predvidjeti mogućnost prijenosa u određenim okolnostima ako je osoba čiji se podaci obrađuju dala svoju suglasnost, ako je prijenos potreban na temelju ugovora ili pravnog zahtjeva, ako je potreban radi važnog javnog interesa utvrđenog zakonodavstvom Unije države članice ili ako se obavlja iz evidencije koja je u skladu sa zakonom namijenjena uvidu javnosti ili osoba koje imaju legitimni interes. U potonjem slučaju takav prijenos ne bi smio uključivati cjelokupne podatke ili cjelokupne skupove podataka koje sadrži evidencija i, ako je evidencija namijenjena uvidu osoba koje imaju legitimni interes, prijenos bi se trebao obaviti samo na zahtjev tih osoba ili ako su te osobe primatelji, ***u potpunosti uzimajući u obzir interese i temeljna prava osobe čiji se podaci obrađuju.***

Amandman 60

Prijedlog Uredbe Uvodna izjava 87.

Tekst koji je predložila Komisija

(87) Ta bi odstupanja posebno trebala važiti za prijenose podataka koji su potrebni radi zaštite nekog važnog javnog interesa, na primjer u slučajevima međunarodnog prijenosa podataka između tijela za zaštitu tržišnog natjecanja, poreznih i carinskih tijela, tijela za financijski nadzor, između službi nadležnih za pitanja socijalnog osiguranja, ili prijenosa u nadležna tijela za sprečavanje, istragu, otkrivanje i progon kaznenih djela.

Izmjena

(87) Ta bi odstupanja posebno trebala važiti za prijenose podataka koji su potrebni radi zaštite nekog važnog javnog interesa, na primjer u slučajevima međunarodnog prijenosa podataka između tijela za zaštitu tržišnog natjecanja, poreznih i carinskih tijela, tijela za financijski nadzor, između službi nadležnih za pitanja socijalnog osiguranja ***ili javnog zdravlja***, ili prijenosa u nadležna ***javna*** tijela za sprečavanje, istragu, otkrivanje i progon kaznenih djela, ***uključujući za***

sprečavanje pranja novca i borbu protiv financiranja terorista. Prijenos osobnih podataka jednako tako treba smatrati zakonitim ako je potrebno zaštititi interes koji je ključan za život osobe čiji se podaci obrađuju ili neke druge osobe ako osoba čiji se podaci obrađuju nije sposobna dati svoju suglasnost. Prijenos osobnih podataka radi tako važnog javnog interesa treba upotrebljavati samo za povremene prijenose. U svakom slučaju treba provesti pažljivu procjenu svih okolnosti prijenosa.

Amandman 61

Prijedlog Uredbe Uvodna izjava 88.

Tekst koji je predložila Komisija

(88) Prijenosi koji se ne mogu opisati kao česti ili masivni mogli bi se također obavljati zbog legitimnih interesa nadzornika ili obrađivača ako su oni ocijenili sve okolnosti oko prijenosa podataka. Za obrade u svrhe povijesnog, statističkog i znanstvenog istraživanja, trebala bi se uzeti u obzir opravdana očekivanja društva u pogledu povećanja znanja.

Izmjena

Za obrade u svrhe povijesnog, statističkog i znanstvenog istraživanja, trebala bi se uzeti u obzir opravdana očekivanja društva u pogledu povećanja znanja.

Amandman 62

Prijedlog Uredbe Uvodna izjava 89.

Tekst koji je predložila Komisija

(89) U svakom slučaju, ako Komisija nije donijela odluku o odgovarajućoj razini zaštite podataka u trećoj zemlji, nadzornik ili obrađivač trebali bi iskoristiti rješenja kojima se osobama čiji se podaci obrađuju jamči da će i nakon prijenosa tih podataka moći ostvariti temeljna prava i mjere

Izmjena

(89) U svakom slučaju, ako Komisija nije donijela odluku o odgovarajućoj razini zaštite podataka u trećoj zemlji, nadzornik ili obrađivač trebali bi iskoristiti rješenja kojima se osobama čiji se podaci obrađuju **pravno obvezujuće** jamči da će i nakon prijenosa tih podataka moći ostvariti temeljna prava i mjere zaštite pri obradi

zaštite pri obradi svojih podataka u Uniji.

svojih podataka u Uniji, *u toj mjeri da obrada nije masivna, da se ne ponavlja i da nije strukturalna. To jamstvo treba uključivati financijsku naknadu štete u slučajevima gubitka ili neovlaštenog pristupa ili obrade podataka te obvezu, neovisno o nacionalnom zakonodavstvu, osiguravanja potpunih pojedinosti o svim pristupima podacima javnih tijela u trećim zemljama.*

Amandman 63

Prijedlog Uredbe Uvodna izjava 90.

Tekst koji je predložila Komisija

(90) Neke treće zemlje donose zakone, uredbe i druge zakonodavne instrumente kojima se izravno uređuju aktivnosti obrade podataka koje provode fizičke i pravne osobe u nadležnosti država članica. Primjenom tih zakona, uredbi i drugih zakonodavnih instrumenata izvan državnog teritorija moglo bi se kršiti međunarodno pravo i otežati postizanje zaštite pojedinaca koja se ovom Uredbom jamči u Uniji. . Prijenosi bi se trebali dopustiti samo onda kad su zadovoljeni uvjeti ove Uredbe za prijenos u treće zemlje. To može na primjer biti slučaj kad je otkrivanje podataka potrebno zbog važnog javnog interesa utvrđenog zakonodavstvom Unije ili države članice kojemu podliježe nadzornik. Uvjete postojanja važnog javnog interesa trebala bi detaljnije odrediti Komisija delegiranim aktom.

Izmjena

(90) Neke treće zemlje donose zakone, uredbe i druge zakonodavne instrumente kojima se izravno uređuju aktivnosti obrade podataka koje provode fizičke i pravne osobe u nadležnosti država članica. Primjenom tih zakona, uredbi i drugih zakonodavnih instrumenata izvan državnog teritorija moglo bi se kršiti međunarodno pravo i otežati postizanje zaštite pojedinaca koja se ovom Uredbom jamči u Uniji. Prijenosi bi se trebali dopustiti samo onda kad su zadovoljeni uvjeti ove Uredbe za prijenos u treće zemlje. To može na primjer biti slučaj kad je otkrivanje podataka potrebno zbog važnog javnog interesa utvrđenog zakonodavstvom Unije ili države članice kojemu podliježe nadzornik. Uvjete postojanja važnog javnog interesa trebala bi detaljnije odrediti Komisija delegiranim aktom. ***U slučajevima u kojima su nadzornici ili obrađivači suočeni s proturječnim zahtjevima usklađenosti između nadležnosti Unije s jedne strane i nadležnosti treće zemlje s druge strane Komisija bi trebala osigurati da primat uvijek ima pravo Unije. Komisija bi trebala osigurati vodstvo i pomoć nadzorniku i obrađivaču te nastojati***

riješiti pravni sukob s trećom zemljom o kojoj je riječ.

Amandman 64

Prijedlog Uredbe Uvodna izjava 92.

Tekst koji je predložila Komisija

(92) Uspostava nadzornih tijela u državama članicama, koje potpuno samostalno provode svoje funkcije ključna je sastavnica zaštite pojedinaca pri obradi njihovih osobnih podataka. Države članice smiju uspostaviti više od jednoga nadzornog tijela, ako to odražava njihovu ustavnu, organizacijsku i administrativnu strukturu.

Izmjena

(92) Uspostava nadzornih tijela u državama članicama, koje potpuno samostalno provode svoje funkcije ključna je sastavnica zaštite pojedinaca pri obradi njihovih osobnih podataka. Države članice smiju uspostaviti više od jednoga nadzornog tijela, ako to odražava njihovu ustavnu, organizacijsku i administrativnu strukturu. ***Tijelo mora imati odgovarajuće financijske i osobne resurse kako bi u potpunosti izvršavalo svoju ulogu, uzimajući u obzir broj stanovništva i količinu obrade osobnih podataka.***

Amandman 65

Prijedlog Uredbe Uvodna izjava 94.

Tekst koji je predložila Komisija

(94) Svako bi nadzorno tijelo trebalo imati odgovarajuće financijske i ljudske resurse, prostore i infrastrukturu, koji su neophodni za učinkovito obavljanje njihovih zadataka, uključujući i zadataka vezanih uz uzajamnu pomoć i suradnju s ostalim nadzornim tijelima u cijeloj Uniji.

Izmjena

(94) Svako bi nadzorno tijelo trebalo imati odgovarajuće financijske i ljudske resurse, ***pridajući posebnu pozornost osiguravanju odgovarajućih tehničkih i pravnih vještina osoblja***, prostore i infrastrukturu, koji su neophodni za učinkovitu provedbu njihovih zadataka, uključujući i zadatke vezane uz obostranu pomoć i suradnju s ostalim nadzornim tijelima u cijeloj Uniji.

Amandman 66

Prijedlog Uredbe Uvodna izjava 95.

Tekst koji je predložila Komisija

(95) Opći uvjeti za članove nadzornog tijela trebali bi biti utvrđeni zakonom u svakoj državi članici te bi osobito trebali predvidjeti da te članove imenuje ili parlament ili vlada dotične države članice te bi trebali obuhvaćati pravila o osobnim kvalifikacijama članova i njihovom položaju.

Izmjena

(95) Opći uvjeti za članove nadzornog tijela trebali bi biti utvrđeni zakonom u svakoj državi članici te bi osobito trebali predvidjeti da te članove imenuje ili parlament ili vlada dotične države članice, **vodeći brigu o smanjenju mogućnosti političkog uplitanja**, te bi trebali obuhvaćati pravila o osobnim kvalifikacijama članova, **izbjegavanju konflikta interesa** i njihovom položaju.

Amandman 67

Prijedlog Uredbe Uvodna izjava 97.

Tekst koji je predložila Komisija

(97) Ako se obrada osobnih podataka u sklopu aktivnosti poslovnog nastana nadzornika ili obrađivača u Uniji provodi u više država članica, za nadzor aktivnosti nadzornika ili obrađivača u cijeloj Uniji trebalo bi biti nadležno samo jedno nadzorno tijelo, čime bi se povećala dosljednost primjene, pružila pravna sigurnost i smanjio administrativni teret za takve nadzornike ili obrađivače.

Izmjena

(97) Ako se obrada osobnih podataka u sklopu aktivnosti poslovnog nastana nadzornika ili obrađivača u Uniji provodi u više država članica, **kao jedinstvena kontaktna točka i vodeće tijelo nadležno za nadzor** nadzornika ili obrađivača u cijeloj Uniji i za donošenje relevantnih odluka trebalo bi biti nadležno samo jedno nadzorno tijelo, čime bi se povećala dosljednost primjene, pružila pravna sigurnost i smanjio administrativni teret za takve nadzornike ili obrađivače.

Amandman 68

Prijedlog Uredbe Uvodna izjava 98.

Tekst koji je predložila Komisija

(98) Nadležno tijelo, koje bi pružalo sve

Izmjena

(98) **Vodeće** tijelo, koje bi pružalo sve

usluge na jednom mjestu, trebalo bi biti nadzorno tijelo države članice u kojoj nadzornik ili obrađivač ima svoj glavni poslovni nastan.

usluge na jednom mjestu, trebalo bi biti nadzorno tijelo države članice u kojoj nadzornik ili obrađivač ima svoj glavni poslovni nastan *ili svojeg predstavnika*. ***Europski odbor za zaštitu podataka na zahtjev nadležnog tijela u određenim slučajevima može imenovati vodeće tijelo preko mehanizma za usklađivanje.***

Amandman 69

Prijedlog Uredbe

Uvodna izjava 98.a (nova)

Tekst koji je predložila Komisija

Izmjena

(98.a) Osobe čiji se podaci obrađuju i čije podatke obrađuje nadzornik ili obrađivač u drugoj državi članici trebale bi imati mogućnost žalbe nadzornom tijelu koje izaberu. Vodeće tijelo za zaštitu podataka trebalo bi uskladiti svoj rad s radom ostalih uključenih tijela.

Amandman 70

Prijedlog Uredbe

Uvodna izjava 101.

Tekst koji je predložila Komisija

Izmjena

(101) Svako nadzorno tijelo trebalo bi razmotriti žalbe koje uloži bilo koja osoba čiji se podaci obrađuju i istražiti to pitanje. Istragu pokrenutu na temelju žalbe treba sukladno sudskom preispitivanju provesti u mjeri koja je za određeni slučaj primjerena. Nadzorno tijelo trebalo bi u razumnom roku obavijestiti osobu čiji se podaci obrađuju o tijeku i ishodu žalbe. Ako slučaj zahtijeva daljnju provjeru ili usklađivanje s drugim nadzornim tijelom, osobu čiji se podaci obrađuju trebalo bi obavijestiti da je provjera u tijeku.

(101) Svako nadzorno tijelo trebalo bi razmotriti žalbe koje uloži bilo koja osoba čiji se podaci obrađuju ***ili udruga koja djeluje u javnom interesu*** i istražiti to pitanje. Istragu pokrenutu na temelju žalbe treba sukladno sudskom preispitivanju provesti u mjeri koja je za određeni slučaj primjerena. Nadzorno tijelo trebalo bi u razumnom roku obavijestiti osobu čiji se podaci obrađuju ***ili udrugu*** o tijeku i ishodu žalbe. Ako slučaj zahtijeva daljnju provjeru ili usklađivanje s drugim nadzornim tijelom, osobu čiji se podaci obrađuju trebalo bi obavijestiti da je

provjera u tijeku.

Amandman 71

Prijedlog Uredbe Uvodna izjava 105.

Tekst koji je predložila Komisija

(105) Kako bi se osigurala dosljedna primjena ove Uredbe u cijeloj Uniji, za suradnju nadzornih tijela jednih s drugima i Komisije trebao bi se uspostaviti mehanizam za usklađivanje. Taj bi se mehanizam trebao primjenjivati osobito u slučajevima kad nadzorno tijelo namjerava poduzeti mjeru u vezi s postupcima obrade koji su povezani s ponudom proizvoda ili usluga u nekoliko država članica osobama čiji se podaci obrađuju ili s praćenjem takvih osoba ili koji bi mogli znatno utjecati na slobodni protok osobnih podataka. Mehanizam bi se također trebao primjenjivati u slučajevima kad bilo koje nadzorno tijelo ili Komisija zatraži da se predmet razmotri u okviru mehanizma za usklađivanje. Taj mehanizam ne bi smio dovoditi u pitanje druge mjere koje Komisija može poduzeti izvršavajući svoje ovlasti u skladu s Ugovorima.

Izmjena

(105) Kako bi se osigurala dosljedna primjena ove Uredbe u cijeloj Uniji, za suradnju nadzornih tijela jednih s drugima i Komisije trebao bi se uspostaviti mehanizam za usklađivanje. Taj bi se mehanizam trebao primjenjivati osobito u slučajevima kad nadzorno tijelo namjerava poduzeti mjeru u vezi s postupcima obrade koji su povezani s ponudom proizvoda ili usluga u nekoliko država članica osobama čiji se podaci obrađuju ili s praćenjem takvih osoba ili koji bi mogli znatno utjecati na slobodni protok osobnih podataka. Mehanizam bi se također trebao primjenjivati u slučajevima kad bilo koje nadzorno tijelo ili Komisija zatraži da se predmet razmotri u okviru mehanizma za usklađivanje. ***Nadalje, osobe čiji se podaci obrađuju trebale bi imati pravo ostvarivanja usklađenosti ako smatraju da mjera tijela za zaštitu podataka države članice nije ispunila taj kriterij.*** Taj mehanizam ne bi smio dovoditi u pitanje druge mjere koje Komisija može poduzeti izvršavajući svoje ovlasti u skladu s Ugovorima.

Amandman 72

Prijedlog Uredbe Uvodna izjava 106.a (nova)

Tekst koji je predložila Komisija

Izmjena

(106.a) Kako bi se osigurala dosljedna primjena ove Uredbe, Europski odbor za zaštitu podataka može u pojedinačnim slučajevima donijeti odluku koja je

Amandman 73

Prijedlog Uredbe Uvodna izjava 107.

Tekst koji je predložila Komisija

(107) Kako bi se osigurala usklađenost s ovom Uredbom, Komisija može donijeti mišljenje o tom pitanju ili odluku kojom se od nadzornog tijela zahtijeva da povuče svoj nacrt mjere.

Izmjena

Briše se.

Amandman 74

Prijedlog Uredbe Uvodna izjava 110.

Tekst koji je predložila Komisija

Na razini Unije trebao bi se osnovati Europski odbor za zaštitu podataka. On bi trebao zamijeniti Radnu skupinu za zaštitu pojedinaca pri obradi osobnih podataka koja je uspostavljena Direktivom 95/46/EZ. Trebao bi se sastojati od predsjednika nadzornog tijela svake države članice i europskog nadzornika za zaštitu podataka. ***Komisija bi trebala sudjelovati u njegovim aktivnostima.*** Europski odbor za zaštitu podataka trebao bi pridonijeti dosljednoj primjeni ove Uredbe u cijeloj Uniji, između ostalog savjetovanjem Komisije i promicanjem suradnje između nadzornih tijela u cijeloj Uniji. Europski odbor za zaštitu podataka trebao bi biti neovisan u izvršavanju svojih zadaća.

Izmjena

Na razini Unije trebao bi se osnovati Europski odbor za zaštitu podataka. On bi trebao zamijeniti Radnu skupinu za zaštitu pojedinaca pri obradi osobnih podataka koja je uspostavljena Direktivom 95/46/EZ. Trebao bi se sastojati od predsjednika nadzornog tijela svake države članice i europskog nadzornika za zaštitu podataka. Europski odbor za zaštitu podataka trebao bi pridonijeti dosljednoj primjeni ove Uredbe u cijeloj Uniji, između ostalog savjetovanjem ***institucija Unije*** i promicanjem suradnje između nadzornih tijela u cijeloj Uniji, ***uključujući koordinaciju zajedničkih mjera.*** Europski odbor za zaštitu podataka trebao bi biti neovisan u izvršavanju svojih zadaća. ***Europski odbor za zaštitu podataka trebao bi ojačati dijalog sa zainteresiranim dionicima kao što su udruge osoba čiji se podaci obrađuju, organizacije potrošača, nadzornici podataka i ostali relevantni dionici i stručnjaci.***

Amandman 75
Prijedlog Uredbe
Uvodna izjava 111.

Tekst koji je predložila Komisija

Svaka osoba čiji se podaci obrađuju trebala bi imati pravo uložiti žalbu nadzornome tijelu u bilo kojoj državi članici te pravo na pravni lijek ako smatra da su joj prava prema ovoj Uredbi povrijeđena ili u slučaju kad nadzorno tijelo ne reagira na žalbu ili ne poduzima nikakve korake, a kad je takav korak potreban za zaštitu prava osobe čiji se podaci obrađuju.

Izmjena

(111) **Osobe** čiji se podaci obrađuju trebale bi imati pravo uložiti žalbu nadzornome tijelu u bilo kojoj državi članici te pravo na **učinkovit** pravni lijek **u skladu s člankom 47. Povelje o temeljnim pravima** ako smatraju da su im prava prema ovoj Uredbi povrijeđena ili u slučaju kad nadzorno tijelo ne reagira na žalbu ili ne poduzima nikakve korake, a kad je takav korak potreban za zaštitu prava osobe čiji se podaci obrađuju.

Amandman 76

Prijedlog Uredbe
Uvodna izjava 112.

Tekst koji je predložila Komisija

(112) Svako tijelo, organizacija ili udruga kojoj je cilj zaštititi prava i interese osoba čiji se podaci obrađuju u vezi sa zaštitom njihovih podataka te je osnovana u skladu sa zakonodavstvom države članice trebala bi imati pravo uložiti žalbu nadzornom tijelu ili ostvariti pravo na pravni lijek u ime osoba čiji se podaci obrađuju, ili imati pravo, neovisno o žalbi osobe čiji se podaci obrađuju, uložiti vlastitu žalbu ako smatra da je došlo do povrede osobnih podataka.

Izmjena

(112) Svako tijelo, organizacija ili udruga koja **djeluje u javnom interesu** te je osnovana u skladu sa zakonodavstvom države članice trebala bi imati pravo uložiti žalbu nadzornom tijelu **u ime osoba čiji se podaci obrađuju i uz njihovu suglasnost** ili ostvariti pravo na pravni lijek **ako ju je za to ovlastila** osoba čiji se podaci obrađuju, ili imati pravo, neovisno o žalbi osobe čiji se podaci obrađuju, uložiti vlastitu žalbu ako smatra da je došlo do povrede **ove Uredbe**.

Amandman 77

Prijedlog Uredbe
Uvodna izjava 114.

Tekst koji je predložila Komisija

Kako bi se ojačala sudska zaštita osoba čiji

Izmjena

(114) Kako bi se ojačala sudska zaštita

se podaci obrađuju u slučajevima kad nadležno nadzorno tijelo ima poslovni nastan u drugoj državi članici od one u kojoj osoba čiji se podaci obrađuju boravi, dotična osoba može zatražiti od bilo kojeg tijela, organizacije ili udruge kojoj je cilj zaštititi prava i interese osoba čiji se podaci obrađuju u vezi sa zaštitom njihovih podataka da u njezino ime na nadležnom sudu u drugoj državi članici pokrene postupak protiv tog nadzornog tijela.

osoba čiji se podaci obrađuju u slučajevima kad nadležno nadzorno tijelo ima poslovni nastan u drugoj državi članici od one u kojoj osoba čiji se podaci obrađuju boravi, dotična osoba može **ovlastiti** bilo koje tijelo, organizaciju ili udruhu koja **djeluje u javnom interesu** da na nadležnom sudu u drugoj državi članici pokrene postupak protiv tog nadzornog tijela.

Amandman 78

Prijedlog Uredbe Uvodna izjava 115.

Tekst koji je predložila Komisija

(115) U slučajevima kad nadležno nadzorno tijelo s poslovnim nastanom u drugoj državi članici ne reagira ili ne poduzima dostatne mjere u pogledu žalbe, osoba čiji se podaci obrađuju može zatražiti od nadzornog tijela u državi članici njezinog uobičajenog boravišta da na nadležnom sudu u drugoj državi članici pokrene postupak protiv tog nadzornog tijela. Nadzorno tijelo kojemu je podnesen zahtjev može na temelju sudskog preispitivanja odlučiti je li primjereno udovoljiti zahtjevu ili ne.

Amandman 79

Prijedlog Uredbe Uvodna izjava 116.

Tekst koji je predložila Komisija

(116) Tužitelj bi trebao imati pravo pokrenuti postupke protiv nadzornika ili obrađivača na sudu u državi članici u kojoj nadzornik ili obrađivač ima poslovni nastan ili u kojoj osoba čiji se podaci

Izmjena

(115) U slučajevima kad nadležno nadzorno tijelo s poslovnim nastanom u drugoj državi članici ne reagira ili ne poduzima dostatne mjere u pogledu žalbe, osoba čiji se podaci obrađuju može zatražiti od nadzornog tijela u državi članici njezinog uobičajenog boravišta da na nadležnom sudu u drugoj državi članici pokrene postupak protiv tog nadzornog tijela. **To se ne primjenjuje na osobe koje nemaju prebivalište u EU-u.** Nadzorno tijelo kojemu je podnesen zahtjev može na temelju sudskog preispitivanja odlučiti je li primjereno udovoljiti zahtjevu ili ne.

Izmjena

(116) Tužitelj bi trebao imati pravo pokrenuti postupke protiv nadzornika ili obrađivača na sudu u državi članici u kojoj nadzornik ili obrađivač ima poslovni nastan ili, **u slučaju boravišta u EU-u,** u

obrađuju boravi, osim ako je nadzornik javno tijelo koje izvršava svoje javne ovlasti.

kojoj osoba čiji se podaci obrađuju boravi, osim ako je nadzornik javno tijelo **Unije ili države članice** koje izvršava svoje javne ovlasti.

Amandman 80

Prijedlog Uredbe Uvodna izjava 118.

Tekst koji je predložila Komisija

(118) Svaku štetu koju osoba može pretrpjeti kao rezultat nezakonite obrade trebao bi nadoknaditi nadzornik ili obrađivač, kojeg se može izuzeti od odgovornosti ako se dokaže da nije odgovoran za štetu, osobito u slučaju kad utvrdi grešku osobe čiji se podaci obrađuju ili u slučaju više sile.

Izmjena

(118) Svaku štetu, **materijalnu ili nematerijalnu**, koju osoba može pretrpjeti kao rezultat nezakonite obrade trebao bi nadoknaditi nadzornik ili obrađivač, kojeg se može izuzeti od odgovornosti **samo** ako **dokaže da on** nije odgovoran za štetu, osobito u slučaju kad utvrdi grešku osobe čiji se podaci obrađuju ili u slučaju više sile.

Amandman 81

Prijedlog Uredbe Uvodna izjava 119.

Tekst koji je predložila Komisija

(119) Sankcije bi trebalo nametnuti svakoj osobi, bilo da je uređena privatnim ili javnim pravom, koja se ne pridržava ove Uredbe. Države članice trebale bi zajamčiti učinkovite, proporcionalne i odvraćajuće sankcije te bi morale poduzeti sve mjere za njihovo provođenje.

Izmjena

Sankcije bi trebalo nametnuti svakoj osobi, bilo da je uređena privatnim ili javnim pravom, koja se ne pridržava ove Uredbe. Države članice trebale bi zajamčiti učinkovite, proporcionalne i odvraćajuće sankcije te bi morale poduzeti sve mjere za njihovo provođenje. **Pravila o sankcijama trebala bi biti uvjetovana odgovarajućim postupovnim zaštitnim mjerama u skladu s općim načelima zakonodavstva Unije i Povelje o temeljnim pravima, uključujući ona koja se odnose na pravo na učinkovit pravni lijek, odgovarajući postupak i načelo „ne bis in idem”.**

Amandman 82

Prijedlog Uredbe Uvodna izjava 119.a (nova)

Tekst koji je predložila Komisija

Izmjena

(119.a) U primjenjivanju sankcija države članice trebale bi u potpunosti poštovati odgovarajuće postupovne zaštitne mjere, uključujući pravo na učinkovit pravni lijek, odgovarajući postupak i načelo „bis in idem”.

Amandman 83

Prijedlog Uredbe Uvodna izjava 121.

Tekst koji je predložila Komisija

Izmjena

(121) Za obradu osobnih podataka koja se provodi isključivo u svrhe novinarstva ili književnog ili umjetničkog izražavanja trebalo bi se primjenjivati izuzeće od zahtjeva određenih odredbi ove Uredbe kako bi se uskladilo pravo na zaštitu osobnih podataka s pravom na slobodu izražavanja i posebno s pravom na primanje i davanje informacije, kako je posebno zajamčeno člankom 11. Povelje Europske unije o temeljnim pravima. **To bi se posebno trebalo primjenjivati na obradu osobnih podataka na audiovizualnom području te u novinskim i medijskim arhivima.** Stoga bi države članice trebale donijeti zakonodavne mjere kojima bi se predvidjela izuzeća i odstupanja potrebna radi usklađivanja tih temeljnih prava. Takva bi izuzeća i odstupanja države članice trebale usvojiti o općim načelima, o pravima osoba čiji se podaci obrađuju, o nadzorniku i obrađivaču, o prijenosu podataka u treće zemlje ili međunarodne organizacije, o neovisnim nadzornim tijelima te o suradnji i usklađenosti. To međutim ne bi trebalo

(121) **Kad god je potrebno, trebalo bi osigurati izuzeća i odstupanja za obradu osobnih podataka** od zahtjeva određenih odredbi ove Uredbe kako bi se uskladilo pravo na zaštitu osobnih podataka s pravom na slobodu izražavanja i posebno s pravom na primanje i davanje informacije, kako je posebno zajamčeno člankom 11. Povelje Europske unije o temeljnim pravima. Stoga bi države članice trebale donijeti zakonodavne mjere kojima bi se predvidjela izuzeća i odstupanja potrebna radi usklađivanja tih temeljnih prava. Takva bi izuzeća i odstupanja države članice trebale usvojiti o općim načelima, o pravima osoba čiji se podaci obrađuju, o nadzorniku i obrađivaču, o prijenosu podataka u treće zemlje ili međunarodne organizacije, o neovisnim nadzornim tijelima, o suradnji i usklađenosti **te o posebnim slučajevima obrade podataka.** To međutim ne bi trebalo navesti države članice na to da predvide izuzeća od drugih odredbi ove uredbe. Kako bi se vodilo računa o važnosti prava na slobodu mišljenja u svakom demokratskom društvu,

navesti države članice na to da predvide izuzeća od drugih odredbi ove uredbe. Kako bi se vodilo računa o važnosti prava na slobodu mišljenja u svakom demokratskom društvu, pojmove vezane uz tu slobodu, kao što je novinarstvo, potrebno je tumačiti u širokom smislu. Stoga bi države članice u svrhu izuzeća i odstupanja predviđenih ovom Uredbom trebale označiti aktivnosti kao „novinarske” ako je predmet tih djelatnosti otkrivanje informacija, mišljenja ili ideja javnosti bez obzira na medij kojim se one prenose. Te aktivnosti ne bi smjele biti ograničene na medijske poduzetnike te se mogu i ne moraju obavljati u cilju stjecanja dobiti.

Amandman 84

Prijedlog Uredbe Uvodna izjava 122.a (nova)

Tekst koji je predložila Komisija

Izmjena

(122.a) Stručnjak koji obrađuje osobne podatke o zdravstvenom stanju trebao bi, ako je moguće, primiti anonimizirane ili pseudonimizirane podatke, čime identitet osobe ostaje poznat samo liječniku opće prakse ili specijalistu koji je zatražio takvu obradu podataka.

Amandman 85

Prijedlog Uredbe Uvodna izjava 123.

Tekst koji je predložila Komisija

Izmjena

(123) Zbog javnog interesa na području javnog zdravlja može biti potrebno provesti obradu osobnih podataka o zdravstvenom stanju bez suglasnosti osobe čiji se podaci obrađuju. U tom kontekstu „javno zdravlje” trebalo bi se tumačiti na način

Zbog javnog interesa na području javnog zdravlja može biti potrebno provesti obradu osobnih podataka o zdravstvenom stanju bez suglasnosti osobe čiji se podaci obrađuju. U tom kontekstu „javno zdravlje” trebalo bi se tumačiti na način

kako je definirano u Uredbi (EZ) br. 1338/2008 Europskog parlamenta i Vijeća od 16. prosinca 2008. o statistici Zajednice o javnom zdravlju i zdravlju i sigurnosti na radu, što uključuje sve elemente vezane uz zdravlje kao što su zdravstveno stanje, uključujući pobol i invalidnost, faktore koji utječu na zdravstveno stanje, potrebe zdravstvene zaštite, sredstva dodijeljena zdravstvenim službama, pružanje zdravstvenih usluga i opći pristup njima kao i troškove zdravstvene zaštite i njezino financiranje te uzroke smrtnosti. ***Takva obrada osobnih podataka o zdravstvenom stanju zbog javnog interesa ne bi smjela dovesti do toga da treće strane kao što su poslodavci, osiguravajuća društva i banke obrađuju osobne podatke u druge svrhe.***

kako je definirano u Uredbi (EZ) br. 1338/2008 Europskog parlamenta i Vijeća, što uključuje sve elemente vezane uz zdravlje kao što su zdravstveno stanje, uključujući pobol i invalidnost, faktore koji utječu na zdravstveno stanje, potrebe zdravstvene zaštite, sredstva dodijeljena zdravstvenim službama, pružanje zdravstvenih usluga i opći pristup njima kao i troškove zdravstvene zaštite i njezino financiranje te uzroke smrtnosti.

Uredba (EZ) br. 1338/2008 Europskog parlamenta i Vijeća od 16. prosinca 2008. o statistici Zajednice o javnom zdravlju i zdravlju i sigurnosti na radu (SL L 354, 31.12.2008., str. 70.).

Amandman 86

Prijedlog Uredbe Uvodna izjava 123.a (nova)

Tekst koji je predložila Komisija

Izmjena

(123.a) Obrada osobnih podataka o zdravstvenom stanju kao posebna kategorija podataka može biti potrebna radi povijesnog, statističkog ili znanstvenog istraživanja. Stoga je ovom Uredbom predviđeno izuzeće od zahtjeva za suglasnost u slučajevima istraživanja od važnog javnog interesa.

Amandman 87

Prijedlog Uredbe Uvodna izjava 124.

Tekst koji je predložila Komisija

(124) Opća načela zaštite pojedinaca pri obradi osobnih podataka trebala bi se primjenjivati i pri zapošljavanju. Kako bi se uredila obrada osobnih podataka zaposlenika pri zapošljavanju, države članice trebale bi imati mogućnosti da u skladu s ovom Uredbom zakonski utvrde posebna pravila za obradu osobnih podataka u sektoru zapošljavanja.

Izmjena

(124) Opća načela zaštite pojedinaca pri obradi osobnih podataka trebala bi se primjenjivati i pri zapošljavanju ***i u kontekstu socijalne sigurnosti***. Države članice ***trebale bi imati mogućnost*** uređivanja obrade osobnih podataka zaposlenika pri zapošljavanju ***i obrade osobnih podataka u kontekstu socijalne sigurnosti, u skladu s pravilima i minimalnim standardima iz ove Uredbe***. ***Ako u državi članici o kojoj je riječ postoji zakonska osnova za uređivanje pitanja u vezi sa zapošljavanjem prema ugovoru između predstavnika zaposlenih i uprave poduzeća ili poduzetnika u vladajućem položaju grupe poduzetnika (kolektivni ugovor) ili u skladu s Direktivom 2009/38/EZ Europskog parlamenta i Vijeća, obrada osobnih podataka pri zapošljavanju može biti uređena i takvim ugovorom.***

Uredba 2009/38/EZ Europskog parlamenta i Vijeća od 6. svibnja 2009. o uspostavljanju Europskog radničkog vijeća ili postupka u poduzećima koja posluju na razini Zajednice i grupacijama poduzeća koje posluju na razini Zajednice u svrhu obavješćivanja i savjetovanja s radnicima (SL L 122, 16.5.2009., str. 28.).

Amandman 88

Prijedlog Uredbe Uvodna izjava 125.a (nova)

Tekst koji je predložila Komisija

Izmjena

(125.a) Osobni podaci mogu se obrađivati i naknadno u arhivskim službama čija je glavna zadaća ili obveza prikupljanje,

pohranjivanje i pružanje informacija, korištenje i širenje arhive u javnom interesu. Zakonodavstvo države članice trebalo bi uskladiti pravo na zaštitu osobnih podataka s pravilima o arhivima i javnom pristupu administrativnim informacijama. Države članice trebale bi poticati sastavljanje pravila, naročito od strane Europske arhivske grupe, kako bi se zajamčila povjerljivost podataka s obzirom na treće strane te autentičnost, cjelovitost i pravilno pohranjivanje podataka.

Amandman 89

Prijedlog Uredbe
Uvodna izjava 126.

Tekst koji je predložila Komisija

(126) Znanstvena istraživanja u smislu ove Uredbe trebala bi uključivati temeljna istraživanja, primijenjena istraživanja i privatno financirana istraživanja te bi osim toga trebala uzimati u obzir cilj Unije iz članka 179. stavka 1. Ugovora o funkcioniranju Europske unije u pogledu izgradnje Europskog istraživačkog prostora.

Izmjena

Znanstvena istraživanja u smislu ove Uredbe trebala bi uključivati temeljna istraživanja, primijenjena istraživanja i privatno financirana istraživanja te bi osim toga trebala uzimati u obzir cilj Unije iz članka 179. stavka 1. Ugovora o funkcioniranju Europske unije u pogledu izgradnje Europskog istraživačkog prostora. ***Obrada osobnih podataka u svrhe povijesnog, statističkog i znanstvenog istraživanja ne bi smjela dovesti do toga da se osobne podatke obrađuje u druge svrhe, osim uz suglasnost osoba čiji se podaci obrađuju ili na temelju zakonodavstva Unije ili države članice.***

Amandman 90

Prijedlog Uredbe
Uvodna izjava 128.

Tekst koji je predložila Komisija

(128) Ovom se Uredbom poštuje i ne dovodi u pitanje status crkava i vjerskih udruga ili zajednica u zakonodavstvu

Izmjena

Ovom se Uredbom poštuje i ne dovodi u pitanje status crkava i vjerskih udruga ili zajednica u zakonodavstvu država članica,

država članica, kao što je priznato u članku 17. Ugovora o funkcioniranju Europske unije. Ako crkva u državi članici u trenutku stupanja na snagu ove Uredbe primijeni sveobuhvatna pravila u pogledu zaštite pojedinaca pri obradi osobnih podataka, ta bi se pravila trebala i dalje primjenjivati ako su usklađena s ovom Uredbom. **Takve crkve i vjerske udruge trebale bi biti dužne uspostaviti potpuno neovisno nadzorno tijelo.**

Amandman 91

Prijedlog Uredbe Uvodna izjava 129.

Tekst koji je predložila Komisija

(129) Kako bi se ostvarili ciljevi iz ove Uredbe, odnosno zaštitila temeljna prava i slobode fizičkih osoba, osobito njihovo pravo na zaštitu osobnih podataka, te kako bi se osigurao slobodni protok osobnih podataka u Uniji, na Komisiju bi trebalo prenijeti ovlast za donošenje akata u skladu s člankom 290. Ugovora o funkcioniranju Europske unije. Štoviše, delegirane akte trebalo bi donositi u vezi sa zakonitošću obrade; radi određivanja kriterija i preduvjeta u pogledu suglasnosti djeteta; **pri obradi posebnih kategorija podataka;** radi određivanja kriterija i preduvjeta za pretjerane zahtjeve i pristojbe za ostvarivanje prava osoba čiji se podaci obrađuju; **kriterija i preduvjeta u pogledu obavještavanja osoba čiji se podaci obrađuju te u vezi s pravom pristupa;** u vezi s pravom na zaborav i brisanje; u vezi s mjerama koje se temelje na profiliranju; **radi određivanja kriterija i preduvjeta u vezi s odgovornošću nadzornika i zaštitom podataka pomoću tehnike i integrirane zaštite; u vezi s obrađivačem; radi određivanja kriterija i preduvjeta za dokumentaciju i sigurnost obrade;** kriterija i preduvjeta za utvrđivanje

kao što je priznato u članku 17. Ugovora o funkcioniranju Europske unije. Ako crkva u državi članici u trenutku stupanja na snagu ove Uredbe primijeni **odgovarajuća** pravila u pogledu zaštite pojedinaca pri obradi osobnih podataka, ta bi se pravila trebala i dalje primjenjivati ako su usklađena s ovom Uredbom **i biti priznata kao sukladna.**

Izmjena

Kako bi se ostvarili ciljevi iz ove Uredbe, odnosno zaštitila temeljna prava i slobode fizičkih osoba, osobito njihovo pravo na zaštitu osobnih podataka, te kako bi se osigurao slobodni protok osobnih podataka u Uniji, na Komisiju bi trebalo prenijeti ovlast za donošenje akata u skladu s člankom 290. Ugovora o funkcioniranju Europske unije. Štoviše, delegirane akte trebalo bi donositi u vezi s određivanjem **uvjeta za način koji se temelji na ikonama za pružanje informacija;** u vezi s pravom na brisanje; **izjavljujući da su** kodeksi ponašanja **u skladu s Uredbom;** radi utvrđivanja kriterija i preduvjeta za mehanizme certificiranja; **odgovarajuće razine zaštite koju pruža treća zemlja ili međunarodna organizacija;** kriterija i preduvjeta za prijenose na temelju obvezujućih pravila poduzeća; u vezi s upravnim sankcijama; u vezi obrade podataka u zdravstvene svrhe **i** pri zapošljavanju; Posebno je važno da Komisija tijekom svog pripremnog rada provede odgovarajuća savjetovanja, uključujući i ona na stručnoj razini, **naročito s Europskim odborom za zaštitu podataka.** Prilikom pripreme i izrade

povrede osobnih podataka i za obavještanje nadzornog tijela o tome te za okolnosti u kojima bi povreda osobnih podataka vjerojatno imala štetan učinak na osobu čiji se podaci obrađuju; **kriterija i preduvjeta za postupke obrade koji zahtijevaju procjenu učinka obrade; kriterija i preduvjeta za utvrđivanje visokog stupnja određenih rizika za koje je potrebno prethodno savjetovanje; u vezi s imenovanjem službenika za zaštitu podataka i njegovim zadaćama;** u vezi s kodeksom ponašanja; radi utvrđivanja kriterija i preduvjeta za mehanizme certificiranja; kriterija i preduvjeta za prijenose na temelju obvezujućih pravila poduzeća; **u vezi s odstupanjima za prijenos podataka;** u vezi s upravnim sankcijama; u vezi s obradom u zdravstvene svrhe; u vezi obrade podataka pri zapošljavanju i obrade u svrhe povijesnog, statističkog i znanstvenog istraživanja. Posebno je važno da Komisija tijekom svog pripremnog rada provede odgovarajuća savjetovanja, uključujući i ona na stručnoj razini. Kod pripreme i sastavljanja delegiranih akata Komisija bi trebala osigurati da se relevantni dokumenti istodobno, pravovremeno i na primjeren način dostave Europskom parlamentu i Vijeću.

delegiranih akata, Komisija bi trebala osigurati da se relevantni dokumenti Europskom parlamentu i Vijeću šalju istodobno, na vrijeme i na primjeren način.

Amandman 92

Prijedlog Uredbe Uvodna izjava 130.

Tekst koji je predložila Komisija

(130) Kako bi se osigurali jednaki uvjeti za provedbu ove Uredbe, na Komisiju bi se trebale prenijeti provedbene ovlasti za: utvrđivanje standardnih obrazaca za suglasnost djeteta; standardne postupke i obrasce za ostvarivanje prava osoba čiji se podaci obrađuju; standardne obrasce za obavješćivanje osoba čiji se podaci

Izmjena

Kako bi se osigurali jednaki uvjeti za provedbu ove Uredbe, na Komisiju bi se trebale prenijeti provedbene ovlasti za: utvrđivanje standardnih obrazaca **za pojedine metode stjecanja provjerljivog pristanka** djeteta; standardne obrasce za **obavješćivanje** osoba čiji se podaci obrađuju **o ostvarivanju njihovih prava;**

obrađuju; standardne obrasce **i postupke** za pravo pristupa; **pravom na prijenos podataka**; standardne obrasce u vezi s odgovornošću nadzornika za zaštitu podataka pomoću tehnike i integrirane zaštite te za dokumentaciju; posebne uvjete za sigurnost obrade; standardni format i postupke obavještanja nadzornog tijela u slučaju povrede osobnih podataka te obavještanje osobe čiji se podaci obrađuju o povredi osobnih podataka; **standarde i postupke za procjenu učinka zaštite podataka**; obrasce i postupke za prethodno odobrenje i prethodno savjetovanje; **tehničke standarde i mehanizme certificiranja; odgovarajuću razinu zaštite koju osigurava treća zemlja ili teritorij ili sektor na kojem se vrši obrada u toj trećoj zemlji ili međunarodna organizacija; otkrivanje podataka koje nije dopušteno prema zakonodavstvu Unije; međusobnu pomoć; zajedničke operacije**; odluke u sklopu mehanizma za usklađivanje. Te ovlasti trebalo bi provoditi u skladu s Uredbom (EU) br. 182/2011 Europskog parlamenta i Vijeća od 16. veljače 2011. kojom se utvrđuju pravila i opća načela u vezi s mehanizmima nadzora država članica nad izvršavanjem provedbenih ovlasti Komisije. U skladu s tim Komisija bi trebala razmotriti posebne mjere za mikro, mala i srednja poduzeća.

standardne obrasce za obavještanje osoba čiji se podaci obrađuju; standardne obrasce za pravo pristupa **uključujući one za obavještanje osobe čiji se podaci obrađuju o osobnim podacima**; standardne obrasce u vezi s dokumentacijom **koju vode nadzornik i obrađivač**; standardni **obrazac** za obavještanje nadzornog tijela u slučaju povrede osobnih podataka te **za dokumentiranje povrede osobnih podataka**; obrasce za prethodno savjetovanje **i obavijest nadzornom tijelu**. Te ovlasti trebalo bi provoditi u skladu s Uredbom (EU) br. 182/2011 Europskog parlamenta i Vijeća. U skladu s tim Komisija bi trebala razmotriti posebne mjere za mikro, mala i srednja poduzeća.

Uredba (EZ) br. 182/2011 Europskog parlamenta i Vijeća od 16. veljače 2011. o utvrđivanju pravila i općih načela u vezi s mehanizmima nadzora država članica nad izvršavanjem provedbenih ovlasti Komisije. U skladu s tim Komisija bi trebala razmotriti posebne mjere za mikro, mala i srednja poduzeća.

Amandman 93

Prijedlog Uredbe Uvodna izjava 131.

Tekst koji je predložila Komisija

(131) Tijekom postupka ispitivanja trebalo bi utvrditi pojedinačne standardne obrasce za suglasnost djeteta; standardne postupke i obrasce za ostvarivanje prava osoba čiji se podaci obrađuju; standardne obrasce za obavještavanje osoba čiji se podaci obrađuju; standardne obrasce i postupke u vezi s pravom pristupa; pravom na prijenos podataka; standardne obrasce u vezi s odgovornošću nadzornika za zaštitu podataka pomoću tehnike i integrirane zaštite te za dokumentaciju; **posebne uvjete sigurnosti obrade**; standardni format i postupke obavještavanja nadzornog tijela u slučaju povrede osobnih podataka te obavještavanje osobe čiji se podaci obrađuju o povredi osobnih podataka; **standarde i postupke za procjenu učinka zaštite podataka**; obrasce i postupke za prethodno odobrenje i prethodno savjetovanje; **tehničke standarde i mehanizme certificiranja; odgovarajuću razinu zaštite koju osigurava treća zemlja ili teritorij ili sektor na kojem se vrši obrada u toj trećoj zemlji ili međunarodna organizacija; otkrivanje podataka koje nije dopušteno prema zakonodavstvu Unije; međusobnu pomoć; zajedničke operacije**; odluke u okviru mehanizma za usklađivanje, pod uvjetom da se radi o općim pravnim aktima.

Amandman 94

Prijedlog Uredbe Uvodna izjava 132.

Tekst koji je predložila Komisija

(132) Komisija treba odmah donijeti

Izmjena

(131) Tijekom postupka ispitivanja trebalo bi utvrditi pojedinačne standardne obrasce: **pojedinačne standardne obrasce za pojedine metode stjecanja provjerljivog pristanka djeteta**; standardne obrasce za **obavještavanje osoba čiji se podaci obrađuju o ostvarivanju njihovih** prava; standardne obrasce za obavještavanje osoba čiji se podaci obrađuju; standardne obrasce za pravo pristupa **uključujući one za obavještavanje osobe čiji se podaci obrađuju o osobnim podacima**; standardne obrasce u vezi s **dokumentacijom koju vode nadzornik i obrađivač**; standardni **obrazac** za obavještavanje nadzornog tijela u slučaju povrede osobnih podataka te **za dokumentiranje** povrede osobnih podataka; obrasce za prethodno **savjetovanje i obavijest nadzornom tijelu**, pod uvjetom da se radi o općim pravnim aktima.

Briše se.

provedbene akte koji se mogu primijeniti u propisno opravdanim slučajevima u vezi s trećom zemljom, teritorijem ili sektorom na kojem se vrši obrada u toj trećoj zemlji ili međunarodnom organizacijom koja ne jamči odgovarajuću razinu zaštite te u vezi s pitanjima koja su iznijela nadzorna tijela u okviru mehanizma za usklađivanje ako je to nužno zbog izrazite hitnosti slučaja.

Amandman 95

Prijedlog Uredbe
Uvodna izjava 134.

Tekst koji je predložila Komisija

(134) Direktiva 95/46/EZ ovom se Uredbom stavlja izvan snage. No, usvojene odluke Komisije i odobrenja nadzornih tijela koja se temelje na Direktivi 95/46/EZ trebaju ostati na snazi.

Izmjena

(134) Direktiva 95/46/EZ ovom se Uredbom stavlja izvan snage. No, usvojene odluke Komisije i odobrenja nadzornih tijela koja se temelje na Direktivi 95/46/EZ trebaju ostati na snazi. ***Odluke Komisije i odobrenja nadzornih tijela koja se odnose na prijenose podataka u treće zemlje u skladu s člankom 41. stavkom 8. trebaju ostati na snazi tijekom prijelaznog razdoblja od pet godina nakon stupanja na snagu ove Uredbe, osim ako ih Komisija ne izmijeni, zamijeni ili stavi izvan snage prije kraja tog razdoblja.***

Amandman 96

Prijedlog Uredbe
Članak 2.

Tekst koji je predložila Komisija

Područje primjene

1. Ova Uredba primjenjuje se na obradu osobnih podataka koji se u cijelosti ili djelomično obrađuju automatiziranim putem te na obradu osobnih podataka koji čine dio sustava podataka ili će činiti dio sustava podataka obradom koja nije

Izmjena

Područje primjene

1. Ova Uredba primjenjuje se na obradu osobnih podataka koji se u cijelosti ili djelomično obrađuju automatiziranim putem, ***bez obzira na metodu obrade***, te na obradu osobnih podataka koji čine dio sustava podataka ili će činiti dio sustava podataka obradom koja nije

automatizirana.

2. Ova Uredba ne primjenjuje se na obradu osobnih podataka:

(a) u okviru aktivnosti koja je izvan područja primjene zakonodavstva Unije, a posebno u vezi s nacionalnom sigurnošću;

(b) od strane institucija, tijela, ureda i agencija Unije;

(c) od strane država članica pri provođenju aktivnosti obuhvaćenih Poglavljem 2. Ugovora o Europskoj uniji;

(d) od strane fizičke osobe radi isključivo osobne ili obiteljske aktivnosti bez ikakvog financijskog interesa;

(e) od strane nadležnih tijela radi sprečavanja, istrage, utvrđivanja ili progona kaznenih djela ili izvršavanja kaznenopravnih sankcija.

3. Ovom se Uredbom ne dovodi u pitanje primjena Direktive 2000/31/EZ, posebno pravila o odgovornosti posrednika pri pružanju usluga prema člancima 12. do 15. te Direktive.

Amandman 97

Prijedlog Uredbe Članak 3.

Tekst koji je predložila Komisija

Teritorijalno područje primjene

1. Ova se Uredba odnosi na obradu osobnih podataka u okviru aktivnosti poslovnog nastana nadzornika ili obrađivača u Uniji.

2. Ova se Uredba odnosi na obradu osobnih podataka osoba čiji se podaci obrađuju koje borave u Uniji od strane

automatizirana.

2. Ova Uredba ne primjenjuje se na obradu osobnih podataka:

(a) u okviru aktivnosti koja je izvan područja primjene zakonodavstva Unije;

(c) od strane država članica pri provođenju aktivnosti obuhvaćenih Poglavljem 2.

Glave V. Ugovora o Europskoj uniji;

(d) od strane fizičke osobe radi isključivo osobne ili obiteljske aktivnosti. **Ovo izuzeće primjenjuje se i na objavljivanje osobnih podataka ako se može opravdano očekivati da će im pristupiti samo ograničen broj osoba;**

(e) od strane nadležnih **javnih** tijela radi sprečavanja, istrage, utvrđivanja ili progona kaznenih djela ili izvršavanja kaznenopravnih sankcija.

3. Ovom se Uredbom ne dovodi u pitanje primjena Direktive 2000/31/EZ, posebno pravila o odgovornosti posrednika pri pružanju usluga prema člancima 12. do 15. te Direktive.

Izmjena

Teritorijalno područje primjene

1. Ova se Uredba odnosi na obradu osobnih podataka u okviru aktivnosti poslovnog nastana nadzornika ili obrađivača u Uniji, **bilo da se obrada događa u Uniji ili ne.**

2. Ova se Uredba odnosi na obradu osobnih podataka osoba čiji se podaci obrađuju koje borave u Uniji od strane

nadzornika bez poslovnog nastana u Uniji, ako se aktivnosti obrade odnose na:

(a) ponudu roba ili usluga tim osobama čiji se podaci obrađuju u Uniji; ili

(b) praćenje njihova ponašanja.

3. Ova Uredba odnosi se na obradu osobnih podataka od strane obrađivača bez poslovnog nastana u Uniji, no s poslovnim nastanom na području u kojem se primjenjuje nacionalno pravo države članice prema javnom međunarodnom pravu.

Amandman 98

Prijedlog Uredbe Članak 4.

Tekst koji je predložila Komisija

Definicije

U smislu ove Uredbe:

(1) „osoba čiji se podaci obrađuju” znači **bilo koja utvrđena fizička osoba ili fizička osoba čiji se identitet može utvrditi, izravno ili neizravno, sredstvima koja bi mogao koristiti nadzornik ili bilo koja druga fizička ili pravna osoba, posebno navođenjem identifikacijskog broja, podataka o lokaciji, mrežnih identifikatora ili jednog ili više faktora vezanih uz fizički, fiziološki, genetski, mentalni, ekonomski, kulturni ili socijalni identitet te osobe;**

(2) „osobni podaci” znači bilo koji podaci koji se odnose na osobu čiji se podaci obrađuju;

nadzornika **ili obrađivača** bez poslovnog nastana u Uniji, ako se aktivnosti obrade odnose na:

(a) ponudu roba ili usluga tim osobama čiji se podaci obrađuju u Uniji, **bez obzira na to je li potrebno plaćanje osobe čiji se podaci obrađuju;** ili

(b) praćenje **takvih osoba čiji se podaci obrađuju.**

3. Ova Uredba odnosi se na obradu osobnih podataka od strane obrađivača bez poslovnog nastana u Uniji, no s poslovnim nastanom na području u kojem se primjenjuje nacionalno pravo države članice prema javnom međunarodnom pravu.

Izmjena

Definicije

U smislu ove Uredbe:

(2) „osobni podaci” znači bilo koji podaci koji se odnose na **fizičku osobu koja je identificirana ili ju je moguće identificirati** („osoba čiji se podaci obrađuju”); **osoba koju je moguće identificirati je osoba koju je moguće**

izravno ili neizravno identificirati, osobito pozivanjem na identifikator poput imena, identifikacijskog broja, podataka o lokaciji, jedinstvenog identifikatora ili na jedan ili više činitelja specifičnih za fizički, fiziološki, genetski, mentalni, gospodarski, kulturni, društveni ili rodni identitet te osobe;

(2.a) „pseudonimni podaci” znači osobni podaci koji se ne mogu povezati s određenom osobom čiji se podaci obrađuju bez korištenja dodatnih informacija dok god se takve dodatne informacije čuvaju odvojeno i dok su podložne tehničkim i organizacijskim mjerama za osiguravanje nepovezivanja;

(2.b) „kodirani podaci” znači osobni podaci koji su s pomoću tehnoloških mjera zaštite nedostupni bilo kojoj osobi koja nije ovlaštena pristupiti im;

(3) „obrada” znači bilo koji postupak ili skup postupaka koji se provode nad osobnim podacima ili skupom osobnih podataka, bilo automatiziranim putem ili ne, kao što je prikupljanje, bilježenje, organiziranje, strukturiranje, pohrana, prilagođavanje ili mijenjanje, vraćanje, obavljanje uvida, uporaba, otkrivanje prijenosom, širenjem, ili stavljanje na raspolaganje drugim načinom, poravnavanje ili kombiniranje, brisanje ili uništavanje;

(3) „obrada” znači bilo koji postupak ili skup postupaka koji se provode nad osobnim podacima ili skupom osobnih podataka, bilo automatiziranim putem ili ne, kao što je prikupljanje, bilježenje, organiziranje, strukturiranje, pohrana, prilagođavanje ili mijenjanje, vraćanje, obavljanje uvida, uporaba, otkrivanje prijenosom, širenjem, ili stavljanje na raspolaganje drugim načinom, poravnavanje ili kombiniranje, brisanje ili uništavanje;

(3.a) „profiliranje” znači bilo koji oblik automatizirane obrade osobnih podataka radi procjene određenih osobnih karakteristika fizičke osobe ili radi analize ili predviđanja posebice u vezi s radnim učinkom te fizičke osobe, financijskom situacijom, lokacijom, zdravljem, osobnim sklonostima, pouzdanošću ili ponašanjem;

(4) „sustav podataka” znači bilo koji strukturirani skup osobnih podataka koji je dostupan prema posebnim mjerilima, bilo da su centralizirani, decentralizirani ili raspršeni na funkcionalnoj ili zemljopisnoj

(4) „sustav podataka” znači bilo koji strukturirani skup osobnih podataka koji je dostupan prema posebnim mjerilima, bilo da su centralizirani, decentralizirani ili raspršeni na funkcionalnoj ili zemljopisnoj

osnovi;

(5) „nadzornik” znači fizička ili pravna osoba, javno tijelo, agencija ili bilo koje drugo tijelo koje samo ili zajedno s drugima utvrđuje svrhu, uvjete i načine obrade osobnih podataka; ako su svrha, uvjeti i načini obrade utvrđeni zakonodavstvom Unije ili zakonodavstvom države članice, imenovanje nadzornika ili posebna mjerila za njegovo imenovanje mogu se utvrditi zakonodavstvom Unije ili zakonodavstvom države članice;

(6) „obrađivač” znači fizička ili pravna osoba, javno tijelo, agencija ili bilo koje drugo tijelo koje obrađuje osobne podatke u ime nadzornika;

(7) „primatelj” znači fizička ili pravna osoba, javno tijelo, agencija ili bilo koje drugo tijelo kojem se otkrivaju osobni podaci;

(8) „suglasnost osobe čiji se podaci obrađuju” znači svaka dobrovoljno dana, posebna izjava volje utemeljena na informacijama, kojom osoba čiji se podaci obrađuju, izjavom ili jasnim postupkom potvrde, daje svoju suglasnost da se obrade osobni podaci koji se na nju odnose;

(9) „povreda osobnih podataka” znači kršenje sigurnosti uslijed kojeg dolazi do slučajnog ili nezakonitog uništavanja, gubitka, izmjene, neovlaštenog otkrivanja podataka ili se dopušta pristup osobnim podacima koji se prenose, pohranjuju ili obrađuju na bilo koji način;

(10) „genetski podaci” znači svi podaci bilo koje vrste koji se odnose na osobine pojedinca koje se nasljeđuju ili stječu

osnovi;

(5) „nadzornik” znači fizička ili pravna osoba, javno tijelo, agencija ili bilo koje drugo tijelo koje samo ili zajedno s drugima utvrđuje svrhu i načine obrade osobnih podataka; kada su svrha i načini obrade utvrđeni pravom Unije ili zakonodavstvom države članice, nadzornik ili posebna mjerila za njegovo imenovanje mogu se utvrditi zakonodavstvom Unije ili države članice;

(6) „obrađivač” znači fizička ili pravna osoba, javno tijelo, agencija ili bilo koje drugo tijelo koje obrađuje osobne podatke u ime nadzornika;

(7) „primatelj” znači fizička ili pravna osoba, javno tijelo, agencija ili bilo koje drugo tijelo kojem se otkrivaju osobni podaci;

(7.a) „treća strana” znači bilo koja fizička ili pravna osoba, javno tijelo, agencija ili bilo koje drugo tijelo koje nije osoba čiji se podaci obrađuju, nadzornik, obrađivač i osobe koje su pod izravnim vodstvom nadzornika ili obrađivača ovlaštene za obradu podataka;

(8) „suglasnost osobe čiji se podaci obrađuju” znači svaka dobrovoljno dana, posebna izjava volje utemeljena na informacijama, kojom osoba čiji se podaci obrađuju, izjavom ili jasnim postupkom potvrde, daje svoju suglasnost da se obrade osobni podaci koji se na nju odnose;

(9) „povreda osobnih podataka” znači slučajno ili nezakonito uništavanje, gubitak, izmjena, neovlašteno otkrivanje podataka ili dopuštenje pristupa osobnim podacima koji se prenose, pohranjuju ili obrađuju na bilo koji način;

(10) „genetski podaci” znači svi ***osobni podaci koji se odnose na genetske*** osobine pojedinca koje ***su naslijedene ili stečene koji proizlaze iz analize biološkog uzorka***

tijekom ranog prenatalnog razvoja;

(11) „biometrijski podaci” znači bilo koji podaci koji se odnose na tjelesne ili fiziološke značajke pojedinca ili na značajke vezane uz ponašanje, a koje omogućuju jedinstvenu identifikaciju, poput slika lica ili daktiloskopskih podataka;

(12) „podaci o zdravstvenom stanju” znači bilo koji podatak koji se odnosi na tjelesno ili duševno zdravlje pojedinca ili na pružanje zdravstvenih usluga pojedincu;

(13) „glavni poslovni nastan” u pogledu nadzornika znači mjesto njegova poslovnog nastana u Uniji gdje se donose najvažnije odluke o svrsi, uvjetima i sredstvima obrade osobnih podataka; *ako se u Uniji ne donose odluke o svrsi, uvjetima i sredstvima obrade osobnih podataka, onda je glavni poslovni nastan mjesto na kojem se obavljaju glavne aktivnosti obrade u sklopu aktivnosti nadzornika u Uniji. Za obrađivača „glavni poslovni nastan” znači mjesto njegove središnje uprave u Uniji;*

(14) „predstavnik” znači bilo koja fizička ili pravna osoba s poslovnim nastanom u Uniji, izričito imenovana od strane nadzornika, kojoj se mogu obratiti bilo koja nadzorno tijelo i druga tijela Unije i koja djeluje umjesto nadzornika s obzirom na obveze nadzornika u skladu s ovom Uredbom;

(15) „poduzeće” znači bilo koji subjekt

pojedinca o kojem je riječ, a posebice iz kromosomske analize ili analize deoksiribonukleinske kiseline (DNK) ili ribonukleinske kiseline (RNK) ili analize bilo kojeg drugog elementa koji omogućava dobivanje jednake informacije;

(11) „biometrijski podaci” znači bilo koji *osobni* podaci koji se odnose na tjelesne ili fiziološke osobine pojedinca ili na osobine vezane uz ponašanje, a koje omogućuju jedinstvenu identifikaciju, poput slika lica ili daktiloskopskih podataka;

(12) „podaci o zdravstvenom stanju” znači bilo koji *osobni* podatak koji se odnosi na tjelesno ili duševno zdravlje pojedinca ili na pružanje zdravstvenih usluga pojedincu;

(13) „glavni poslovni nastan” znači mjesto poslovnog nastana poduzetnika ili grupe poduzetnika u Uniji, bilo da je riječ o nadzorniku ili obrađivaču, gdje se donose najvažnije odluke o svrsi, uvjetima i sredstvima obrade osobnih podataka. Između ostalog mogu se uzeti u obzir sljedeći objektivni kriteriji: lokacija sjedišta nadzornika ili obrađivača; lokacija subjekta unutar grupe poduzetnika koji je u smislu funkcija upravljanja i administrativnih odgovornosti najbolje smješten za rješavanje i provedbu pravila kako je utvrđeno u ovoj Uredbi; lokacija na kojoj se ostvaruju učinkovite i stvarne upravljačke aktivnosti u okviru kojih se kroz stabilni sustav određuje obrada podataka;

(14) „predstavnik” znači bilo koja fizička ili pravna osoba s poslovnim nastanom u Uniji koja, izričito imenovana od strane nadzornika, *predstavlja* nadzornika s obzirom na obveze nadzornika u skladu s ovom Uredbom;

(15) „poduzeće” znači bilo koji subjekt

uključen u gospodarsku djelatnost, bez obzira na pravni oblik, uključujući stoga posebno fizičke i pravne osobe, partnerstva ili udruge koji se redovno bave gospodarskom djelatnošću;

(16) „grupa poduzetnika” znači poduzetnik u vladajućem položaju i njemu podređeni poduzetnici;

(17) „obvezujuća pravila poduzeća” znači politike zaštite osobnih podataka kojih se pridržavaju nadzornik ili obrađivač s glavnim nastanom na području države članice Unije za prijenos ili niz prijenosa osobnih podataka nadzorniku ili obrađivaču u jednoj ili više trećih zemalja unutar grupe poduzetnika;

(18) „dijete” znači svaka osoba mlađa od 18 godina;

(19) „nadzorno tijelo” znači javno tijelo koje je osnovala država članica u skladu s člankom 46.

uključen u gospodarsku djelatnost, bez obzira na pravni oblik, uključujući stoga posebno fizičke i pravne osobe, partnerstva ili udruge koji se redovno bave gospodarskom djelatnošću;

(16) „grupa poduzetnika” znači poduzetnik u vladajućem položaju i njemu podređeni poduzetnici;

(17) „obvezujuća pravila poduzeća” znači politike zaštite osobnih podataka kojih se pridržavaju nadzornik ili obrađivač s glavnim nastanom na području države članice Unije za prijenos ili niz prijenosa osobnih podataka nadzorniku ili obrađivaču u jednoj ili više trećih zemalja unutar grupe poduzetnika;

(18) „dijete” znači svaka osoba mlađa od 18 godina;

(19) „nadzorno tijelo” znači javno tijelo koje je osnovala država članica u skladu s člankom 46.

Amandman 99

Prijedlog Uredbe Članak 5.

Tekst koji je predložila Komisija

Načela obrade osobnih podataka

1. Osobni podaci **moraju**:

(a) **biti obrađeni** u skladu sa zakonom, pošteno i transparentno u odnosu na osobu čiji se podaci obrađuju;

(b) **biti prikupljeni** u posebne, izričite i zakonite svrhe te ih se ne **smije dalje obrađivati** na način koji bi bio nespojiv s **tom svrhom**;

(c) **biti** prikladni, relevantni i ograničeni na nužne podatke u odnosu na svrhu radi koje se obrađuju; **biti obrađeni** samo i dok god se ta svrha ne može ispuniti obradom

Izmjena

Načela obrade osobnih podataka

1. Osobni podaci:

(a) **obrađuju se** u skladu sa zakonom, pošteno i transparentno u odnosu na osobu čiji se podaci obrađuju (**zakonitost, pravednost i transparentnost**);

(b) **prikupljaju se** u posebne, izričite i zakonite svrhe te ih se **dalje ne obrađuju** na način koji bi bio nespojiv s **tim svrhama (ograničavanje svrhe)**;

(c) prikladni **su**, relevantni i ograničeni na nužne podatke u odnosu na svrhu radi koje se obrađuju; **obrađuju se** samo i dok god se ta svrha ne može ispuniti obradom

informacija *koje* ne uključuju osobne podatke;

(d) *biti* točni i ažurirani; potrebno je poduzeti sve razumne mjere kako bi se osobni podaci koji su netočni bez odlaganja izbrisali ili ispravili, uzimajući u obzir svrhu radi koje se obrađuju;

(e) se čuvati u obliku koji omogućuje identifikaciju osoba čiji se podaci obrađuju, ne duže nego što je nužno u svrhe radi kojih se osobni podaci obrađuju; osobni podaci mogu se duže pohraniti ako će se obrađivati samo u svrhu povijesnog, statističkog ili znanstvenog istraživanja u skladu s pravilima i uvjetima članka 83. te ako se periodički provodi revizija kako bi se procijenila nužnost daljnjeg pohranjivanja;

(f) se obrađivati uz odgovornost nadzornika koji za svaki postupak obrade *mora osigurati* i dokazati postupanje u skladu s odredbama *donesenima* u skladu s ovom Uredbom.

informacija *koja* ne uključuju osobne podatke (*smanjenje količine podataka*);

(d) *su* točni i, *po potrebi*, ažurirani; potrebno je poduzeti sve razumne mjere kako bi se osobni podaci koji su netočni bez odlaganja izbrisali ili ispravili, uzimajući u obzir svrhu radi koje se obrađuju (*točnost*).

(e) se čuvati u obliku koji omogućuje *izravnu ili neizravnu* identifikaciju osoba čiji se podaci obrađuju, ne duže nego što je nužno u svrhe radi kojih se osobni podaci obrađuju; osobni podaci mogu se duže pohraniti ako će se obrađivati samo u svrhu povijesnog, statističkog ili znanstvenog istraživanja *ili u svrhe arhiviranja u skladu s pravilima i uvjetima članka 83.i 83.a* te ako se periodički provodi revizija kako bi se procijenila nužnost daljnjeg pohranjivanja *i ako su uvedene odgovarajuće tehničke i organizacijske mjere radi ograničavanja pristupa podacima samo u te svrhe (smanjenje količine podataka)*;

(ea) se obrađivati na način kojim se učinkovito omogućava osobi čiji se podaci obrađuju ostvarivanje njezinih prava (učinkovitost);

(eb) se obrađivati na način kojim se štite od neovlaštene i nezakonite obrade te od slučajnog gubitka, uništavanja ili oštećivanja primjenom odgovarajućih tehničkih ili organizacijskih mjera (cjelovitost);

(f) se obrađivati uz odgovornost nadzornika koji za svaki postupak obrade *osigurava* i *sposoban je* dokazati postupanje u skladu s odredbama *doneseima* u skladu s ovom Uredbom (*pouzdanost*).

Prijedlog Uredbe Članak 6.

Tekst koji je predložila Komisija

Zakovitost obrade

1. Obrada osobnih podataka zakonita je samo ako je ispunjen jedan od sljedećih preuvjeta:

- (a) osoba čiji se podaci obrađuju dala je svoju suglasnost da se njezini osobni podaci obrade u jednu ili više određenih svrha;
- (b) obrada je nužna za izvršavanje ugovora kojem je osoba čiji se podaci obrađuju stranka ili kako bi se poduzele mjere na zahtjev osobe čiji se podaci obrađuju prije sklapanja ugovora;
- (c) obrada je potrebna radi usklađenosti sa zakonskom obvezom kojoj nadzornik podliježe;
- (d) obrada je potrebna radi zaštite vitalnih interesa osobe čiji se podaci obrađuju;
- (e) obrada je potrebna za izvršavanje zadatka koji se provodi zbog javnog interesa ili pri izvršavanju javne ovlasti koju ima nadzornik;
- (f) obrada je nužna u svrhe legitimnog interesa koji ima nadzornik, osim kada su ti interesi podređeni interesima ili temeljnim pravima i slobodama osobe čiji se podaci obrađuju, a koji iziskuju zaštitu osobnih podataka, ***pogotovo ako je osoba čiji se podaci obrađuju dijete***. Ovo se ne odnosi na obrade koje provode javna tijela pri izvršavanju svojih zadataka.

2. Obrada osobnih podataka koja je nužna u svrhu povijesnog, statističkog ili znanstvenog istraživanja zakonita je prema uvjetima i mjerama zaštite navedenima u

Izmjena

Zakovitost obrade

1. Obrada osobnih podataka zakonita je samo ako ***i u mjeru u kojoj*** je ispunjen jedan od sljedećih preuvjeta:

- (a) osoba čiji se podaci obrađuju dala je svoju suglasnost da se njezini osobni podaci obrade u jednu ili više određenih svrha;
- (b) obrada je nužna za izvršavanje ugovora kojem je osoba čiji se podaci obrađuju stranka ili kako bi se poduzele mjere na zahtjev osobe čiji se podaci obrađuju prije sklapanja ugovora;
- (c) obrada je potrebna radi usklađenosti sa zakonskom obvezom kojoj nadzornik podliježe;
- (d) obrada je potrebna radi zaštite vitalnih interesa osobe čiji se podaci obrađuju;
- (e) obrada je potrebna za izvršavanje zadatka koji se provodi zbog javnog interesa ili pri izvršavanju javne ovlasti koju ima nadzornik;
- (f) obrada je nužna u svrhe legitimnog interesa koji ima ***taj nadzornik ili koju, u slučaju otkrivanja, ima treća strana kojoj se podaci otkrivaju a koja ispunjava razumna očekivanja osobe čiji se podaci obrađuju na temelju njegove ili njezine veze s nadzornikom***, osim kada su ti interesi podređeni interesima ili temeljnim pravima i slobodama osobe čiji se podaci obrađuju, a koji iziskuju zaštitu osobnih podataka. Ovo se ne odnosi na obrade koje provode javna tijela pri izvršavanju svojih zadataka.

2. Obrada osobnih podataka koja je nužna u svrhu povijesnog, statističkog ili znanstvenog istraživanja zakonita je prema uvjetima i mjerama zaštite navedenima u

članku 83.

3. Osnova za obradu navedenu u točkama (c) i (e) stavka 1. mora biti sadržana u:

- (a) zakonodavstvu Unije, ili
- (b) zakonodavstvu države članice kojem podliježe nadzornik.

Zakon države članice mora ispuniti cilj u javnom interesu ili mora biti nužan radi zaštite prava i sloboda drugih, poštovati bit prava na zaštitu osobnih podataka i biti proporcionalan s legitimnim ciljem koji se želi postići.

4. Ako svrha daljnje obrade nije u skladu sa svrhom zbog koje su prikupljeni osobni podaci, obrada mora imati pravnu osnovu u barem jednom od razloga navedenih u točkama (a) do (e) stavka 1. To se pogotovo odnosi na slučaj bilo kakve promjene općih uvjeta ugovora.

5. Komisija je ovlaštena donositi delegirane akte u skladu s člankom 86. u svrhu dodatnog određivanja uvjeta navedenih u točki (f) stavka 1. za razne sektore i situacije obrade podataka, uključujući obradu podataka vezanih uz dijete.

Amandman 101

Prijedlog Uredbe Članak 7.

Tekst koji je predložila Komisija

Uvjeti za suglasnost

1. Nadzornik snosi odgovornost

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članku 83.

3. Osnova za obradu navedenu u točkama (c) i (e) stavka 1. mora biti sadržana u:

- (a) zakonodavstvu Unije, ili
- (b) zakonodavstvu države članice kojem podliježe nadzornik.

Zakon države članice mora ispuniti cilj u javnom interesu ili mora biti nužan radi zaštite prava i sloboda drugih, poštovati bit prava na zaštitu osobnih podataka i biti proporcionalan s legitimnim ciljem koji se želi postići. ***U skladu s ovom Uredbom zakonom države članice mogu se osigurati detaljne informacije o zakonitosti obrade, osobito kad je riječ o nadzornicima podataka, svrsi obrade i ograničenju svrhe, prirodi podataka i osoba čiji se podaci obrađuju, mjerama obrade i postupcima, primateljima i trajanju pohranjivanja podataka.***

Izmjena

Uvjeti za suglasnost

1. ***Kada se obrada temelji na suglasnosti,***

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dokazivanja suglasnosti osobe čiji se podaci obrađuju na obradu njegovih osobnih podataka u navedene svrhe.

2. Ako osoba čiji se podaci obrađuju daje suglasnost pisanom izjavom koja se odnosi i na druga pitanja, zahtjev za davanjem suglasnosti mora se jasno izdvojiti u odnosu na druga pitanja.

3. Osoba čiji se podaci obrađuju ima pravo u bilo kojem trenutku povući svoju suglasnost. Povlačenje suglasnosti ne utječe na zakonitost obrade koja se temelji na suglasnosti danoj prije njezina povlačenja.

4. Suglasnost *ne predstavlja pravnu osnovu* za obradu *ako postoji znatna neravnoteža između položaja ispitanika i nadzornika*.

nadzornik snosi odgovornost dokazivanja suglasnosti osobe čiji se podaci obrađuju na obradu njegovih osobnih podataka u navedene svrhe.

2. Ako osoba čiji se podaci obrađuju daje suglasnost pisanom izjavom koja se odnosi i na druga pitanja, zahtjev za davanjem suglasnosti mora se **naočigled** jasno izdvojiti u odnosu na druga pitanja.

Odredbe o suglasnosti osobe čiji se podaci obrađuju kojima se djelomično krši ova Uredba u cijelosti su nevaljane.

3. ***Neovisno o ostalim pravnim osnovama za obradu***, osoba čiji se podaci obrađuju ima pravo u bilo kojem trenutku povući svoju suglasnost. Povlačenje suglasnosti ne utječe na zakonitost obrade koja se temelji na suglasnosti danoj prije njezina povlačenja. ***Suglasnost se jednako lako povlači kao što se i daje. Osobu čiji se podaci obrađuju obavještava nadzornik podataka ako povlačenje suglasnosti može rezultirati obustavom usluga koje se pruža ili odnosa s nadzornikom.***

4. Suglasnost ***je ograničena na svrhu i gubi valjanost kada ta svrha prestane postojati ili čim obrada osobnih podataka više nije potrebna za provođenje svrhe radi koje su podaci prvotno prikupljeni. Izvršenje ugovora ili pružanje usluge nije uvjetovano suglasnošću za obradu podataka koja je nije neophodna za izvršenje ugovora ili pružanje usluge u skladu s člankom 6. stavkom 1. točkom (b).***

Amandman 102

Prijedlog Uredbe Članak 8.

Tekst koji je predložila Komisija

Obrada osobnih podataka djeteta

1. U smislu ove Uredbe obrada osobnih podataka djeteta mlađeg od 13 godina,

Izmjena

Obrada osobnih podataka djeteta

1. U smislu ove Uredbe obrada osobnih podataka djeteta mlađeg od 13 godina,

kojem se izravno nude usluge **informacijskog društva**, zakonita je samo u slučaju suglasnosti ili autorizacije od strane djetetovog roditelja ili skrbnika ili u mjeri u kojoj one to dopuštaju. Nadzornik, uzimajući u obzir dostupnu tehnologiju, poduzima ogovarajuće mjere kako bi **stekao provjerljivu** suglasnost.

2. Stavak 1. ne utječe na opće ugovorno pravo država članica poput propisa o valjanosti, obliku i učinku ugovora u vezi s djetetom.

3. **Komisija je ovlaštena donositi delegirane akte u skladu s člankom 86. u svrhu dodatnog određivanja kriterija i preduvjeta za metode stjecanja provjerljive suglasnosti iz stavka 1. U skladu s tim Komisija će razmatra posebne mjere za mikro, mala i srednja poduzeća.**

4. **Komisija može odrediti standardne obrasce za pojedine metode stjecanja provjerljive suglasnosti navedene u stavku 1. Ti provedbeni akti usvajaju se u skladu s postupkom provjere navedenim u članku 87. stavku 2.**

Amandman 103

Prijedlog Uredbe Članak 9.

Tekst koji je predložila Komisija

Obrada posebnih kategorija osobnih podataka

1. Obrada osobnih podataka kojima se **otkriva** rasno ili etničko porijeklo, politička

kojem se izravno nude **robe ili** usluge, zakonita je samo u slučaju suglasnosti ili autorizacije od strane djetetovog roditelja ili **pravnog** skrbnika ili u mjeri u kojoj one to dopuštaju. Nadzornik, uzimajući u obzir dostupnu tehnologiju **i ne dajući povoda inače neophodnoj obradi osobnih podataka**, poduzima ogovarajuće mjere kako bi **provjerio takvu** suglasnost.

1a. Podaci dani djeci, roditeljima i pravnim skrbnicima radi izražavanja suglasnosti, također i podaci o prikupljanju osobnih podataka i korištenju njima od strane nadzornika, trebali bi biti sastavljeni jasnim jezikom i primjereni ciljanom publici.

2. Stavak 1. ne utječe na opće ugovorno pravo država članica poput propisa o valjanosti, obliku i učinku ugovora u vezi s djetetom.

3. **Europskom odboru za zaštitu podataka povjeren je zadatak donošenja smjernica, preporuka i najboljih praksi za metode provjeravanja suglasnosti uz stavka 1. u skladu s člankom 66.**

Izmjena

Posebne kategorije podataka

1. Obrada osobnih podataka kojima se **otkrivaju** rasno ili etničko porijeklo,

mišljenja, vjera ili uvjerenja, članstvo u sindikatu te obrada genetskih podataka ili podataka u vezi sa zdravljem ili spolnim životom ili kaznenim presudama ili povezanim sigurnosnim mjerama zabranjena je.

2. Stavak 1. ne primjenjuje se ako:

(a) je osoba čiji se podaci obrađuju dala svoju suglasnost za obradu tih podataka, **utvrđenih** člancima 7. i 8., osim kada je zakonodavstvom Unije ili države članice predviđeno da zabranu iz stavka 1. ne može ukinuti osoba čiji se podaci obrađuju; **ili**

(b) je obrada potrebna u svrhe izvršavanja obveza i posebnih prava nadzornika na području zakonodavstva o zapošljavanju u onoj mjeri u kojoj je to dopušteno zakonodavstvom Unije ili države članice koje pruža odgovarajuće mjere zaštite; ili

(c) je obrada neophodna kako bi se zaštitili ključni interesi osobe čiji se podaci obrađuju ili druge osobe u slučaju da osoba čiji se podaci obrađuju nije fizički ili pravno sposobna dati suglasnost; ili

(d) se obrada provodi tijekom zakonitih aktivnosti uz odgovarajuću zaštitu ustanova, udruga ili nekog drugog neprofitnog tijela s političkim, filozofskim,

politička mišljenja, vjera ili **filozofska** uvjerenja, **spolna opredijeljenost ili spolni identitet**, članstvo u sindikatu **i aktivnosti sindikata** te obrada genetskih **ili biometričkih** podataka ili podataka u vezi sa zdravljem ili spolnim životom, **upravnim sankcijama, presudama, kaznenim ili navodnim kaznenim djelima, kaznenim** presudama ili povezanim sigurnosnim mjerama zabranjena je.

2. Stavak 1. ne primjenjuje se ako **važi jedno od sljedećega**:

(a) je osoba čiji se podaci obrađuju dala svoju suglasnost za obradu tih podataka **radi jedne utvrđene svrhe ili više njih, podložno uvjetima u** člancima 7. i 8., osim kada je zakonodavstvom Unije ili države članice predviđeno da zabranu iz stavka 1. ne može ukinuti osoba čiji se podaci obrađuju;

(aa) obrada je nužna za izvođenje ili izvršavanje ugovora kojem je osoba čiji se podaci obrađuju stranka ili kako bi se poduzele mjere na zahtjev osobe čiji se podaci obrađuju prije sklapanja ugovora;

(b) je obrada potrebna u svrhe izvršavanja obveza i posebnih prava nadzornika na području zakonodavstva o zapošljavanju u onoj mjeri u kojoj je to dopušteno zakonodavstvom **ili kolektivnim ugovorima** Unije ili države članice koje pruža odgovarajuće mjere zaštite **temeljnih prava i interesa osobe čiji se podaci obrađuju kao što je pravo na nediskriminaciju, podložno uvjetima i mjereama zaštite iz članka 82.;** ili

(c) je obrada neophodna kako bi se zaštitili ključni interesi osobe čiji se podaci obrađuju ili druge osobe u slučaju da osoba čiji se podaci obrađuju nije fizički ili pravno sposobna dati suglasnost; ili

(d) se obrada provodi tijekom zakonitih aktivnosti uz odgovarajuću zaštitu ustanova, udruga ili nekog drugog neprofitnog tijela s političkim, filozofskim,

vjerskim ili sindikalnim ciljem, te pod uvjetom da se obrada odnosi jedino na članove tijela ili bivše članove tijela ili na osobe koje su u redovitom kontaktu s njime u pogledu njihove svrhe, te da se podaci ne otkrivaju trećoj stranci bez suglasnosti osobe čiji se podaci obrađuju; ili

(e) se obrada odnosi na osobne podatke koje je objavila osoba čiji se podaci obrađuju; ili

(f) je to potrebno radi uspostave, izvršenja ili obrane zakonskog prava; ili

(g) je obrada nužna za izvršenje zadaće **od** javnog interesa na temelju zakonodavstva Unije ili države članice kojim se osiguravaju prikladne mjere za očuvanje **legitimnih** interesa osobe čiji se podaci obrađuju; ili

(h) obrada je podataka o zdravstvenom stanju nužna u zdravstvene svrhe i podliježe uvjetima i mjerama zaštite utvrđenima člankom 81.; ili

(i) je obrada podataka nužna za povijesno, statističko ili znanstveno istraživanje i podliježe uvjetima i mjerama zaštite utvrđenima člankom 83.; ili

(j) se obrada podataka vezanih uz kaznene presude ili povezane sigurnosne mjere provodi ili pod nadzorom nadležnog tijela ili ako je obrada nužna radi usklađenosti s pravnom ili regulatornom obvezom kojoj podliježe nadzornik, ili za obavljanje zadatka koji se provodi radi važnog javnog interesa, ako je to dopušteno zakonodavstvom Unije ili države članice koji predviđaju odgovarajuće mjere zaštite. **Potpuna** evidencija kaznenih presuda vodi se samo pod nadzorom službenog tijela.

vjerskim ili sindikalnim ciljem, te pod uvjetom da se obrada odnosi jedino na članove tijela ili bivše članove tijela ili na osobe koje su u redovitom kontaktu s njime u pogledu njihove svrhe, te da se podaci ne otkrivaju trećoj stranci **izvan toga tijela** bez suglasnosti osobe čiji se podaci obrađuju; ili

(e) se obrada odnosi na osobne podatke koje je objavila osoba čiji se podaci obrađuju; ili

(f) je to potrebno radi uspostave, izvršenja ili obrane zakonskog prava; ili

(g) je obrada nužna za izvršenje zadaće **iz razloga važnog** javnog interesa na temelju zakonodavstva Unije ili države članice **koje je razmjerno željenome cilju, poštuje bit prava na zaštitu podataka i** kojim se osiguravaju prikladne mjere za očuvanje **temeljnih prava i** interesa osobe čiji se podaci obrađuju; ili

(h) obrada je podataka o zdravstvenom stanju nužna u zdravstvene svrhe i podliježe uvjetima i mjerama zaštite utvrđenima člankom 81.; ili

(i) je obrada podataka nužna za povijesno, statističko ili znanstveno istraživanje i podliježe uvjetima i mjerama zaštite utvrđenima člankom 83.; ili

(ia) je obrada potrebna za usluge arhiviranja podložno uvjetima i mjerama zaštite iz članka 83.a; ili

(j) se obrada podataka vezanih uz **upravne sankcije, presude, kaznena djela**, kaznene presude ili povezane sigurnosne mjere provodi ili pod nadzorom nadležnog tijela ili ako je obrada nužna radi usklađenosti s pravnom ili regulatornom obvezom kojoj podliježe nadzornik, ili za obavljanje zadatka koji se provodi radi važnog javnog interesa, ako je to dopušteno zakonodavstvom Unije ili države članice koji predviđaju odgovarajuće mjere zaštite **temeljnih prava i interesa osobe čiji se podaci obrađuju. Svaka** evidencija

3. Komisija je ovlaštena donositi delegirane akte u skladu s člankom 86. u svrhu dodatnog određivanja kriterija, uvjeta i odgovarajućih jamstava za obradu posebnih kategorija osobnih podataka navedenih u stavku 1. i iznimaka navedenih u stavku 2.

Amandman 104

Prijedlog Uredbe Članak 10.

Tekst koji je predložila Komisija

Ako nadzornik ne može identificirati fizičku osobu čije podatke obrađuje, nadzornik **nije obvezan prikupiti** dodatne informacije kako bi identificirao osobu čiji se podaci obrađuju samo radi pridržavanja neke odredbe ove Uredbe.

Amandman 105

Prijedlog Uredbe Članak 10.a (novi)

Tekst koji je predložila Komisija

kaznenih presuda vodi se samo pod nadzorom službenog tijela.

3. Europskom odboru za zaštitu podataka povjeren je zadatak donošenja smjernica, preporuka i najboljih praksi za obradu posebnih kategorija osobnih podataka navedenih u stavku 1. i iznimaka navedenih u stavku 2. u skladu s člankom 66.

Izmjena

1. Ako nadzornik ili obrađivač ne može izravno ili neizravno identificirati fizičku osobu čije podatke obrađuje ili se ti podaci sastoje samo od pseudonimnih podataka, nadzornik ne obrađuje niti prikuplja dodatne informacije kako bi identificirao osobu čiji se podaci obrađuju samo radi pridržavanja neke odredbe ove Uredbe.

2. Ako nadzornik podataka ne može poštovati neku odredbu ove Uredbe zbog stavka 1., nadzornik nije obvezan poštovati tu odredbu ove Uredbe. Ako posljedično nadzornik podataka ne može poštovati zahtjev osobe čiji se podaci obrađuju, on o tome obavještava osobu čiji se podaci obrađuju.

Izmjena

Članak 10.a

Opća načela o pravima osoba čiji se podaci obrađuju

1. Temelj zaštite podataka jasna su i jednoznačna prava osobe čiji se podaci obrađuju, a koje poštuje nadzornik podataka. Odredbama ove Uredbe ta se prava nastoji osnažiti, pojasniti, zajamčiti i prema potrebi kodificirati.

2. Takva prava među ostalim uključuju pružanje jasnih i lako razumljivih informacija u vezi s obradom njegovih ili svojih podataka, pravom pristupanja, ispravljanja i brisanja njihovih podataka, pravom na dobivanje podataka, pravom prigovora na oblikovanje profila, pravom podnošenja žalbe nadležnom tijelu za zaštitu podataka i pokretanja sudskih postupaka kao i pravom na naknadu pretrpljene štete zbog nezakonitog postupka obrade. Ta se prava općenito ostvaruju besplatno. Nadzornik podataka odgovara na zahtjeve osobe čiji se podaci obrađuju u razumnom roku.

Amandman 106

Prijedlog Uredbe Članak 11.

Tekst koji je predložila Komisija

1. Nadzornik se u pogledu obrade osobnih podataka i ostvarenja prava osoba čiji se podaci obrađuju vodi transparentnim i lako dostupnim politikama.

2. Nadzornik treba osobi čiji se podaci obrađuju na razumljiv način pružiti informacije te je izvijestiti o obradi osobnih podataka koristeći jasan i jednostavan jezik, **prilagođen osobi čiji se podaci obrađuju**, posebice ako se radi o informacijama izričito namijenjenima djetetu.

Izmjena

1. Nadzornik se u pogledu obrade osobnih podataka i ostvarenja prava osoba čiji se podaci obrađuju vodi **sažetim**, transparentnim, **jasnim** i lako dostupnim politikama.

2. Nadzornik treba osobi čiji se podaci obrađuju na razumljiv način pružiti informacije te je izvijestiti o obradi osobnih podataka koristeći jasan i jednostavan jezik, posebice ako se radi o informacijama izričito namijenjenima djetetu.

Amandman 107

Prijedlog Uredbe Članak 12.

Tekst koji je predložila Komisija

1. **Nadzornik treba odrediti postupke pružanja informacija navedenih u članku 14. te postupke za ostvarivanje prava osoba čiji se podaci obrađuju navedenih u članku 13. i člancima 15. do 19.**

Nadzornik posebno treba osigurati mehanizme za izvršenje postupaka navedenih u članku 13. i u člancima 15. do 19. Ako se osobni podaci automatizirano obrađuju, nadzornik također treba osigurati sredstva kako bi se zahtjevi podnijeli elektroničkim putem.

2. Nadzornik osobu čiji se podaci obrađuju bez odgode i najkasnije **jedan mjesec** po primitku zahtjeva obavještava o tome jesu li poduzete mjere u skladu s člankom 13. i člancima 15. do 19. i pruža zatražene informacije. To se razdoblje može odgoditi za još jedan mjesec ako više osoba čiji se podaci obrađuju ostvaruju svoje pravo te je u određenoj mjeri potrebna njihova suradnja kako bi se spriječio nepotreban i neproporcionalan napor nadzornika. Te se informacije dostavljaju pisanim putem. Ako osoba čiji se podaci obrađuju podnese zahtjev u elektroničkom obliku, informacije **treba pružiti** u elektroničkom obliku, osim ako osoba čiji se podaci obrađuju ne zatraži drugačije.

3. Ako nadzornik **odbije djelovati** na zahtjev osobe čiji se podaci obrađuju, nadzornik **mora obavijestiti** osobu čiji se podaci obrađuju o razlozima **odbijanja** i o mogućnostima podnošenja žalbe

Izmjena

1. Ako se osobni podaci automatizirano obrađuju, nadzornik također **kad je to moguće** treba osigurati sredstva kako bi se zahtjevi podnijeli elektroničkim putem.

2. Nadzornik osobu čiji se podaci obrađuju bez **nepotrebne** odgode i najkasnije **40 kalendarskih dana** po primitku zahtjeva obavještava o tome jesu li poduzete mjere u skladu s člankom 13. i člancima 15. do 19. i pruža zatražene informacije. To se razdoblje može odgoditi za još jedan mjesec ako više osoba čiji se podaci obrađuju ostvaruju svoje pravo te je u određenoj mjeri potrebna njihova suradnja kako bi se spriječio nepotreban i neproporcionalan napor nadzornika. Te se informacije dostavljaju pisanim putem, **a kad je to moguće, nadzornik može omogućiti daljinski pristup zaštićenom sustavu koji bi osobi čiji se podaci obrađuju omogućio izravan pristup njegovim/njezinim osobnim podacima.** Ako osoba čiji se podaci obrađuju podnese zahtjev u elektroničkom obliku, informacije **se kad je to moguće pruža** u elektroničkom obliku, osim ako osoba čiji se podaci obrađuju ne zatraži drugačije.

3. Ako nadzornik **ne djeluje** na zahtjev osobe čiji se podaci obrađuju, nadzornik **obavještava** osobu čiji se podaci obrađuju o razlozima **nedjelovanja** i o mogućnostima podnošenja žalbe

nadzornom tijelu te traženju pravnog lijeka.

4. Informacije i postupci koji se poduzmu zbog zahtjeva iz stavka 1. besplatni su. Ako su zahtjevi pretjerani, posebice ako se ponavljaju, nadzornik može naplatiti pristojbu za pružanje informacija ili poduzimanje zatraženih akcija, **ili nadzornik ne mora poduzeti zatraženu akciju**. U tom je slučaju nadzornik **odgovor** za dokazivanje činjenice da je zahtjev pretjeran.

5. Komisija je ovlaštena donositi delegirane akte u skladu s člankom 86. u svrhu dodatnog određivanja kriterija i preduvjeta za pretjerane zahtjeve i pristojbe navedene u stavku 4.

6. Komisija može odrediti standardne obrasce i standardne postupke za komunikaciju navedenu u stavku 2., uključujući elektronički format. U skladu s tim Komisija će poduzeti potrebne mjere za mikro, mala i srednja poduzeća. Ti provedbeni akti usvajaju se u skladu s postupkom provjere navedenim u članku 87. stavku 2.

Amandman 108

Prijedlog Uredbe Članak 13.

Tekst koji je predložila Komisija

Prava primatelja

Nadzornik svakog primatelja kojem su podaci **otkriveni** izvješćuje o ispravljanju ili brisanju provedenima u skladu s člancima 16. i 17., osim ako se pokaže da to nije moguće ili iziskuje nerazmjern napor.

nadzornom tijelu te traženju pravnog lijeka.

4. Informacije i postupci koji se poduzmu zbog zahtjeva iz stavka 1. besplatni su. Ako su zahtjevi pretjerani, posebice ako se ponavljaju, nadzornik može naplatiti **razumno** pristojbu za pružanje informacija ili poduzimanje zatraženih akcija **uzimajući u obzir administrativne troškove**. U tom je slučaju nadzornik **odgovoran** za dokazivanje činjenice da je zahtjev pretjeran.

Izmjena

Obveza obavješćavanja u slučaju ispravljanja i brisanja podataka

Nadzornik svakog primatelja kojem su podaci **preneseni** izvješćuje o ispravljanju ili brisanju provedenima u skladu s člancima 16. i 17., osim ako se pokaže da to nije moguće ili iziskuje nerazmjern napor. **Nadzornik obavještava osobu čiji se podaci obrađuju o tim primateljima ako to zahtijeva osoba čiji se podaci obrađuju.**

Amandman 109

Prijedlog Uredbe Članak 13.a (novi)

Tekst koji je predložila Komisija

Izmjena

Članak 13a

Standardizirani načini obavještanja

1. Ako se prikupljaju osobni podaci u vezi s osobom čiji se podaci obrađuju, nadzornik osobi čiji se podaci obrađuju prije pružanja informacijama u skladu s člankom 14. pruža barem ove informacije:

(a) jesu li osobni podaci prikupljeni više od minimuma nužnog za svaku posebnu svrhu obrade;

(b) jesu li osobni podaci zadržani više od minimuma nužnog za svaku posebnu svrhu obrade;

(c) obrađuje li se osobne podatke u svrhe drukčije od onih radi kojih su podaci prikupljeni;

(d) širi li se osobne podatke komercijalnim trećim stranama;

(e) prodaje li se ili iznajmljuje osobne podatke;

(f) zadržava li se osobne podatke u kodiranom obliku.

2. Informacije iz stavka 1. prikazuje se u skladu s Prilogom X. u formatu usklađene tablice s tekstem i simbolima u sljedeća tri stupca:

(a) u prvom su stupcu prikazani grafički oblici koji simboliziraju te informacije;

(b) drugi stupac sadrži osnovne informacije o tim informacijama;

(c) u trećem se stupcu nalaze grafički oblici koji pokazuju važe li određene informacije.

3. Informacije iz stavka 1. i 2. prikazane

su na lako vidljiv i jasno čitljiv način na jeziku koji razumiju potrošači država članica kojima se te informacije nude. Kada su informacije prikazane elektroničkim putem, strojno su čitljive.

4. Dodatne se informacije ne pružaju. Detaljna objašnjenja ili daljnje napomene u vezi s informacijama iz stavka 1. može se predstaviti zajedno s ostalim zahtjevima za informacijama u skladu s člankom 14.

5. Komisija je, nakon traženja mišljenja Europskog odbora za zaštitu podataka, ovlaštena donositi delegirane akte u skladu s člankom 86. u svrhe daljnjeg utvrđivanja informacija iz stavka 1. i njihovog predstavljanja kao što je utvrđeno stavkom 2. i Prilogom 1.

Amandman 110

Prijedlog Uredbe Članak 14.

Tekst koji je predložila Komisija

Obavješćavanje osobe čiji se podaci obrađuju

1. Ako se prikupljaju osobni podaci u vezi s osobom čiji se podaci obrađuju, nadzornik osobi čiji se podaci obrađuju ***mora pružiti*** barem ove informacije:

(a) identitet i kontaktne podatke nadzornika i, ako ga ima, njegovog zastupnika te službenika zaduženog za zaštitu podataka;

(b) svrhu obrade kojoj su osobni podaci namijenjeni, uključujući uvjete ugovora i opće uvjete ako se obrada temelji na točki (b) članka 6. stavka 1. te ***legitimne interese koje ispunjava nadzornik ako se obrada temelji na točki*** (f) članka 6. stavka 1.;

Izmjena

Obavješćavanje osobe čiji se podaci obrađuju

1. Ako se prikupljaju osobni podaci u vezi s osobom čiji se podaci obrađuju, nadzornik osobi čiji se podaci obrađuju ***nakon pružanja informacijama u skladu s člankom 13.a pruža*** barem ove informacije:

(a) identitet i kontaktne podatke nadzornika i, ako ga ima, njegovog zastupnika te službenika zaduženog za zaštitu podataka;

(b) svrhu obrade kojoj su osobni podaci namijenjeni, ***kao i informacije o sigurnosti obrade osobnih podataka***, uključujući uvjete ugovora i opće uvjete ako se obrada temelji na točki (b) članka 6. stavka 1. te ***prema potrebi informacije o načinu na koji provode i ispunjavaju uvjete iz točke*** (f) članka 6. stavka 1.;

(c) razdoblju u kojem će se osobni podaci pohranjivati;

(d) postojanje prava da se od nadzornika zatraži pristup podacima te prava na ispravak ili brisanje osobnih podataka koji se odnose na osobu čiji se podaci **obrađuju ili** na protivljenje obradi tih osobnih podataka;

(e) pravu na žalbu nadzornom tijelu i kontaktne podatke nadzornog tijela;

(f) primatelje ili kategorije primatelja osobnih podataka;

(g) ako je potrebno, namjeru nadzornika da podatke prenese trećoj zemlji ili međunarodnoj organizaciji **te razinu zaštite u toj trećoj zemlji ili međunarodnoj organizaciji pozivajući se na Komisijinu odluku** o primjerenosti;

(h) sve dodatne informacije potrebne kako bi se osigurala poštena obrada u odnosu na osobu čiji se podaci obrađuju, uzimajući u obzir posebne okolnosti u kojima se **prikupljaju** osobni podaci.

(c) razdoblju u kojem će se osobni podaci pohranjivati **ili, ako to nije moguće, kriteriji korišteni za utvrđivanje tog razdoblja**;

(d) postojanje prava da se od nadzornika zatraži pristup podacima te prava na ispravak ili brisanje osobnih podataka koji se odnose na osobu čiji se podaci **prikupljaju**, na protivljenje obradi tih osobnih podataka **ili dobivanje podataka**;

(e) pravu na žalbu nadzornom tijelu i kontaktne podatke nadzornog tijela;

(f) primatelje ili kategorije primatelja osobnih podataka;

(g) ako je potrebno, namjeru nadzornika da **te** podatke prenese trećoj zemlji ili međunarodnoj organizaciji **i postojanje ili nepostojanje odluke** o primjerenosti **Komisije, ili u slučaju prijenosa iz članka 42., članka 43. ili točke (h) članka 44. stavka 1., upućivanje na odgovarajuće mjere zaštite i načine pribavljanja njihove kopije**;

(ga) prema potrebi, informacije o postojanju profiliranja, mjerama koje se temelje na oblikovanju profila i predviđenim učincima profiliranja na osobu čiji se podaci obrađuju;

(gb) važne informacije o logici iza svake automatizirane obrade;

(h) sve dodatne informacije **koje su** potrebne kako bi se osigurala poštena obrada u odnosu na osobu čiji se podaci obrađuju, uzimajući u obzir posebne okolnosti u kojima se osobni podaci **prikupljaju ili obrađuju, osobito postojanje određenih aktivnosti i postupaka obrade za koje je ocjena učinka osobnih podataka pokazala da uključuju visok stupanj rizika**;

(ha) prema potrebi, informacije o tome jesu li osobni podaci pruženi javnim tijelima tijekom uzastopnog razdoblja od posljednjih dvanaest mjeseci.

2. Ako se osobni podaci prikupljaju od osobe čiji se podaci obrađuju, nadzornik osobi čiji se podaci obrađuju uz informacije iz stavka 1. **pruža** i informaciju o tome je li pružanje osobnih podataka **obvezno ili dobrovoljno** te koje su moguće posljedice u slučaju uskraćivanja tih podataka.

3. Ako podaci nisu dobiveni od osobe čiji se podaci obrađuju, nadzornik mora, uz **obavještanje** iz stavka 1., izvijestiti osobu čiji se podaci obrađuju o porijeklu osobnih podataka.

4. Nadzornik treba pružiti informacije iz stavaka 1., 2. i 3.:

(a) u trenutku kada se osobni podaci prikupe od osobe čiji se podaci obrađuju; ili

(b) ako se osobni podaci ne prikupljaju od osobe čiji se podaci obrađuju, u trenutku bilježenja ili u razumnom vremenskom roku nakon prikupljanja, uzimajući u obzir posebne okolnosti u kojima su podaci prikupljeni ili obrađeni na drugi način, ili ako je **planirano njihovo otkrivanje** drugom primatelju, te najkasnije kada se podaci prvi puta **objave**.

2. Ako se osobni podaci prikupljaju od osobe čiji se podaci obrađuju, nadzornik osobi čiji se podaci obrađuju uz informacije iz stavka 1. **mora pružiti** i informaciju o tome je li pružanje osobnih podataka **obvezatno ili neobvezatno** te koje su moguće posljedice u slučaju uskraćivanja tih podataka.

2a. Pri odlučivanju o daljnjim informacijama koje je potrebno kako bi obrada bila poštena u skladu s točkom (h) stavka 1., nadzornici uzimaju u obzir sve relevantne smjernice iz stavka 38.

3. Ako podaci nisu dobiveni od osobe čiji se podaci obrađuju, nadzornik mora, uz **informacije** iz stavka 1., izvijestiti osobu čiji se podaci obrađuju o porijeklu **određenih** osobnih podataka. **Ako osobni podaci potječu iz javno dostupnih izvora, može se pružiti opća naznaka.**

4. Nadzornik treba pružiti informacije iz stavaka 1., 2. i 3.:

(a) u trenutku kada se osobni podaci prikupe od osobe čiji se podaci obrađuju **ili bez nepotrebnog odgađanja kada gore spomenuto nije moguće**; ili

(aa) na zahtjev tijela, organizacije ili udruženja iz članka 73.;

(b) ako se osobni podaci ne prikupljaju od osobe čiji se podaci obrađuju, u trenutku bilježenja ili u razumnom vremenskom roku nakon prikupljanja, uzimajući u obzir posebne okolnosti u kojima su podaci prikupljeni ili obrađeni na drugi način, ili ako je **planiran njihov prijenos** drugom primatelju, te najkasnije kada se podaci prvi puta **prenose ili ako ih se namjerava upotrijebiti za komunikaciju s predmetnom osobom čiji se podaci obrađuju najkasnije u trenutku prvog obavještanja te osobe**; ili

(ba) samo na zahtjev kada podatke obrađuje malo ili mikro poduzeće kojemu je obrada osobnih podataka samo

5. Stavci 1. do 4. ne primjenjuju se ako:

(a) osoba čiji se podaci obrađuju već raspoláže informacijama iz stavaka 1., 2. i 3.; ili

(b) se podaci ne prikupljaju od osobe čiji se podaci obrađuju te se pružanje takvih informacija pokaže nemogućim ili bi iziskivalo prekomjeren napor; ili

(c) se podaci ne prikupljaju od osobe čiji se podaci **obrađuju** te je **evidentiranje** ili otkrivanje podataka izričito propisano zakonima; ili

(d) se podaci ne prikupljaju od osobe čiji se podaci obrađuju te bi davanje takvih informacija narušilo prava i slobode drugih, kao što je određeno zakonodavstvom Unije ili države članice u skladu s člankom 21.

6. U slučaju navedenom u točki (b) stavka 5. nadzornik **treba poduzeti** primjerene mjere kako bi zaštitio legitimne interese osobe čiji se podaci prikupljaju.

7. Komisija je ovlaštena donositi delegirane akte u skladu s člankom 86. u svrhu dodatnog određivanja kriterija za

sporedna aktivnost.

5. Stavci 1. do 4. ne primjenjuju se ako:

(a) osoba čiji se podaci obrađuju već raspoláže informacijama iz stavaka 1., 2. i 3.; ili

(b) se podaci **obrađuju u povijesne, statističke ili znanstvene istraživačke svrhe podložno uvjetima i mjerama zaštite iz članaka 81. i 83.**, ne prikupljaju od osobe čiji se podaci obrađuju te se pružanje takvih informacija pokaže nemogućim ili bi iziskivalo prekomjeren napor **i nadzornik je objavio informacije koje svi mogu preuzimati**; ili

(c) se podaci ne prikupljaju od osobe čiji se podaci te je **bilježenje** ili otkrivanje podataka izričito propisano zakonima **kojima nadzornik podliježe, koji osiguravaju odgovarajuće mjere zaštite legitimnih interesa osobe čiji se podaci obrađuju uzimajući u obzir rizike koje predstavlja obrada i priroda osobnih podataka**; ili

(d) se podaci ne prikupljaju od osobe čiji se podaci obrađuju te bi davanje takvih informacija narušilo prava i slobode drugih **fizičkih osoba**, kao što je određeno zakonodavstvom Unije ili države članice u skladu s člankom 21.;

(da) podatke obrađuje osoba u okviru obavljanja svoje profesije ili su podaci povjereni ili otkriveni osobi koja podliježe obvezi profesionalne tajne uređene pravom Unije ili države članice ili koja podliježe zakonskoj obvezi tajne osim ako se podaci ne prikupljaju izravno od osobe čiji se podaci obrađuju.

6. U slučaju navedenom u točki (b) stavka 5. nadzornik **poduzima** primjerene mjere kako bi zaštitio **prava ili** legitimne interese osobe čiji se podaci prikupljaju.

kategorije primatelja iz točke (f) stavka 1., zahtjeva za mogućim pristupom iz točke (g) stavka 1., kriterija za daljnje potrebe obavještanja iz točke (h) stavka 1. za posebne sektore i situacije, te uvjete i odgovarajuće mjere zaštite određene točkom (b) stavka 5. U skladu s tim Komisija će poduzeti potrebne mjere za mikro, mala i srednja poduzeća.

8. Komisija može odrediti standardne obrasce za pružanje informacija iz stavaka 1. do 3., uzimajući u obzir posebne karakteristike i potrebe raznih sektora i situacija za obradu podataka ako je to potrebno. Ti provedbeni akti usvajaju se u skladu s postupkom provjere navedenim u članku 87. stavku 2.

Amandman 111

Prijedlog Uredbe Članak 15.

Tekst koji je predložila Komisija

Pravo osobe čiji se podaci obrađuju na pristup **podacima**

1. Osoba čiji se podaci obrađuju **treba imati** pravo da bilo kada, na zahtjev, od nadzornika dobije potvrdu o tome obrađuju li se ili ne osobni podaci koji se na nju odnose. **Ako se obrađuju osobni podaci koji se na nju odnose, nadzornik je dužan pružiti** informacije o:

- (a) svrsi obrade;
- (b) kategorijama dotičnih osobnih podataka;
- (c) primateljima **ili kategorijama primatelja** kojima su otkriveni osobni podaci ili će biti otkriveni, **a posebno** primateljima u trećim zemljama;
- (d) razdoblju u kojem će se osobni podaci pohranjivati;

Izmjena

Pravo osobe čiji se podaci obrađuju na pristup **i dobivanje podataka**

1. **Podložno članku 12. stavku 4.** osoba čiji se podaci obrađuju **ima** pravo da bilo kada, na zahtjev, od nadzornika dobije potvrdu o tome obrađuju li se ili ne osobni podaci koji se na nju odnose **te** informacije **sročene jasnim i jednostavnim jezikom** o:

- (a) svrsi obrade **za svaku kategoriju osobnih podataka**;
- (b) kategorijama dotičnih osobnih podataka;
- (c) primateljima kojima su otkriveni osobni podaci ili će biti otkriveni, **uključujući** primateljima u trećim zemljama;
- (d) razdoblju u kojem će se osobni podaci pohranjivati **ili, ako to nije moguće,**

(e) postojanju prava da se od nadzornika zatraži ispravak ili brisanje osobnih podataka koji se odnose na osobu čiji se podaci prikupljaju ili na protivljenje obradi tih osobnih podataka;

(f) pravu na žalbu nadzornom tijelu i kontaktne podatke nadzornog tijela;

(g) osobnim podacima koji se obrađuju i o svim dostupnim informacijama o njihovom izvoru;

(h) važnosti i predviđenim posljedicama takve obrade, **barem u slučaju mjera navedenih u članku 20.**

2. Osoba čiji se podaci obrađuju ima pravo saznati od nadzornika koji se osobni podaci obrađuju. Ako osoba čiji se podaci obrađuju podnese zahtjev u elektroničkom obliku, informacije **treba pružiti** u elektroničkom obliku, osim ako osoba čiji se podaci obrađuju ne zatraži drugačije.

kriteriji korišteni za utvrđivanje tog razdoblja;

(e) postojanju prava da se od nadzornika zatraži ispravak ili brisanje osobnih podataka koji se odnose na osobu čiji se podaci prikupljaju ili na protivljenje obradi tih osobnih podataka;

(f) pravu na žalbu nadzornom tijelu i kontaktne podatke nadzornog tijela;

(h) važnosti i predviđenim posljedicama takve obrade.

(ha) važne informacije o logici svake automatizirane obrade;

(hb) ne dovodeći u pitanje članak 21., u slučaju otkrivanja osobnih podataka javnom tijelu na temelju zahtjeva upućenog javnom tijelu, potvrda o tome da je takav zahtjev podnesen.

2. Osoba čiji se podaci obrađuju ima pravo saznati od nadzornika koji se osobni podaci obrađuju. Ako osoba čiji se podaci obrađuju podnese zahtjev u elektroničkom obliku, informacije **se pruža** u elektroničkom **i strukturiranom** obliku, osim ako osoba čiji se podaci obrađuju ne zatraži drugačije. **Ne dovodeći u pitanje članak 10., nadzornik poduzima sve opravdane korake kako bi potvrdio da je osoba koja traži pristup podacima osoba čiji se podaci obrađuju.**

2a. Kada je osoba čiji se podaci obrađuju ustupila osobne podatke i ti se podaci obrađuju elektroničkim putem, osoba čiji se podaci obrađuju ima pravo da od nadzornika dobije kopiju danih osobnih podataka u elektroničkom i interoperabilnom formatu koji se inače koristi i omogućuje osobi čiji se podaci obrađuju daljnju upotrebu, a da je u tome ne sprečava nadzornik od kojeg su osobni

podaci povučeni. Kada je to tehnički izvedivo i dopušteno, podatke se, na zahtjev osobe čiji se podaci obrađuju, prenosi izravno od jednog nadzornika drugome.

2b. Ovim se člankom ne dovodi u pitanje obveza brisanja podataka kada oni više nisu potrebni u skladu s točkom (e) članka 5. stavka 1.

2c. U skladu sa stavcima 1. i 2. ne postoji pravo pristupa kad je riječ o podacima u smislu točke (da) članka 14. stavka 5., osim ako je osoba čiji se podaci obrađuju ovlaštena ukinuti predmetnu tajnu i u skladu s time djeluje.

3. Komisija je ovlaštena donositi delegirane akte u skladu s člankom 86. u svrhu dodatnog određivanja kriterija i preduvjeta za obavještanje osobe čiji se podaci obrađuju o sadržaju osobnih podataka navedenih u točki (g) stavku 1.

4. Komisija može odrediti standardne obrasce i postupke za traženje i ostvarivanje pristupa informacijama iz stavka 1., uključujući provjeru identiteta osobe čiji se podaci obrađuju te informiranje osobe čiji se podaci obrađuju o osobnim podacima, uzimajući u obzir posebne karakteristike i potrebe raznih sektora i situacija za obradu podataka. Ti provedbeni akti usvajaju se u skladu s postupkom provjere navedenim u članku 87. stavku 2.

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Prijedlog Uredbe Članak 17.

Tekst koji je predložila Komisija

Pravo na *zaboravljanje* i brisanje podataka

1. Osoba čiji se podaci obrađuju ima pravo zatražiti od nadzornika da se izbrišu osobni podaci vezani uz nju te zatražiti izuzimanje

Izmjena

Pravo na brisanje podataka

1. Osoba čiji se podaci obrađuju ima pravo zatražiti od nadzornika da se izbrišu osobni podaci vezani uz nju te zatražiti izuzimanje

iz daljnjeg širenja tih podataka, **posebice u vezi s osobnim podacima koje je osoba čiji su podaci obrađuju otkrila kad je bila dijete**, pri čemu vrijedi jedan od sljedećih razloga:

(a) podaci više nisu potrebni zbog svrhe za koje su prikupljeni ili obrađeni na drugi način;

(b) osoba čiji se podaci obrađuju povlači suglasnost na kojoj se temelji obrada u skladu s točkom (a) članka 6. stavka 1., ili kada je isteklo dogovoreno razdoblje pohrane, te kada više ne postoji pravna osnova za obradu podataka;

(c) osoba čiji se podaci obrađuju protivi se obradi osobnih podataka u skladu s člankom 19.;

(d) **obrada podataka nije usklađena s ovom Uredbom iz drugih razloga.**

2. Ako nadzornik iz stavka 1. objavi osobne podatke, on poduzima sve opravdane korake, **uključujući tehničke mjere, u odnosu na podatke za čije je objavljivanje odgovoran nadzornik**, kako bi se **obavijestilo treće strane koje obrađuju te podatke da osoba čiji se podaci obrađuju zahtijeva da se izbrišu sve poveznice, ili kopije ili replike tih osobnih podataka. Ako je nadzornik ovlastio treću stranu da objavi osobne podatke, nadzornik se smatra odgovornim za tu objavu.**

3. Nadzornik **će** bez odgode **provesti** brisanje podataka, osim ako je **njihova pohrana** do neke mjere nužna :

iz daljnjeg širenja tih podataka, **te da joj treće strane omogućće brisanje svih poveznica, kopije ili replike tih podataka**, pri čemu vrijedi jedan od sljedećih razloga

(a) podaci više nisu potrebni zbog svrhe za koje su prikupljeni ili obrađeni na drugi način;

(b) osoba čiji se podaci obrađuju povlači suglasnost na kojoj se temelji obrada u skladu s točkom (a) članka 6. stavka 1., ili kada je isteklo dogovoreno razdoblje pohrane, te kada više ne postoji pravna osnova za obradu podataka;

(c) osoba čiji se podaci obrađuju protivi se obradi osobnih podataka u skladu s člankom 19.;

(ca) sud ili regulatorno tijelo utemeljeno u Uniji donijelo je konačnu i pravomoćnu odluku da se predmetne podatke mora izbrisati;

(d) **podaci su nezakonito obrađeni.**

1a. Primjena stavka 1. ovisi o mogućnosti nadzornika da provjeri kako je osoba koja traži brisanje osoba čiji se podaci obrađuju.

2. Ako nadzornik iz stavka 1. objavi osobne podatke **bez obrazloženja na temelju članka 6. stavka 1.**, on poduzima sve opravdane korake kako bi se **podaci izbrisali, uključujući kod trećih strana, ne dovodeći pritom u pitanje članak 77. Nadzornik, kad je to moguće, obavještava osobu čiji se podaci obrađuju o mjerama koje su poduzele relevantne treće strane.**

3. Nadzornik, **i prema potrebi treća strana**, bez odgode **provodi** brisanje podataka, osim ako je do neke mjere nužna **njihova pohrana**:

(a) zbog ostvarivanja prava slobode govora u skladu s člankom 80.;

(b) zbog općeg interesa u području javnog zdravlja u skladu s člankom 81.;

(c) u svrhu povijesnog, statističkog i znanstvenog istraživanja u skladu s člankom 83.;

(d) zbog usklađenosti s pravnom obvezom o pohranjivanju osobnih podataka prema pravu Unije ili nacionalnom zakonodavstvu kojem podliježe nadzornik; zakonima države članice **treba se ostvariti** cilj od javnog interesa, **poštovati bit prava** na zaštitu osobnih podataka te oni **trebaju biti** proporcionalni u odnosu na legitimni cilj koji se želi ostvariti;

(e) u slučajevima iz stavka 4.

4. Umjesto brisanja, nadzornik **će ograničiti** obradu osobnih podataka ako:

(a) osoba čiji se podaci obrađuju osporava njihovu točnost, u razdoblju u kojem nadzornik može provjeriti točnost podataka;

(b) nadzorniku osobni podaci više nisu potrebni za ostvarenje svog zadatka, ali ih se mora sačuvati u svrhu dokaza;

(c) je obrada nezakonita i osoba čiji se podaci obrađuju se protivi njihovu brisanju i umjesto toga traži njihovo ograničeno korištenje;

(d) osoba čiji se podaci obrađuju traži da se osobni podaci prenesu u drugi automatizirani sustav obrade u skladu s **člankom 18. stavkom 2.**

(a) zbog ostvarivanja prava slobode govora u skladu s člankom 80.;

(b) zbog općeg interesa u području javnog zdravlja u skladu s člankom 81.;

(c) u svrhu povijesnog, statističkog i znanstvenog istraživanja u skladu s člankom 83.;

(d) zbog usklađenosti s pravnom obvezom o pohranjivanju osobnih podataka prema pravu Unije ili nacionalnom zakonodavstvu kojem podliježe nadzornik; zakonima države članice **ostvaruje se** cilj od javnog interesa, **poštuje pravo** na zaštitu osobnih podataka te **su** oni proporcionalni u odnosu na legitimni cilj koji se želi ostvariti;

(e) u slučajevima iz stavka 4.

4. Umjesto brisanja, nadzornik **ograničava** obradu osobnih podataka **na način da ne podliježe uobičajenim postupcima pristupanja podacima i njihove obrade i više se ne može mijenjati** ako:

(a) osoba čiji se podaci obrađuju osporava njihovu točnost, u razdoblju u kojem nadzornik može provjeriti točnost podataka;

(b) nadzorniku osobni podaci više nisu potrebni za ostvarenje svog zadatka, ali ih se mora sačuvati u svrhu dokaza;

(c) je obrada nezakonita i osoba čiji se podaci obrađuju se protivi njihovu brisanju i umjesto toga traži njihovo ograničeno korištenje;

(ca) sud ili regulatorno tijelo utemeljeno u Uniji donijelo konačnu i pravomoćnu odluku da se predmetne podatke mora ograničiti;

(d) osoba čiji se podaci obrađuju traži da se osobni podaci prenesu u drugi automatizirani sustav obrade u skladu **sa stavcima 2a. članka 15.;**

(da) određena vrsta tehnologije pohranjivanja ne omogućuje brisanje te je

5. Osobni podaci iz stavka 4. mogu se, s iznimkom pohranjivanja, obrađivati samo u svrhu dokazivanja, ili uz suglasnost osobe čiji se podaci obrađuju, ili za zaštitu prava druge fizičke ili pravne osobe ili za cilj od javnog interesa.

6. Ako je obrada osobnih podataka ograničena u skladu sa stavkom 4., nadzornik **treba obavijestiti** osobu čiji se podaci obrađuju prije uklanjanja ograničenja obrade.

7. Nadzornik treba donijeti mehanizme kojima bi se osiguralo poštovanje vremenskog okvira određenog za brisanje osobnih podataka i/ili za periodičku reviziju potrebe pohranjivanja podataka.

8. Kada se provede brisanje, nadzornik ne smije na drugi način obrađivati te osobne podatke.

9. Komisija je ovlaštena donijeti delegirane akte u skladu s člankom 86. u svrhu daljnjeg određivanja:

(a) kriterija i uvjeta za primjenu stavka 1. za pojedine sektore i pojedinačne situacije obrade podataka;

(b) uvjeta brisanja poveznica, kopija *i* replika osobnih podataka iz javno dostupnih sredstava komunikacije iz stavka 2.;

(c) kriterija i uvjeta za ograničavanje obrade osobnih podataka iz stavka 4.;

ugrađena prije stupanja na snagu ove Uredbe.

5. Osobni podaci iz stavka 4. mogu se, s iznimkom pohranjivanja, obrađivati samo u svrhu dokazivanja, ili uz suglasnost osobe čiji se podaci obrađuju, ili za zaštitu prava druge fizičke ili pravne osobe ili za cilj od javnog interesa.

6. Ako je obrada osobnih podataka ograničena u skladu sa stavkom 4., nadzornik **obavještava** osobu čiji se podaci obrađuju prije uklanjanja ograničenja obrade.

8. Kada se provede brisanje, nadzornik ne smije na drugi način obrađivati te osobne podatke.

8a. Nadzornik provodi mehanizme kojima bi se osiguralo poštovanje vremenskog okvira određenog za brisanje osobnih podataka i/ili za periodičku reviziju potrebe pohranjivanja podataka.

9. Komisija je, **nakon traženja mišljenja Europskog odbora za zaštitu podataka**, ovlaštena donijeti delegirane akte u skladu s člankom 86. u svrhu daljnjeg određivanja:

(a) kriterija i uvjeta za primjenu stavka 1. za pojedine sektore i pojedinačne situacije obrade podataka;

(b) uvjeta brisanja poveznica, kopija *ili* replika osobnih podataka iz javno dostupnih sredstava komunikacije iz stavka 2.;

(c) kriterija i uvjeta za ograničavanje obrade osobnih podataka iz stavka 4.;

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Prijedlog Uredbe Članak 18.

Tekst koji je predložila Komisija

Izmjena

Pravo na prijenos podataka

Briše se.

1. Osoba čiji se podaci obrađuju ima pravo, ako se osobni podaci obrađuju elektroničkim putem te pomoću strukturiranog i uobičajenog formata, dobiti od nadzornika kopiju podataka koji se obrađuju u elektroničkom i strukturiranom formatu koji je uobičajen i dopušta daljnju upotrebu od strane osobe čiji se podaci obrađuju.

2. Ako je osoba čiji se podaci obrađuju ustupila osobne podatke i obrada se temelji na suglasnosti ili na ugovoru, osoba čiji se podaci obrađuju ima pravo prenijeti te osobne podatke i bilo koje druge informacije koje je ustupila osoba čiji se podaci obrađuju, te su pohranjeni automatiziranim sustavom obrade, u drugi, elektronički format koji se često koristi, a da je u tome ne sprečava nadzornik od kojeg su osobni podaci povučeni.

3. Komisija može odrediti elektronički format iz stavka 1. i tehničke standarde, načine i postupke za prijenos osobnih podataka u skladu sa stavkom 2. Ti provedbeni akti usvajaju se u skladu s postupkom provjere navedenim u članku 87. stavku 2.

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Prijedlog Uredbe Članak 19.

Tekst koji je predložila Komisija

Izmjena

Pravo prigovora

Pravo prigovora

1. Osoba čiji se podaci obrađuju ima, **na osnovi svoje posebne situacije**, pravo prigovora u bilo kojem trenutku obrade osobnih podataka što se temelji na točkama (d), (e) **i (f)** članka 6. stavka 1., osim ako nadzornik nema uvjerljive legitimne razloge za obradu koji nadvladavaju interese ili temeljna prava i slobode osobe čiji se podaci obrađuju.

2. Ako se **osobni podaci obrađuju u izravne marketinške svrhe**, osoba čiji se podaci obrađuju ima pravo besplatno se protiviti obradi svojih osobnih podataka **za takav marketing. To se pravo treba izričito ponuditi osobi čiji se podaci obrađuju na razumljiv način i treba se jasno razdvojiti u odnosu na druge informacije.**

3. U slučaju usvajanja prigovora u skladu sa stavcima 1. i 2., nadzornik više ne **smije koristiti** ili na druge načine **obrađivati dotične osobne podatke.**

(The last sentence of paragraph 2 in the Commission text has become paragraph 2a in Parliament's amendment).

1. Osoba čiji se podaci obrađuju ima pravo prigovora u bilo kojem trenutku obrade osobnih podataka što se temelji na točkama (d) **i (e)** članka 6. stavka 1., osim ako nadzornik nema uvjerljive legitimne razloge za obradu koji nadvladavaju interese ili temeljna prava i slobode osobe čiji se podaci obrađuju.

2. Ako se **obrada osobnih podataka temelji na točki (f) članka 6. stavka 1.**, osoba čiji se podaci obrađuju ima pravo **u bilo koje vrijeme i bez dodatnog obrazloženja općenito ili radi bilo kakve posebne svrhe** besplatno se protiviti obradi svojih osobnih podataka.

2a. Pravo iz stavka 2. izričito se nudi osobi čiji se podaci obrađuju na razumljiv način i u razumljivom obliku, sročeno jasnim i jednostavnim jezikom, osobito ako je posebno namijenjeno djetetu i jasno se razdvaja u odnosu na druge informacije.

2b. U kontekstu korištenja uslugama informacijskog društva i neovisno o Direktivi 2002/58/EZ, pravo na prigovor može se ostvarivati automatiziranim putem korištenjem tehničkim standardom koji osobi čiji se podaci obrađuju omogućava jasno izražavanje njezinih želja.

3. U slučaju usvajanja prigovora u skladu sa stavcima 1. i 2., nadzornik **se** više ne **koristi dotičnim osobnim podacima** ili **ih** na druge načine **obrađuje u svrhe utvrđene u prigovoru.**

Amandman 115

Prijedlog Uredbe Članak 20.

Tekst koji je predložila Komisija

Mjere koje se temelje na profiliranju

1. Svaka fizička osoba ima pravo *ne podlijegati mjeri koja ima pravni učinak u vezi s tom fizičkom osobom ili uvelike utječe na tu fizičku osobu, a koja se temelji isključivo na automatiziranoj obradi radi procjene određenih osobnih karakteristika te fizičke osobe ili radi analize ili predviđanja posebice u vezi s radnim učinkom te fizičke osobe, financijskom situacijom, lokacijom, zdravljem, osobnim sklonostima, pouzdanošću ili ponašanjem.*

2. U skladu s drugim odredbama ove Uredbe, osoba može podleći *onoj vrsti mjere kakva se nalazi u stavku 1.* samo ako:

(a) *se obrada provodi tijekom stupanja na snagu ili provođenja* ugovora, a zahtjev, koji je uložila osoba čiji se podaci obrađuju, za stupanje na snagu ili provođenje ugovora je ispunjen *ili ako* su poduzete odgovarajuće mjere kako bi se zaštitili legitimni interesi osobe čiji se podaci obrađuju, *primjerice pravo na izravno ljudsko posredovanje*; ili

(b) je obrada izričito odobrena pravom Unije ili zakonodavstvom države članice kojim se također određuju odgovarajuće mjere za očuvanje legitimnih interesa osobe čiji se podaci obrađuju; *ili*

(c) se obrada temelji na suglasnosti osobe čiji se podaci obrađuju, u skladu s uvjetima utvrđenima člankom 7. i odgovarajućim mjerama zaštite.

Izmjena

Profiliranje

1. *Ne dovodeći u pitanje odredbe iz članka 6., svaka fizička osoba ima pravo prigovora na profiliranje u skladu s člankom 19. Osobu čiji se podaci obrađuju obavještava se o pravu prigovora na profiliranje na veoma vidljiv način.*

2. U skladu s drugim odredbama ove Uredbe, osoba može podleći *profiliranju koje rezultira mjerama s pravnim učincima na osobu čiji se podaci obrađuju ili slično tome znatno utječu na interese, prava ili slobode predmetne osobe čiji se podaci obrađuju* samo ako:

(a) *je neophodna za stupanje* na snagu ili *provođenje* ugovora, a zahtjev, koji je uložila osoba čiji se podaci obrađuju, za stupanje na snagu ili provođenje ugovora je ispunjen *pod uvjetom da* su poduzete odgovarajuće mjere kako bi se zaštitili legitimni interesi osobe čiji se podaci obrađuju; ili

(b) je obrada izričito odobrena pravom Unije ili zakonodavstvom države članice kojim se također određuju odgovarajuće mjere za očuvanje legitimnih interesa osobe čiji se podaci obrađuju;

(c) se obrada temelji na suglasnosti osobe čiji se podaci obrađuju, u skladu s uvjetima utvrđenima člankom 7. i odgovarajućim mjerama zaštite.

3. Automatizirana obrada osobnih podataka radi procjene određenih osobnih karakteristika fizičke osobe ne smije se temeljiti samo na posebnim kategorijama osobnih podataka iz članka 9.

4. U slučajevima iz stavka 2., informacije koje treba ustupiti nadzornik prema članku 14. moraju sadržati podatke o postojanju obrade radi mjera iz stavka 1. i predviđenim učincima takve obrade na osobu čiji se podaci obrađuju.

5. Komisija je ovlaštena donositi delegirane akte u skladu s člankom 86. u svrhu dodatnog određivanja kriterija i preduvjeta za odgovarajuće mjere radi zaštite legitimnih interesa osobe čiji se podaci obrađuju navedenih u stavku 2.

3. Zabranjuje se profiliranje koje ima učinak diskriminacije pojedinaca na temelju rasnog ili etničkog porijekla, političkih mišljenja, vjere ili uvjerenja, članstva u sindikatu, spolne opredijeljenosti ili spolnog identiteta, ili koje rezultira mjerama koje imaju takav učinak. Nadzornik provodi učinkovitu zaštitu od moguće diskriminacije na temelju profiliranja. Profiliranje se ne temelji samo na posebnim kategorijama osobnih podataka iz članka 9.

5. Profiliranje koje rezultira mjerama s pravnim učinkom na osobu čiji se podaci obrađuju ili slično tomu uvelike utječu na interese, prava ili slobode predmetne osobe čiji se podaci obrađuju ne temelji se samo ili prvenstveno na automatiziranoj obradi i uključuje ljudsku procjenu, a također pojašnjenje odluke donesene nakon takve procjene. Odgovarajuće mjere radi zaštite legitimnih interesa osobe čiji se podaci obrađuju navedenih u stavku 2. uključuju pravo na podvrgavanje ljudskoj procjeni i pojašnjenje odluke donesene nakon takve procjene.

5a. Europskom odboru za zaštitu podataka povjerena je zadaća izdavanja smjernica, preporuka i najboljih praksi u skladu s člankom 66. stavkom 1. točkom (b) u svrhu dodatnog određivanja kriterija i uvjeta za oblikovanje profila na temelju stavka 2.

Amandman 116

Prijedlog Uredbe Članak 21.

Tekst koji je predložila Komisija

Ograničenja

1. Pravom Unije ili zakonodavstvom države članice mogu se donijeti pravni propisi za ograničavanje područja primjene obveza i prava iz **točaka (a) do (e) članka 5. i članka 11. do 20.** te članka 32. kada **takvo ograničavanje** predstavlja **potrebne i proporcionalne mjere** u demokratskom društvu za zaštitu:

- (a) javne sigurnosti;
 - (b) sprečavanja, istrage, otkrivanja i progona kaznenih djela;
 - (c) **drugih javnih interesa Unije ili države članice, posebice važnog gospodarskog ili financijskog interesa Unije ili države članice, uključujući novčana, proračunska i porezna pitanja i zaštitu tržišne stabilnosti i cjelovitosti;**
 - (d) sprečavanja, istrage, otkrivanja i progona zbog kršenja etičkih načela u zakonski reguliranim profesijama;
 - (e) nadzora, inspekcije ili regulatorne funkcije povezane, **čak povremeno, s izvršavanjem javnih ovlasti** u slučajevima iz točaka (a), (b), (c) i (d);
 - (f) zaštite osobe čiji se podaci obrađuju ili prava i sloboda drugih.
2. Bilo koja zakonodavna mjera iz stavka 1., **posebice, treba sadržavati** posebne odredbe barem u pogledu **ciljeva koje treba dostići obradom i određivanja nadzornika.**

Izmjena

Ograničenja

1. Pravom Unije ili zakonodavstvom države članice mogu se donijeti pravni propisi za ograničavanje područja primjene obveza i prava iz članka 11. do **19.** te članka 32. kada **se takvim ograničavanjem ispunjava jasno definiran cilj javnog interesa, poštuje bit prava na zaštitu osobnih podataka, kada je on proporcionalan legitimnom cilju koji se želi ostvariti i kada se njime poštuju temeljna prava i interesi osobe čiji se podaci obrađuju te kad** predstavlja **potrebnu i proporcionalnu mjeru** u demokratskom društvu za zaštitu:

- (a) javne sigurnosti;
 - (b) sprečavanja, istrage, otkrivanja i progona kaznenih djela;
 - (c) **poreznih** pitanja;
 - (d) sprečavanja, istrage, otkrivanja i progona zbog kršenja etičkih načela u zakonski reguliranim profesijama;
 - (e) nadzora, inspekcije ili regulatorne funkcije povezane u **okviru izvršavanja nadležnog javnog tijela** u slučajevima iz točaka (a), (b), (c) i (d);
 - (f) zaštite osobe čiji se podaci obrađuju ili prava i sloboda drugih.
2. Bilo koja zakonodavna mjera, **posebice,** iz stavka 1. **mora biti neophodna i proporcionalna u demokratskom društvu te sadržava** posebne odredbe barem u

pogledu:

(a) ciljeva koje treba nastojati ostvariti obradom;

(b) odlučnosti nadzornika;

(c) posebnih svrha i načina obrade;

(d) mjera zaštita za sprečavanje zlouporabe ili nezakonitog pristupa ili prijenosa;

(e) prava osoba čiji se podaci obrađuju na informiranje o ograničavanju.

2a. Zakonodavnim mjerama iz stavka 1. privatnim se nadzornicima podataka ne odobrava niti ih se obvezuje na pohranjivanje podataka osim onih koji su nužno potrebni za ispunjenje prvotne svrhe.

(The last words of paragraph 2 in the Commission text have become point (a) and (b) in Parliament's amendment).

Amandman 117

Prijedlog Uredbe Članak 22.

Tekst koji je predložila Komisija

Izmjena

Odgovornost nadzornika

1. Nadzornik **treba usvojiti** politike i **provesti** odgovarajuće mjere **kako bi se osiguralo i dokazalo** da se obrada osobnih podataka provodi u skladu s Uredbom.

Odgovornost **i pouzdanost** nadzornika

1. Nadzornik **usvaja odgovarajuće** politike i **provodi** odgovarajuće **i dokazive tehničke i organizacijske** mjere **radi osiguravanja i sposobnosti transparentnog dokazivanja činjenice** da se obrada osobnih podataka provodi u skladu s **ovom** Uredbom, **uzimajući u obzir stanje, prirodu obrade osobnih podataka, kontekst, opseg i svrhe obrade, rizike za prava i slobode osoba čiji se podaci obrađuju i vrstu organizacije u trenutku utvrđivanja sredstava obrade i u trenutku same obrade.**

1a. Uzimajući u obzir stanje i trošak provedbe, nadzornik poduzima sve opravdane korake radi provedbe politika i postupaka usklađivanja kojima se trajno

poštuje samostalan izbor osoba čiji se podaci obrađuju. Te politike usklađivanja revidira se barem svake dvije godine i prema potrebi ažurira.

2. Mjere iz stavka 1. posebno uključuju:

(a) vođenje dokumentacije u skladu s člankom 28.;

(b) provođenje zahtjeva o sigurnosti podataka određenih člankom 30.;

(c) provođenje procjene učinka zaštite podataka u skladu s člankom 33.;

(d) poštovanje zahtjeva za prethodnim odobrenjem ili prethodnim savjetovanjem nadzornog tijela u skladu s člankom 34. stavcima 1. i 2.;

(e) imenovanje službenika za zaštitu podataka u skladu s člankom 35. stavkom 1.;

3. Nadzornik treba provesti mehanizme za osiguranje provjere učinkovitosti mjera iz stavaka 1. i 2. Ako je razmjerno, tu provjeru provode nezavisni interni ili vanjski revizori.

3. Nadzornik je sposoban dokazati prikladnost i učinkovitosti mjera iz stavaka 1. i 2. Sva redovita opća izvješća o aktivnostima nadzornika, kao što su obavezna izvješća trgovačkih društava uvrštenih na burzu, sadrže sažet opis politika i mjera iz stavka 1.

3a. Nadzornik ima pravo prenositi osobne podatke u skupini poduzeća unutar Unije kojima nadzornik pripada ako je takva obrada nužna radi legitimnih unutarnjih administrativnih svrha povezanih područja poslovanja u toj skupini poduzeća i ako je unutarnjim odredbama za zaštitu podataka ili jednakovrijednim pravilima ponašanja iz članka 38. zajamčena odgovarajuća razina zaštite podataka te interesi osoba čiji se podaci obrađuju.

4. Komisija je ovlaštena donositi delegirane akte u skladu s člankom 86. u svrhu dodatnog određivanja kriterija i preduvjeta za odgovarajuće mjere iz stavka 1. osim onih već navedenih u stavku 2., uvjeta za provjeru i reviziju mehanizama iz stavka 3. i kriterija za

proporcionalnost iz stavka 3., te razmatranja posebnih mjera za mirko, mala i srednja poduzeća.

Amandman 118

Prijedlog Uredbe Članak 23.

Tekst koji je predložila Komisija

Tehnička i integrirana zaštita podataka

1. Uzimajući **u** obzir stanje i **troškove provedbe**, nadzornik **treba**, u trenutku određivanja sredstava obrade i u trenutku same obrade, **provesti** odgovarajuće tehničke i organizacijske mjere i postupke tako da obrada bude u skladu s odredbama ove Uredbe te da se osigura zaštita prava osoba čiji se podaci obrađuju.

Izmjena

Tehnička i integrirana zaštita podataka

1. Uzimajući **o** obzir stanje, **trenutačno tehničko znanje, najbolje prakse u svijetu i rizike koje predstavlja obrada podataka**, nadzornik **i obrađivač, ako postoji**, u trenutku određivanja **svrha i** sredstava obrade i u trenutku same obrade, **provode** odgovarajuće **i proporcionalne** tehničke i organizacijske mjere i postupke tako da obrada bude u skladu s odredbama ove Uredbe te da se osigura zaštita prava osoba čiji se podaci obrađuju, **osobito u vezi s načelima iz članka 5. Pri tehničkoj zaštiti podataka posebnu se pozornost posvećuje upravljanju cjelokupnog životnog ciklusa osobnih podataka, od prikupljanja preko obrade do brisanja, pri čemu se sustavno usredotočuje na sveobuhvatne postupovne mjere zaštite u pogledu točnosti, pouzdanosti, cjelovitosti, fizičke zaštite i brisanja osobnih podataka. Ako je nadzornik proveo procjenu učinka zaštite podataka u skladu s člankom 33., rezultate se uzima u obzir pri razvoju tih mjera i postupaka.**

1a. Radi poticanja njezine proširene provedbe u različitim gospodarskim sektorima, tehnička zaštita podataka predstavlja preduvjet natječaja javne nabave u skladu s Direktivom 2004/18/EZ Europskog parlamenta i Vijeća¹ te u skladu s Direktivom 2004/17/EZ Europskog parlamenta i Vijeća² (komunalna direktiva).

2. Nadzornik **treba provesti mehanizme kojima će se osigurati** da se **automatizirano** obrađuju samo oni osobni podaci koji su nužni za određenu svrhu obrade i da se prije svega ne prikupljaju ili **zadržavaju** više od minimuma nužnog za **te svrhe**, to se odnosi i na količinu podataka i na razdoblje njihove pohrane. Tim se mehanizmima posebno treba osigurati da osobni podaci ne budu automatski dostupni neodređenom broju osoba.

3. **Komisija je ovlaštena donositi delegirane akte u skladu s člankom 86. u svrhu dodatnog određivanja kriterija i preduvjeta za odgovarajuće mjere iz stavaka 1. i 2., posebice za zaštitu podataka tehničkim preduvjetima primjenjivim u više sektora, na više proizvoda i usluga.**

4. **Komisija može odrediti tehničke standarde za preduvjete iz stavaka 1. i 2. Ti provedbeni akti usvajaju se u skladu s postupkom provjere navedenim u članku 87. stavku 2.**

2. Nadzornik **osigurava** da se **automatski** obrađuju samo oni osobni podaci koji su nužni za određenu svrhu obrade i da se prije svega ne prikupljaju, **zadržavaju** ili **šire** više od minimuma nužnog za **svaku od tih svrha**, to se odnosi i na količinu podataka i na razdoblje njihove pohrane. Tim se mehanizmima posebno treba osigurati da osobni podaci ne budu automatski dostupni neodređenom broju osoba **i da su osobe čiji se podaci obrađuju u mogućnosti nadzirati širenje svojih osobnih podataka.**

Direktiva 2004/18/EZ Europskog parlamenta i Vijeća od 31. ožujka 2004. o usklađivanju postupaka za sklapanje ugovora o javnim radovima, ugovora o javnoj nabavi i ugovora o javnim uslugama (SL L 134, 30.4.2004., str. 114.).

Direktiva 2004/17/EZ Europskog parlamenta i Vijeća od 31. ožujka 2004. o usklađivanju postupaka nabave subjekata koji posluju u vodnom, energetsom, prometnom sektoru i sektoru poštanskih usluga (SL L 134, 30.4.2004., str.1.).

Amandman 119

Prijedlog Uredbe Članak 24.

Tekst koji je predložila Komisija

Zajednički nadzornici

Ako **nadzornik** određuje **svrhu, uvjete** i sredstva obrade osobnih podataka zajedno s ostalima, zajednički nadzornici **trebaju** međusobnim dogovorom **odrediti** pojedinačne odgovornosti za usklađenost s obvezama iz ove Uredbe, **posebice** u vezi s postupcima i mehanizmima za **korištenje** prava osobe čiji se podaci obrađuju

Izmjena

Zajednički nadzornici

Ako **nekoliko nadzornika zajednički** određuje **svrhe** i sredstva obrade osobnih podataka zajedno s ostalima, zajednički nadzornici međusobnim dogovorom **određuju** pojedinačne odgovornosti za usklađenost s obvezama iz ove Uredbe, **posebno** u vezi s postupcima i mehanizmima za **ostvarivanje** prava osobe čiji se podaci obrađuju **Mehanizmom se propisno ogledaju pojedinačne stvarne uloge zajedničkih nadzornika i njihovi odnosi prema osobama čiji se podaci obrađuju te se bit mehanizma daje na raspolaganje osobi čiji se podaci obrađuju. U slučaju nejasnoća u pogledu odgovornosti nadzornici zajednički i pojedinačno snose odgovornost.**

Amandman 120

Prijedlog Uredbe Članak 25.

Tekst koji je predložila Komisija

Predstavnici nadzornika koji nemaju poslovni nastan u Uniji

1. U situaciji navedenoj u članku 3. stavku 2. nadzornik **treba odrediti** predstavnika u Uniji.
2. Ova se obveza ne primjenjuje:
 - (a) na nadzornika s poslovnim nastanom u trećoj zemlji ako je Komisija odlučila da treća zemlja pruža odgovarajuću razinu zaštite u skladu s člankom 41.; ili
 - (b) na **tvrtku koja zapošljava** manje od **250**

Izmjena

Predstavnici nadzornika koji nemaju poslovni nastan u Uniji

1. U situaciji navedenoj u članku 3. stavku 2. nadzornik **određuje** predstavnika u Uniji.
2. Ova se obveza ne primjenjuje:
 - (a) na nadzornika s poslovnim nastanom u trećoj zemlji ako je Komisija odlučila da treća zemlja pruža odgovarajuću razinu zaštite u skladu s člankom 41.; ili
 - (b) na **nadzornika koji obrađuje osobne**

osoba; ili

podatke koji se odnose na manje od 5000 osoba čiji se podaci obrađuju tijekom svakog uzastopnog razdoblja od 12 mjeseci i koji ne obrađuje posebne kategorije osobnih podataka iz članka 9. stavka 1., podatke o lokaciji ili o djeci ili zaposlenicima u opsežnim sustavima podataka; ili

(c) na javnu ustanovu ili tijelo; ili

(c) na javnu ustanovu ili tijelo; ili

(d) na nadzornika koji samo povremeno nudi robu ili usluge osobama čiji se podaci obrađuju, **a borave u Uniji;**

(d) na nadzornika koji samo povremeno nudi robu ili usluge osobama čiji se podaci obrađuju *osim ako se obrada osobnih podataka odnosi na posebne kategorije osobnih podataka iz članka 9. stavka 1., na podatke o lokaciji ili o djeci ili zaposlenicima u opsežnim sustavima podataka.*

3. Predstavnik **treba imati** sjedište u jednoj od država članica u **kojoj borave osobe čiji se osobni podaci obrađuju zbog toga da bi im se nudile** robe ili usluge, **ili** čiji se **ponašanje** nadzire.

3. Predstavnik **ima** sjedište u jednoj od država članica u **kojima se nude** robe ili usluge **osobama** čiji se **podaci obrađuju ili u kojima ih se** nadzire.

4. Nadzornik treba imenovati predstavnika ne dovodeći u pitanje pravne postupke koji bi se mogli pokrenuti protiv samog nadzornika.

4. Nadzornik treba imenovati predstavnika ne dovodeći u pitanje pravne postupke koji bi se mogli pokrenuti protiv samog nadzornika.

Amandman 121

Prijedlog Uredbe Članak 26.

Tekst koji je predložila Komisija

Izmjena

Obrađivač

Obrađivač

1. Kada u ime nadzornika treba provesti **postupak obrade**, nadzornik **treba izabrati** obrađivača koji može u dovoljnoj mjeri jamčiti provedbu odgovarajućih tehničkih i organizacijskih mjera i postupaka na način da obrada bude u skladu s odredbama ove Uredbe te **osigurati** zaštitu prava osobe čiji se podaci obrađuju, posebice u vezi s mjerama tehničke sigurnosti i organizacijskim mjerama za postupak

1. Kada u ime nadzornika treba provesti **obradu**, nadzornik **izabire** obrađivača koji može u dovoljnoj mjeri jamčiti provedbu odgovarajućih tehničkih i organizacijskih mjera i postupaka na način da obrada bude u skladu s odredbama ove Uredbe te **osigurava** zaštitu prava osobe čiji se podaci obrađuju, posebice u vezi s mjerama tehničke sigurnosti i organizacijskim mjerama za postupak

obrade te **treba osigurati** usklađenost s tim mjerama.

2. Obradivačevo provođenje obrade **treba se temeljiti** na ugovoru ili drugom pravnom aktu kojim se obradivač obvezuje prema nadzorniku te **se posebice utvrđuje** da obradivač **treba**:

- (a) **djelovati** samo prema uputama nadzornika, **posebice ako je zabranjen prijenos osobnih podataka**;
- (b) **zaposliti** samo osoblje koje se obvezalo na povjerljivost ili podliježe zakonskim odredbama o povjerljivosti;
- (c) **poduzeti** sve potrebne mjere u skladu s člankom 30.;
- (d) **zaposliti** drugog obradivača samo uz **prethodnu dozvolu** nadzornika;
- (e) **ako** je moguće, s obzirom na prirodu obrade, u dogovoru s nadzornikom **odrediti nužne** tehničke i organizacijske preduvjete za ispunjenje nadzornikove obveze u skladu sa zahtjevima za korištenjem prava osobe čiji se podaci obrađuju u skladu s poglavljem III.;
- (f) **pomoći** nadzorniku kako bi se osigurala usklađenost s obvezama u skladu s člancima 30. do 34.;
- (g) **uručiti** nadzorniku **rezultate** na kraju obrade **i** ne obrađivati osobne podatke na drugi način;
- (h) nadzorniku **i nadzornom tijelu ustupiti** sve informacije potrebne za **nadzor** usklađenosti obveza u skladu s ovim

obrade te **osigurava** usklađenost s tim mjerama.

2. Obradivačevo provođenje obrade **temelji se** na ugovoru ili drugom pravnom aktu kojim se obradivač obvezuje prema nadzorniku. **Nadzornik i obradivač imaju slobodu odrediti svoje pojedinačne uloge i zadaće u pogledu zahtjeva iz ove Uredbe te osiguravaju** da obradivač:

- (a) **obrađuje osobne podatke** samo prema uputama nadzornika **osim ako nešto drukčije nalaže pravo Unije ili države članice**;
- (b) **zapošljava** samo osoblje koje se obvezalo na povjerljivost ili podliježe zakonskim odredbama o povjerljivosti;
- (c) **poduzima** sve potrebne mjere u skladu s člankom 30.;
- (d) **utvrđuje uvjete za zapošljavanje** drugog obradivača samo uz **prethodno dopuštenje** nadzornika **osim ako nije drukčije utvrđeno**;
- (e) **koliko** je **to** moguće, s obzirom na prirodu obrade, u dogovoru s nadzornikom **određuje odgovarajuće i relevantne** tehničke i organizacijske preduvjete za ispunjenje nadzornikove obveze u skladu sa zahtjevima za korištenjem prava osobe čiji se podaci obrađuju u skladu s poglavljem III.;
- (f) **pomaže** nadzorniku kako bi se osigurala usklađenost s obvezama u skladu s člancima 30. do 34. **uzimajući u obzir prirodu obrade i informacije koje su dostupne obradivaču**;
- (g) **vрати sve rezultate** nadzorniku na kraju obrade, ne obrađivati osobne podatke na drugi način **i izbriše postojeće kopije osim ako pravo Unije ili države članice zahtijeva pohranjivanje podataka**;
- (h) nadzorniku **ustupi** sve informacije potrebne za **dokazivanje** usklađenosti obveza u skladu s ovim člankom **i**

člankom.

3. Nadzornik i obrađivač **trebaju** u pisanom obliku **zabilježiti** nadzornikove upute i obrađivačeve obveze iz stavka 2.

4. Ako obrađivač obrađuje osobne podatke na način koji ne odgovara uputama nadzornika, obrađivač se smatra nadzornikom pri takvoj obradi te podliježe **uvjetima** o zajedničkim nadzornicima utvrđenima člankom 24.

5. Komisija je ovlaštena donositi delegirane akte u skladu s člankom 86. u svrhu dodatnog određivanja kriterija i uvjeta za odgovornosti, dužnosti i zadaće u vezi s obrađivačem u skladu sa stavkom 1., te uvjetima kojima se olakšava obrada osobnih podataka u grupi poduzetnika, posebice radi nadzora i izvještavanja.

Amandman 122

Prijedlog Uredbe Članak 28.

Tekst koji je predložila Komisija

Dokumentacija

1. Svaki nadzornik i obrađivač **te, ako postoji, predstavnik nadzornika treba voditi** dokumentaciju **o svim postupcima obrade pod svojom nadležnošću.**

2. **Dokumentacija mora sadržavati barem sljedeće informacije:**

(a) ime i kontaktne podatke nadzornika, ili bilo kojeg zajedničkog nadzornika ili obrađivača, i zastupnika, ako postoji;

(b) ime i kontaktne podatke službenika za zaštitu podataka, ako postoji;

inspekcijama na licu mjesta;

3. Nadzornik i obrađivač u pisanom obliku **bilježe** nadzornikove upute i obrađivačeve obveze iz stavka 2.

3a. Dovoljna jamstva iz stavka 1. mogu se dokazati pridržavajući se pravila postupanja ili mehanizama certificiranja u skladu s člancima 38. ili 39. ove Uredbe.

4. Ako obrađivač obrađuje osobne podatke na način koji ne odgovara uputama nadzornika **ili postane strana koja utvrđuje svrhe i načine obrade podataka,** obrađivač se smatra nadzornikom pri takvoj obradi te podliježe **pravilima** o zajedničkim nadzornicima utvrđenima člankom 24.

Izmjena

Dokumentacija

1. Svaki nadzornik i obrađivač **vodi redovito ažuriranu** dokumentaciju **potrebnu za ispunjavanje uvjeta utvrđenih ovom Uredbom.**

2. **Usto, svaki nadzornik i obrađivač vodi dokumentaciju sljedećih informacija:**

(a) ime i kontaktne podatke nadzornika, ili bilo kojeg zajedničkog nadzornika ili obrađivača, i zastupnika, ako postoji;

(b) ime i kontaktne podatke službenika za zaštitu podataka, ako postoji;

(c) svrhu obrade, uključujući legitimne interese nadzornika ako se obrada temelji na točki (f) članka 6. stavka 1.;

(d) opis kategorija osoba čiji se podaci obrađuju te kategorija osobnih podataka koji se na njih odnose;

(e) primatelje ili kategorije primatelja osobnih podataka, uključujući nadzornike kojima se otkrivaju osobni podaci radi legitimnog interesa na čijem ostvarenju rade;

(f) ako je potrebno, prijenos podataka u treću zemlju ili međunarodnu organizaciju, uključujući identificiranje te treće zemlje ili međunarodne organizacije te, u slučaju prijenosa iz točke (h) članka 44. stavka 1., dokumentaciju o odgovarajućoj zaštiti;

(g) opću naznaku vremenskog roka za brisanje različitih kategorija podataka;

(h) opis mehanizama iz članka 22. stavka 3.

3. Nadzornik i obrađivač te, ako postoji, predstavnik nadzornika trebaju na zahtjev ustupiti dokumentaciju nadzornom tijelu.

4. Obveze iz stavaka 1. i 2. ne odnose se na sljedeće nadzornike i obrađivače:

(a) na fizičku osobu koja obrađuje osobne podatke bez komercijalnog interesa; ili

(b) na poduzeće ili organizaciju koja zapošljava manje od 250 osoba, a koja obrađuje podatke samo kao sporednu aktivnost uz svoje glavne aktivnosti.

5. Komisija je ovlaštena donositi delegirane akte u skladu s člankom 86. u svrhu dodatnog određivanja kriterija i preduvjeta za dokumentaciju iz stavka 1. kako bi se uzele u obzir posebno odgovornosti nadzornika i obrađivača te, ako postoji, predstavnika nadzornika.

6. Komisija može odrediti standardne obrasce za dokumentaciju navedenu u stavku 1. Ti provedbeni akti usvajaju se u

(e) ime i kontaktne podatke nadzornika kojemu se osobni podaci otkrivaju, ako postoje;

Briše se.

skladu s postupkom provjere navedenim u članku 87. stavku 2.

Amandman 123

Prijedlog Uredbe

Članak 29. – stavak 1.

Tekst koji je predložila Komisija

1. Nadzornik i obrađivač i, **ako postoji**, predstavnik nadzornika, **trebaju**, ako se to zatraži, **suradivati** s nadzornim tijelom pri obavljaju njegovih dužnosti, posebice pružajući informacije iz točke (a) članka 53. stavka 2. te omogućujući pristup kao što je navedeno u točki (b) tog stavka.

Izmjena

1. Nadzornik i, **ako postoje**, obrađivač i predstavnik nadzornika, **suraduju**, ako se to zatraži, s nadzornim tijelom pri obavljaju njegovih dužnosti, posebice pružajući informacije iz točke (a) članka 53. stavka 2. te omogućujući pristup kao što je navedeno u točki (b) tog stavka.

Amandman 124

Prijedlog Uredbe

Članak 30.

Tekst koji je predložila Komisija

Sigurnost obrade podataka

1. Nadzornik i obrađivač **moraju provoditi** odgovarajuće tehničke i organizacijske mjere kako bi osigurali razinu sigurnosti koja odgovara rizicima obrade **i prirodi osobnih** podataka **koje je potrebno zaštititi**, imajući na umu vrstu **podataka** i troškove njihovog provođenja.

Izmjena

Sigurnost obrade podataka

1. Nadzornik i obrađivač **provode** odgovarajuće tehničke i organizacijske mjere kako bi osigurali razinu sigurnosti koja odgovara rizicima obrade **uzimajući u obzir rezultate procjene učinka zaštite** podataka **u skladu s člankom 33.**, imajući na umu vrstu i troškove njihovog provođenja.

1a. Uzimajući u obzir vrstu i troškove provođenja, takva sigurnosna politika uključuje:

(a) sposobnost osiguravanja potvrde integriteta osobnih podataka;

(b) sposobnost osiguravanja trajne povjerljivosti, cjelovitosti, dostupnosti i otpornosti sustava i usluga obrade osobnih podataka;

(c) sposobnosti ponovne uspostave dostupnosti i pristupa podacima na pravodoban način u slučaju fizičkog ili tehničkog incidenta koji utječe na dostupnost, cjelovitost i povjerljivost informacijskih sustava i usluga;

(d) u slučaju osjetljive obrade osobnih podataka u skladu s člancima 8. i 9. dodatne mjere sigurnosti radi osiguravanja svjesnosti situacije u pogledu rizika i sposobnosti poduzimanja preventivnih, korektivnih i ublažavajućih mjera u gotovo stvarnom vremenu protiv slabih točaka ili zamijećenih incidenata koji bi mogli predstavljati rizik za podatke;

(e) proces za redovno testiranje, ocjenjivanje i procjenjivanje učinkovitosti sigurnosnih politika, postupaka i planova uspostavljenih radi osiguranja trajne učinkovitosti.

2. Nadzornik i obrađivač moraju, nakon procjene rizika, poduzeti mjere iz stavka 1. kako bi zaštitili osobne podatke od slučajnog ili nezakonitog uništavanja ili slučajnoga gubitka te kako bi spriječili nezakonite oblike obrade, posebice nedozvoljeno otkrivanje, širenje ili pristup, ili izmjenu osobnih podataka.

2. Mjere iz stavka 1. **barem:**

(a) osiguravaju da osobnim podacima može pristupiti samo ovlašteno osoblje u zakonski odobrene svrhe;

(b) štite osobne podatke koji su pohranjeni ili preneseni kao zaštita od slučajnog ili nezakonitog uništavanja, slučajnog gubitka ili izmjene i neovlaštenog ili nezakonitog pohranjivanja, obrade, pristupa ili otkrivanja; i

(c) osiguravaju provedbu sigurnosne politike u vezi s obradom osobnih podataka.

3. Komisija je ovlaštena donositi delegirane akte u skladu s člankom 86. u svrhu dodatnog određivanja kriterija i uvjeta za tehničke i organizacijske mjere iz

3. Europskom odboru za zaštitu podataka dodjeljuje se zadatak izdavanja smjernica, preporuka i najboljih praksi u skladu s točkom (b) članka 66. stavka 1. zatehničke

stavaka 1. i 2., uključujući definiranje pojma tehničkih dostignuća, za pojedinačne sektore i u pojedinačnim situacijama obrade podataka, vodeći posebno računa o tehnološkom razvoju i tehničkim rješenjima zaštite privatnosti te integriranoj zaštiti podataka, *osim ako se primjenjuje stavak 4.*

4. Ako je potrebno, Komisija može donijeti provedbene akte radi određivanja preduvjeta utvrđenih stavcima 1. i 2. za različite situacije, posebno radi:

(a) sprečavanja nedopuštenog pristupa osobnim podacima;

(b) sprečavanja nedopuštenog otkrivanja, čitanja, kopiranja, mijenjanja, brisanja ili uklanjanja osobnih podataka;

(c) osiguranja provjere zakonitosti postupaka obrade.

Ti provedbeni akti usvajaju se u skladu s postupkom provjere navedenim u članku 87. stavku 2.

(Paragraph 2 in the Commission text has partly become point (b) in Parliament's amendment).

Amandman 125

Prijedlog Uredbe Članak 31.

Tekst koji je predložila Komisija

Obavješćavanje nadzornog tijela o povredi osobnih podataka

1. U slučaju povrede osobnih podataka, nadzornik **treba** bez odgode **i, ako je moguće, ne kasnije od 24 sata nakon što je saznao za povredu osobnih podataka**, o tome **obavijestiti** nadzorno tijelo.
Obavijesti upućenoj nadzornom tijelu treba biti priloženo obrazloženo opravdanje u slučaju da se ona ne pošalje unutar 24 sata.

Izmjena

Obavješćavanje nadzornog tijela o povredi osobnih podataka

1. U slučaju povrede osobnih podataka, nadzornik bez odgode o tome **obavješćava** nadzorno tijelo.

2. U skladu s točkom (f) članka 26. stavka 2. obrađivač *će upozoriti i obavijestiti* nadzornika *odmah* nakon *povrede* osobnih podataka.

3. Obaviješću iz stavka 1. mora se barem:

(a) opisati *prirodu* povrede osobnih podataka uključujući kategorije i broj dotičnih osoba čiji se podaci obrađuju te kategorije i broj dotičnih podataka;

(b) iznijeti identitet i kontaktne podatke službenika za zaštitu podataka ili druge kontaktne točke na kojoj se mogu dobiti informacije;

(c) predložiti mjere kojima bi se ublažili mogući štetni učinci povrede osobnih podataka;

(d) opisati posljedice povrede osobnih podataka;

(e) opisati predložene mjere ili mjere koje je poduzeo nadzornik kao odgovor na povredu osobnih podataka.

4. Nadzornik *treba zabilježiti* svaku povredu osobnih podataka, uključujući činjenice povezane s povredom, učinke povrede i poduzete pravne lijekove.

Pomoću dokumentacije nadzornom se tijelu *treba omogućiti provjera usklađenosti* s ovim člankom.

Dokumentacija treba sadržavati samo informacije potrebne u ovu svrhu.

5. *Komisija je ovlaštena donositi delegirane akte* u skladu s *člankom 86. u svrhu dodatnog određivanja kriterija i preduvjeta* za utvrđivanje povrede podataka iz stavaka 1. i 2. te za posebne okolnosti u kojima nadzornik i obrađivač moraju izvijestiti o povredi osobnih podataka.

2. Obrađivač *bez odgode upozorava i obavještava* nadzornika nakon *što sazna za povredu* osobnih podataka.

3. Obaviješću iz stavka 1. mora se barem:

(a) opisati *priroda* povrede osobnih podataka uključujući kategorije i broj dotičnih osoba čiji se podaci obrađuju te kategorije i broj dotičnih podataka;

(b) iznijeti identitet i kontaktne podatke službenika za zaštitu podataka ili druge kontaktne točke na kojoj se mogu dobiti informacije;

(c) predložiti mjere kojima bi se ublažili mogući štetni učinci povrede osobnih podataka;

(d) opisati posljedice povrede osobnih podataka;

(e) opisati predložene mjere ili mjere koje je poduzeo nadzornik kao odgovor na povredu osobnih podataka. *i ublažiti njezine posljedice.*

Informacije se prema potrebi mogu pružiti u fazama.

4. Nadzornik *bilježi* svaku povredu osobnih podataka, uključujući činjenice povezane s povredom, učinke povrede i poduzete pravne lijekove. *Ova dokumentacija mora biti dostatna da* nadzornom tijelu *omogućiti provjeru usklađenost* s ovim člankom *i člankom 30.* Dokumentacija treba sadržavati samo informacije potrebne u ovu svrhu.

4a. Nadzorno tijelo vodi javnu evidenciju vrsta zabilježenih povreda.

5. *Europskom odboru za zaštitu podataka povjeren je zadatak izdavanja smjernica, preporuka i najboljih praksi* u skladu s *točkom (b) članka 66. stavka 1.* za utvrđivanje povrede podataka *i nepotrebne odgode* iz stavaka 1. i 2. te za posebne okolnosti u kojima nadzornik i obrađivač moraju izvijestiti o povredi osobnih

podataka.

6. Komisija može odrediti standardni obrazac za takvo obavještanje nadzornog tijela, postupke koji se primjenjuju za obvezu obavještanja te oblik i načine dokumentacije iz stavka 4., uključujući vremenski rok za brisanje navedenih informacija. Ti provedbeni akti usvajaju se u skladu s postupkom provjere navedenim u članku 87. stavku 2.

Amandman 126

Prijedlog Uredbe Članak 32.

Tekst koji je predložila Komisija

Obavještanje osobe čiji se podaci obrađuju o povredi osobnih podataka

1. Ako je vjerojatno da će zbog povrede osobnih podataka doći do štetnog učinka po zaštitu osobnih podataka ili **privatnost** osobe čiji se podaci obrađuju, nadzornik bez daljnjeg odlaganja, nakon obavještanja iz članka 31., izvješćuje osobu čiji se podaci obrađuju o povredi osobnih podataka.

2. ***U obavijesti*** osobi čiji se podaci obrađuju iz stavka 1. ***treba se opisati*** priroda povrede osobnih podataka ***te ona treba sadržavati*** barem informacije i preporuke iz točaka (b) i (c) članka 31. stavka 3.

3. Obavještanje osobe čiji se podaci obrađuju o povredi osobnih podataka nije potrebno ako nadzornik dokaže da je proveo odgovarajuće mjere tehničke zaštite, kojima je nadzorno tijelo zadovoljno, te da su te mjere primijenjene na dotične podatke pogođene povredom osobnih podataka. Te tehničke mjere

Izmjena

Obavještanje osobe čiji se podaci obrađuju o povredi osobnih podataka

1. Ako je vjerojatno da će zbog povrede osobnih podataka doći do štetnog učinka po zaštitu osobnih podataka, **privatnost, prava ili legitimne interese** osobe čiji se podaci obrađuju, nadzornik bez daljnjeg odlaganja, nakon obavještanja iz članka 31., izvješćuje osobu čiji se podaci obrađuju o povredi osobnih podataka.

Obavijest osobi čiji se podaci obrađuju iz stavka 1. ***opsežna je i sročena jasnim i jednostavnim jezikom. Njome se opisuju*** priroda povrede osobnih podataka ***i ona sadrži*** barem informacije i preporuke iz točaka (b), (c) i (d) članka 31. stavka 3. ***te informacije o pravima osoba čiji se podaci obrađuju, uključujući sudsku zaštitu.***

3. Obavještanje osobe čiji se podaci obrađuju o povredi osobnih podataka nije potrebno ako nadzornik dokaže da je proveo odgovarajuće mjere tehničke zaštite, kojima je nadzorno tijelo zadovoljno, te da su te mjere primijenjene na dotične podatke pogođene povredom osobnih podataka. Te tehničke mjere

zaštite **trebaju** podatke **učiniti** nedostupnima svim osobama koje nisu ovlaštene pristupiti im.

4. Ne dovodeći u pitanje nadzornikovu obvezu da osobu čiji se podaci obrađuju obavijesti o povredi osobnih podataka, ako nadzornik još nije obavijestio o povredi osobnih podataka osobu na koju se ti podaci odnose, nadzorno tijelo, nakon razmatranja mogućeg štetnog učinka povrede, može zahtijevati da nadzornik to učini.

5. Komisija je ovlaštena donositi delegirane akte u skladu s člankom 86. u svrhu dodatnog određivanja kriterija i preduvjeta vezanih uz okolnosti u kojima će povreda osobnih podataka vjerojatno imati štetan učinak na osobne podatke iz stavka 1.

6. Komisija može odrediti način obavještavanja osobe čiji se podaci obrađuju iz stavka 1. te postupke koji se odnose na to obavještavanje. Ti provedbeni akti usvajaju se u skladu s postupkom provjere navedenim u članku 87. stavku 2.

Amandman 127

Prijedlog Uredbe Članak 32.a (novi)

Tekst koji je predložila Komisija

zaštite **čine** podatke nedostupnima svim osobama koje nisu ovlaštene pristupiti im.

4. Ne dovodeći u pitanje nadzornikovu obvezu da osobu čiji se podaci obrađuju obavijesti o povredi osobnih podataka, ako nadzornik još nije obavijestio o povredi osobnih podataka osobu na koju se ti podaci odnose, nadzorno tijelo, nakon razmatranja mogućeg štetnog učinka povrede, može zahtijevati da nadzornik to učini.

Europskom odboru za zaštitu podataka povjeren je zadatak izdavanja smjernica, preporuka i najboljih praksi u skladu s točkom (b) članka 66. stavka 1. vezanih uz okolnosti u kojima će povreda osobnih podataka vjerojatno imati štetan učinak na osobne podatke, **privatnost, prava ili legitimne interese osobe čiji se podaci obrađuju** iz stavka 1.

Izmjena

Članak 32.a

Poštovanje rizika

1. Nadzornik, i prema potrebi obrađivač, provodi analizu rizika potencijalnog učinka namjeravane obrade podataka na prava i slobode osoba čiji se podaci obrađuju, pri čemu se procjenjuje mogu li njegovi postupci obrade predstavljati

određene rizike.

2. Sljedeći postupci obrade mogu predstavljati određene rizike:

(a) obrada osobnih podataka koji se odnose na više od 5000 osoba čiji se podaci obrađuju tijekom bilo kojeg uzastopnog razdoblja od 12 mjeseci;

(b) obrada posebnih kategorija osobnih podataka iz članka 9. stavka 1., podataka o lokaciji ili o djeci ili zaposlenicima u opsežnim sustavima podataka;

(c) izrada profila na kojemu se temelje mjere koje imaju pravni učinak za tu osobu ili slično tome znatno utječu na tu osobu;

(d) obrada osobnih podataka za pružanje zdravstvenih usluga, epidemiološka istraživanja ili studije o mentalnim ili zaraznim bolestima, kada se podaci u velikoj mjeri obrađuju radi donošenja mjera ili odlučivanja u vezi s određenim osobama;

(e) automatizirano praćenje javno dostupnih područja u velikoj mjeri;

(f) drugi postupci obrade za koje je potrebno savjetovanje sa službenikom za zaštitu podataka ili nadzornim tijelom u skladu s točkom (b) članka 34. stavka 2.;

(g) kada bi povreda osobnih podataka mogla štetno utjecati na zaštitu osobnih podataka, privatnost, prava ili legitimne interese osobe čiji se podaci obrađuju;

(h) se osnovne djelatnosti nadzornika ili obrađivača sastoje od postupaka obrade koji zbog svoje prirode, opsega i/ili svrhe iziskuju redovito i sustavno praćenje osoba čiji se podaci obrađuju;

(i) kada se osobne podatke učini dostupnima određenom broju osoba za koje se ne može opravdano očekivati da ih se ograniči.

3. U skladu s rezultatom analize rizika:

(a) kada postoji bilo koji postupak obrade iz točke (a) ili (b) stavka 2., nadzornici koji nemaju poslovni nastan u Uniji određuju predstavnika u Uniji u skladu s uvjetima i izuzecima utvrđenima u članku 25.;

(b) kada postoji bilo koji postupak obrade iz točke (a), (b) ili (h) stavka 2., nadzornik određuje službenika za zaštitu podataka u skladu s uvjetima i izuzecima utvrđenima u članku 35.;

(c) kada postoje bilo koji postupci obrade iz točaka (a), (b), (c), (d), (e), (f), (g) ili (h) stavka 2., nadzornik ili obrađivač koji djeluje u ime nadzornika provodi procjenu učinka zaštite podataka u skladu s člankom 33.;

(d) kada postoje postupci obrade iz točke (f) stavka 2., nadzornik se savjetuje sa službenikom za zaštitu podataka, ili ako on nije postavljen, s nadzornim tijelom u skladu s člankom 34.

4. Analizu rizika revidira se najkasnije nakon jedne godine ili odmah ako se znatno promijeni priroda, opseg ili svrha postupaka obrade podataka. Ako se u skladu s točkom (c) stavka 3. nadzornika ne obvezuje provesti procjenu učinka zaštite podataka, analizu rizika se dokumentira.

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Prijedlog Uredbe Poglavlje 4. – odjeljak 3. – naslov

Tekst koji je predložila Komisija

**PROCJENA UČINKA ZAŠTITE
PODATAKA I PRETHODNO
OVLAŠTENJE**

Izmjena

**UPRAVLJANJE ZAŠTITOM
PODATAKA TIJEKOM NJIHOVOG
CIJELOG ŽIVOTNOG CIKLUSA**

Amandman 129

Prijedlog Uredbe Članak 33.

Tekst koji je predložila Komisija

Procjena učinka zaštite podataka

1. Ako *postupci* obrade *zbog svoje prirode, opsega ili svrhe predstavljaju određeni rizik* za prava i slobode osobe čiji se podaci obrađuju, *nadzornik ili obrađivač koji djeluje u ime nadzornika treba provesti procjenu učinka predviđenih postupaka obrade* na zaštitu osobnih podataka.

2. Sljedeći postupci obrade posebno predstavljaju rizik iz stavka 1.:

(a) sustavna i opsežna procjena osobnih aspekata u vezi s fizičkom osobom ili za analizu ili predviđanje posebno financijskog stanja, lokacije, zdravlja, osobnih sklonosti, pouzdanosti ili ponašanja fizičke osobe koji se temelje na automatiziranoj obradi i na kojima se temelje mjere koje imaju pravni učinak za tu osobu ili znatno utječu na tu osobu;

(b) podaci o spolnom životu, zdravlju, rasi i etničkom porijeklu ili za pružanje zdravstvenih usluga, epidemiološka istraživanja, studije o mentalnim ili zaraznim bolestima, kada se podaci u velikoj mjeri obrađuju radi donošenja mjera ili odlučivanja u vezi s određenim osobama;

(c) nadzor javno dostupnih područja, posebno ako se u velikoj mjeri koriste optičko-elektronički uređaji (videonadzor);

(d) osobni podaci u opsežnim zbirkama podataka koji se odnose na djecu, genetske podatke i biometričke podatke;

(e) drugi postupci obrade za koje je

Izmjena

Procjena učinka zaštite podataka

1. *Ako je to u skladu s točkom (c) članka 32.a stavka 3. potrebno, nadzornik ili obrađivač koji djeluje u ime nadzornika provodi procjenu učinka predviđenih postupaka obrade na prava i slobode osobe čiji se podaci obrađuju, osobito njihovo pravo na zaštitu osobnih podataka Jedna procjena dovoljna je kako bi se riješio niz sličnih postupaka obrade koji predstavljaju slične rizike.*

potrebno savjetovanje s nadležnim tijelom u skladu s točkom (b) članka 34. stavka 2.

3. Procjena treba sadržavati barem općenit opis predviđenih postupaka obrade, procjenu rizika za prava i slobode osoba čiji se podaci obrađuju, predviđene mjere za rizike, jamstva, sigurnosne mjere i mehanizme kako bi se osigurala zaštita osobnih podataka i usklađenost s ovom Uredbom, uzimajući u obzir prava i legitimne interese osoba čiji se podaci obrađuju i drugih uključenih osoba.

3. U procjeni se uzima u obzir upravljanje cijelim životnim ciklusom osobnih podataka od njihova prikupljanja preko obrade do njihovog brisanja. Ona sadržava barem:

(a) sustavan opis predviđenih postupaka obrade, svrha obrade i po potrebi legitimnih interesa nadzornika;

(b) procjenu neophodnosti i proporcionalnosti postupaka obrade povezanih s njihovim svrhama;

(c) procjenu rizika za prava i slobode osoba čiji se podaci obrađuju, uključujući rizik da se diskriminaciju ugradi u postupak ili da je se njime potiče;

(d) opis mjera predviđenih radi rješavanja rizika i smanjivanja opsega osobnih podataka koji se obrađuju;

(e) popis mjera zaštite, sigurnosnih mjera i mehanizama za osiguravanje zaštite osobnih podataka, npr. pseudonimizacijom, te za dokazivanje usklađenosti s tom Uredbom uzimajući u obzir prava i legitimne interese osoba čiji se podaci obrađuju i drugih predmetnih osoba;

(f) opću naznaku vremenskog roka za brisanje različitih kategorija podataka;

(h) objašnjenje toga koje su prakse integrirane strategije zaštite podataka i tehničke zaštite podataka u skladu s člankom 23. provedene;

(i) popis primatelja ili kategorije primatelja osobnih podataka;

(j) ako je potrebno, popis predviđenih prijenosa podataka u treću zemlju ili

međunarodnu organizaciju, uključujući identificiranje te treće zemlje ili međunarodne organizacije te, u slučaju prijenosa iz točke (h) članka 44. stavka 1., dokumentaciju o odgovarajućoj zaštiti;

(k) procjenu konteksta obrade podataka.

3a. Ako je nadzornik ili obrađivač odredio službenika za zaštitu podataka, on ili ona uključen/uključena je u postupak procjene učinka.

3b. Procjenu se dokumentira i njome se utvrđuje raspored redovnih periodičnih provjera sukladnosti sa zaštitom podataka u skladu s člankom 33.a stavkom 1. Procjena se bez odgode ažurira ako rezultati provjere sukladnosti sa zaštitom podataka iz članka 33.a pokazuju nedosljednosti. Nadzornik i obrađivač te, ako postoji, predstavnik nadzornika ustupaju na zahtjev dokumentaciju nadzornom tijelu.

4. Nadzornik od osoba čiji se podaci obrađuju ili njihovih predstavnika treba zatražiti mišljenje o planiranoj obradi, ne dovodeći u pitanje komercijalne ili javne interese ili sigurnost postupka obrade.

5. Ako je nadzornik javna ustanova ili tijelo i ako obrada proizlazi iz pravne obveze u skladu s točkom (c) članka 6. stavka 1. kojom su predviđena pravila i postupci vezani uz postupke obrade te koji su određeni zakonodavstvom Unije, ne primjenjuju se stavci 1. do 4. osim ako države članice ne smatraju to nužnim radi provođenja procjene prije postupaka obrade.

6. Komisija je ovlaštena donositi delegirane akte u skladu s člankom 86. u svrhu dodatnog određivanja kriterija i preduvjeta za postupke obrade koji vjerojatno predstavljaju određeni rizik iz stavka 1. ili 2. i preduvjete za procjenu iz stavka 3., uključujući uvjete za skalabilnost, provjeru i reviziju. U skladu s tim Komisija će razmatra posebne mjere

za mikro, mala i srednja poduzeća.

7. Komisija može odrediti standarde i postupke za provođenje, provjeru i reviziju procjena iz stavka 3. Ti provedbeni akti usvajaju se u skladu s postupkom provjere navedenim u članku 87. stavku 2.

(Paragraph 3 in the Commission text has partly become points (a), (c), (d) and (e) in Parliament's amendment).

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Prijedlog Uredbe Članak 33.a (novi)

Tekst koji je predložila Komisija

Izmjena

Članak 33.a

Provjera sukladnosti sa zaštitom podataka

- 1. Najkasnije dvije godine nakon provođenja procjene učinka u skladu s člankom 33. stavkom 1. nadzornik ili obrađivač koji djeluje u ime nadzornika provodi provjeru sukladnosti. Ovom provjerom sukladnosti pokazuje se da se obrada osobnih podataka provodi u skladu s procjenom učinka zaštite podataka.***
- 2. Provjera sukladnosti provodi se periodično najmanje jednom u svake dvije godine ili odmah kada nastupi promjena određenih rizika postupaka obrade.***
- 3. Kada rezultati provjere sukladnosti pokazuju nedosljednosti sukladnosti, provjera sukladnosti uključuje preporuke o tome kako ostvariti potpunu sukladnost.***
- 4. Provjeru sukladnosti i njezine preporuke bilježi se. Nadzornik i obrađivač te, ako postoji, predstavnik nadzornika ustupaju na zahtjev dokumentaciju nadzornom tijelu.***
- 5. Ako je nadzornik ili obrađivač odredio službenika za zaštitu podataka, on ili ona uključen/uključena je u postupak provjere***

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Prijedlog Uredbe

Članak 34.

Tekst koji je predložila Komisija

Izmjena

Prethodno **odobrenje i prethodno**
savjetovanje

Prethodno savjetovanje

1. Nadzornik ili, u određenom slučaju, obrađivač od nadzornog tijela prije obrade osobnih podataka treba dobiti odobrenje kako bi se osiguralo usklađivanje planirane obrade s ovom Uredbom te posebno kako bi se ublažili rizici za osobe čiji se podaci obrađuju ako nadzornik ili obrađivač usvoji stavke ugovora iz točke (d) članka 42. stavka 2. ili ne osigura odgovarajuće mjere zaštite u pravno obvezujućem instrumentu iz članka 42. stavka 5. za prijenos osobnih podataka u treću zemlju ili međunarodnu organizaciju.

2. Nadzornik ili obrađivač koji djeluje u ime nadzornika **trebaju se savjetovati** s nadzornim tijelom prije obrade osobnih podataka kako bi se osiguralo usklađivanje planirane obrade s ovom Uredbom te posebno kako bi se ublažili rizici za osobe čiji se podaci obrađuju ako:

(a) procjena učinka zaštite podataka u skladu s člankom 33. upućuje na to da postupci obrade zbog svoje prirode, opsega ili svrhe vjerojatno predstavljaju visoku razinu specifičnih rizika; ili

(b) nadzorno tijelo smatra da je nužno provesti prethodno savjetovanje o postupcima obrade koji bi vjerojatno mogli predstavljati specifičan rizik za prava i slobode osoba čiji se podaci obrađuju zbog

2. Nadzornik ili obrađivač koji djeluje u ime nadzornika **savjetuju se sa službenikom za zaštitu podataka, ili u slučaju da službenik za zaštitu podataka nije određen**, s nadzornim tijelom prije obrade osobnih podataka kako bi se osiguralo usklađivanje planirane obrade s ovom Uredbom te posebno kako bi se ublažili rizici za osobe čiji se podaci obrađuju ako:

(a) procjena učinka zaštite podataka u skladu s člankom 33. upućuje na to da postupci obrade zbog svoje prirode, opsega ili svrhe vjerojatno predstavljaju visoku razinu specifičnih rizika; ili

(b) **službenik za zaštitu podataka ili** nadzorno tijelo smatra da je nužno provesti prethodno savjetovanje o postupcima obrade koji bi vjerojatno mogli predstavljati specifičan rizik za prava i

svoje prirode, opsega i/ili svoje svrhe određene u skladu sa stavkom 4.

3. Ako nadzorno tijelo *smatra* da predviđena obrada nije u skladu s ovom Uredbom, posebno ako su rizici nedovoljno utvrđeni ili umanjeni, ono zabranjuje predviđenu obradu i predlaže odgovarajući pravni lijek za uklanjanje te neusklađenosti.

4. *Nadzorno tijelo* sastavlja i objavljuje popis postupaka obrade za koje je potrebno obaviti prethodno savjetovanje u skladu s *točkom (b) stavka 2. Nadzorno tijelo prosljeđuje te popise Europskom odboru za zaštitu podataka.*

5. Ako popis iz stavka 4. obuhvaća postupke obrade u vezi s ponudom roba ili usluga osobama čiji se podaci obrađuju u više država članica, ili u vezi s praćenjem njihovog ponašanja, ili mogu znatno utjecati na slobodu prijenosa osobnih podataka u Uniji, nadzorno tijelo treba primijeniti mehanizam za usklađivanje iz članka 57. prije usvajanja popisa.

6. Nadzornik ili obrađivač nadzornom tijelu dostavljaju procjenu učinka zaštite podataka *predviđenu* člankom 33. i, na zahtjev, pružaju sve informacije pomoću kojih će nadzorno tijelo moći procijeniti usklađenost obrade te posebno rizike za zaštitu osobnih podataka osoba čiji se podaci obrađuju i povezane mjere zaštite.

7. Države članice *trebaju se savjetovati* s nadzornim tijelom pri pripremi zakonodavne mjere koja će se usvojiti u nacionalnom parlamentu ili mjere koja se temelji na toj zakonodavnoj mjeri, a koja određuje prirodu obrade, kako bi se osigurala usklađenost predviđene obrade s ovom Uredbom te posebno kako bi se umanjili rizici za osobe čiji se podaci obrađuju.

8. Komisija je ovlaštena donositi

slobode osoba čiji se podaci obrađuju zbog svoje prirode, opsega i/ili svoje svrhe određene u skladu sa stavkom 4.

3. Ako *nadležno* nadzorno tijelo *u skladu sa svojim ovlastima utvrdi* da predviđena obrada nije u skladu s ovom Uredbom, posebno ako su rizici nedovoljno utvrđeni ili umanjeni, ono zabranjuje predviđenu obradu i predlaže odgovarajući pravni lijek za uklanjanje te neusklađenosti.

4. *Europski odbor za zaštitu podataka* sastavlja i objavljuje popis postupaka obrade za koje je potrebno obaviti prethodno savjetovanje u skladu *sa stavkom 2.*

6. Nadzornik ili obrađivač nadzornom tijelu *na zahtjev* dostavljaju procjenu učinka zaštite podataka *u skladu s* člankom 33. i, na zahtjev, pružaju sve informacije pomoću kojih će nadzorno tijelo moći procijeniti usklađenost obrade te posebno rizike za zaštitu osobnih podataka osoba čiji se podaci obrađuju i povezane mjere zaštite.

7. Države članice *savjetuju se* s nadzornim tijelom pri pripremi zakonodavne mjere koja će se usvojiti u nacionalnom parlamentu ili mjere koja se temelji na toj zakonodavnoj mjeri, a koja određuje prirodu obrade, kako bi se osigurala usklađenost predviđene obrade s ovom Uredbom te posebno kako bi se umanjili rizici za osobe čiji se podaci obrađuju.

delegirane akte u skladu s člankom 86. u svrhu dodatnog određivanja kriterija i preduvjeta za određivanje visoke razine pojedinog rizika iz točke (a) stavka 2.

9. Komisija može odrediti standardne obrasce i postupke za prethodno odobrenje i savjetovanje iz stavaka 1. i 2., te standardne obrasce i postupke za obavješćavanje nadzornih tijela u skladu sa stavkom 6. Ti provedbeni akti usvajaju se u skladu s postupkom provjere navedenim u članku 87. stavku 2.

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**Prijedlog Uredbe
Članak 35.**

Tekst koji je predložila Komisija

Izmjena

Imenovanje službenika za zaštitu podataka

Imenovanje službenika za zaštitu podataka

1. Nadzornik i obrađivač **trebaju imenovati** službenika za zaštitu podataka u svakom slučaju kada:

1. Nadzornik i obrađivač **imenuju** službenika za zaštitu podataka u svakom slučaju kada:

(a) obradu provodi javna ustanova ili tijelo; ili

(a) obradu provodi javna ustanova ili tijelo; ili

(b) obradu provodi **poduzeće s 250 zaposlenika ili** više; ili

(b) obradu provodi **pravna osoba i kada se ona odnosi na više od 5000 osoba čiji se podaci obrađuju u bilo kojem uzastopnom razdoblju od 12 mjeseci;** ili

(c) se osnovne djelatnosti nadzornika ili obrađivača sastoje od postupaka obrade koji zbog svoje prirode, opsega i/ili svrhe iziskuju redovit i sustavan nadzor osoba čiji se podaci obrađuju.

(c) se osnovne djelatnosti nadzornika ili obrađivača sastoje od postupaka obrade koji zbog svoje prirode, opsega i/ili svrhe iziskuju redovit i sustavan nadzor osoba čiji se podaci obrađuju; **ili**

(d) se osnovne djelatnosti nadzornika ili obrađivača sastoje od obrade posebnih kategorija podataka iz članka 9. stavka 1., podataka o lokaciji ili djeci ili o zaposlenicima u opsežnim sustavima podataka.

2. **U slučaju iz točke (b) stavka 1.** skupina poduzeća može imenovati **zajedničkog** službenika za zaštitu podataka.

2. Skupina poduzeća može imenovati **glavnog odgovornog** službenika za zaštitu **podataka pod uvjetom da je iz svake ustanove osigurana laka dostupnost**

3. Ako je nadzornik ili obrađivač javna ustanova ili tijelo, službenik za zaštitu podataka može biti imenovan za više njegovih sektora, uzimajući u obzir organizacijsku strukturu javne ustanove ili tijela.

4. U slučaju osim onih iz stavka 1., nadzornik ili obrađivač ili udruga ili druga tijela koja predstavljaju kategoriju nadzornika ili obrađivača mogu imenovati službenika za zaštitu podataka.

5. Nadzornik ili obrađivač **treba imenovati** službenika za zaštitu podataka na temelju stručnih kvalifikacija i, pogotovo, stručnog poznavanja prava i praksi na području zaštite podataka te sposobnosti izvršavanja zadaća iz članka 37. Potrebna razina stručnog znanja **utvrdit će** se u odnosu na obradu podataka koja se provodi te na zaštitu koju za obrađene osobne podatke zahtijeva nadzornik ili obrađivač.

6. Nadzornik ili obrađivač **treba osigurati** da su bilo koje druge profesionalne dužnosti službenika za zaštitu podataka u skladu sa zadaćama i dužnostima te osobe kao službenika za zaštitu podataka te da ne izazovu sukob interesa.

7. Nadzornik ili obrađivač imenuje službenika za zaštitu podataka za razdoblje od **barem** dvije godine. Službenik za zaštitu podataka može se ponovno imenovati u daljnjim mandatima. Tijekom **njegovog** mandata, službenika za zaštitu podataka može se otpustiti samo ako **službenik za zaštitu podataka** više ne ispunjava uvjete potrebne za obavljanje svoje dužnosti.

8. Službenika za zaštitu podataka može zaposliti nadzornik ili obrađivač ili, on ili ona može obavljati svoju dužnost na temelju ugovora o pružanju usluga.

9. Nadzornik ili obrađivač **trebaju dostaviti** ime i kontaktne podatke službenika za

službenika za zaštitu podataka.

3. Ako je nadzornik ili obrađivač javna ustanova ili tijelo, službenik za zaštitu podataka može biti imenovan za više njegovih sektora, uzimajući u obzir organizacijsku strukturu javne ustanove ili tijela.

4. U slučaju osim onih iz stavka 1., nadzornik ili obrađivač ili udruga ili druga tijela koja predstavljaju kategoriju nadzornika ili obrađivača mogu imenovati službenika za zaštitu podataka.

5. Nadzornik ili obrađivač **imenuje** službenika za zaštitu podataka na temelju stručnih kvalifikacija i, pogotovo, stručnog poznavanja prava i praksi na području zaštite podataka te sposobnosti izvršavanja zadaća iz članka 37. Potrebna razina stručnog znanja **utvrđuje** se u odnosu na obradu podataka koja se provodi te na zaštitu koju za obrađene osobne podatke zahtijeva nadzornik ili obrađivač.

6. Nadzornik ili obrađivač **osigurava** da su bilo koje druge profesionalne dužnosti službenika za zaštitu podataka u skladu sa zadaćama i dužnostima te osobe kao službenika za zaštitu podataka te da ne izazovu sukob interesa.

7. Nadzornik ili obrađivač imenuje službenika za zaštitu podataka za razdoblje od **najmanje četiri godine ako je u pitanju zaposlenik ili** dvije godine **ako je u pitanju vanjski suradnik**. Službenik za zaštitu podataka može se ponovno imenovati u daljnjim mandatima. Tijekom **njegova ili njezina** mandata, službenika za zaštitu podataka može se otpustiti samo ako **on ili ona** više ne ispunjava uvjete potrebne za obavljanje svoje dužnosti.

8. Službenika za zaštitu podataka može zaposliti nadzornik ili obrađivač ili, on ili ona može obavljati svoju dužnost na temelju ugovora o pružanju usluga.

9. Nadzornik ili obrađivač **dostavlja** ime i kontaktne podatke službenika za zaštitu

zaštitu podataka nadzornom tijelu i javnosti.

10. Osobe čiji se podaci obrađuju imaju pravo obratiti se službeniku za zaštitu podataka u vezi svih pitanja o obradi osobnih podataka vezanih uz osobu čiji se podaci obrađuju te zatražiti ostvarivanje prava u skladu s ovom Uredbom.

11. Komisija je ovlaštena donositi delegirane akte u skladu s člankom 86. u svrhu dodatnog određivanja kriterija i preduvjeta za osnove djelatnosti nadzornika ili obrađivača iz točke (c) stavka 1. i kriterija za profesionalne kvalifikacije službenika za zaštitu podataka iz stavka 5.

Amandman 133

Prijedlog Uredbe Članak 36.

Tekst koji je predložila Komisija

Položaj službenika za zaštitu podataka

1. Nadzornik ili obrađivač **trebaju osigurati** da se službenik za zaštitu podataka primjereno i pravovremeno uključi u sva pitanja povezana sa zaštitom podataka.

2. Nadzornik ili obrađivač **trebaju osigurati** da službenik za zaštitu podataka obavlja dužnosti i zadatke neovisno te da ne dobiva upute o načinu na koji treba vršiti svoju dužnost. Službenik za zaštitu podataka **treba** izravno **izvještavati** upravu nadzornika ili obrađivača.

3. Nadzornik ili obrađivač **trebaju podržati** službenika za zaštitu podataka pri obavljanju zadataka te mu **trebaju osigurati** osoblje, prostor, opremu i druga sredstva potrebna za obavljanje dužnosti i

podataka nadzornom tijelu i javnosti.

10. Osobe čiji se podaci obrađuju imaju pravo obratiti se službeniku za zaštitu podataka u vezi svih pitanja o obradi osobnih podataka vezanih uz osobu čiji se podaci obrađuju te zatražiti ostvarivanje prava u skladu s ovom Uredbom.

Izmjena

Položaj službenika za zaštitu podataka

1. Nadzornik ili obrađivač **osiguravaju** da se službenik za zaštitu podataka primjereno i pravovremeno uključi u sva pitanja povezana sa zaštitom podataka.

2. Nadzornik ili obrađivač **osiguravaju** da službenik za zaštitu podataka obavlja dužnosti i zadatke neovisno te da ne dobiva upute o načinu na koji treba vršiti svoju dužnost. Službenik za zaštitu podataka izravno **izvještava izvršnu** upravu nadzornika ili obrađivača. **Nadzornik ili obrađivač u tu svrhu određuju člana izvršne uprave koji je odgovoran za usklađenost s odredbama ove Uredbe.**

3. Nadzornik ili obrađivač **podržavaju** službenika za zaštitu podataka pri obavljanju zadataka te mu **osiguravaju sva sredstva, uključujući** osoblje, prostor, opremu i druga sredstva potrebna za

zadataka iz članka 37.

obavljanje dužnosti i zadataka iz članka 37.
i potrebna za održavanje njegovog ili njezinog stručnog znanja.

4. Službenici za zaštitu podataka obvezani su tajnošću u vezi s identitetom osoba čiji se podaci obrađuju i okolnostima koje omogućuju identifikaciju osoba čiji se podaci obrađuju osim ako ih od te obveze oslobodi osoba čiji se podaci obrađuju.

Amandman 134

Prijedlog Uredbe Članak 37.

Tekst koji je predložila Komisija

Izmjena

Zadaće službenika za zaštitu podataka

Zadaće službenika za zaštitu podataka

1. Nadzornik i obrađivač **trebaju** službeniku za zaštitu podataka **povjeriti** barem jednu od sljedećih zadaća:

Nadzornik i obrađivač ***povjeravaju*** službeniku za zaštitu podataka barem jednu od sljedećih zadaća:

(a) obavještanje i savjetovanje nadzornika ili obrađivača o njihovim obvezama u skladu s ovom Uredbom te dokumentiranje te aktivnosti i primljenih odgovora;

(a) ***podizanje svijesti***, obavještanje i savjetovanje nadzornika ili obrađivača o njihovim obvezama u skladu s ovom Uredbom, ***osobito u skladu s tehničkim i organizacijskim mjerama i postupcima***, te dokumentiranje te aktivnosti i primljenih odgovora;

(b) nadziranje provedbe i primjene politika nadzornika ili obrađivača u vezi sa zaštitom osobnih podataka, uključujući određivanje odgovornosti, izobrazbu osoblja uključenog u postupke obrade i povezane revizije;

(b) nadziranje provedbe i primjene politika nadzornika ili obrađivača u vezi sa zaštitom osobnih podataka, uključujući određivanje odgovornosti, izobrazbu osoblja uključenog u postupke obrade i povezane revizije;

(c) nadziranje provedbe i primjene ove Uredbe, posebno u vezi sa zahtjevima za integriranu strategiju zaštite podataka, tehničku zaštitu podataka i sigurnost podataka te u vezi s informiranjem osoba čiji se podaci obrađuju i njihovim zahtjevima za ostvarivanjem vlastitih prava u skladu s ovom Uredbom;

(c) nadziranje provedbe i primjene ove Uredbe, posebno u vezi sa zahtjevima za integriranu strategiju zaštite podataka, tehničku zaštitu podataka i sigurnost podataka te u vezi s informiranjem osoba čiji se podaci obrađuju i njihovim zahtjevima za ostvarivanjem vlastitih prava u skladu s ovom Uredbom;

(d) osiguranje vođenja dokumentacije kako je navedeno u članku 28.;

(d) osiguranje vođenja dokumentacije kako je navedeno u članku 28.;

(e) nadziranje dokumentiranja, obavještanja i posredovanja slučajeva povrede osobnih podataka u skladu s člancima 31. i 32.;

(f) nadziranje provođenja procjene učinka zaštite podataka od strane nadzornika ili obrađivača te **zahtjevanje** prethodnog **odobrenja ili prethodnog** savjetovanja, ako je potrebno, u skladu s člancima 33. i 34.;

(g) nadziranje odgovaranja na zahtjeve nadzornog tijela te, u okviru nadležnosti službenika za zaštitu podataka, suradnja s nadzornim tijelom na njegov zahtjev ili na vlastitu inicijativu službenika za zaštitu podataka;

(h) djelovanje kao kontaktna točka za nadzorno tijelo za pitanja u vezi s obradom te, ako je potrebno, savjetovanje s nadzornim tijelom na vlastitu inicijativu.

(e) nadziranje dokumentiranja, obavještanja i posredovanja slučajeva povrede osobnih podataka u skladu s člancima 31. i 32.;

(f) nadziranje provođenja procjene učinka zaštite podataka od strane nadzornika ili obrađivača te **zahtijevanje** prethodnog savjetovanja, ako je potrebno, u skladu s člancima **32.a**, 33. i 34.;

(g) nadziranje odgovaranja na zahtjeve nadzornog tijela te, u okviru nadležnosti službenika za zaštitu podataka, suradnja s nadzornim tijelom na njegov zahtjev ili na vlastitu inicijativu službenika za zaštitu podataka;

(h) djelovanje kao kontaktna točka za nadzorno tijelo za pitanja u vezi s obradom te, ako je potrebno, savjetovanje s nadzornim tijelom na vlastitu inicijativu.

(i) provjeravanje usklađenosti s ovom Uredbom u skladu s mehanizom prethodnog savjetovanja utvrđenim člankom 34.;

(j) obavještanje predstavnika zaposlenika o obradi podataka zaposlenika.

2. Komisija je ovlaštena donositi delegirane akte u skladu s člankom 86. u svrhu dodatnog određivanja kriterija i preduvjeta za zadaće, certificiranje, ovlasti i sredstva službenika za zaštitu podataka iz stavka 1.

Amandman 135

Prijedlog Uredbe Članak 38.

Tekst koji je predložila Komisija

Kodeks ponašanja

1. Države članice, nadzorna tijela i Komisija **trebaju podržati** sastavljanje kodeksa ponašanja kako bi se doprinijelo

Izmjena

Kodeks ponašanja

1. Države članice, nadzorna tijela i Komisija **podržavaju** sastavljanje kodeksa ponašanja **ili usvajanje kodeksa**

ispravnoj primjeni ove Uredbe, uzimajući u obzir posebne osobine različitih područja na kojima se provodi obrada, posebno u odnosu na:

- (a) poštenu i transparentnu obradu podataka;
- (b) prikupljanje podataka;
- (c) obavještanje javnosti i osoba čiji se podaci obrađuju;
- (d) zahtjeve osoba čiji se podaci obrađuju za ostvarenjem svojih prava;
- (e) obavještanje i zaštitu djece;
- (f) prijenos podataka u treće zemlje ili međunarodne organizacije;
- (g) mehanizme za nadzor i osiguranje pridržavanja pravila od strane nadzornika koji im podliježu;
- (h) izvansudske postupke i druge postupke za rješavanje sporova između nadzornika i osoba čiji se podaci obrađuju u odnosu na obradu osobnih podataka, ne dovodeći u pitanje prava osoba čiji se podaci obrađuju u skladu s člancima 73. i 75.

2. Udruge i druga tijela koja predstavljaju kategorije nadzornika ili obrađivača u državi članici, a koja namjeravaju sastaviti kodeks ponašanja ili izmijeniti ili proširiti postojeće kodekse ponašanja mogu ih predati nadzornom tijelu u toj državi članici kako bi ono iznijelo svoje mišljenje. Nadzorno tijelo **može izraziti** mišljenje o tome **jesu li nacrt** kodeksa ponašanja ili **izmjene** u skladu s ovom Uredbom. Nadzorno tijelo **treba zatražiti** mišljenje osoba čiji se podaci obrađuju ili njihovih predstavnika o tim nacrtima.

3. **Udruge** i druga tijela koja predstavljaju kategoriju nadzornika u više država članica mogu predati nacрте kodeksa ponašanja i

ponašanja koja je sastavilo nadzorno tijelo kako bi se doprinijelo ispravnoj primjeni ove Uredbe, uzimajući u obzir posebne osobine različitih područja na kojima se provodi obrada, posebno u odnosu na:

- (a) poštenu i transparentnu obradu podataka;
- (aa) poštovanje prava potrošača;**
- (b) prikupljanje podataka;
- (c) obavještanje javnosti i osoba čiji se podaci obrađuju;
- (d) zahtjeve osoba čiji se podaci obrađuju za ostvarenjem svojih prava;
- (e) obavještanje i zaštitu djece;
- (f) prijenos podataka u treće zemlje ili međunarodne organizacije;
- (g) mehanizme za nadzor i osiguranje pridržavanja pravila od strane nadzornika koji im podliježu;
- (h) izvansudske postupke i druge postupke za rješavanje sporova između nadzornika i osoba čiji se podaci obrađuju u odnosu na obradu osobnih podataka, ne dovodeći u pitanje prava osoba čiji se podaci obrađuju u skladu s člancima 73. i 75.

2. Udruge i druga tijela koja predstavljaju kategorije nadzornika ili obrađivača u državi članici, a koja namjeravaju sastaviti kodeks ponašanja ili izmijeniti ili proširiti postojeće kodekse ponašanja mogu ih predati nadzornom tijelu u toj državi članici kako bi ono iznijelo svoje mišljenje. Nadzorno tijelo **bez nepotreobne odgode izražava** mišljenje o tome **je li obrada u skladu s nacrtom** kodeksa ponašanja ili **izmjenom** u skladu s ovom Uredbom. Nadzorno tijelo **traži** mišljenje osoba čiji se podaci obrađuju ili njihovih predstavnika o tim nacrtima.

3. **Udruženja** i druga tijela koja predstavljaju kategoriju nadzornika **ili obrađivača** u više država članica mogu

izmjene ili proširenja postojećih kodeksa ponašanja Komisiji.

4. Komisija **može donijeti provedbene** akte kojima odlučuje da kodeksi ponašanja i izmjene ili proširenja postojećih kodeksa ponašanja, koja je primila u skladu s člankom 3., imaju opću valjanost u Uniji. **Ti provedbeni akti usvajaju se u skladu s postupkom provjere iz članka 87. stavka 2.**

5. Komisija **treba osigurati** odgovarajuću objavu kodeksa ponašanja za koje je odlučeno da imaju opću valjanost u skladu sa stavkom 4.

predati nacрте kodeksa ponašanja i izmjene ili proširenja postojećih kodeksa ponašanja Komisiji.

4. Komisija, **nakon traženja mišljanja Europskog odbora za zaštitu podataka, ima ovlast donositi delegirane** akte u skladu s člankom 86. kojima odlučuje da **su** kodeksi ponašanja i izmjene ili proširenja postojećih kodeksa ponašanja, koja je primila u skladu s člankom 3. **u skladu s ovom Uredbom i da** imaju opću valjanost u Uniji. **Tim delegiranim aktima prenose se ostvariva prava na osobe čiji se podaci obrađuju.**

5. Komisija **osigurava** odgovarajuću objavu kodeksa ponašanja za koje je odlučeno da imaju opću valjanost u skladu sa stavkom 4.

Amandman 136

Prijedlog Uredbe Članak 39.

Tekst koji je predložila Komisija

Certificiranje

1. Države članice i Komisija trebaju podupirati, posebno na razini Europe, uspostavljanje mehanizama certificiranja za zaštitu podataka te pečate i oznake za zaštitu podataka, čim će se osobama čiji se podaci obrađuju omogućiti da brzo procijene razinu zaštite podataka koju pružaju nadzornici i obrađivači. Mehanizmi certificiranja za zaštitu podataka trebaju pridonijeti ispravnoj primjeni ove Uredbe, uzimajući u obzir pojedinačne osobine različitih sektora i različitih postupaka obrade.

Izmjena

Certificiranje

1a. Svaki nadzornik ili obrađivač može tražiti svako nadzorno tijelo u Uniji razumnu pristojbu uzimajući u obzir administrativne troškove, kako bi potvrdio da se obrada osobnih podataka

provodi u skladu s ovom Uredbom, osobito s načelima iz članka 5., 23. i 30., obvezama nadzornika i obrađivača i pravima osobe čiji se podaci obrađuju.

1b. Certificiranje je dobrovoljno, pristupačno i dostupno putem procesa koji je transparentan i nije neopravdano opterećujući.

1c. Nadzorna tijela i Europski odbor za zaštitu podataka surađuju u skladu s mehanizmom za usklađivanje iz članka 57. radi zajamčivanja usklađenosti mehanizama certificiranja za zaštitu podataka uključujući usklađene pristojbe unutar Unije.

1d. Tijekom postupka certificiranja nadzorno tijelo može ovlastiti specijalizirana revizorska tijela kao treće strane za provođenje revizije nadzornika ili obrađivača u njihovo ime. Revizorska tijela kao treća strana imaju dovoljno kvalificiranog osoblja, nepristrana su i slobodna od bilo kakvog sukoba interesa u vezi s njihovim dužnostima. Nadzorna tijela povlače ovlaštenje ako postoje razlozi vjerovati da revizor ne ispunjava svoje dužnosti na ispravan način. Konačno certificiranje osigurava nadzorno tijelo.

1e. Nadzorna tijela dodjeljuju nadzornicima i obrađivačima, koji su u skladu s revizijom ovlašteni za obradu osobnih podataka u skladu s ovom Uredbom, standardiziranu oznaku zaštite podataka pod nazivom „Europski pečat za zaštitu podataka”.

1f. „Europski pečat za zaštitu podataka” važi sve dok se postupcima obrade podataka certificiranog nadzornika ili obrađivača u potpunosti poštuje ova Uredba.

1g. Neovisno o stavku 1.f, certificiranje važi najviše pet godina.

1h. Europski odbor za zaštitu podataka uvodi javnu elektroničku evidenciju u

kojoj javnost može vidjeti sve važeće i nevažeće certifikate koji su izdani u državama članicama.

1i. Europski odbor za zaštitu podataka može na vlastitu inicijativu provjeriti da je tehnički standard koji poboljšava zaštitu podataka u skladu s ovom Uredbom.

2. Komisija je ovlaštena donositi delegirane akte u skladu s člankom 86. u svrhu dodatnog određivanja kriterija i preduvjeta za mehanizme certificiranja za zaštitu podataka iz stavka 1., uključujući uvjete za odobravanje i povlačenje te preduvjete za priznanje u Uniji i u trećim zemljama.

2. Komisija je, *nakon traženja mišljenja Europskog odbora za zaštitu podataka i savjetovanja s dionicima, osobito industrijom i nevladinim organizacijama*, ovlaštena donositi delegirane akte u skladu s člankom 86. u svrhu dodatnog određivanja kriterija i preduvjeta za mehanizme certificiranja za zaštitu podataka iz stavka 1.a do 1.h, uključujući *preduvjete za ovlaštenje revizorskih tijela*, uvjete za odobravanje i povlačenje te preduvjete za priznanje u Uniji i u trećim zemljama. *Tim delegiranim aktima prenose se ostvariva prava na osobe čiji se podaci obrađuju.*

3. Komisija može odrediti tehničke standarde za mehanizme certificiranja te pečate i oznake za zaštitu podataka kako bi se promicali i prepoznali mehanizmi certificiranja te pečati i oznake za zaštitu podataka. Ti provedbeni akti usvajaju se u skladu s postupkom provjere iz članka 87. stavka 2.

Amandman 137

Prijedlog Uredbe Članak 41.

Tekst koji je predložila Komisija

Prijenosi na temelju odluke o odgovarajućoj razini zaštite

1. Prijenos se može provesti ako je Komisija donijela odluku da dotična treća zemlja ili teritorij ili područje na kojem se vrši obrada u trećoj zemlji ili određena međunarodna organizacija osiguravaju

Izmjena

Prijenosi na temelju odluke o odgovarajućoj razini zaštite

1. Prijenos se može provesti ako je Komisija donijela odluku da dotična treća zemlja ili teritorij ili područje na kojem se vrši obrada u trećoj zemlji ili određena međunarodna organizacija osiguravaju

odgovarajuću razinu zaštite podataka. Za takav prijenos nije potrebno **dodatno** odobrenje.

2. Pri ocjenjivanju odgovarajuće razine zaštite Komisija poštuje sljedeće elemente:

(a) vladavinu prava, relevantno važeće zakonodavstvo, kako opće tako i sektorsko, uključujući javnu sigurnost, obranu, nacionalnu sigurnost i kazneno pravo, profesionalna pravila i sigurnosne mjere koje se poštuju u toj državi ili međunarodnoj organizaciji, kao i učinkovita i ostvariva prava uključujući učinkovitu upravnu i sudsku zaštitu za osobe čiji se podaci obrađuju, naročito za one koje imaju boravište u Uniji i čiji se osobni podaci prenose;

(b) postojanje i učinkovito djelovanje jednoga neovisnog nadzornog tijela ili više njih u dotičnoj trećoj zemlji ili međunarodnoj organizaciji koja su nadležna za osiguravanje sukladnosti s pravilima o zaštiti podataka, za pomoć osobama čiji se podaci obrađuju i njihovo savjetovanje u ostvarivanju njihovih prava te za suradnju s nadzornim tijelima Unije i država članica; i

(c) međunarodne obveze koje je dotična treća zemlja ili međunarodna organizacija preuzela.

3. Komisija **može donijeti odluku** da treća zemlja, teritorij, područje na kojem se vrši obrada podataka u dotičnoj trećoj zemlji ili međunarodna organizacija osiguravaju odgovarajuću razinu zaštite u smislu stavka 2. **Ti provedbeni akti usvajaju se u skladu s postupkom provjere navedenim u članku 87. stavku 2.**

odgovarajuću razinu zaštite podataka. Za takav prijenos nije potrebno **posebno** odobrenje.

2. Pri ocjenjivanju odgovarajuće razine zaštite Komisija poštuje sljedeće elemente:

(a) vladavinu prava, relevantno važeće zakonodavstvo, kako opće tako i sektorsko, uključujući javnu sigurnost, obranu, nacionalnu sigurnost i kazneno pravo, **kao i provedbu ovog zakonodavstva**, profesionalna pravila i sigurnosne mjere koje se poštuju u toj državi ili međunarodnoj organizaciji, **sudski presedani** kao i učinkovita i ostvariva prava uključujući učinkovitu upravnu i sudsku zaštitu za osobe čiji se podaci obrađuju, naročito za one koje imaju boravište u Uniji i čiji se osobni podaci prenose;

(b) postojanje i učinkovito djelovanje jednoga neovisnog nadzornog tijela ili više njih u dotičnoj trećoj zemlji ili međunarodnoj organizaciji koja su nadležna za osiguravanje sukladnosti s pravilima o zaštiti podataka, **uključujući dovoljne vlasti za sankcioniranje**, za pomoć osobama čiji se podaci obrađuju i njihovo savjetovanje u ostvarivanju njihovih prava te za suradnju s nadzornim tijelima Unije i država članica; i

(c) međunarodne obveze koje je dotična treća zemlja ili međunarodna organizacija preuzela, **posebice sve pravno obvezujuće konvencije ili instrumenti u vezi sa zaštitom osobnih podataka.**

3. Komisija **je ovlaštena donositi delegirane akte u skladu s člankom 86. radi donošenja odluke o tome** da treća zemlja, teritorij, područje na kojem se vrši obrada podataka u dotičnoj trećoj zemlji ili međunarodna organizacija osiguravaju odgovarajuću razinu zaštite u smislu stavka 2. **Tim delegiranim aktima predviđa se klauzula o vremenskom ograničenju valjanosti ako se oni odnose na područje na kojem se vrši obrada te ih se opoziva u**

4. U **provedbenom** aktu precizira se njegova zemljopisna i sektorska primjena i, po potrebi, utvrđuje nadzorno tijelo iz točke (b) stavka 2.

5. Komisija **može donijeti odluku** da treća zemlja ili teritorij ili područje na kojem se vrši obrada unutar te treće zemlje ili međunarodna organizacija ne osigurava odgovarajuću razinu zaštite u smislu stavka 2. ovog članka, naročito u slučajevima kad relevantno zakonodavstvo, kako opće tako i sektorsko, koje je na snazi u trećoj zemlji ili međunarodnoj organizaciji ne jamči djelotvorna i ostvariva prava uključujući djelotvorne administrativne i sudske pravne radnje za osobe čiji se podaci obrađuju, naročito za one koje imaju boravište u Uniji i čiji se osobni podaci prenose. **Navedeni provedbeni akti donose se u skladu s postupkom provjere iz članka 87. stavka 2. ili u iznimno hitnim situacijama za pojedince s obzirom na njihovo pravo na zaštitu osobnih podataka, u skladu s postupkom iz članka 87. stavka 3.**

6. Ako Komisija donese odluku u skladu sa stavkom 5., svaki prijenos osobnih podataka u treću zemlju ili teritorij ili područje na kojem se vrši obrada unutar te treće zemlje ili međunarodnu organizaciju zabranjen je, ne dovodeći u pitanje članke 42. do 44. U primjereno vrijeme Komisija započinje savjetovanja s trećom zemljom ili međunarodnom organizacijom koja se odnose na rješavanje situacije nastale zbog Odluke **donesene** u skladu sa stavkom 5.

skladu sa stavkom 5. čim više nije osigurana odgovarajuća razina zaštite u skladu s ovom Uredbom.

4. U **delegiranom** aktu precizira se njegova zemljopisna i sektorska primjena i, po potrebi, utvrđuje nadzorno tijelo iz točke (b) stavka 2.

4a. Komisija na trajnoj osnovi prati tijek razvoja u trećim zemljama i međunarodnim organizacijama koji bi mogao utjecati na elemente popisane u stavku 2. kada je u skladu sa stavkom 3. donesen delegirani akt.

5. Komisija **je ovlaštena donositi delegirane akte u skladu s člankom 86. radi donošenja odluke o tome** da treća zemlja ili teritorij ili područje na kojem se vrši obrada unutar te treće zemlje ili međunarodna organizacija ne osigurava **ili više ne osigurava** odgovarajuću razinu zaštite u smislu stavka 2. ovog članka, naročito u slučajevima kad relevantno zakonodavstvo, kako opće tako i sektorsko, koje je na snazi u trećoj zemlji ili međunarodnoj organizaciji ne jamči djelotvorna i ostvariva prava uključujući djelotvorne administrativne i sudske pravne radnje za osobe čiji se podaci obrađuju, naročito za one koje imaju boravište u Uniji i čiji se osobni podaci prenose.

6. Ako Komisija donese odluku u skladu sa stavkom 5., svaki prijenos osobnih podataka u treću zemlju ili teritorij ili područje na kojem se vrši obrada unutar te treće zemlje ili međunarodnu organizaciju zabranjen je, ne dovodeći u pitanje članke 42. do 44. U primjereno vrijeme Komisija započinje savjetovanja s trećom zemljom ili međunarodnom organizacijom koja se odnose na rješavanje situacije nastale zbog odluke u skladu sa stavkom 5. ovog članka.

ovog članka.

6a. Prije donošenja delegiranog akta u skladu sa stavcima 3. i 5. Komisija traži Europski odbor za zaštitu podataka za mišljenje o prikladnosti razine zaštite. U tu svrhu Komisija dostavlja Europskom odboru za zaštitu podataka svu potrebnu dokumentaciju, također korespondenciju s vladom treće zemlje, teritorijem ili područjem na kojem se vrši obrada u toj trećoj zemlji ili međunarodnom organizacijom.

7. U Službenom listu Europske unije Komisija objavljuje popis trećih zemalja, teritorija, područja na kojima se vrši obrada u trećoj zemlji i međunarodnih organizacija u vezi s kojima je donijela odluku o tome osiguravaju li odgovarajuću razinu zaštite ili ne.

7. U Službenom listu Europske unije **i na svojoj internetskoj stranici** Komisija objavljuje popis trećih zemalja, teritorija, područja na kojima se vrši obrada u trećoj zemlji i međunarodnih organizacija u vezi s kojima je donijela odluku o tome osiguravaju li odgovarajuću razinu zaštite ili ne.

8. Odluke koje je Komisija **usvojila** na temelju članka 25. stavka 6. ili članka 26. stavka 4. Direktive 95/46/EZ ostaju na snazi **dok** ih Komisija ne izmijeni, zamijeni ili stavi izvan snage.

8. Odluke koje je Komisija na temelju članka 25. stavka 6. ili članka 26. stavka 4. Direktive 95/46/EZ ostaju na snazi **pet godina nakon stupanja na snagu ove Uredbe, osim ako** ih Komisija ne izmijeni, zamijeni ili stavi izvan snage **prije kraja navedenog roka.**

Amandman 138

Prijedlog Uredbe Članak 42.

Tekst koji je predložila Komisija

Prijenosi s odgovarajućim mjerama zaštite

1. Ako Komisija nije donijela nikakvu odluku u skladu s člankom 41., nadzornik ili obrađivač može prenijeti osobne podatke u treću zemlju ili međunarodnu organizaciju **samo** ako je u vezi sa zaštitom osobnih podataka u pravno obvezujućem instrumentu osigurao odgovarajuće mjere

Izmjena

Prijenosi s odgovarajućim mjerama zaštite

1. Ako Komisija nije donijela nikakvu odluku u skladu s člankom 41. **ili je odlučila da treća zemlja, teritorij ili područje na kojemu se provodi obrada u trećoj zemlji ili međunarodna organizacija ne osiguravaju dostatnu razinu zaštite u skladu s člankom 41.**

zaštite.

2. Odgovarajuće mjere zaštite iz stavka 1. osiguravaju se posebice na sljedeći način:

(a) obvezujućim pravilima poduzeća u skladu s člankom 43.; ili

(b) standardnim klauzulama Komisije o zaštiti podataka. Ti provedbeni akti usvajaju se u skladu s postupkom provjere iz članka 87. stavka 2. ili

(c) standardnim klauzulama o zaštiti podataka koje je usvojilo nadzorno tijelo u skladu s mehanizmom za usklađivanje iz članka 57. a koje Komisija u skladu s točkom (b) članka 62. stavka 1. proglasi općevažećima; ili

(d) ugovornim klauzulama između nadzornika ili obrađivača i primatelja podataka koje je odobrilo nadzorno tijelo u skladu sa stavkom 4.

3. Za prijenos koji se temelji na standardnim klauzulama o zaštiti podataka ili obvezujućim pravilima poduzeća iz točaka (a), **(b)** ili (c) stavka 2. nije potrebno **ododatno** odobrenje.

4. Kad se prijenos temelji na ugovornim klauzulama iz točke (d) stavka 2. ovog članka, nadzornik ili obrađivač od nadzornog tijela dobiva prethodno odobrenje ugovornih klauzula **u skladu s točkom (a) članka 34. stavka 1.** Ako je prijenos povezan s postupcima obrade koji se tiču osoba čiji se podaci obrađuju u drugoj državi članici ili drugim državama članicama ili ako znatno utječe na slobodno kretanje osobnih podataka unutar

stavkom 5., nadzornik ili obrađivač **ne** može prenijeti osobne podatke u treću zemlju ili međunarodnu organizaciju **osim** ako je u vezi sa zaštitom osobnih podataka u pravno obvezujućem instrumentu osigurao odgovarajuće mjere zaštite.

2. Odgovarajuće mjere zaštite iz stavka 1. osiguravaju se posebice na sljedeći način:

(a) obvezujućim pravilima poduzeća u skladu s člankom 43.; ili

(aa) za nadzornika i primatelja važećim europskim pečatom za zaštitu podataka u skladu s člankom 39. stavkom 1.; ili

(c) standardnim klauzulama o zaštiti podataka koje je usvojilo nadzorno tijelo u skladu s mehanizmom za usklađivanje iz članka 57. a koje Komisija u skladu s točkom (b) članka 62. stavka 1. proglasi općevažećima; ili

(d) ugovornim klauzulama između nadzornika ili obrađivača i primatelja podataka koje je odobrilo nadzorno tijelo u skladu sa stavkom 4.

3. Za prijenos koji se temelji na standardnim klauzulama o zaštiti podataka, **europskom pečatu za zaštitu podataka** ili obvezujućim pravilima poduzeća iz točaka (a), **(aa)** ili (c) stavka 2. nije potrebno **posebno** odobrenje.

4. Kad se prijenos temelji na ugovornim klauzulama iz točke (d) stavka 2. ovog članka, nadzornik ili obrađivač od nadzornog tijela dobiva prethodno odobrenje ugovornih klauzula. Ako je prijenos povezan s postupcima obrade koji se tiču osoba čiji se podaci obrađuju u drugoj državi članici ili drugim državama članicama ili ako znatno utječe na slobodno kretanje osobnih podataka unutar Unije, nadzorno tijelo primjenjuje

Unije, nadzorno tijelo primjenjuje mehanizam za usklađivanje iz članka 57.

5. Kad odgovarajuće mjere zaštite osobnih podataka nisu osigurane u pravno obvezujućem instrumentu, nadzornik ili obrađivač dobiva prethodno odobrenje za prijenos ili niz prijenosa ili za odredbe koje će biti uključene u upravne dogovore koji su temelj za takve prijenose. Takvo odobrenje koje daje nadzorno tijelo u skladu je s točkom (a) članka 34. stavka 1. Ako je prijenos povezan s postupcima obrade koji se tiču osoba čiji se podaci obrađuju u drugoj državi članici ili drugim državama članicama ili ako znatno utječe na slobodno kretanje osobnih podataka unutar Unije, nadzorno tijelo primjenjuje mehanizam za usklađivanje iz članka 57. Odobrenja koja daje nadzorno tijelo na temelju članka 26. stavka 2. Direktive 95/46/EZ ostaju na snazi **dok ih to** nadzorno tijelo ne izmijeni, zamijeni ili stavi izvan snage.

Amandman 139

Prijedlog Uredbe Članak 43.

Tekst koji je predložila Komisija

Prijenos s obvezujućim pravilima poduzeća

1. Nadzorno tijelo u skladu s mehanizmom za usklađivanje iz članka 58. odobrava obvezujuća pravila poduzeća:

(a) ako su pravno obvezujuća, primjenjuju se na svakog člana grupe poduzetnika nadzornika ili obrađivača, provode ih svi članovi te grupe te uključuju i zaposlenike te grupe;

(b) ako izričito prenose ostvariva prava na osobe čiji se podaci obrađuju;

(c) ako ispunjavaju zahtjeve iz stavka 2.

mehanizam za usklađivanje iz članka 57.

5. Odobrenja koja daje nadzorno tijelo na temelju članka 26. stavka 2. Direktive 95/46/EZ ostaju na snazi **dvije godine nakon stupanja na snagu ove Uredbe, osim ako ih** nadzorno tijelo ne izmijeni, zamijeni ili stavi izvan snage **prije kraja navedenog roka;**

Izmjena

Prijenos s obvezujućim pravilima poduzeća

1. Nadzorno tijelo u skladu s mehanizmom za usklađivanje iz članka 58. odobrava obvezujuća pravila poduzeća:

(a) ako su pravno obvezujuća, primjenjuju se na svakog člana grupe poduzetnika nadzornika ili obrađivača, provode ih svi članovi te grupe **i vanjski podizvođači koji su obuhvaćeni obvezujućim pravilima poduzeća** te uključuju i zaposlenike te grupe;

(b) ako izričito prenose ostvariva prava na osobe čiji se podaci obrađuju;

(c) ako ispunjavaju zahtjeve iz stavka 2.

2. Obvezujuća pravila poduzeća određuju najmanje sljedeće:

(a) strukturu i kontaktne podatke grupe poduzetnika i njezinih članova;

(b) prijenose podataka ili nizove prijenosa, uključujući kategorije osobnih podataka, vrstu obrade i njezine namjene, vrstu osoba čiji se podaci obrađuju i na koje ta pravila utječu te identifikaciju treće zemlje ili trećih zemalja o kojima je riječ;

(c) njihovu pravno obvezujuću prirodu, kako interno tako i eksterno;

(d) opća načela zaštite podataka, naročito ograničenje namjene, kvalitetu podataka, pravnu osnovu za obradu, obradu osjetljivih osobnih podataka; mjere za osiguranje sigurnosti podataka i zahtjeve za daljnje prijenose organizacijama za koje politike nisu obvezujuće;

(e) prava osoba čiji se podaci obrađuju i sredstva za ostvarivanje tih prava, uključujući pravo da osoba čiji se podaci obrađuju ne bude predmetom mjera koje se temelje na profiliranju u skladu s člankom 20., pravo na žalbu nadležnome nadzornom tijelu i nadležnim sudovima država članica u skladu s člankom 75. te na pravnu zaštitu i po potrebi odštetu za kršenje obvezujućih pravila poduzeća;

(f) odgovornost koju nadzornik *ili obrađivač* s nastanom na teritoriju države članice prihvaća za moguće kršenje obvezujućih pravila poduzeća koje je počinio neki član grupe poduzetnika koji

1a. S obzirom na podatke o zaposlenosti predstavnici zaposlenika obavještavaju se i, u skladu s pravom i praksom Unije ili država članica, uključuju u sastavljanje obvezujućih pravila poduzeća u skladu s člankom 43.

2. Obvezujuća pravila poduzeća određuju najmanje sljedeće:

(a) strukturu i kontaktne podatke grupe poduzetnika i njezinih članova *te vanjskih podizvođača koji su obuhvaćeni obvezujućim pravilima poduzeća;*

(b) prijenose podataka ili nizove prijenosa, uključujući kategorije osobnih podataka, vrstu obrade i njezine namjene, vrstu osoba čiji se podaci obrađuju i na koje ta pravila utječu te identifikaciju treće zemlje ili trećih zemalja o kojima je riječ;

(c) njihovu pravno obvezujuću prirodu, kako interno tako i eksterno;

(d) opća načela zaštite podataka, naročito ograničenje namjene, *smanjenje količine podataka, ograničeno razdoblje njihove pohrane, kvalitetu podataka, tehničku i integriranu zaštitu podataka,* pravnu osnovu za obradu, obradu osjetljivih osobnih podataka; mjere za osiguranje sigurnosti podataka i zahtjeve za daljnje prijenose organizacijama za koje politike nisu obvezujuće;

(e) prava osoba čiji se podaci obrađuju i sredstva za ostvarivanje tih prava, uključujući pravo da osoba čiji se podaci obrađuju ne bude predmetom mjera koje se temelje na profiliranju u skladu s člankom 20., pravo na žalbu nadležnome nadzornom tijelu i nadležnim sudovima država članica u skladu s člankom 75. te na pravnu zaštitu i po potrebi odštetu za kršenje obvezujućih pravila poduzeća;

(f) odgovornost koju nadzornik s nastanom na teritoriju države članice prihvaća za moguće kršenje obvezujućih pravila poduzeća koje je počinio neki član grupe poduzetnika koji nema nastan u Uniji;

nema nastan u Uniji; nadzornik *ili obrađivač* može djelomično ili u potpunosti biti izuzet od te odgovornosti ako dokaže da nije odgovoran za događaj *koji je prouzročio štetu*.

(g) načine na koje se informacije o obvezujućim pravilima poduzeća, naročito o odredbama navedenim u točkama (d), (e) i (f) ovog stavka osiguravaju za osobu čiji se podaci obrađuju, u skladu s člankom 11.;

(h) zadatke službenika za zaštitu podataka imenovanog u skladu s člankom 35., uključujući praćenje usklađenosti s obvezujućim pravilima poduzeća unutar grupe poduzetnika kao i praćenje osposobljavanja i postupanja sa žalbama;

(i) mehanizme unutar grupe poduzetnika čiji je cilj osigurati provjeru usklađenosti s obvezujućim pravilima poduzeća;

(j) mehanizme za izvještavanje o promjenama politika i njihovo evidentiranje te za podnošenje izvještaja o tim promjenama nadzornom tijelu;

(k) mehanizam suradnje s nadzornim tijelom kako bi se osiguralo da svaki član grupe poduzetnika poštuje pravila, osobito tako da rezultati provjera mjera iz točke (i) ovog stavka budu dostupni nadzornom tijelu.

3. Komisija je ovlaštena za donošenje delegiranih akata u skladu s člankom 86. u svrhu dodatnog utvrđivanja kriterija i zahtjeva za obvezujuća pravila poduzeća u smislu ovog članka, naročito s obzirom na kriterije za njihovo odobravanje, primjenu točaka (b), (d), (e) i (f) stavka 2. na obvezujuća pravila poduzeća kojih se pridržavaju obrađivači te daljnjih zahtjeva potrebnih za osiguravanje zaštite osobnih podataka osoba čiji se podaci obrađuju.

nadzornik može djelomično ili u potpunosti biti izuzet od te odgovornosti ako dokaže da *taj član* nije odgovoran za događaj *na temelju kojeg je šteta nastala*;

(g) načine na koje se informacije o obvezujućim pravilima poduzeća, naročito o odredbama navedenim u točkama (d), (e) i (f) ovog stavka osiguravaju za osobu čiji se podaci obrađuju, u skladu s člankom 11.;

(h) zadatke službenika za zaštitu podataka imenovanog u skladu s člankom 35., uključujući praćenje usklađenosti s obvezujućim pravilima poduzeća unutar grupe poduzetnika kao i praćenje osposobljavanja i postupanja sa žalbama;

(i) mehanizme unutar grupe poduzetnika čiji je cilj osigurati provjeru usklađenosti s obvezujućim pravilima poduzeća;

(j) mehanizme za izvještavanje o promjenama politika i njihovo evidentiranje te za podnošenje izvještaja o tim promjenama nadzornom tijelu;

(k) mehanizam suradnje s nadzornim tijelom kako bi se osiguralo da svaki član grupe poduzetnika poštuje pravila, osobito tako da rezultati provjera mjera iz točke (i) ovog stavka budu dostupni nadzornom tijelu.

3. Komisija je ovlaštena za donošenje delegiranih akata u skladu s člankom 86. u svrhu dodatnog utvrđivanja *oblika, postupaka*, kriterija i zahtjeva za obvezujuća pravila poduzeća u smislu ovog članka, naročito s obzirom na kriterije za njihovo odobravanje, *uključujući transparentnost za osobe čiji se podaci obrađuju*, primjenu točaka (b), (d), (e) i (f) stavka 2. na obvezujuća pravila poduzeća kojih se pridržavaju obrađivači te daljnjih zahtjeva potrebnih za osiguravanje zaštite osobnih podataka osoba čiji se podaci obrađuju.

4. Komisija može odrediti oblik i postupke elektroničke razmjene informacija među nadzornicima, obrađivačima i nadzornim tijelima za obvezujuća pravila poduzeća u smislu ovog članka. Ti provedbeni akti usvajaju se u skladu s postupkom provjere iz članka 87. stavka 2.

Amandman 140

Prijedlog Uredbe Članak 43.a (novi)

Tekst koji je predložila Komisija

Izmjena

Članak 43.a

Prijenos ili otkrivanje podataka koji nisu dopušteni u pravu Unije

1. Presude suda ili odluke upravnih tijela treće zemlje u kojima se zahtijeva da nadzornik ili obrađivač otkriju osobne podatke ne priznaju se niti su izvršive, ne dovodeći u pitanje ugovor o međusobnoj pravnoj pomoći ili međunarodni sporazum koji je na snazi između treće zemlje koja je podnijela zahtjev i Unije ili države članice.

2. Ako se presudom suda ili odlukom upravnih tijela treće zemlje od nadzornika ili obrađivača zahtijeva da otkriju osobne podatke, nadzornik ili obrađivač i, ako postoji, predstavnik nadzornika bez odgode obavještavaju nadzorno tijelo o zahtjevu te od njega moraju dobiti prethodno odobrenje za prijenos ili otkrivanje podataka.

3. Nadzorno tijelo ocjenjuje je li zatraženo otkrivanje podataka u skladu s Uredbom, a posebno je li otkrivanje podataka potrebno ili propisano zakonom u skladu s člankom 44. stavkom 1. točkama (d) i (e) i člankom 44. stavkom 5. U slučajevima kada se postupkom otkrivanja utječe na osobe na čiji se podaci obrađuju,

nadzorno tijelo primjenjuje mehanizam za usklađivanje iz članka 57.

4. Nadzorno tijelo o zahtjevu obavještava nadležno nacionalno tijelo. Ne dovodeći u pitanje članak 21., nadzornik ili obrađivač također obavještava osobe čiji se podaci obrađuju o zahtjevu i o odobrenju koje je izdalo nadzorno tijelo, i po potrebi, obavještava osobu čiji se podaci obrađuju o tome jesu li osobni podaci proslijeđeni javnim tijelima u posljednjem neprekinutom dvanaestomjesečnom razdoblju u skladu s člankom 14. stavkom 1. točkom (ha).

Amandman 141

Prijedlog Uredbe Članak 44.

Tekst koji je predložila Komisija

Izmjena

Odstupanja

Odstupanja

1. Ako nije donesena odluka o odgovarajućoj razini zaštite u skladu s člankom 41. ili ne postoje odgovarajuće mjere zaštite u skladu s člankom 42., prijenos ili niz prijenosa osobnih podataka u treću zemlju ili međunarodnu organizaciju može se izvesti samo pod sljedećim uvjetima:

(a) osoba čiji se podaci obrađuju pristala je na predloženi prijenos nakon što je bila obaviještena o rizicima takvog prijenosa zbog nepostojanja odluke o odgovarajućoj razini zaštite i odgovarajućih mjera zaštite; ili

(b) prijenos je potreban radi izvršenja ugovora između osobe čiji se podaci obrađuju i nadzornika ili radi provedbe predugovornih mjera poduzetih na zahtjev osobe čiji se podaci obrađuju; ili

(c) prijenos je potreban radi zaključenja ili izvršenja ugovora sklopljenog između nadzornika i druge fizičke ili pravne osobe koji je u interesu osobe čiji se podaci

1. Ako nije donesena odluka o odgovarajućoj razini zaštite u skladu s člankom 41. ili ne postoje odgovarajuće mjere zaštite u skladu s člankom 42., prijenos ili niz prijenosa osobnih podataka u treću zemlju ili međunarodnu organizaciju može se izvesti samo pod sljedećim uvjetima:

(a) osoba čiji se podaci obrađuju pristala je na predloženi prijenos nakon što je bila obaviještena o rizicima takvog prijenosa zbog nepostojanja odluke o odgovarajućoj razini zaštite i odgovarajućih mjera zaštite; ili

(b) prijenos je potreban radi izvršenja ugovora između osobe čiji se podaci obrađuju i nadzornika ili radi provedbe predugovornih mjera poduzetih na zahtjev osobe čiji se podaci obrađuju; ili

(c) prijenos je potreban radi zaključenja ili izvršenja ugovora sklopljenog između nadzornika i druge fizičke ili pravne osobe koji je u interesu osobe čiji se podaci

obrađuju; ili

(d) prijenos je potreban zbog važnih javnih interesa; ili

(e) prijenos je potreban radi uspostave, izvršenja ili obrane zakonskog prava; ili

(f) prijenos je potreban kako bi se zaštitili vitalni interesi osobe čiji se podaci obrađuju ili druge osobe kad osoba čiji se podaci obrađuju fizički ili pravno nije sposobna dati svoju suglasnost; ili

(g) prijenos se vrši iz evidencije koja je prema zakonodavstvu Unije ili države članice namijenjena pružanju informacija javnosti i u nju mogu imati uvid ili javnost općenito ili bilo koja osoba koja može dokazati legitiman interes, u onoj mjeri koliko su u određenom slučaju ispunjeni uvjeti za takav uvid utvrđeni u zakonodavstvu Unije ili države članice; *ili*

(h) prijenos je potreban zbog legitimnih interesa koje ima nadzornik ili obrađivač i koji se ne mogu kvalificirati kao česti ili brojni i kad je nadzornik ili obrađivač ocijenio sve okolnosti prijenosa podataka ili niza prijenosa podataka te na temelju te ocjene po potrebi predvidio odgovarajuće mjere zaštite osobnih podataka.

2. Prijenos u skladu s točkom (g) stavka 1. ne uključuje sve osobne podatke ili sve kategorije osobnih podataka koje sadrži evidencija. Kad je evidencija namijenjena uvidu osoba koje imaju legitimni interes, prijenos se obavlja samo na zahtjev tih osoba ili ako su te osobe primatelji.

3. Ako se prijenos temelji na točki (h) stavka 1., nadzornik ili obrađivač posebnu pozornost pridaje prirodi podataka, namjeni i trajanju predložene obrade ili predloženih obrada kao i situaciji u zemlji porijekla, trećoj zemlji i zemlji konačnog odredišta te po potrebi predviđa odgovarajuće mjere zaštite osobnih podataka.

4. Točke (b), (c), *i* (h) stavka 1. ne

obrađuju; ili

(d) prijenos je potreban zbog važnih javnih interesa; ili

(e) prijenos je potreban radi uspostave, izvršenja ili obrane zakonskog prava; ili

(f) prijenos je potreban kako bi se zaštitili vitalni interesi osobe čiji se podaci obrađuju ili druge osobe kad osoba čiji se podaci obrađuju fizički ili pravno nije sposobna dati svoju suglasnost; ili

(g) prijenos se vrši iz evidencije koja je prema zakonodavstvu Unije ili države članice namijenjena pružanju informacija javnosti i u nju mogu imati uvid ili javnost općenito ili bilo koja osoba koja može dokazati legitiman interes, u onoj mjeri koliko su u određenom slučaju ispunjeni uvjeti za takav uvid utvrđeni u zakonodavstvu Unije ili države članice;

2. Prijenos u skladu s točkom (g) stavka 1. ne uključuje sve osobne podatke ili sve kategorije osobnih podataka koje sadrži evidencija. Kad je evidencija namijenjena uvidu osoba koje imaju legitimni interes, prijenos se obavlja samo na zahtjev tih osoba ili ako su te osobe primatelji.

4. Točke (b) *i* (c) stavka 1. ne primjenjuju

primjenjuju se za aktivnosti koje provode javna tijela pri izvršavanju svojih javnih ovlasti.

5. Javni interes iz točke (d) stavka 1. mora biti priznat u zakonodavstvu Unije ili u zakonodavstvu države članice kojem podliježe nadzornik.

6. Nadzornik ili obrađivač dokumentira ocjenu i predviđene odgovarajuće mjere zaštite iz točke (h) stavka 1. ovog članka u dokumentaciji navedenoj u članku 28. te o prijenosu obavještava nadzorno tijelo.

7. Komisija je ovlaštena za donošenje delegiranih akata u skladu s člankom 86. u svrhu dodatnog određivanja važnih javnih interesa u smislu točke (d) stavka 1. te kriterija i zahtjeva za odgovarajuće mjere zaštite iz točke (h) stavka 1.

se za aktivnosti koje provode javna tijela pri izvršavanju svojih javnih ovlasti.

5. Javni interes iz točke (d) stavka 1. mora biti priznat u zakonodavstvu Unije ili u zakonodavstvu države članice kojem podliježe nadzornik.

7. Europskom odboru za zaštitu podataka povjerena je zadaća izdavanja smjernica, preporuka i najboljih praksi u skladu s člankom 66. stavkom 1. točkom (b) u svrhu dodatnog određivanja kriterija i zahtjeva za prijenose podataka na temelju stavka 1.

Amandman 142

Prijedlog Uredbe

Članak 45. – stavak 1. – točka a

Tekst koji je predložila Komisija

(a) razvoj učinkovitih **mehanizama** međunarodne suradnje kako bi se **olakšalo** provođenje zakonodavstva za zaštitu osobnih podataka;

Izmjena

(a) razvoj učinkovitih **mehanizma** međunarodne suradnje kako bi se **osiguralo** provođenje zakonodavstva za zaštitu osobnih podataka;

Amandman 143

Prijedlog Uredbe

Članak 45. – stavak 1. – točka da (nova)

Tekst koji je predložila Komisija

(da) pojašnjavanje sukoba nadležnosti i savjetovanje na tu temu s trećim zemljama;

Izmjena

Amandman 144

Prijedlog Uredbe Članak 45.a (novi)

Tekst koji je predložila Komisija

Izmjena

Članak 45.a

Izješće Komisije

Komisija u redovnim vremenskim razmacima, počevši najkasnije četiri godine nakon datuma iz članka 9. stavka 1., podnosi Europskom parlamentu i Vijeću izvješće o primjeni članka 40. do 45. U tu svrhu Komisija može zatražiti informacije od država članica i nadzornih tijela, koje joj se prosljeđuju bez nepotrebnog odlaganja. Izvješće se objavljuje.

Amandman 145

Prijedlog Uredbe Članak 47. – stavak 1.

Tekst koji je predložila Komisija

Izmjena

1. Nadzorno tijelo potpuno je neovisno u provođenju dužnosti i ovlasti koje su mu povjerene.

1. Nadzorno tijelo potpuno je neovisno ***i nepristrano*** u provođenju dužnosti i ovlasti koje su mu povjerene, ***bez obzira na organizaciju suradnje i usklađivanja u skladu s poglavljem VII. ove Uredbe.***

Amandman 146

Prijedlog Uredbe Članak 47. – stavak 7.a (novi)

Tekst koji je predložila Komisija

Izmjena

7a. Svaka država članica osigurava da nadzorno tijelo odgovora nacionalnom

parlamentu u vezi s proračunskim nadzorom.

Amandman 147

Prijedlog Uredbe Članak 50.

Tekst koji je predložila Komisija

Profesionalna tajna

Članovi i osoblje nadzornog tijela tijekom svojeg mandata i nakon njegova isteka dužni su čuvati profesionalnu tajnu s obzirom na svaku povjerljivu informaciju koju su saznali u obavljanju svojih službenih dužnosti.

Izmjena

Profesionalna tajna

Članovi i osoblje nadzornog tijela tijekom svojeg mandata i nakon njegova isteka, ***a u skladu s nacionalnim zakonodavstvom i nacionalnom praksom***, dužni su čuvati profesionalnu tajnu s obzirom na svaku povjerljivu informaciju koju su saznali u obavljanju svojih službenih dužnosti ***na neovisan i transparentan način kako je određeno Uredbom***.

Amandman 148

Prijedlog Uredbe Članak 51. – stavak 1.

Tekst koji je predložila Komisija

1. Svako nadzorno tijelo ***na području svoje države članice*** izvršava ovlasti koje su mu povjerene u skladu s ovom Uredbom.

Izmjena

1. Svako nadzorno tijelo ***ima nadležnost da obavlja dužnosti i*** izvršava ovlasti koje su mu povjerene u skladu s ovom Uredbom ***tijelo na području svoje države članice, ne dovodeći u pitanje članke 73. i 74. Nadzor nad obradom podataka koju provodi javno tijelo obavlja nadzorno tijelo te države članice.***

Amandman 149

Prijedlog Uredbe

Članak 51. – stavak 2.

Tekst koji je predložila Komisija

2. Kad se obrada osobnih podataka provodi u okviru djelatnosti ustanove nadzornika ili obrađivača u Uniji, a nadzornik ili obrađivač imaju nastan u više nego jednoj državi članici, nadzorno tijelo glavnog nastana nadzornika ili obrađivača nadležno je za nadzor postupaka obrade nadzornika ili obrađivača u svim državama članicama, ne dovodeći u pitanje odredbe poglavlja VII. ove Uredbe.

Izmjena

Briše se.

Amandman 150

Prijedlog Uredbe

Članak 52. – stavak 1. – točka b

Tekst koji je predložila Komisija

(b) razmatra žalbe koje u skladu s člankom 73. uloži osoba čiji se podaci obrađuju ili udruga **koja tu osobu zastupa**, u primjerenom mjeri istražuje to pitanje te osobu čiji se podaci obrađuju ili udrugu u razumnom roku obavještava o tijeku i ishodu žalbe, naročito ako je potrebna daljnja istraga ili usklađivanje s drugim nadzornim tijelom;

Izmjena

(b) razmatra žalbe koje u skladu s člankom 73. uloži osoba čiji se podaci obrađuju ili udruga, u primjerenom mjeri istražuje to pitanje te osobu čiji se podaci obrađuju ili udrugu u razumnom roku obavještava o tijeku i ishodu žalbe, naročito ako je potrebna daljnja istraga ili usklađivanje s drugim nadzornim tijelom;

Amandman 151

Prijedlog Uredbe

Članak 52. – stavak 1. – točka d

Tekst koji je predložila Komisija

(d) provodi istrage na vlastitu inicijativu ili na temelju žalbe ili na zahtjev drugoga nadzornog tijela te osobu čiji se podaci

Izmjena

(d) provodi istrage na vlastitu inicijativu ili na temelju žalbe ili **određenih zaprimljenih i dokumentiranih**

obrađuju, ako je ta osoba uložila žalbu ovome nadzornom tijelu, u razumnom roku obavještava o ishodu istrage;

informacija o navodnoj nezakonitoj obradi podataka ili na zahtjev drugoga nadzornog tijela te osobu čiji se podaci obrađuju, ako je ta osoba uložila žalbu ovome nadzornom tijelu, u razumnom roku obavještava o ishodu istrage;

Amandman 152

Prijedlog Uredbe

Članak 52. – stavak 1. – točka ja (nova)

Tekst koji je predložila Komisija

Izmjena

(ja) u skladu s člankom 39. nadzornicima i obrađivačima izdaje certifikate.

Amandman 153

Prijedlog Uredbe

Članak 52. – stavak 2.

Tekst koji je predložila Komisija

Izmjena

2. Svako nadzorno tijelo mora promicati svijest javnosti o opasnostima, pravilima, mjerama zaštite **i** pravima vezanima uz obradu osobnih podataka. Posebna pozornost pridaje se aktivnostima koje se izričito odnose na djecu.

2. Svako nadzorno tijelo mora promicati svijest javnosti o opasnostima, pravilima, mjerama zaštite, pravima vezanima uz obradu osobnih podataka **i odgovarajućim mjerama za zaštitu osobnih podataka.** Posebna pozornost pridaje se aktivnostima koje se izričito odnose na djecu.

Amandman 154

Prijedlog Uredbe

Članak 52. – stavak 2.a (novi)

Tekst koji je predložila Komisija

Izmjena

2a. Svako nadzorno tijelo zajedno s Europskim odborom za zaštitu podataka promiče svijest nadzornika i obrađivača o opasnostima, pravilima, mjerama zaštite, pravima vezanima uz obradu osobnih

podataka. To uključuje vođenje evidencije o snakcijama i povredama. Evidencija bi trebala sadržavati što detaljnije određene opomene i sankcije, kao i rješavanje povreda. Svako nadzorno tijelo mikro, malim i srednjim poduzećima koje obavljaju funkciju nadzornika i obrađivača na zahtjev osigurava opće informacije o njihovim odgovornostima i obavezama u skladu s ovom Uredbom.

Amandman 155

Prijedlog Uredbe

Članak 52. – stavak 6.

Tekst koji je predložila Komisija

6. Ako su zahtjevi pretjerani, posebice ako se ponavljaju, nadzorno tijelo može naplatiti uslugu ili ne mora obaviti zadatak koji je zatražila osoba čiji se podaci obrađuju. U tom slučaju nadzorno tijelo dokazuje pretjeranost zahtjeva.

Izmjena

6. Ako su zahtjevi pretjerani, posebice ako se ponavljaju, nadzorno tijelo može naplatiti uslugu **u razumnom iznosu** ili ne mora obaviti zadatak koji je zatražila osoba čiji se podaci obrađuju. **Cijena spomenute usluge ne prelazi troškove obavljanja zadatka koji je zatražila osoba čiji se podaci obrađuju.** U tom slučaju nadzorno tijelo dokazuje pretjeranost zahtjeva.

Amandman 156

Prijedlog Uredbe

Članak 53.

Tekst koji je predložila Komisija

Ovlasti

1. Svako nadzorno tijelo ovlašteno je da:

(a) obavijesti nadzornika ili obrađivača o navodnom kršenju odredbi kojima se uređuje obrada osobnih podataka i po potrebi nadzorniku ili obrađivaču naloži da na određen način ukloni to kršenje kako bi se poboljšala zaštita osobe čiji se podaci

Izmjena

Ovlasti

1. **U skladu s ovom Uredbom** svako nadzorno tijelo ovlašteno je da:

(a) obavijesti nadzornika ili obrađivača o navodnom kršenju odredbi kojima se uređuje obrada osobnih podataka i po potrebi nadzorniku ili obrađivaču naloži da na određen način ukloni to kršenje kako bi se poboljšala zaštita osobe čiji se podaci obrađuju **ili da naloži nadzorniku da**

obrađuju.

(b) nadzorniku ili obrađivaču naredi da udovolje zahtjevu osobe čiji se podaci obrađuju u vezi s ostvarivanjem prava iz ove Uredbe;

(c) nadzorniku ili obrađivaču te, ako je potrebno, predstavniku naredi da osigura sve informacije potrebne za obavljanje svojih dužnosti;

(d) osigura sukladnost s prethodnim odobrenjima i prethodnim savjetovanjima iz članka 34.;

(e) upozori ili opomene nadzornika ili obrađivača;

(f) naredi ispravljanje, brisanje ili uništenje svih podataka koji su bili obrađeni pri kršenju odredbi ove Uredbe te o takvim mjerama obavijesti treće strane kojima su podaci bili otkriveni;

(g) privremeno ili konačno zabrani obradu;

(h) prekine prijenose podataka primatelju u trećoj zemlji ili međunarodnoj organizaciji;

(i) daje mišljenja o svim pitanjima koja se odnose na zaštitu osobnih podataka;

(j) nacionalni parlament, vladu ili druge političke institucije i javnost obavijesti o svim pitanjima koja se odnose na zaštitu osobnih podataka.

2. Svako nadzorno tijelo ima istražne ovlasti da od nadzornika ili obrađivača dobije:

(a) pristup svim osobnim podacima i svim informacijama potrebnim za obavljanje

osobu čiji se podaci obrađuju obavijesti o povredi njezinih osobnih podataka.

(b) nadzorniku ili obrađivaču naredi da udovolje zahtjevu osobe čiji se podaci obrađuju u vezi s ostvarivanjem prava iz ove Uredbe;

(c) nadzorniku ili obrađivaču te, ako je potrebno, predstavniku naredi da osigura sve informacije potrebne za obavljanje svojih dužnosti;

(d) osigura sukladnost s prethodnim odobrenjima i prethodnim savjetovanjima iz članka 34.;

(e) upozori ili opomene nadzornika ili obrađivača;

(f) naredi ispravljanje, brisanje ili uništenje svih podataka koji su bili obrađeni pri kršenju odredbi ove Uredbe te o takvim mjerama obavijesti treće strane kojima su podaci bili otkriveni;

(g) privremeno ili konačno zabrani obradu;

(h) prekine prijenose podataka primatelju u trećoj zemlji ili međunarodnoj organizaciji;

(i) daje mišljenja o svim pitanjima koja se odnose na zaštitu osobnih podataka;

(ia) u skladu s člankom 39. nadzornicima i obrađivačima izdaje certifikate.

(j) nacionalni parlament, vladu ili druge političke institucije i javnost obavijesti o svim pitanjima koja se odnose na zaštitu osobnih podataka;

(ja) uspostavi učinkovite mehanizme za poticanje povjerljivog izvješćivanja o kršenju ove Uredbe, uzimajući u obzir smjernice koje je u skladu s člankom 66. stavkom 4. točkom (b) izdao Europski odbor za zaštitu podataka.

2. Svako nadzorno tijelo ima istražne ovlasti da od nadzornika ili obrađivača ***bez prethodne obavijesti*** dobije:

(a) pristup svim osobnim podacima i svim ***dokumentima i*** informacijama potrebnim

svojih dužnosti;

(b) pristup svim njihovim prostorijama, uključujući svu opremu i sredstva za obradu podataka, **ako postoje utemeljeni razlozi za pretpostavku da se u njima provodi aktivnost kojom se krši ova Uredba.**

Ovlasti navedene u točki (b) provode se u skladu sa zakonodavstvom Unije i zakonodavstvom država članica.

3. Svako nadzorno tijelo ima ovlast da obavijesti sudske vlasti o kršenju ove Uredbe i sudjeluje u pravnim postupcima, naročito u skladu s člankom 74. stavkom 4. i člankom 75. člankom 2.

4. Svako nadzorno tijelo ima ovlast da kazni upravne prijestupe, **naročito one navedene u članku 79. stavcima 4., 5. i 6.**

za obavljanje svojih dužnosti;

(b) pristup svim njihovim prostorijama, uključujući svu opremu i sredstva za obradu podataka.

Ovlasti navedene u točki (b) provode se u skladu sa zakonodavstvom Unije i zakonodavstvom država članica.

3. Svako nadzorno tijelo ima ovlast da obavijesti sudske vlasti o kršenju ove Uredbe i sudjeluje u pravnim postupcima, naročito u skladu s člankom 74. stavkom 4. i člankom 75. člankom 2.

4. Svako nadzorno tijelo ima ovlast da kazni upravne prijestupe **u skladu s člankom 79. Tu ovlast provodi učinkovito, proporcionalno i odvrćuće.**

Amandman 157

Prijedlog Uredbe Članak 54.

Tekst koji je predložila Komisija

Svako nadzorno tijelo mora sastaviti **godišnji** izvještaj o svojim aktivnostima. Izvještaj se predstavlja **nacionalnom** parlamentu i dostupan je javnosti, Komisiji i Europskom odboru za zaštitu podataka.

Izmjena

Svako nadzorno tijelo mora sastaviti izvještaj o svojim aktivnostima **najmanje svake dvije godine**. Izvještaj se predstavlja **nadležnom** parlamentu i dostupan je javnosti, Komisiji i Europskom odboru za zaštitu podataka.

Amandman 158

Prijedlog Uredbe Članak 54.a (novi)

Tekst koji je predložila Komisija

Izmjena

Članak 54a
Vodeće tijelo

1. Kad se obrada osobnih podataka provodi u okviru djelatnosti ustanove nadzornika ili obrađivača u Uniji, a nadzornik ili obrađivač imaju nastan u više nego jednoj državi članici ili kada se obrađuju osobni podaci rezidenata nekoliko država članica, nadzorno tijelo glavnog nastana nadzornika ili obrađivača djeluje kao vodeće tijelo odgovorno za nadzor postupaka obrade nadzornika ili obrađivača u svim državama članicama, u skladu s odredbama poglavlja VII. ove Uredbe.

2. Vodeće nadzorno tijelo poduzima primjerene mjere nadzora nad postupcima obrade koje provodi nadzornik ili obrađivač za koji je tijelo odgovorno i to tek nakon savjetovanja sa svima drugim nadležnim nadzornim tijelima u smislu članka 51. stavka 1. u nastojanju da se postigne konsenzus. U tu svrhu u prvom redu dostavlja sve relevantne informacije i savjetuje se s ostalim tijelima prije donošenja mjera kojima se proizvode pravni učinci na nadzornika ili obrađivača u smislu članka 51. stavka 1. Vodeće tijelo maksimalno uvažava mišljenja uključenih tijela. Vodeće tijelo jedino je tijelo koje je ovlašteno donositi odluke o mjerama kojima se proizvode pravni učinci na postupke obrade koje provodi nadzornik ili obrađivač za koje je tijelo odgovorno.

3. Europski odbor za zaštitu podataka na zahtjev nadležnog nadzornog tijela izdaje mišljenje o identifikaciji vodećeg tijela odgovornog za nadzornika ili obrađivača u slučajevima kada:

(a) iz činjenica nije jasno gdje proizvođač ili obrađivač imaju glavni poslovni nastan; ili

(b) se nadležna tijela ne slažu oko toga koje nadzorno tijelo obavlja dužnost vodećeg tijela; ili

(c) nadzornik nema poslovni nastan u Uniji, a postupci obrade u okviru

područja primjene ove Uredbe utječu na rezidente različitih država članica.

3a. Ako nadzornik također obavlja aktivnosti obrađivača, nadzorno tijelo glavnog nastana nadzornika djeluje kao vodeće tijelo za nadzor postupaka obrade.

4. Europski odbor za zaštitu podataka može odlučiti o određivanju vodećeg tijela.

(Paragraph 1 in Parliament's amendment is based on Article 51(2) of the Commission proposal).

Amandman 159

Prijedlog Uredbe

Članak 55. – stavak 1.

Tekst koji je predložila Komisija

1. Nadzorna tijela jedno drugome pružaju relevantne informacije i pomoć kako bi se dosljedno provela i primijenila ova Uredba, te uvode mjere za učinkovitu međusobnu suradnju. Uzajamna pomoć uključuje posebice zahtjeve za informacije i mjere nadzora kao što su zahtjevi za prethodna odobrenja i savjetovanja, preglede i hitno obavještanje o početku postupaka i daljnjem razvoju kad je vjerojatno da će postupci obrade utjecati na osobe čiji se podaci obrađuju u više država članica.

Izmjena

1. Nadzorna tijela jedno drugome pružaju relevantne informacije i pomoć kako bi se dosljedno provela i primijenila ova Uredba, te uvode mjere za učinkovitu međusobnu suradnju. Uzajamna pomoć uključuje posebice zahtjeve za informacije i mjere nadzora kao što su zahtjevi za prethodna odobrenja i savjetovanja, preglede, *istrage* i hitno obavještanje o početku postupaka i daljnjem razvoju kad *nadzornik ili obrađivač ima nastane u nekoliko država članica ili kad* je vjerojatno da će postupci obrade utjecati na osobe čiji se podaci obrađuju u više država članica. *Vodeće tijelo kako je definirano u članku 54.a osigurava koordinaciju s uključenim nadzornim tijelima te djeluje kao jedinstvena kontaktna točka za nadzornika ili obrađivača.*

Amandman 160

Prijedlog Uredbe

Članak 55. – stavak 7.

Tekst koji je predložila Komisija

7. Pristojba se ne naplaćuje ni za kakvu mjeru poduzetu na temelju zahtjeva **za uzajamnu pomoć**.

Amandman 161

Prijedlog Uredbe

Članak 55. – stavak 8.

Tekst koji je predložila Komisija

8. Ako nadzorno tijelo ne djeluje u roku od mjesec dana nakon primitka zahtjeva drugoga nadzornog tijela, nadzorno tijelo koje je podnijelo zahtjev nadležno je za poduzimanje privremene mjere na području svoje država članice u skladu s člankom 51. stavkom 1. te predmet predaje Europskom odboru za zaštitu podataka u skladu s postupkom iz članka 57.

Amandman 162

Prijedlog Uredbe

Članak 55. – stavak 9.

Tekst koji je predložila Komisija

9. Nadzorno tijelo određuje razdoblje valjanosti takve privremene mjere. To razdoblje nije duže od tri mjeseca. Nadzorno tijelo, bez odgode i navodeći sve razloge, o tim mjerama obavještava Europski odbor za zaštitu podataka i Komisiju.

Izmjena

7. Pristojba se ne naplaćuje **nadzornom tijelu koje je podnijelo zahtjev** ni za kakvu mjeru poduzetu na temelju zahtjeva.

Izmjena

8. Ako nadzorno tijelo ne djeluje u roku od mjesec dana nakon primitka zahtjeva drugoga nadzornog tijela, nadzorno tijelo koje je podnijelo zahtjev nadležno je za poduzimanje privremene mjere na području svoje država članice u skladu s člankom 51. stavkom 1. te predmet predaje Europskom odboru za zaštitu podataka u skladu s postupkom iz članka 57. ***Ako još nije moguće poduzeti konačnu mjeru, zato što pružanje uzajamne pomoći još nije okončano, nadzorno tijelo koje je podnijelo zahtjev na teritoriju svoje države članice može poduzimati privremene mjere u skladu s člankom 53.***

Izmjena

9. Nadzorno tijelo određuje razdoblje valjanosti takve privremene mjere. To razdoblje nije duže od tri mjeseca. Nadzorno tijelo, bez odgode i navodeći sve razloge, o tim mjerama obavještava Europski odbor za zaštitu podataka i Komisiju ***u skladu s postupkom iz članka 57.***

Amandman 163

Prijedlog Uredbe

Članak 55. – stavak 10.

Tekst koji je predložila Komisija

10. **Komisija** može odrediti oblik i postupke uzajamne pomoći navedene u ovom članku te dogovore o razmjeni informacija elektroničkim sredstvima među nadzornim tijelima te među nadzornim tijelima i Europskim odborom za zaštitu podataka, naročito standardizirani oblik iz stavka 6. **Ti provedbeni akti usvajaju se u skladu s postupkom provjere navedenim u članku 87. stavku 2.**

Izmjena

10. **Europski odbor za zaštitu podataka** može odrediti oblik i postupke uzajamne pomoći navedene u ovom članku te dogovore o razmjeni informacija elektroničkim sredstvima među nadzornim tijelima te među nadzornim tijelima i Europskim odborom za zaštitu podataka, naročito standardizirani oblik iz stavka 6.

Amandman 164

Prijedlog Uredbe

Članak 56. – stavak 2.

Tekst koji je predložila Komisija

2. Kad postoji vjerojatnost da će postupci obrade u više država članica utjecati na osobe čiji se podaci obrađuju, nadzorno tijelo svake od tih država članica ima pravo na sudjelovanje u zajedničkim istražnim zadaćama ili zajedničkim mjerama, ovisno o potrebi. **Nadležno nadzorno** tijelo **poziva** nadzorno tijelo svake od tih država članica da sudjeluje u odgovarajućim istražnim zadacima ili zajedničkim mjerama te se bez odgode odziva na zahtjev nadzornog tijela koji se odnosi na sudjelovanje u mjerama.

Izmjena

2. Kad **nadzornik ili obrađivač ima nastane u nekoliko država članica** ili kad postoji vjerojatnost da će postupci obrade u više država članica utjecati na osobe čiji se podaci obrađuju, nadzorno tijelo svake od tih država članica ima pravo na sudjelovanje u zajedničkim istražnim zadaćama ili zajedničkim mjerama, ovisno o potrebi. **Vodeće** tijelo **kako je definirano u članku 54.a uključuje** nadzorno tijelo svake od tih država članica da sudjeluje u odgovarajućim istražnim zadacima ili zajedničkim mjerama te se bez odgode odziva na zahtjev nadzornog tijela koji se odnosi na sudjelovanje u mjerama. **Vodeće tijelo djeluje kao jedinstvena kontaktna točka za nadzornika ili obrađivača.**

Amandman 165

Prijedlog Uredbe Članak 57.

Tekst koji je predložila Komisija

Mehanizam za usklađivanje

Za namjene iz članka 46. stavka 1. nadzorna tijela surađuju međusobno i s Komisijom preko mehanizma za usklađivanje, *kako je određeno* u ovom odjeljku.

Izmjena

Mehanizam za usklađivanje

Za namjene iz članka 46. stavka 1. nadzorna tijela surađuju međusobno i s Komisijom preko mehanizma za usklađivanje *u općim pitanjima i u pojedinačnim slučajevima*, u skladu s *odredbama* u ovom odjeljku.

Amandman 166

Prijedlog Uredbe Članak 58.

Tekst koji je predložila Komisija

Mišljenje Europskog odbora za zaštitu podataka

1. Prije nego nadzorno tijelo usvoji mjeru iz stavka 2., nacrt mjere prosljeđuje Europskom odboru za zaštitu podataka i Komisiji.

2. Obaveza određena u stavku 1. primjenjuje se na mjeru čija su namjena pravni učinci i koja:

(a) se odnosi na postupke obrade u vezi s ponudom roba ili usluga osobama čiji se podaci obrađuju u više država članica ili s praćenjem njihova ponašanja; ili

(b) može znatno utjecati na slobodno kretanje osobnih podataka unutar Unije; ili

(c) je namijenjena usvajanju popisa postupaka obrade za koje je potrebno prethodno savjetovanje u skladu s člankom 34. stavkom 5.; ili

(d) je *namijenjena određivanju* standardnih klauzula o zaštiti podataka iz točke (c)

Izmjena

Consistency on matters of general application

1. Prije nego nadzorno tijelo usvoji mjeru iz stavka 2., nacrt mjere prosljeđuje Europskom odboru za zaštitu podataka i Komisiji.

2. Obaveza određena u stavku 1. primjenjuje se na mjeru čija su namjena pravni učinci i koja:

(d) je *namijenjena određivanju* standardnih klauzula o zaštiti podataka iz

članka 42. stavka 2.; ili

(e) je namijenjena odobrenju ugovornih klauzula iz točke (d) članka 42. stavka 2.; ili

(f) je namijenjena odobrenju obvezujućih pravila poduzeća u smislu članka 43.

3. Svako nadzorno tijelo ili Europski odbor za zaštitu podataka može zatražiti da se bilo koji predmet obradi u mehanizmu za usklađivanje, naročito ako nadzorno tijelo ne predloži nacrt mjere iz stavka 2. ili ne ispuni obveze u vezi sa zajedničkom pomoći u skladu s člankom 55. ili u vezi sa zajedničkim mjerama u skladu s člankom 56.

4. Kako bi zajamčila pravilnu i dosljednu primjenu ove Uredbe, Komisija može zatražiti da se bilo koji **predmet** obradi u mehanizmu za usklađivanje.

5. Nadzorna tijela i Komisija u standardiziranom elektroničkom obliku prosljeđuju sve relevantne informacije, uključujući po potrebi sažet prikaz činjenica, nacrt mjere i razloge zbog kojih je donošenje takve mjere potrebno.

6. Predsjednik Europskog odbora za zaštitu podataka u standardiziranom elektroničkom obliku **odmah** obavještava članove Europskog odbora za zaštitu podataka i Komisiju o svim relevantnim informacijama koje je primio. **Predsjednik** Europskog odbora za zaštitu podataka po potrebi osigurava prijevode relevantnih informacija.

7. Europski odbor za zaštitu podataka **daje mišljenje o predmetu ako tako odluči** običnom većinom **ili ako to zahtijeva** bilo koje nadzorno tijelo ili Komisija, u roku od jednog tjedna nakon primitka

točke (c) članka 42. stavka 2.; ili

(e) je namijenjena odobrenju ugovornih klauzula iz točke (d) članka 42. stavka 2.; ili

(f) je namijenjena odobrenju obvezujućih pravila poduzeća u smislu članka 43.

3. Svako nadzorno tijelo ili Europski odbor za zaštitu podataka može zatražiti da se bilo koji predmet **opće primjene** obradi u mehanizmu za usklađivanje, naročito ako nadzorno tijelo ne predloži nacrt mjere iz stavka 2. ili ne ispuni obveze u vezi sa zajedničkom pomoći u skladu s člankom 55. ili u vezi sa zajedničkim mjerama u skladu s člankom 56.

4. Kako bi zajamčila pravilnu i dosljednu primjenu ove Uredbe, Komisija može zatražiti da se bilo koji **predmetopće primjene** obradi u mehanizmu za usklađivanje.

5. Nadzorna tijela i Komisija **bez nepotrebnog odlaganja** u standardiziranom elektroničkom obliku prosljeđuju sve relevantne informacije, uključujući po potrebi sažet prikaz činjenica, nacrt mjere i razloge zbog kojih je donošenje takve mjere potrebno.

6. Predsjednik Europskog odbora za zaštitu podataka **bez nepotrebnog odlaganja** u standardiziranom elektroničkom obliku **bez odlaganja** obavještava članove Europskog odbora za zaštitu podataka i Komisiju o svim relevantnim informacijama koje je primio. **Tajništvo** Europskog odbora za zaštitu podataka po potrebi osigurava prijevode relevantnih informacija.

6a. Europski odbor za zaštitu podataka donosi mišljenje o predmetima koji su mu upućeni na temelju stavka 2.

7. Europski odbor za zaštitu podataka **može odlučiti** običnom većinom **o donošenju mišljenja o** bilo kojem predmetu podnesenom na temelju stavaka 3. i 4., **uzimajući u obzir:**

relevantne informacije u skladu sa stavkom 5. Mišljenje se usvaja u roku od mjesec dana većinom članova Europskog odbora za zaštitu podataka. Predsjednik Europskog odbora za zaštitu podataka o mišljenju bez odlaganja obavještava nadzorno tijelo iz stavka 1. odnosno stavka 3., Komisiju i nadležno nadzorno tijelo na temelju članka 51. te ga objavljuje.

8. Nadzorno tijelo iz stavka 1. i nadležno nadzorno tijelo na temelju članka 51. uzimaju u obzir mišljenje Europskog odbora za zaštitu podataka i u roku od dva tjedna nakon što ih je predsjednik Europskog odbora za zaštitu podataka obavijestio o mišljenju u standardiziranom elektroničkom obliku obavještavaju predsjednika Europskog odbora za zaštitu podataka i Komisiju o tome hoće li zadržati svoj nacrt mjere ili će ga izmijeniti ili ih obavještavaju o izmijenjenom nacrtu mjere, ako postoji.

(a) sadrži li predmet nove elemente, uzimajući u obzir pravna i činjenična zbivanja, osobito na području informacijskih tehnologija, i napredak informatičkog društva; i

(b) je li Europski odbor za zaštitu podataka o tom predmetu već dao mišljenje.

8. Europski odbor za zaštitu podataka donosi mišljenja u skladu sa stavicima 6a i 7. običnom većinom glasova svojih članova. Ta se mišljenja objavljuju.

Amandman 167

Proposition de règlement
Članak 58.a (novi)

Texte proposé par la Commission

Amendement

Članak 58a

Dosljednost u pojedinačnim slučajevima

1. Prije poduzimanja mjere čija je namjena proizvesti pravne učinke u

smislu članka 54a, vodeće tijelo dijeli sve važne informacije sa svim ostalim nadležnim tijelima i predlaže im nacrt mjere. Vodeće tijelo ne usvaja mjeru ako se nadležno tijelo u roku od tri tjedna snažno usprotivi mjeri.

2. Ako se se nadležno tijelo snažno usprotivilo nacrtu mjere koji je predložilo vodeće tijelo ili ako vodeće tijelo ne predloži nacrt mjere iz stavka 1. ili ne ispuni obavezu pružanja uzajamne pomoći u skladu s člankom 55. ili zajedničkog djelovanja u skladu s člankom 56., predmet razmatra Europski odbor za zaštitu podataka.

3. Vodeće tijelo i/ili uključena nadležna tijela i Komisija bez nepotrebnog odlaganja i u standardiziranom elektroničkom obliku prosljeđuju Europskom odboru za zaštitu podataka sve relevantne informacije, po potrebi i sažetak činjenica, nacrt mjere, razloge zbog kojih je donošenje te mjere potrebno, prigovore iznesene protiv te mjere te stajališta drugih uključenih nadležnih tijela.

4. Europski odbor za zaštitu podataka razmatra predmet, uzimajući u obzir učinak nacrta mjere vodećeg tijela na temeljna prava i slobode osoba čiji se podaci obrađuju i običnom većinom glasova odlučuje o tome hoće li izdati mišljenje o tom predmetu u roku od dva tjedna od kad su važne informacije dostavljene u skladu sa stavkom 3.

5. Ako Europski odbor za zaštitu podataka odluči izdati mišljenje, to će učiniti u roku od šest tjedana te će mišljenje i objaviti.

6. Vodeće tijelo u najvećoj mogućoj mjeri uzima u obzir mišljenje Europskog odbora za zaštitu podataka i u roku od dva tjedna nakon što ih je predsjednik Europskog odbora za zaštitu podataka obavijestio o mišljenju u standardiziranom elektroničkom obliku obavještavaju predsjednika Europskog odbora za zaštitu

podataka i Komisiju o tome hoće li zadržati svoj nacrt mjere ili će ga izmijeniti ili ih obavještavaju o izmijenjenom nacrtu mjere, ako postoji. Ako vodeće tijelo ne namjerava postupiti u skladu s mišljenjem Europskog odbora za zaštitu podataka, ono dostavlja utemeljeno obrazloženje.

7. U slučaju da se Europski odbor za zaštitu podataka i dalje protivi mjeri nadzornog tijela, u skladu sa stavkom 5. i u roku od jednog mjeseca dvotrećinskom većinom može donijeti mjeru koja je za nadzorno tijelo obvezujuća.

Amandman 168

Prijedlog Uredbe Članak 59.

Tekst koji je predložila Komisija

Izmjena

Članak 59.

Briše se.

Mišljenje Komisije

1. U roku od deset tjedana nakon podnošenja pitanja iz članka 58. ili najkasnije u roku od šest tjedana u slučaju članka 61. Komisija može, kako bi zajamčila pravilnu i dosljednu primjenu ove Uredbe, usvojiti mišljenje u vezi s pitanjima koja su se pojavila u skladu s člankom 58. ili 61.

2. Ako je Komisija usvojila mišljenje u skladu sa stavkom 1., dotično nadzorno tijelo u najvećoj mogućoj mjeri uzima u obzir mišljenje Komisije te Komisiju i Europski odbor za zaštitu podataka obavještava o tome namjerava li zadržati svoj nacrt mjere ili ga izmijeniti.

3. U razdoblju iz stavka 1. nadzorno tijelo ne usvaja nacrt mjere.

4. Ako dotično nadzorno tijelo ne namjerava poštovati mišljenje Komisije, Komisiju i Europski odbor za zaštitu

podataka o tome obavještava u roku iz stavka 1. te dostavlja obrazloženje. U ovom slučaju nacrt mjere ne usvaja se daljnjih mjesec dana.

Amandman 169

Prijedlog Uredbe Članak 60.

Tekst koji je predložila Komisija

Izmjena

Članak 60.

Briše se.

Privremeni opoziv nacrtu mjere

1. U roku od mjesec dana nakon obavijesti iz članka 59. stavka 4. i ako postoji ozbiljna sumnja u to osigurava li nacrt mjere pravilnu primjenu ove Uredbe ili bi mogao dovesti do njezine nedosljedne primjene Komisija može usvojiti obrazloženu odluku u kojoj od nadzornog tijela zahtijeva da privremeno opozove usvajanje nacrtu mjere, poštujući pritom mišljenje Europskog odbora za zaštitu podataka u skladu s člankom 58. stavkom 7. ili člankom 61. stavkom 2. ako se to čini potrebnim radi:

(a) usklađivanja različitih stajališta nadzornog tijela i Europskog odbora za zaštitu podataka, ako se to još čini mogućim; ili

(b) usvajanja mjere u skladu s točkom (a) članka 62. stavka 1.

2. Komisija određuje trajanje privremenog opoziva koje nije duže od 12 mjeseci.

3. U razdoblju iz stavka 2. nadzorno tijelo ne smije usvojiti nacrt mjere.

Amandman 170

Prijedlog Uredbe Članak 60.a (novi)

Tekst koji je predložila Komisija

Izmjena

Članak 60a

Obavješćavanje Europskog parlamenta i Vijeća

Komisija obavještava Europski parlament i Vijeće temeljeći se na izvješću predsjednika Europskog odbora za zaštitu podataka i u redovnim vremenskim razmacima, a najmanje svakih šest mjeseci, o predmetima riješenima u okviru mehanizma za usklađivanje, pri čemu navodi zaključke koje su donijeli Komisija i Europski odbor za zaštitu podataka u cilju osiguravanja dosljedne provedbe i primjene ove Uredbe.

Amandman 171

Prijedlog Uredbe

Članak 61. – stavak 1.

Tekst koji je predložila Komisija

Izmjena

1. U izvanrednim okolnostima, kad nadzorno tijelo smatra da postoji hitna potreba za djelovanjem kako bi se zaštitili interesi osobe čiji se podaci obrađuju, naročito kad postoji opasnost da bi ostvarivanje prava osobe čiji se podaci obrađuju moglo biti znatno otežano zbog promjene postojećeg stanja ili uklanjanja negativnih učinaka ili drugih razloga, može odstupajući od postupka iz članka 58. bez odgode usvojiti privremene mjere s utvrđenim razdobljem valjanosti. Nadzorno tijelo, bez odgode i navodeći sve razloge, o tim mjerama obavještava Europski odbor za zaštitu podataka i Komisiju.

1. U izvanrednim okolnostima, kad nadzorno tijelo smatra da postoji hitna potreba za djelovanjem kako bi se zaštitili interesi osobe čiji se podaci obrađuju, naročito kad postoji opasnost da bi ostvarivanje prava osobe čiji se podaci obrađuju moglo biti znatno otežano zbog promjene postojećeg stanja ili uklanjanja negativnih učinaka ili drugih razloga, može odstupajući od postupka iz članka 58.**a** bez odgode usvojiti privremene mjere s utvrđenim razdobljem valjanosti. Nadzorno tijelo, bez odgode i navodeći sve razloge, o tim mjerama obavještava Europski odbor za zaštitu podataka i Komisiju.

Amandman 172

Prijedlog Uredbe

Članak 61. – stavak 4.

Tekst koji je predložila Komisija

4. **Odstupajući od članka 58. stavka 7.** hitno mišljenje iz stavaka 2. i 3. ovog članka usvaja se u roku od dva tjedna većinom članova Europskog odbora za zaštitu podataka.

Amandman 173

Prijedlog Uredbe Članak 62.

Tekst koji je predložila Komisija

Provedbeni akti

Komisija može usvojiti provedbene akte kojima:

(a) donosi odluku o ispravnoj primjeni ove Uredbe u skladu sa svojim ciljevima i zahtjevima u vezi s predmetima o kojima su je obavijestila nadzorna tijela u skladu s člankom 58. ili 61., u odnosu na predmete u vezi s kojima je usvojena obrazložena odluka u skladu s člankom 60. stavkom 1., u odnosu na predmete u vezi s kojima nadzorno tijelo ne podnosi nacrt mjere te je navelo da ne namjerava poštovati mišljenje Komisije usvojeno u skladu s člankom 59.;

(b) u razdoblju iz članka 59. stavka 1. donosi odluku o tome hoće li nacрте standardnih klauzula o zaštiti podataka iz točke (d) članka 58. stavka 2. proglasiti opće valjanima;

(c) određuje oblik i postupke primjene mehanizma dosljednosti iz ovog odjeljka;

(d) određuje dogovore o razmjeni informacija elektroničkim sredstvima među nadzornim tijelima te među nadzornim tijelima i Europskim odborom za zaštitu podataka, naročito standardizirani oblik iz

Izmjena

4. Hitno mišljenje iz stavaka 2. i 3. ovog članka usvaja se u roku od dva tjedna većinom članova Europskog odbora za zaštitu podataka.

Izmjena

Provedbeni akti

1. Nakon što zatraži mišljenje Europskog odbora za zaštitu podataka Komisija može usvojiti provedbene akte ***opće primjene*** kojima:

(b) donosi odluku o tome hoće li nacрте standardnih klauzula o zaštiti podataka iz točke (d) članka 42. stavka 2. proglasiti opće valjanima;

(d) određuje dogovore o razmjeni informacija elektroničkim sredstvima među nadzornim tijelima te među nadzornim tijelima i Europskim odborom za zaštitu podataka, naročito standardizirani oblik iz

članka 58. stavka 5., 6. i 8.

Ti provedbeni akti usvajaju se u skladu s postupkom provjere navedenim u članku 87. stavku 2.

2. Komisija na temelju opravdanih izrazito hitnih razloga u vezi s interesima osobe čiji se podaci obrađuju u slučajevima iz točke (a) stavka 1. usvaja provedbene akte u skladu s postupkom iz članka 87. stavka 3. koji se mogu primijeniti odmah. Ti akti ostaju na snazi najduže 12 mjeseci.

3. Neusvajanje ili usvajanje mjere na temelju ovog odjeljka ne dovodi u pitanje nijednu drugu mjeru Komisije na temelju Ugovora.

članka 58. stavka 5., 6. i 8.

3. Neusvajanje ili usvajanje mjere na temelju ovog odjeljka ne dovodi u pitanje nijednu drugu mjeru Komisije na temelju Ugovora.

Amandman 174

Prijedlog Uredbe

Članak 63. – stavak 2.

Tekst koji je predložila Komisija

2. Ako nadzorno tijelo ne predloži nacrt mjere za mehanizam za usklađivanje i time krši članak 58. stavke 1. do 5., mjera nadzornog tijela nije pravno valjana ni primjenjiva.

Izmjena

2. Ako nadzorno tijelo ne predloži nacrt mjere za mehanizam za usklađivanje i time krši članak 58. stavke 1. do 2. **ili usvoji mjeru unatoč snažnom protivljenju u skladu s člankom 58.a stavkom 1.**, mjera nadzornog tijela nije pravno valjana ni primjenjiva.

Amandman 175

Prijedlog Uredbe

Članak 66.

Tekst koji je predložila Komisija

Zadaće Europskog odbora za zaštitu podataka

1. Europski odbor za zaštitu podataka

Izmjena

Zadaće Europskog odbora za zaštitu podataka

1. Europski odbor za zaštitu podataka

osigurava dosljednu primjenu ove Uredbe. U tu svrhu Europski odbor za zaštitu podataka na vlastitu inicijativu ili na zahtjev Komisije osobito:

(a) savjetuje **Komisiju** o svim pitanjima u vezi sa zaštitom osobnih podataka u Uniji kao i o svakoj predloženoj izmjeni ove Uredbe;

(b) razmatra na vlastitu inicijativu ili na zahtjev jednog od svojih članova ili na zahtjev Komisije svako pitanje u vezi s primjenom ove Uredbe te izdaje smjernice, preporuke i primjere najbolje prakse upućene nadzornim tijelima kako bi se potakla dosljedna primjena ove Uredbe;

(c) provjerava primjenu smjernica, preporuka i primjera najbolje prakse iz točke (b) i o tome redovito izvještava Komisiju;

(d) daje mišljenja o nacrtima odluka nadzornih tijela u skladu s mehanizmom dosljednosti iz članka 57.;

(e) promiče suradnju i djelotvornu bilateralnu i multilateralnu razmjenu informacija i prakse među nadzornim tijelima;

(f) promiče zajedničke programe izobrazbe i olakšava razmjenu osoblja među nadzornim tijelima te po potrebi s nadzornim tijelima trećih zemalja ili međunarodnih organizacija;

(g) promiče razmjenu znanja i dokumentacije o zakonodavstvu i praksi na području zaštite podataka s nadzornim

osigurava dosljednu primjenu ove Uredbe. U tu svrhu Europski odbor za zaštitu podataka na vlastitu inicijativu ili na zahtjev **Europskog parlamenta, Vijeća ili Komisije** osobito:

(a) savjetuje **europske institucije** o svim pitanjima u vezi sa zaštitom osobnih podataka u Uniji kao i o svakoj predloženoj izmjeni ove Uredbe;

(b) razmatra na vlastitu inicijativu ili na zahtjev jednog od svojih članova ili na zahtjev **Europskog parlamenta, Vijeća ili Komisije** svako pitanje u vezi s primjenom ove Uredbe te izdaje smjernice, preporuke i primjere najbolje prakse upućene nadzornim tijelima kako bi se potakla dosljedna primjena ove Uredbe, **između ostalog u vezi s izvršnim ovlastima**;

(c) provjerava primjenu smjernica, preporuka i primjera najbolje prakse iz točke (b) i o tome redovito izvještava Komisiju;

(d) daje mišljenja o nacrtima odluka nadzornih tijela u skladu s mehanizmom dosljednosti iz članka 57.;

(da) daje mišljenje o tome koje bi tijelo trebalo biti vodeće tijelo u skladu s člankom 54.a stavkom 3.;

(e) promiče suradnju i djelotvornu bilateralnu i multilateralnu razmjenu informacija i prakse među nadzornim tijelima, **uključujući koordinaciju zajedničkog djelovanja i ostalih zajedničkih aktivnosti, ako tako odluči slijedom zahtjeva jednog ili više nadzornih tijela**;

(f) promiče zajedničke programe izobrazbe i olakšava razmjenu osoblja među nadzornim tijelima te po potrebi s nadzornim tijelima trećih zemalja ili međunarodnih organizacija;

(g) promiče razmjenu znanja i dokumentacije o zakonodavstvu i praksi na području zaštite podataka s nadzornim

tijelima za zaštitu podataka u svijetu.

2. Ako Komisija *zatraži* savjet od Europskog odbora za zaštitu podataka, može zadati vremenski rok u kojem Europski odbor za zaštitu podataka mora pružiti traženi savjet, uzimajući u obzir žurnost slučaja.
3. Europski odbor za zaštitu podataka prosljeđuje Komisiji i odboru iz članka 87. svoja mišljenja, smjernice, preporuke i primjere najbolje prakse te ih objavljuje.
4. Komisija obavještava Europski odbor za zaštitu podataka o mjerama koje je poduzela na temelju mišljenja, smjernica, preporuka i primjera najbolje prakse koje je dao Europski odbor za zaštitu podataka.

tijelima za zaštitu podataka u svijetu.

(ga) daje mišljenje Komisiji prilikom pripreme delegiranih i provedbenih akata koji se temelje na ovoj Uredbi;

(gb) daje mišljenje o kodeksima ponašanja sastavljenima ta razini Unije u skladu s člankom 38. stavku 4.;

(gc) daje mišljenje o kriterijima i preduvjetima za mehanizame certificiranja za zaštitu podataka u skladu s člankom 39. stavkom 3.;

(gd) voditi javnu elektroničku evidenciju o važećim i nevažećim certifikatima u skladu s člankom 39. stavkom 1.h;

(ge) osigurati pomoć nacionalnim nadzornim tijelima na njihov zahtjev;

(gf) uspostaviti i objaviti popis postupaka obrade za koje je potrebno prethodno savjetovanje u skladu s člankom 34.;

(gg) voditi evidenciju sankcija koju su nadzornicima i obrađivačima nametnula nadležna nadzorna tijela;

2. Ako **Europski parlament, Vijeće ili** Komisija *zatraže* savjet od Europskog odbora za zaštitu podataka, može zadati vremenski rok u kojem Europski odbor za zaštitu podataka mora pružiti traženi savjet, uzimajući u obzir žurnost slučaja.
3. Europski odbor za zaštitu podataka prosljeđuje **Europskom parlamentu, Vijeću,** Komisiji i odboru iz članka 87. svoja mišljenja, smjernice, preporuke i primjere najbolje prakse te ih objavljuje.
4. Komisija obavještava Europski odbor za zaštitu podataka o mjerama koje je poduzela na temelju mišljenja, smjernica, preporuka i primjera najbolje prakse koje je dao Europski odbor za zaštitu podataka.

4a. Europski odbor za zaštitu podataka po potrebi se savjetuje sa zainteresiranim stranama i pruža im priliku da u razumnom roku dostave svoje komentare;

Ne dovodeći u pitanje članak 72. Europski odbor za zaštitu podataka objavljuje rezultate postupka savjetovanja.

4b. Europski odbor za zaštitu podataka zadužen je, u skladu sa stavkom 1. točkom (b), za izdavanje smjernica, preporuka i primjera najbolje prakse za uspostavu zajedničkih postupaka za dobivanje i ispitivanje informacija u vezi s navodnim nezakonitim obradama i za osiguranje povjerljivosti dobivenih informacija i njihovih izvora;

Amandman 176

Prijedlog Uredbe

Članak 67. – stavak 1.

Tekst koji je predložila Komisija

1. Europski odbor za zaštitu podataka redovito i pravovremeno obavještava Komisiju o rezultatima svojih aktivnosti. Sastavlja **godišnji** izvještaj o stanju na području zaštite fizičkih osoba pri obradi osobnih podataka u Uniji i trećim zemljama.

Izvještaj sadrži pregled primjene smjernica, preporuka i primjera najbolje prakse iz točke (c) članka 66. stavka 1.

Izmjena

1. Europski odbor za zaštitu podataka redovito i pravovremeno obavještava **Europski parlament, Vijeće i** Komisiju o rezultatima svojih aktivnosti. **Najmanje svake dvije godine** sastavlja izvještaj o stanju na području zaštite fizičkih osoba pri obradi osobnih podataka u Uniji i trećim zemljama.

Izvještaj sadrži pregled primjene smjernica, preporuka i primjera najbolje prakse iz točke (c) članka 66. stavka 1.

Amandman 177

Prijedlog Uredbe

Članak 68. – stavak 1.

Tekst koji je predložila Komisija

1. Europski odbor za zaštitu podataka donosi odluke većinom glasova svojih članova.

Izmjena

1. **Ako nije drugačije predviđeno njegovim poslovníkom,** Europski odbor za zaštitu podataka donosi odluke većinom glasova

svojih članova.

Amandman 178

Prijedlog Uredbe

Članak 69. – stavak 1.

Tekst koji je predložila Komisija

1. Europski odbor za zaštitu podataka iz kruga svojih članova bira predsjednika i dva zamjenika predsjednika. **Jedan je zamjenik predsjednika Europski nadzornik za zaštitu podataka, osim ako nije izabran za predsjednika.**

Izmjena

1. Europski odbor za zaštitu podataka iz kruga svojih članova bira predsjednika i **najmanje** dva zamjenika predsjednika.

Amandman 179

Prijedlog Uredbe

Članak 69. – stavak 2.a (novi)

Tekst koji je predložila Komisija

Izmjena

2a. Dužnost predsjednika obnaša se u radnom odnosu s punim radnim vremenom.

Amandman 180

Prijedlog Uredbe

Članak 71. – stavak 2.

Tekst koji je predložila Komisija

2. Tajništvo pod vodstvom predsjednika pruža analitičku, administrativnu i logističku podršku Europskom odboru za zaštitu podataka.

Izmjena

2. Tajništvo pod vodstvom predsjednika pruža analitičku, **pravnu**, administrativnu i logističku podršku Europskom odboru za zaštitu podataka.

Amandman 181

Prijedlog Uredbe Članak 72. – stavak 1.

Tekst koji je predložila Komisija

1. Rasprave Europskog odbora za zaštitu podataka povjerljive *su*.

Izmjena

1. *Ako nije drugačije predviđeno njegovim poslovnikom*, rasprave Europskog odbora za zaštitu podataka *po potrebi mogu biti* povjerljive. *Dnevni redovi sastanaka Europskog odbora za zaštitu objavljuju se*.

Amandman 182

Prijedlog Uredbe Članak 73.

Tekst koji je predložila Komisija

Pravo žalbe nadzornom tijelu

1. Ne dovodeći u pitanje pravne lijekove u upravnom ili sudskom postupku, svaka osoba čiji se podaci obrađuju ima pravo na žalbu nadzornom tijelu u bilo kojoj državi članici ako smatra da obrada osobnih podataka koji se na nju odnose nije u skladu s ovom Uredbom.

2. Svako tijelo, organizacija ili udruga *s ciljem zaštite prava i interesa osobe čiji se podaci obrađuju povezanih sa zaštitom njihovih osobnih podataka*, osnovani u skladu sa zakonodavstvom države članice, *ima* pravo na žalbu nadzornom tijelu u bilo kojoj državi članici u ime jedne osobe čiji se podaci obrađuju ili više njih ako smatra da su prava osobe čiji se podaci obrađuju navedena u ovoj Uredbi povrijeđena uslijed obrade osobnih podataka.

3. Neovisno o žalbi osobe čiji se podaci obrađuju svako tijelo, organizacija ili udruga iz stavka 2. ima pravo na žalbu nadzornom tijelu u bilo kojoj državi članici

Izmjena

Pravo žalbe nadzornom tijelu

1. Ne dovodeći u pitanje pravne lijekove u upravnom ili sudskom postupku *ni mehanizam usklađivanja*, svaka osoba čiji se podaci obrađuju ima pravo na žalbu nadzornom tijelu u bilo kojoj državi članici ako smatra da obrada osobnih podataka koji se na nju odnose nije u skladu s ovom Uredbom.

2. Svako tijelo, organizacija ili udruga *koji djeluju u javnom interesu*, osnovani u skladu sa zakonodavstvom države članice, *imaju* pravo na žalbu nadzornom tijelu u bilo kojoj državi članici u ime jedne osobe čiji se podaci obrađuju ili više njih ako smatra da su prava osobe čiji se podaci obrađuju navedena u ovoj Uredbi povrijeđena uslijed obrade osobnih podataka.

3. Neovisno o žalbi osobe čiji se podaci obrađuju svako tijelo, organizacija ili udruga iz stavka 2. ima pravo na žalbu nadzornom tijelu u bilo kojoj državi članici

ako smatra da je došlo do povrede *osobnih podataka*.

ako smatra da je došlo do povrede *ove Uredbe*.

Amandman 183

Prijedlog Uredbe Članak 74.

Tekst koji je predložila Komisija

Pravo na pravni lijek protiv nadzornog tijela

1. Svaka fizička ili pravna osoba ima pravo na pravni lijek protiv odluka nadzornog tijela koje se na njih odnose.

2. Svaka osoba čiji se podaci obrađuju ima pravo na pravni lijek koji od nadzornog tijela zahtijeva odgovor na žalbu ako ne postoji odluka potrebna da bi se zaštitila njezina prava ili ako nadzorno tijelo osobu čiji se podaci obrađuju u roku od tri mjeseca ne obavijesti o tijeku ili ishodu žalbe u skladu s točkom (b) članka 52. stavka 1.

3. Za postupke protiv nadzornog tijela nadležni su sudovi države članice u kojoj nadzorno tijelo ima nastan.

4. Osoba čiji se podaci obrađuju i na koju se odnosi odluka nadzornog tijela u državi članici u kojoj ta osoba nema svoje uobičajeno boravište može od nadzornog tijela u državi članici u kojoj ima svoje uobičajeno boravište zatražiti da u njezino ime pokrene postupak protiv nadležnoga nadzornog tijela u drugoj državi članici.

5. Države članice provode konačne odluke sudova iz ovog članka.

Izmjena

Pravo na pravni lijek protiv nadzornog tijela

1. ***Ne dovodeći u pitanje nijedan drugi upravni ili izvansudski pravni lijek***, svaka fizička ili pravna osoba ima pravo na pravni lijek protiv odluka nadzornog tijela koje se na njih odnose.

2. ***Ne dovodeći u pitanje nijedan drugi upravni ili izvansudski pravni lijek***, svaka osoba čiji se podaci obrađuju ima pravo na pravni lijek koji od nadzornog tijela zahtijeva odgovor na žalbu ako ne postoji odluka potrebna da bi se zaštitila njezina prava ili ako nadzorno tijelo osobu čiji se podaci obrađuju u roku od tri mjeseca ne obavijesti o tijeku ili ishodu žalbe u skladu s točkom (b) članka 52. stavka 1.

3. Za postupke protiv nadzornog tijela nadležni su sudovi države članice u kojoj nadzorno tijelo ima nastan.

4. ***Ne dovodeći u pitanje mahanizam za usklađivanje***, osoba čiji se podaci obrađuju i na koju se odnosi odluka nadzornog tijela u državi članici u kojoj ta osoba nema svoje uobičajeno boravište može od nadzornog tijela u državi članici u kojoj ima svoje uobičajeno boravište zatražiti da u njezino ime pokrene postupak protiv nadležnoga nadzornog tijela u drugoj državi članici.

5. Države članice provode konačne odluke sudova iz ovog članka.

Amandman 184

Prijedlog Uredbe

Članak 75. – stavak 2.

Tekst koji je predložila Komisija

2. Za postupke protiv nadzornika ili obrađivača nadležni su sudovi države članice u kojoj nadzornik ili obrađivač ima nastan. Alternativno su za takve postupke nadležni sudovi države članice u kojoj osoba čiji se podaci obrađuju ima uobičajeno boravište, osim ako je nadzornik javno tijelo koje izvršava svoje javne ovlasti.

Izmjena

2. Za postupke protiv nadzornika ili obrađivača nadležni su sudovi države članice u kojoj nadzornik ili obrađivač ima nastan. Alternativno su za takve postupke nadležni sudovi države članice u kojoj osoba čiji se podaci obrađuju ima uobičajeno boravište, osim ako je nadzornik javno tijelo **Unije ili države članice** koje izvršava svoje javne ovlasti.

Amandman 185

Prijedlog Uredbe

Članak 76. – stavak 1.

Tekst koji je predložila Komisija

1. Svako tijelo, organizacija ili udruga iz članka 73. stavka 2. ima pravo na ostvarivanje prava iz članka 74. i 75. **u ime jedne osobe** čiji se podaci obrađuju ili **u ime** više njih.

Izmjena

1. Svako tijelo, organizacija ili udruga iz članka 73. stavka 2. ima pravo na ostvarivanje prava iz članka 74., 75. i 77. **ako ih je ovlastila osoba** čiji se podaci obrađuju ili više njih.

Amandman 186

Prijedlog Uredbe

Članak 77. – stavak 1.

Tekst koji je predložila Komisija

1. Svaka osoba koja je pretrpjela štetu zbog nezakonitog postupka obrade ili zbog djelovanja nespojivog s ovom Uredbom ima pravo **na** odštetu od nadzornika ili obrađivača za štetu koja joj je nanesena.

Izmjena

1. Svaka osoba koja je pretrpjela štetu, **uključujući nematerijalnu štetu**, zbog nezakonitog postupka obrade ili zbog djelovanja nespojivog s ovom Uredbom ima pravo **zatražiti** odštetu od nadzornika ili obrađivača za štetu koja joj je nanesena.

Amandman 187

Prijedlog Uredbe

Članak 77. – stavak 2.

Tekst koji je predložila Komisija

2. Ako je u obradu uključeno više nadzornika ili obrađivača, svaki **je** nadzornik ili obrađivač zajednički i pojedinačno odgovoran za ukupan iznos štete.

Izmjena

2. Ako je u obradu uključeno više nadzornika ili obrađivača, svaki **taj** nadzornik ili obrađivač zajednički **je** i pojedinačno odgovoran za ukupan iznos štete, **osim ako između njih u skladu s člankom 24. ne postoji pisani sporazum kojim se utvrđuju odgovornosti.**

Amandman 188

Prijedlog Uredbe

Članak 79.

Tekst koji je predložila Komisija

Upravne sankcije

Svako nadzorno tijelo ovlašteno je za izricanje upravnih sankcija u skladu s ovim člankom.

2. Upravna sankcija mora u svakom pojedinačnom slučaju biti učinkovita, proporcionalna i odvratajuća. **Iznos upravne kazne određuje se s obzirom na prirodu, težinu i trajanje kršenja, namjeran ili nehotečan karakter kršenja, stupanj odgovornosti fizičke ili pravne osobe i njezine ranije prekršaje, tehničke i organizacijske mjere i postupke provedene u skladu s člankom 23., te stupanj suradnje s nadzornim tijelom kako bi se uklonilo kršenje.**

Izmjena

Upravne sankcije

1. Svako nadzorno tijelo ovlašteno je za izricanje upravnih sankcija u skladu s ovim člankom. **Nadzorna tijela međusobno surađuju u skladu s člankom 46. i 57. kako bi zajamčila usklađenu razinu sankcija u Uniji.**

2. Upravna sankcija mora u svakom pojedinačnom slučaju biti učinkovita, proporcionalna i odvratajuća.

2a. Svima koji ne pridržavaju obveza utvrđenih ovom Uredbom, nadležno tijelo izriče najmanje jednu od navedenih

sankcija:

(a) pismenu opomenu u slučaju prvog i nenamjernog nepridržavanja;

(b) revizije zaštite podataka u redovnim vremenskim intervalima;

(c) novčanu kaznu u iznosu od 100 000 000 EUR ili do 5 % ukupnoga godišnjeg prometa ako je riječ o poduzeću, ovisno o tome koji je od dvaju iznosa veći.

2b. Ako nadzornik ili proizvođač posjeduje „europski pečat za zaštitu podataka” u skladu s člankom 39. stavkom 2.a točkom (c) kazna se izriče samo u slučaju namjernog ili nehotičnog nepridržavanja.

Pri izricanju upravnih sankcija u obzir se uzimaju sljedeći čimbenici:

(a) priroda, ozbiljnost i trajanje nepridržavanja,

(b) namjeran ili nehotičan karakter kršenja;

(c) stupanj odgovornosti fizičke ili pravne osobe i prethodna kršenja koja je osoba počinila;

(d) ponavljajuću prirodu kršenja;

(e) stupanj suradnje sa nadzronim tijelom kako bi se otklonilo kršenje i ublažili mogući štetni učinci toga kršenja;

(f) posebne kategorije osobnih podataka na koje kršenje utječe;

(g) razinu štete, uključujući nematerijalnu štetu, koja je nanesena osobama čiji se podaci obrađuju;

(h) mjere koje je poduzeo nadzorenik ili obrađivač za ublažavanje štete nanesene osobama čiji se podaci obrađuju;

(i) svaka financijska korist, planirana ili ostvarena ili izbjegnuti gubici, u izravnoj ili neizravnoj vezi s kršenjem;

(j) obujam tehničkih ili organizacijskih

mjera i postupaka provedenih u skladu s:

i. člankom 23. – Tehnička i integrirana zaštita podataka

ii. člankom 30. – Sigurnost obrade podataka

iii. člankom 33. – Procjena učinka zaštite podataka

iv. člankom 33.a – Provjera sukladnosti sa zaštitom podataka

v. člankom 35. – Imenovanje službenika za zaštitu podataka

(k) odbijanje suradnje ili ometanje inspekcija, revizija i nadzora koje provodi nadležno tijelo u skladu s člankom 53.

(l) ostali otegotni ili olakotni čimbenici koji se odnose na okolnosti slučaja.

3. U slučaju prve i nenamjerne neusklađenosti s ovom Uredbom, umjesto sankcije može se izreći pismena opomena ako:

(a) fizička osoba obrađuje osobne podatke bez komercijalnog interesa; ili

(b) poduzeće ili organizacija koja zapošljava manje od 250 osoba obrađuje osobne podatke samo kao sporednu aktivnost uz svoje glavne aktivnosti.

4. Nadzorno tijelo izriče novčanu kaznu do 250.000 EUR odnosno ako je riječ o poduzeću do 0,5 % njegovoga ukupnoga godišnjeg prometa svakome tko namjerno ili nehotice:

(a) ne osigura mehanizme za zahtjeve osobe čiji se podaci obrađuju ili osobi čiji se podaci obrađuju ne odgovori odmah ili u zatraženom obliku u skladu s člankom 12. stavkom 1. i 2.;

(b) naplati pristojbu za informacije ili odgovore na zahtjeve osoba čiji se podaci obrađuju kršeći pritom članak 12. stavak 4.

5. Nadzorno tijelo izriče novčanu kaznu do 500 000 EUR odnosno ako je riječ o

poduzeću do 1 % njegovoga ukupnoga godišnjeg prometa svakome tko namjerno ili nehotice:

(a) osobi čiji se podaci obrađuju ne osigura informacije ili ne osigura potpune informacije ili ne osigura informacije na dovoljno transparentan način u skladu s člankom 11., člankom 12. stavkom 3. i člankom 14.;

(b) osobi čiji se podaci obrađuju ne osigura pristup ili ne ispravi osobne podatke u skladu s člancima 15. i 16. ili primatelju ne proslijedi relevantne informacije u skladu s člankom 13.;

(c) ne poštuje pravo na zaborav ili brisanje podataka ili ne uspostavlja mehanizme kojima bi se osiguralo poštovanje rokova ili ne poduzima sve potrebne korake kako se bi treće strane obavijestilo da osoba čiji se podaci obrađuju zahtijeva da se izbrišu sve poveznice ili kopije ili replike osobnih podataka u skladu s člankom 17.;

(d) ne osigurava kopije osobnih podataka u elektroničkom obliku ili osobu čiji se podaci obrađuju sprečava u prijenosu osobnih podataka u drugu aplikaciju kršeći pritom članak 18.;

(e) ne definira odgovarajuće odgovornosti s drugim nadzornicima u skladu s člankom 24. ili to ne čini u dovoljnoj mjeri;

(f) ne vodi dokumentaciju u skladu s člankom 28., člankom 31. stavkom 4. i člankom 44. stavkom 3. ili to ne čini u dovoljnoj mjeri;

(g) u slučajevima u kojima se ne radi o posebnim vrstama podataka ne poštuje pravila o slobodi izražavanja ili pravila o obradi u okviru zapošljavanja ili uvjete za obradu koja ima povijesnu, statističku i znanstvenoistraživačku svrhu u skladu s člancima 80., 82. i 83.

6. Nadzorno tijelo izriče novčanu kaznu

do 1 000 000 EUR odnosno ako je riječ o poduzeću do 2 % njegovoga ukupnoga godišnjeg prometa svakome tko namjerno ili nehotice:

(a) obrađuje osobne podatke bez pravne osnove ili bez dovoljne pravne osnove za obradu ili ne ispunjava uvjete za suglasnost u skladu s člancima 6., 7. i 8.;

(b) obrađuje posebne vrste podataka kršeći pritom članke 9. i 81.;

(c) ne poštuje prigovor ili zahtjeve u skladu s člankom 19.;

(d) ne ispunjava uvjete u vezi s mjerama koje se temelje na profiliranju u skladu s člankom 20.;

(e) ne usvaja interne strategije ili ne provodi prikladne mjere za osiguranje i dokazivanje sukladnosti u skladu s člancima 22., 23. i 30.;

(f) ne imenuje predstavnika u skladu s člankom 25.;

(g) obrađuje osobne podatke ili daje upute za njihovu obradu kršeći pritom obveze u vezi s obradom u ime nadzornika u skladu s člancima 26. i 27.;

(h) nadzorno tijelo ili osobu čiji se podaci obrađuju ne upozori na povredu podataka ili ih o tome ne obavijesti u skladu s člancima 31. i 32. odnosno ta obavijest nije pravovremena ili potpuna;

(i) ne provodi procjene učinka zaštite podataka ili obrađuje osobne podatke bez prethodnog odobrenja ili prethodnog savjetovanja s nadzornim tijelom u skladu s člancima 33. i 34.;

(j) ne imenuje službenika za zaštitu podataka ili ne osigurava uvjete za ispunjavanje zadaća u skladu s člancima 35., 36. i 37.;

(k) zloupotrijebi pečat ili oznaku za zaštitu podataka u smislu članka 39.;

(l) provodi ili naredi prijenos podataka u treću zemlju ili međunarodnu

organizaciju koji se ne temelji na odluci o odgovarajućoj razini zaštite ili odgovarajućim mjerama zaštite ili odstupajući od članaka 40. do 44.;

(m) ne poštuje nalog ili privremenu ili konačnu zabranu obrade ili prekid protoka podataka od strane nadzornog tijela u skladu s člankom 53. stavkom 1.;

(n) ne ispunjava obaveze koje se odnose na pomoć ili odgovor ili osiguravanje relevantnih informacija ili odobrenja za pristup u prostorije nadzornome tijelu u skladu s člankom 28. stavkom 3., člankom 29., člankom 34. stavkom 6. i člankom 53. stavkom 2.;

(o) ne poštuje pravila o čuvanju profesionalne tajne u skladu s člankom 84.

7. Komisija je ovlaštena donositi delegirane akte u skladu s člankom 86. u svrhu ažuriranja iznosa upravnih kazni iz stavaka **4., 5. i 6.**, uzimajući u obzir mjerila iz *stavka 2.*

7. Komisija je ovlaštena donositi delegirane akte u skladu s člankom 86. u svrhu ažuriranja **apsolutnih** iznosa upravnih kazni iz stavaka **2.a**, uzimajući u obzir mjerila **i čimbenike** iz *stavaka 2 i 2.c.*

Amandman 189

Prijedlog Uredbe

Članak 80. – stavak 1.

Tekst koji je predložila Komisija

1. Države članice predviđaju izuzeća i odstupanja od odredbi o općim načelima iz poglavlja II., o pravima osoba čiji se podaci obrađuju iz poglavlja III., o nadzorniku i obrađivaču iz poglavlja IV., o prijenosu osobnih podataka u treće zemlje i međunarodne organizacije iz poglavlja V., o neovisnim nadzornim tijelima iz poglavlja VI. **te** o suradnji i usklađenosti iz poglavlja VII. za obradu osobnih podataka **koja se provodi isključivo u svrhe novinarstva ili umjetničkog ili književnog izražavanja** kako bi se pravo na zaštitu osobnih podataka uskladilo s pravilima

Izmjena

1. Države članice predviđaju izuzeća i odstupanja od odredbi o općim načelima iz poglavlja II., o pravima osoba čiji se podaci obrađuju iz poglavlja III., o nadzorniku i obrađivaču iz poglavlja IV., o prijenosu osobnih podataka u treće zemlje i međunarodne organizacije iz poglavlja V., o neovisnim nadzornim tijelima iz poglavlja VI., o suradnji i usklađenosti iz poglavlja VII. za obradu osobnih podataka **i posebnim slučajevima obrade podataka iz poglavlja IX. kad god je to potrebno** kako bi se pravo na zaštitu osobnih podataka uskladilo s pravilima koja

koja uređuju pravo na slobodu izražavanja.

uređuju pravo na slobodu izražavanja *u skladu s Poveljom Europske unije o temeljnim pravima.*

Amandman 190

Prijedlog Uredbe Članak 80.a (novi)

Tekst koji je predložila Komisija

Izmjena

Članak 80a

Pristup dokumentima

1. Osobne podatke u dokumentima koje posjeduje javna ustanova ili javno tijelo ta ustanova ili to tijelo mogu otkriti u skladu sa zakonodavstvom Unije ili države članice o javnom pristupu službenim dokumentima koje usklađuje pravo na zaštitu osobnih podataka s pravom javnog pristupa službenim dokumentima.

2. Svaka država članica najkasnije do datuma određenog u članku 91. stavku 2. obavještava Komisiju o odredbama koje usvaja u skladu sa stavkom 1. te, bez odgode, o svim daljnjim izmjenama tih odredbi.

Amandman 191

Prijedlog Uredbe Članak 81.

Tekst koji je predložila Komisija

Izmjena

Obrada osobnih podataka o zdravstvenom stanju

1. U skladu s ovom Uredbom **i** točkom (h) članka 9. stavka 2. obrada osobnih podataka o zdravstvenom stanju mora se provoditi na temelju zakonodavstva Unije ili zakonodavstva države članice kojim se

Obrada osobnih podataka o zdravstvenom stanju

1. U skladu s **pravilima utvrđenima** ovom Uredbom, **a posebno** točkom (h) članka 9. stavka 2. obrada osobnih podataka o zdravstvenom stanju mora se provoditi na temelju zakonodavstva Unije ili

osiguravaju prikladne i posebne mjere za očuvanje *legitimnih* interesa osobe čiji se podaci obrađuju *te mora biti potrebna*:

(a) za namjene preventivne medicine ili medicine rada, medicinske dijagnoze, osiguranje njege ili liječenja ili upravljanje zdravstvenim službama i kad te podatke obrađuje zdravstveni djelatnik koji podliježe obvezi profesionalne tajne ili druga osoba za koju također vrijedi istovrsna odredba o povjerljivosti na temelju zakonodavstva države članice ili pravila koja su uspostavila nadležna nacionalna tijela; ili

(b) zbog javnog interesa na području javnog zdravlja kao što je zaštita od ozbiljnih prekograničnih opasnosti za zdravlje ili osiguravanje visokih standarda kvalitete i sigurnosti, između ostalog lijekova i medicinskih proizvoda; ili

(c) zbog drugih razloga od javnog interesa kao što je socijalna zaštita, posebno kako bi se osigurale kvaliteta i isplativost postupaka koji se koriste za rješavanje zahtjeva za ostvarenje pogodnosti i usluga iz sustava zdravstvenog osiguranja.

zakonodavstva države članice kojim se osiguravaju prikladne, *dosljedne* i posebne mjere za očuvanje interesa *i temeljnih prava* osobe čiji se podaci obrađuju, *u mjeri u kojoj su potrebne i razmjerne i na način da ih osoba čiji se podaci obrađuju može predvidjeti*:

(a) za namjene preventivne medicine ili medicine rada, medicinske dijagnoze, osiguranje njege ili liječenja ili upravljanje zdravstvenim službama i kad te podatke obrađuje zdravstveni djelatnik koji podliježe obvezi profesionalne tajne ili druga osoba za koju također vrijedi istovrsna odredba o povjerljivosti na temelju zakonodavstva države članice ili pravila koja su uspostavila nadležna nacionalna tijela; ili

(b) zbog javnog interesa na području javnog zdravlja kao što je zaštita od ozbiljnih prekograničnih opasnosti za zdravlje ili osiguravanje visokih standarda kvalitete i sigurnosti, između ostalog lijekova i medicinskih proizvoda, *ako podatke obrađuje osoba koja podliježe obvezi povjerljivosti*; ili

(c) zbog drugih razloga od javnog interesa kao što je socijalna zaštita, posebno kako bi se osigurale kvaliteta i isplativost postupaka koji se koriste za rješavanje zahtjeva za ostvarenje pogodnosti i usluga iz sustava zdravstvenog osiguranja, *kao i za pružanje zdravstvenih usluga. Ta obrada podataka o zdravstvenom stanju zbog javnog interesa ne smije dovesti do toga da se podatke obrađuje u druge svrhe, osim uz suglasnost osoba čiji se podaci obrađuju na temelju zakonodavstva Unije ili države članice.*

1a. Ako se namjene iz stavka 1. točaka (a) do (c) mogu ostvariti bez uporabe osobnih podataka, onda se osobni podaci ne koriste za njihovo ostvarivanje, osim na temelju suglasnosti osobe čiji se podaci obrađuju ili na temelju prava države članice.

2. Obrada **osobnih** podataka o zdravstvenom stanju nužnu u svrhu povijesnog, statističkog ili znanstvenog istraživanja, **kao što su evidencije pacijenata uvedene radi poboljšanja dijagnoza i razlikovanja sličnih vrsta bolesti te pripremanja studija za terapije**, podliježe uvjetima i mjerama zaštite iz članka 83.

3. Komisija je ovlaštena donositi delegirane akte u skladu s člankom 86. u svrhu dodatnog određivanja **drugih razloga od** javnog interesa na području javnog zdravlja, kako je navedeno u točki (b) stavka 1., **te kriterije i preduvjete za mjere zaštite za obradu osobnih podataka**

1b. Ako je za obradu medicinskih podataka isključivo u svrhu javnog zdravlja ili znanstvenog istraživanja potrebna suglasnost osobe čije se podaci obrađuju, se može dati za jedno ili za više posebnih i sličnih istraživanja. Međutim, osoba čiji se podaci obrađuju može povući svoju suglasnost u svakom trenutku.

1c. U svrhu suglasnosti za sudjelovanje u znanstvenoistraživačkim aktivnostima u okviru kliničkih ispitivanja, primjenjuju se odgovarajuće odredbe Direktive 2001/20/EZ Europskog parlament i Vijeća.

2. Obrada podataka o zdravstvenom stanju nužnu u svrhu povijesnog, statističkog ili znanstvenog istraživanja, **dopuštena je samo uz suglasnost osobe čiji se podaci obrađuju i** podliježe uvjetima i mjerama zaštite iz članka 83.

2a. U pravu države članice mogu biti predviđene iznimke od zahtjeva za suglasnost za sudjelovanje u istraživanju, kao što je utvrđeno u stavku 2., ako je to istraživanje od većeg javnog interesa te ako ga se drugačije ne može provesti. U tom su slučaju podaci anonimizirani, odnosno, ako to nije moguće, pseudonimizirani u skladu s najvišim tehničkim standardima te se poduzimaju sve potrebne mjere za sprečavanje neovlaštene ponovne identifikacije osoba čiji se podaci obrađuju. Međutim, osobe čiji se podaci obrađuju u svakom trenutku imaju pravo prigovora u skladu s člankom 19.

3. Komisija je ovlaštena donositi, **nakon što zatraži mišljenje Europskog odbora za zaštitu podataka**, delegirane akte u skladu s člankom 86. u svrhu dodatnog određivanja javnog interesa na području javnog zdravlja, kako je navedeno u točki (b) stavka 1., **i velikog javnog interesa na**

u svrhe iz stavka 1.

*području istraživanja, kako je navedeno u
čstavku 2.a.*

*3a. Svaka država članica najkasnije do
datuma određenog u članku 91. stavku 2.
obavještava Komisiju o odredbama koje
usvaja u skladu sa stavkom 1. te, bez
odgode, o svim daljnjim izmjenama tih
odredbi.*

*¹ Direktiva 2001/20/EZ Europskog
parlamenta i Vijeća od 4. travnja 2001. o
usklađivanju zakonodavstava i drugih
propisa država članica koji se odnose na
primjenu dobre kliničke prakse pri
provođenju kliničkih ispitivanja lijekova
za ljudsku uporabu (SL L 121, 1.5.2001.,
str. 34.).*

Amandman 192

Prijedlog Uredbe Članak 82.

Tekst koji je predložila Komisija

Izmjena

Obrada pri zapošljavanju

Minimalni standardi obrade podataka pri zapošljavanju

1. U skladu s ovom Uredbom **države članice mogu zakonom** propisati posebna pravila kojima se uređuje obrada osobnih podataka zaposlenika pri zapošljavanju, naročito u svrhu zaposlenja, izvršavanja ugovora o zaposlenju, uključujući ispunjenje obaveza utvrđenih zakonom **ili** kolektivnim ugovorima, upravljanja, planiranja i organizacije **rada**, zdravlja i sigurnosti na poslu, u svrhu individualnog ili kolektivnog ostvarivanja i uživanja prava i pogodnosti u vezi sa zaposlenjem te u svrhu prekida radnog odnosa.

1. **Države članice mogu**, u skladu s **pravilima utvrđenima** ovom Uredbom **i uzimajući u obzir načelo proporcionalnosti, zakonskim sredstvima** propisati posebna pravila kojima se uređuje obrada osobnih podataka zaposlenika pri zapošljavanju, naročito, **ali ne i isključivo** u svrhu zaposlenja, **prijava za posao u okviru skupina poduzeća**, izvršavanja ugovora o zaposlenju, uključujući ispunjenje obaveza utvrđenih zakonom **i** kolektivnim ugovorima, **u skladu s nacionalnim pravom i praksom**, upravljanja, planiranja i organizacije **radma**, zdravlja i sigurnosti na poslu, u svrhu individualnog ili kolektivnog ostvarivanja i uživanja prava i pogodnosti u vezi sa zaposlenjem te u svrhu prekida radnog odnosa. **Države članice mogu**

*dopustiti da se u kolektivnim ugovorima
podrobnije odrede odredbe utvrđene ovim
člankom.*

*Ia. Svrha obrade takvih podataka mora
biti povezana s razlogom zbog kojeg su ti
podaci prikupljeni te mora ostati u okviru
konteksta zapošljavanja. Profiliranje ili
korištenje u sekundarne svrhe nije
dopušteno.*

*Ib. Ako nije dobrovoljna, suglasnost
zaposlenika ne pruža pravnu osnovu
poslodavcu za obradu njegovih podataka.*

*Ic. Bez obzira na ostale odredbe ove
Uredbe, pravni propisi država članica iz
stavka 1. uključuju namjanje sljedeće
minimalne standarde:*

*(a) obrada podataka o zaposlenicima bez
njihova znanja nije dopuštena. Bez obzira
na prvu rečenicu, države članice po
zakonu mogu dopustiti spomenutu praksu
određujući primjerene rokove za brisanje
podataka, pod uvjetom da postoji sumnja
zasnovana na dokumentiranim
konkretnim dokazima o tome da je
zaposlenik počinio zločin ili je grubo
prekršio svoju zaposleničku dužnost, kao i
da je prikupljanje podataka potrebno za
razjašnjavanje pitanja te da su priroda i
opseg toga prikupljanja potrebni i
proporcionalni u odnosu na svrhu
prikupljanja. Privatnost i osobni životi
zaposlenika u svakom trenutku moraju
biti zaštićeni. Istrage provodi nadležno
tijelo;*

*(b) otvoreni nadzor optičko-elektroničkim
i/ili akustično-elektroničkim uređajima
zabranjen je u dijelovima poduzeća
kojima javnost ne može pristupiti i koje u
prvom redu koriste zaposlenici za svoje
privatne aktivnosti, a tu se posebice
ubrajaju kupaonice, garderobe i prostorije
za odmor i spavanje. Tajni nadzor nije
dopušten ni pod kojim uvjetima;*

*(c) ako poduzeća ili tijela prikupljaju i
obrađuju osobne podatke u kontekstu*

medicinskih pregleda i/ili testova sposobnosti, dužna su kandidatu za radno mjesto ili zaposleniku unaprijed objasniti namjenu tih podataka te osigurati da im se ti podaci na kraju dostave zajedno s rezultatima, a na zahtjev i objašnjenjem. Prikupljanje podataka u svrhu genetičkih testiranja i analiza načelno je zabranjeno.

(d) Kolektivnim ugovorom može se odrediti mogu li se, i u kojoj mjeri, telefon, elektronička pošta, internet i ostale telekomunikacijske usluge koristiti u privatne svrhe. Ondje gdje to nije određeno kolektivnim ugovorom, poslodavac se dogovara izravno sa zaposlenikom. Ako je korištenje u privatne svrhe dopušteno, obrada pri tome nastalih prikupljenih podataka dopuštena je u prvom redu kako bi se osigurala sigurnost podataka, pravilno funkcioniranje telekomunikacijskih mreža i usluga te u svrhe naplate.

Bez obzira na treću rečenicu, države članice po zakonu mogu dopustiti spomenutu praksu određujući primjerene rokove za brisanje podataka, pod uvjetom da postoji sumnja zasnovana na dokumentiranim konkretnim dokazima o tome da je zaposlenik počinio zločin ili je grubo prekršio svoju zaposleničku dužnost, kao i da je prikupljanje podataka potrebno za razjašnjavanje pitanja te da su priroda i opseg toga prikupljanja potrebni i proporcionalni u odnosu na svrhu prikupljanja. Privatnost i osobni životi zaposlenika u svakom trenutku moraju biti zaštićeni. Istrage provodi nadležno tijelo;

(e) osobni podaci zaposlenika, posebno osjetljivi podaci poput političke orijentacije te članstva i aktivnosti u sindikatu, ni u kome se slučaju ne smiju koristiti kako bi se zaposlenika stavilo na tzv. crnu listu, provjeravalo ili sprečavalo u dobivanju posla u budućnosti. Obrada, korištenje u vezi sa zapošljavanjem, sastavljanje i prosljeđivanje crnih lista

zaposlenika ili ostali oblici diskriminacije zabranjeni su. Države članice provode provjere i izriču odgovarajuće sankcije u skladu s člankom 79. stavkom 6. u cilju osiguravanja učinkovite provedbe ove točke.

1d. Prosljeđivanje i obrada osobnih podataka zaposlenika između pravno nezavisnih poduzeća koja pripadaju istoj grupi poduzeća i uz sudjelovanje stručnjaka koji osiguravaju pravno i porezno savjetovanje dopušteni su, pod uvjetom da je to važno za poslovanje te namijenjeno provedbi specifičnih operacija ili upravnih postupaka, odnosno, ako nije u suprotnosti s interesima i temeljnim pravima osobe o čijim je podacima riječ, koje treba zaštititi. Ako se podaci o zaposlenicima prosljeđuju trećoj zemlji i/ili međunarodnoj organizaciju, primjenjuje se poglavlje V.

2. Svaka država članica najkasnije do datuma određenog u članku 91. stavku 2. obavještava Komisiju o odredbama koje usvaja u skladu sa **stavkom** 1. te, bez odgode, o svim daljnjim izmjenama tih odredbi.

3. Komisija je ovlaštena donositi delegirane akte u skladu s člankom 86. u svrhu dodatnog određivanja kriterija i preduvjeta za mjere zaštite za obradu osobnih podataka u svrhe iz stavka 1.

2. Svaka država članica najkasnije do datuma određenog u članku 91. stavku 2. obavještava Komisiju o odredbama koje usvaja u skladu sa **stavcima** 1. *i 1.b* te, bez odgode, o svim daljnjim izmjenama tih odredbi.

3. Komisija je ovlaštena, **nakon što zatraži mišljenje Europskog odbora za zaštitu podataka**, donositi delegirane akte u skladu s člankom 86. u svrhu dodatnog određivanja kriterija i preduvjeta za mjere zaštite za obradu osobnih podataka u svrhe iz stavka 1.

Amandman 193

Prijedlog Uredbe Članak 82.a (novi)

Tekst koji je predložila Komisija

Izmjena

Članak 82a

Obrada u kontekstu socijalne sigurnosti

1. Države članice mogu u skladu s pravilima utvrđenima ovom Uredbom usvojiti posebne zakonske propise u kojima se navode uvjeti obrade osobnih podataka kojih se moraju pridržavati javne institucije i odjeli u kontekstu socijalne sigurnosti, ako se obrada obavlja u javnom interesu.

2. Svaka država članica najkasnije do datuma određenog u članku 91. stavku 2. obavještava Komisiju o odredbama koje usvaja u skladu sa stavkom 1. te, bez odgode, o svim daljnjim izmjenama tih odredbi.

Amandman 194

Prijedlog Uredbe Članak 83.

Tekst koji je predložila Komisija

Obrada u svrhe povijesnog, statističkog i znanstvenog istraživanja

1. U skladu s ovom Uredbom osobni podaci mogu se obrađivati u svrhe povijesnog, statističkog i znanstvenog istraživanja samo ako:

(a) te svrhe nije moguće ispuniti drugačije obradom podataka koja ne omogućuje ili više ne omogućuje identifikaciju osobe čiji se podaci obrađuju;

(b) se podaci koji omogućuju povezivanje informacija s identificiranom osobom čiji se podaci obrađuju ili osobom čiji se podaci obrađuju, a koju je moguće identificirati, čuvaju odvojeno od drugih informacija *dok god se te svrhe mogu ispuniti na taj način.*

2. Tijela koja provode povijesna, statistička ili znanstvena istraživanja

Izmjena

Obrada u svrhe povijesnog, statističkog i znanstvenog istraživanja

1. U skladu s ***pravilima utvrđenima*** ovom Uredbom osobni podaci mogu se obrađivati u svrhe povijesnog, statističkog i znanstvenog istraživanja samo ako:

(a) te svrhe nije moguće ispuniti drugačije obradom podataka koja ne omogućuje ili više ne omogućuje identifikaciju osobe čiji se podaci obrađuju;

(b) se podaci koji omogućuju povezivanje informacija s identificiranom osobom čiji se podaci obrađuju ili osobom čiji se podaci obrađuju, a koju je moguće identificirati, čuvaju *se* odvojeno od drugih informacija ***u skladu s najvišim tehničkim standardima, pri čemu se poduzimaju sve potrebne mjere kako bi se spriječila neovlaštena ponovna identifikacija osoba čiji se podaci obrađuju.***

možu objaviti osobne podatke ili ih na neki drugi način javno otkriti samo ako:

(a) je osoba čiji se podaci obrađuju dala suglasnost u skladu s uvjetima utvrđenim u članku 7.;

(b) je objavljivanje osobnih podataka potrebno radi predstavljanja rezultata istraživanja ili radi lakšeg istraživanja ako interesi i temeljna prava ili temeljne slobode osobe čiji se podaci obrađuju ne nadvladavaju te interese; ili

(c) je osoba čiji se podaci obrađuju objavila podatke.

3. Komisija je ovlaštena donositi delegirane akte u skladu s člankom 86. u svrhu dodatnog određivanja kriterija i preduvjeta za obradu osobnih podataka u svrhe iz stavaka 1. i 2. kao i potrebna ograničenja prava na informacije i prava na pristup osobe čiji se podaci obrađuju te u svrhu podrobnijih uvjeta i mjera zaštite za prava osobe čiji se podaci obrađuju u tim okolnostima.

Amandman 195

Prijedlog Uredbe
Članak 83.a (novi)

Tekst koji je predložila Komisija

Izmjena

Članak 83a

Obrada osobnih podataka u arhivskim službama

1. Kada je početna obrada uzbog koje su podaci prikupljeni završena, osobni podaci mogu se obrađivati u arhivskim službama, čija je glavna zadaća ili obveza prikupljati, pohranjivati i pružati informacije, koristiti i širiti arhivu u javnom interesu, posebno u cilju potvrđivanja prava pojedinca ili u povijesne, statističke ili znanstvene svrhe. Te se zadaće provode u skladu s pravilima o pristupu, puštanju u opticaj i širenju upravnih dokumenata i arhivske građe

koja su odredile države članice te u skladu s pravilima utvrđenima ovom Uredbom, posebice u pogledu davanja suglasnosti te prava na prigovor.

2. Svaka država članica najkasnije do datuma određenog u članku 91. stavku 2. obavještava Komisiju o odredbama koje usvaja u skladu sa stavkom 1. te, bez odgode, o svim daljnjim izmjenama tih odredbi.

Amandman 196

Prijedlog Uredbe

Članak 84. – stavak 1.

Tekst koji je predložila Komisija

1. U skladu s ovom Uredbom države članice **moгу zakonom propisati posebna** pravila kojima se određuju istražne ovlasti nadzornih tijela iz članka 53. stavka 2. u vezi s nadzornicima ili obrađivačima koji podliježu nacionalnom zakonodavstvu ili pravila koja nadležna nacionalna tijela propisuju za obvezu čuvanja profesionalne tajne ili drugu istovrsnu obvezu kada je to potrebno i razmjerno radi usklađivanja prava na zaštitu osobnih podataka s obvezom čuvanja profesionalne tajne. ***Ta se pravila primjenjuju samo s obzirom na osobne podatke koje je nadzornik ili obrađivač primio ili dobio u okviru djelatnosti pokrivenе ovom obvezom čuvanja tajne.***

Izmjena

1. U skladu s **pravilima propisanim** ovom Uredbom države članice **osiguravaju uspostavu posebnih** pravila kojima se određuju istražne ovlasti nadzornih tijela iz članka 53. stavka 2. u vezi s nadzornicima ili obrađivačima koji podliježu nacionalnom zakonodavstvu ili pravila koja nadležna nacionalna tijela propisuju za obvezu čuvanja profesionalne tajne ili drugu istovrsnu obvezu kada je to potrebno i razmjerno radi usklađivanja prava na zaštitu osobnih podataka s obvezom čuvanja profesionalne tajne

Amandman 197

Prijedlog Uredbe Članak 85.

Tekst koji je predložila Komisija

Postojeća pravila o zaštiti podataka crkava i vjerskih udruga

1. Ako u državi članici u trenutku stupanja na snagu ove Uredbe crkve i vjerske udruge ili zajednice primjenjuju **sveobuhvatna** pravila u vezi sa zaštitom pojedinaca pri obradi osobnih podataka, ta se pravila mogu i dalje primjenjivati ako su usklađena s odredbama ove Uredbe.

2. Crkve i vjerske udruge koje primjenjuju **sveobuhvatna** pravila u skladu sa stavkom 1. **osiguravaju uspostavu neovisnoga nadzornog tijela u skladu s poglavljem VI. ove Uredbe.**

Amandman 198

Prijedlog Uredbe Članak 85.a (novi)

Tekst koji je predložila Komisija

Izmjena

Postojeća pravila o zaštiti podataka crkava i vjerskih udruga

1. Ako u državi članici u trenutku stupanja na snagu ove Uredbe crkve i vjerske udruge ili zajednice primjenjuju **odgovarajuća** pravila u vezi sa zaštitom pojedinaca pri obradi osobnih podataka, ta se pravila mogu i dalje primjenjivati ako su usklađena s odredbama ove Uredbe.

2. Crkve i vjerske udruge koje primjenjuju **odgovarajuća** pravila u skladu sa stavkom 1. **moraju, u skladu s člankom 38., dobiti mišljenje o sukladnosti.**

Izmjena

Članak 85a

Poštovanje temeljnih prava

Ovom se Uredbom ne mijenja obveza poštovanja temeljnih prava i temeljnih pravnih načela sadržanih u članku 6. UEU-a.

Amandman 199

Prijedlog Uredbe Članak 85.b (novi)

Tekst koji je predložila Komisija

Izmjena

Članak 85b

Standardni obrasci

1. Uzimajući u obzir posebne odlike i potrebe različitih sektora i situacije obrade, Komisija može odrediti standardne obrasce za:

(a) pojedine metode stjecanja provjerljive suglasnosti navedene u članku 8. stavku 1.,

(b) obavještanje iz članka 12. stavka 2., uključujući u elektroničkom obliku,

(c) pružanje informacija iz članka 14. stavaka 1. do 3.,

(d) zahtjeva za pristup informacijama i njegovo odobravanje iz članka 15. stavka 1., uključujući i za obavještanje osobe čiji se podaci obrađuju o osobnim podacima;

(e) dokumentaciju iz članka 28. stavka 1.,

(f) obavještanje nadzornog tijela o povredi osobnih podataka u skladu s člankom 31. i za dokumentaciju iz članka 34. stavka 2.,

(g) prethodna savjetovanja iz članka 34. i za obavještanje nadzornih tijela u skladu s člankom 34. stavkom 6.

2. U skladu s tim Komisija će poduzeti potrebne mjere za mikro, mala i srednja poduzeća.

3. Ti provedbeni akti usvajaju se u skladu s postupkom provjere navedenim u članku 87. stavku 2.

Amandman 200

Prijedlog Uredbe

Članak 86. – stavak 2.

Tekst koji je predložila Komisija

2. *Delegiranje ovlasti navedeno u članku 6. stavku 5., članku 8. stavku 3., članku 9. stavku 3., članku 12. stavku 5., članku 14. stavku 7., članku 15. stavku 3., članku 17. stavku 9., članku 20. stavku 5., članku 22. stavku 4., članku 23. stavku 3., članku 26. stavku 5., članku 28. stavku 5., članku 30. stavku 3., članku 31. stavku 5., članku 32. stavku 5., članku 33. stavku 5., članku 34. stavku 8., članku 35. stavku 11., članku 37. stavku 2., članku 39. stavku 2., članku 43. stavku 3., članku 44. stavku 7., članku 79. stavku 7., članku 81. stavku 3., članku 82. stavku 3. i članku 83. stavku 3. prenosi se na Komisiju na neodređeno vrijeme od dana stupanja ove Uredbe na snagu.*

Izmjena

2. *Ovlast donošenja delegiranih akata iz članka 13.a stavka 5., članka 17. stavka 9., članka 38. stavka 4., članka 39. stavka 2., članka 41. stavka 3., članka 41. stavka 5., članka 43. stavka 3., članka 79. stavka 7., članka 81. stavka 3. i članka 82. stavka 3. prenosi se na Komisiju na neodređeno vrijeme od dana stupanja ove Uredbe na snagu.*

Amandman 201

Prijedlog Uredbe

Članak 86. – stavak 3.

Tekst koji je predložila Komisija

3. *Europski parlament ili Vijeće u svakom trenutku mogu opozvati delegiranje ovlasti navedeno u članku 6. stavku 5., članku 8. stavku 3., članku 9. stavku 3., članku 12. stavku 5., članku 14. stavku 7., članku 15. stavku 3., članku 17. stavku 9., članku 20. stavku 5., članku 22. stavku 4., članku 23. stavku 3., članku 26. stavku 5., članku 28. stavku 5., članku 30. stavku 3., članku 31. stavku 5., članku 32. stavku 5., članku 33. stavku 5., članku 34. stavku 8., članku 35. stavku 11., članku 37. stavku 2., članku 39. stavku 2., članku 43. stavku 3., članku 44. stavku 7., članku 79. stavku 7., članku 81. stavku 3., članku 82. stavku 3. i članku 83. stavku 3. Odlukom o opozivu *prestaje**

Izmjena

3. *Europski parlament ili Vijeće u svakom trenutku mogu opozvati delegiranje ovlasti navedeno u članku 13.a stavku 5., članku 17. stavku 9., članku 38. stavku 4., članku 39. stavku 2., članku 41. stavku 3., članku 41. stavku 5., članku 43. stavku 3., članku 79. stavku 7., članku 81. stavku 3. i članku 82. stavku 3. Odlukom o opozivu *prekida se* delegiranje ovlasti *koje je u njoj navedeno*. Odluka proizvodi *pravne* učinke *na* dan nakon njezine objave u Službenom listu Europske unije ili na kasniji datum koji je u njoj naveden. Odluka ne utječe na valjanost delegiranih akata koji su već na snazi.*

delegiranje ovlasti *navedene u toj odluci*. Odluka proizvodi učinke dan nakon njezine objave u Službenom listu Europske unije ili na kasniji datum koji je u njoj naveden. Odluka ne utječe na valjanost delegiranih akata koji su već na snazi.

Amandman 202

Prijedlog Uredbe

Članak 86. – stavak 5.

Tekst koji je predložila Komisija

5. Delegiranje ovlasti iz članka 6. stavka 5., članka 8. stavka 3., članka 9. stavka 3., članka 12. stavka 5., članka 14. stavka 7., članka 15. stavka 3., članka 17. stavka 9., članka 20. stavka 5., članka 22. stavka 4., članka 23. stavka 3., članka 26. stavka 5., članka 28. stavka 5., članka 30. stavka 3., članka 31. stavka 5., članka 32. stavka 5., članka 33. stavka 5., članka 34. stavka 8., članka 35. stavka 11., članka 37. stavka 2., članka 39. stavka 2., članka 43. stavka 3., članka 44. stavka 7., članka 79. stavka 7., članka 81. stavka 3., članka 82. stavka 3. i članka 83. stavka 3. stupa na snagu samo ako *ni* Europski parlament *ni* Vijeće *ne izraze nikakav prigovor* u roku od *dva mjeseca nakon što su obaviješteni o tom aktu* ili ako prije isteka tog roka Europski parlament i Vijeće *obavijeste* Komisiju da neće uložiti *prigovor*. *Navedeni rok produžuje se za dva mjeseca na zahtjev* Europskog parlamenta ili Vijeća.

Izmjena

5. Delegirani akt donesen na temelju članka 13.a stavka 5., članka 17. stavaka 9., članka 38. stavka 4., članka 39. stavka 2., članka 41. stavka 3., članka 41. stavka 5., članka 43. stavka 3., članka 44. stavka 7., članka 79. stavka 7., članka 81. stavka 3. i članka 82. stavka 3. stupa na snagu samo ako Europski parlament *ili* Vijeće u roku od *šest mjeseci od priopćenja tog akta Europskom parlamentu i Vijeću na njega ne ulože nikakav prigovor* ili ako *su* prije isteka tog roka *i* Europski parlament i Vijeće *obavijestili* Komisiju da neće uložiti *prigovore*. *Taj se rok produžuje za šest mjeseci na inicijativu* Europskog parlamenta ili Vijeća.

Amandman 203

Prijedlog Uredbe

Članak 87. – stavak 3.

Tekst koji je predložila Komisija

3. Kod upućivanja na ovaj stavak primjenjuje se članak 8. Uredbe (EU) br.

Izmjena

Briše se.

182/2011 u vezi s njezinim člankom 5.

Amandman 204

Prijedlog Uredbe

Članak 89. – stavak 2.

Tekst koji je predložila Komisija

2. Članak 1. stavak 2. Direktive
2002/58/EZ *briše* se.

Izmjena

2. Članak 1. stavak 2., **članci 4. i 15.**
Direktive 2002/58/EZ *brišu* se.

Amandman 205

Prijedlog Uredbe

Članak 89. – stavak 2.a (novi)

Tekst koji je predložila Komisija

Izmjena

2a. Komisija bez odlaganja i najkasnije do datuma iz članka 91. stavka 2. predstavlja prijedlog revizije pravnog okvira za obradu osobnih podataka i zaštitu privatnosti u elektroničkoj komunikaciji kako bi uskladila pravne propise s ovom Uredbom i osigurala dosljedne i ujednačene pravne odredbe koje se odnose na temeljno pravo na zaštitu osobnih podataka u Europskoj uniji.

Amandman 206

Prijedlog Uredbe

Članak 89.a (novi)

Tekst koji je predložila Komisija

Izmjena

Članak 89a

***Odnos prema Uredbi (EZ) br. 45/2001 i
izmjena te Uredbe***

1. Pravila utvrđena ovom Uredbom primjenjuju se na obradu osobnih podataka u institucijama, tijelima,

uredima i agencijama Unije, koji se odnose na pitanja u čijem se slučaju ne primjenjuju dodatna pravila utvrđena Uredbom (EZ) br. 45/2001.

2. Komisija bez odgode i najkasnije do datuma navedenog u članku 91. stavku 2. predstavlja prijedlog revizije pravnog okvira koji se primjenjuje za obradu osobnih podataka u institucijama, tijelima, uredima i agencijama Unije.

Prilog 1. – Prikaz informacija iz članka 13.a (novi)

1) Uzimajući u obzir proporcije navedene u članku 6., informacije se navode na sljedeći način:

IKONA	OSNOVNE INFORMACIJE	ISPUNJENO
	<p>Osobni podaci ne prikupljaju se više od minimuma nužnog za svaku posebnu svrhu obrade</p>	
	<p>Osobni podaci ne zadržavaju se više od minimuma nužnog za svaku posebnu svrhu obrade</p>	
	<p>Osobni podaci obrađuju se u svrhe različite od onih u koje su prikupljeni;</p>	
	<p>Osobni podaci šire se komercijalnim trećim stranama;</p>	
	<p>Osobni podaci ne prodaju se niti se iznajmljuju</p>	
	<p>Osobni podaci zadržavaju se u nekodiranom obliku</p>	

2) Sljedeće riječi u recima drugog stupca tablice pod točkom 1., pod nazivom „OSNOVNE INFORMACIJE”, napisane su kao podebljani tekst:

(a) riječ „prikupljaju“ u prvom retku drugog stupca;

(b) riječ „zadržavaju“ u drugom retku drugog stupca;

(c) riječ „obrađuju“ u trećem retku drugog stupca;

(d) riječ „šire“ u četvrtom retku drugog stupca;

(e) riječi „prodaju se niti se iznajmljuju” u petom retku drugog stupca;

(f) riječ „nekodiranom“ u šestom retku drugog stupca.

3) Uzimajući u obzir proporcije navedene u članku 6., reci u trećem stupcu tablice pod točkom 1. pod nazivom „ISPUNJENO“, nadopunjuju se jednim od sljedećih grafičkih oblika u skladu s uvjetima utvrđenima u točki 4.:

(a)



(b)



4)

(a) Ako se ne prikupi više od minimuma osobnih podataka nužnog za svaku posebnu svrhu obrade, prvi redak trećeg stupca tablice pod točkom 1. sadrži grafički oblik iz točke 3. pod (a).

(b) Ako se prikupi više od minimuma osobnih podataka nužnog za svaku posebnu svrhu obrade, prvi redak trećeg stupca tablice pod točkom 1. sadrži grafički oblik iz točke 3. pod (b).

(c) Ako se ne zadrži više od minimuma osobnih podataka nužnog za svaku posebnu svrhu

obrade, drugi redak trećeg stupca tablice pod točkom 1. sadrži grafički oblik iz točke 3. pod (a).

(d) Ako se zadrži više od minimuma osobnih podataka nužnog za svaku posebnu svrhu obrade, drugi redak trećeg stupca tablice pod točkom 1. sadrži grafički oblik iz točke 3. pod (b).

(e) Ako se osobni podaci ne obrađuju u svrhe različite od onih u koje su prikupljeni, treći redak trećeg stupca tablice pod točkom 1. sadrži grafički oblik iz točke 3. pod (a).

(f) Ako se osobni podaci obrađuju u svrhe različite od onih u koje su prikupljeni, treći redak trećeg stupca tablice pod točkom 1. sadrži grafički oblik iz točke 3. pod (b).

(g) Ako se osobni podaci ne šire komercijalnim trećim stranama, četvrti redak trećeg stupca tablice pod točkom 1. sadrži grafički oblik iz točke 3. pod (a).

(h) Ako se osobni podaci šire komercijalnim trećim stranama, četvrti redak trećeg stupca tablice pod točkom 1. sadrži grafički oblik iz točke 3. pod (b).

(i) Ako se osobni podaci ne prodaju niti se iznajmljuju, peti redak trećeg stupca tablice pod točkom 1. sadrži grafički oblik iz točke 3. pod (a).

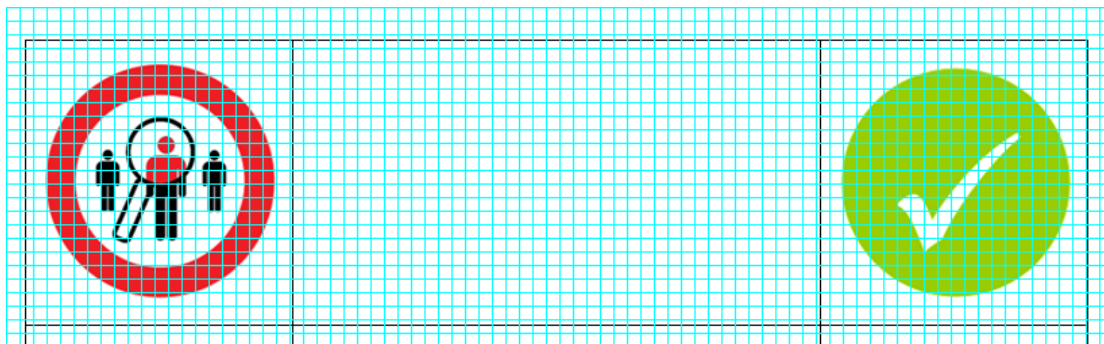
(j) Ako se osobni podaci prodaju ili se iznajmljuju, peti redak trećeg stupca tablice pod točkom 1. sadrži grafički oblik iz točke 3. pod (b).

(k) Ako se osobni podaci ne zadržavaju u nekodiranom obliku, šesti redak trećeg stupca tablice pod točkom 1. sadrži grafički oblik iz točke 3. pod (a).

(l) Ako se osobni podaci zadržavaju u nekodiranom obliku, šesti redak trećeg stupca tablice pod točkom 1. sadrži grafički oblik iz točke 3. pod (b).

5) Referentne boje grafičkih oblika u točki 1. u skali boja Pantone su crna Pantone br. 7547 i crvena Pantone br. 485. Referentna boja grafičkog oblika u točki 3. pod (a) je zelena Pantone br. 370. Referentna boja grafičkih oblika u točki 3. pod (b) je crvena Pantone br. 485.

6) Proporcije u sljedećem crtežu moraju se poštovati, čak i kada je format tablice smanjen ili povećan:



EXPLANATORY STATEMENT

Introduction

In accordance with Article 8 of the EU Charter the right to personal data protection:

1. Everyone has the right to the protection of personal data concerning him or her.
2. 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. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified
3. Compliance with these rules shall be subject to control by an independent authority.

Since the adoption of Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data a lot has changed in the area of data protection, notably technological developments, increased collection and processing of personal data, including for law enforcement purposes, with a patchwork of applicable data protection rules and globalization of markets and cooperation.

Furthermore the Directive has failed to achieve a proper harmonisation due to the different implementation of its provisions in the Member States. In this context it has become increasingly difficult for individuals ('data subjects') to exercise their right to data protection.

Finally it has hampered the development of the single market with companies (controlling or processing personal data, 'data controllers') and individuals facing differences in data protection requirements.

Since the entry into force of the Lisbon Treaty, the Union has an explicit legal basis for data protection covering processing of personal data in the public and private sector but also in the context of law enforcement (resulting from the collapse of the pre Lisbon "pillar structure") (Article 16(2) TFEU) The Commission has now used Article 16(2) TFEU as legal basis to present proposals for a revision of the Union's data protection framework. It proposes a Regulation (COM (2012)11) that will replace Directive 95/46/EC (rapporteur: Jan Philipp Albrecht, Greens/EFA) and a Directive (COM(2012)10) that will replace Framework Decision 2008/977/JHA on the protection of personal data processed for the purpose of prevention, detection, investigation or prosecution of criminal offences (rapporteur: Dimitrios Droutsas, S_D). Both rapporteurs support the objective of establishing a fully coherent, harmonious and robust framework with a high level of protection for all data processing activities in the EU.¹ In order to achieve this objective the Commission proposals must be considered a single package requiring coordinated legislative approaches for both texts.

Extensive discussions have taken place on the data protection reform between the rapporteurs and the shadow rapporteurs, the draftspersons and shadows of the Committees for opinion (ITRE, IMCO, JURI, EMPL), the Council Presidency, the Commission and stakeholders (data

¹ DT/905569EN.doc

protection authorities, national authorities, industry, civil rights and consumer organisations, academic experts) in order to ensure broad support for the Parliament's approach.

A stakeholder workshop was organised by the LIBE committee on 29 May 2012. The LIBE committee also held its annual Inter- Parliamentary Committee Meeting (IPCM) together with national parliaments in the area of freedom, security and justice on the data protection reform package on 9 and 10 October 2012. Four Working Documents were produced on the data protection reform package.

Position on the draft Data Protection Regulation

The Commission's proposal is based on the following aims:

- A comprehensive approach to data protection;
- Strengthening individual's rights;
- Further advancing the internal market dimension and ensuring better enforcement of data protection rules; and
- Strengthening the global dimension

The rapporteur supports these ambitions. His approach is presented accordingly

A comprehensive approach to data protection

As indicated in the Working Document of 6 July 2012¹, the rapporteur welcomes the fact that the Commission has chosen to replace Directive 95/46 with a (directly applicable) Regulation; since this should reduce the fragmented approach to data protection among Member States.

He also agrees with the pragmatic approach chosen by the Commission in leaving room, in accordance with the Regulation, to the Member States to maintain or adopt specific rules regarding issues such as freedom of expression, professional secrecy, health and employment (Articles 81-85). Particular reference is made to work of the Employment and Social Affairs Committee, which is to deliver an opinion on Article 82.²

EU institutions are not within the scope of the new Regulation. However, they should be covered to ensure a consistent and uniform framework throughout the Union. This will require an adjustment of EU legal instruments, particularly Regulation (EC) No 45/2001, to bring them fully in line with the general Data Protection Regulation before the latter will be applied. The rapporteur also sees a need for a more horizontal debate on how to address the current patchwork of data protection rules for different EU Agencies (such as Europol and Eurojust) and ensure consistency with the data protection package (Article 2(b), Article 89a).

The rapporteur strongly regrets that the Commission's proposal does not cover law enforcement cooperation (on which the separate Directive is proposed). This leaves legal uncertainty as regards rights and obligation in borderline issues, for instance where commercial data is accessed by law enforcement authorities for law enforcement purposes and transfers between authorities that are responsible for law enforcement and those that are

¹ DT/905569EN.doc

² PA/918358EN.doc

not. The report on the proposed Directive addresses these issues and proposes amendments. The Regulation specifies that the exclusion from the scope of the Regulation only covers competent public authorities for law enforcement activities (not private entities) and that the applicable legislation should provide adequate safeguards based on the principles of necessity and proportionality (Articles 2(e), 21).

The territorial scope of the Regulation is an important issue for the consistent application of EU data protection law. The rapporteur wishes to clarify that the Regulation should also be applicable to a controller not established in the Union when processing activities are aimed at the offering of goods or services to data subjects in the Union, irrespective of whether payment for these goods or services is required, or the monitoring of such data subjects (Article 3(2)).

The Regulation needs to be comprehensive also in terms of providing legal certainty. The extensive use of delegated and implementing acts runs counter to this goal. Therefore the rapporteur proposes the deletion of a number of provisions conferring on the Commission the power to adopt delegated acts. However, in order to provide legal certainty where possible, the rapporteur has replaced several acts with more detailed wording in the Regulation (e.g.: Articles 6(1b), 15, 35(10)). In other instances, the rapporteur proposes to entrust the European Data Protection Board (EDPB) with the task of further specifying the criteria and requirements of a particular provision instead granting the Commission the power to adopt a delegated act. The reason is that in those cases the matter relates to cooperation between national supervisors and they are better placed to determine the principles and practices to be applied (e.g.: Articles 23(3), 30(3), 42(3), 44(7), 55(10)).

Strengthening individuals' rights

As the Regulation implements a fundamental right, a limitation of the material scope, particularly as regards the definition of “personal data”, by for instance introducing subjective elements relating to the efforts the data controller should make to identify personal data is rejected. The concept of personal data is further clarified with objective criteria (Article 4(1); Recitals 23 and 24). Legitimate concerns regarding specific business models can be addressed without denying individuals their fundamental rights. In this context the rapporteur encourages the pseudonymous and anonymous use of services. For the use of pseudonymous data, there could be alleviations with regard to obligations for the data controller (Articles 4(2)(a), 10), Recital 23).

Consent should remain a cornerstone of the EU approach to data protection, since this is the best way for individuals to control data processing activities. Information to data subjects should be presented in easily comprehensible form, such as by standardised logos or icons (Article 11(2a),(2b)). Technical standards that express a subject’s clear wishes may be seen as a valid form of providing explicit consent (Articles 7(2a), 23).

In order to ensure an informed consent to profiling activities, these need to be defined and regulated (Articles 4(3b), 14(1)(g), (ga) and (gb), 15(1), 20). Other legal grounds for processing than consent, particularly the “legitimate interests” of the data controller, should be clearly defined (amendment replacing Article 6(1)(f) by a new Article 6(1a), (1b), (1c)).

Purpose limitation is a core element of data protection, as it protects the data subjects from an unforeseeable extension of data processing. A change of purpose of personal data after its collection should not be possible only on the basis of a legitimate interest of the data controller. The rapporteur therefore proposes to delete Article 6(4) instead of widening it.

The rapporteur supports the strengthening of the right of access, with a right to data portability - being able to move one's data from one platform to another. In the digital age, data subjects, also in their role as consumers, can legitimately expect to receive their personal information in a commonly used electronic format (Article 15(2a)). Therefore he proposes to merge Articles 15 and 18.

The right to erasure and the right to rectification remain important for data subjects, as more and more information are disclosed which can have significant impacts. The "right to be forgotten" should be seen in this light; the amendments proposed clarify these rights for the digital environment, while maintaining the general exception for freedom of expression. In case of data transferred to third parties or published without a proper legal basis, the original data controller should be obliged to inform those third parties and ensure the erasure of the data. Where the individual has agreed to a publication of his or her data, however, a "right to be forgotten" is neither legitimate nor realistic (Article 17, Recital 54).

The right to object to further data processing should always be free of charge and it should be explicitly offered to the data subject by using a clear, plain and adapted language (Article 19(2)). There is also need to provide for better possibilities for effective redress, including by associations acting in the public interest (Articles 73, 76).

Further advancing the internal market dimension and ensuring better enforcement of data protection rules

The rapporteur welcomes the proposed shift from notification requirements to the Data Protection Authorities (DPAs) to practical accountability and corporate Data Protection Officers (DPOs). The proposed regulation can be simplified by merging information rights and documentation requirements essentially being two sides of the same coin. This will reduce administrative burdens for data controllers and make it easier for individuals to understand and exercise their rights (Articles 14, 28). In the age of cloud computing, the threshold for the mandatory designation of a data protection officer should not be based on the size of the enterprise, but rather on the relevance of data processing (category of personal data, type of processing activity, and the number of individuals whose data are processed) (Article 35). It is clarified that the DPO can be a part-time function, depending on the size of the enterprise and the amount of data processing (Recital 75).

Data protection by design and by default is applauded as a core innovation of the reform. This would ensure that only data that are necessary for a specific purpose will actually be processed. Producers and service providers are called to implement appropriate measures. The European Data Protection Board should be entrusted to provide further guidance (Article 23). The amendments on Privacy Impact Assessments aim at further determining the situations where this assessment should be conducted (Article 33(2)) and the elements to assess (Article 33(3)).

The rapporteur proposes to extend the period within which to notify a personal data breach to the supervisory authority from 24 to 72 hours. Furthermore, to prevent notification fatigue to data subjects, only cases where a data breach is likely to adversely affect the protection of the personal data or privacy of the data subject, for example in cases of identity theft or fraud, financial loss, physical harm, significant humiliation or damage to reputation, the data subject should be notified. The notification should also comprise a description of the nature of the personal data breach, and information regarding the rights, including possibilities regarding redress (Articles 31 and 32). For breach notifications, impact assessments, and the right to erasure and to be forgotten, it is proposed that the Commission adopts delegated acts prior to the date of application of the Regulation in order to ensure legal certainty (Article 86(5a)).

Codes of conduct as well as certification and seals are supported, but there is also need to provide for incentives for the establishment and use and clearer rules on the principles that they must contain and consequences with regard to lawfulness of data processing, liabilities, and related issues. Codes of Conduct declared by the Commission to be in line with the Regulation shall confer enforceable rights to data subjects. The certification seals must set out the formal procedure for the issuance and withdrawal of the seal and they must ensure compliance with data protection principles and data subject rights (Articles 38 and 39).

The Regulation should also ensure a unified working framework for all Data Protection Authorities (DPAs). In order to function, a crucial element is that DPAs, who must be completely independent, need to be sufficiently resourced for the effective performance of their tasks (Article 47). Cooperation between DPAs will also be strengthened in the context of a European Data Protection Board (EDPB, which will replace the current "Article 29 Working Party"). The rapporteur views the foreseen cooperation and consistency mechanism among national DPAs as a huge step towards a coherent application of data protection legislation across the EU. The model proposed by the Commission however does not ensure the necessary independence of DPAs. After having assessed different options, an alternative mechanism is proposed which maintains the idea of a lead DPA, but also relies on close cooperation between DPAs to ensure consistency (Articles 51, 55a). In substance, a DPA is competent to supervise processing operations within its territory or affecting data subjects resident in its territory. In the case of processing activities of a controller or processor established on more than one Member State or affecting data subjects in several Member States, the DPA of the main establishment will be the lead authority acting as single contact point for the controller or the processor (one-stop shop). The lead authority shall ensure coordination with involved authorities and consult the other authorities before adopting a measure. The EDPB shall designate the lead authority in cases it is unclear or the DPAs do not agree. Where a DPA involved in a case does not agree with the draft measure proposed by the lead authority, the EDPB shall issue an opinion. If the lead authority does not intend to follow this opinion, it shall inform the EDPB and provide a reasoned opinion. The EDPB may adopt a final decision, by a qualified majority, legally binding upon the supervisory authority. This decision can be subject to judicial review (Articles 45a, 55, 58). The Commission may also challenge this decision before the EU Court of Justice and request the suspension of the measure (Article 61a).

The rapporteur supports the strengthening of the DPAs as regards investigative powers and sanctions. The Commission's proposal was however too prescriptive. He proposes a simplified regime which allows DPAs more discretion whilst at the same time entrusting the

EDPD with the role of ensuring consistency in enforcement (Article 52, 53, 78, 79). The system of sanctions is also clarified by including several criteria that must be taken into account in order to determine the level of the fine that a DPA may impose.

Strengthening the global dimension

As hitherto, the Commission's power to adopt decisions recognising the adequacy or the non-adequacy of a third country, a territory of a third country, and international organisations is maintained. The proposed new option of recognising sectors in third countries as adequate is rejected by the rapporteur, however, as it would increase legal uncertainty and undermine the Union's goal of a harmonised and coherent international data protection framework. The criteria for assessing the adequacy of a third country are strengthened (Article 41(2)). It is also proposed that the adequacy finding declared by the Commission is made by means of a delegated act instead of an implementing act, so as to enable the Council and the Parliament to make use of their right of control (Article 41(3) and (5)).

In the absence of an adequacy decision, to provide adequate protections and safeguards, the controller or processor should take appropriate safeguards measures such as binding corporate rules, standard data protection clauses adopted by the Commission or by a supervisory authority. Amendment in Articles 41(1a) and 42 clarify and detail the essential safeguards that these instruments should contain.

A new article 43a is proposed to address the issue raised by access requests by public authorities or courts in third countries to personal data stored and processed in the EU. The transfer should only be granted by the data protection authority after verifying that the transfer complies with the Regulation and in particular with Article 44(1)(d) or (e). This situation will become even more important with the growth of cloud computing and needs to be addressed here.

Summary

The rapporteur supports the aim of strengthening the right to the protection of personal data, while ensuring a unified legal framework and reducing administrative burdens for data controllers. He proposes to limit the role of the Commission in the implementation to the minimum necessary, by clarifying essential elements in the text of the regulation itself and leaving practical implementation to the cooperation mechanism of data protection authorities. He proposes to emphasise further the use of technological measures for protecting personal data and ensuring compliance, combined with incentives for data controllers when using such measures. In line with the accountability approach, the role of corporate data protection officers is strengthened, while the need for prior consultation of the supervisory authorities is reduced. Union Institutions, bodies and agencies should be brought under the same regulatory framework in the mid-term. If these elements can be supported by Parliament, Council and Commission, the new legal framework for data protection will provide an improvement both for individuals and for data controllers, and will be future-proof for the coming years.

In the course of the extensive work together with the shadows of all political groups and the opinion draftpersons the rapporteur has worked out a large amount of amendments which reflect discussions between the involved colleagues. Especially on the principles, the legal

grounds for processing personal data, the data subject rights, the provisions for controller and processor, the consistency mechanism and the sanctions several compromises are integrated in this report. The rapporteur expects his proposals to form a good basis for swift agreement in the European Parliament and negotiations with the Council during the Irish presidency.

4.3.2013

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

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

Rapporteur: Nadja Hirsch

SHORT JUSTIFICATION

Your rapporteur specifically welcomes the present Regulation and its purpose which is to further harmonise data protection in the European Union (EU).

This aim of this opinion is as follows: it quite obvious that European employee data protection cannot be comprehensively regulated in one article. Your rapporteur's purpose is rather to lay down a number of markers. In the context of realising a genuine European labour and the single market, further consideration may subsequently be given to regulating employment data protection at European level. This would be possible on the basis of Article 288 TFEU.

Although a large volume of data processing in the EU relates to employment, little space in the Regulation is specifically devoted to employee data protection. Furthermore the level of abstraction of the Regulation often makes it difficult to interpret the rules in an employment context.

Your rapporteur takes the view that the best way of addressing the issues facing employee data protection in this Regulation is mainly to restrict the scope of the opinion to Article 82. This will allow an in-depth analysis of the content, besides grouping together the various articles in the Regulation which have a bearing on employee data protection.

Re 82 (1) and Recital 124

In its present stage, the present Regulation can only provide a minimum level of protection, particularly as regards employee data. Each Member State must continue to be able to set standards more favourable for workers than those provided for in the Regulation. Moreover, it must be possible to set such standards in collective agreements. The phrase 'within the limits of this Regulation' should be rejected for a number of reasons. Firstly, it is incompatible with

the general tenor of Article 82 - which deals with exceptions - and could, in connection with the delegated acts proposed by the Commission in Article 82, result in an extremely complex situation. Secondly, as a worst case scenario, this could mean that Member States were unable to adopt more far-reaching rules. Finally, this formulation seems to have been arbitrarily chosen here, since other opening clauses, e.g. concerning the media, do not contain this restriction.

Re 82 (1b)

Since the Commission has not so far made any specific proposal relating to employee data protection, and bearing in mind the few substantive points relating to employee data protection in the regulation, a number of Europe-wide minimum protection standards must be established. The four sub-points should not be seen as an exhaustive list, but rather as the cornerstone of comprehensive European data protection legislation.

Re 82 (1c)

The data protection officer plays a role of paramount importance. It must therefore be made absolutely clear that he or she should be able to perform his or her duties without fear of pressure or external influence and for the benefit of employees. Special protection from dismissal and the prohibition of discrimination against his or her person are therefore appropriate.

Re 82 (1e) and Recital 124 a

The Commission proposal does not sufficiently specify the rules governing the transmission of data within a group of undertakings in the EU. This amendment is intended to rectify this omission, while protecting the interests of employees.

Re 82 (1f) and Recital 34

The complete exclusion of consent as a valid legal reason for the processing of personal data will not have the desired result in an employment context. Your rapporteur therefore proposes that even in situations where there is an imbalance between the parties, consent should be possible as a valid legal reason, where it is intended to have legally and financially advantageous effects for the employee.

Re 82 (3)

Delegated acts should, in your rapporteur's view, only be used where non-material elements of the existing Regulation need to be adapted rapidly and flexibly to technical and security innovations. Hitherto the Commission proposal's wording was too broad-based. Moreover, alongside paragraph 1, it should also be possible to continue to regulate the new paragraph 1c by legal acts.

Re 82 (3a)

This review clause allows a fresh evaluation.

AMENDMENTS

The Committee on Employment and Social 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 regulation Recital 34

Text proposed by the Commission

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

Amendment

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

Amendment 2

Proposal for a regulation Recital 75

Text proposed by the Commission

(75) Where the processing is carried out in the public sector or where, in the private sector, processing is carried out by **a large** enterprise, or where its core activities, regardless of the size of the enterprise, involve processing operations which require regular and systematic monitoring, a person should assist the controller or processor to monitor internal compliance with this Regulation. Such data protection officers, whether or not an employee of the controller, should be in a position to perform their duties and tasks independently.

Amendment

(75) Where the processing is carried out in the public sector or where, in the private sector, processing is carried out by **an** enterprise, or where its core activities, regardless of the size of the enterprise, involve processing operations which require regular and systematic monitoring, a person should assist the controller or processor to monitor internal compliance with this Regulation. Such data protection officers, whether or not an employee of the controller, should be in a position to perform their duties and tasks independently. ***Processing should be carried out by a legal person and relate to more than 250 data subjects per year.***

Amendment 3
Proposal for a regulation
Recital 124

Text proposed by the Commission

(124) The general principles on the protection of individuals with regard to the processing of personal data should also be applicable to the employment context. ***Therefore, in order*** to regulate the processing of employees' personal data in the employment context, ***Member States should be able, within the limits of*** this Regulation, ***to adopt by law specific rules for*** the processing of personal data in ***the*** employment ***sector***.

Amendment

(124) The general principles on the protection of individuals with regard to the processing of personal data should also be applicable to the employment context. ***Member States should be able*** to regulate the processing of employees' personal data in the employment context ***in accordance with the rules and minimum standards set out in*** this Regulation. ***Where a statutory basis is provided in the Member State in question for the regulation of employment matters by agreement between employee representatives and the management of the undertaking or the controlling undertaking of a group of undertakings (collective agreement) or under Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale***

groups of undertakings for the purposes of informing and consulting employees¹, the processing of personal data in an employment context may also be regulated by such an agreement; in this particular case there is the possibility for derogations and exceptions in accordance with national law and practices.

¹ OJ L 122, 16.5.2009, p. 28.

Amendment 4

Proposal for a regulation Recital 124 a (new)

Text proposed by the Commission

Amendment

(124a) In order to safeguard business interests which are directly related to employment, the transmission and processing of employee data within groups of undertakings is permitted. This should not be affected by interests of the person concerned which are worthy of protection. Employee data includes all types of personal data of the person concerned which are directly related to employment. The rules laid down in Article 82(1e) take into account the widespread practice of processing employee data in groups of undertakings.

Amendment 5

Proposal for a regulation Article 3 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. This Regulation applies to the processing of personal data of data subjects not residing in the Union by a controller or processor established in the Union, through their economic activities

in a third country(ies).

Amendment 6

Proposal for a regulation

Article 6 – paragraph 1 – point f

Text proposed by the Commission

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

Amendment

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

Justification

In order for the collective bargaining system to function properly the unions must have the possibility to monitor the observance of collective agreements. Today this is carried out within the framework of Article 7 (f) of directive 95/46/EC. Article 7 (f) recognizes the legitimate interest of a third party to process personal data. The employer is mostly regarded as the controller and the labour union as the third party.

Amendment 7

Proposal for a regulation

Article 6 – paragraph 5

Text proposed by the Commission

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

Amendment

deleted

Justification

Provisions on lawfulness of processing form the core of the rules on data protection. As provisions on delegated acts must be limited only to non-essential elements of the Regulation paragraph 5 should be deleted.

Amendment 8

Proposal for a regulation Article 9 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 9

Proposal for a regulation Article 14 – paragraph 3

Text proposed by the Commission

3. Where the personal data are not collected from the data subject, the controller shall inform the data subject, in addition to the information referred to in paragraph 1, from which source the personal data originate.

Amendment

3. Where the personal data are not collected from the data subject, the controller shall inform the data subject, in addition to the information referred to in paragraph 1, from which source the personal data originate. ***This would include data sourced from a third party illegally and passed on to the controller.***

Amendment 10

Proposal for a regulation Article 17 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6 a. While complying with the data requirements of this Regulation, especially privacy by design, the provisions in paragraph 4 and 6 of this Article do not change the right of public authorities to store data for documentary evidence of a given case history.

Amendment 11

Proposal for a regulation Article 28 – paragraph 4 – point b

Text proposed by the Commission

Amendment

(b) an enterprise or an organisation **employing fewer than 250 persons** that is processing personal data only as an activity ancillary to its main activities.

(b) an enterprise or an organisation that is processing personal data only as an activity ancillary to its main activities.

Justification

The limit of 250 employee's places employers in an unequal position, is discriminatory against larger enter-prises and is by no means necessary for reaching the aim. The number of employees doesn't correlate with the amount or type of personal data kept by the organization. A small organization with just a few employees can control a huge amount of delegate personal data and vice versa. Furthermore, the limit is not in all aspects easily interpreted.

Amendment 12

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

Text proposed by the Commission

Amendment

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

1. The controller and the processor, **after obtaining the consent of the workplace representation**, shall designate a data protection officer in any case where:

Amendment 13

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

Text proposed by the Commission

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

Amendment

(a) the processing is carried out by a public authority or body ***or on their behalf***; or

Amendment 14

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

Text proposed by the Commission

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

Amendment

(b) the processing is carried out by ***a legal person and relates to more than 250 data subjects per year***; or

Amendment 15

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

Text proposed by the Commission

Amendment

(b a) the data processed is of particularly sensitive nature e.g. medical; or

Amendment 16

Proposal for a regulation
Article 35 – paragraph 2

Text proposed by the Commission

Amendment

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

2. ***A group of organizations*** referred to in point (a) ***and*** (b) of paragraph 1 may appoint a single data protection officer ***where this applies to a single jurisdiction.***

Justification

Public authorities today act in the form of quasi-enterprises in many fields. The regulation should not prohibit the possibility to appoint a single data protection officer for a group

consisting of both public and private sector entities.

Amendment 17

Proposal for a regulation

Article 82 – title

Text proposed by the Commission

Processing in the employment context

Amendment

Minimum standards for processing ***data*** in the employment context

Amendment 18

Proposal for a regulation

Article 82 – paragraph 1

Text proposed by the Commission

1. ***Within the limits of this Regulation,*** Member States may adopt by ***law*** specific rules regulating the processing of employees' personal data in the employment context, in particular ***for*** the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law ***or*** by collective agreements, management, planning and organisation of work, health and safety at work, and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship.

Amendment

1. Member States may, ***in accordance with the rules set out in this Regulation, and taking into account the principle of proportionality,*** adopt by ***legal provisions*** specific rules regulating the processing of employees' personal data in the employment context, in particular ***but not limited to*** the purposes of the recruitment ***and job applications within the group of undertakings,*** the performance of the contract of employment, including discharge of obligations laid down by law ***and*** by collective agreements, ***company agreements and collective agreements in accordance with national law and practice,*** management, planning and organisation of work, health and safety at work, and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship.

The level of protection afforded by this Regulation may not be undercut. Notwithstanding the previous sentence, where arrangements are made by

agreement between employee representatives and the management of the undertaking or of the controlling undertaking of a group of undertakings the level of protection afforded by this Regulation may not be significantly undercut.

The right of Member States, or the social partners via collective agreements, to provide employees with more favourable protection provisions in respect of the processing of personal data in the employment context shall remain unaffected.

Amendment 19

Proposal for a regulation Article 82 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. The purpose of processing such data must be directly linked to the reason it was collected for and stay within the context of employment. Profiling or use for secondary purposes shall not be allowed.

Amendment 20

Proposal for a regulation Article 82 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Notwithstanding the other provisions of this Regulation, the legal provisions of Member States referred to in paragraph 1 shall include at least the following minimum standards:

(a) the processing of employee data without the employees' knowledge shall not be permitted. Notwithstanding sentence 1, Member States may, by law,

provide for the admissibility of this practice, by setting appropriate deadlines for the deletion of data, providing there exists a suspicion based on factual indications that must be documented that the employee has committed a crime or serious dereliction of duty in the employment context, providing also the collection of data is necessary to clarify the matter and providing finally the nature and extent of this data collection are not disproportionate to the purpose for which it is intended. The privacy and private lives of employees shall be protected at all times. The investigation shall be carried out by the competent authority;

(b) the open optical-electronic and/or open acoustic-electronic monitoring of parts of an undertaking which are not accessible to the public and are used primarily by employees for private activities, especially in bathrooms, changing rooms, rest areas, and bedrooms, shall be prohibited. Clandestine surveillance shall be inadmissible under all circumstances;

(c) where undertakings or authorities collect and process personal data in the context of medical examinations and/or aptitude tests, they must explain to the applicant or employee beforehand the purpose for which these data are being used, and ensure that afterwards they are provided with these data together with the results, and that they receive an explanation of their significance on request. Data collection for the purpose of genetic testing and analyses shall be prohibited as a matter of principle;

(d) whether and to what extent the use of telephone, e-mail, internet and other telecommunications services shall also be permitted for private use may be regulated by collective agreement. Where there is no possibility of regulation by collective agreement, the employer shall reach an

agreement on this matter directly with the employee. In so far as private use is permitted, the processing of this accumulated traffic data shall be permitted in particular to ensure data security, to ensure the proper operation of telecommunications networks and telecommunications services and for billing purposes. Notwithstanding sentence 3, Member States may, by law, provide for the admissibility of this practice, by setting appropriate deadlines for the deletion of data, providing there exists a suspicion based on factual indications that must be documented that the employee has committed a crime or serious dereliction of duty in the employment context, providing also the collection of data is necessary to clarify the matter and providing finally the nature and extent of this data collection are not disproportionate to the purpose for which it is intended. The privacy and private lives of employees shall be protected at all times. The investigation shall be carried out by the competent authority;

(e) workers' personal data, especially sensitive data such as political orientation and membership of and activities in trade unions, may under no circumstances be used to put workers on so-called 'blacklists', and to vet or bar them from future employment. The processing, the use in the employment context, the drawing-up and passing-on of blacklists of employees shall be prohibited. Member States shall conduct checks and adopt adequate sanctions to ensure effective implementation of this point.

Amendment 21
Proposal for a regulation
Article 82 – paragraph 1 c (new)

Text proposed by the Commission

Amendment

1c. In addition to the provisions of Chapter IV, Section 4, the data protection officer shall enjoy special protection from dismissal in the performance of his/her duties and may not be the subject of discrimination. Authorities and companies shall also ensure that the data protection officer can carry out all activities independently in accordance with Article 36(2) and has access to training, whereby the corresponding costs will be borne by the controller and/or processor. If undertakings are located in more than one Member State, a data protection officer shall be easily accessible for all its workers in each of these Member States.

In addition to the provisions of Chapter IV, Section 4, the data protection officer shall be afforded due time to fulfil relevant duties, where they are in addition to their general tasks. National and European Works Councils shall be consulted in the appointment of the data protection officer and shall be afforded the continuous right of consultation with them.

Amendment 22

Proposal for a regulation Article 82 – paragraph 1 d (new)

Text proposed by the Commission

Amendment

1d. Without prejudice to the information and codetermination rights guaranteed by national labour law, the workplace representation and the European Works Council shall enjoy the following rights:

(a) right to codetermination with regard to the appointment of the workplace data protection officer (Article 35 et seq.);

(b) right to be consulted and receive information from the workplace data protection officer on a regular basis;

(c) right to represent affected employees in a normal national court (Article 73) and possibility of bringing class actions (Article 75);

(d) right to codetermination with regard to the drawing-up of binding corporate rules (Article 43).

Amendment 23

Proposal for a regulation

Article 82 – paragraph 1 e (new)

Text proposed by the Commission

Amendment

1e. The transmission and processing of personal employee data between legally independent undertakings within a group of undertakings and with professionals providing legal and tax advice shall be permitted, providing it is relevant to the operation of the business and is used for the conduct of specific operations or administrative procedures and is not contrary to the interests of the person concerned which are worthy of protection. Where employee data are transmitted to a third country and/or to an international organization, Chapter V shall apply.

Amendment 24

Proposal for a regulation

Article 82 – paragraph 1 f (new)

Text proposed by the Commission

Amendment

1f. Article 7, paragraph 4, shall not apply where the data processing is intended to have legally or economically advantageous consequences for the employee.

Amendment 25

Proposal for a regulation Article 82 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Each Member State shall notify to the Commission those *legal provisions* which it adopts pursuant to *paragraphs 1 and 1b*, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.

Amendment 26

Proposal for a regulation Article 82 – paragraph 3

Text proposed by the Commission

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

Amendment

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 *exclusively* for the purpose of further specifying the criteria and requirements for *ensuring the latest technical and security standards* for the processing of personal data *with respect to* the purposes referred to in *paragraphs 1 and 1e*. *Account shall be taken of the costs and benefits of implementation, the risks represented by the processing and the corresponding need to protect the data.*

Amendment 27

Proposal for a regulation Article 82 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. On a proposal from the Commission, the European Parliament and the Council shall review Article 82 no later than 2

years after the date referred to in Article 91, paragraph 2. They shall reach a decision on this proposal under the procedure laid down in Article 294 of the Treaty on the Functioning of the European Union.

PROCEDURE

Title	Protection of individuals with regard to the processing of personal data, and the free movement of such data (General Data Protection Regulation)		
References	COM(2012)0011 – C7-0025/2012 – 2012/0011(COD)		
Committee responsible Date announced in plenary	LIBE 16.2.2012		
Opinion by Date announced in plenary	EMPL 24.5.2012		
Rapporteur Date appointed	Nadja Hirsch 20.4.2012		
Discussed in committee	28.11.2012	23.1.2013	20.2.2013
Date adopted	21.2.2013		
Result of final vote	+: -: 0:	35 3 6	
Members present for the final vote	Regina Bastos, Edit Bauer, Heinz K. Becker, Jean-Luc Bennahmias, Phil Bennion, Pervenche Berès, Philippe Boulland, Alejandro Cercas, Ole Christensen, Derek Roland Clark, Minodora Cliveti, Emer Costello, Frédéric Daerden, Sari Essayah, Richard Falbr, Thomas Händel, Marian Harkin, Nadja Hirsch, Stephen Hughes, Danuta Jazłowiecka, Jean Lambert, Patrick Le Hyaric, Verónica Lope Fontagné, Olle Ludvigsson, Thomas Mann, Elisabeth Morin-Chartier, Csaba Óry, Konstantinos Poupakis, Sylvana Rapti, Licia Ronzulli, Elisabeth Schroedter, Nicole Sinclaire, Joanna Katarzyna Skrzydlewska, Jutta Steinruck, Traian Ungureanu, Inês Cristina Zuber		
Substitute(s) present for the final vote	Georges Bach, Sergio Gutiérrez Prieto, Ria Oomen-Ruijten, Antigoni Papadopoulou, Csaba Sógor		
Substitute(s) under Rule 187(2) present for the final vote	Alexander Alvaro, Nirj Deva, Pat the Cope Gallagher		

26.2.2013

OPINION OF THE COMMITTEE ON INDUSTRY, RESEARCH AND ENERGY

for the Committee on Civil Liberties, Justice and Home Affairs

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

Rapporteur: Seán Kelly

SHORT JUSTIFICATION

On 25 January 2012 the European Commission presented a comprehensive reform of the EU's data protection rules. The proposed regulation aims to harmonise online privacy rights and guarantee the free movement of such data within the European Union.

The proposed regulation also aims to:

- adapt data protection to the changed demand of the digital world, knowing that the current provisions have been adopted 17 years ago when less than 1% of the Europeans used the internet;
- prevent the current divergences in enforcement of the 1995 rules by the different member States and ensure that the fundamental rights to personal data protection is applied in a uniform way in all areas of the Union's activities;
- reinforce consumer confidence in online services with a better information about the rights and data protection with the introduction of the right to rectification, to be forgotten and to erasure, to data portability and the right to object;
- boost the Digital Single Market reducing the current fragmentation and the administrative burdens and, more generally, play an important role in the Europe 2020 Strategy.

Compared to the existing Directive 95/46/EC, the proposed regulation introduces a mandatory data protection officer for the public sector, and, in the private sector, for large enterprises with more than 250 persons and for those enterprises whose core activity concerns the

processing of personal data.

Improvements have also been made concerning the transfer of personal data to third countries or international organisations.

The current proposal establishes the European data Protection Board and provides sanctions, penalties and rights to compensation in case of infringement of the Regulation.

Your rapporteur substantially supports the main aims of the Commission proposal.

The proposed changes should help avoid excessive administrative burdens for enterprises, especially for those enterprises that have embedded privacy accountability, and guarantee a certain level of flexibility concerning some provisions of the Regulation, in particular those regarding the accountability mechanism and the notification to the supervisory authority. Some definitions and aspects of the original text need also to be clarified, contextualised and simplified.

Your rapporteur has prioritised a qualitative rather than a quantitative approach to data protection which focuses on corporate governance, based on the aforementioned accountability principle, as opposed to the over-reliance on consent or bureaucratic documentation procedures, which nevertheless also play a role in data protection.

It is important to also place emphasis on the role of technical solutions such as privacy by design, pseudonymisation and anonymisation of data, prioritising the protection of sensitive data and targeted compliance measures.

Your rapporteur wishes to highlight the importance of avoiding unintended consequences which may have negative consequences in the areas of freedom of the press, health research, the fight against financial crime, the fight against fraud in sport and innovation in the delivery of energy smart grids and intelligent transport systems.

Another aspect of the proposal concerns the important number of delegated acts. Your rapporteur considers that the use of the delegated acts is too extensive and proposes to delete the majority of them.

AMENDMENTS

The Committee on Industry, Research and Energy 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 regulation
Citation 1 a (new)

Text proposed by the Commission

Amendment

Having regard to the Charter of Fundamental rights of the European Union, and in particular Articles 7 and 8 thereof,

Amendment 2

**Proposal for a regulation
Citation 1 b (new)**

Text proposed by the Commission

Amendment

Having regard to the European Convention of Human Rights and in particular Article 8 thereof,

Amendment 3

**Proposal for a regulation
Recital 1 a (new)**

Text proposed by the Commission

Amendment

(1a) Freedom of expression and information is a fundamental right in accordance with Article 11 of the Charter of Fundamental Rights of the European Union. This right includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The freedom and pluralism of the media should be respected.

Justification

Explicit reference should be made to the freedom of information and the right to free expression which are fundamental rights in the European Union, pursuant to Article 11 of the European Charter of Fundamental Rights.

Amendment 4

Proposal for a regulation
Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) The protection of individual privacy should be the point of departure for how to deal with personal data in public registers.

Amendment 5

Proposal for a regulation
Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) The principles of free access to information that characterise the Member States through their constitutional traditions should not be undermined, while freedom of expression and freedom of the press as expressed in Member State constitutions should be safeguarded.

Amendment 6

Proposal for a regulation
Recital 5

Text proposed by the Commission

Amendment

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

(5) Rapid technological developments and globalisation have brought new challenges for the protection of personal data. The scale of data sharing and ***collection*** has increased spectacularly. Technology allows both private companies and public authorities to make use of personal data on an unprecedented scale in order to pursue their activities. Individuals increasingly make personal information available publicly and globally. Technology has transformed both the economy and social life, and requires ***improved legal safeguards which will*** facilitate the free

transfer to third countries and international organisations, *while* ensuring *an* high level of *the* protection of personal data.

flow of data within the Union and the transfer to third countries and international organisations, ensuring *a* high level of protection of personal data.

Justification

While the Regulation has two aims – protecting personal data and allowing their free flow within the Union -, the first objective should be stressed more as it is a fundamental right

Amendment 7

Proposal for a regulation Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) Amongst other technologies, cloud computing has the potential to transform the European economy, provided, that appropriate data safety and data protection measures are put in place. In order to ensure the highest level of safety of personal data, it is essential to understand rights and obligations of data controllers and data processors within this Regulation.

Amendment 8

Proposal for a regulation Recital 8

Text proposed by the Commission

Amendment

(8) In order to ensure consistent and high level of protection of individuals and to remove the obstacles to flows of personal data, the level of protection of the rights and freedoms of individuals with regard to the processing of such data should 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

(8) In order to ensure consistent and high level of protection of individuals and to remove the obstacles to flows of personal data, the level of protection of the rights and freedoms of individuals with regard to the processing of such data should be equivalent in all Member States ***and identical where possible***. Consistent and homogenous application of the rules for the protection of the fundamental rights and freedoms of natural persons with regard to

should be ensured throughout the Union.

the processing of personal data should be ensured throughout the Union.

Justification

Rules for processing of data are already theoretically “equivalent” in all Member States. The failure of this approach is the logic behind this proposal being a Regulation. This recital should adequately reflect this thinking.

Amendment 9

Proposal for a regulation

Recital 10

Text proposed by the Commission

(10) Article 16(2) of the Treaty mandates the European Parliament and the Council to 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.

Amendment

(10) Article 16(2) of the Treaty mandates the European Parliament and the Council to lay down the rules relating to the protection of individuals with regard to the processing of personal data **by the Union institutions, bodies, offices and agencies, and by Member States when carrying out activities which fall within the scope of Union law, and** the rules relating to the free movement of personal data.

Amendment 10 Proposal for a regulation

Recital 11

Text proposed by the Commission

(11) In order to ensure a consistent level of protection for individuals throughout the Union and to prevent divergences hampering the free movement of data within the internal market, a Regulation is necessary to provide legal certainty and transparency for economic operators, including micro, small and medium-sized enterprises, and to provide individuals in all Member States with the same level of legally enforceable rights and obligations and responsibilities for controllers and processors, to ensure consistent monitoring of the processing of personal data, and

Amendment

(11) In order to ensure a consistent level of protection for individuals throughout the Union and to prevent divergences hampering the free movement of data within the internal market, a Regulation is necessary to provide legal certainty and transparency for economic operators, including micro, small and medium-sized enterprises, and to provide individuals in all Member States with the same level of legally enforceable rights and obligations and responsibilities for controllers and processors, to ensure consistent monitoring of the processing of personal data, and

equivalent sanctions in all Member States as well as effective co-operation by the supervisory authorities of different Member States. To take account of the specific situation of micro, small and medium-sized enterprises, this Regulation includes a number of derogations. In addition, the Union institutions and bodies, Member States and their supervisory authorities are encouraged to take account of the specific needs of micro, small and medium-sized enterprises in the application of this Regulation. The notion of micro, small and medium-sized enterprises should draw upon Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

equivalent sanctions in all Member States as well as effective co-operation by the supervisory authorities of different Member States. ***Where demonstrably necessary and without undermining either protection of personal data or internal market principles in order*** to take account of the specific situation of micro, small and medium-sized enterprises, this Regulation includes a number of derogations. In addition, the Union institutions and bodies, Member States and their supervisory authorities are encouraged to take account of the specific needs of micro, small and medium-sized enterprises in the application of this Regulation ***in consultation with the parties concerned, and also take into account the 'Think Small First' principle, so that the interests of micro, small and medium-sized enterprises are taken into account at the very early stages of policy making.*** The notion of micro, small and medium-sized enterprises should draw upon Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

Amendment 11

Proposal for a regulation Recital 12

Text proposed by the Commission

(12) The protection afforded by this Regulation concerns natural persons, whatever their nationality or place of residence, in relation to the processing of personal data. With regard to the processing of data which concern legal persons and in particular undertakings established as legal persons, including the name and the form of the legal person and the contact details of the legal person, the protection of this Regulation should ***not*** be claimed by any person. ***This should also***

Amendment

(12) The protection afforded by this Regulation concerns natural persons, whatever their nationality or place of residence, in relation to the processing of personal data. With regard to the processing of data which concern legal persons and in particular undertakings established as legal persons, including the name and the form of the legal person and the contact details of the legal person, the protection of this Regulation should ***also***

apply where the name of the legal person contains the names of one or more natural persons.

be claimed by any person.

Amendment 12
Proposal for a regulation
Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) This Regulation does not sit in isolation from other legal acts of the Union. The liability limitations of the e-commerce directive have a horizontal structure and therefore apply to all information. This Regulation determines what constitutes a data protection infringement while the e-commerce directive sets the conditions by which the information service provider is liable for third party infringements of the law.

Justification

It is necessary to further explain in a recital the reasons for a reference to the liability limitations of the e-commerce directive.

Amendment 13
Proposal for a regulation
Recital 23

Text proposed by the Commission

Amendment

(23) The principles of protection should apply to **any** information concerning an identified or identifiable person. To determine whether a 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.

(23) The principles of protection should apply **only** to **specific** information concerning an identified or identifiable person. To determine whether a person is identifiable, account should be taken: **(i) only of those** means likely to be used by the controller or by any other **natural or legal** person to identify the individual, **and (ii) of the likeliness of a person being identified**. The principles of data protection should not apply to data rendered anonymous in such a way that the data subject is no longer identifiable **from the**

data, taking full account of the technological "state of the art" and technological trends.

Amendment 14

Proposal for a regulation Recital 23 a (new)

Text proposed by the Commission

Amendment

(23a) This regulation recognises that pseudonymisation is in the benefit of all data subjects as, by definition, personal data is altered so that it of itself cannot be attributed to a data subject without the use of additional data. By this, controllers shall be encouraged to the practice of pseudonymising data.

Amendment 15

Proposal for a regulation Recital 24

Text proposed by the Commission

Amendment

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

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

Amendment 16

Proposal for a regulation
Recital 25

Text proposed by the Commission

(25) Consent should be given ***explicitly*** by any appropriate method enabling a freely given specific and informed indication of the data subject's wishes, either by a statement or by a clear affirmative action by the data subject, ensuring that individuals are aware that they give their consent to the processing of personal data, including by ticking a box when visiting an Internet website or by any other statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of their personal data. Silence or inactivity should therefore not constitute consent. Consent should cover all processing activities carried out for the same purpose or purposes. If the data subject's consent is to be given following an electronic request, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided.

Amendment 17

Proposal for a regulation
Recital 25 a (new)

Text proposed by the Commission

Amendment

(25) Consent should be given ***unambiguously*** by any appropriate method ***within the context of the product or service being offered*** enabling a freely given specific and informed indication of the data subject's wishes, either by a statement or by a clear affirmative action by the data subject, ensuring that individuals are aware that they give their consent to the processing of personal data, including by ticking a box when visiting an Internet website or by any other statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of their personal data. Silence or inactivity should therefore not constitute consent. Consent should cover all processing activities carried out for the same purpose or purposes. If the data subject's consent is to be given following an electronic request, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided.

Amendment

(25a) This regulation recognises that the pseudonymisation of data can help minimise the risks to privacy of data subjects. To the extent that a controller pseudonymises data such processing shall be considered justified as a legitimate interest of the controller according to point (f) of Article 6(1).

Amendment 18
Proposal for a regulation
Recital 26

Text proposed by the Commission

(26) Personal data relating to health should include in particular all data pertaining to the health status of a data subject; information about the registration of the individual for the provision of health services; information about payments or eligibility for healthcare with respect to the individual; a number, symbol or particular assigned to an individual to uniquely identify the individual for health purposes; any information about the individual collected in the course of the provision of health services to the individual; **information** derived from the testing or examination of a body part or bodily substance, **including** biological **samples**; identification of a person as provider of healthcare to the individual; or any information on e.g. a disease, disability, disease risk, medical history, clinical treatment, or the actual physiological or biomedical state of the data subject independent of its source, such as e.g. from a physician or other health professional, a hospital, a medical device, or an in vitro diagnostic test.

Amendment 19
Proposal for a regulation
Recital 27

Text proposed by the Commission

(27) The main establishment of a controller in the Union should be determined according to objective criteria and should imply the effective and real exercise of management activities determining the main decisions as to the purposes, conditions and means of processing

Amendment

(26) Personal data relating to health should include in particular all **personal** data pertaining to the health status of a data subject **including genetic information**; information about the registration of the individual for the provision of health services; information about payments or eligibility for healthcare with respect to the individual; a number, symbol or particular assigned to an individual to uniquely identify the individual for health purposes; any information about the individual collected in the course of the provision of health services to the individual; **personal data** derived from the testing or examination of a body part, bodily substance **or** biological **sample**; identification of a person as provider of healthcare to the individual; or any information on e.g. a disease, disability, disease risk, medical history, clinical treatment, or the actual physiological or biomedical state of the data subject independent of its source, such as e.g. from a physician or other health professional, a hospital, a medical device, or an in vitro diagnostic test.

Amendment

(27) **Where a controller or a processor has multiple establishments in the Union, including but not limited to cases where the controller or the processor is a group of undertakings, the main establishment of a controller in the Union for the purposes of this Regulation** should be determined

through stable arrangements. This criterion should not depend whether the processing of personal data is actually carried out at that location; the presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute such main establishment and are therefore *no* determining criteria for a main establishment. ***The main establishment of the processor should be the place of its central administration in the Union.***

according to objective criteria and should imply the effective and real exercise of management activities determining the main decisions as to the purposes, conditions and means of processing through stable arrangements. This criterion should not depend whether the processing of personal data is actually carried out at that location; the presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute such main establishment and are therefore *not* determining criteria for a main establishment.

Amendment 20

Proposal for a regulation

Recital 28

Text proposed by the Commission

(28) A group of undertakings should cover a controlling undertaking and its controlled undertakings, whereby the controlling undertaking should be the undertaking which can exercise a dominant influence over the other undertakings by virtue, for example, of ownership, financial participation or the rules which govern it or the power to have personal data protection rules implemented.

Amendment

(28) A group of undertakings should cover a controlling undertaking and its controlled undertakings, whereby the controlling undertaking should be the undertaking which can exercise a dominant influence over the other undertakings by virtue, for example, of ownership, financial participation or the rules which govern it or the power to have personal data protection rules implemented. ***A group of undertakings may nominate a single main establishment in the Union.***

Amendment 21

Proposal for a regulation

Recital 29

Text proposed by the Commission

(29) Children deserve specific protection of their personal data, as they may be less aware of risks, consequences, safeguards and their rights in relation to the processing

Amendment

(29) Children deserve specific protection of their personal data, as they may be less aware of risks, consequences, safeguards and their rights in relation to the processing

of personal data. To determine when an individual is a child, this Regulation should take over the definition laid down by the UN Convention on the Rights of the Child.

of personal data. *Such protection is particularly important in the context of social networks, where children should be aware of the identities of those with whom they are communicating.* To determine when an individual is a child, this Regulation should take over the definition laid down by the UN Convention on the Rights of the Child. *No reference to child protection in this Regulation should be understood as an implicit instruction that protection of personal data of adults should be treated with less care than would have been the case if the reference was not included.*

Amendment 22

Proposal for a regulation Recital 30

Text proposed by the Commission

(30) Any processing of personal data should 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 data. The data should be adequate, relevant and **limited to the minimum necessary for** the purposes for which the data are processed; this requires in particular ensuring that the data collected are not excessive and that the period for which the data are stored is limited 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 are rectified or deleted. In order to ensure that the data are not kept longer than necessary, time limits should be established by the controller for erasure or for a periodic review.

Amendment

(30) Any processing of personal data should 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 data. The data should be adequate, relevant and **not excessive in relation** to the purposes for which the data are processed; this requires in particular ensuring that the data collected are not excessive and that the period for which the data are stored is limited 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 are rectified or deleted. In order to ensure that the data are not kept longer than necessary, time limits should be established by the controller for erasure or for a periodic review.

Amendment 23
Proposal for a regulation
Recital 31

Text proposed by the Commission

(31) In order for processing to be lawful, personal data should be processed on ***the basis*** of the ***consent of the person concerned or some other*** legitimate ***basis***, laid down by law, either in this Regulation or in other Union or Member State law as referred to in this Regulation.

Amendment

(31) In order for processing to be lawful, personal data should be processed on ***one*** of the legitimate ***bases*** laid down by law, either in this Regulation or in other Union or Member State law as referred to in this Regulation.

Justification

This amendment encourages an appropriate use of consent, as equal among the other grounds for lawful processing set out in Article 6.

Amendment 24
Proposal for a regulation
Recital 32

Text proposed by the Commission

(32) Where processing is based on the data subject's consent, the controller should have the burden of proving that the data subject has given the consent to the processing operation. In particular in the context of a written declaration on another matter, safeguards should ensure that the data subject is aware that and to what extent consent is given.

Amendment

(32) Where processing is based on the data subject's consent, the controller should have the burden of proving that the data subject has given the consent to the processing operation. In particular in the context of a written declaration on another matter, safeguards should ensure that the data subject is aware that and to what extent consent is given. ***To comply with the principle of data minimisation, this burden of proof should not be understood neither as requiring positive identification of data subjects unless necessary nor as causing more data to be processed than otherwise have been the case.***

Amendment 25
Proposal for a regulation
Recital 33 a (new)

Text proposed by the Commission

Amendment

(33a) Consent may not be the primary or the most desirable means of legitimising the processing of personal data. The use of consent in the right context is crucial, but it should be relied on as the legitimate basis for processing only when data subjects can meaningfully and easily provide and revoke their consent. When used in inappropriate contexts, consent loses its value and places an unnecessary burden on the data subject. For example, consent is not an appropriate justification when the processing is necessary for a service the user has requested or when subjects cannot refuse consent without impacting the underlying service. In these and other contexts, data controllers should aim to ensure the lawfulness of the processing on another legitimate ground.

Justification

This amendment aligns the text with the Article 29 Working Party Opinion 15/2011 on the definition of consent (p. 10) by reinforcing the point that consent may be unhelpful or outright harmful to privacy protection when overused, particularly in information services.

Amendment 26

Proposal for a regulation

Recital 34

Text proposed by the Commission

Amendment

(34) Consent should not provide a valid legal ground for the processing of personal data, where there is a clear imbalance between the data subject and the controller. This is especially the case where the data subject is in a situation of dependence from the controller, ***among others, where personal data are processed by the employer of employees' personal data in the employment context.*** Where the controller is a public authority, there would

(34) Consent should not provide a valid legal ground for the processing of personal data, where there is a clear imbalance between the data subject and the controller. This is especially the case where the data subject is in a situation of dependence from the controller. Where the controller is a public authority, there would be an imbalance only in the specific data processing operations where the public authority can impose an obligation by

be an imbalance only in the specific data processing operations where the public authority can impose an obligation by virtue of its relevant public powers and the consent cannot be deemed as freely given, taking into account the interest of the data subject.

virtue of its relevant public powers and the consent cannot be deemed as freely given, taking into account the interest of the data subject.

Justification

Consent to data processing in an employment context should not be called into question across the board, as it is often given when it comes to matters in which it is in the interest of the employees concerned themselves to allow the processing of their personal data.

Amendment 27

Proposal for a regulation Recital 36 a (new)

Text proposed by the Commission

Amendment

(36a) Tasks carried out in the public interest or in the exercise of official authority include the processing of personal data necessary for the management and functioning of those authorities.

Justification

A further indication is needed of what exactly can be covered by the legal obligation or the tasks carried out in the public interest or in the exercise of public authority.

Amendment 28

Proposal for a regulation Recital 38

Text proposed by the Commission

Amendment

(38) The legitimate interests of a controller may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding. ***This*** would need careful assessment in particular where the data subject is a child, given that

(38) The legitimate interests of a controller, ***or of the third party or parties in whose interest the data is processed,*** may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding. ***To ensure clarity, the***

children deserve specific protection. The data subject should have the right to object the processing, on grounds relating to their particular situation and free of charge. To ensure transparency, the controller should be obliged to explicitly inform the data subject on the legitimate interests pursued and on the right to object, and also be obliged to document these legitimate interests. Given that it is for the legislator to provide by law the legal basis for public authorities to process data, this legal ground should not apply for the processing by public authorities in the performance of their tasks.

European Data Protection Board should set out comprehensive guidelines on what can be defined as "legitimate interest".

Processing would need careful assessment in particular where the data subject is a child, given that children deserve specific protection. The data subject should have the right to object the processing, free of charge. To ensure transparency, the controller should be obliged to explicitly inform the data subject on the legitimate interests pursued and on the right to object, and also be obliged to document these legitimate interests. Given that it is for the legislator to provide by law the legal basis for public authorities to process data, this legal ground should not apply for the processing by public authorities in the performance of their tasks.

Amendment 29
Proposal for a regulation
Recital 40

Text proposed by the Commission

(40) The processing of personal data for other purposes should be only allowed where the processing is compatible with those purposes for which the data have been initially collected, ***in particular*** where the processing is necessary for historical, statistical or scientific research purposes. Where the other purpose is not compatible with the initial one for which the data are collected, the controller should obtain the consent of the data subject for this other purpose ***or should base the processing on another legitimate ground for lawful processing, in particular where provided by Union law or the law of the Member State to which the controller is subject.*** In any case, the application of the principles set out by this Regulation and in particular the information of the data subject on those other purposes should be

Amendment

(40) The processing of personal data for other purposes should be only allowed where the processing is compatible with those purposes for which the data have been initially collected, ***such as*** where the processing is necessary for historical, statistical or scientific purposes. Where the other purpose is not compatible with the initial one for which the data are collected, the controller should obtain the consent of the data subject for this other purpose. In any case, the application of the principles set out by this Regulation and in particular the information of the data subject on those other purposes should be ensured.

ensured.

Amendment 30

Proposal for a regulation Recital 40 a (new)

Text proposed by the Commission

Amendment

(40a) The processing of data to the extent strictly necessary for the purposes of ensuring that electricity or gas undertakings or distribution system operators as defined in Directive 2009/72/EC and Directive 2009/73/EC can meet system, grid or operational needs, or the implementation of demand response, energy management, or energy efficiency programmes should be allowed provided that the electricity or gas undertaking or the distribution system operator has required by contract that the processor fulfils the requirements outlined in this Regulation.

Amendment 31

Proposal for a regulation Recital 41

Text proposed by the Commission

Amendment

(41) 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 the data subject gives his ***explicit*** consent. However, derogations from this prohibition should be explicitly provided for in respect of specific needs, in particular where the processing is carried out in the course of legitimate activities by certain associations or foundations the purpose of which is to permit the exercise of fundamental freedoms.

(41) 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 the data subject gives his ***informed*** consent. However, derogations from this prohibition should be explicitly provided for in respect of specific needs, in particular where the processing is carried out in the course of legitimate activities by certain associations or foundations the purpose of which is to permit the exercise of fundamental freedoms ***of the data***

subjects in question.

Amendment 32
Proposal for a regulation
Recital 45

Text proposed by the Commission

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

Amendment

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

Amendment 33
Proposal for a regulation
Recital 48

Text proposed by the Commission

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

Amendment

(48) The principles of fair and transparent processing require that the data subject should be informed in particular of the existence of the processing operation and its purposes, how long the data will be stored ***and the criteria which may be used as the basis for determining 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 34
Proposal for a regulation
Recital 49

Text proposed by the Commission

(49) The information in relation to the processing of personal data relating to the data subject should be given to them at the time of collection, or, where the data are not collected from the data subject, within a reasonable period, depending on the circumstances of the case. Where data can be legitimately disclosed to another recipient, the data subject should be informed when the data are first disclosed to the recipient.

Amendment

(49) The information in relation to the processing of personal data relating to the data subject should be given to them at the time of collection, or, where the data are not collected from the data subject, within a reasonable period, depending on the circumstances of the case. Where data can be legitimately disclosed to another recipient ***without the data subject's consent or renewed consent***, the data subject should be informed when the data are first disclosed to the recipient, ***should the data subject request this information***.

Justification

If data are legitimately disclosed to another recipient, there should be no need for a constant, iterative process of informing the data subject. This may lead to unintended consequences such as the data subject removing their consent to legitimate processing, or even worse, the data subject becoming desensitised to information pertaining to the status of their personal data.

Amendment 35
Proposal for a regulation
Recital 51

Text proposed by the Commission

(51) Any person should have the right of access to data which has been collected concerning them, and to exercise this right easily, in order to be aware and verify the lawfulness of the processing. Every data subject should therefore have the right to know and obtain communication in particular for what purposes the data are processed, for what period, which recipients receive the data, what is the

Amendment

(51) Any person should have the right of access to ***personal*** data which has been collected concerning them, and to exercise this right easily, in order to be aware and verify the lawfulness of the processing. Every data subject should therefore have the right to know and obtain communication in particular for what purposes the ***personal*** data are processed, for what period, which recipients receive

logic of the data that are undergoing the processing and what might be, **at least when based on profiling**, the consequences of such processing. This right should not adversely affect the rights and freedoms of others, including trade secrets or intellectual property and in particular **the** copyright protecting the software. However, the result of these considerations should not be that all information is refused to the data subject.

the **personal** data, what is the logic of the **personal** data that are undergoing the processing and what might be, the consequences of such processing. This right should not adversely affect the rights and freedoms of others, including trade secrets or intellectual property, **such as in relation to** copyright protecting the software. However, the result of these considerations should not be that all information is refused to the data subject.

Amendment 36
Proposal for a regulation
Recital 52

Text proposed by the Commission

(52) The controller should use all reasonable measures to verify the **identity** of a **data** subject that requests access, in particular in the context of online services and online identifiers. A controller should not retain personal data for the unique purpose of being able to react to potential requests.

Amendment

(52) The controller should use all reasonable measures **within the context of the product or service being provided, or otherwise within the context of the relationship between the controller and the data subject, and the sensitivity of the personal data being processed** to verify the **authenticity of a** subject access **request**, in particular in the context of online services and online identifiers. A controller should not retain **nor be forced to gather** personal data for the unique purpose of being able to react to potential requests.

Amendment 37
Proposal for a regulation
Recital 53 a (new)

Text proposed by the Commission

Amendment

(53a) A data subject should always have the option to give broad consent for his or her data to be used for historical, statistical or scientific research purposes, and to withdraw consent at any time.

Justification

Broad consent is a necessity for conducting research in fields of medicine that rely on biobanks and tissue banks among other forms. Biobanks are collections of biological samples and data, accumulated over a period of time, used for medical research and diagnostic purposes. These repositories store data from millions of data subjects, which is used by scientists to perform research. The option of broad consent given to a data subject at their first encounter with a doctor allows the researchers to use this data without having to go back to the data subject for every minor research they are conducting and is thus a necessary and practical solution for protecting and fostering public health research.

Amendment 38 **Proposal for a regulation** **Recital 58**

Text proposed by the Commission

(58) Every natural person should have the right not to be subject to a measure which is based on profiling by means of automated processing. However, *such* measure should be allowed when expressly authorised by law, carried out in the course of entering or performance of a contract, or when the data subject has given his consent. In any case, such processing should be subject to suitable safeguards, including specific information of the data subject and the right to obtain human intervention and that such measure should not concern a child.

Amendment

(58) Every natural person should have the right not to be subject to a measure which is based on profiling by means of automated processing ***and which produces legal effects concerning that natural person or significantly affects that natural person. Actual effects should be comparable in their intensity to legal effects to fall under the scope of this Regulation. This is not the case for measures relating to commercial communication, like for example in the field of customer relationship management or customer acquisition.*** However, *a measure based on profiling by automated data processing and which produces legal effects concerning a natural person or significantly affects a natural person* should be allowed when expressly authorised by law, carried out in the course of entering or performance of a contract, or when the data subject has given his consent. In any case, such processing should be subject to suitable safeguards, including specific information of the data subject and the right to obtain human intervention and that such measure should not concern a child.

Justification

The amendment clarifies that commercial communication, like for example in the field of customer relationship management or customer acquisition does not significantly affect a natural person in the sense of Article 20 paragraph 1. Actual effects must be comparable in their intensity to legal effects to fall under this provision.

Amendment 39 **Proposal for a regulation** **Recital 60**

Text proposed by the Commission

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

Amendment

(60) **Overall** responsibility and liability of the controller for any processing of personal data carried out by the controller or on the controller's behalf should be established **in order to ensure accountability**. In particular, the controller should ensure and be obliged to demonstrate the compliance of each processing operation with this Regulation. **Otherwise unnecessary data processing may not be justified on the basis of the need to respect this obligation.**

Amendment 40 **Proposal for a regulation** **Recital 61**

Text proposed by the Commission

(61) **The** protection of the rights and freedoms of data subjects with regard to the processing of personal data **require that** appropriate **technical and** organisational measures **are** taken, both at the time of the design of the processing and at the time of the processing itself, to ensure that the requirements of this Regulation are met. **In order to ensure and demonstrate compliance with this Regulation, the controller should adopt internal policies and implement appropriate measures, which meet in particular the principles of data protection**

Amendment

(61) **To meet consumer and business expectations around the** protection of the rights and freedoms of data subjects with regard to the processing of personal data, appropriate organisational measures **should be** taken, both at the time of the design of the processing and **its underlying technologies as well as** at the time of the processing itself, to ensure that the requirements of this Regulation are met. **Measures having as an objective to increase consumer information and ease of choice should be encouraged, based on industry cooperation and favouring**

by design and data protection by default.

innovative solutions, products and services. Data protection by design is the process by which data protection and privacy are integrated in the development of products and services through both technical and organisational measures. Data protection by default means that products and services are by default configured in a way that limits the processing and especially the disclosure of personal data. In particular, personal data should not be disclosed to an unlimited number of persons by default.

Amendment 41
Proposal for a regulation
Recital 61 a (new)

Text proposed by the Commission

Amendment

(61a) This Regulation should encourage enterprises to develop internal programmes that will identify the processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, and to put in place appropriate data protection safeguards and develop innovative data protection-by-design solutions and data protection enhancing techniques. Enterprises would then demonstrate publicly and pro-actively their compliance with the provisions and spirit of this Regulation and thus increase the trust of the European citizens. Corporate accountability on personal data protection cannot however exempt an enterprise from any obligation laid down in this Regulation.

Amendment 42
Proposal for a regulation
Recital 62

Text proposed by the Commission

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

Amendment 43
Proposal for a regulation
Recital 65

Text proposed by the Commission

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

Amendment 44
Proposal for a regulation
Recital 66

Text proposed by the Commission

(66) In order to maintain security and to prevent processing in breach of this Regulation, 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

Amendment

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

Amendment

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

Amendment

(66) In order to maintain security and to prevent processing in breach of this Regulation, the controller or processor should evaluate the risks inherent to the processing and implement measures to mitigate those risks. ***In particular, the controller or processor should duly take into account the greater risks arising from***

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, *the Commission should promote* technological neutrality, interoperability and innovation, and, where appropriate, cooperate with third countries.

the processing of personal data of the data subject, due to the sensitive nature of the data. 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, interoperability and innovation *should be promoted*, and, where appropriate, cooperate with third countries *should be encouraged*.

Amendment 45
Proposal for a regulation
Recital 67

Text proposed by the Commission

(67) A personal data breach may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud, to the individual concerned. Therefore, as soon as the controller becomes aware that such a breach has occurred, the controller should notify the breach to the supervisory authority without undue delay *and, where feasible, within 24 hours*. Where this cannot be achieved within *24 hours*, an explanation of the reasons for the delay should accompany the notification. The individuals whose personal data could be adversely affected by the breach should be notified without undue delay in order to allow them to take the necessary precautions. A breach should be considered as adversely affecting the personal data or privacy of a data subject where it could result in, for example, identity theft or fraud, physical harm, significant humiliation or damage to reputation. The notification should describe the nature of the personal data breach as well as recommendations as well as

Amendment

(67) A personal data breach may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud, to the individual concerned. Therefore, as soon as the controller becomes aware that such a breach has occurred, the controller should notify the breach to the supervisory authority without undue delay. Where this cannot be achieved within *a reasonable time period*, an explanation of the reasons for the delay should accompany the notification. The individuals whose personal data could be adversely affected by the breach should be notified without undue delay in order to allow them to take the necessary precautions. A breach should be considered as adversely affecting the personal data or privacy of a data subject where it could result in, for example, identity theft or fraud, physical harm, significant humiliation or damage to reputation. The notification should describe the nature of the personal data breach as well as recommendations as well as recommendations for the individual

recommendations for the individual concerned to mitigate potential adverse effects. Notifications to data subjects should be made as soon as reasonably feasible, and in close cooperation with the supervisory authority and respecting guidance provided by it or other relevant authorities (e.g. law enforcement authorities). For example, the chance for data subjects to mitigate an immediate risk of harm would call for a prompt notification of data subjects whereas the need to implement appropriate measures against continuing or similar data breaches may justify a longer delay.

concerned to mitigate potential adverse effects. Notifications to data subjects should be made as soon as reasonably feasible, and in close cooperation with the supervisory authority and respecting guidance provided by it or other relevant authorities (e.g. law enforcement authorities). For example, the chance for data subjects to mitigate an immediate risk of harm would call for a prompt notification of data subjects whereas the need to implement appropriate measures against continuing or similar data breaches may justify a longer delay.

Amendment 46

Proposal for a regulation

Recital 70

Text proposed by the Commission

(70) Directive 95/46/EC provided for a general obligation to notify processing of personal data to the supervisory authorities. While this obligation produces administrative and financial burdens, it did not in all cases contribute to improving the protection of personal data. Therefore such indiscriminate general notification obligation should be abolished, and replaced by effective procedures and mechanism which focus instead on those 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. In such cases, a data protection impact assessment should be carried out by the controller *or processor* prior to the processing, which should include in particular the envisaged measures, safeguards and mechanisms for ensuring the protection of personal data and for demonstrating the compliance with this

Amendment

(70) Directive 95/46/EC provided for a general obligation to notify processing of personal data to the supervisory authorities. While this obligation produces administrative and financial burdens, it did not in all cases contribute to improving the protection of personal data. Therefore such indiscriminate general notification obligation should be abolished, and replaced by effective procedures and mechanism which focus instead on those 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. In such cases, a data protection impact assessment should be carried out by the controller prior to the processing, which should include in particular the envisaged measures, safeguards and mechanisms for ensuring the protection of personal data and for demonstrating the compliance with this Regulation.

Regulation.

Justification

It should be up to the data controllers to assess the impact to privacy as they will determine the purposes of the processing.

Amendment 47
Proposal for a regulation
Recital 70 a (new)

Text proposed by the Commission

Amendment

(70a) Directive 2002/58/EC sets out personal data breach notification obligations for the processing of personal data in connection with the provision of publicly available electronic communications services in public communications networks in the Union. Where providers of publicly available electronic communications services also provide other services, they continue to be subject to the breach notification obligations of Directive 2002/58/EC, not this Regulation. Such providers should be subject to a single personal data breach notification regime for both personal data processed in connection with the provision of a publicly available electronic communications service and for any other personal data for which they are a controller.

Justification

Electronic communications service providers should be subject to a single notification regime for any breaches relating to the data they process, not multiple regimes depending on the service offered. This ensures a level playing field among industry players.

Amendment 48
Proposal for a regulation
Recital 76

Text proposed by the Commission

(76) Associations or other bodies representing categories of controllers should be encouraged to draw up codes of conduct, within the limits of this Regulation, so as to facilitate the effective application of this Regulation, taking account of the specific characteristics of the processing carried out in certain sectors.

Amendment

(76) Associations or other bodies representing categories of controllers should be encouraged to draw up codes of conduct, within the limits of this Regulation, so as to facilitate the effective application of this Regulation, taking account of the specific characteristics of the processing carried out in certain sectors. ***Such codes should make compliance with this Regulation easier for industry.***

Justification

It should be made clear that such codes of conduct are beneficial for industry and not a gesture which needs to be reciprocated with less oversight by DPAs.

Amendment 49

**Proposal for a regulation
Recital 77**

Text proposed by the Commission

(77) In order to enhance transparency and compliance with this Regulation, the establishment of certification mechanisms, data protection seals and marks should be encouraged, allowing data subjects to quickly assess the level of data protection of relevant products and services.

Amendment

(77) In order to enhance transparency and compliance with this Regulation, the establishment of certification mechanisms, data protection seals and marks should be encouraged, allowing data subjects to quickly, ***reliably and verifiably*** assess the level of data protection of relevant products and services.

Justification

Such tools must be rigorously tested, learning from successes and failures experienced with this approach.

Amendment 50

**Proposal for a regulation
Recital 80**

Text proposed by the Commission

(80) The Commission may decide with effect for the entire Union that certain third countries, or a territory or a processing sector within a third country, or an international organisation, offer an adequate level of data protection, thus providing legal certainty and uniformity throughout the Union as regards the third countries or international organisations which are considered to provide such level of protection. In these cases, transfers of personal data to these countries may take place without needing to obtain any further authorisation.

Amendment

(80) The Commission may decide with effect for the entire Union that certain third countries, or a territory or a processing sector within a third country, or an international organisation, offer an adequate level of data protection, thus providing legal certainty and uniformity throughout the Union as regards the third countries or international organisations which are considered to provide such level of protection. In these cases, transfers of personal data to these countries may take place without needing to obtain any further authorisation. ***The Commission may also decide, having given notice and a complete justification to the third country, to revoke such a decision.***

Justification

It would be illogical to imagine that the data protection situation in such a third country could not subsequently deteriorate.

Amendment 51

**Proposal for a regulation
Recital 84**

Text proposed by the Commission

(84) The possibility for the controller or processor to use standard data protection clauses adopted by the Commission or by a supervisory authority should neither prevent the possibility for controllers or processors to include the standard data protection clauses in a wider contract nor to add other clauses as long as they do not contradict, directly or indirectly, the standard contractual clauses adopted by the Commission or by a supervisory authority or prejudice the fundamental rights or freedoms of the data subjects.

Amendment

(84) The possibility for the controller or processor to use standard data protection clauses adopted by the Commission or by a supervisory authority should neither prevent the possibility for controllers or processors to include the standard data protection clauses in a wider contract nor to add other clauses as long as they do not contradict, directly or indirectly, the standard contractual clauses adopted by the Commission or by a supervisory authority or prejudice the fundamental rights or freedoms of the data subjects. ***In some scenarios, it may be appropriate to***

encourage controllers and processors to provide even more robust safeguards via additional contractual commitments that supplement standard data protection clauses.

Justification

This amendment would provide an incentive for organisations to go beyond the baseline regulatory requirements comply with regimes such as a "data seal" or "trust mark".

Amendment 52
Proposal for a regulation
Recital 85 a (new)

Text proposed by the Commission

Amendment

(85a) A group of companies planning to submit for approval binding corporate rules may propose a supervisory authority as the lead authority. This should be the supervisory authority of the Member State in which the main establishment of the controller or processor is situated.

Justification

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

Amendment 53
Proposal for a regulation
Recital 87

Text proposed by the Commission

Amendment

(87) These derogations should in particular apply to data transfers required and necessary for the protection of important grounds of public interest, for example in cases of international data transfers between competition authorities, tax or customs administrations, financial supervisory authorities, between services

(87) These derogations should in particular apply to data transfers required and necessary for the protection of important grounds of public interest, for example in cases of international data transfers between competition authorities, tax or customs administrations, financial supervisory authorities, between services

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

competent for social security matters, ***between bodies responsible for fighting fraud in sports***, or to competent authorities for the prevention, investigation, detection and prosecution of criminal offences. ***Transferring personal data for such important grounds of public interest should only be used for occasional transfers. In each and every case, a careful assessment of all circumstances of the transfer needs to be carried out.***

Amendment 54

Proposal for a regulation Recital 94

Text proposed by the Commission

(94) Each supervisory authority should be provided with the adequate financial and human resources, premises and infrastructure, which is 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.

Amendment

(94) Each supervisory authority should be provided with the adequate financial and human resources, ***paying particular attention to ensuring adequate technical skills of staff***, premises and infrastructure, which is ***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.

Justification

Strong, independent supervisory authorities are one of the necessary conditions for effective data protection. They should be free from external influence, as confirmed by the ECJ (C-518/07 and C-614/10), and should have the necessary resources – financial and human – to ensure enforcement of data protection legislation. These changes aim to provide supervisory authorities with the independence and resources they need to effectively protect the fundamental right to data protection. Supervisory authorities are needed to ensure enforcement of data protection legislation. As Article 16(2) TFEU states, they shall be independent in the exercise of their duties. Experience with the current framework has shown that this level of independence is not always provided in practice. It should be noted that this should not only be seen as referring to interference by Member States, but also by the Commission. Independence on paper alone is not enough, supervisory authorities also need the means to put their powers into action. This implies a need for appropriate resources and skilled staff, including staff with technical expertise. The increasing technical challenges facing supervisory authority staff must be recognised and addressed.

Amendment 55

Proposal for a regulation Recital 95

Text proposed by the Commission

(95) 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

(95) 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 ***taking due care to minimise the possibility of political interference***, and include rules on the personal qualification of the members, ***the avoidance of conflicts of interest*** and the position of those members.

Justification

Strong, independent supervisory authorities are one of the necessary conditions for effective data protection. They should be free from external influence, as confirmed by the ECJ (C-518/07 and C-614/10), and should have the necessary resources – financial and human – to ensure enforcement of data protection legislation. These changes aim to provide supervisory authorities with the independence and resources they need to effectively protect the fundamental right to data protection. Supervisory authorities are needed to ensure enforcement of data protection legislation. As Article 16(2) TFEU states, they shall be independent in the exercise of their duties. Experience with the current framework has shown that this level of independence is not always provided in practice. It should be noted that this should not only be seen as referring to interference by Member States, but also by the Commission. Independence on paper alone is not enough, supervisory authorities also need the means to put their powers into action. This implies a need for appropriate resources and skilled staff, including staff with technical expertise.

Amendment 56

Proposal for a regulation Recital 97

Text proposed by the Commission

(97) Where the processing of personal data ***in the context of the activities of an establishment of a controller or a processor in the Union*** takes place in more

Amendment

(97) Where the processing of personal data takes place in more than one Member State, one single supervisory authority should be competent for monitoring the

than one Member State, one single supervisory authority should be competent for monitoring the activities of the controller or processor throughout the Union and taking the related decisions, in order to increase the consistent application, provide legal certainty and reduce administrative burden for such controllers and processors.

activities of the controller or processor throughout the Union and taking the related decisions, in order to increase the consistent application, provide legal certainty and reduce administrative burden for such controllers and processors.

Justification

The one-stop shop principle should apply consistently to both EU and non-EU based controllers subject to the law.

Amendment 57

**Proposal for a regulation
Recital 98 a (new)**

Text proposed by the Commission

Amendment

(98a) Where the processing of personal data is the subject of a complaint lodged by a data subject, the competent authority, providing the one-stop shop, should be the supervisory authority of the Member State in which the data subject has its main residence. Where data subjects lodge similar complaints against such processing with supervisory authorities in different Member States, the competent authority should be the first seized.

Justification

It is appropriate to enable the data subject to exercise its administrative action towards the supervisory authority closest to its main residence, and in the same Member State where he/she can take legal action if needed, in order to enhance the accessibility and coherence of the recourse of the data subject and also to avoid administrative burden.

Amendment 58

**Proposal for a regulation
Recital 105**

Text proposed by the Commission

(105) In order to ensure the consistent application of this Regulation throughout the Union, a consistency mechanism for co-operation between the supervisory authorities themselves and the Commission should be established. This mechanism should in particular apply where **a** supervisory authority intends to take a measure as regards processing operations that are related to the offering of goods or services to data subjects in several Member States, , or to the monitoring such data subjects, or that might substantially affect the free flow of personal data. It should also apply where any supervisory authority or the Commission requests that the matter should be dealt with in the consistency mechanism. This mechanism should be without prejudice to any measures that the Commission may take in the exercise of its powers under the Treaties.

Amendment

(105) In order to ensure the consistent application of this Regulation throughout the Union, a consistency mechanism for co-operation between the supervisory authorities themselves and the Commission should be established. This mechanism should in particular apply where **the competent** supervisory authority intends to take a measure as regards processing operations that are related to the offering of goods or services to data subjects in several Member States, or to the monitoring such data subjects, or that might substantially affect the free flow of personal data. It should also apply where any supervisory authority or the Commission requests that the matter should be dealt with in the consistency mechanism. This mechanism should be without prejudice to any measures that the Commission may take in the exercise of its powers under the Treaties.

Amendment 59
Proposal for a regulation
Recital 121

Text proposed by the Commission

(121) The processing of personal data **solely** for journalistic purposes, or for the purposes of artistic or literary expression should qualify for exemption from the requirements of certain provisions of this Regulation in order to reconcile the right to the protection of personal data with the right to freedom of expression, and notably the right to receive and impart information, as guaranteed in particular by Article 11 of the Charter of Fundamental Rights of the European Union. This should apply in particular to processing of personal data in the audiovisual field and in news archives and press libraries. **Therefore, Member**

Amendment

(121) The processing of personal data for journalistic purposes, or for the purposes of artistic or literary expression should qualify for exemption from the requirements of certain provisions of this Regulation in order to reconcile the right to the protection of personal data with the right to freedom of expression, and notably the right to receive and impart information, as guaranteed in particular by Article 11 of the Charter of Fundamental Rights of the European Union. This should apply in particular to processing of personal data in the audiovisual field and in news archives and press libraries. In order to take account

States should adopt legislative measures, which should lay down exemptions and derogations which are necessary for the purpose of balancing these fundamental rights. Such exemptions and derogations should be adopted by the Member States on general principles, on the rights of the data subject, on controller and processor, on the transfer of data to third countries or international organisations, on the independent supervisory authorities and on co-operation and consistency. This should not, however, lead Member States to lay down exemptions from the other provisions of this Regulation. In order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary to interpret notions relating to that freedom, such as journalism, broadly. *Therefore, Member States should classify activities as ‘journalistic’ for the purpose of the exemptions and derogations to be laid down under this Regulation if the object of these activities is the disclosure to the public of information, opinions or ideas, irrespective of the medium which is used to transmit them. They should not be limited to media undertakings and may be undertaken for profit-making or for non-profit making purposes.*

of the importance of the right to freedom of expression in every democratic society, it is necessary to interpret notions relating to that freedom, such as journalism, broadly *and* irrespective of the medium which is used to transmit them.

Amendment 60

Proposal for a regulation Recital 121 a (new)

Text proposed by the Commission

Amendment

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

legislation to which the public authority or public body is subject. Such legislation should reconcile the right to the protection of personal data with the principle of public access to official documents.

Justification

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

Amendment 61
Proposal for a regulation
Recital 123 a (new)

Text proposed by the Commission

Amendment

(123a) The processing of personal data concerning health, as a special category of data, may be necessary for reasons of historical, statistical or scientific research. Therefore this Regulation should ensure that the harmonisation of conditions provided for the processing of personal data concerning health, subject to specific and suitable safeguards so as to protect the fundamental rights and the personal data of individuals, do not act as a barrier to translational, clinical and public health research.

Justification

Ensuring seamless access to medical data is crucial for public health research. This Regulation makes it essential to find a balance between protecting individual data and respecting public health researchers enough to provide them with the means to conduct medical research. One of the aims of this Regulation is to harmonize data protection across different sectors. It is thus important to note that any harmonization of data protection across countries or sectors must protect public health research sector and not constitute a barrier to crucial research addressing the great societal challenges.

Amendment 62
Proposal for a regulation
Recital 129

Text proposed by the Commission

(129) In order to fulfil the objectives of this Regulation, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. ***In particular, delegated acts should be adopted in respect of lawfulness of processing; specifying the criteria and conditions in relation to the consent of a child; processing of special categories of data; specifying the criteria and conditions for manifestly excessive requests and fees for exercising the rights of the data subject; criteria and requirements for the information to the data subject and in relation to the right of access; the right to be forgotten and to erasure; measures based on profiling; criteria and requirements in relation to the responsibility of the controller and to data protection by design and by default; a processor; criteria and requirements for the documentation and the security of processing; criteria and requirements for establishing a personal data breach and for its notification to the supervisory authority, and on the circumstances where a personal data breach is likely to adversely affect the data subject; the criteria and conditions for processing operations requiring a data protection impact assessment; the criteria and requirements for determining a high degree of specific risks which require prior consultation; designation and tasks of the data protection officer; codes of conduct; criteria and requirements for certification mechanisms; criteria and requirements for transfers by way of binding corporate rules; transfer***

Amendment

(129) In order to fulfil the objectives of this Regulation, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission, ***in certain limited circumstances***. 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.

derogations; administrative sanctions; processing for health purposes; processing in the employment context and processing for historical, statistical and scientific research purposes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

Amendment 63
Proposal for a regulation
Recital 130

Text proposed by the Commission

(130) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission *for: specifying standard forms in relation to the processing of personal data of a child; standard procedures and forms for exercising the rights of data subjects; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access; the right to data portability; standard forms in relation to the responsibility of the controller to data protection by design and by default and to the documentation; specific requirements for the security of processing; the standard format and the procedures for the notification of a personal data breach to the supervisory authority and the communication of a personal data breach to the data subject; standards and procedures for a data protection impact assessment; forms and procedures for prior authorisation and prior consultation; technical standards and*

Amendment

(130) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. ***In implementing the provisions of this Regulation, it should be ensured that no mandatory requirements for specific technical features are imposed on products and services, including terminal or other electronic communications equipment, which could impede the placing of equipment on the market and the free circulation of such equipment in and between Member States.*** In this context, the Commission should consider specific measures for micro, small and medium-sized enterprises ***in consultation with the parties concerned, as these measures should not overly burden those enterprises.***

mechanisms for certification; the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an international organisation; disclosures not authorized by Union law; mutual assistance; joint operations; decisions under the consistency mechanism. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers. In this context, the Commission should consider specific measures for micro, small and medium-sized enterprises.

Amendment 64

Proposal for a regulation Recital 139

Text proposed by the Commission

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

Amendment

(139) In view of the fact that, as underlined by the Court of Justice of the European Union, the right to the protection of personal data is not an absolute right, but must be considered in relation to its function in society and ***the actual and potential advances in science, health and technology and*** be balanced with other fundamental rights, in accordance with the principle of proportionality, this Regulation respects all fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union as enshrined in the Treaties, notably the right to respect for private and family life, home and communications, the right to the protection of personal data, the freedom of thought, conscience and religion, the freedom of expression and information, the freedom to

cultural, religious and linguistic diversity.

conduct a business, ***the right to property and in particular the protection of intellectual property*** the right to an effective remedy and to a fair trial as well as cultural, religious and linguistic diversity.

Justification

The processing of IP addresses is often a critical component of investigations into IPR abuses under Directive 2004/48/EC and should not be prevented by the Regulation.

Amendment 65

**Proposal for a regulation
Article 1 – paragraph 1**

Text proposed by the Commission

1. This Regulation lays down rules relating to the protection of ***individuals*** with regard to the processing of personal data and rules relating to the free movement of personal data.

Amendment

1. This Regulation lays down rules relating to the protection of ***natural and legal persons*** with regard to the processing of personal data and rules relating to the free movement of personal data.

Amendment 66

**Proposal for a regulation
Article 1 – paragraph 2**

Text proposed by the Commission

2. This Regulation protects the fundamental rights and freedoms of natural persons, and in particular their right to the protection of personal data.

Amendment

2. This Regulation protects the fundamental rights and freedoms of natural ***and legal*** persons, and in particular their right to the protection of personal data.

Amendment 67

**Proposal for a regulation
Article 1 – paragraph 3**

Text proposed by the Commission

3. The free movement of personal data

Amendment

3. The free movement of personal data

within the Union shall neither be restricted nor prohibited for reasons connected with the protection of *individuals* with regard to the processing of personal data.

within the Union shall neither be restricted nor prohibited for reasons connected with the protection of *natural and legal persons* with regard to the processing of personal data.

Amendment 68

Proposal for a regulation

Article 1 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. This Regulation shall not influence or restrict the freedom of the press and the freedom of expression that are enshrined in the constitutions of the Member States and are derived from the tradition of freedom of the press and freedom of expression that characterises free and open societies. Nor shall citizens' rights and access to information from the public authorities be affected or impaired. The Member States' right and responsibility to protect individual privacy with respect to dealing with public registers through special legislation shall also not be affected by this Regulation.

Amendment 69

Proposal for a regulation

Article 2 – paragraph 1

Text proposed by the Commission

Amendment

1. This Regulation 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.

1. This Regulation applies to the processing of personal data wholly or partly by automated means, ***without discrimination between such processing means and the technology used***, 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.

Amendment 70
Proposal for a regulation
Article 2 – paragraph 2 – point b

Text proposed by the Commission

Amendment

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

deleted

Amendment 71

Proposal for a regulation
Article 2 – paragraph 2 – point e a (new)

Text proposed by the Commission

Amendment

*(ea) for historical, statistical and scientific
research purposes*

Amendment 72

Proposal for a regulation
Article 2 – paragraph 2 – point e b (new)

Text proposed by the Commission

Amendment

*(eb) in the course of an activity which can
be attributed to the professional or a
commercial activity of a data subject*

Amendment 73

Proposal for a regulation
Article 2 – paragraph 2 – point e c (new)

Text proposed by the Commission

Amendment

*(ec) carried out by an employer as part of
the treatment of employee personal data
in an employment context*

Justification

*It is important that an employer can continue to process data about the employee – for
example with regards to wage, vacation, benefits, anniversary, education, health, criminal*

convictions, etc. Currently the employee can consent that the employer processes these data. However, the wording in the regulation could be interpreted as if in the future an imbalance between employer and employee is introduced.

Amendment 74

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(ed) anonymous data within the meaning of Article 4(2b)

Amendment 75

Proposal for a regulation

Article 3 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. This Regulation applies to the processing of personal data of data subjects **residing** in the Union by a controller not established in the Union, where the processing activities are related to:

2. This Regulation applies to the processing of personal data of data subjects **domiciled** in the Union by a controller not established in the Union, where the processing activities are related to:

Justification

Clarification of the concept of ‘residence’.

Amendment 76

Proposal for a regulation

Article 4 –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 identifier or to one or more factors specific

(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 **or other unique**

to the physical, physiological, genetic, mental, economic, cultural or social identity of that person;

identifier, location data, online identifier or to one or more factors specific to the *gender*, physical, physiological, genetic, mental, economic, cultural or social identity *or sexual orientation* of that person *and who is not acting in his/her professional capacity*;

Amendment 77
Proposal for a regulation
Article 4 – point 2 a (new)

Text proposed by the Commission

Amendment

(2a) 'pseudonymous data' means any personal data that has been collected, altered or otherwise processed so that it of itself cannot be attributed to a data subject without the use of additional data which is subject to separate and distinct technical and organisational controls to ensure such non attribution;

Amendment 78
Proposal for a regulation
Article 4 – point 2 b (new)

Text proposed by the Commission

Amendment

(2b) 'identification number' means any numeric, alphanumeric or similar code typically used in the online space, excluding codes assigned by a public or state controlled authority to identify a natural person as an individual;

Amendment 79
Proposal for a regulation
Article 4 – point 2 c (new)

Text proposed by the Commission

Amendment

(2c) 'anonymous data' means any

personal data that has been collected, altered or otherwise processed in such a way that it can no longer be attributed to a data subject; anonymous data shall not be considered personal data;

Amendment 80

Proposal for a regulation Article 4 – point 5

Text proposed by the Commission

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

Amendment

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

Amendment 81

Proposal for a regulation Article 4 – point 6

Text proposed by the Commission

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

Amendment

(6) ‘processor’ means a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller; ***is able to access personal data in a technically feasible way, without disproportionate effort, and is reasonably likely to gain knowledge of its content;***

Justification

This amendment is consistent with the amendment to Recital 24a (new).

Amendment 82
Proposal for a regulation
Article 4 – point 8

Text proposed by the Commission

(8) '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 them being processed;

Amendment

(8) 'the data subject's consent' means any freely given specific, informed and ***unambiguous*** indication of his or her wishes by which the data subject signifies agreement to personal data relating to them being processed. ***Silence or inactivity does not in itself indicate consent***;

Amendment 83
Proposal for a regulation
Article 4 – point 9 a (new)

Text proposed by the Commission

Amendment

(9a) 'Special categories of personal data' means information which shows the racial or ethnic origin, political beliefs, religion or belief or membership of a trade union as well as genetic data, data concerning health or sex life and data relating to criminal convictions or related security measures;

Justification

The processing of "special categories of personal data" is already subject to specific requirements (see Article 9). This group of sensitive data should, for reasons of proportionality, also be taken into account when determining other obligations of the controller (see amendment to Article 31). The addition of this definition creates more legal certainty.

Amendment 84
Proposal for a regulation
Article 4 – point 10

Text proposed by the Commission

(10) 'genetic data' means ***all data, of whatever type, concerning the***

Amendment

(10) 'genetic data' means ***information on the hereditary characteristics, or***

characteristics of an individual which are inherited or acquired during early prenatal development;

alteration thereof, of an identified or identifiable person, obtained through nucleic acid analysis;

Justification

The proposed definition should be in line with definitions used elsewhere, such as the definition of “human genetic data” used in the United Nations International Declaration on Human Genetic Data.

Amendment 85

Proposal for a regulation
Article 4 – point 12

Text proposed by the Commission

(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;

Amendment

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

Amendment 86

Proposal for a regulation
Article 4 – point 13

Text proposed by the Commission

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

Amendment

(13) ‘main establishment’ means **the location as determined by the data controller or data processor on the basis of the following transparent and objective criteria: the location of the group’s European headquarters, or, the location of the company within the group with delegated data protection responsibilities, or, the location of the company which is best placed (in terms of management function, administrative capability etc) to address and enforce the rules as set out in this Regulation, or, the place where the main decisions as to the purposes of processing are taken for the regional group;**

Justification

This amendment seeks to provide clarity reflecting the real situation of companies acting across a number of different jurisdictions. This should not be interpreted as a charter for "forum shopping", as the company must provide transparent, objective criteria to justify the location of its main establishment for the purposes of the regulation.

Amendment 87

Proposal for a regulation Article 4 – point 13 a (new)

Text proposed by the Commission

Amendment

(13a) 'competent supervisory authority' means the supervisory authority which shall be solely competent for the supervision of a controller in accordance with Articles 51(2),(3) and (4);

Amendment 88

Proposal for a regulation Article 4 – point 14

Text proposed by the Commission

Amendment

(14) 'representative' means any natural or legal person established in the Union who, explicitly designated by the controller, acts and ***may*** be addressed by ***any*** supervisory authority ***and other bodies in the Union instead of the controller***, with regard to the obligations of the controller under this Regulation;

(14) 'representative' means any natural or legal person established in the Union who, explicitly designated by the controller, acts and ***shall*** be addressed by ***the competent*** supervisory authority, with regard to the obligations of the controller under this Regulation;

Amendment 89

Proposal for a regulation Article 4 – point 19 a (new)

Text proposed by the Commission

Amendment

(19a) 'financial crime' means criminal offences in connection with organised crime, racketeering, terrorism, terrorist financing, trafficking in human beings,

migrant smuggling, sexual exploitation, trafficking in narcotic drugs and psychotropic substances, illegal arms trafficking, trafficking in stolen goods, corruption, bribery, fraud, counterfeiting currency, counterfeiting and piracy of products, environmental offences, kidnapping, illegal restraint and hostage-taking, robbery, theft, smuggling, offences related to taxation, extortion, forgery, piracy, insider trading and market manipulation.

Justification

It is necessary to add a definition of 'financial crime', derived from the recommendations of the Financial Action Task Force, as the processing of personal data will be allowed in order to prevent, investigate or detect financial crime.

Amendment 90

Proposal for a regulation
Article 5 – point b

Text proposed by the Commission

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

Amendment

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

Amendment 91

Proposal for a regulation
Article 5 – point c

Text proposed by the Commission

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

Amendment

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

Amendment 92

Proposal for a regulation Article 5 – point d

Text proposed by the Commission

(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;

Amendment

(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 **undue** delay;

Amendment 93

Proposal for a regulation Article 5 – point e

Text proposed by the Commission

(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the data will be processed solely for historical, statistical or scientific **research** purposes in accordance with the rules and conditions of Article 83 and if a periodic review is carried out to assess the necessity to continue the storage;

Amendment

(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the data will be processed solely for historical, statistical or scientific purposes in accordance with the rules and conditions of Article 83 and if a periodic review is carried out to assess the necessity to continue the storage;

Amendment 94

Proposal for a regulation Article 5 – point f

Text proposed by the Commission

(f) processed under the responsibility and liability of the controller, who shall ensure and **demonstrate for each processing operation the compliance** with the provisions of this Regulation.

Amendment

(f) processed under the responsibility and liability of the controller, who shall ensure and, **if required to do so, demonstrate compliance of the controller's processing** with the provisions of this Regulation **to the supervisory authority having**

competence under Article 51(2).

Amendment 95

Proposal for a regulation

Article 6 – paragraph 1 – point a

Text proposed by the Commission

(a) the data subject has given consent to the processing of their personal data ***for one or more specific purposes***;

Amendment

(a) the data subject has given consent to the processing of their personal data;

Amendment 96

Proposal for a regulation

Article 6 – paragraph 1 – point b

Text proposed by the Commission

(b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;

Amendment

(b) processing is necessary for the performance of a contract ***or of collective agreements and company-level agreements***, to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract.

Justification

Collective agreements in Germany are equivalent to state law contracts and can thus also be the basis for legitimate data processing.

Amendment 97

Proposal for a regulation

Article 6 – paragraph 1 – point c

Text proposed by the Commission

(c) processing is necessary for compliance with a legal obligation to which the controller is subject;

Amendment

(c) processing is necessary for compliance with a legal obligation, ***regulatory rule, guidance, industry code of practice, either domestically or internationally*** to which the controller is subject ***including the***

requirements of supervisory authorities;

Justification

The provision should ensure that domestic financial regulation or codes of conduct are included.

Amendment 98

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(da) processing is necessary to ensure network and information security;

Justification

This amendment incorporates into the text the safeguards established in Recital 39 by clarifying in a legally binding article that processing of data for network and information security purposes is considered lawful processing.

Amendment 99

Proposal for a regulation

Article 6 – paragraph 1 – point e

Text proposed by the Commission

Amendment

(e) processing is necessary for the performance of a task carried out in the ***public interest or in the*** exercise of official authority vested in the controller;

(e) processing is necessary for the performance of a task carried out in the exercise of official authority vested in the controller; ***or in the public interest,***

Amendment 100

Proposal for a regulation

Article 6 – paragraph 1 – point f

Text proposed by the Commission

Amendment

(f) processing is necessary for the purposes of the legitimate interests pursued by a controller, except where such interests are overridden by the interests or fundamental

(f) processing is necessary for the purposes of the legitimate interests pursued by, ***or on behalf of*** a controller ***or a processor, or by a third party or parties in whose***

rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. ***This*** shall not ***apply to*** processing carried out by public authorities in the performance of their tasks.

interest the data is processed, including for the security of processing, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. ***The interest or fundamental rights and freedoms of the data subject*** shall not ***over-ride*** processing carried out by public authorities in the performance of their tasks ***or enterprises in the exercise of their legal obligations, and in order to safeguard against fraudulent behaviour***.

Amendment 101
Proposal for a regulation
Article 6 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) processing is limited to pseudonymised data, where the data subject is adequately protected and the recipient of the service is given a right to object pursuant to Article 19 (3a).

Amendment 102
Proposal for a regulation
Article 6 – paragraph 1 – point f b (new)

Text proposed by the Commission

Amendment

(fb) the data are collected from public registers, lists or documents accessible by everyone;

Amendment 103
Proposal for a regulation
Article 6 – paragraph 1 – point f c (new)

Text proposed by the Commission

Amendment

(fc) where the controller has entrusted personal data to a third party, the third party is jointly responsible for compliance with this Regulation;

Amendment 104

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(fd) processing is strictly necessary for the proper response to detected network and/or information security incidents, breaches or attacks;

Amendment 105

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(fe) processing is necessary for the purpose of anonymisation or pseudonymisation of personal data;

Amendment 106

Proposal for a regulation

Article 6 – paragraph 2

Text proposed by the Commission

Amendment

2. Processing of personal data which is necessary for the purposes of historical, statistical or scientific research shall be lawful subject to the conditions and safeguards referred to in Article 83.

2. ***Subsequent*** processing of personal data which is necessary for the purposes of historical, statistical or scientific research shall be lawful subject to the conditions and safeguards referred to in Article 83.

Justification

It is important to specify and allow for subsequent processing (e.g. linkage, correction and addition of data concerning a data subject) since modern and innovative public health research will be build on multiple data sets and historical series.

Amendment 107

Proposal for a regulation

Article 6 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Processing of pseudonymised data to safeguard the legitimate interests pursued by a controller shall be lawful, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. This shall not apply to processing carried out by public authorities in the performance of their tasks.

Justification

The regulation does not yet currently recognise different categories of data and their different treatment.

Amendment 108

Proposal for a regulation

Article 6 – paragraph 3 – subparagraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) international conventions to which the Union or a Member State is a party.

Justification

A public interest can also be expressed in international conventions, even in the absence of specific national or EU laws. Such conventions would still need to respect the essence of the right to the protection of personal data and be proportionate to the legitimate aim pursued. Moreover, any processing of personal data on this basis would obviously have to comply with all other aspects of the Regulation as well.

Amendment 109

Proposal for a regulation

Article 6 – paragraph 3 – subparagraph 2

Text proposed by the Commission

The law of the Member State must meet an objective of public interest or must be necessary to protect the rights and freedoms of others, respect the essence of the right to the protection of personal data **and be** proportionate to the legitimate aim pursued.

Amendment

The law of the Member State must meet an objective of public interest or must be necessary to protect the rights and freedoms of others. ***The law of the Member State must also*** respect the essence of the right to the protection of personal data ***in this Regulation and in international treaties to which the Member State is party. Finally the Member State shall evaluate and decide if national legislation is*** proportionate to the legitimate aim pursued ***or if a legitimate aim could be achieved using less privacy invasive solutions.***

Justification

Article 6, paragraph 1, indent e states that processing is lawful if the following applies: “processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller”. Seen in connection with the above mentioned paragraph 3 this leaves Member States a very wide room for eroding citizens’ protection of data mentioned in this regulation using national legislation. The harmonisation among Member States will come under pressure because national interests will result in many different examples of legislation. Citizens’ data will be processed differently in the different countries. This is not satisfying. Similar arguments can be found in relation to article 21.

Amendment 110

Proposal for a regulation

Article 6 – paragraph 4

Text proposed by the Commission

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

Amendment

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

particular apply to any change of terms and general conditions of a contract.

particular apply to any change of terms and general conditions of a contract.

Justification

It is important to also include legitimate interests, such as the sector-specific example of providing a more efficient energy supply chain through the provision of smart grids. Whereas a data subject's energy consumption may not have explicitly been collected for the purpose of providing a more efficient overall supply, if it is in the legitimate interest of the service provider to use this information to achieve this goal, flexibility should be provided to ensure this is possible.

Amendment 111
Proposal for a regulation
Article 6 – paragraph 5

Text proposed by the Commission

Amendment

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

Amendment 112
Proposal for a regulation
Article 7 – paragraph 1

Text proposed by the Commission

Amendment

1. The controller shall bear the burden of proof for the data subject's consent to the processing of their personal data for specified purposes. **deleted**

Justification

Superfluous as the burden of proof under normal procedural law applies currently.

Amendment 113
Proposal for a regulation
Article 7 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The form of consent captured for the processing of a data subject's personal data shall be proportionate to the type of data processed and the purpose of the processing, as determined through a properly conducted data protection impact assessment as described in Article 33.

Justification

This amendment ties the identification of proportionate consent to the results of impact assessments, which will encourage their use. Where no data protection impact assessment has been conducted, a default requirement of explicit consent would continue to apply.

Amendment 114
Proposal for a regulation
Article 7 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Unless another form of consent is determined to be proportionate by such an impact assessment, consent shall be captured in a specific, informed and explicit statement or other clear affirmative action.

Justification

This amendment ties the identification of proportionate consent to the results of impact assessments, which will encourage their use. Where no data protection impact assessment has been conducted, a default requirement of explicit consent would continue to apply.

Amendment 115
Proposal for a regulation
Article 7 – paragraph 2

Text proposed by the Commission

Amendment

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

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

presented *distinguishable* in its appearance from this other matter.

presented *conspicuously* in its appearance.

Justification

Data subjects should be given clear and unambiguous conditions for offering their consent. If the intention is to ensure that consent language does not get lost amidst other technical jargon, perhaps the term “distinguishable” should not be used but the term “conspicuous” should be used instead. It should be highlighted, not distinguished.

Amendment 116 Proposal for a regulation Article 7 – paragraph 3

Text proposed by the Commission

3. The data subject shall have the right to withdraw his or her consent at any time. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal.

Amendment

3. The data subject shall have the right to withdraw his or her consent at any time. ***If the consent is part of a contractual or statutory relationship the withdrawal shall depend on the contractual or legal conditions.*** The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal.

Amendment 117

Proposal for a regulation Article 7 – paragraph 4

Text proposed by the Commission

4. Consent shall not provide a legal basis for the processing, ***where there is a significant imbalance between the position of the data subject and the controller.***

Amendment

4. Consent ***of an employee*** shall not provide a legal basis for the processing ***of data by the employer when the consent has not been given freely. The lawfulness of the processing shall be assessed in accordance with points (a) to (f) of Article 6(1) and with Article 6 (2) to (5). The individual consent according to point (a) of Article 6(1) can be replaced by collective agreements as legal basis, in particular by collective bargaining agreements or works council agreements.***

Amendment 118

Proposal for a regulation Article 8 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Ia. Where an information society service makes social networking facilities available to children it shall take explicit measures to protect their welfare, including by ensuring, in so far as possible, that they are aware of the identities of those with whom they are communicating.

Amendment 119

Proposal for a regulation Article 8 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the methods to obtain verifiable consent referred to in paragraph 1. In doing so, the Commission shall consider specific measures for micro, small and medium-sized enterprises.

deleted

Amendment 120

Proposal for a regulation Article 9 – paragraph 1

Text proposed by the Commission

Amendment

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

1. The processing of personal data, revealing race or ethnic origin, political opinions, religion or beliefs, trade-union membership, and the processing of genetic data or data concerning health or sex life or criminal convictions, *criminal offences*,

measures shall be prohibited.

including offences and matters which have not lead to conviction, significant social problems, or related security measures shall be prohibited.

Amendment 121
Proposal for a regulation
Article 9 – paragraph 2 – point b

Text proposed by the Commission

(b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller in the field of employment law in so far as it is authorised by Union law or Member State law providing for adequate safeguards; or

Amendment

(b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller in the field of employment law *or collective agreements on the labour market* in so far as it is authorised by Union law or Member State law providing for adequate safeguards *for the fundamental rights and the interests of the data subject*; or

Amendment 122
Proposal for a regulation
Article 9 – paragraph 2 – point d

Text proposed by the Commission

(d) processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other non-profit-seeking body with a political, philosophical, religious or trade-union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the data are not disclosed outside that body without the consent of the data subjects; or

Amendment

(d) processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association, *organizations on the labour market* or any other non-profit-seeking body with a political, philosophical, religious or trade-union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the data are not disclosed outside that body without the consent of the data subjects; or

Justification

It is important that organisations on the labour market can continue to process and exchange personal information about their members.

Amendment 123

Proposal for a regulation

Article 9 – paragraph 2 – point g

Text proposed by the Commission

(g) processing is necessary for the performance of a task carried out in the public interest, on the basis of Union law, or Member State law which shall provide for suitable measures to safeguard the data subject's legitimate interests; or

Amendment

(g) processing ***and sharing*** is necessary for the performance of a task carried out in the public interest, on the basis of Union law, Member State law, ***international conventions to which the Union or a Member State is a party***, which shall provide for suitable measures to safeguard the data subject's fundamental rights and legitimate interests; or

Amendment 124

Proposal for a regulation

Article 9 – paragraph 2 – point h

Text proposed by the Commission

(h) processing of data concerning health is necessary for health purposes and subject to the conditions and safeguards referred to in Article 81; or

Amendment

(h) processing ***and sharing*** of data concerning health is necessary for health purposes, ***including for historical, statistical or scientific research*** and subject to the conditions and safeguards referred to in Article 81; or

Justification

This clarification is necessary in order to safeguard the processing of medical data used for historical, statistical or scientific research purposes. Scientists heavily rely on patient registries and biobanks to conduct epidemiological, clinical and translational research, thus making it necessary to ensure the processing of personal data for health purposes.

Amendment 125

Proposal for a regulation

Article 9 – paragraph 2 – point i

Text proposed by the Commission

(i) processing is necessary for historical, statistical or scientific research purposes subject to the conditions and safeguards referred to in Article 83; or

Amendment 126

Proposal for a regulation

Article 9 – paragraph 2 – point j

Text proposed by the Commission

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

Amendment 127

Proposal for a regulation

Article 9 – paragraph 2 – point j a (new)

Text proposed by the Commission

Amendment

(i) processing **and sharing** is necessary for historical, statistical or scientific research purposes subject to the conditions and safeguards referred to in Article 83; or

Amendment

(j) processing of data relating to criminal convictions or related security measures is carried out either **subject to the conditions and safeguards referred to in Article 83a** or under the **supervision of a supervisory** authority or when the processing is necessary for compliance with **or to avoid a breach of** a legal or regulatory obligation **or collective agreements on the labour market** to which a controller is subject, or for the performance of a task carried out for important public interest reasons, and in so far as authorised by Union law or Member State law providing for adequate safeguards **for the fundamental rights of the data subject**. A complete register of criminal convictions shall be kept only under the control of official authority.

Amendment

(ja) processing of data concerning health is necessary for private social protection, especially by providing income security or tools to manage risks that are in the interests of the data subject and his or her dependants and assets, or by enhancing inter-generational equity by means of

distribution.

Amendment 128

Proposal for a regulation Article 9 – paragraph 3

Text proposed by the Commission

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

Amendment

3. The European Data Protection Board shall be entrusted with the task of issuing the recommendations regarding criteria, conditions and appropriate safeguards for the *protection of* special categories of personal data *in accordance with* paragraph 2.

Amendment 129

Proposal for a regulation Article 10

Text proposed by the Commission

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

Amendment

If the data processed by a controller do not permit the controller, *through means used by the controller* to identify *a data subject, in particular when rendered anonymous or pseudonymous*, the controller shall not acquire additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation.

The controller of research databases shall provide general information on the original data sources of the research database.

Amendment 130

Proposal for a regulation Article 11 – paragraph 1

Text proposed by the Commission

1. The controller shall have transparent ***and easily accessible*** policies with regard to the processing of personal data and for the exercise of data subjects' rights.

Amendment

1. The controller shall have transparent policies with regard to the processing of personal data and for the exercise of data subjects' rights ***and on request for this purpose shall provide to everybody the information set out in points (a) through (g) of Article 28(2) in an appropriate manner.***

Amendment 131

Proposal for a regulation Article 11 a (new)

Text proposed by the Commission

Amendment

Article 11a

Article 12 of Directive 2002/58/EC and Articles 20 and 21(3)(e) of 2002/22/EC are an application of the data subjects' right to transparent information and communication which requires that the controller informs data subjects of their rights with respect to the use of their personal information and draws attention to the presence of systems which have been developed in accordance with the principles of privacy by design.

Justification

Article 12 of the e-Privacy Directive and Articles 20 and 21 of the Universal Service Directive cover directory services, as part of the scope of universal services. The databases of directory service providers are required to be "comprehensive" and the inclusion of subscriber data is therefore important, as is the need for subscriber to be clearly informed of all their options, regardless of the model adopted by a Member State (opt-in, opt-out or hybrid).

Amendment 132

Proposal for a regulation Article 12 – paragraph 1

Text proposed by the Commission

1. The controller shall establish procedures for providing the information referred to in Article 14 and for the exercise of the rights of data subjects referred to in Article 13 and Articles 15 to 19. The controller shall provide in particular mechanisms for facilitating the request for the actions referred to in Article 13 and Articles 15 to 19. Where personal data are processed by automated means, the controller **shall** also provide means for requests to be made electronically.

Amendment 133

**Proposal for a regulation
Article 12 – paragraph 2**

Text proposed by the Commission

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

Justification

An enormous amount of red tape could be involved, particularly for SMEs, if electronic arrangements had to be made to ensure that the procedure was conducted electronically.

Amendment

1. The controller shall establish procedures for providing the information referred to in Article 14 and for the exercise of the rights of data subjects referred to in Article 13 and Articles 15 to 19. The controller shall provide in particular mechanisms for facilitating the request for the actions referred to in Article 13 and Articles 15 to 19. Where personal data are processed by automated means, the controller **may** also provide means for requests to be made electronically.

Amendment

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

Amendment 134

Proposal for a regulation Article 12 – paragraph 4

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 135

Proposal for a regulation Article 12 – paragraph 5

Text proposed by the Commission

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

Amendment

deleted

Amendment 136

Proposal for a regulation Article 12 – paragraph 6

Text proposed by the Commission

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

Amendment

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

Justification

Standard forms and procedures need to be laid down in order to guarantee that this measure is properly implemented, in particular by micro, small and medium-sized enterprises.

Amendment 137
Proposal for a regulation
Article 14 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Justification

The requirement to communicate contract terms and general conditions is an issue adequately regulated under civil law. From a data protection perspective there is therefore only the need to provide information regarding the purposes or the legitimate interests of processing.

Amendment 138
Proposal for a regulation
Article 14 – paragraph 1 – point c

Text proposed by the Commission

Amendment

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

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

Amendment 139
Proposal for a regulation
Article 14 – paragraph 1 – point e

Text proposed by the Commission

Amendment

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

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

Justification

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

Amendment 140
Proposal for a regulation
Article 14 – paragraph 1 – point g a (new)

Text proposed by the Commission

Amendment

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

Amendment 141
Proposal for a regulation
Article 14 – paragraph 1 – point h

Text proposed by the Commission

Amendment

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

deleted

are collected.

Justification

The blanket clause-like extension of the already substantial information obligations is likely to result in considerable legal uncertainty. Neither the company concerned, nor the consumer can from this formulation assess with legal certainty what information in each individual case must be made available.

Amendment 142
Proposal for a regulation
Article 14 – paragraph 2

Text proposed by the Commission

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.*

Amendment

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.

Justification

The information needs of data subjects are adequately taken into account, if they are informed whether the data provision is obligatory. Where this is not indicated, the provision of the data is consequently optional. The consumer is already accustomed to this practice. There is no reason to change this effective and functioning system. Information about whether the provision of information is mandatory or optional and the possible consequences of the refusal of the data would unnecessarily expand the information requirements. It is also unnecessary in many cases because it is already obvious from the context. In the course of ordering a product it is for example necessary to specify a shipping address, so that the product can actually be delivered.

Amendment 143
Proposal for a regulation
Article 14 – paragraph 3

Text proposed by the Commission

3. Where the personal data are not collected from the data subject, the controller shall inform the data subject, in addition to the information referred to in

Amendment

3. Where the personal data are not collected from the data subject, the controller shall inform the data subject, *as far as possible*, in addition to the

paragraph 1, from which source the personal data originate.

information referred to in paragraph 1, from which source the personal data originate, *except where the data originate from a publicly available source or where the transfer is provided by law or the processing is used for purposes relating to the professional activities of the person concerned.*

Amendment 144
Proposal for a regulation
Article 14 – paragraph 4 – point b

Text proposed by the Commission

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

Amendment

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

Justification

The data subject's right to informational self-determination is adequately taken into account if the relevant information is provided at this time.

Amendment 145
Proposal for a regulation
Article 14 – paragraph 5 – point b

Text proposed by the Commission

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

Amendment

(b) the data are not collected from the data subject *or the data processes do not allow the verification of identity* and the provision of such information proves impossible or would involve a disproportionate effort *such as by generating excessive administrative*

burden, especially when the processing is carried out by a SME; or

Amendment 146

Proposal for a regulation

Article 14 – paragraph 5 – point d a (new)

Text proposed by the Commission

Amendment

(da) the data originates from publicly available sources

Amendment 147

Proposal for a regulation

Article 14 – paragraph 7

Text proposed by the Commission

Amendment

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria for categories of recipients referred to in point (f) of paragraph 1, the requirements for the notice of potential access referred to in point (g) of paragraph 1, the criteria for the further information necessary referred to in point (h) of paragraph 1 for specific sectors and situations, and the conditions and appropriate safeguards for the exceptions laid down in point (b) of paragraph 5. In doing so, the Commission shall take the appropriate measures for micro, small and medium-sized-enterprises.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria for categories of recipients referred to in point (f) of paragraph 1, the requirements for the notice of potential access referred to in point (g) of paragraph 1, the criteria for the further information necessary referred to in point (h) of paragraph 1 for specific sectors and situations, and the conditions and appropriate safeguards for the exceptions laid down in point (b) of paragraph 5. In doing so, the Commission shall take the appropriate measures for micro, small and medium-sized enterprises, ***in consultation with relevant stakeholders.***

Justification

The potential lack of transparency associated with delegated acts should be avoided by ensuring that they are drafted in close cooperation with the stakeholders affected.

Amendment 148
Proposal for a regulation
Article 15 – paragraph 1 – introductory part

Text proposed by the Commission

1. The data subject shall have the right to obtain from the controller at any time, on request, confirmation as to whether or not personal data relating to the data subject are being processed. ***Where such personal data are being processed***, the controller shall provide the following information:

Amendment

1. The data subject shall have the right to obtain from the controller at any time, on request, ***in clear and plain language***, confirmation as to whether or not personal data relating to the data subject are being processed. ***With the exception of data being used for historical, statistical or scientific research purposes***, the controller shall provide the following information ***when personal data are being processed***:

Amendment 149

Proposal for a regulation
Article 15 – paragraph 1 – point d

Text proposed by the Commission

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

Amendment

(d) the ***maximum*** period for which the personal data will be stored.

Justification

The storage period varies considerably for all sorts of data and can often not be determined precisely from the outset. The maximum storage period for personal data should, however, be stated.

Amendment 150
Proposal for a regulation
Article 15 – paragraph 1 – point e

Text proposed by the Commission

(e) the existence of the right to request from the controller rectification or erasure of personal data concerning the data subject or to object to the processing of such personal data;

Amendment

(e) the existence of the right to request from the controller rectification ***in accordance with Article 16*** or erasure of personal data concerning the data subject or to object to the processing of such personal data;

Amendment 151
Proposal for a regulation
Article 15 – paragraph 1 – point f

Text proposed by the Commission

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

Amendment

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

Justification

A duty to specify the contact details of the supervisory authority associated with liability in respect of any misinformation would make a continuous review of the relevant information necessary, thus leading to disproportionate efforts especially for small and medium-sized enterprises.

Amendment 152

Proposal for a regulation
Article 15 – paragraph 1 – point h

Text proposed by the Commission

(h) the significance and envisaged consequences of such processing, ***at least in the case of measures referred to in Article 20.***

Amendment

(h) the significance and envisaged consequences of such processing.

Amendment 153

Proposal for a regulation
Article 15 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The data subject shall have the right to obtain from the controller of the data source at any time, on request, confirmation as to whether or not personal data relating to the data subject are being processed to a research data base, in accordance with the Article 10.

Justification

Data in research databases will most often be considered personal data according to a high threshold of the definition of data considered personal. For linked research databases it would involve a disproportionate effort for the controller of the linked data to back track data on individual data subjects, since information on the single data subject may be build on data from different data sources, and data may not directly identifiable when the Key ID is kept with the controller of the original data source. Article 10 solves the paradox that in order to notify data subjects on data about him or her in the database, the controller should do what he is not allowed to, namely to identify that data subject.

Amendment 154 **Proposal for a regulation** **Article 15 – paragraph 3**

Text proposed by the Commission

Amendment

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the communication to the data subject of the content of the personal data referred to in point (g) of paragraph 1.

deleted

Amendment 155

Proposal for a regulation **Article 16**

Text proposed by the Commission

Amendment

The data subject ***shall have*** the right 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, including by way of supplementing a corrective statement.

The data subject ***has*** the right to obtain from the controller the rectification of personal data relating to them which are inaccurate. The data subject ***has*** the right to obtain completion of incomplete personal data, including by way of supplementing a corrective statement.

Amendment 156

Proposal for a regulation **Article 17 – title**

Text proposed by the Commission

Amendment

Right to *be forgotten and to* erasure

Right to erasure

Amendment 157

Proposal for a regulation

Article 17 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. The data subject *shall have* the right to obtain from the controller the erasure of personal data relating to them and the abstention from further *dissemination* of such data, *especially* in relation to personal data which are made available by the data subject while he or she was a child, where one of the following grounds applies:

1. The data subject *has* the right to obtain from the controller the erasure of personal data relating to them and the abstention from further *processing* of such data, *unless the data controller is a public authority or an entity commissioned by a public authority or otherwise acting on the behalf of the public authority, including* in relation to personal data which are made available by the data subject while he or she was a child, where one of the following grounds applies:

Amendment 158

Proposal for a regulation

Article 17 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) the data are no longer necessary in relation to the purposes for which they were collected or *otherwise* processed;

(a) the data are no longer necessary in relation to the purposes for which they were collected or *further* processed *and the legally mandatory minimum retention period has expired*;

Amendment 159

Proposal for a regulation

Article 17 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) the data subject withdraws consent on which the processing is based according to

(b) the data subject withdraws consent on which the processing is based according to

point (a) of Article 6(1), or when the *storage* period consented to has expired, and where there is no other legal ground for the processing of the data;

point (a) of Article 6(1), or when the *retention* period consented to has expired, and where there is no other legal ground for the processing *or storage* of the data;

Amendment 160

Proposal for a regulation Article 17 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The controller shall take all reasonable steps to communicate any erasure to each legal entity to whom the data have been disclosed.

Amendment 161

Proposal for a regulation Article 17 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Paragraph 1 shall only apply where the data controller is able to confirm the identity of the data subject making the erasure request.

Amendment 162

Proposal for a regulation Article 17 – paragraph 2

Text proposed by the Commission

Amendment

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

deleted

authorised a third party publication of personal data, the controller shall be considered responsible for that publication.

Justification

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

Amendment 163
Proposal for a regulation
Article 17 – paragraph 3 – introductory part

Text proposed by the Commission

3. The controller shall carry out the erasure without delay, except to the extent that the retention of the personal data is necessary:

Amendment

3. The controller shall carry out the erasure without **undue** delay, except to the extent that the retention **and dissemination** of the personal data is necessary:

Amendment 164
Proposal for a regulation
Article 17 – paragraph 3 – point b

Text proposed by the Commission

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

Amendment

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

Amendment 165
Proposal for a regulation
Article 17 – paragraph 3 – point d

Text proposed by the Commission

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

Amendment

(d) for compliance with a legal obligation to retain the personal data by Union or Member State law to which the controller is subject;

legitimate aim pursued;

Justification

There may be laws of other member states that require a controller to refuse the right to be forgotten. Data may need to be held for accounting reasons under financial reporting rules for example.

Amendment 166

Proposal for a regulation

Article 17 – paragraph 3 – point e a (new)

Text proposed by the Commission

Amendment

(ea) for prevention or detection of fraud, confirming identity, and/or determining creditworthiness, or ability to pay.

Amendment 167

Proposal for a regulation

Article 17 – paragraph 4 – point d a (new)

Text proposed by the Commission

Amendment

(da) the controller has to store the personal data in order to ensure that based on an objection pursuant to Article 19, further processing of the respective data is excluded.

Justification

An objection to the processing of personal data pursuant to Article 19 regularly excludes the processing of the respective data for the future. To ensure that the respective data is not actually used for future data processing measures, it must not be deleted but blocked or otherwise marked.

Amendment 168

Proposal for a regulation

Article 17 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. Requests for the rectification, erasure or blocking of personal data shall not prejudice processing that is necessary to secure, protect and maintain the resiliency of one or more information systems. In addition, the right of rectification and/or erasure of personal data shall not apply to any personal data that is required to be maintained by legal obligation or to protect the rights of the controller, processor or third parties.

Justification

There are circumstances where the right of the data subject to rectify or erase personal data should not apply – for example, in compliance with EU Member States laws and other jurisdictions requiring maintenance of certain types of personal data for national security reasons or for investigations of potential wrongdoing.

Amendment 169
Proposal for a regulation
Article 17 – paragraph 9

Text proposed by the Commission

Amendment

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

deleted

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

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

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

Amendment 170
Proposal for a regulation
Article 18 – paragraph 1

Text proposed by the Commission

1. The data subject shall have the right, where personal data are processed by electronic means and in a structured and commonly used format, to obtain from the controller a copy of data undergoing processing in an electronic and structured format which is commonly used and allows for further use by the data subject.

Amendment

1. The data subject shall have the right, where personal data are processed by electronic means and in a structured and commonly used format, to obtain, ***on request***, from the controller, ***where technically feasible*** a copy of data undergoing processing in an electronic, interoperable and structured format which is commonly used and allows for further use by the data subject.

Amendment 171
Proposal for a regulation
Article 18 – paragraph 2

Text proposed by the Commission

2. Where the data subject has provided the personal data and the processing is based on consent or on a contract, the data subject shall have the right to transmit those personal data and any other information provided by the data subject and retained by an automated processing system, ***into another one, in an electronic format which is commonly used, without hindrance from the controller from whom the personal data are withdrawn.***

Amendment

2. Where the data subject has provided the personal data and the processing is based on consent or on a contract, the data subject shall have the right to transmit those personal data and any other information provided by the data subject, ***where technically feasible*** and retained by an automated processing system.

Amendment 172
Proposal for a regulation
Article 18 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The rights referred to in paragraphs 1 and 2 shall not adversely affect the rights and freedoms of others, including trade secrets or intellectual property rights. The result of such considerations shall not be

that all information is refused to the data subject.

Justification

Use of language from Recital 51 in relation to access to data. Due regard must be given to the limits to data portability, especially in relation to the legitimate interests of businesses to protect trade secrets and intellectual property rights, within reason.

Amendment 173

**Proposal for a regulation
Article 18 – paragraph 2 b (new)**

Text proposed by the Commission

Amendment

2b. The rights referred to in paragraphs 1 and 2 shall be without prejudice to the obligation to delete data when they are no longer necessary under Article 5(e).

Amendment 174

**Proposal for a regulation
Article 18 – paragraph 2 c (new)**

Text proposed by the Commission

Amendment

2c. Paragraphs 1 and 2 shall not apply to the processing of anonymised and pseudonymised data, insofar as the data subject is not sufficiently identifiable on the basis of such data, or identification would require the controller to undo the process of pseudonymisation.

Amendment 175

**Proposal for a regulation
Article 18 – paragraph 2 d (new)**

Text proposed by the Commission

Amendment

2d. Paragraphs 1 and 2 shall not apply where a controller can reasonably

demonstrate that it is not possible to separate the data subject's data from data of other data subjects.

Amendment 176
Proposal for a regulation
Article 18 – paragraph 3

Text proposed by the Commission

3. The Commission *may specify the electronic format referred to in paragraph 1 and the* technical standards, modalities and procedures for the transmission of personal data pursuant to paragraph 2. *Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).*

Amendment

3. The electronic format, related functionalities and procedures for the transmission of personal data pursuant to paragraph 2, shall be determined by the controller by reference to the most appropriate industry standards available or as defined by industry stakeholders or standardisation bodies. The Commission shall promote and assist industry, stakeholders and standardisation bodies in the mapping and adoption of technical standards, modalities and procedures for the transmission of personal data pursuant to paragraph 2.

Amendment 177

Proposal for a regulation
Article 18 a (new)

Text proposed by the Commission

Amendment

Article 18a

Controllers shall ensure that sufficient documentation for a data subject's identity has been received, when the data subject enforces the rights referred to in Articles 14 to 19 of this Regulation.

Justification

Citizens have to document their identities to enforce the rights in order to make sure that no form of identity theft can occur.

Amendment 178
Proposal for a regulation
Article 19 – paragraph 1

Text proposed by the Commission

1. The data subject shall have the right to object, *on* grounds relating to their particular situation, at any time to the processing of personal data *which is based on points (d), (e) and (f) of Article 6(1), unless the controller demonstrates compelling legitimate grounds for the processing which override the interests or fundamental rights and freedoms of the data subject.*

Amendment

1. The data subject shall have the right to object *in the cases of points (d), (e) and (f) of Article 6(1) on predominant, and protection-worthy* grounds relating to their particular situation, at any time to the processing of *their* personal data. *In the case of a justified objection the processing by the controller may no longer refer to this data*

Justification

The changes reflect the effective and proven provision on objection of Article 14a) of Directive 95/46/EC. There is no reason to change the current system. There are no known practical problems in this area, which would justify a legislative change. This applies even more so as the Regulation will now apply directly and thus without the flexibility of the Directive.

Amendment 179

Proposal for a regulation
Article 19 – paragraph 2

Text proposed by the Commission

2. Where personal data are processed for direct marketing purposes, the data subject shall have the right to object free of charge to the processing of their personal data for such marketing. This right shall be explicitly offered to the data subject in an intelligible manner and shall be clearly distinguishable from other information.

Amendment

2. Where personal data are processed for direct marketing purposes *or where processing is based on point (f) of Article 6(1)*, the data subject shall have the right to object free of charge to the processing of their personal data for such marketing. This right shall be explicitly offered to the data subject in an intelligible manner, *using clear and plain language, adapted to the data subject, in particular for any information addressed specifically to a child*, and shall be clearly distinguishable from other information.

Amendment 180

Proposal for a regulation

Article 19 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Where pseudonymous data are processed based on point (g) of Article 6(1), the data subject shall have the right to object free of charge to the processing. This right shall be explicitly offered to the data subject in an intelligible manner and shall be clearly distinguishable from other information.

Amendment 181

Proposal for a regulation

Article 20 – paragraph 1

Text proposed by the Commission

Amendment

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

1. A ***data subject*** shall have the right not to be subject to a measure which ***adversely*** affects this ***data subject, both offline and online*** which is based solely on automated processing ***of data*** intended to evaluate certain personal aspects relating to ***a data subject*** or to analyse or predict in particular the ***data subject's*** performance at work, economic situation, location, health, personal preferences, reliability or behaviour.

Amendment 182

Proposal for a regulation

Article 20 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. For the purposes of advertising, market research or tailoring telemedia, user profiles may be created using pseudonymised data, provided that the

person concerned does not object. The person concerned must be informed of his/her right to object. User profiles may not be combined with data about the bearer of the pseudonym.

Justification

The original wording of Article 20 could lead to companies having to obtain consent for any form of processing personal data. In order, however, not to destroy the business models of countless small and medium-sized European companies in particular, and thus give priority to large US firms, certain forms of data processing should be allowed with due respect to the protection of personal data.

Amendment 183

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

Text proposed by the Commission

Amendment

1b. Data controllers shall notify the data subject where processing as referred to in paragraph 1 takes place and give the individual the right to have any such decision reviewed.

Justification

Profiling for the purposes of credit scoring should be clearly distinguished from other purposes, not least in that this profiling is clearly notified to the individual in advance.

Amendment 184

**Proposal for a regulation
Article 20 – paragraph 2 – point a a (new)**

Text proposed by the Commission

Amendment

(aa) is based on pseudonymous data;

Amendment 185

**Proposal for a regulation
Article 20 – paragraph 2 – point a b (new)**

Text proposed by the Commission

Amendment

(ab) is based on the legitimate interests pursued by the data controller;

Amendment 186

**Proposal for a regulation
Article 20 – paragraph 2 – point a**

Text proposed by the Commission

Amendment

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

deleted

Amendment 187

**Proposal for a regulation
Article 20 – paragraph 2 – point b**

Text proposed by the Commission

Amendment

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

deleted

Amendment 188

**Proposal for a regulation
Article 20 – paragraph 2 – point c**

Text proposed by the Commission

Amendment

(c) is based on the data subject's consent, subject to the conditions laid down in

deleted

Article 7 and to suitable safeguards.

Amendment 189
Proposal for a regulation
Article 20 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(ca) is necessary to protect the vital interests of the data subject or in the public interest as provided by points (d) and (e) of Article 5;

Amendment 190
Proposal for a regulation
Article 20 – paragraph 2 – point c b (new)

Text proposed by the Commission

Amendment

(cb) is limited to pseudonymised data. Such pseudonymised data must not be collated with data on the bearer of the pseudonym. Article 19 (3a) shall apply correspondingly;

Justification

In line with Article 15, paragraph 3 of the German Telemedia Act which encourages the pseudonymisation of data and provides a clear legislative framework for profiling in the areas of, inter alia, advertising and market research.

Amendment 191
Proposal for a regulation
Article 20 – paragraph 2 – point c c (new)

Text proposed by the Commission

Amendment

(cc) is necessary to protect the rights available to other data subjects, for example for the purposes of detecting fraud, or for the purposes of detecting irregularities or other illegal activity according to Union law or Member State

law;

Amendment 192
Proposal for a regulation
Article 20 – paragraph 2 – point c d (new)

Text proposed by the Commission

Amendment

(cd) concerns data which have been made anonymous.

Justification

Data that are rendered permanently anonymous as per the definition in Article 4, paragraph 1, point 2 b (new).

Amendment 193

Proposal for a regulation
Article 20 – paragraph 3

Text proposed by the Commission

Amendment

3. Automated processing of personal data intended to evaluate certain personal aspects relating to a natural person shall not be based solely on the special categories of personal data referred to in Article 9.

deleted

Amendment 194

Proposal for a regulation
Article 20 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

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

Amendment 195

**Proposal for a regulation
Article 20 – paragraph 4**

Text proposed by the Commission

Amendment

4. In the cases referred to in paragraph 2, the information to be provided by the controller under Article 14 shall include information as to the existence of processing for a measure of the kind referred to in paragraph 1 and the envisaged effects of such processing on the data subject.

deleted

**Amendment 196
Proposal for a regulation
Article 20 – paragraph 5**

Text proposed by the Commission

Amendment

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

deleted

Amendment 197

**Proposal for a regulation
Article 21 – paragraph 1 a (new)**

Text proposed by the Commission

Amendment

1a. Parties on the labour market may restrict by way of a legislative measure the scope of the obligations and rights provided for in points (a) to (e) of Article 5 and Articles 11 to 20 and Article 32, when such a restriction have been agreed by national collective agreements to constitute a necessary and proportionate measure.

Justification

The labour market is regulated very differently in the different Member States. Some Member States have a tradition with legislation and other Member States have a high degree of regulation that stems from collective agreements on the labour market.

Amendment 198

**Proposal for a regulation
Article 22 – paragraph 1**

Text proposed by the Commission

1. *The controller shall adopt policies and implement appropriate measures to ensure and be able to demonstrate that the processing of personal data is performed in compliance with this Regulation.*

Amendment

1. *Having regard to the state of the art, the nature of personal data processing and the type of the organisation, both at the time of the determination of the means for processing and at the time of the processing itself, appropriate and demonstrable technical and organisational measures shall be implemented in such a way that the processing will meet the requirements of this Regulation and ensures the protection of the rights of the data subject by design.*

Justification

The Regulation should provide enough flexibility to allow different organizations to implement the most effective technical and organizational measures, fit for the nature and structure of each respective organization.

Amendment 199

**Proposal for a regulation
Article 22 – paragraph 1 a (new)**

Text proposed by the Commission

Amendment

1a. *Upon request by the competent data protection authority, the controller or processor shall demonstrate the existence of technical and organisational measures.*

Amendment 200

Proposal for a regulation
Article 22 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. A group of undertakings may apply joint technical and organisational measures to meet its obligations arising from this Regulation.

Amendment 201

Proposal for a regulation
Article 22 – paragraph 1 c (new)

Text proposed by the Commission

Amendment

1c. This article shall not apply to a natural person processing personal data without commercial interest.

Amendment 202

Proposal for a regulation
Article 22 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

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

2. Such measures include, without limitation:

Amendment 203

Proposal for a regulation
Article 22 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) keeping the documentation pursuant to Article 28;

(a) independent management oversight of processing of personal data to ensure the existence and effectiveness of the technical and organisational measures;

Amendment 204

Proposal for a regulation
Article 22 – paragraph 2 – point a a (new)

Text proposed by the Commission

Amendment

(aa) implementing a control management system, including the assignment of responsibilities, training of staff and adequate instructions;

Amendment 205

Proposal for a regulation
Article 22 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) implementing the data security requirements laid down in Article 30;

(b) existence of proper policies, instructions or other guidelines to guide data processing needed to comply with the Regulation as well as procedures and enforcement to make such guidelines effective;

Amendment 206

Proposal for a regulation
Article 22 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) performing a data protection impact assessment pursuant to Article 33;

(c) existence of proper planning procedures to ensure compliance and to address potentially risky processing of personal data prior to the commencement of the processing;

Amendment 207

Proposal for a regulation
Article 22 – paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) complying with the requirements for

(d) existence of appropriate

prior authorisation or prior consultation of the supervisory authority pursuant to Article 34(1) and (2);

documentation of data processing to enable compliance with the obligations arising from this Regulation;

Amendment 208

Proposal for a regulation

Article 22 – paragraph 2 – point e a (new)

Text proposed by the Commission

Amendment

(ea) clear and accessible data governance policies that are proportionate to the amount and type of personal data processed by the controller and the risk of harm to data protection involved in the processing of the data;

Justification

The additional sections are intended to provide the basis for a true, enforceable accountability mechanism that can be flexible enough to accommodate both large enterprises and smaller organizations. Such a concept is in line with best practices already in place in other compliance regimes, such as anti-bribery provisions.

Amendment 209

Proposal for a regulation

Article 22 – paragraph 2 – point e b (new)

Text proposed by the Commission

Amendment

(eb) existence of proper awareness and training of the staff participating in data processing and decisions thereto of the obligations arising from this Regulation;

Amendment 210

Proposal for a regulation

Article 22 – paragraph 2 – point e c (new)

Text proposed by the Commission

Amendment

(ec) establishing and documenting the

measures referred to in Article 11;

Amendment 211
Proposal for a regulation
Article 22 – paragraph 2 – point e d (new)

Text proposed by the Commission

Amendment

(ed) evidence of top-level management commitment to implementing the data governance policies throughout the enterprise so as to ensure compliance with this Regulation.

Justification

The additional sections are intended to provide the basis for a true, enforceable accountability mechanism that can be flexible enough to accommodate both large enterprises and smaller organizations. Such a concept is in line with best practices already in place in other compliance regimes, such as anti-bribery provisions.

Amendment 212

Proposal for a regulation
Article 22 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Any regular report of the activities of the controller shall contain a description of the policies and measures referred to in paragraph 1.

Amendment 213
Proposal for a regulation
Article 22 – paragraph 4

Text proposed by the Commission

Amendment

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of specifying any further criteria and requirements for appropriate measures referred to in paragraph 1 other than those already

deleted

referred to in paragraph 2, the conditions for the verification and auditing mechanisms referred to in paragraph 3 and as regards the criteria for proportionality under paragraph 3, and considering specific measures for micro, small and medium-sized-enterprises.

Amendment 214
Proposal for a regulation
Article 23 – title

Text proposed by the Commission

Data protection by design *and by default*

Amendment

Data protection by design

Amendment 215
Proposal for a regulation
Article 23 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Notwithstanding the first subparagraph, the controller shall only be burdened with measures that are proportionate to the risk of data processing reflected by the nature of the personal data to be processed.

Amendment 216
Proposal for a regulation
Article 23 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The measures and procedures referred to in paragraph 1 shall:

- (a) take due account of existing technical standards and regulations in the area of public safety and security;**
- (b) follow the principle of technology, service and business model neutrality;**
- (c) be based on global industry-led efforts and standards;**
- (d) take due account of international developments.**

Amendment 217

Proposal for a regulation Article 23 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. In implementing the provisions of this Regulation, it shall be ensured that no mandatory requirements for specific technical features are imposed on products and services, including terminal or other electronic communications equipment, which could impede the placing of equipment on the market and the free circulation of such equipment in and between Member States.

Amendment 218
Proposal for a regulation
Article 23 – paragraph 3

Text proposed by the Commission

Amendment

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

deleted

Amendment 219
Proposal for a regulation
Article 23 – paragraph 4

Text proposed by the Commission

Amendment

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

deleted

Amendment 220

Proposal for a regulation
Article 24

Text proposed by the Commission

Amendment

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

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

an arrangement between them.

controllers' respective effective roles and relationships vis-à-vis data subjects.

Justification

The arrangement to be entered into by joint controllers should be expressly required to duly reflect the joint controllers' respective roles and relationships with the data subjects. Joint controllers are not necessarily in an equal negotiation position when it comes to contractual agreements. Moreover, not all joint controllers enjoy a direct relationship with the data subject and they do not control the same kind and amount of personal data.

Amendment 221
Proposal for a regulation
Article 25 – paragraph 4

Text proposed by the Commission

Amendment

4. The designation of a representative by the controller shall be without prejudice to legal actions which could be initiated against the controller itself. ***deleted***

Justification

The representative acts on behalf of the controller and is the controller in the EU. Non bis in idem.

Amendment 222
Proposal for a regulation
Article 26 – paragraph 1

Text proposed by the Commission

Amendment

1. Where a processing operation is to be 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 this Regulation and ensure the protection of the rights of the data subject, in particular in respect of the technical security measures and organizational measures governing the processing to be carried out and shall

1. Where a processing operation is to be carried out on behalf of a controller ***and involves the processing of data that would permit the processor to reasonably identify the data subject***, 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 this Regulation and ensure the protection of the rights of the data subject, in particular in respect of the

ensure compliance with those measures.

technical security measures and organizational measures governing the processing to be carried out and shall ensure compliance with those measures.

Amendment 223
Proposal for a regulation
Article 26 – paragraph 2 – introductory part

Text proposed by the Commission

2. The carrying out of processing by a processor shall be governed by a contract or other legal act binding the processor to the controller *and stipulating in particular that the processor shall:*

Amendment

2. The carrying out of processing by a processor shall be governed by a contract or other legal act binding the processor to the controller. *The controller and the processor shall be free to determine their respective roles and responsibilities with respect to the requirements of this Regulation, and shall provide for the following:*

Amendment 224
Proposal for a regulation
Article 26 – paragraph 2 – point a

Text proposed by the Commission

(a) act only on instructions from the controller, in particular, where the transfer of the personal data used is prohibited;

Amendment

(a) *the processor shall* act only on instructions from the controller, in particular, where the transfer of the personal data used is prohibited;

Amendment 225
Proposal for a regulation
Article 26 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) take account of the principle of data protection by design;

Amendment 226

Proposal for a regulation
Article 26 – paragraph 2 – point d

Text proposed by the Commission

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

Amendment

deleted

Amendment 227
Proposal for a regulation
Article 26 – paragraph 2 – point e

Text proposed by the Commission

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

Amendment

(e) insofar as this is possible given the nature of the processing ***and the processor's ability to assist with reasonable effort, an*** agreement as to the ***appropriate and relevant*** technical and organisational requirements ***which support the ability of the controller*** to respond to requests for exercising the subject's rights laid down in Chapter III;

Amendment 228
Proposal for a regulation
Article 26 – paragraph 2 – point f

Text proposed by the Commission

(f) assist ***the controller in ensuring*** compliance with the obligations pursuant to Articles 30 to 34;

Amendment

(f) ***insofar as this is possible given the nature of processing, the information available to the processor and his ability to assist with reasonable effort, an agreement on how*** compliance ***will be ensured*** with the obligations pursuant to Articles 30 to 34;

Amendment 229
Proposal for a regulation
Article 26 – paragraph 2 – point g

Text proposed by the Commission

Amendment

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

(g) hand over all results to the controller after the end of the processing ***or destroy them in a commercially accepted manner;***

Amendment 230

Proposal for a regulation Article 26 – paragraph 4

Text proposed by the Commission

Amendment

4. 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 24.

deleted

Amendment 231

Proposal for a regulation Article 26 – paragraph 5

Text proposed by the Commission

Amendment

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the responsibilities, duties and tasks in relation to a processor in line with paragraph 1, and conditions which allow facilitating the processing of personal data within a group of undertakings, in particular for the purposes of control and reporting.

deleted

Justification

Accountability principle should leave details to controller and processor

Amendment 232
Proposal for a regulation
Article 28 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Each controller and, if any, the controller's representative, shall maintain **appropriate** documentation of **the measures taken to ensure that the processing of personal data** under its responsibility **is in compliance with this Regulation**.

Amendment 233
Proposal for a regulation
Article 28 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The documentation shall contain the information necessary for the supervisory authority to ascertain that the controller or processor has complied with this Regulation, including a description of any of the applicable internal measures and mechanisms intended to comply with Article 22.

Justification

A prescriptive documentation requirement for each data processing activity is unachievable both for multinational enterprises and for smaller enterprises and would not lead to greater privacy protection for customers. The proposed amendment avoids legalistic, onerous compliance programmes for data protection that create paperwork but do not result in better operational practices on the ground.

Amendment 234
Proposal for a regulation
Article 28 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. The obligation referred to in paragraphs 1 and 1a shall not apply to

SMEs processing data only as an activity ancillary to the sale of goods or services. Ancillary activity shall be defined as business or non-trade activity that is not associated with the core activities of a firm. In relation to data protection, data processing activities which represent less than 50% of company's turnover shall be considered ancillary.

Amendment 235
Proposal for a regulation
Article 28 – paragraph 2

Text proposed by the Commission

Amendment

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

deleted

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

(b) the name and contact details of the data protection officer, if any;

(c) the purposes of the processing, including the legitimate interests pursued by the controller where the processing is based on point (f) of Article 6(1);

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

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

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

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

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

Amendment 236

Proposal for a regulation Article 28 – paragraph 3

Text proposed by the Commission

3. The controller **and the processor** and, if any, the controller's representative, shall make the documentation available, on request, to the supervisory authority.

Amendment

3. The controller and, if any, the controller's representative, shall make the documentation available, on request, to the supervisory authority.

Amendment 237

Proposal for a regulation Article 28 – paragraph 5

Text proposed by the Commission

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

Amendment

deleted

Amendment 238

Proposal for a regulation Article 28 – paragraph 6

Text proposed by the Commission

6. The Commission may lay down standard forms for the documentation referred to in paragraph 1. Those implementing acts shall

Amendment

6. The Commission, **after consulting the European Data Protection Board**, may lay down standard forms for the

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

documentation referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

Amendment 239

Proposal for a regulation Article 29 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 240

Proposal for a regulation Article 29 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Where the controller and the processor are established in several Member States for the purposes of the full or partial management of data, they shall be given the opportunity to designate their main establishment.

Amendment 241

Proposal for a regulation Article 30 – paragraph 1

Text proposed by the Commission

1. The controller and the processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected, having regard to the state of the art and the costs of their implementation.

Amendment

1. The controller and the processor shall implement appropriate technical and organisational measures, **including pseudonymisation**, to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected, having regard to the state of the art and the costs of their implementation.

Notwithstanding the first subparagraph, the controller and the processor shall only be burdened with measures that are proportionate to the risk of data processing reflected by the nature of the personal data to be processed.

**Amendment 242
Proposal for a regulation
Article 30 – paragraph 2 a (new)**

Text proposed by the Commission

Amendment

2a. The legal obligations referred to in paragraphs 1 and 2, which would require processing of personal data to the extent strictly necessary for the purposes of ensuring network and information security, constitute a legitimate interest pursued by or on behalf of a data controller or processor, as referred to in point (f) of Article 6 (1).

**Amendment 243
Proposal for a regulation
Article 30 – paragraph 3**

Text proposed by the Commission

Amendment

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

deleted

the technical and organisational measures referred to in paragraphs 1 and 2, including the determinations of what constitutes the state of the art, for specific sectors and in specific data processing situations, in particular taking account of developments in technology and solutions for privacy by design and data protection by default, unless paragraph 4 applies.

Amendment 244

Proposal for a regulation Article 30 – paragraph 4

Text proposed by the Commission

Amendment

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

deleted

(a) prevent any unauthorised access to personal data;

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

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

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

Amendment 245

Proposal for a regulation Article 31 – paragraph 1

Text proposed by the Commission

Amendment

1. In the case of a personal data breach, the controller shall without undue delay and, where feasible, not later than 24 hours after having become aware of it, notify the personal data breach to the supervisory

1. In the case of a personal data breach relating to special categories of personal data, personal data which are subject to professional secrecy, personal data relating to criminal offences or to the

authority. *The notification to the supervisory authority shall be accompanied by a reasoned justification in cases where it is not made within 24 hours.*

suspicion of a criminal act or personal data relating to bank or credit card accounts, which seriously threaten the rights or legitimate interests of the data subject, the controller shall without undue delay notify the personal data breach to the supervisory authority.

Amendment 246

Proposal for a regulation Article 31 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Pursuant to point (f) of Article 26(2), the processor shall alert and inform the controller *without undue delay* after the *identification of a* personal data breach *that is likely to produce legal effects to the detriment of the data subject's privacy.*

Amendment 247

Proposal for a regulation Article 31 – paragraph 3 – point e

Text proposed by the Commission

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

Amendment

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

Amendment 248

Proposal for a regulation Article 31 – paragraph 4

Text proposed by the Commission

4. The controller shall document any personal data breaches, comprising the facts surrounding the breach, its effects and the remedial action taken. This

Amendment

4. The controller shall document 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.

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.

Amendment 249
Proposal for a regulation
Article 31 – paragraph 5

Text proposed by the Commission

Amendment

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for establishing the data breach referred to in paragraphs 1 and 2 and for the particular circumstances in which a controller and a processor is required to notify the personal data breach.

deleted

Amendment 250

Proposal for a regulation
Article 31 – paragraph 6

Text proposed by the Commission

Amendment

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 87(2).**

6. The Commission may lay down the standard format of such notification to the supervisory authority **and** the procedures applicable to the **filing of reports.**

Amendment 251
Proposal for a regulation
Article 32 – paragraph 1

Text proposed by the Commission

1. 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 31, communicate the personal data breach to the data subject without undue delay.

Amendment

1. When the personal data breach is likely to adversely affect the protection of the personal data, ***the*** privacy, ***the right*** or ***the legitimate interests*** of the data subject, the controller shall, after the notification referred to in Article 31, communicate the personal data breach to the data subject without undue delay. ***A breach shall be considered as adversely affecting the personal data or privacy of a data subject where it could result in, for example, identity theft or fraud, physical harm, significant humiliation or damage to reputation.***

Amendment 252

**Proposal for a regulation
Article 32 – paragraph 2**

Text proposed by the Commission

2. The communication to the data subject referred to in paragraph 1 shall describe the nature of the personal data breach and contain at least the information and the recommendations provided for in points (b) ***and*** (c) of Article 31(3).

Amendment

2. The communication to the data subject referred to in paragraph 1 shall ***be comprehensive, clear and understandable by any individual and 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 31(3).

Amendment 253

**Proposal for a regulation
Article 32 – paragraph 3**

Text proposed by the Commission

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

Amendment

3. The communication of a personal data breach to the data subject shall not be required if ***the data breach has not produced significant harm and*** the controller has implemented appropriate technological protection measures, and that

measures, and that those measures were applied to the data concerned by the personal data breach. Such technological protection measures shall render the data unintelligible to any person who is not authorised to access it.

those measures were applied to the data concerned by the personal data breach. Such technological protection measures shall render the data unintelligible, ***unusable or anonymised*** to any person who is not authorised access to it.

Amendment 254
Proposal for a regulation
Article 32 – paragraph 5

Text proposed by the Commission

Amendment

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements as to the circumstances in which a personal data breach is likely to adversely affect the personal data referred to in paragraph 1.

deleted

Amendment 255

Proposal for a regulation
Article 32 a (new)

Text proposed by the Commission

Amendment

Article 32a

Communication of a personal data breach to other organisations

A controller that communicates a personal data breach to a data subject pursuant to Article 32 may notify another organisation, a government institution or a part of a government institution of the personal data breach if that organisation, government institution or part of a government institution may be able to reduce the risk of harm that could result from it or mitigate that harm. Such notifications may be done without informing the data subject if the disclosure is made solely for the purposes

of reducing the risk of harm to the data subject that could result from the breach or mitigating that harm.

Justification

In many cases other organisations or government institutions are in a position to be able to assist in mitigating harm that may result to a data subject following a personal data breach if they are made aware of the breach and the circumstances surrounding the breach.

Amendment 256

**Proposal for a regulation
Chapter 4 – section 3 – title**

Text proposed by the Commission

Amendment

DATA PROTECTION IMPACT
ASSESSMENT AND PRIOR
AUTHORISATION

DATA PROTECTION IMPACT
ASSESSMENT AND PRIOR
NOTIFICATION

Justification

Procedures requiring prior authorisation are costly and time-consuming for the controller, and their added value compared to a system of prior notification can be questioned from the point of view of data protection. Prior notifications, which would give the supervising authority the possibility to react and act, is sufficient and also provides for a user-friendly data protection procedure.

Amendment 257

**Proposal for a regulation
Article 33 – paragraph 1**

Text proposed by the Commission

Amendment

1. Where processing operations present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, the controller *or the processor acting on the controller's behalf* shall carry out an assessment of the impact of the envisaged processing operations on the protection of personal data.

1. Where processing operations present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, the controller shall carry out an assessment of the impact of the envisaged processing operations on the protection of personal data. **A single assessment shall be sufficient to address a set of processing operations that present similar risks. SMEs shall only be required to perform an impact assessment after**

their third year of incorporation where data processing is deemed as a core activity of their business.

Amendment 258

Proposal for a regulation

Article 33 – paragraph 2 – introductory part

Text proposed by the Commission

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

Amendment

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

Justification

In the interests of legal certainty it is necessary to clearly stipulate which specific risks pertain, in an exhaustive manner.

Amendment 259

Proposal for a regulation

Article 33 – paragraph 2 – point a

Text proposed by the Commission

(a) a systematic and extensive evaluation of personal aspects relating to a natural person or for analysing or predicting in particular the natural person's economic situation, location, health, personal preferences, reliability or behaviour, which is based on automated processing and on which measures are based that produce legal effects *concerning* the individual *or significantly affect the individual*;

Amendment

(a) a systematic and extensive evaluation of personal aspects relating to a natural person or for analysing or predicting in particular the natural person's economic situation, location, health, personal preferences, reliability or behaviour, which is based on automated processing and on which measures are based that produce legal effects *to the detriment of* the individual, *including any further processing operation of the kind referred to in Article 20(1) of this Regulation*;

Amendment 260

Proposal for a regulation

Article 33 – paragraph 2 – point b

Text proposed by the Commission

(b) information on sex life, health, race and ethnic origin or for the provision of health care, epidemiological researches, or surveys of mental or infectious diseases, where the data are processed for taking measures or decisions regarding specific individuals on a large scale;

Amendment

(b) information on sex life, health, ***political opinions, religious beliefs, criminal convictions***, race and ethnic origin or for the provision of health care, epidemiological researches, or surveys of mental or infectious diseases, where the data are processed for taking measures or decisions regarding specific individuals on a large scale;

Amendment 261
Proposal for a regulation
Article 33 – paragraph 3

Text proposed by the Commission

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

Amendment

3. The assessment shall contain at least a general description of the envisaged processing operations, an assessment of the risks to the rights and freedoms of data subjects, ***including the risk of discrimination being embedded in or reinforced by the operation***, the measures envisaged to address the risks, safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Regulation, taking into account the rights and legitimate interests of data subjects and other persons concerned ***and also taking into account modern technologies and methods that can improve citizens' privacy. Where European guidelines exist, such guidelines shall be taken into account for the impact assessment.***

Amendment 262
Proposal for a regulation
Article 33 – paragraph 4

Text proposed by the Commission

Amendment

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

deleted

Justification

To actively seek the views of data subjects represents a disproportionate burden on data controllers.

Amendment 263

Proposal for a regulation Article 33 – paragraph 5

Text proposed by the Commission

Amendment

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

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

Justification

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

Amendment 264

Proposal for a regulation Article 33 – paragraph 6

Text proposed by the Commission

Amendment

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

deleted

Amendment 265

Proposal for a regulation Article 33 – paragraph 7

Text proposed by the Commission

Amendment

7. The Commission may specify standards and procedures for carrying out and verifying and auditing the assessment referred to in paragraph 3. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

deleted

Amendment 266

Proposal for a regulation Article 33 – paragraph 7 a (new)

Text proposed by the Commission

Amendment

7a. Data protection impact assessments shall be deemed as privileged communications.

Justification

Important to stipulate this to allay the fears of companies that innovative new processes subject to commercial secrecy may be released into the public domain.

Amendment 267
Proposal for a regulation
Article 34 – title

Text proposed by the Commission

Amendment

Prior authorisation and prior consultation

Prior consultation

Justification

Internal consistency with objectives set out in Recital 70.

Amendment 268
Proposal for a regulation
Article 34 – paragraph 1

Text proposed by the Commission

Amendment

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

deleted

Justification

Prior authorization or consultation with supervisory authorities will lead to a misallocation of privacy resources and place a significant burden on already overextended supervisory authorities, create significant, inevitable delays in the rollout of new products and services, and generally disincentivise the creation of effective corporate privacy programmes. Requiring enterprises that have invested in these internal programmes to submit to

compulsory consultation with the supervisory authority will have an adverse impact on their ability to develop and release to the market new products and services which benefit consumers and the economy.

Amendment 269

Proposal for a regulation

Article 34 – paragraph 2 – introductory part

Text proposed by the Commission

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

Amendment

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

Amendment 270

Proposal for a regulation

Article 34 – paragraph 2 – point b

Text proposed by the Commission

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

Amendment

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

Justification

See justification of deletion of paragraph 4.

Amendment 271

Proposal for a regulation

Article 34 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Amendment 272

**Proposal for a regulation
Article 34 – paragraph 4**

Text proposed by the Commission

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

Amendment

deleted

Justification

Too administratively complex to implement effectively, especially in light of the need to have a non-sector specific, future-proof Regulation.

Amendment 273

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

Text proposed by the Commission

5. Where ***the list provided for in paragraph 4 involves*** processing activities

Amendment

5. Where processing activities ***relate*** to the offering of goods or services to data

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

subjects in several Member States, or to the monitoring of their behaviour, or may substantially affect the free movement of personal data within the Union, the supervisory authority shall apply the consistency mechanism referred to in Article 57.

Justification

Focuses the consistency mechanism at where it is most appropriate, in line with amendments to Article 58, paragraph 2.

Amendment 274

Proposal for a regulation Article 34 – paragraph 6

Text proposed by the Commission

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

Amendment

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

Justification

With the view to ensure legal certainty and enable better enforcement by supervisory authorities and in accordance with Recital 62 which requires “a clear attribution of the responsibilities under this Regulation”, prior authorisation from and consultation with the supervisory authority should rest solely with the controller. This establishes a much clearer framework both for business and supervisory authorities.

Amendment 275

Proposal for a regulation Article 34 – paragraph 8

Text proposed by the Commission

Amendment

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

deleted

Amendment 276

Proposal for a regulation Article 34 – paragraph 9

Text proposed by the Commission

Amendment

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

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

Amendment 277

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

Text proposed by the Commission

Amendment

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

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

Amendment 278

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

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 279

**Proposal for a regulation
Article 35 – paragraph 3**

Text proposed by the Commission

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

Amendment

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

Amendment 280

**Proposal for a regulation
Article 35 – paragraph 5**

Text proposed by the Commission

5. The controller or processor ***shall*** designate the data protection officer on the

Amendment

5. The controller or processor ***may*** designate the data protection officer on the

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

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

Amendment 281

Proposal for a regulation Article 35 – paragraph 6

Text proposed by the Commission

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

Amendment

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

Amendment 282

Proposal for a regulation Article 35 – paragraph 7

Text proposed by the Commission

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

Amendment

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

Justification

Like all other personnel it should be possible to dismiss the DPO if he does not perform the

tasks set up by management. It is management who decides if they are satisfied with the person they hired or not.

Amendment 283

Proposal for a regulation Article 35 – paragraph 10

Text proposed by the Commission

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

Amendment

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

Amendment 284

Proposal for a regulation Article 35 – paragraph 11

Text proposed by the Commission

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

Amendment

deleted

Amendment 285

Proposal for a regulation Article 36 – paragraph 1

Text proposed by the Commission

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

Amendment

1. The executive management of the controller or the processor shall support the data protection organisation or data protection officer in performing their

of personal data.

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

Amendment 286
Proposal for a regulation
Article 36 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The **data protection organisation** or data protection officer **shall perform his or her** duties and tasks independently and shall directly report to the management of the controller or the processor.

Amendment 287

Proposal for a regulation
Article 36 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Amendment 288

Proposal for a regulation
Article 37 – paragraph 1 – introductory part

Text proposed by the Commission

1. The controller or the processor shall entrust the data protection officer at least

Amendment

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

with the following tasks:

following tasks:

Amendment 289

Proposal for a regulation

Article 37 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

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

Amendment 290

Proposal for a regulation

Article 37 – paragraph 1 – point c

Text proposed by the Commission

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

Amendment

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

Amendment 291

Proposal for a regulation

Article 37 – paragraph 1 – point e

Text proposed by the Commission

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

Amendment

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

Amendment 292
Proposal for a regulation
Article 37 – paragraph 1 – point f

Text proposed by the Commission

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

Amendment

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

Amendment 293
Proposal for a regulation
Article 37 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) to ensure that accountability measures exist as defined in points (c) to (ed) of Article 22(2);

Justification

Clarifying the central role of the Data Protection Officer in the chain of accountability to top-level management.

Amendment 294
Proposal for a regulation
Article 37 – paragraph 1 – point g

Text proposed by the Commission

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

Amendment

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

Amendment 295
Proposal for a regulation
Article 39 – paragraph 1

Text proposed by the Commission

1. The Member States and the Commission shall encourage, in particular at European level, the establishment of data protection certification mechanisms and of data protection seals and marks, allowing data subjects to quickly assess the level of data protection provided by controllers and processors. The data protection certifications mechanisms shall contribute to the proper application of this Regulation, taking account of the specific features of the various sectors and different processing operations.

Amendment

1. The Member States and the Commission shall ***work with controllers, processors and other stakeholders to*** encourage, in particular at European level, the establishment of data protection certification mechanisms and of data protection seals and marks, allowing data subjects ***and Member State authorities*** to quickly assess the level of data protection provided by controllers and processors. The data protection certifications mechanisms shall contribute to the proper application of this Regulation, taking account of the specific features of the various sectors and different processing operations.

Justification

This amendment encourages and enables the creation of a system in which regulators accredit independent assessors, for both whole-enterprise assessments and product- or technology-specific assessments.

Amendment 296

Proposal for a regulation

Article 39 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The data protection certifications mechanisms shall be voluntary, affordable, and available via a process that is transparent and not unduly burdensome. These mechanisms shall also be technology neutral and capable of global application and shall contribute to the proper application of this Regulation, taking account of the specific features of the various sectors and different processing operations.

Justification

Certification mechanisms should be designed to be effective without being overly bureaucratic or burdensome.

Amendment 297

Proposal for a regulation Article 39 – paragraph 2

Text proposed by the Commission

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the data protection certification mechanisms referred to in paragraph 1, including conditions for granting and withdrawal, and requirements for recognition within the Union and in third countries.

Amendment

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the data protection certification mechanisms referred to in paragraph 1, including conditions for granting and withdrawal, and requirements for recognition within the Union and in third countries, ***provided such measures are technology neutral.***

Amendment 298

Proposal for a regulation Article 39 – paragraph 3

Text proposed by the Commission

3. The Commission may lay down technical standards for certification mechanisms and data protection seals and marks and mechanisms to promote and recognize certification mechanisms and data protection seals and marks. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).

Amendment

deleted

Amendment 299

Proposal for a regulation Article 41 – paragraph 2 – point a

Text proposed by the Commission

(a) the rule of law, relevant legislation in force, both general and sectoral, including concerning public security, defence, national security and criminal law, the professional rules and 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;

Amendment

(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 implementation of that legislation***, the professional rules and 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;

Amendment 300

Proposal for a regulation

Article 41 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. If the Commission has grounds to believe, because of the monitoring of any other source, that a country or international organisation concerning which a decision pursuant to paragraph 3 has been adopted no longer provides an adequate level of protection within the meaning of paragraph 2, it shall review that decision.

Amendment 301

Proposal for a regulation

Article 42 – paragraph 1

Text proposed by the Commission

Amendment

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

1. Where the Commission has taken no decision pursuant to Article 41, ***or decides that a third country, or a territory or a processing sector within that third country, or an international organisation***

processor has adduced appropriate safeguards with respect to the protection of personal data in a legally binding instrument.

*does not ensure an adequate level of protection in accordance with paragraph 5 of this Article, a controller or processor may transfer personal data to a third country or an international organisation transferring data on an international basis only if the controller or processor has adduced appropriate safeguards with respect to the protection of personal data in a legally binding instrument, **and where appropriate pursuant to an impact assessment, where the controller or processor has ensured that the recipient of data in a third country maintains high standards of data protection.***

These safeguards shall, at least, guarantee the observance of the principles of personal data processing as established in Article 5 and guarantee data subject rights as established in Chapter III.

Amendment 302

Proposal for a regulation Article 42 – paragraph 2 – point b

Text proposed by the Commission

(b) standard data protection clauses adopted by the Commission. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2); or

Amendment

(b) standard data protection clauses, ***between the controller or processor and the recipient, that can be a sub-processor, of the data outside the European Economic Area (EEA), which may include standard terms for onward transfers outside the EEA,*** adopted by the Commission. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2); or

Justification

This is an important addition to clarify the relationship between controllers, processors and sub-processors in the context of international data transfers.

Amendment 303

Proposal for a regulation

Article 42 – paragraph 2 – point c

Text proposed by the Commission

(c) standard data protection clauses adopted by a supervisory authority in accordance with the consistency mechanism referred to in Article 57 when declared generally valid by the Commission pursuant to point (b) of Article 62(1); or

Amendment

(c) standard data protection clauses, ***between the controller or processor and the recipient, that can be a sub-processor, of the data outside the EEA, which may include standard terms for onward transfers outside the EEA,*** adopted by a supervisory authority in accordance with the consistency mechanism referred to in Article 57 when declared generally valid by the Commission pursuant to point (b) of Article 62(1); or

Justification

This is an important addition to clarify the relationship between controllers, processors and sub-processors in the context of international data transfers.

Amendment 304

Proposal for a regulation

Article 42 – paragraph 2 – point d

Text proposed by the Commission

(d) contractual clauses between the controller or processor and the recipient of the data authorised by a supervisory authority in accordance with paragraph 4.

Amendment

(d) contractual clauses between the controller or processor and the recipient of the data authorised by a supervisory authority in accordance with paragraph 4;
or

Amendment 305

Proposal for a regulation

Article 42 – paragraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(da) contractual clauses between the controller or processor and the recipient

of the data that supplement standard data protection clauses as referred to in points (b) and (c) of this paragraph, and are authorised by the competent supervisory authority in accordance with paragraph 4;

Justification

This amendment would provide an incentive for organisations to go beyond the baseline regulatory requirements comply with regimes such as a "data seal" or "trust mark".

Amendment 306

Proposal for a regulation

Article 42 – paragraph 2 – point d b (new)

Text proposed by the Commission

Amendment

(db) for historical, statistical or scientific purposes, the measures referred to in Article 83(4);

Amendment 307

Proposal for a regulation

Article 42 – paragraph 3

Text proposed by the Commission

Amendment

3. A transfer based on *standard data protection clauses or binding corporate rules as referred to in* points (a), (b) *or* (c) of paragraph 2 shall not require any further authorisation.

3. A transfer based on points (a), (b), (c) *or* (e) of paragraph 2 shall not require any further authorisation.

Justification

A transfer for research purposes of key-coded data that cannot and will not be re-identified by recipients located in third countries should be permitted without further administrative burdens.

Amendment 308

Proposal for a regulation

Article 42 – paragraph 4

Text proposed by the Commission

4. Where a transfer is based on contractual clauses as referred to in point (d) of paragraph 2 of this Article the controller or processor shall obtain prior authorisation of the contractual clauses according to point (a) of Article 34(1) from the supervisory authority. If the transfer is related to processing activities which **concern data subjects in another Member State or other Member States, or** substantially affect the free movement of personal data within the Union, the supervisory authority shall apply the consistency mechanism referred to in Article 57.

Amendment 309

Proposal for a regulation Article 42 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4. The controller or processor shall obtain prior authorisation of the contractual clauses according to point (a) of Article 34(1) from the **competent** supervisory authority **for transfers according to this Article**. If the transfer is related to processing activities which substantially affect the free movement of personal data within the Union, the **competent** supervisory authority shall apply the consistency mechanism referred to in Article 57.

Amendment

4a. A controller or processor may choose to base transfers on standard data protection clauses as referred to in points (b) and (c) of paragraph 2, and to offer in addition to these standard clauses supplemental, legally binding commitments that apply to transferred data. In such cases, these additional commitments shall be subject to prior consultation with the competent supervisory authority and shall supplement and not contradict, directly or indirectly, the standard clauses. Member States, supervisory authorities and the Commission shall encourage the use of supplemental and legally binding commitments by offering a data protection seal, mark or mechanism, adopted pursuant to Article 39, to controllers and processors who adopt these heightened

safeguards.

Justification

Controllers and processors will often have direct and practical experience that demonstrates that additional safeguards may be appropriate in relation to the personal data they are transferring. The Regulation should encourage these controllers and processors to offer supplemental safeguards where these are appropriate. These supplemental commitments should not contradict the standard clauses.

Amendment 310

Proposal for a regulation

Article 42 – paragraph 4 b (new)

Text proposed by the Commission

Amendment

4b To encourage the use of supplemental contractual clauses as referred to in point (e) of paragraph 2 of this Article, competent authorities may offer a data protection seal, mark or mechanism, adopted pursuant to Article 39, to controllers and processors who adopt these safeguards.

Justification

Amendment to encourage the use of supplemental data protection seals or trust marks.

Amendment 311

Proposal for a regulation

Article 43 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. A supervisory authority shall ***in accordance with the consistency mechanism set out in Article 58 approve*** binding corporate rules, provided that they:

1. ***The competent*** supervisory authority shall ***authorize through a single act of approval*** binding corporate rules ***for a group of undertakings. These rules will allow multiple intracompany international transfers in and out of Europe,*** provided that they:

Amendment 312

Proposal for a regulation
Article 43 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

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

Justification

In the Cloud Computing services, cloud providers often use the external subcontractors to perform a specific task to deliver 24/7 service and maintenance. Therefore, this should be recognised in the Binding Corporate Rules by the supervising authority.

Amendment 313

Proposal for a regulation
Article 43 – paragraph 1 – point b

Text proposed by the Commission

(b) expressly confer enforceable rights on data subjects;

Amendment

(b) expressly confer enforceable rights on data subjects **and are transparent for data subjects**;

Amendment 314

Proposal for a regulation
Article 43 – paragraph 2 – point a

Text proposed by the Commission

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

Amendment

(a) the structure and contact details of the group of undertakings and its members, **and their external subcontractors**;

Amendment 315

Proposal for a regulation
Article 43 – paragraph 3

Text proposed by the Commission

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for binding corporate rules within the meaning of this Article, in particular as regards the criteria for their approval, the application of points (b), (d), (e) and (f) of paragraph 2 to binding corporate rules adhered to by processors and on further necessary requirements to ensure the protection of personal data of the data subjects concerned.

Amendment 316
Proposal for a regulation
Article 44 – title

Text proposed by the Commission

Derogations

Amendment 317

Proposal for a regulation
Article 44 – paragraph 1 – introductory part

Text proposed by the Commission

1. In the absence of an adequacy decision pursuant to Article 41 **or** of appropriate safeguards pursuant to Article 42, a transfer or a set of transfers of personal data to a third country or an international organisation may take place only on condition that:

Amendment

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for binding corporate rules within the meaning of this Article, in particular as regards the criteria for their approval, ***including transparency for data subjects***, the application of points (b), (d), (e) and (f) of paragraph 2 to binding corporate rules adhered to by processors and on further necessary requirements to ensure the protection of personal data of the data subjects concerned.

Amendment

Other legitimate grounds for international transfers

Amendment

1. In the absence of an adequacy decision pursuant to Article 41; ***or where the Commission decides 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 in accordance with Article 41(5); or in the absence*** of appropriate safeguards pursuant to Article 42, a transfer or a set of transfers of personal data to a third country or an international organisation may take place

only on condition that:

Amendment 318
Proposal for a regulation
Article 44 – paragraph 1 – point h

Text proposed by the Commission

(h) the transfer is necessary for the purposes of the legitimate interests pursued by the controller or the processor, **which cannot be qualified as frequent or massive**, and where the controller or processor has assessed all the circumstances surrounding the data transfer operation or the set of data transfer operations and based on this assessment adduced appropriate safeguards with respect to the protection of personal data, where necessary.

Amendment

(h) the transfer is necessary for the purposes of the legitimate interests pursued by the controller or the processor, and where the controller or processor has assessed all the circumstances surrounding the data transfer operation or the set of data transfer operations and based on this assessment adduced appropriate safeguards with respect to the protection of personal data, where necessary.

Justification

In today's data driven society, there is no justification to single out massive or frequent transfers as this does not meet the realities of data flows and therefore would be at odds with the objective of ensuring free flow of data.

Amendment 319
Proposal for a regulation
Article 44 – paragraph 5

Text proposed by the Commission

5. The public interest referred to in point (d) of paragraph 1 must be recognised in Union law or in the law of the Member State to which the controller is subject.

Amendment

5. The public interest referred to in point (d) of paragraph 1 must be recognised in **international conventions**, in Union law or in the law of the Member State to which the controller is subject. ***This derogation shall only be used for occasional transfers. In each and every case, a careful assessment of all circumstances of the transfer needs to be carried out.***

Amendment 320

Proposal for a regulation
Article 44 – paragraph 6

Text proposed by the Commission

Amendment

6. The controller or processor shall document the assessment as well as the appropriate safeguards adduced referred to in point (h) of paragraph 1 of this Article in the documentation referred to in Article 28 and shall inform the supervisory authority of the transfer.

deleted

Amendment 321
Proposal for a regulation
Article 44 – paragraph 7

Text proposed by the Commission

Amendment

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

deleted

Amendment 322
Proposal for a regulation
Article 46 – paragraph 1

Text proposed by the Commission

Amendment

1. Each Member State shall provide **that one or more public authorities are** responsible for monitoring the application of this Regulation and for contributing to its consistent application throughout the Union, in order to protect the fundamental rights and freedoms of natural persons in relation to the processing of their personal data and to facilitate the free flow of personal data within the Union. For these purposes, the supervisory authorities shall co-operate with each other and the

1. Each Member State shall provide **a lead** public **supervisory authority** responsible for monitoring the application of this Regulation and for contributing to its consistent application throughout the Union, in order to protect the fundamental rights and freedoms of natural persons in relation to the processing of their personal data and to facilitate the free flow of personal data within the Union. For these purposes, the supervisory authorities shall co-operate with each other and the

Commission.

Commission.

Justification

A lead supervisory authority should be clearly assigned in order to streamline the implementation of a true one-stop shop.

Amendment 323
Proposal for a regulation
Article 46 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Each supervisory authority shall have the power to sanction administrative offences, in particular those referred to in Article 79(4), (5) and (6). Supervisory authorities may only issue sanctions for controllers or processors with their main establishment within the same Member State or, in coordination with Articles 56 and 57 if the supervisory authority of the main establishment fails to take action.

Justification

Clarifies and underlines the role of supervisory authorities in relation to sanctions.

Amendment 324
Proposal for a regulation
Article 47 – paragraph 1

Text proposed by the Commission

Amendment

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

1. The supervisory authority shall act with complete independence in exercising the duties and powers entrusted to it, ***notwithstanding co-operative and consistency arrangements related to Chapter VII.***

Justification

Due regard must be given to the supervisory authorities' obligations to each other under the consistency mechanism.

Amendment 325

Proposal for a regulation Article 48 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 326

Proposal for a regulation Article 51 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Where *this Regulation applies by virtue of Article 3(1), the competent supervisory authority shall be the supervisory authority of the Member State or territory where the main establishment of the controller or processor subject to this Regulation is established. Disputes shall be decided upon in accordance with the consistency mechanism set out in article 58*, without prejudice to the *other* provisions of Chapter VII of this Regulation.

Amendment 327

Proposal for a regulation Article 51 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Where this Regulation applies by virtue of Article 3(2), the competent supervisory authority shall be the supervisory authority of the Member State or territory where the controller has

designated a representative in the Union pursuant to Article 25.

Amendment 328

Proposal for a regulation Article 51 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Where this Regulation applies to several controllers and/ or processors with the same group of undertakings by virtue of both Article 3(1) and (2), only one supervisory authority shall be competent and it will be determined in accordance with Article 51(2).

Amendment 329

Proposal for a regulation Article 52 – paragraph 3

Text proposed by the Commission

Amendment

3. The supervisory authority shall, upon request, advise any data subject in exercising the rights under this Regulation and, if appropriate, co-operate with the supervisory authorities in other Member States to this end.

3. The ***competent*** supervisory authority shall, upon request, advise any data subject in exercising the rights under this Regulation and, if appropriate, co-operate with the supervisory authorities in other Member States to this end.

Amendment 330

Proposal for a regulation Article 53 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. ***Each*** supervisory authority shall have the power:

1. ***The competent*** supervisory authority shall have the power:

Amendment 331
Proposal for a regulation
Article 53 – paragraph 1 – point d

Text proposed by the Commission

(d) to ensure the compliance with prior **authorisations and prior** consultations referred to in Article 34;

Amendment

(d) to ensure the compliance with prior consultations referred to in Article 34;

Amendment 332
Proposal for a regulation
Article 53 – paragraph 1 – point j a (new)

Text proposed by the Commission

Amendment

(ja) to inform the controller and/or the processor of the judicial remedies available against its decision.

Justification

The provisions on supervisory authority powers against the controller and/or the processor should be complemented with explicit legal safeguards for controllers and/or processors.

Amendment 333

Proposal for a regulation
Article 53 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

2. **Each** supervisory authority shall have the investigative power to obtain from the controller or the processor:

2. **The competent** supervisory authority shall have the investigative power to obtain from the controller or the processor:

Amendment 334

Proposal for a regulation
Article 53 – paragraph 3

Text proposed by the Commission

Amendment

3. **Each** supervisory authority shall have the power to bring violations of this

3. **The competent** supervisory authority shall have the power to bring violations of

Regulation to the attention of the judicial authorities and to engage in legal proceedings, in particular pursuant to Article 74(4) and Article 75(2).

this Regulation to the attention of the judicial authorities and to engage in legal proceedings, in particular pursuant to Article 74(4) and Article 75(2).

Amendment 335

Proposal for a regulation Article 53 – paragraph 4

Text proposed by the Commission

4. *Each* supervisory authority shall have the power to sanction administrative offences, in particular those referred to in Article 79(4), (5) and (6).

Amendment

4. *The competent* supervisory authority shall have the power to sanction administrative offences, in particular those referred to in Article 79(4), (5) and (6).

Amendment 336

Proposal for a regulation Article 55 – paragraph 1

Text proposed by the Commission

1. Supervisory authorities shall provide each other relevant information and mutual assistance in order to implement and apply this Regulation 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 *authorisations and* consultations, inspections and prompt information on the opening of cases and ensuing developments where data subjects in several Member States are likely to *be affected by processing operations*.

Amendment

1. Supervisory authorities shall provide each other relevant information and mutual assistance in order to implement and apply this Regulation 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 prompt information on the opening of cases and ensuing developments where data subjects in several Member States are likely to *cause legal effects to the detriment of the data subjects*.

Amendment 337

Proposal for a regulation Article 55 – paragraph 2

Text proposed by the Commission

2. Each supervisory authority shall take all appropriate measures required to reply to the request of another supervisory authority without delay and no later than one month after having received the request. Such measures may include, in particular, the transmission of relevant information on the course of an investigation or enforcement measures to bring about the cessation or prohibition of processing operations contrary to this Regulation.

Amendment 338
Proposal for a regulation
Article 56 – paragraph 4

Text proposed by the Commission

4. Supervisory authorities shall lay down the practical aspects of specific co-operation actions.

Amendment 339
Proposal for a regulation
Article 58 – paragraph 1

Text proposed by the Commission

1. Before *a* supervisory authority adopts a measure referred to in paragraph 2, this supervisory authority shall communicate the draft measure to the European Data Protection Board and the Commission.

Amendment 340

Amendment

2. Each supervisory authority shall take all appropriate measures required to reply to the request of another supervisory authority without delay and no later than one month after having received the request. Such measures may include, in particular, the transmission of relevant information on the course of an investigation or enforcement measures to bring about the cessation or prohibition of processing operations ***that have been proven*** contrary to this Regulation.

Amendment

4. Supervisory authorities shall lay down the practical aspects of specific co-operation actions ***in their rules of procedure. The rules of procedures shall be made public in the Official Journal of the European Union.***

Amendment

1. Before ***the competent*** supervisory authority adopts a measure referred to in paragraph 2, this supervisory authority shall communicate the draft measure to the European Data Protection Board and the Commission.

Proposal for a regulation
Article 58 – paragraph 2 – point a

Text proposed by the Commission

(a) relates to processing activities which are related to the offering of goods or services to data subjects in several Member States, ***or to the monitoring of their behaviour***; or

Amendment

(a) relates to processing activities ***of personal data*** which are related to the offering of goods or services to data subjects in several Member States ***when the non-EEA controller or processor does not name a representative in the territory of the EEA***; or it

Justification

This should incentivise non-EU companies to name a representative in the territory of the EU. There should be no discrimination against non-EU companies who are established in the EU.

Amendment 341

Proposal for a regulation
Article 58 – paragraph 2 – point b

Text proposed by the Commission

(b) ***may substantially affect the free movement of personal data within the Union***; or

Amendment

deleted

Amendment 342

Proposal for a regulation
Article 58 – paragraph 2 – point c

Text proposed by the Commission

(c) ***aims at adopting a list of the processing operations subject to prior consultation pursuant to Article 34(5)***; or

Amendment

deleted

Justification

See amendments to Article 34 on prior consultation - the requirement to draft up lists and submit them to the consistency mechanism is overly bureaucratic and anti-innovation.

Amendment 343

Proposal for a regulation Article 58 – paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) aims to determine standard data protection clauses referred to in point (c) of Article 42(2); or **deleted**

Amendment 344

Proposal for a regulation Article 58 – paragraph 2 – point e

Text proposed by the Commission

Amendment

(e) aims to authorise contractual clauses referred to in point (d) of Article 42(2); or **deleted**

Amendment 345

Proposal for a regulation Article 58 – paragraph 2 – point f

Text proposed by the Commission

Amendment

(f) aims to approve binding corporate rules within the meaning of Article 43. **deleted**

Justification

DPA's should be competent under the direct effect of the Regulation to draw up BCRs without having to submit it to the consistency mechanism.

Amendment 346

Proposal for a regulation Article 58 – paragraph 2 – point f a (new)

Text proposed by the Commission

Amendment

(fa) permits processing for research purposes in accordance with Article 81(3)

and/or Article 83(3).

Amendment 347

Proposal for a regulation Article 58 – paragraph 3

Text proposed by the Commission

3. Any supervisory authority or the European Data Protection Board may request that any matter shall be dealt with in the consistency mechanism, in particular where **a supervisory** authority does not submit a draft measure referred to in paragraph 2 or does not comply with the obligations for mutual assistance in accordance with Article 55 or for joint operations in accordance with Article 56.

Amendment

3. Any supervisory authority or the European Data Protection Board may request that any matter shall be dealt with in the consistency mechanism, in particular where **the competent** authority does not submit a draft measure referred to in paragraph 2 or does not comply with the obligations for mutual assistance in accordance with Article 55 or for joint operations in accordance with Article 56.

Amendment 348

Proposal for a regulation Article 58 – paragraph 4

Text proposed by the Commission

4. In order to ensure correct and consistent application of this Regulation, the Commission may request that any matter shall be dealt with in the consistency mechanism.

Amendment

4. In order to ensure correct and consistent application of this Regulation, the Commission may, **acting on its own behalf, and shall at the request of a stakeholder**, request that any matter shall be dealt with in the consistency mechanism.

Justification

When there are inconsistencies with regards to the application of the Regulation which threaten the harmonized implementation and affect specific stakeholders, the affected stakeholders should be given the right to bring their concerns into the consistency mechanism.

Amendment 349

Proposal for a regulation
Article 58 – paragraph 6

Text proposed by the Commission

6. The chair of the European Data Protection Board shall ***immediately*** electronically inform the members of the European Data Protection Board and the Commission of any relevant information which has been communicated to it, using a standardised format. The chair of the European Data Protection Board shall provide translations of relevant information, where necessary.

Amendment

6. The chair of the European Data Protection Board shall ***without undue delay*** electronically inform the members of the European Data Protection Board and the Commission of any relevant information which has been communicated to it, using a standardised format. The chair of the European Data Protection Board shall provide translations of relevant information, where necessary.

Amendment 350

Proposal for a regulation
Article 58 – paragraph 8

Text proposed by the Commission

8. The supervisory authority referred to in paragraph 1 ***and the supervisory authority competent under Article 51*** shall take account of the opinion of the European Data Protection Board and shall within two weeks after the information on the opinion by the chair of the European Data Protection Board, electronically communicate to the chair of the European Data Protection Board and to the Commission whether it maintains or amends its draft measure and, if any, the amended draft measure, using a standardised format.

Amendment

8. The ***competent*** supervisory authority referred to in paragraph 1 shall take account of the opinion of the European Data Protection Board and shall within two weeks after the information on the opinion by the chair of the European Data Protection Board, electronically communicate to the chair of the European Data Protection Board and to the Commission whether it maintains or amends its draft measure and, if any, the amended draft measure, using a standardised format.

Amendment 351

Proposal for a regulation
Article 61 – paragraph 1

Text proposed by the Commission

1. In exceptional circumstances, where a supervisory authority considers that there is

Amendment

1. In exceptional circumstances, where a supervisory authority considers that there is

an urgent need to act in order to protect the interests of data subjects, *in particular* when the danger exists that the enforcement of a right of a data subject could be considerably impeded by means of an alteration of the existing state or for averting major disadvantages *or for other reasons*, by way of derogation from the procedure referred to in Article 58, it may immediately adopt provisional measures with a specified period of validity. *The* supervisory authority shall, without delay, communicate those measures, with full reasons, to the European Data Protection Board *and to the Commission*.

an urgent need to act in order to protect the interests of data subjects, when the danger exists that the enforcement of a right of a data subject could be considerably impeded by means of an alteration of the existing state or for averting major disadvantages, by way of derogation from the procedure referred to in Article 58, it may immediately adopt provisional measures with a specified period of validity. *This* supervisory authority shall, without delay, communicate those measures, with full reasons, *to the competent supervisory authority*, the European Data Protection Board, *the Commission and the controller or processor concerned*.

Amendment 352

Proposal for a regulation Article 61 – paragraph 2

Text proposed by the Commission

2. Where a supervisory authority has taken a measure pursuant to paragraph 1 *and considers that final measures need urgently be adopted, it may* request an urgent opinion of the European Data Protection Board, giving reasons for *requesting such opinion*, including for the urgency of final measures.

Amendment

2. Where a supervisory authority has taken a measure pursuant to paragraph 1, *it shall* request an urgent opinion of the European Data Protection Board, giving reasons for *the request*, including for the urgency of final measures.

Amendment 353

Proposal for a regulation Article 62 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

(a) deciding on the correct application of this Regulation in accordance with its objectives and requirements in relation to matters communicated by supervisory authorities pursuant to Article 58 or 61, concerning a matter in relation to which a

Amendment

deleted

reasoned decision has been adopted pursuant to Article 60(1), or concerning a matter in relation to which a supervisory authority does not submit a draft measure and that supervisory authority has indicated that it does not intend to follow the opinion of the Commission adopted pursuant to Article 59;

Amendment 354

Proposal for a regulation Article 66 – paragraph 1 – introductory part

Text proposed by the Commission

1. The European Data Protection Board shall ensure the consistent application of this Regulation. To this effect, the European Data Protection Board shall, on its own initiative *or* at the request of the Commission, in particular:

Amendment

1. The European Data Protection Board shall ensure the consistent application of this Regulation. To this effect, the European Data Protection Board shall, on its own initiative, at the request of the Commission *or other stakeholders*, in particular:

Amendment 355

Proposal for a regulation Article 66 – 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 Regulation;

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 Regulation;

Amendment 356

Proposal for a regulation Article 66 – paragraph 1 – point b

Text proposed by the Commission

(b) examine, on its own initiative or on

Amendment

(b) examine, on its own initiative or on

request of one of its members *or on request of the Commission*, any question covering the application of this Regulation and issue guidelines, recommendations and best practices addressed to the supervisory authorities in order to encourage consistent application of this Regulation;

request of one of its members, *the Commission or other stakeholders* any question covering the application of this Regulation and issue guidelines, recommendations and best practices addressed to the supervisory authorities in order to encourage consistent application of this Regulation;

Amendment 357

Proposal for a regulation Article 66 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Where appropriate, the European Data Protection Board shall, in its execution of the tasks set out in this Article, consult interested parties and give them the opportunity to comment within a reasonable period. The European Data Protection Board shall, without prejudice to Article 72, make the results of the consultation procedure publicly available.

Justification

Before the Board adopts opinions and reports, they should consult interested parties and give them the opportunity to comment within a reasonable period as possible for other regulatory domains.

Amendment 358

Proposal for a regulation Article 68 – paragraph 2

Text proposed by the Commission

Amendment

2. The European Data Protection Board shall adopt its own rules of procedure and organise its own operational arrangements. In particular, it shall provide for the continuation of exercising duties when a member's term of office expires or a member resigns, for the establishment of subgroups for specific issues or sectors and

2. The European Data Protection Board shall adopt its own rules of procedure and organise its own operational arrangements. In particular, it shall provide for the continuation of exercising duties when a member's term of office expires or a member resigns, for the establishment of subgroups for specific issues or sectors and

for its procedures in relation to the consistency mechanism referred to in Article 57.

for its procedures in relation to the consistency mechanism referred to in Article 57 **and the legal safeguards applicable to controllers or processors concerned.**

Justification

There are no explicit legal safeguards for controllers or processors concerned.

Amendment 359

**Proposal for a regulation
Article 69 – paragraph 2**

Text proposed by the Commission

2. The term of office of the chair and of the deputy chairpersons shall be five years and be renewable.

Amendment

2. The term of office of the chair and of the deputy chairpersons shall be five years and be renewable. ***Their appointment may be revoked by a decision of the European Parliament adopted by a two-thirds majority of the votes cast, representing a majority of its component Members.***

Amendment 360

**Proposal for a regulation
Article 73 – paragraph 2**

Text proposed by the Commission

2. Any body, organisation or association which aims to protect data subjects' rights and interests concerning the protection of their personal data and has been properly constituted according to the law of a Member State shall have the right 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 Regulation have been infringed as a result of the processing of personal data.

Amendment

2. Any body, organisation or association which aims to protect data subjects' rights and interests concerning the protection of their personal data and has been properly constituted according to the law of a Member State shall have the right to lodge a complaint with a supervisory authority in any Member State on behalf of one or more data subjects ***from among its membership*** if it considers that a data subject's rights under this Regulation have been infringed as a result of the processing of personal data ***and it has minimum funding of EUR 80 000 and***

representative membership with a corresponding membership structure.

Justification

Minimum funding and a representative membership structure are necessary in order to guarantee that collective actions are not misused and avoid a situation where associations are set up specifically for this purpose, as well as to ensure minimum cover for lawyers' fees and court costs.

Amendment 361

**Proposal for a regulation
Article 75 – paragraph 2**

Text proposed by the Commission

2. Proceedings against a controller or a processor shall be brought before the courts of the Member State where the controller or processor has an establishment. Alternatively, such proceedings may be brought before the courts of the Member State where the data subject has its habitual residence, unless the controller is a public authority acting in the exercise of its public powers.

Amendment

2. Proceedings against a controller or a processor shall be brought before the courts of the Member State where the controller or processor has an establishment. Alternatively, such proceedings may be brought before the courts of the Member State where the data subject has its habitual residence, unless the controller is a public authority acting in the exercise of its public powers. ***The derogation in the second sentence shall not apply to a public authority of a third country.***

Amendment 362

**Proposal for a regulation
Article 76 – paragraph 1**

Text proposed by the Commission

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

Amendment

1. Any body, organisation or association referred to in Article 73(2) shall have the right to exercise the rights referred to in Articles 74 on behalf of one or more data subjects. ***Claims according to Article 77 may not be exercised by bodies, organisations or associations within the meaning of Article 73(2).***

Amendment 363
Proposal for a regulation
Article 77 – paragraph 1

Text proposed by the Commission

1. Any person who has suffered damage as a result of an unlawful processing operation or of an action incompatible with this Regulation shall have the right to receive compensation from the controller **or the processor** for the damage suffered.

Amendment

1. Any person who has suffered damage as a result of an unlawful processing operation or of an action incompatible with this Regulation shall have the right to receive compensation from the controller for the damage suffered.

Amendment 364
Proposal for a regulation
Article 77 – paragraph 2

Text proposed by the Commission

2. Where more than one controller **or processor** is involved in the processing, each controller **or processor** shall be jointly and severally liable for the entire amount of the damage.

Amendment

2. Where more than one controller is involved in the processing, each controller shall be jointly and severally liable for the entire amount of the damage **to the extent that the joint controllers' respective liability has not been determined in the legal arrangement referred to in Article 24. In the case of a group of undertakings, the entire group shall be liable as a single economic entity.**

Amendment 365
Proposal for a regulation
Article 77 – paragraph 3

Text proposed by the Commission

3. The controller **or the processor** may be exempted from this liability, in whole or in part, if the **controller or the processor** proves that **they are** not responsible for the event giving rise to the damage.

Amendment

3. The controller may be exempted from this liability, in whole or in part, if the proves that **it is** not responsible for the event giving rise to the damage.

Amendment 366

Proposal for a regulation Article 79 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 367

Proposal for a regulation Article 79 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The administrative sanction shall be in each individual case effective, proportionate and dissuasive. The amount of the administrative fine shall be fixed with due regard to the nature, gravity and duration of the breach, the ***sensitivity of the data in issue, the*** intentional or negligent character of the infringement, the degree of ***harm created by the violation, the degree of*** responsibility of the natural or legal person and of previous breaches by this person, the technical and organisational measures and procedures implemented pursuant to Article 23 and the degree of co-operation with the supervisory authority in order to remedy the breach. ***While some discretion is granted in the imposition of such sanctions to take into account the circumstances outlined above and other facts specific to the situation, divergences in the application of administrative sanctions may be subject to review pursuant to the consistency mechanism. Where appropriate, the data protection authority shall also be empowered to require that a data protection officer is appointed if the body, organisation or association has opted not to do so.***

Amendment 368

Proposal for a regulation Article 79 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Aggravating factors that support administrative fines at the upper limits established in paragraphs 4 to 6 shall include in particular:

- (i) repeated violations committed in reckless disregard of applicable law;***
- (ii) refusal to co-operate with or obstruction of an enforcement process;***
- (iii) violations that are deliberate, serious and likely to cause substantial damage;***
- (iv) a data protection impact assessment has not been undertaken;***
- (v) a data protection officer has not been appointed.***

Amendment 369

Proposal for a regulation Article 79 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Mitigating factors which support administrative fines at the lower limits established in paragraphs 4 to 6 shall include:

- (i) measures having been taken by the natural or legal person to ensure compliance with relevant obligations;***
- (ii) genuine uncertainty as to whether the activity constituted a violation of the relevant obligations;***
- (iii) immediate termination of the violation upon knowledge;***

(iv) co-operation with any enforcement processes;

(v) a data protection impact assessment has been undertaken;

(vi) a data protection officer has been appointed.

Amendment 370
Proposal for a regulation
Article 79 – paragraph 3

Text proposed by the Commission

3. In case of a first and non-intentional non-compliance with this Regulation, a warning in writing may be given and no sanction imposed, where:

(a) a natural person is processing personal data without a commercial interest; or

(b) an enterprise or an organisation employing fewer than 250 persons is processing personal data only as an activity ancillary to its main activities.

Amendment

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

Justification

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

Amendment 371
Proposal for a regulation
Article 79 – paragraph 4 – introductory part

Text proposed by the Commission

4. The supervisory authority shall impose

Amendment

deleted

a fine up to 250 000 EUR, or in case of an enterprise up to 0,5 % of its annual worldwide turnover, to anyone who, intentionally or negligently:

Amendment 372
Proposal for a regulation
Article 79 – paragraph 4 – point a

Text proposed by the Commission

Amendment

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

Amendment 373
Proposal for a regulation
Article 79 – paragraph 4 – point b

Text proposed by the Commission

Amendment

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

Amendment 374
Proposal for a regulation
Article 79 – paragraph 5 – introductory part

Text proposed by the Commission

Amendment

5. The supervisory authority shall impose a fine up to 500 000 EUR, or in case of an enterprise up to 1 % of its annual worldwide turnover, to anyone who, intentionally or negligently: **deleted**

Amendment 375
Proposal for a regulation
Article 79 – paragraph 5 – point a

Text proposed by the Commission

Amendment

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

deleted

Amendment 376
Proposal for a regulation
Article 79 – paragraph 5 – point b

Text proposed by the Commission

Amendment

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

deleted

Amendment 377
Proposal for a regulation
Article 79 – paragraph 5 – point c

Text proposed by the Commission

Amendment

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

deleted

Amendment 378
Proposal for a regulation
Article 79 – paragraph 5 – point d

Text proposed by the Commission

Amendment

(d) does not provide a copy of the personal

deleted

data in electronic format or hinders the data subject to transmit the personal data to another application in violation of Article 18;

Amendment 379
Proposal for a regulation
Article 79 – paragraph 5 – point e

Text proposed by the Commission

Amendment

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

Amendment 380
Proposal for a regulation
Article 79 – paragraph 5 – point f

Text proposed by the Commission

Amendment

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

Amendment 381
Proposal for a regulation
Article 79 – paragraph 5 – point g

Text proposed by the Commission

Amendment

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

Amendment 382
Proposal for a regulation
Article 79 – paragraph 6 – introductory part

Text proposed by the Commission

Amendment

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

**Amendment 383
Proposal for a regulation
Article 79 – paragraph 6 – point a**

Text proposed by the Commission

Amendment

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

**Amendment 384
Proposal for a regulation
Article 79 – paragraph 6 – point b**

Text proposed by the Commission

Amendment

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

**Amendment 385
Proposal for a regulation
Article 79 – paragraph 6 – point c**

Text proposed by the Commission

Amendment

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

**Amendment 386
Proposal for a regulation
Article 79 – paragraph 6 – point d**

Text proposed by the Commission

Amendment

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

Amendment 387
Proposal for a regulation
Article 79 – paragraph 6 – point e

Text proposed by the Commission

Amendment

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

Amendment 388
Proposal for a regulation
Article 79 – paragraph 6 – point f

Text proposed by the Commission

Amendment

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

Amendment 389
Proposal for a regulation
Article 79 – paragraph 6 – point g

Text proposed by the Commission

Amendment

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

Amendment 390
Proposal for a regulation
Article 79 – paragraph 6 – point h

Text proposed by the Commission

Amendment

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

**Amendment 391
Proposal for a regulation
Article 79 – paragraph 6 – point i**

Text proposed by the Commission

Amendment

(i) does not carry out a data protection impact assessment pursuant or processes personal data without prior authorisation or prior consultation of the supervisory authority pursuant to Articles 33 and 34; *deleted*

**Amendment 392
Proposal for a regulation
Article 79 – paragraph 6 – point j**

Text proposed by the Commission

Amendment

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

**Amendment 393
Proposal for a regulation
Article 79 – paragraph 6 – point k**

Text proposed by the Commission

Amendment

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

Amendment 394
Proposal for a regulation
Article 79 – paragraph 6 – point l

Text proposed by the Commission

Amendment

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

Amendment 395
Proposal for a regulation
Article 79 – paragraph 6 – point m

Text proposed by the Commission

Amendment

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

Amendment 396
Proposal for a regulation
Article 79 – paragraph 6 – point n

Text proposed by the Commission

Amendment

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

Amendment 397
Proposal for a regulation
Article 79 – paragraph 6 – point o

Text proposed by the Commission

Amendment

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

deleted

Amendment 398
Proposal for a regulation
Article 79 – paragraph 7

Text proposed by the Commission

Amendment

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

deleted

Amendment 399
Proposal for a regulation
Article 80 – paragraph 1

Text proposed by the Commission

Amendment

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

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

Justification

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

Amendment 400

Proposal for a regulation

Article 80 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The European Data Protection Board shall issue guidance on when such exemptions or derogations may be necessary, after consultation with representatives of the press, authors and artists, data subjects and relevant civil society organisations.

Amendment 401

Proposal for a regulation

Article 80 a (new)

Text proposed by the Commission

Amendment

Article 80a

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

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

Justification

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

Amendment 402 **Proposal for a regulation** **Article 81 – paragraph 3**

Text proposed by the Commission

Amendment

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying other reasons of public interest in the area of public health as referred to in point (b) of paragraph 1, as well as criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1.

deleted

Amendment 403

Proposal for a regulation **Article 82 – paragraph 1**

Text proposed by the Commission

Amendment

1. Within the limits of this Regulation, Member States may adopt by law specific rules regulating the processing of employees' personal data in the employment context, in particular for the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organisation of work, health and safety at work, and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the

1. Without prejudice to this Regulation, Member States *or collective agreement among employers and employees* may adopt by law specific rules regulating the processing of employees' personal data in the employment context, in particular for the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organisation of work, *criminal conviction*, health and safety at work, and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits

employment relationship.

related to employment, and for the purpose of the termination of the employment relationship.

Amendment 404
Proposal for a regulation
Article 82 – paragraph 3

Text proposed by the Commission

Amendment

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

deleted

Amendment 405
Proposal for a regulation
Article 83 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

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

1. Without prejudice to this Regulation, personal data *not falling within the categories of data covered by Article 8 of this Regulation* may be processed for historical, statistical or scientific purposes under paragraph 2 of Article 6 and point (i) of Article 9(2) only if:

Amendment 406
Proposal for a regulation
Article 83 – paragraph 1 – point a

Text proposed by the Commission

Amendment

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

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

Amendment 407

Proposal for a regulation Article 83 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Further processing of data for historical, statistical or scientific purposes shall not be considered as incompatible under point (b) of Article 5(1) provided that the processing:

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

(b) complies with all other relevant legislation.

Amendment 408

Proposal for a regulation Article 83 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Within the limits of this Regulation, especially this article, Member States may adopt specific regulations concerning the processing of personal data for scientific research purposes, in particular public health research.

Justification

Data protection rules at Member State-level are complex and nuanced also with regard to public health research. Member States legislators should be empowered to maintain or adopt concrete measures on ethical review of public health research, carried out without the need for the data subject's consent. Ethical review at Member State level offers data subjects a guarantee that the use and reuse of their personal data for research purposes is in line with societal values at the given point in time.

Amendment 409

Proposal for a regulation Article 83 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(ca) the personal data is processed for the purpose of generating aggregate data reports, wholly composed of either anonymous data, pseudonymous data or both.

Justification

The purpose of such reports is not to identify or go back to individuals. To create such reports, individual data sets are pooled together in an anonymous way and have no privacy impact. Web Analytics are an example of Aggregate Data Reports.

Amendment 410

Proposal for a regulation

Article 83 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Where personal data is collected for statistical and public health purposes, such data shall be made anonymous immediately after the end of data collection, checking or matching operations, except if the identification data remain necessary for statistical¹, and public health purposes such as epidemiological, translational and clinical research.

¹ Paragraph 8 of the Appendix to the Council Recommendation No. R (97) concerning protection of personal data collected and processed for statistical purposes – Adopted by the Committee of Ministers on 30 September 1997 at the 602nd meeting of the Ministers' Deputies

Justification

Epidemiological research relies heavily on using “linked data” and cannot be done with completely anonymised or pseudonymised data. Linked research has been a luxury for certain

countries in the European Union, whereas with the measures suggested in this binding Regulation, there is a possibility of this kind of crucial research to come to a halt.

Amendment 411

Proposal for a regulation

Article 83 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. A controller or processor may transfer personal data to a third country or an international organisation for historical, statistical or scientific purposes if:

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

(b) the recipient does not reasonably have access to data enabling the attribution of information to an identified or identifiable data subject; and

(c) contractual clauses between the controller or processor and the recipient of the data prohibit re-identification of the data subject and limit processing in accordance with the conditions and safeguards laid down in this Article.

Justification

A recipient of key-coded data, transferred for scientific research purposes has no means to re-identify subjects, and under this amendment, does not have access to the key and is contractually precluded from re-identifying data subjects. This amendment would formalize a process for reasonably ensuring that key-coded data cannot and will not be re-identified by recipients located in third countries, allowing for the transfer of such data without further burdens.

Amendment 412

Proposal for a regulation

Article 83 – paragraph 2 c (new)

Text proposed by the Commission

Amendment

2c. Where the data subject is required to

give his/her consent for the processing of medical data exclusively for public health research purposes, the option of broad consent may be available to the data subject for the purposes of epidemiological, translational and clinical research.

Justification

In many fields of medicine and science, it is crucial for researchers to be able to follow the data of a certain patient they have been monitoring. This enables the researchers to understand and constantly improve their search for new treatments and cures. Importantly, epidemiological research involves monitoring populations to decipher trends in lifestyle, genetics, diseases among others, and is crucial for furthering public health research, an example of which is patient registries. Thus record linkage should remain possible, when it comes to the case of using medical data solely for the furthering of public health research, specifically epidemiological, translational and clinical research. With respect to the point on broad consent, the current Directive on Data Protection (95/46/EC) allows for exceptions for the processing of data for public health research and the general aim of the proposed Regulation is to apply the principle of explicit consent for the processing of personal data. For public health research purposes, such as epidemiological, clinical and translational research it becomes virtually impossible to acquire the consent of every single data subject required for research. Public health researchers need to have access to the past, current and future medical records of patients in order to conduct their research. The option of broad consent gives the data subject a measure of control over their data and the option for their data being used for furthering public health research.

Amendment 413
Proposal for a regulation
Article 83 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the processing of personal data for the purposes referred to in paragraph 1 and 2 as well as any necessary limitations on the rights of information to and access by the data subject and detailing the conditions and safeguards for the rights of the data subject under these circumstances.

deleted

Amendment 414
Proposal for a regulation
Article 83 a (new)

Text proposed by the Commission

Amendment

Article 83a

***Processing of criminal convictions data
for the purpose of the prevention of
financial crime***

***Within the limits of this Regulation and in
accordance with point (j) of Article 9(2),
processing of personal data concerning
criminal convictions or related security
measures shall be permitted if it provides
for appropriate measures to protect the
data subject's fundamental rights and
freedoms and is for:***

***(a) the purposes of the prevention,
investigation or detection of financial
crime, or***

***(a) reasons of public interest such as
protecting against cross-border threats of
financial crime,***

***and in either case, must necessarily be
carried out without the consent of the data
subject being sought so as not to prejudice
those purposes.***

Justification

The amendment adds a provision in order to allow the processing of criminal convictions data for the purpose of the prevention of financial crime. The EU has demonstrated its commitment to fight against financial crime with recent initiatives such as the review of the Anti-Money laundering Directive, the anti-corruption package, the anti-fraud strategy, and the establishment of the European Parliament special committee on organised crime, corruption and money laundering. This provision is therefore a needed complementary measure that will allow an effective fight against financial crime. Finally, no consent should be asked in this scenario as this would not be forthcoming. Actors of financial crime would not be keen in providing consent and this would therefore defeat the purpose of processing the data.

Amendment 415
Proposal for a regulation
Article 86 – paragraph 2

Text proposed by the Commission

2. The delegation of power referred to in **Article 6(5), Article 8(3), Article 9(3), Article 12(5), Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 22(4), Article 23(3), Article 26(5), Article 28(5), Article 30(3), Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11), Article 37(2), Article 39(2), Article 43(3), Article 44(7), Article 79(6), Article 81(3), Article 82(3) and Article 83(3)** shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

Amendment 416
Proposal for a regulation
Article 89 – paragraph 2

Text proposed by the Commission

2. Article 1(2) of Directive 2002/58/EC shall be deleted.

Amendment 417

Proposal for a regulation
Article 90 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

2. The delegation of power referred to in Article 14(7), Article 26(5), Article 33(6), Article 35(11), Article 37(2), Article 39(2) **and** Article 43(3) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

Amendment

2. Article 1(2), **points (b) and (c) of Article 2, Article 4(3), (4) and (5) and Articles 6 and 9** of Directive 2002/58/EC shall be deleted.

Amendment

1a. Delegated acts and Implementing acts adopted by the Commission should be evaluated by the Parliament and the Council every second year.

PROCEDURE

Title	Protection of individuals with regard to the processing of personal data, and the free movement of such data (General Data Protection Regulation)		
References	COM(2012)0011 – C7-0025/2012 – 2012/0011(COD)		
Committee responsible Date announced in plenary	LIBE 16.2.2012		
Opinion by Date announced in plenary	ITRE 16.2.2012		
Rapporteur Date appointed	Seán Kelly 14.3.2012		
Discussed in committee	31.5.2012	28.11.2012	23.1.2013
Date adopted	20.2.2013		
Result of final vote	+: –: 0:	33 24 1	
Members present for the final vote	Amelia Andersdotter, Josefa Andrés Barea, Zigmantas Balčytis, Bendt Bendtsen, Jan Březina, Reinhard Bütikofer, Maria Da Graça Carvalho, Giles Chichester, Jürgen Creutzmann, Pilar del Castillo Vera, Dimitrios Droutsas, Christian Ehler, Vicky Ford, Gaston Franco, Adam Gierek, Norbert Glante, Fiona Hall, Jacky Hélin, Kent Johansson, Romana Jordan, Krišjānis Kariņš, Lena Kolarska-Bobińska, Béla Kovács, Philippe Lamberts, Marisa Matias, Angelika Niebler, Jaroslav Paška, Herbert Reul, Teresa Riera Madurell, Michèle Rivasi, Paul Rübig, Amalia Sartori, Salvador Sedó i Alabart, Francisco Sosa Wagner, Konrad Szymański, Britta Thomsen, Patrizia Toia, Evžen Tošenovský, Catherine Trautmann, Marita Ulvskog, Vladimir Urutchev, Adina-Ioana Vălean		
Substitute(s) present for the final vote	Lara Comi, Ioan Enciu, Satu Hassi, Roger Helmer, Jolanta Emilia Hibner, Seán Kelly, Holger Krahmer, Bernd Lange, Werner Langen, Zofija Mazej Kukovič, Vladko Todorov Panayotov, Pavel Poc, Vladimír Remek, Algirdas Saudargas, Silvia-Adriana Țicău		
Substitute(s) under Rule 187(2) present for the final vote	Axel Voss		

28.1.2013

OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION

for the Committee on Civil Liberties, Justice and Home Affairs

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

Rapporteur: Lara Comi

SHORT JUSTIFICATION

Data protection is a fundamental right and citizens' trust needs to be ensured to enable them to benefit better of the on-line environment. The approach needs to be updated for the new technologic tools and the data flows stemming from them, so that the current provisions of Directive 95/46/EC are not fully addressing the needs of the Digital Single Market.

The variety of the available business models, technologies and services – including those of great importance in the context of e-commerce and Internal Market – have resulted in a vast spectrum of data protection issues. Companies and governments are using these technologies often without the individuals being aware of the impact they may have.

On 25 January 2012, the European Commission presented proposals of a new regulation¹ and directive² on the protection of individuals with regard to the processing of personal data and on the free movement of such data. The proposed regulation aims to complement the provisions of the e-Privacy Directive (2002/58/EC) and ensure that legal certainty and consistency are paramount for effective work across the EU in this area.

The proposed regulation aims to harmonise rights, ensuring the free flow of information, cut

¹ Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation), COM(2012) 11 final; hereinafter referred to also as “General Regulation”.

² 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) 10 final.

red tape and improve enforcement. More transparency will increase trust, and new provisions will make the EU more attractive as a business destination. The proposed regulation also aims to:

- modernise the EU legal system for the protection of personal data, in particular to meet the challenges resulting from globalisation and the use of new technologies;
- strengthen individuals' rights, and at the same time reduce administrative formalities to ensure a unhindered flow of personal data within the EU;
- improve the clarity and coherence of the EU rules for personal data protection and achieve a consistent and effective implementation and application of this fundamental right in all areas of the Union's activities.

The internal market dimension

The proposal has a high potential for enhancing the internal market and creating a level-playing field for all businesses active in the EU. Key elements include:

- the shift of the legislative instrument (from directive to regulation);
- the 'one-stop shop' principle regarding the competent supervisory authority in cross-border cases;
- the marketplace principle (which makes EU data protection standards also applicable to businesses based outside the EU, if they are active within the EU);
- the general principle of accountability (which replaces the obligation of data controllers or processors to make a general notification about their processing to their national regulator);
- the strengthening of the existing tools and the introduction of new ones for a consistent implementation and enforcement in all Member States.

Strengthening the rights of the consumer

As for strengthening the rights of consumers, it seems that the balance of competing interests such as consumer awareness, autonomy, protection and the internal market has been struck through the promotion of transparency.

Improvements have been made especially in relation to the notion of consent as one of the legitimating factors for processing personal data, to the data subject rights as powerful tools of consumer protection and to the conditions for lawfulness of data transfers outside the EU. Nonetheless, there remain many areas of the Proposal which require further refinement and clarification. This is particularly the case with the practicalities of implementation particularly in relation to some rights. This ambiguity must be resolved and in particular the following elements require attention:

- clarify in Article 17 to what extent, once informed by a data controller that a data subject has exercised the right of erasure, the data held by the third party data controller must also be deleted;
- the specific protection required for minors up to the age of 14 as they are still children;
- the proposed definition of "personal data";

- the role that anonymisation and pseudonimisation can play to protect the data subject;
- the Proposal should be refined as regards precise division and determination of the obligations and responsibilities of the data controller and data processor;
- profiling operations and the differences in “profiling” in the different sectors of the economy or legal relations need to be considered thoroughly as well as taking the consequences of overly restrictive regulation in this area.

With this in mind the Rapporteur would like to focus especially on the:

- definitions;
- rights of the data subject;
- obligations of data controller and processor with reference to consumer rights;
- consistency.

The Rapporteur would also like to embrace a wider view of technological neutrality; as well as address the:

- purpose limitation principle;
- use of Delegated and Implementing Acts in association to the proposed package; and,
- practical implementation of the provisions.

AMENDMENTS

The Committee on the Internal Market and Consumer Protection 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 regulation Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) A proper balance between protection of privacy and respect of the single market has to be ensured. Data protection rules should not undermine competitiveness, innovation and new technology.

Amendment 2

Proposal for a regulation Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) Technological neutrality should also mean that similar acts, in similar conditions and with similar consequences should be legally equivalent, with no regard of their happening online or offline, unless the diverse dynamics of data processing in such environments does not make a substantial difference among them.

Justification

A recital to better assess the difference between online and offline was necessary. Without it, some economic actors could perceive this regulation as specifically meant to address online and, in particular, social networking issues.

Amendment 3

Proposal for a regulation

Recital 15

Text proposed by the Commission

Amendment

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

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

Justification

The scope of this exemption should be clarified, particularly in view of the development of social networks which make it possible to share information with hundreds of people. In its judgments in Cases C-101/01 and C-73/07, the CJEU advocates accessibility 'by an indefinite number of people' as a criterion for application of this exemption. The EDPS shares this

view.

Amendment 4
Proposal for a regulation
Recital 23

Text proposed by the Commission

(23) The principles of protection should apply to any information concerning an identified or identifiable person. To determine whether a 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

(23) The principles of protection should apply to any information concerning an identified or identifiable person. To determine whether a 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 *directly* identifiable, *including, where possible, a separation of processed data from identity-revealing data. In the latter case, also pseudonymised data are useful if the key to link the pseudonymous with the identity is safe according to the state of the art.*

Justification

The definition of "personal data" needs clarifications to make it useful in both consumer experience and business running. The introduction of pseudonymous and anonymous data is helpful in this domain.

Amendment 5
Proposal for a regulation
Recital 23 a (new)

Text proposed by the Commission

Amendment

(23a) A large amount of personal data might be processed for purposes of fraud detection and prevention. The pursuit of such claims, regulated by Member States' or Union law, should be taken into account when the data minimization principle and the lawfulness of processing

are assessed.

Justification

This Amendment wants to underline a principle that is not in contrast with the present Regulation, but at the same time is not clearly stated.

Amendment 6

**Proposal for a regulation
Recital 23 b (new)**

Text proposed by the Commission

Amendment

(23b) Following the principle of data protection by default, online services and products must initially be set on maximum protection of personal information and data without demanding any action from the data subject.

Amendment 7

**Proposal for a regulation
Recital 24**

Text proposed by the Commission

Amendment

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

(24) When using online services, individuals may be associated with online identifiers provided by their devices, applications, tools and protocols, such as Internet Protocol addresses or cookie identifiers. This may leave traces which, combined with unique identifiers and other information received by the servers, may be used to create profiles of the individuals and identify them. It follows that ***a study should be conducted, on a case-by-case basis and in accordance with technological developments, into whether*** identification numbers, location data, online identifiers or other specific factors as such ***must*** necessarily be considered as personal data ***but shall be considered as one, when processed with the intention of***

targeting particular content at an individual or of singling that individual out for any other purpose;

Justification

Against a background of an increasing number of new on-line services and constant technological development, a higher level of protection of personal data is required. A case-by-case study would therefore seem indispensable.

**Amendment 8
Proposal for a regulation
Recital 25**

Text proposed by the Commission

(25) Consent should be given ***explicitly*** by any ***appropriate*** method enabling a freely given specific and informed indication of the data subject's wishes, either by a statement or by a clear affirmative action by the data subject, ensuring that individuals are aware that they give their consent to the processing of personal data, including by ticking a box when visiting an Internet website or by any other statement or conduct which ***clearly*** indicates ***in this*** context the data subject's acceptance of the proposed processing of their personal data. Silence or inactivity should therefore not constitute consent. Consent should cover all processing activities carried out for the same purpose or purposes. If the data subject's consent is to be given following an electronic request, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided.

Amendment

(25) Consent should be given by any method ***appropriate to the media used***, enabling a freely given specific and informed indication of the data subject's wishes, either by a statement or by a clear affirmative action by the data subject, ensuring that individuals are aware that they give their consent to the processing of personal data, including by ticking a box when visiting an Internet website or by any other statement or conduct which indicates, ***clearly within the*** context, the data subject's acceptance of the proposed processing of their personal data. Silence or inactivity should therefore not constitute consent. Consent should cover all processing activities carried out for the same purpose or purposes. If the data subject's consent is to be given following an electronic request, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided. ***The information provided in order for children to express the consent should be given in a clear and age-appropriate language, in a way that would be easy to understand for the child above the age of 13.***

Justification

In order to smooth some daily life situation, both online and offline, it was necessary to add some specific words for the cases where the consent can be assumed by the context. For instance: asking a doctor for a diagnosis implies the treatment of some personal data, without necessarily an explicit action as defined at the beginning of this recital. In the same instance, the doctor can talk to a specialist, if necessary to deliver the diagnosis, without necessarily asking for permission.

Amendment 9 **Proposal for a regulation** **Recital 27**

Text proposed by the Commission

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

Amendment

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

Justification

This amendment completes the amendment to Art. 4(13)

Amendment 10 **Proposal for a regulation** **Recital 27 a (new)**

Text proposed by the Commission

Amendment

(27a) The representative is liable, together with the controller, for any behaviour that

is contrary to the present Regulation.

Justification

The liability of the representative is not sufficiently clearly stated, and this recital helps to underline it.

Amendment 11

Proposal for a regulation

Recital 29

Text proposed by the Commission

(29) Children deserve specific protection of their personal data, as they may be less aware of risks, consequences, safeguards and their rights in relation to the processing of personal data. To determine when an individual is a child, this Regulation should take over the definition laid down by the UN Convention on the Rights of the Child.

Amendment

(29) Children deserve specific protection of their personal data, as they may be less aware of risks, consequences, safeguards and their rights in relation to the processing of personal data ***and they are vulnerable consumers***. To determine when an individual is a child, this Regulation should take over the definition laid down by the UN Convention on the Rights of the Child. ***In particular, child-friendly language has to be used to ensure the right of consent for children above the age of 13.***

Amendment 12

Proposal for a regulation

Recital 30

Text proposed by the Commission

(30) Any processing of personal data should 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 data. The data should be adequate, relevant and limited to the minimum necessary for the purposes for which the data are processed; this requires ***in particular*** ensuring that the data collected are not excessive and that

Amendment

(30) Any processing of personal data should 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 data. The data should be adequate, relevant and limited to the minimum necessary for the purposes for which the data are processed; this requires ensuring that the data collected are not excessive and that the period for which

the period for which the data are stored is *limited 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 are rectified or deleted. In order to ensure that the data are not kept longer than necessary, time limits should be established by the controller for erasure or for a periodic review.

the data are stored is *no longer than is necessary for the purposes for which the personal data is processed*. 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 are rectified or deleted. In order to ensure that the data are not kept longer than necessary, time limits should be established by the controller for erasure or for a periodic review. *When the assessment is made of the minimum data necessary for the purposes for which the data are processed, consideration should be given of the obligations of other legislation which require comprehensive data to be processed when used for prevention and detection of fraud, confirmation of identity and/or determination of creditworthiness.*

Justification

This amendment is designed to clarify obligation for controllers to monitor the minimum data necessary and storage periods. This amendment in addition seeks to ensure consistency with the language of this recital with that included in Article 5(e). The amendment also seeks to harmonise the Regulation with existing legislation, such as the Consumer Credit Directive and Credit Agreements for Residential Property, and existing good practice, which require a comprehensive assessment of a consumer's financial situation through creditworthiness assessment.

Amendment 13

Proposal for a regulation Recital 33

Text proposed by the Commission

(33) In order to ensure free consent, it should be clarified that consent does not provide a valid legal ground where the individual has no genuine and free choice and is subsequently not able to refuse or withdraw consent without detriment.

Amendment

(33) In order to ensure free consent, it should be clarified that consent does not provide a valid legal ground where the individual has no genuine and free choice and is subsequently not able to refuse or withdraw consent without detriment.
Similarly, consent should not provide a legal basis for data processing when the

data subject has no different access to equivalent services.

Amendment 14

Proposal for a regulation Recital 34

Text proposed by the Commission

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

Amendment

(34) Consent *shall be freely given and the data subject shall not be forced to consent for* processing of *its* data, *especially* where there is a *significant* imbalance between data subject and controller. This *may be* the case where the data subject is in a situation of dependence from the controller, among others, where personal data are processed by the employer of employees' personal data in the employment context. *However, when the purpose of data processing is in the interest of the data subject and the data subject is subsequently able to withdraw consent without detriment, the consent should provide a valid legal ground for processing.*

Where the controller is a public authority, there would be an imbalance only in the specific data processing operations where the public authority can impose *a new and unjustified* obligation by virtue of its relevant public powers and the consent cannot be deemed as freely given, taking into account the interest of the data subject.

Justification

The provision should assure that data subject has a genuine and free choice and is subsequently able to withdraw consent or object to further processing in any situation. It shall not deprive natural persons of the possibility of agreeing to the processing of data, especially when it is in the purpose which is to their benefit (e.g. offering an insurance by the employer). The regulation should not presume that it is impossible to freely consent to data processing in employment relation.

Amendment 15

Proposal for a regulation Recital 34 a (new)

Text proposed by the Commission

Amendment

(34a) When personal data, processed on the basis of a data subject's consent are necessary for the provision of a service, the withdrawal of the consent can constitute the ground for the termination of a contract by the service provider. This shall apply in particular to the services which are provided free of charge to the consumers.

Justification

Adding such a recital would have an awareness-raising meaning. Although the possibility to terminate a contract stems from the terms of contract in cases where data processing is necessary for the provision of a service, it is necessary to make users conscious that in some cases data are the currency by which they pay for the service. Auction platforms, for instance, use stored data to examine credibility of those selling with the use of a platform and a mutual evaluation exercised by the users is used by them to attract more potential clients but also to prevent fraud. Withdrawing consent to process such data would run against the whole point of such platforms. Consumers should also be aware that many business models provide access to services "free" of charge in return for the access to some of their personal data. Withdrawing the right to process these data can therefore result in no access to the service.

Amendment 16

Proposal for a regulation Recital 38

Text proposed by the Commission

Amendment

(38) The legitimate interests of a ***controller*** may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding. This would need careful assessment in particular where the data subject is a child, given that children deserve specific protection. The data subject should have the right to object the processing, on grounds relating to their

(38) The legitimate interests of a ***data subject*** may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding. This would need careful assessment in particular where the data subject is a child, given that children deserve specific protection. The data subject should have the right to object the processing, on grounds relating to their

particular situation and free of charge. To ensure transparency, the controller should be obliged to explicitly inform the data subject on the legitimate interests pursued and on the right to object, and also be obliged to document these legitimate interests. Given that it is for the legislator to provide by law the legal basis for public authorities to process data, this legal ground should not apply for the processing by public authorities in the performance of their tasks.

particular situation and free of charge. To ensure transparency, the controller *or the third parties to whom the data are sent* should be obliged to explicitly inform the data subject on the legitimate interests pursued and on the right to object, and also be obliged to document these legitimate interests. Given that it is for the legislator to provide by law the legal basis for public authorities to process data, this legal ground should not apply for the processing by public authorities in the performance of their tasks.

Justification

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

Amendment 17

Proposal for a regulation Recital 40 a (new)

Text proposed by the Commission

Amendment

(40a) In general, harmonisation of the Union law as regards to data protection must not take away the possibility of Member States to practice sector specific legislation, inter alia in the field of register-based research.

Justification

The current legal framework on data protection in the EU, directive 95/46/EC, gives Member States various degrees of freedom to adapt the EU legislation to national circumstances.

Amendment 18

Proposal for a regulation Recital 40 b (new)

Text proposed by the Commission

Amendment

(40b) Processing of personal data collected to another purpose can be made available for public scientific research when a scientific relevance of the processing of the collected data can be documented. Privacy by design must be taken into account when making data available for public scientific research.

Amendment 19

Proposal for a regulation

Recital 42

Text proposed by the Commission

Amendment

(42) Derogating from the prohibition on processing sensitive categories of data should also be allowed if done by a law, and subject to suitable safeguards, so as to protect personal data and other fundamental rights, where grounds of public interest so justify and in particular for health purposes, including public health and social protection and the management of health-care services, especially in order to ensure the quality and cost-effectiveness of the procedures used for settling claims for benefits and services in the health insurance system, or for historical, statistical and scientific research purposes.

(42) Derogating from the prohibition on processing sensitive categories of data should also be allowed if done by a law, and subject to suitable safeguards, so as to protect personal data and other fundamental rights, where grounds of public interest so justify and in particular for health purposes, including public health and social protection and the management of health-care services, ***including information sent via electronic text messages or e-mail to patients regarding appointments at hospitals or clinics,*** especially in order to ensure the quality and cost-effectiveness of the procedures used for settling claims for benefits and services in the health insurance system, or for historical, statistical and scientific research purposes.

Amendment 20

Proposal for a regulation

Recital 48

Text proposed by the Commission

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

Amendment

(48) The principles of fair and transparent processing require that the data subject should be informed in particular of the existence of the processing operation and its purposes, ***the criteria and/or legal obligations which may be used as the basis for determining*** 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.

Justification

It is not possible to know in advance for how long personal data will be stored, particularly as this may be linked to specific legal obligations.

Amendment 21
Proposal for a regulation
Recital 49

Text proposed by the Commission

(49) The information in relation to the processing of personal data relating to the data subject should be given to them at the time of collection, or, where the data are not collected from the data subject, within a reasonable period, depending on the circumstances of the case. Where data can be legitimately disclosed to another recipient, the data subject should be informed when the data are first disclosed to the recipient.

Amendment

(49) The information in relation to the processing of personal data relating to the data subject should be given to them at the time of collection, or, where the data are not collected from the data subject, within a reasonable period, depending on the circumstances of the case. Where data can be legitimately disclosed to another recipient, the data subject should be informed when the data are first disclosed to the recipient. ***At the same time, no processing other than storing should be allowed before the data subject is fully aware of the information referred to here.***

Justification

This amendment matches the amendment to Art. 14(4b).

Amendment 22

Proposal for a regulation

Recital 51

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 23

Proposal for a regulation

Recital 53

Text proposed by the Commission

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

Amendment

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

Justification

This amendment matches the amendment to the title of Art. 17.

Amendment 24
Proposal for a regulation
Recital 54

Text proposed by the Commission

(54) To strengthen the ‘right to *be forgotten*’ in the online environment, *the* right to *erasure* should also be extended in such a way that a controller who has *made* the personal data public should be obliged to inform third parties which are processing such data that a data subject requests them to erase any links to, or copies or replications of that personal data. To ensure this information, the controller should take all reasonable steps, including technical measures, in relation to data for the publication of which the controller is responsible. In relation to a third party publication of personal data, the controller should be considered responsible for the publication, where the controller has authorised the publication by the third party.

Amendment

(54) To strengthen the right to *erasure* in the online environment, *such* right should also be extended in such a way that a controller who has *transferred* the personal data *or made them* public *without being instructed to do so by the data subject* should be obliged to inform third parties which are processing such data that a data subject requests them to erase any links to, or copies or replications of that personal data. To ensure this information, the controller should take all reasonable steps, including technical measures, in relation to data for the publication of which the controller is responsible. In relation to a third party publication of personal data, the controller should be considered responsible for the publication, where the controller has authorised the publication by the third party.

Justification

This amendment accompanies the amendment to Article 17(2).

Amendment 25
Proposal for a regulation
Recital 55 a (new)

Text proposed by the Commission

Amendment

(55a) Some personal data, once processed by the data controller or processor, produce outcomes that are used only internally by the data controller and whose format is meaningless even for the data subject. In this case, the right to data portability should not apply, while the other rights, in particular the right to object and the right of access and the right to rectification, are still valid.

Justification

This amendment is meant to clarify the "meaningfulness" introduced in the previous amendment.

Amendment 26

Proposal for a regulation

Recital 60

Text proposed by the Commission

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

Amendment

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

Justification

Strengthens the protection of personal data. A general principle that responsibility rests with the controller needs to be explicitly laid down.

Amendment 27

Proposal for a regulation

Recital 61 a (new)

Text proposed by the Commission

Amendment

(61a) This Regulation encourages enterprises to develop internal programmes that will identify the processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, and to put in place appropriate privacy safeguards and develop innovative privacy-by-design solutions and privacy enhancing techniques. Enterprises that can publicly demonstrate that they have embedded privacy accountability do not also require the application of the additional oversight

mechanisms of prior consultation and prior authorisation.

Justification

This amendment aligns the text with an approach in which accountability is an alternative process that properly incentivises good organizational practices. Such an alignment also shifts the burden of the costs of compliance and assurance to the marketplace rather than the public purse.

Amendment 28
Proposal for a regulation
Recital 61 b (new)

Text proposed by the Commission

Amendment

(61b) Data protection by design is a very useful tool as it allows the data subject to be fully in control of his own data protection, of the information he shares and with the subject with whom he shares. When considering this principle as well as data protection by default, the context should heavily influence the assessment of lawfulness of processing.

Justification

This Amendment clarifies the Amendment to Art. 23(2). It refers to cases where the data subject has the choice to opt in a data processing system, and in that case the whole range of consequences shall be taken into consideration. For instance, when signing in a social network, the data subjects should accept that some information be public for the other users to connect with him, while the same level of publicity of data should not be accepted by a data subject that asks for a loan.

Amendment 29
Proposal for a regulation
Recital 61 c (new)

Text proposed by the Commission

Amendment

(61c) The principle of data protection by design require data protection to be embedded within the entire life cycle of the technology, from the very early design

stage, right through to their ultimate deployment, use and ultimate disposal. The principle of data protection by default requires privacy settings on services and products should by default comply with the general principles of data protection, such as data minimisation and purpose limitation.

Amendment 30

Proposal for a regulation Recital 62

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 31

Proposal for a regulation
Recital 65

Text proposed by the Commission

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

Amendment

(65) In order to demonstrate compliance with this Regulation, the controller or processor should **maintain relevant information on the main categories of processing undertaken**. **The Commission should establish a uniform format for the documentation of this information across the EU**. Each controller and processor should be obliged to co-operate with the supervisory authority and make this documentation, on request, available to it, so that it might **assist the supervisory authority in evaluating the compliance of those main categories of processing with this Regulation**.

Justification

Effective data protection requires organisations to have a sufficiently documented understanding of their data processing activities. However, the maintenance of documentation for all processing operations is disproportionately burdensome. Instead of satisfying bureaucratic needs, the aim of the documentation should be to help controllers and processors meet their obligations.

Amendment 32
Proposal for a regulation
Recital 67

Text proposed by the Commission

(67) A personal data breach may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud, to the individual concerned. Therefore, as soon as the controller becomes aware that **such** a breach has occurred, the controller should notify the breach to the supervisory authority without undue delay **and, where feasible, within 24 hours**. **Where this cannot be achieved within 24 hours, an explanation of the reasons for the delay**

Amendment

(67) A personal data breach may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud, to the individual concerned. Therefore, **addressing such economic loss and social harm should be the first and utmost priority**. **After that**, as soon as the controller becomes aware that a breach, **which would have a significantly adverse impact on the protection of the personal data or the privacy of the data subject**

should accompany the notification. The individuals whose personal data could be adversely affected by the breach should be notified without undue delay in order to allow them to take the necessary precautions. A breach should be considered as adversely affecting the personal data or privacy of a data subject where it could result in, for example, identity theft or fraud, physical harm, significant humiliation ***or*** damage to reputation. The notification should describe the nature of the personal data breach as well as recommendations as well as recommendations for the individual concerned to mitigate potential adverse effects. Notifications to data subjects should be made as soon as reasonably feasible, and in close cooperation with the supervisory authority and respecting guidance provided by it or other relevant authorities (e.g. law enforcement authorities). For example, the chance for data subjects to mitigate an immediate risk of harm would call for a prompt notification of data subjects whereas the need to implement appropriate measures against continuing or similar data breaches may justify a longer delay.

concerned, has occurred, the controller should notify the breach to the supervisory authority without undue delay. The individuals whose personal data could be adversely affected by the breach should be notified without undue delay in order to allow them to take the necessary precautions, ***avoiding information overload for the data subject.*** A breach should be considered as ***significantly*** adversely affecting the personal data or privacy of a data subject where it could result in, for example, identity theft or fraud, physical harm, significant humiliation, damage to reputation. The notification should describe the nature of the personal data breach as well as recommendations for the individual concerned to mitigate potential adverse effects. Notifications to data subjects should be made as soon as reasonably feasible, and in close cooperation with the supervisory authority and respecting guidance provided by it or other relevant authorities (e.g. law enforcement authorities). For example, the chance for data subjects to mitigate an immediate risk of harm would call for a prompt notification of data subjects whereas the need to implement appropriate measures against continuing or similar data breaches may justify a longer delay.

Justification

This Amendment is meant to clarify the actions that are desirable in case of data breach, and the Amendments to Article 31 and to Article 32.

Amendment 33 **Proposal for a regulation** **Recital 69**

Text proposed by the Commission

(69) In ***setting detailed rules concerning the format and procedures applicable to*** the notification of personal data breaches,

Amendment

(69) In ***assessing the level of detail of*** the notification of personal data breaches, due consideration should be given to the

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 identity fraud or other forms of misuse. Moreover, such rules and procedures should take into account the legitimate interests of law enforcement authorities in cases where early disclosure could unnecessarily hamper the investigation of the circumstances of a breach.

circumstances of the breach, including whether or not personal data had been protected by appropriate technical protection measures, effectively limiting the likelihood of identity fraud or other forms of misuse. Moreover, such rules and procedures should take into account the legitimate interests of law enforcement authorities in cases where early disclosure could unnecessarily hamper the investigation of the circumstances of a breach.

Justification

This Amendment follows the deletion of Article 32(5).

Amendment 34

Proposal for a regulation Recital 70 a (new)

Text proposed by the Commission

Amendment

(70a) Directive 2002/58/EC (as amended by Directive 2009/136/EC) sets out personal data breach notification obligations for the processing of personal data in connection with the provision of publicly available electronic communications services in public communications networks in the Union. Where providers of publicly available electronic communications services also provide other services, they continue to be subject to the breach notification obligations of the ePrivacy Directive, not this Regulation. Such providers should be subject to a single personal data breach notification regime for both personal data processed in connection with the provision of a publicly available electronic communications service and for any other personal data for which they are a controller.

Justification

Electronic communications service providers should be subject to a single notification regime for any breaches relating to the data they process, not multiple regimes depending on the service offered. This ensures a level playing field among industry players.

Amendment 35

Proposal for a regulation Recital 97

Text proposed by the Commission

(97) Where the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union takes place in more than one Member State, one single supervisory authority should be competent for monitoring the activities of the controller or processor throughout the Union and taking the related decisions, in order to increase the consistent application, provide legal certainty and reduce administrative burden for such controllers and processors.

Amendment

(97) Where the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union takes place in more than one Member State, one single supervisory authority should be competent for monitoring the ***processing*** activities of the controller or processor throughout the Union and taking the related decisions, in order to increase the consistent application, provide legal certainty and reduce administrative burden for such controllers and processors. ***By way of derogation from Article 51(2), when the processing of personal data is not mainly carried out by the main establishment, but by one of the other establishments of the controller or processor situated in the European Union, the competent supervisory authority for those processing operations shall be that of the Member State where that other establishment is situated. In keeping with the provisions of Chapter VII, this derogation shall be without prejudice to the right of the supervisory authority of the Member State where the main establishment is situated to require an additional declaration.***

Justification

While processing operations covering more than one country can easily be monitored by the main establishment, and should be the responsibility of a single authority, on the basis of a centralised declaration, national processing activities which are managed on a decentralised

basis by branch establishments, and which are difficult for the main establishment to supervise, should be the responsibility of each national supervisory authority.

Amendment 36
Proposal for a regulation
Recital 105

Text proposed by the Commission

(105) In order to ensure the consistent application of this Regulation throughout the Union, a consistency mechanism for co-operation between the supervisory authorities themselves and the Commission should be established. This mechanism should in particular apply where a supervisory authority intends to take a measure as regards processing operations that are related to the offering of goods or services to data subjects in several Member States, , or to the monitoring such data subjects, or that might substantially affect the free flow of personal data. It should also apply where any supervisory authority or the Commission requests that the matter should be dealt with in the consistency mechanism. This mechanism should be without prejudice to any measures that the Commission may take in the exercise of its powers under the Treaties.

Amendment

(105) In order to ensure the consistent application of this Regulation throughout the Union, a consistency mechanism for co-operation between the supervisory authorities themselves and the Commission should be established. This mechanism should in particular apply where a supervisory authority intends to take a measure as regards processing operations that are related to the offering of goods or services to data subjects in several Member States, or to the monitoring *of* such data subjects, or that might substantially affect the free flow of personal data. It should also apply where any supervisory authority or the Commission requests that the matter should be dealt with in the consistency mechanism. ***Furthermore, the data subjects should have the right to obtain consistency, if they deem a measure by a Data Protection Authority of a Member State has not fulfilled this criterion.*** This mechanism should be without prejudice to any measures that the Commission may take in the exercise of its powers under the Treaties.

Justification

This Amendment introduces the new Article 63a.

Amendment 37
Proposal for a regulation
Recital 111

Text proposed by the Commission

(111) Every data subject should have the right to lodge a complaint with a supervisory authority in any Member State and have the right to a judicial remedy if they consider that their rights under this Regulation are infringed or where the supervisory authority does not react on a complaint or does not act where such action is necessary to protect the rights of the data subject.

Amendment

(111) Every data subject should have the right to lodge a complaint with a supervisory authority in any Member State and have the right to a judicial remedy if they consider that their rights under this Regulation are infringed or where the supervisory authority does not react on a complaint or does not act where such action is necessary to protect the rights of the data subject. ***If the data subject deems consistency is not fulfilled, a complaint to the European Data Protection Board can be filed.***

Amendment 38
Proposal for a regulation
Recital 113

Text proposed by the Commission

(113) Each natural or legal person should have the right to a judicial remedy against decisions of a supervisory authority concerning them. Proceedings against a supervisory authority should be brought before the courts of the Member State, where the supervisory authority is established.

Amendment

(113) Each natural or legal person should have the right to a judicial remedy against decisions of a supervisory authority concerning them. Proceedings against a supervisory authority should be brought before the courts of the Member State, where the supervisory authority is established, ***or before the European Data Protection Board on grounds of inconsistency with the application of the present Regulation in other Member States***

Amendment 39

Proposal for a regulation
Recital 115

Text proposed by the Commission

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

Amendment

deleted

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

Justification

This possibility would bring no added value for the public and might jeopardise the cooperation of the supervisory authorities under the consistency mechanism.

Amendment 40

**Proposal for a regulation
Recital 118**

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 41
Proposal for a regulation
Recital 120

Text proposed by the Commission

(120) In order to strengthen and harmonise administrative sanctions against infringements of this Regulation, each supervisory authority should have the power to sanction administrative offences. This Regulation should indicate these offences and the upper limit for the related administrative fines, which should be fixed in each individual case proportionate to the specific situation, with due regard in particular to the nature, gravity and duration of the breach. The consistency mechanism may also be used to cover divergences in the application of administrative sanctions.

Amendment

(120) In order to strengthen and harmonise administrative sanctions against infringements of this Regulation, each supervisory authority should have the power to sanction administrative offences. This Regulation should indicate these offences and the upper limit for the related administrative fines, which should be fixed in each individual case proportionate to the specific situation, with due regard in particular to the nature, gravity and duration of the breach. ***In order to strengthen the internal market, the administrative sanctions should be consistent across Member States.*** The consistency mechanism may also be used to cover divergences in the application of administrative sanctions.

Justification

This Amendment anticipates the consistency requirement of the administrative sanctions in Article 78 and Article 79.

Amendment 42
Proposal for a regulation
Recital 122

Text proposed by the Commission

(122) The processing of personal data concerning health, as a special category of data which deserves higher protection, may often be justified by a number of legitimate reasons for the benefit of individuals and society as a whole, in particular in the context of ensuring continuity of cross-border healthcare. Therefore this Regulation should provide for harmonised conditions for the processing of personal data concerning health, subject to specific

Amendment

(122) The processing of personal data concerning health, as a special category of data which deserves higher protection, may often be justified by a number of legitimate reasons for the benefit of individuals and society as a whole, in particular in the context of ensuring continuity of cross-border healthcare. Therefore this Regulation should provide for harmonised conditions for the processing of personal data concerning health, subject to specific

and suitable safeguards so as to protect the fundamental rights and the personal data of individuals. This includes the right for individuals to have access to their personal data concerning their health, for example the data in their medical records containing such information as diagnosis, examination results, assessments by treating physicians and any treatment or interventions provided.

and suitable safeguards so as to protect the fundamental rights and the personal data of individuals. This includes the right for individuals to have access, *directly or through previously delegated persons*, to their personal data concerning their health, for example the data in their medical records containing such information as diagnosis, examination results, assessments by treating physicians and any treatment or interventions provided.

Justification

This Amendment is needed to allow access to information by a patient's relative, over all where the patient is not able to take decisions or to use such information, due to the gravity of the illness.

Amendment 43 **Proposal for a regulation** **Recital 122 a (new)**

Text proposed by the Commission

Amendment

(122a) A professional who process personal data concerning health should receive, if possible, anonymised or pseudonymised data, leaving the knowledge of the identity only to the General Practitioner or to the Specialist who has requested such data processing.

Justification

This Amendment means to suggest a further tool for the protection of citizens whose health data are controlled or processed by a professional who does not need to know the identity of the data subject.

Amendment 44 **Proposal for a regulation** **Recital 129**

Text proposed by the Commission

Amendment

(129) In order to fulfil the objectives of this

(129) In order to fulfil the objectives of this

Regulation, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. In particular, delegated acts should be adopted in respect of lawfulness of processing; specifying the criteria and conditions in relation to the consent of a child; processing of special categories of data; *specifying the criteria and conditions for manifestly excessive requests and fees for exercising the rights of the data subject*; criteria and requirements for the information to the data subject and in relation to the right of access; the right to be forgotten and to erasure; measures based on profiling; criteria and requirements in relation to the responsibility of the controller *and to data protection by design and by default*; a processor; criteria and requirements for the documentation *and the security of processing*; criteria and requirements for establishing a personal data breach and for its notification to the supervisory authority, and on the circumstances where a personal data breach is likely to adversely affect the data subject; the criteria and conditions for processing operations requiring a data protection impact assessment; the criteria and requirements for determining a high degree of specific risks which require prior consultation; designation and tasks of the data protection officer; codes of conduct; criteria and requirements for certification mechanisms; criteria and requirements for transfers by way of binding corporate rules; transfer derogations; *administrative sanctions*; processing for health purposes; processing in the employment context and processing for historical, statistical and scientific research purposes. It is of particular importance that the Commission

Regulation, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. In particular, delegated acts should be adopted in respect of lawfulness of processing; specifying the criteria and conditions in relation to the consent of a child; processing of special categories of data; criteria and requirements for the information to the data subject and in relation to the right of access; the right to be forgotten and to erasure; measures based on profiling; criteria and requirements in relation to the responsibility of the controller; a processor; criteria and requirements for the documentation; criteria and requirements for establishing a personal data breach and for its notification to the supervisory authority, and on the circumstances where a personal data breach is likely to adversely affect the data subject; the criteria and conditions for processing operations requiring a data protection impact assessment; the criteria and requirements for determining a high degree of specific risks which require prior consultation; designation and tasks of the data protection officer; codes of conduct; criteria and requirements for certification mechanisms; criteria and requirements for transfers by way of binding corporate rules; transfer derogations; processing for health purposes; processing in the employment context and processing for historical, statistical and scientific research purposes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely

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.

and appropriate transmission of relevant documents to the European Parliament and Council.

Amendment 45

Proposal for a regulation Recital 130

Text proposed by the Commission

(130) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission for: specifying standard forms in relation to the processing of personal data of a child; ***standard procedures and forms for exercising the rights of data subjects***; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access; ***the right to data portability***; standard forms in relation to the responsibility of the controller ***to data protection by design and by default and to the documentation***; specific requirements for the security of processing; the standard format and the procedures for the notification of a personal data breach to the supervisory authority and the communication of a personal data breach to the data subject; standards and procedures for a data protection impact assessment; forms and procedures for prior authorisation and prior consultation; technical standards and mechanisms for certification; the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an international organisation; disclosures not authorized by Union law; mutual assistance; joint

Amendment

(130) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission for: specifying standard forms in relation to the processing of personal data of a child; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access; standard forms in relation to the responsibility of the controller ***in respect of*** the documentation; specific requirements for the security of processing; the standard format and the procedures for the notification of a personal data breach to the supervisory authority and the communication of a personal data breach to the data subject; standards and procedures for a data protection impact assessment; forms and procedures for prior authorisation and prior consultation; technical standards and mechanisms for certification; the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an international organisation; disclosures not authorized by Union law; mutual assistance; joint operations; decisions under the consistency mechanism. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European

operations; decisions under the consistency mechanism. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers. In this context, the Commission should consider specific measures for micro, small and medium-sized enterprises.

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. In this context, the Commission should consider specific measures for micro, small and medium-sized enterprises.

Amendment 46

Proposal for a regulation Recital 131

Text proposed by the Commission

(131) The examination procedure should be used for the adoption of specifying standard forms in relation to the consent of a child; standard procedures and forms for exercising the rights of data subjects; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access; ***the right to data portability***; standard forms in relation to the responsibility of the controller ***to data protection by design and by default and to the documentation***; specific requirements for the security of processing; the standard format and the procedures for the notification of a personal data breach to the supervisory authority and the communication of a personal data breach to the data subject; standards and procedures for a data protection impact assessment; forms and procedures for prior authorisation and prior consultation; technical standards and mechanisms for certification; ***the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an international***

Amendment

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

organisation; disclosures not authorized by Union law; mutual assistance; joint operations; decisions under the consistency mechanism, given that those acts are of general scope.

Amendment 47

Proposal for a regulation Recital 139

Text proposed by the Commission

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

Amendment

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

Amendment 48

Proposal for a regulation Article 2 – paragraph 2 – point b

Text proposed by the Commission

(b) by the Union institutions, bodies,

Amendment

deleted

offices and agencies;

Justification

To ensure citizens' trust, all sectors must protect data equally well. If data breaches in the public sector create mistrust among citizens this will have a negative effect on the private sector's ICT activities and vice versa. This also holds true concerning the Union institutions.

Amendment 49

Proposal for a regulation

Article 2 – paragraph 2 – point d

Text proposed by the Commission

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

Amendment

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

Justification

The scope of this exemption should be clarified, particularly in view of the development of social networks which make it possible to share information with hundreds of people. In its judgments in Cases C-101/01 and C-73/07, the CJEU advocates accessibility 'by an indefinite number of people' as a criterion for application of this exemption. The EDPS shares that view.

Amendment 50

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(da) which have been rendered anonymous within the meaning of Article 4(2a);

Justification

Clarification in the body of the text of recital 23, which refers to cases where data has been rendered anonymous and to which this Directive need not apply.

Amendment 51

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(ea) in areas covered by Articles 153, 154 and 155 of the Treaty of the Functioning of the European Union (TFEU) regarding regulation of recruitment and conclusion and compliance of collective agreements.

Amendment 52

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(eb) of a natural person which are made public in the course of exercising professional duties such as name, contact details and function;

Amendment 53

Proposal for a regulation

Article 2 – paragraph 3

Text proposed by the Commission

Amendment

3. This Regulation shall be without prejudice to the application of Directive 2000/31/EC, in particular of the liability rules of intermediary service providers in Articles 12 to 15 of that Directive.

3. This Regulation shall be without prejudice to the application of Directive 2000/31/EC, in particular of the liability rules of intermediary service providers in Articles 12 to 15 of that Directive, ***as well as to the specific provisions of Union law or law of Member States related to processing of data, especially with regard to legally protected interests, when they provide for a stricter protection than the provisions of this regulation;***

Amendment 54

Proposal for a regulation
Article 3 – paragraph 1

Text proposed by the Commission

1. This Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union.

Amendment

1. This Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union, ***whether the processing takes place in the Union or not.***

Amendment 55
Proposal for a regulation
Article 3 – paragraph 2 – point a

Text proposed by the Commission

(a) the offering of goods ***or*** services to such data subjects in the Union; ***or***

Amendment

(a) the offering of goods ***and*** services to such data subjects in the Union, ***including services provided without financial costs to the individual, or;***

Justification

This addition helps to clarify that the objective pursued is not relevant to the application of this Regulation, and that no-profit or free services shall have the same obligations of the other actors, if similar conditions apply.

Amendment 56

Proposal for a regulation
Article 3 – paragraph 2 – point b

Text proposed by the Commission

(b) ***the monitoring of their behaviour.***

Amendment

(b) ***monitoring the behaviour of such data subjects with a view to offering goods or services to them.***

Amendment 57

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

Text proposed by the Commission

Amendment

3a. This Regulation applies to the processing of personal data of data subjects not residing in the Union by a controller or processor established in the Union, through their economic activities in a third country(ies).

Justification

EU companies or employers should not be allowed illegally to access employees' personal data to then monitor their behaviour, blacklist them due to trade union affiliation, etc., whether the employee is based in the EU or not.

Amendment 58

Proposal for a regulation

Article 4 – 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 identifier*** 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, in particular by reference to an identification number ***or identifier***, location data or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person;

Justification

Adherence to the principle of technological neutrality.

Amendment 59

Proposal for a regulation

Article 4 – point 2 a (new)

Text proposed by the Commission

Amendment

(2a) 'anonymous data' means any personal data that has been collected, altered or otherwise processed in such a way that it can no longer be attributed to a data subject; anonymous data shall not be considered personal data.

Justification

Businesses should be incentivized to anonymise data, which will ultimately strengthen consumers' privacy protection. The changes aim at clarifying the meaning of anonymous data and, in line with recital 23, explicitly excluding such data from the scope of the Regulation. The definition has been taken from Article 3 point 6 of the German Federal Data Protection Act.

Amendment 60

Proposal for a regulation Article 4 – point 3 a (new)

Text proposed by the Commission

Amendment

(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 the natural person's performance at work, economic situation, location, health, personal preferences, reliability or behaviour;

Amendment 61

Proposal for a regulation Article 4 – point 3 b (new)

Text proposed by the Commission

Amendment

(3b) 'pseudonymous data' means any personal data that has been collected, altered or otherwise processed so that it of itself cannot be attributed to a data subject

without the use of additional data which is subject to separate and distinct technical and organisational controls to ensure such non attribution, or that such attribution would require a disproportionate amount of time, expense and effort

Justification

This is part of a package of amendments enabling the use of pseudonymous and anonymous data and will encourage good business practice safeguarding the interests of data subjects. Ensuring that personal data cannot be attributed to a data subject (since it cannot be related back to a data subject without use of additional data) helps to further promote business use of data while providing a high level of consumer protection.

Amendment 62

**Proposal for a regulation
Article 4 – point 5**

Text proposed by the Commission

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

Amendment

(5) ‘controller’ means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes of the processing of personal data; where the purposes 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;

Justification

With new technologies and services available such as cloud computing traditional division of entities involved in the processing of personal data may prove difficult, with the processor having in such cases significant influence over the way in which data are being processed. For this reason it seems reasonable to determine the controller as the entity, which decides over the purpose of processing personal data as determination of finality is the most important decision with the other factors serving as means to achieve it.

Amendment 63

Proposal for a regulation
Article 4 – point 8

Text proposed by the Commission

(8) ‘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 them being processed;

Amendment

(8) ‘the data subject's consent’ means any freely given indication **that must be specific, informed and as explicit as possible according to the context**, of his or her wishes by which the data subject, either by a statement or by a clear affirmative action, **explicitly whenever the data referred to in Article 9(1) are to be processed**, signifies agreement to personal data relating to them being processed;

Amendment 64

Proposal for a regulation
Article 4 – point 9

Text proposed by the Commission

(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;

Amendment

(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; **strongly encrypted data, where there is evidence that the encryption key has not been compromised fall outside this legislation**

Justification

Loss of data that has been encrypted with strong encryption and where the encryption key is not lost does not pose any risk of harm to the individual. The data can simply not be read. When data cannot be read it does not seem reasonable to treat them as stipulated in Articles 31 and 32. The notification does not give any privacy improvements to citizens in this situation.

Amendment 65

Proposal for a regulation
Article 4 – point 13

Text proposed by the Commission

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

Amendment

(13) ‘main establishment’ means *the location as designated by the undertaking or group of undertakings, whether controller or processor, subject to the consistency mechanism set out in Article 57, on the basis of, but not limited to, the following optional objective criteria:*

(a) the location of the European headquarters of a group of undertakings;

(b) the location of the entity within a group of undertakings with delegated data protection responsibilities;

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

(d) the location where effective and real management activities are exercised determining the data processing through stable arrangements.

The competent authority shall be informed by the undertaking or group of undertakings of the designation of the main establishment.

Justification

The proposed definition for ‘main establishment’ is too vague and provides too much room for diverging interpretation. It is necessary to have a uniform test for determining an organization’s “main establishment”, which can be applied to “undertakings/groups of undertakings” as the relevant reference point and based on a set of relevant objective criteria. These criteria are used to determine the appropriate DPA for BCRs and therefore are proven to be implementable.

Amendment 66

Proposal for a regulation Article 5 – point c

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 67

Proposal for a regulation Article 5 – point e

Text proposed by the Commission

(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the data will be processed solely for historical, statistical or scientific research purposes in accordance with the rules and conditions of **Article 83** and if a periodic review is carried out to assess the necessity to continue the storage;

Amendment

(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the data will be processed solely for historical, statistical or scientific research purposes in accordance with the rules and conditions of **Articles 81 and 83** and if a periodic review is carried out to assess the necessity to continue the storage;

Justification

It should also be possible to store personal data for longer periods for health purposes (Article 81) as well as for historical, statistical and scientific research purposes (Article 83), which is already referenced in the Commission's text. This will ensure that all relevant data is available to deliver the most appropriate care to the data subject.

Amendment 68

Proposal for a regulation

Article 6 – paragraph 1 – point c

Text proposed by the Commission

(c) processing is necessary for compliance with *a* legal obligation to which *the* controller is subject;

Amendment

(c) processing is necessary for compliance with *or to avoid breach of an EU or national* legal obligation *or legal right* to which *a* controller is subject *including the performance of a task carried out for assessing creditworthiness or for fraud prevention and detection purposes.*

Amendment 69

Proposal for a regulation

Article 6 – paragraph 1 – point e

Text proposed by the Commission

(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;

Amendment

(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller *or for the performance of a task carried out for assessing creditworthiness or for fraud prevention and detection purposes;*

Amendment 70

Proposal for a regulation

Article 6 – paragraph 1 – point f

Text proposed by the Commission

(f) processing is necessary for the purposes

Amendment

(f) processing is necessary for the purposes

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

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

Justification

This amendment seeks to regulate the situation when a third party has a legitimate interest to process data, in line with the current Directive 95/46/EC which recognizes the legitimate interest of a third party. This is for example the case in some Member States where the social partners regulate wages and other work conditions through collective agreements. Trade unions negotiate with employers to ensure a common set of rights that apply to all employees at a workplace, regardless of whether or not they are union members. In order for this system to function the unions must have the possibility to monitor the observance of collective agreements.

Amendment 71

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(fa) the data are collected from public registers, lists or documents accessible by everyone;

Amendment 72

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(fb) the processing of data, inter alia information of members of an organisation, which is done by the organisation in question in compliance with its statutory rules, is of outmost

importance for the data controller in voluntary membership based organisations;

Amendment 73

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(fc) processing is necessary for fraud detection and prevention purposes according to applicable financial regulation or established industry, or professional body, codes of practice;

Justification

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

Amendment 74

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(fd) the processing is necessary to defend an interest, collecting evidences as judicial proofs or file an action;

Amendment 75

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(fe) only pseudonymous data is processed.

Justification

This is part of a package of amendments enabling the use of pseudonymous and anonymous data and will encourage good business practice safeguarding the interests of data subjects. Ensuring that personal data cannot be attributed to a data subject (since it cannot be related back to a data subject without use of additional data) helps to further promote business use of data while providing a high level of consumer protection.

Amendment 76

Proposal for a regulation

Article 6 – paragraph 3 – subparagraph 2

Text proposed by the Commission

The law of the Member State must meet an objective of public interest or must be necessary to protect the rights and freedoms of others, ***respect the essence*** of the ***right to the protection of personal data*** and be proportionate to the legitimate aim pursued.

Amendment

The law of the Member State must meet an objective of public interest or must be necessary to protect the rights and freedoms of others. ***The law*** of the ***Member State must also respect this regulation and international treaties that the Member State has decided to follow. Finally the Member State is obliged to evaluate and decide if national legislation*** is proportionate to the legitimate aim pursued ***or if a legitimate aim could be achieved using less privacy invasive solutions.***

Justification

Article 6, paragraph 1, point e states that processing is lawful if: “processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller”. Seen in connection with paragraph 3, this leaves Member States a very wide margin for eroding citizens’ protection of data mentioned in this regulation using national legislation. The harmonisation among Member States will be under pressure because national interests will result in many different examples of legislation. Citizens’ data will be processed differently in the different countries.

Amendment 77

Proposal for a regulation

Article 6 – paragraph 4

Text proposed by the Commission

4. Where the purpose of further processing

Amendment

4. Where the purpose of further processing

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

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

Justification

Designing for consent in context and to ensure effective privacy experiences is in line with the objectives of proposals to recital 25.

Amendment 78 **Proposal for a regulation** **Article 6 – paragraph 5**

Text proposed by the Commission

Amendment

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

deleted

Justification

There is no need for further specifications.

Amendment 79 **Proposal for a regulation** **Article 7 – paragraph 1**

Text proposed by the Commission

Amendment

1. The controller shall bear the burden of proof for the data subject's consent to the processing of their personal data for specified purposes.

1. Where consent is required, the form of consent captured for the processing of a data subject's personal data shall be proportionate to the type of data processed, the purpose for the processing and any identified risks, as determined through a data protection impact

assessment.

Amendment 80

Proposal for a regulation Article 7 – paragraph 3

Text proposed by the Commission

3. The data subject shall have the right to withdraw his or her consent *at any time*. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal.

Amendment

3. The data subject shall have the right to withdraw his or her consent. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal *or in cases where a minimum mandatory term of storage is provided by a European or national law, or data are processed according to European and national regulatory provisions, or for anti-fraud or legal purposes. The data subject has to communicate his willingness to withdraw his or her consent to the processor.*

Amendment 81

Proposal for a regulation Article 7 – paragraph 4

Text proposed by the Commission

4. Consent shall not provide a legal basis for the processing, where there is a significant imbalance between the position of the data subject and the controller.

Amendment

deleted

Justification

Terminology such as 'significant imbalance' is likely to cause legal uncertainty. Furthermore, it is unnecessary because contract law, including consumer protection law, provides adequate safeguards against fraud, threats, unfair exploitation etc and those should apply also to agreements to process personal data.

Amendment 82

Proposal for a regulation
Article 7 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The execution of a contract or the provision of a service may not be made dependent on the consent to the processing or use of data that is not necessary for the execution of the contract or the provision of the service according to Article 6 (1) (b).

Amendment 83

Proposal for a regulation
Article 7 – paragraph 4 b (new)

Text proposed by the Commission

Amendment

4b. This article shall not apply where the data subject's consent is required by law.

Amendment 84

Proposal for a regulation
Article 7 – paragraph 4 c (new)

Text proposed by the Commission

Amendment

4c. Access to a given consent in regards to Article 6, paragraph 1 (a), as well as Article 9, paragraph 2 (a), can be limited in cases where internal rules of organisations regarding fraud and of crime prevention reasons, in accordance with legislation of the Member State, are enforced.

Amendment 85

Proposal for a regulation
Article 7 – paragraph 4 d (new)

Text proposed by the Commission

Amendment

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

Amendment 86

Proposal for a regulation Article 7 – paragraph 4 e (new)

Text proposed by the Commission

Amendment

4e. This provision shall not apply to the right of the employer to process data on the basis of consent by the employee nor the right of public authorities to process data on the basis of consent by the citizen.

Amendment 87

Proposal for a regulation Article 8 – paragraph 1

Text proposed by the Commission

Amendment

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

1. For the purposes of this Regulation, in relation to the offering of ***goods and*** services directly to a child, the processing of personal data of a child below the age of 13 years shall only be lawful if and to the extent that consent is given or authorised by the child's parent or custodian. The controller shall make reasonable efforts to obtain verifiable consent, taking into consideration available technology ***without causing unnecessary processing of personal data.***

Amendment 88

Proposal for a regulation
Article 8 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The information provided in order to express the consent should be given in a clear and age-appropriate language, in a way that would be easy to understand for the child above the age of 13;

Amendment 89

Proposal for a regulation
Article 8 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

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

Justification

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

Amendment 90

Proposal for a regulation
Article 9 – paragraph 1

Text proposed by the Commission

Amendment

1. The processing of personal data, revealing race or ethnic origin, political opinions, religion or beliefs, trade-union membership, and the processing of genetic data or data concerning health or sex life or

1. The processing of personal data, revealing race or ethnic origin, political opinions, religion or beliefs, trade-union membership ***and activities, significant social problems, private information*** and

criminal convictions or related security measures shall be prohibited.

the processing of genetic data or data concerning health or sex life or criminal convictions or related security measures shall be prohibited.

Justification

In Denmark the special categories of data that are demanded to be protected the most are more extensive than the regulation proposes. The result is that the regulation actually makes Danish citizens worse off than the current legislation. For this reason, I suggest that the special categories be expanded to include “significant social problems and private information”.

Amendment 91

Proposal for a regulation

Article 9 – paragraph 2 – point a

Text proposed by the Commission

(a) the data subject has given consent to the processing of those personal data, subject to the conditions laid down in Articles 7 and 8, except where Union law or Member State law provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject; or

Amendment

(a) the data subject has given consent to the processing of those personal data, subject to the conditions laid down in Articles 7 and 8, except where Union law or Member State law provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject. ***In particular, this would include safeguards to prevent the blacklisting of workers, for example in relation to their trade union activities or health and safety representative roles;*** or

Amendment 92

Proposal for a regulation

Article 9 – paragraph 2 – point b

Text proposed by the Commission

(b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller in the field of employment law in so far as it is authorised by Union law **or** Member State law providing for adequate safeguards; or

Amendment

(b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller in the field of employment law in so far as it is authorised by Union law, Member State law, ***or collective agreements on the labour market*** providing for adequate

safeguards; or

Amendment 93

Proposal for a regulation

Article 9 – paragraph 2 – point d

Text proposed by the Commission

(d) processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other non-profit-seeking body with a political, philosophical, religious or trade-union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the data are not disclosed outside that body without the consent of the data subjects; or

Amendment

(d) processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association, ***organizations on the labour market*** or any other non-profit-seeking body with a political, philosophical, religious or trade-union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the data are not disclosed outside that body without the consent of the data subjects; or

Amendment 94

Proposal for a regulation

Article 9 – paragraph 2 – point e

Text proposed by the Commission

(e) the processing relates to personal data which are manifestly made public by the data subject; or

Amendment

(e) the processing relates to personal data which are manifestly made public by the data subject ***or which are freely transferred to the controller on the initiative of data subject and which are processed for the specific purpose determined by data subject and in his interest***; or

Amendment 95

Proposal for a regulation

Article 9 – paragraph 2 – point j

Text proposed by the Commission

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

Amendment

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

Justification

It is important that the employers' organisations and employees' organisations (labour unions) can continue in the future to negotiate with each other and create collective agreements that are in accordance with national culture, tradition, competitiveness and economic situation.

Amendment 96

Proposal for a regulation

Article 9 – paragraph 2 – point j a (new)

Text proposed by the Commission

Amendment

(ja) processing of personal data concerning criminal convictions or related security measures is carried out in the context of databases which contain data on fraud committed against the credit institutions or members of other financial groups regulated by EU or national legislation and set up by financial institutions to prevent fraud; The restrictions on the processing of data relating to criminal convictions should not apply to data relating to criminal

offences.

Amendment 97

Proposal for a regulation Article 9 – paragraph 3

Text proposed by the Commission

Amendment

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

deleted

Amendment 98

Proposal for a regulation Article –11 (new)

Text proposed by the Commission

Amendment

Article -11

General principles for data subject rights

1. The basis of data protection are clear and unambiguous rights for the data subject with respect to the data controller. The provisions of this Regulation aim to strengthen, clarify, guarantee and where appropriate, codify, these rights.

2. Such rights include, inter alia, the provision of clear, easily understood information regarding the data controller's policies for data subject access, rectification and erasure to their data, the right to data portability and the right to object to profiling; that such rights in general must be exercised free of charge and that the data controller will undertake requests from the data subject within a reasonable period of time.

Amendment 99

Proposal for a regulation Article 11 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 100

Proposal for a regulation Article 11 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Information for data subjects shall be provided in a format offering data subjects the information needed to understand their position and make decisions in an appropriate way. Full information shall be available on request. Therefore the controller shall provide transparency in information and communication in his data protection policies through an easily understandable icon-based mode of description for the different steps of data-processing.

Amendment 101

Proposal for a regulation
Article 12 – paragraph 1

Text proposed by the Commission

1. The controller shall establish procedures for providing the information referred to in Article 14 and for the exercise of the rights of data subjects referred to in Article 13 and Articles 15 to 19. The controller shall provide in particular mechanisms for facilitating the request for the actions referred to in Article 13 and Articles 15 to 19. Where personal data are processed by automated means, the controller shall also provide means for requests to be made electronically.

Amendment

1. The controller shall establish procedures for providing the information referred to in Article 14 and for the exercise of the rights of data subjects referred to in Article 13 and Articles 15 to 19. The controller shall provide in particular mechanisms for facilitating the request for the actions referred to in Article 13 and Articles 15 to 19. Where personal data are processed by automated means, the controller shall also provide means for requests to be made electronically. ***The procedures referred to in this Article can be procedures already established by public authorities in the Member States provided that the procedures comply with the provisions of the Regulation.***

Amendment 102

Proposal for a regulation
Article 12 – paragraph 2

Text proposed by the Commission

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

Amendment

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

data subject.

data subject *or unless the controller has reason to believe that providing the information in electronic form would create a significant risk of fraud.*

Justification

Releasing certain data in electronic form such as credit files could result in modification or identity theft when provided to consumers. Release of data from credit reference agencies should be dependent upon authentication checks which satisfy criteria set out by the agency holding the data to prevent interception, misuse, fraudulent use or modification.

Amendment 103

Proposal for a regulation Article 12 – paragraph 4

Text proposed by the Commission

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

Amendment

4. The information and the actions taken on requests referred to in paragraph 1 shall be free of charge. Where requests are manifestly excessive, in particular because of their repetitive character, the controller may charge a *reasonable* fee for providing the information or taking the action requested. In that case, the controller shall bear the burden of proving the manifestly excessive character of the request.

Amendment 104

Proposal for a regulation Article 12 – paragraph 5

Text proposed by the Commission

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

Amendment

deleted

Justification

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

Amendment 105

**Proposal for a regulation
Article 12 – paragraph 6**

Text proposed by the Commission

Amendment

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

deleted

Justification

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

Amendment 106

**Proposal for a regulation
Article 13**

Text proposed by the Commission

Amendment

The controller shall communicate* any rectification or erasure carried out in accordance with Articles 16 and 17 to each recipient to whom the data have been disclosed, ***unless this proves impossible or involves a disproportionate effort.**

Any rectification or erasure carried out in accordance with Articles 16 and 17 ***is extended*** to each recipient to whom the data have been disclosed ***without the control of the data subject.***

Justification

Selling a database to a third party does not exempt the data controller from executing her

obligations. If, instead, the data subject has voluntarily or consciously transferred some information through the data controller, the latter does not bear further responsibility.

Amendment 107

Proposal for a regulation Article 14 a (new)

Text proposed by the Commission

Amendment

Article 14a

Verification of a data subject's identity

The controller must ensure that sufficient documentation for a data subject's identity has been received, when the data subject enforces the rights referred to in articles 14-19 in this regulation.

Justification

New rights for the citizens are introduced in this regulation. However, nowhere is it stated how the citizens should be made document their identities to enforce the rights. It is important that citizen's identity is documented and potentially challenged by the controller to make sure that no form of identity theft can occur.

Amendment 108

Proposal for a regulation Article 14 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. Where personal data relating to a data subject are collected, the controller shall provide the data subject with ***at least*** the following information:

1. Where personal data relating to a data subject are collected, the controller shall provide the data subject with the following information:

Amendment 109

Proposal for a regulation Article 14 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) the period for which the personal data

(c) ***the criteria and/or legal requirements***

will be stored;

for determining the period for which the personal data will be stored *for each purpose*;

Justification

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

Amendment 110

Proposal for a regulation

Article 14 – paragraph 1 – point h

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 111

Proposal for a regulation

Article 14 – paragraph 5 – point b

Text proposed by the Commission

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

Amendment

(b) the data are *meant to serve solely the purposes of art. 83, are* not collected from the data subject and the provision of such information proves impossible or would involve a disproportionate effort *and generate excessive administrative burden, especially when the processing is carried out by a SME as defined in EU recommendation 2003/361*; or

Justification

This provision emanates directly from art. 11(2) of the Directive 95/46/EC, but without this specification it would have resulted as a loophole in consumer protection. This amendment restores the match between the original intentions and the wording.

Amendment 112
Proposal for a regulation
Article 14 – paragraph 7

Text proposed by the Commission

Amendment

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria for categories of recipients referred to in point (f) of paragraph 1, the requirements for the notice of potential access referred to in point (g) of paragraph 1, the criteria for the further information necessary referred to in point (h) of paragraph 1 for specific sectors and situations, and the conditions and appropriate safeguards for the exceptions laid down in point (b) of paragraph 5. In doing so, the Commission shall take the appropriate measures for micro, small and medium-sized-enterprises. **deleted**

Justification

There is no need for such further specifications.

Amendment 113
Proposal for a regulation
Article 15 – paragraph 1 – subparagraph 2 (new)

Text proposed by the Commission

Amendment

On request, and free of charge, the data controller shall also provide a proof of the lawfulness of processing in a reasonable time.

Justification

If the data controller provides this proof directly to the data subject, the number of lawsuits should be reduced.

Amendment 114

Proposal for a regulation

Article 15 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The data subject shall have the right to obtain from the controller communication of the personal data undergoing processing **and profiling**. 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. ***The controller shall use all reasonable measures to verify the identity of a data subject requesting access to data.***

Justification

The right of access must never be abused, particularly when a request is made in electronic form. The controller must therefore verify the identity of the person requesting access and be able to prove that it acted with all due care.

Amendment 115

Proposal for a regulation

Article 15 – paragraph 3

Text proposed by the Commission

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the communication to the data subject of the content of the personal data referred to in point (g) of paragraph 1.

Amendment

deleted

Justification

This addition does not seem necessary.

Amendment 116

Proposal for a regulation

Article 15 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Subject to the necessary legal safeguards, especially in order to ensure that information are not used to take measures or decisions regarding specific persons, Member States can, in cases with no risk of violation of privacy, by law limit the rights following article 15 only if these rights are processed as part of scientific research in compliance with article 83 of this Regulation or only if these personal data are stored in the specific timeframe it takes to make statistics.

Justification

See Article 13, paragraph 2, of Directive 95/46/EC, OJ L 281/95.

Amendment 117

Proposal for a regulation

Article 16 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Paragraph 1 shall not apply to pseudonymous data.

Justification

This is part of a package of amendments enabling the use of pseudonymous and anonymous data and will encourage good business practice safeguarding the interests of data subjects. Ensuring that personal data cannot be attributed to a data subject (since it cannot be related back to a data subject without use of additional data) helps to further promote business use of data while providing a high level of consumer protection.

Amendment 118
Proposal for a regulation
Article 17 – title

Text proposed by the Commission

Amendment

Right to *be forgotten and to* erasure

Right to erasure

Justification

The title proposed by the Commission is misleading.

Amendment 119

Proposal for a regulation
Article 17 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) the data subject objects to the processing of personal data pursuant to Article 19;

(c) the data subject objects to the processing of personal data pursuant to Article 19, **and the objection is upheld**;

Justification

This amendment is designed to ensure that a data subject cannot simply make an objection under Article 19, therefore triggering the principle of the Right to be Forgotten, where the objection would be without merit.

Amendment 120
Proposal for a regulation
Article 17 – paragraph 2

Text proposed by the Commission

Amendment

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

2. Where the controller referred to in paragraph 1 has **transferred** the personal data, **or has made such data** public **without the consent of the data subject**, it shall take all reasonable steps, including technical measures, in relation to data for the publication of which the controller is responsible, to inform third parties which are processing such data, that a data subject requests them to erase any links to, or copy or replication of that personal data. **When**

personal data, the controller shall be considered responsible for that publication.

data has been transferred, the transferring controller shall inform these subsequent controllers that the data subject requests the deletion of the personal data, any links to, or copy or replication of that personal data. Where the controller has authorised a third party publication of personal data, the controller shall be considered responsible for that publication.

Justification

This provision targets particularly the transfer of data that are object of an erasure request. It must be clear that, if the data subject made them public, or instructed the controller to do so, or did it through the controller, the responsibility is still borne by the data subject. On the other side, the controller is responsible for applying this provision also to data that have been voluntarily transferred or released to third parties that have no relation with the data subject.

Amendment 121

Proposal for a regulation

Article 17 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The controller referred to in paragraph 1 shall inform the data subject, where possible, of the action taken in response to their request by the third parties referred to in paragraph 2.

Justification

The rights of data subjects must be reinforced. Article 17(2) imposes an obligation of responsibility on the controller. This must be accompanied at the very least by a duty to inform regarding the action taken by third parties processing the personal data in question.

Amendment 122

Proposal for a regulation

Article 17 – paragraph 3 – points e a and e b (new)

Text proposed by the Commission

Amendment

(ea) for prevention or detection of fraud

or other financial crime, confirming identity, and/or determining creditworthiness,

(eb) for keeping documentary evidence of a given case history, when the data controller is a public authority.

Justification

It would not be appropriate for individuals to be able to delete data about themselves which is held for legitimate reasons in line with existing legislation.

Amendment 123

Proposal for a regulation

Article 17 – paragraph 9 – introductory part

Text proposed by the Commission

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

Amendment

The Commission shall be empowered to adopt delegated acts in accordance with Article 86, ***after requesting an opinion of the European Data Protection Board***, for the purpose of further specifying:

Amendment 124

Proposal for a regulation

Article 18 – paragraph 3

Text proposed by the Commission

3. The Commission may specify the electronic format referred to in paragraph 1 and the technical standards, modalities and procedures for the transmission of personal data pursuant to paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

Amendment

deleted

Justification

Once the format is portable, the market can provide it without the Commission's intervention

Amendment 125

Proposal for a regulation Article 19 – paragraph 1

Text proposed by the Commission

1. The data subject shall have the right to object, on grounds relating to their particular situation, at any time to the processing of personal data which is based on points (d), (e) and (f) of Article 6(1), unless the controller demonstrates **compelling** legitimate grounds for the processing which override the interests or fundamental rights and freedoms of the data subject.

Amendment

1. The data subject shall have the right to object, on grounds relating to their particular situation, at any time to the processing of personal data which is based on points (d), (e) and (f) of Article 6(1), unless the controller demonstrates legitimate grounds for the processing which override the interests or fundamental rights and freedoms of the data subject.

Justification

This amendment is designed to demonstrate that legitimate grounds should constitute sufficient grounds for processing, as per Article 6.

Amendment 126

Proposal for a regulation Article 19 – paragraph 2

Text proposed by the Commission

2. Where personal data are processed for direct marketing purposes, the data subject shall have the right to object free of charge to the processing of their personal data for such marketing. This right shall be explicitly offered to the data subject **in an intelligible manner** and shall be clearly distinguishable from other information.

Amendment

2. Where personal data are processed for direct marketing purposes, the data subject shall have the right to object free of charge to the processing of their personal data for such marketing. This right shall be explicitly offered **in a manner intelligible to** the data subject and shall be clearly distinguishable from other information.

Amendment 127

Proposal for a regulation Article 19 – paragraph 3

Text proposed by the Commission

Amendment

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

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

Amendment 128

Proposal for a regulation

Article 19 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Where pseudonymous data are processed based on Article 6(1)(g), the data subject shall have the right to object free of charge to the processing. This right shall be explicitly offered to the data subject in an intelligible manner and shall be clearly distinguishable from other information.

Justification

This is part of a package of amendments enabling the use of pseudonymous and anonymous data and will encourage good business practice safeguarding the interests of data subjects. Ensuring that personal data cannot be attributed to a data subject (since it cannot be related back to a data subject without use of additional data) helps to further promote business use of data while providing a high level of consumer protection.

Amendment 129

Proposal for a regulation

Article 20 – title

Text proposed by the Commission

Amendment

Measures based on ***profiling***

Measures based on ***automated processing***

Justification

Article 20 concerns automated processing rather than profiling. The title of this article should therefore be amended to “Measures based on automated processing”.

Amendment 130

Proposal for a regulation Article 20 – paragraph 1

Text proposed by the Commission

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

Amendment

1. A **data subject** shall **not** be subject to a **decision** which **is unfair or discriminatory**, and which is based solely on automated processing intended to evaluate certain personal aspects relating to this **data subject**.

Justification

Article 20 in its current form does not recognise the positive uses of profiling nor does it take into account the varying levels of risk or impact on the privacy of the individuals associated with profiling. By focusing on techniques which are either "unfair" or "discriminatory" as defined in Directive 2005/29/EC the approach in this proposal is more technologically neutral and focuses on the negative uses of profiling techniques rather than the technology itself.

Amendment 131

Proposal for a regulation Article 20 – paragraph 2

Text proposed by the Commission

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

(a) is carried out in the course of the entering into, or performance of, a contract, where the request for the entering into or the performance of the contract, lodged by the data subject, has

Amendment

deleted

been satisfied or where suitable measures to safeguard the data subject's legitimate interests have been adduced, such as the right to obtain human intervention; or

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

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

Justification

Deletion following proposed amendment to paragraph 1.

Amendment 132

**Proposal for a regulation
Article 20 – paragraph 3**

Text proposed by the Commission

Amendment

3. Automated processing of personal data intended to evaluate certain personal aspects relating to a natural person shall not be based solely on the special categories of personal data referred to in Article 9.

3. Automated processing of personal data intended to evaluate certain personal aspects relating to a natural person shall not be based solely on the special categories of personal data referred to in Articles **8 and 9**.

Justification

Deletion following proposed amendment to paragraph 1.

Amendment 133

**Proposal for a regulation
Article 20 – paragraph 4**

Text proposed by the Commission

Amendment

4. In the cases referred to in paragraph 2, the information to be provided by the controller under Article 14 shall include information as to the existence of

deleted

processing for a measure of the kind referred to in paragraph 1 and the envisaged effects of such processing on the data subject..

Amendment 134

Proposal for a regulation Article 20 – paragraph 5

Text proposed by the Commission

Amendment

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

deleted

Amendment 135

Proposal for a regulation Article 21 – paragraph 2

Text proposed by the Commission

Amendment

2. In particular, any legislative measure referred to in paragraph 1 shall contain specific provisions at least as to the objectives to be pursued by the processing and the determination of the controller.

2. In particular, any legislative measure referred to in paragraph 1 shall contain specific provisions at least as to ***the aim of the processing***, the objectives to be pursued by the processing and the determination of the controller.

Justification

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

Amendment 136

Proposal for a regulation Article 22 – title

Text proposed by the Commission

Amendment

Responsibility of the controller

Overall principle of responsibility of the controller.

Justification

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

Amendment 137

Proposal for a regulation

Article 22 – paragraph 4

Text proposed by the Commission

Amendment

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

deleted

Justification

The text is already clear enough, and no further specification seems necessary.

Amendment 138

Proposal for a regulation

Article 23 – paragraph 1

Text proposed by the Commission

Amendment

1. Having regard to the state of the art and the cost of implementation, the controller shall, both at the time of the determination of the means for processing

1. Where required, mandatory measures may be adopted to ensure that categories of goods or services are designed and have default settings meeting the

and at the time of the processing itself, implement appropriate technical and organisational measures and procedures in such a way that the processing will meet the requirements of this Regulation and ensure the protection of the rights of the data subject.

requirements of this Regulation relating to the protection of individuals with regard to the processing of personal data. Such measures shall be based on standardisation pursuant to [Regulation .../2012 of the European Parliament and of the Council on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Decision 87/95/EEC and Decision No 1673/2006/EC].

Justification

This is part of a package of amendments aimed at recognising that, while data protection by design and default is a commendable concept, the Commission's proposal does not achieve sufficient certainty while creating a risk for possible restrictions on free movement. Therefore, the established mechanism of using standardisation, as compiled in the 'Standardisation Package', should be used to harmonise the applicable requirements and enabling free movement instead.

Amendment 139

Proposal for a regulation Article 23 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Ia. Anonymisation or pseudonymisation of personal data should be applied by the data processor where feasible and proportionate according to the purpose of processing.

Amendment 140

Proposal for a regulation Article 23 – paragraph 2

Text proposed by the Commission

Amendment

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

2. Until such time as mandatory measures have been adopted pursuant to paragraph 1, Member States shall ensure that no mandatory design or default requirements are imposed on goods or services relating to the protection of individuals with regard to the processing of personal data which could impede the placing of equipment on the market and the free circulation of such goods and services in and between Member States.

Justification

This is part of a package of amendments aimed at recognising that, while data protection by design and default is a commendable concept, the Commission's proposal does not achieve sufficient certainty while creating a risk for possible restrictions on free movement. Therefore, the established mechanism of using standardisation to harmonise the applicable requirements and enabling free movement should be used instead.

Amendment 141

Proposal for a regulation Article 23 – paragraph 3

Text proposed by the Commission

Amendment

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

deleted

Justification

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

authorities and the European Data Protection Board are better placed to resolve any difficulties which might arise.

Amendment 142

Proposal for a regulation Article 23 – paragraph 4

Text proposed by the Commission

Amendment

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

Justification

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

Amendment 143

Proposal for a regulation Article 24

Text proposed by the Commission

Amendment

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

Where a controller determines the purposes, conditions and means of the processing of personal data jointly with others, the joint controllers shall determine their respective responsibilities for compliance with the obligations under this Regulation, in particular as regards the procedures and mechanisms for exercising the rights of the data subject, by means of an arrangement between them. ***Where such determination is lacking or is not sufficiently clear, the data subject can exercise his rights with any of the controllers and they shall be equally liable.***

Justification

This amendment gives the data subject more protection in this specific case.

Amendment 144

Proposal for a regulation Article 26 – paragraph 1

Text proposed by the Commission

1. Where a processing operation is to be 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 this Regulation and ensure the protection of the rights of the data subject, in particular in respect of the technical security measures and organizational measures governing the processing to be carried out and shall ensure compliance with those measures.

Amendment

1. Where a processing operation is to be carried out on behalf of a controller ***and which involves the processing of data that would permit the processor to reasonably identify the data subject***, 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 this Regulation and ensure the protection of the rights of the data subject, in particular in respect of the technical security measures and organizational measures governing the processing to be carried out and shall ensure compliance with those measures. ***The controller remains solely responsible for ensuring compliance with the requirements of this Regulation.***

Justification

Where, due to proper anonymisation techniques, it is technically not feasible for the processor to identify a data subject, Article 26 shall not apply. The lessening of administrative burdens will incentivize investment in effective anonymisation technology and use of strong system of restricted access. The basic principle according to which primary and direct responsibility and liability for processing is incumbent upon the controller should be clearly stated in this Article.

Amendment 145

Proposal for a regulation Article 26 – paragraph 2 – point d

Text proposed by the Commission

Amendment

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

Justification

The requirement to obtain prior authorization from the controller for the processor to enlist sub-processors imposes burdens with no clear benefit in terms of enhanced data protection. Also, it is not workable particularly in the cloud context and especially if interpreted to require prior authorization to use specific sub-processors. This requirement should be removed.

Amendment 146

Proposal for a regulation

Article 26 – paragraph 2 – point h a (new)

Text proposed by the Commission

Amendment

(ha) When a processor is processing data on behalf of the controller, the processor must implement privacy by design and privacy by default.

Amendment 147

Proposal for a regulation

Article 26 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The controller is deemed to have fulfilled the obligations set out in paragraph 1 when choosing a processor who has voluntarily self-certified or voluntarily obtained a certification, seal or mark pursuant to Articles 38 or 39 of this Regulation showing the implementation of appropriate standard technical and organizational measures in response to the requirements set out in this Regulation.

Justification

The Regulation should offer clear incentives to controllers and processors to invest in security and privacy enhancing measures. Where controllers and processors propose additional safeguards to protect data, which are in line with or go beyond accepted industry standards and who can demonstrate this via conclusive certificates they should benefit from less prescriptive requirements. In particular this would allow for flexibility and a reduced burden for cloud providers and cloud customers,

Amendment 148 **Proposal for a regulation** **Article 26 – paragraph 5**

Text proposed by the Commission

Amendment

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the responsibilities, duties and tasks in relation to a processor in line with paragraph 1, and conditions which allow facilitating the processing of personal data within a group of undertakings, in particular for the purposes of control and reporting.

deleted

Justification

These specifications are not necessary. The intra-group transfers are already considered in another part of the present proposal.

Amendment 149

Proposal for a regulation **Article 28 – paragraph 1**

Text proposed by the Commission

Amendment

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

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

Justification

Effective data protection requires organisations to have a sufficiently documented understanding of their data processing activities. However, the maintenance of documentation for all processing operations is disproportionately burdensome. Instead of satisfying bureaucratic needs, the aim of the documentation should be to help controllers and processors meet their obligations.

Amendment 150

Proposal for a regulation

Article 28 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

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

2. The documentation shall contain the following information:

Justification

The list of information contained in the documentation must be exhaustive in order to guarantee legal certainty.

Amendment 151

Proposal for a regulation

Article 28 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) the purposes of **the** processing, **including the legitimate interests pursued by the controller where the processing is based on point (f) of Article 6(1);**

(c) the **generic** purposes of processing.

Justification

This amendment helps to reduce administrative burdens on both data controllers and data processors.

Amendment 152

Proposal for a regulation

Article 28 – paragraph 2 – point d

Text proposed by the Commission

Amendment

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

Justification

The regulation has two aims: to ensure a high degree of protection for personal data and to reduce the administrative burden generated by rules on data protection. The obligation imposed on the controller and processor by Article 28(2)(h) is sufficient to achieve these aims.

Amendment 153

Proposal for a regulation Article 28 – paragraph 2 – point e

Text proposed by the Commission

Amendment

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

Justification

The regulation has two aims: to ensure a high degree of protection for personal data and to reduce the administrative burden generated by rules on data protection. The obligation imposed on the controller and processor by Article 28(2)(h) is sufficient to achieve these aims.

Amendment 154

Proposal for a regulation Article 28 – paragraph 2 – point f

Text proposed by the Commission

Amendment

(f) where applicable, transfers of data to a third country or an international organisation, including the identification of that third country or international organisation and, in case of transfers

(f) where applicable, transfers of **personal** data to a third country or an international organisation **and** in case of transfers referred to in point (h) of Article 44(1), a **reference to the** safeguards **employed**;

referred to in point (h) of Article 44(1), **the documentation of appropriate** safeguards;

Justification

This amendment helps to reduce administrative burdens on both data controllers and data processors.

Amendment 155

**Proposal for a regulation
Article 28 – paragraph 2 – point g**

Text proposed by the Commission

Amendment

(g) a general indication of the time limits for erasure of the different categories of data; **deleted**

Justification

The regulation has two aims: to ensure a high degree of protection for personal data and to reduce the administrative burden generated by rules on data protection. The obligation imposed on the controller and processor by Article 28(2)(h) is sufficient to achieve these aims.

Amendment 156

**Proposal for a regulation
Article 28 – paragraph 3**

Text proposed by the Commission

Amendment

3. The controller and the processor and, if any, the controller's representative, shall make the documentation available, on request, to the supervisory authority.

3. The controller and the processor and, if any, the controller's representative, shall make the documentation available, on request, to the supervisory authority **and, in an electronic format, to the data subject.**

Justification

The privacy policy should be made available to the data subject as well as to the supervisory authority.

Amendment 157

Proposal for a regulation
Article 28 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. a public authority when dealing with data other than personal sensitive data as referred to in Article 9, paragraph 1, of this Regulation.

Amendment 158
Proposal for a regulation
Article 28 – paragraph 5

Text proposed by the Commission

Amendment

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

deleted

Justification

There is no need for such further specification.

Amendment 159

Proposal for a regulation
Article 28 – paragraph 6

Text proposed by the Commission

Amendment

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

deleted

Amendment 160

Proposal for a regulation
Article 30 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for the technical and organisational measures referred to in paragraphs 1 and 2, including the determinations of what constitutes the state of the art, for specific sectors and in specific data processing situations, in particular taking account of developments in technology and solutions for privacy by design and data protection by default, unless paragraph 4 applies.

deleted

Amendment 161

Proposal for a regulation
Article 30 – paragraph 4

Text proposed by the Commission

Amendment

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

deleted

(a) prevent any unauthorised access to personal data;

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

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

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

Amendment 162
Proposal for a regulation
Article 31 – paragraph 1

Text proposed by the Commission

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

Amendment

1. In the case of a personal data breach, *which would have a significantly adverse impact on the protection of the personal data or privacy of the data subject*, the controller shall without undue delay notify the personal data breach to the supervisory authority.

Justification

After a data breach, the priority should be to take appropriate measures meant to reduce the damages. An explicit deadline shifts the priority to the notification.

Amendment 163

Proposal for a regulation
Article 31 – paragraph 3 – introductory part

Text proposed by the Commission

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

Amendment

3. The notification referred to in paragraph 1 must *if possible*:

Amendment 164
Proposal for a regulation
Article 31 – paragraph 4

Text proposed by the Commission

4. The controller shall document 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

Amendment

4. The controller shall document 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 *and with Article 30*. The documentation shall only include the

purpose.

information necessary for that purpose.

Justification

The data controller must prove that he has taken any reasonably possible measure to avoid data breaches, besides showing he has managed correctly the breaches occurred.

Amendment 165
Proposal for a regulation
Article 31 – paragraph 5

Text proposed by the Commission

Amendment

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for establishing the data breach referred to in paragraphs 1 and 2 and for the particular circumstances in which a controller and a processor is required to notify the personal data breach. **deleted**

Justification

There is no need for such further specification.

Amendment 166
Proposal for a regulation
Article 31 – paragraph 6

Text proposed by the Commission

Amendment

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 87(2). **deleted**

Amendment 167
Proposal for a regulation
Article 32 – paragraph 1

Text proposed by the Commission

1. 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 31, communicate the personal data breach to the data subject without undue delay.

Amendment

1. When the personal data breach is likely to **have a significantly adverse impact on** the protection of the personal data or privacy of the data subject, **for example identity theft or fraud, physical harm, significant humiliation or damage to the reputation,** the controller shall, after the notification referred to in Article 31, communicate the personal data breach to the data subject **in a clear and concise manner and** without undue delay.

Justification

There are cases where the cooperation of the data subject is fundamental to reduce the adverse effects of the data breach. For instance, if credit card numbers are stolen, the data subject is the only one empowered to separate due payments from undue ones. Therefore, his cooperation is even more important than the notification to the Authority. Adding such cases, and giving them the priority, becomes then very important.

Amendment 168
Proposal for a regulation
Article 32 – paragraph 2

Text proposed by the Commission

2. The communication to the data subject referred to in paragraph 1 shall describe the nature of the personal data breach and contain at least the information and the recommendations provided for in points (b) and (c) of Article 31(3).

Amendment

2. The communication to the data subject referred to in paragraph 1 shall describe the nature of the personal data breach and contain at least the information and the recommendations provided for in points (b), (c) and (d) of Article 31(3).

Amendment 169
Proposal for a regulation
Article 32 – paragraph 3

Text proposed by the Commission

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 data concerned by the personal data breach. Such technological protection measures shall render the data unintelligible to any person who is not authorised to access it.

Amendment

3. The communication of a personal data breach to the data subject shall not be required if the ***data breach does not have significant risk of harm to citizens and 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 data concerned by the personal data breach. Such technological protection measures shall render the data unintelligible to any person who is not authorised to access it.

Amendment 170
Proposal for a regulation
Article 32 – paragraph 5

Text proposed by the Commission

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements as to the circumstances in which a personal data breach is likely to adversely affect the personal data referred to in paragraph 1.

Amendment

deleted

Justification

In the Impact Assessment, the Data Protection Authority has all the information it needs to judge whether the consequences of a data breach are likely to have an adverse effect on the personal data or privacy of the data subject.

Amendment 171

Proposal for a regulation
Article 32 – paragraph 6

Text proposed by the Commission

6. The Commission may lay down the

Amendment

deleted

format of the communication to the data subject referred to in paragraph 1 and the procedures applicable to that communication. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

Amendment 172

Proposal for a regulation Article 33 – paragraph 1

Text proposed by the Commission

1. Where processing operations present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, the controller or the processor acting on the controller's behalf shall carry out an assessment of the impact of the envisaged processing operations on the protection of personal data.

Amendment

1. Where processing operations present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, ***or where processing takes place as a public sector infrastructure project*** the controller or the processor acting on the controller's behalf shall carry out an assessment of the impact of the envisaged processing operations on the protection of personal data.

Amendment 173

Proposal for a regulation Article 33 – paragraph 2 – introductory part

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 174

Proposal for a regulation
Article 33 – paragraph 2 – point b

Text proposed by the Commission

(b) information on sex life, health, race and ethnic origin or for the provision of health care, epidemiological researches, or surveys of mental or infectious diseases, where the data are processed for taking measures or decisions regarding specific individuals on a large scale;

Amendment

(b) information on sex life, health, ***political opinions, religious beliefs, criminal convictions***, race and ethnic origin or for the provision of health care, epidemiological researches, or surveys of mental or infectious diseases, where the data are processed for taking measures or decisions regarding specific individuals on a large scale;

Amendment 175

Proposal for a regulation
Article 33 – paragraph 3

Text proposed by the Commission

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

Amendment

3. The assessment shall contain at least a general description of the envisaged processing operations, an assessment of the risks to the rights and freedoms of data subjects, the measures envisaged to address the risks, safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Regulation, taking into account the rights and legitimate interests of data subjects and other persons concerned ***and also taking into account modern technologies and methods that can improve citizens' privacy.***

Amendment 176

Proposal for a regulation
Article 33 – paragraph 4

Text proposed by the Commission

4. The controller shall seek the views of data subjects or their representatives on

Amendment

deleted

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

Justification

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

Amendment 177

**Proposal for a regulation
Article 33 – paragraph 5**

Text proposed by the Commission

Amendment

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

deleted

Amendment 178

**Proposal for a regulation
Article 33 – paragraph 7**

Text proposed by the Commission

Amendment

7. The Commission may specify standards and procedures for carrying out and verifying and auditing the assessment referred to in paragraph 3. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

deleted

Amendment 179

Proposal for a regulation
Article 34 – paragraph 8

Text proposed by the Commission

Amendment

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

Amendment 180

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

Text proposed by the Commission

Amendment

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

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

Justification

The appointment of a DPO should not be encouraged but not mandatory, to ensure this would generate disproportionate financial and administrative obligations on organisations whose activities do not present a substantial risk to the privacy of the data subject. This AM is linked to ECR AMs to Article 79, which ensure DPAs take into consideration the presence, or lack, of a DPO when deciding upon administrative sanctions and empowers DPAs to appoint DPOs as form of administrative sanction.

Amendment 181

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

Text proposed by the Commission

Amendment

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

Amendment 182
Proposal for a regulation
Article 35 – paragraph 2

Text proposed by the Commission

Amendment

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

Justification

After deleting point (b) of paragraph (1), this paragraph no longer makes any sense.

Amendment 183

Proposal for a regulation
Article 35 – paragraph 5

Text proposed by the Commission

Amendment

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

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

Amendment 184

Proposal for a regulation
Article 35 – paragraph 7

Text proposed by the Commission

Amendment

7. The controller or the processor shall designate a data protection officer for a

7. The controller or the processor shall designate a data protection officer for a

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

period of at least two years. The data protection officer may be reappointed for further terms.

Justification

Like all other personnel it should be possible to dismiss the DPO if he does not perform the tasks set up by management. It is management who decides if they are satisfied with the person they hired or not.

Amendment 185

Proposal for a regulation Article 35 – paragraph 10

Text proposed by the Commission

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

Amendment

10. Data subjects shall have the right to contact the data protection officer on all issues related to exercising the rights under this Regulation.

Amendment 186

Proposal for a regulation Article 35 – paragraph 11

Text proposed by the Commission

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

Amendment

deleted

Justification

Such further specifications are not necessary.

Amendment 187
Proposal for a regulation
Article 37 – paragraph 2

Text proposed by the Commission

Amendment

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

Justification

There is no need for such further specifications.

Amendment 188
Proposal for a regulation
Article 41 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) the rule of law, relevant legislation in force, both general and sectoral, including concerning public security, defence, national security and criminal law, the professional rules and 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;

(a) the rule of law, relevant legislation in force, both general and sectoral, including concerning public security, defence, national security and criminal law, the professional rules and 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;

Justification

In some countries, the precedent rulings of the Courts have a high relevance (e.g.: Common Law Countries).

Amendment 189
Proposal for a regulation
Article 41 – paragraph 7

Text proposed by the Commission

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 and international organisations where it has decided that an adequate level of protection is or is not ensured.

Amendment

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

Justification

The website makes it easier to update and, in many cases, to find.

Amendment 190

Proposal for a regulation
Article 42 – paragraph 1

Text proposed by the Commission

1. Where the Commission has taken no decision pursuant to Article 41, a controller or processor may transfer personal data to a third country or an international organisation only if the controller or processor has adduced appropriate safeguards with respect to the protection of personal data in a legally binding instrument.

Amendment

1. Where the Commission has taken no decision pursuant to Article 41, a controller or processor may transfer personal data to a third country or an international organisation only if the controller or processor has adduced appropriate safeguards with respect to the protection of personal data in a legally binding instrument, **and where appropriate pursuant to an impact assessment, where the controller or processor has ensured that the recipient of data in a third country maintains high standards of data protection.**

Justification

In accordance with ECR Amendments aimed at incentivising controllers to have high standards of data protection by encouraging them to undertake an impact assessment, on an

optional basis.

Amendment 191

Proposal for a regulation

Article 42 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(ca) standard data protection clauses, as adopted according to points (a) and (b), between the data controller or data processor and the recipient of data situated in a third country, which may include standard terms for onward transfers to a recipient situated in a third country;

Justification

The Parliament's policy department study on reforming the data protection package points out that under the proposed Regulation, standard clauses do not extend to agreements between processors and sub-processors. This gap could significantly disadvantage EU firms and new technology start-ups. This amendment seeks to close this gap.

Amendment 192

Proposal for a regulation

Article 44 – paragraph 1 – point h

Text proposed by the Commission

Amendment

(h) the transfer is necessary for the purposes of the legitimate interests pursued by the controller or the processor, which cannot be qualified as frequent or massive, and where the controller or processor has assessed all the circumstances surrounding the data transfer operation or the set of data transfer operations and based on this assessment adduced appropriate safeguards with respect to the protection of personal data, where necessary.

(h) the transfer is necessary for the purposes of the legitimate interests pursued by the controller or the processor, which cannot be qualified as frequent or massive ***or where, prior to such transfer, the personal data is already made public in the third country***, and where the controller or processor has assessed all the circumstances surrounding the data transfer operation or the set of data transfer operations and based on this assessment adduced appropriate safeguards with respect to the protection of personal data, where necessary.

Amendment 193

Proposal for a regulation Article 44 – paragraph 7

Text proposed by the Commission

Amendment

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

Amendment 194

Proposal for a regulation Article 62

Text proposed by the Commission

Amendment

Article 62

deleted

Implementing acts

1. The Commission may adopt implementing acts for:

(a) deciding on the correct application of this Regulation in accordance with its objectives and requirements in relation to matters communicated by supervisory authorities pursuant to Article 58 or 61, concerning a matter in relation to which a reasoned decision has been adopted pursuant to Article 60(1), or concerning a matter in relation to which a supervisory authority does not submit a draft measure and that supervisory authority has indicated that it does not intend to follow the opinion of the Commission adopted pursuant to Article 59;

(b) deciding, within the period referred to in Article 59(1), whether it declares draft standard data protection clauses referred

to in point (d) of Article 58(2), as having general validity;

(c) specifying the format and procedures for the application of the consistency mechanism referred to in this section;

(d) specifying the arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the European Data Protection Board, in particular the standardised format referred to in Article 58(5), (6) and (8).

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

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

3. The absence or adoption of a measure under this Section does not prejudice any other measure by the Commission under the Treaties.

Justification

It is not wise to overload the Commission with such tasks, which can be more effectively handled by the European Data Protection Board.

Amendment 195 Proposal for a regulation Article 63 a (new)

Text proposed by the Commission

Amendment

Article 63a

Appealing procedures

(1) Without prejudice to the competences of the European Court of Justice, the

European Data Protection Board can issue binding opinions if:

(a) a data subject or data controller appeals on ground of inconsistent application of the present Regulation across the Member States: or

(b) a draft measure of the competent authority has gone through the whole Consistency Mechanism described in this Section without being yet perceived as consistent with the application of this Regulation in the whole EU.

(2) Before issuing such opinion, the European Data Protection Board shall take into consideration every information the competent Data Protection Authority knows, including the point of view of the interested parties.

Justification

Notwithstanding the competence of the Data Protection Authority of the main establishment Country, an additional measure is needed to ensure consistency in the whole single market for the remote case of a measure so controversial that the whole consistency mechanism has failed to produce a wide consensus.

Amendment 196
Proposal for a regulation
Article 66 – paragraph 1 – point d

Text proposed by the Commission

(d) issue opinions on draft decisions of supervisory authorities pursuant to the consistency mechanism referred to in Article 57;

Amendment

(d) issue opinions on draft decisions of supervisory authorities pursuant to the consistency mechanism referred to in Article 57 **and in Article 63a**;

Justification

This amendment matches the new Article 63a

Amendment 197
Proposal for a regulation
Article 73 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 198

**Proposal for a regulation
Article 73 – paragraph 2**

Text proposed by the Commission

2. Any body, organisation or association which aims to protect data subjects' rights and interests concerning the protection of their personal data and has been properly constituted according to the law of a Member State shall have the right 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 Regulation have been infringed as a result of the processing of personal data.

Amendment

deleted

Amendment 199

**Proposal for a regulation
Article 74 – paragraph 1**

Text proposed by the Commission

1. ***Each*** natural or legal person shall have the right to a judicial remedy against decisions of a supervisory authority concerning them.

Amendment

1. ***Without prejudice to the procedure described in Article 63a (new), each*** natural or legal person, ***including each data controller and data processor,*** shall have the right to a judicial remedy against decisions of a supervisory authority

concerning *or affecting* them.

Justification

This amendment is essential to clarify the basic principle that data controllers may seek a judicial remedy when they are affected by decisions, even where they themselves are not the direct subject of the decision by a national authority.

Amendment 200

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

Text proposed by the Commission

Amendment

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

Justification

This possibility would bring no added value for the public and might jeopardise the cooperation of the supervisory authorities under the consistency mechanism.

Amendment 201

**Proposal for a regulation
Article 76 – paragraph 1**

Text proposed by the Commission

Amendment

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

Amendment 202

Proposal for a regulation
Article 77 – paragraph 1

Text proposed by the Commission

1. Any person who has suffered damage as a result of an unlawful processing operation or of an action incompatible with this Regulation shall have the right to receive compensation from the controller or the processor for the damage suffered.

Amendment

1. Any person who has suffered **material or immaterial** damage as a result of an unlawful processing operation, **including blacklisting**, or of an action incompatible with this Regulation shall have the right to receive compensation from the controller or the processor for the damage suffered **and for any emotional injury**.

Amendment 203
Proposal for a regulation
Article 78 – paragraph 1

Text proposed by the Commission

1. Member States shall lay down the rules on penalties, applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented, including where the controller did not comply with the obligation to designate a representative. The penalties provided for must be effective, proportionate and dissuasive.

Amendment

1. Member States shall lay down the rules on penalties, applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented, including where the controller did not comply with the obligation to designate a representative. The penalties provided for must be effective, **consistent** proportionate and dissuasive.

Justification

Penalties must be applied consistently throughout the European Union.

Amendment 204

Proposal for a regulation
Article 79 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 205

Proposal for a regulation Article 79 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The administrative sanction shall be in each individual case effective, proportionate, ***non discriminatory*** and dissuasive. The amount of the administrative fine shall be fixed with due regard to the nature, gravity and duration of the breach, the intentional or negligent character of the infringement, ***the particular category of personal data***, the degree of ***harm or risk of harm created by the violation***, ***the degree of*** responsibility of the natural or legal person and of previous breaches by this person, the technical and organisational measures and procedures implemented pursuant to Article 23 and the degree of co-operation with the supervisory authority in order to remedy the breach. ***Where appropriate, the Data Protection Authority shall also be empowered to require that a data protection officer is appointed if the body, organisation or association has opted not to do so.***

Justification

This AM aims to ensure that deliberate or reckless violations merit more substantial penalties than merely negligent violations. The package of amendments relating to administrative sanctions are aimed at ensuring that the penalty is proportionate to the conduct, and the most punitive sanctions are reserved for the most serious misconduct. The DPA's ability to require the appointment of a DPO is also aimed at ensuring proportionality in terms of sanctions.

Amendment 206

Proposal for a regulation Article 79 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Aggravating factors shall include in particular:

(a) repeated violations committed in reckless disregard of applicable law;

(b) refusal to co-operate with or obstruction of an enforcement process;

(c) violations that are deliberate, serious and likely to cause substantial damage;

(d) a data protection impact assessment has not been undertaken;

(e) a data protection officer has not been appointed.

Amendment 207

Proposal for a regulation Article 79 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Mitigating factors shall include:

(a) measures having been taken by the natural or legal person to ensure compliance with relevant obligations;

(b) genuine uncertainty as to whether the activity constituted a violation of the relevant obligations;

(c) immediate termination of the violation upon knowledge;

(d) co-operation with any enforcement processes;

(e) a data protection impact assessment has been undertaken;

(f) a data protection officer has been appointed.

Amendment 208

Proposal for a regulation
Article 79 – paragraph 4

Text proposed by the Commission

Amendment

4. The supervisory authority shall impose a fine up to 250 000 EUR, or in case of an enterprise up to 0,5 % of its annual worldwide turnover, to anyone who, intentionally or negligently: *deleted*

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

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

Justification

See Article 79, paragraph 3.

Amendment 209

Proposal for a regulation
Article 79 – paragraph 5

Text proposed by the Commission

Amendment

5. The supervisory authority shall impose a fine up to 500 000 EUR, or in case of an enterprise up to 1 % of its annual worldwide turnover, to anyone who, intentionally or negligently: *deleted*

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

(b) does not provide access for the data subject or does not rectify personal data pursuant to Articles 15 and 16 or does not communicate the relevant information to

a recipient pursuant to Article 13;

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

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

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

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

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

Justification

See Article 79, paragraph 3.

Amendment 210

**Proposal for a regulation
Article 79 – paragraph 6**

Text proposed by the Commission

Amendment

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

deleted

intentionally or negligently:

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

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

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

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

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

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

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

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

(i) does not carry out a data protection impact assessment pursuant or processes personal data without prior authorisation or prior consultation of the supervisory authority pursuant to Articles 33 and 34;

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

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

(l) carries out or instructs a data transfer to a third country or an international organisation that is not allowed by an adequacy decision or by appropriate

Text proposed by the Commission

Amendment

1. Within the limits of this Regulation and in accordance with point (h) of Article 9(2), processing of personal data concerning health must be on the basis of Union law or Member State law which shall provide for suitable and specific measures to safeguard the data subject's legitimate interests, and be necessary for:

1. Within the limits of this Regulation and in accordance with point (h) of Article 9(2), processing of personal data concerning health must be on the basis of Union law or Member State law which shall provide for suitable, **consistent** and specific measures to safeguard the data subject's legitimate interests, and be necessary for:

Justification

Adding the consistency requirement allows the Member States' laws to have a lesser degree of freedom, bearing in mind the objective of the Single Market.

Amendment 213
Proposal for a regulation
Article 81 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying other reasons of public interest in the area of public health as referred to in point (b) of paragraph 1, as well as criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1.

deleted

Justification

There is no need for such further specifications.

Amendment 214

Proposal for a regulation
Article 82 – paragraph 1

Text proposed by the Commission

1. Within the limits of this Regulation, Member States may adopt by law specific rules regulating the processing of employees' personal data in the employment context, in particular for the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organisation of work, health and safety at work, and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship.

Amendment

1. Within the limits of this Regulation, Member States may adopt by law **or collective agreement among employers and employees** specific rules regulating the processing of employees' personal data in the employment context, in particular for the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organisation of work, health and safety at work, **criminal conviction** and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship. ***This Regulation must, in accordance with the principles of Article 5, respect collective agreements regarding decentralized regulation of the employer's data processing concluded in accordance with this Regulation.***

Amendment 215

**Proposal for a regulation
Article 82 – paragraph 3**

Text proposed by the Commission

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

Amendment

3. This regulation recognizes the role of the social partners. In Member States where it has been left to the parties on the labour market to regulate wages and other work conditions through collective agreements, the social partners' obligations and rights under collective agreements should be taken into specific consideration when applying Article 6.1 (f).

Amendment 216
Proposal for a regulation
Article 83 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the processing of personal data for the purposes referred to in paragraph 1 and 2 as well as any necessary limitations on the rights of information to and access by the data subject and detailing the conditions and safeguards for the rights of the data subject under these circumstances.

deleted

Justification

There is no need for such further specifications.

Amendment 217

Proposal for a regulation
Article 83 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States can adopt specific measures to regulate the processing of personal data for historical, statistical or scientific purposes while respecting the provisions of paragraph 1 and 2 of this article as well as respecting the Charter of Fundamental Rights of the European Union.

Amendment 218

Proposal for a regulation
Article 83 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. A Member State adopting specific

measures according to article 83, paragraph 3a, must inform the Commission about the adopted measures prior to the date set in article 91, paragraph 2, and without undue delay inform the Commission about eventual changes at a later stage of the measures.

Amendment 219
Proposal for a regulation
Article 84 – paragraph 2

Text proposed by the Commission

2. Each Member State shall notify to the Commission the rules adopted pursuant to paragraph 1, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.

Amendment

2. Each Member State shall notify to the Commission the rules adopted pursuant to paragraph 1, ***in order for the Commission to verify the consistency with the other Member States rules***, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.

Justification

The Single market needs consistent application of the present Regulation.

Amendment 220
Proposal for a regulation
Article 86 – paragraph 2

Text proposed by the Commission

2. The delegation of power referred to in Article **6(5)**, **Article 8(3)**, Article 9(3), Article 12(5), Article **14(7)**, **Article 15(3)**, **Article 17(9)**, **Article 20(6)**, **Article 22(4)**, Article 23(3), Article **26(5)**, **Article 28(5)**, **Article 30(3)**, Article **31(5)**, **Article 32(5)**, **Article 33(6)**, Article 34(8), Article **35(11)**, **Article 37(2)**, **Article 39(2)**, Article 43(3), Article 44(7), Article 79(6), **Article 81(3)**, **Article 82(3)** and Article 83(3) shall be conferred on the Commission for an indeterminate period of time from the date

Amendment

2. The delegation of power referred to in Article 8(3), Article 9(3), Article 12(5), Article **20(5)**, Article 23(3), Article 30(3), Article **33(6)**, Article 34(8), Article 39(2), Article 43(3), Article 44(7), Article 79(7) and Article **82(3)** shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

of entry into force of this Regulation.

Justification

It is necessary to match the amendments that deleted such power. Where there has been a correction of the paragraph referred to, a typing error had been found.

Amendment 221
Proposal for a regulation
Article 86 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Justification

This amendment completes the ones deleting this power. Where the referred Article has been amended, a typing mistake had been found.

Amendment 222
Proposal for a regulation
Article 86 – paragraph 5

Text proposed by the Commission

5. A delegated act adopted pursuant to

Amendment

5. A delegated act adopted pursuant to

Article **6(5)**, **Article 8(3)**, Article 9(3), Article 12(5), Article **14(7)**, **Article 15(3)**, **Article 17(9)**, **Article 20(6)**, **Article 22(4)**, Article 23(3), Article **26(5)**, **Article 28(5)**, **Article 30(3)**, Article **31(5)**, **Article 32(5)**, **Article 33(6)**, Article 34(8), Article **35(11)**, **Article 37(2)**, **Article 39(2)**, Article 43(3), Article 44(7), Article 79(6), **Article 81(3)**, Article **82(3)** **and Article 83(3)** shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

Article 8(3), Article 9(3), Article 12(5), Article **20(5)**, Article 23(3), Article 30(3), Article 33(6), Article 34(8), Article 39(2), Article 43(3), Article 44(7), Article 79(7), **and Article 82(3)** shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

Justification

This amendment is necessary to make effective those amendments that deleted the power referred to at the beginning of this article.

Amendment 223

Proposal for a regulation

Article 86 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. When adopting the acts referred to in this article, the Commission shall promote technological neutrality.

Amendment 224

Proposal for a regulation

Article 89 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. In relation to natural or legal persons who are under obligations to report

personal data breaches under Directive 2002/58/EC as amended by Directive 2009/136/EC in relation to the processing of personal data in connection with the provision of publicly available electronic communications services, this Regulation shall not impose additional obligations in relation to the process of notifying a personal data breach to the supervisory authority and in relation to the process of communicating a personal data breach to the data subjects. Such a natural or legal person shall notify personal data breaches affecting all personal data for which it is a controller in accordance with the personal data breach notification process set out in Directive 2002/58/EC as amended by Directive 2009/136/EC.

Justification

This new paragraph establishes that electronic communications service providers are subject to a single notification regime for any breaches relating to the data they process, not multiple regimes depending on the service offered or the data held. This ensures a level playing field among industry players.

Amendment 225

Proposal for a regulation
Article 89 – paragraph 2

Text proposed by the Commission

2. Article 1(2) of Directive 2002/58/EC shall be deleted.

Amendment

2. Article 1(2), **Article 2(c) and Article 9** of Directive 2002/58/EC shall be deleted.

Justification

This amendment provides an essential alignment of Directive 2002/58/EC with the present Regulation. Furthermore, it avoids double-regulation, which may seriously harm the competitiveness of sectors covered by Directive 2002/58/EC. The general requirements of the present Regulation, including those relating to privacy impact assessments, will ensure that location is treated with the appropriate degree of care regardless of source or the industry of its data controller.

Amendment 226

Proposal for a regulation
Article 90 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

***Delegated acts and implementing acts
adopted by the Commission should be
evaluated by the Parliament and the
Council every second year.***

PROCEDURE

Title	Protection of individuals with regard to the processing of personal data, and the free movement of such data (General Data Protection Regulation)			
References	COM(2012)0011 – C7-0025/2012 – 2012/0011(COD)			
Committee responsible Date announced in plenary	LIBE 16.2.2012			
Opinion by Date announced in plenary	IMCO 16.2.2012			
Rapporteur Date appointed	Lara Comi 29.2.2012			
Discussed in committee	21.6.2012	10.10.2012	28.11.2012	17.12.2012
Date adopted	23.1.2013			
Result of final vote	+: -: 0:	19 16 1		
Members present for the final vote	Preslav Borissov, Cristian Silviu Buşoi, Jorgo Chatzimarkakis, Sergio Gaetano Cofferati, Birgit Collin-Langen, Lara Comi, Anna Maria Corazza Bildt, Cornelis de Jong, Christian Engström, Dolores García-Hierro Caraballo, Evelyne Gebhardt, Małgorzata Handzlik, Malcolm Harbour, Philippe Juvin, Hans-Peter Mayer, Angelika Niebler, Sirpa Pietikäinen, Phil Prendergast, Mitro Repo, Heide Rühle, Christel Schaldemose, Andreas Schwab, Catherine Stihler, Emilie Turunen, Bernadette Vergnaud, Barbara Weiler			
Substitute(s) present for the final vote	Raffaele Baldassarre, Jürgen Creutzmann, Anna Hedh, Constance Le Grip, Morten Løkkegaard, Emma McClarkin, Konstantinos Poupakis, Kyriacos Triantaphyllides, Patricia van der Kammen, Sabine Verheyen			

25.3.2013

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

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

Rapporteur: Marielle Gallo

SHORT JUSTIFICATION

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

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

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

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

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

The 'right to be forgotten' should also be strengthened. Article 17(2) imposes an obligation of

responsibility on the controller with regard to data processed by a third party. The rapporteur proposes introducing an obligation on the controller to inform the person concerned of the action taken by the third party in response to the request.

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

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

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

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

AMENDMENTS

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

Amendment 1 **Proposal for a regulation**

Recital 4

Text proposed by the Commission

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

Amendment 2
Proposal for a regulation

Recital 5

Text proposed by the Commission

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

Amendment

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

Amendment

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

Amendment 3

Proposal for a regulation Recital 15

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 4

Proposal for a regulation Recital 24

Text proposed by the Commission

(24) When using online services, individuals may be associated with online identifiers provided by their devices, applications, tools and protocols, such as Internet Protocol addresses or cookie identifiers. This may leave traces which, combined with unique identifiers and other information received by the servers, may be used to create profiles of the individuals and identify them. It follows that identification numbers, location data,

Amendment

(24) When using online services, individuals may be associated with online identifiers provided by their devices, applications, tools and protocols, such as Internet Protocol addresses or cookie identifiers. This may leave traces which, combined with unique identifiers and other information received by the servers, may be used to create profiles of the individuals and identify them. It follows that **a study should be undertaken, on a case-by-case**

online identifiers or other specific factors as such need not necessarily be considered as personal data in all circumstances.

basis and in accordance with technological developments, of whether identification numbers, location data, online identifiers or other specific factors as such need not necessarily be considered as personal data in all circumstances.

Justification

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

Amendment 5 Proposal for a regulation

Recital 25

Text proposed by the Commission

(25) Consent should be given explicitly by any appropriate method enabling a freely given specific and informed indication of the data subject's wishes, either by a statement or by a clear affirmative action by the data subject, ensuring that individuals are aware that they give their consent to the processing of personal data, including by ticking a box when visiting an Internet website or by any other statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of their personal data. Silence or inactivity should therefore not constitute consent. Consent should cover all processing activities carried out for the same purpose or purposes. If the data subject's consent is to be given following an electronic request, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided.

Amendment

(25) Consent should be given explicitly by any ***method*** appropriate ***to the media used*** enabling a freely given specific and informed indication of the data subject's wishes, either by a statement or by a clear affirmative action by the data subject, ensuring that individuals are aware that they give their consent to the processing of personal data, including by ticking a box when visiting an Internet website or by any other statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of their personal data. Silence or inactivity should therefore not constitute consent. ***This is notwithstanding the possibility to express consent to processing in accordance with Directive 2002/58/EC by using the appropriate settings of a browser or other application.*** Consent should cover all processing activities carried out for the same purpose or purposes. If the data subject's consent is to be given following an electronic request, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided.

Amendment 6
Proposal for a regulation

Recital 27

Text proposed by the Commission

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

Amendment

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

Amendment 7
Proposal for a regulation

Recital 34

Text proposed by the Commission

(34) Consent should not provide a valid legal ground for the processing of personal data, where there is a clear imbalance between the data subject and the controller. This is especially the case where the data subject is in a situation of dependence from the controller, among others, where personal data are processed by the employer of employees' personal data in the employment context. Where the

Amendment

(34) Consent should not provide a valid legal ground for the processing of personal data, where there is a clear imbalance between the data subject and the controller. This is especially the case where the data subject is in a situation of dependence from the controller, among others, where personal data are processed by the employer of employees' personal data in the employment context, *or where a*

controller is a public authority, there would be an imbalance only in the specific data processing operations where the public authority can impose an obligation by virtue of its relevant public powers and the consent cannot be deemed as freely given, taking into account the interest of the data subject.

controller has a substantial market power with respect to certain products or services and where these products or services are offered on condition of consent to the processing of personal data, or where a unilateral and non-essential change in terms of service gives a data subject no option other than accept the change or abandon an online resource in which they have invested significant time. Where the controller is a public authority, there would be an imbalance only in the specific data processing operations where the public authority can impose an obligation by virtue of its relevant public powers and the consent cannot be deemed as freely given, taking into account the interest of the data subject.

Justification

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

Amendment 8

Proposal for a regulation

Recital 38

Text proposed by the Commission

(38) The legitimate interests of a ***controller*** may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding. This would need careful assessment in particular where the data subject is a child, given that children deserve specific protection. The data subject should have the right to object

Amendment

(38) The legitimate interests of a ***person*** may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding. This would need careful assessment in particular where the data subject is a child, given that children deserve specific protection. The data subject should have the right to object

the processing, on grounds relating to their particular situation and free of charge. To ensure transparency, the controller should be obliged to explicitly inform the data subject on the legitimate interests pursued and on the right to object, and also be obliged to document these legitimate interests. Given that it is for the legislator to provide by law the legal basis for public authorities to process data, this legal ground should not apply for the processing by public authorities in the performance of their tasks.

the processing, on grounds relating to their particular situation and free of charge. To ensure transparency, the controller *or the third parties to whom the data are sent* should be obliged to explicitly inform the data subject on the legitimate interests pursued and on the right to object, and also be obliged to document these legitimate interests. Given that it is for the legislator to provide by law the legal basis for public authorities to process data, this legal ground should not apply for the processing by public authorities in the performance of their tasks.

Justification

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

Amendment 9 **Proposal for a regulation**

Recital 45

Text proposed by the Commission

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

Amendment

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

Amendment 10

Proposal for a regulation Recital 48

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 11

Proposal for a regulation Recital 51

Text proposed by the Commission

(51) Any person should have the right of access to data which has been collected concerning them, and to exercise this right easily, in order to be aware and verify the lawfulness of the processing. Every data subject should therefore have the right to know and obtain communication in particular for what purposes the data are processed, for what period, which recipients receive the data, what is the logic of the data that are undergoing the processing and what might be, at least

Amendment

(51) Any person should have the right of access to data which has been collected concerning them, and to exercise this right easily, in order to be aware and verify the lawfulness of the processing. Every data subject should therefore have the right to know and obtain communication in particular for what purposes the data are processed, for what period, which recipients receive the data, what is the logic of the data that are undergoing the processing and what might be, at least

when based on profiling, the consequences of such processing. *This* right should not adversely affect the rights and freedoms of others, including trade secrets or intellectual property and in particular the copyright protecting the software. However, the result of these considerations should not be that all information is refused to the data subject.

when based on profiling, the consequences of such processing. *Every data subject should furthermore have the right to communication of the personal data undergoing processing and, on electronic request, an electronic copy of the non-commercial data undergoing processing in an interoperable and structured format which allows for further use. These rights* should not adversely affect the rights and freedoms of others, including trade secrets or intellectual property and in particular the copyright protecting the software. However, the result of these considerations should not be that all information is refused to the data subject.

Justification

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

Amendment 12 **Proposal for a regulation**

Recital 53

Text proposed by the Commission

(53) Any person should have the right to have personal data concerning them rectified and a ‘right to be forgotten’ where the retention of such data is not in compliance with this Regulation. In particular, data subjects should have the right that their personal data are erased and no longer processed, where the data are no longer necessary in relation to the purposes for which the data are collected or otherwise processed, where data subjects have withdrawn their consent for processing or where they object to the processing of personal data concerning them or where the processing of their personal data otherwise does not comply with this Regulation. This right is

Amendment

(53) Any person should have the right to have personal data concerning them rectified and a ‘right to be forgotten’ where the retention of such data is not in compliance with this Regulation. In particular, data subjects should have the right that their personal data are erased and no longer processed, where the data are no longer necessary in relation to the purposes for which the data are collected or otherwise processed, where data subjects have withdrawn their consent for processing or where they object to the processing of personal data concerning them or where the processing of their personal data otherwise does not comply with this Regulation. This right is

particularly relevant, when the data subject has given their consent as a child, when not being fully aware of the risks involved by the processing, and later wants to remove such personal data especially on the Internet. However, the further retention of the data should be allowed where it is necessary for historical, statistical and scientific research purposes, for reasons of public interest in the area of public health, for exercising the right of freedom of expression, when required by law or where there is a reason to restrict the processing of the data instead of erasing them.

particularly relevant, when the data subject has given their consent as a child, when not being fully aware of the risks involved by the processing, and later wants to remove such personal data especially on the Internet. However, the further retention of the data should be allowed where it is necessary for historical, statistical, **aggregated** and scientific research purposes, for reasons of public interest in the area of public health, **for the purpose of processing health data for healthcare purposes**, for exercising the right of freedom of expression, when required by law or where there is a reason to restrict the processing of the data instead of erasing them.

Justification

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

Amendment 13

Proposal for a regulation Recital 55

Text proposed by the Commission

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

Amendment

deleted

contract.

Justification

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

Amendment 14
Proposal for a regulation

Recital 58

Text proposed by the Commission

(58) Every **natural person** should have the right not to be subject to a **measure** which is based on profiling by means of automated processing. However, such **measure** should be allowed when expressly authorised by law, carried out in the course of entering or performance of a contract, or when the data subject has given his consent. In any case, such processing should be subject to suitable safeguards, including specific information of the data subject and the right to obtain human intervention and that such measure should not concern a child.

Amendment

(58) Every **data subject** should have the right not to be subject to a **decision** which is based on profiling by means of automated processing **and which produces adverse legal effects or adversely affects this data subject. This is not the case for measures relating to a commercial communication, for example in the field of customer relationship management or customer acquisition.** However, such **decision** should be allowed when authorised by law, **or when processing is lawful under points (a) to (fa) of Article 6(1).** In any case, such processing should be subject to suitable safeguards, including specific information of the data subject and the right to obtain human intervention and that such measure should not concern a child. **Profiling should not have the effects of discriminating against individuals on the basis, for instance, of race or ethnic origin, religion or sexual orientation, without prejudice to Article 9, paragraph 2.**

Justification

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

Amendment 15

Proposal for a regulation Recital 60

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 16

Proposal for a regulation Recital 62

Text proposed by the Commission

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

Amendment

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

binding it to the controller.

Justification

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

Amendment 17

Proposal for a regulation

Recital 65

Text proposed by the Commission

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

Amendment

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

Amendment 18

Proposal for a regulation

Recital 67

Text proposed by the Commission

(67) A personal data breach may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud, to the individual concerned. Therefore, as soon as the controller becomes aware that **such** a breach has occurred, the controller should notify the breach to the supervisory authority without undue delay **and, where feasible, within 24 hours. Where this**

Amendment

(67) A personal data breach may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud, to the individual concerned. Therefore, as soon as the controller becomes aware that a breach **which would have a significant impact on the data subject** has occurred, the controller should notify the breach to the supervisory authority without undue

cannot achieved within 24 hours, an explanation of the reasons for the delay should accompany the notification. The individuals whose personal data could be adversely affected by the breach should be notified without undue delay in order to allow them to take the necessary precautions. A breach should be considered as adversely affecting the personal data or privacy of a data subject where it could result in, for example, identity theft or fraud, physical harm, significant humiliation or damage to reputation. The notification should describe the nature of the personal data breach as well as recommendations as well as recommendations for the individual concerned to mitigate potential adverse effects. Notifications to data subjects should be made as soon as reasonably feasible, and in close cooperation with the supervisory authority and respecting guidance provided by it or other relevant authorities (e.g. law enforcement authorities). For example, the chance for data subjects to mitigate an immediate risk of harm would call for a prompt notification of data subjects whereas the need to implement appropriate measures against continuing or similar data breaches may justify a longer delay.

delay. The individuals whose personal data could be *significantly* adversely affected by the breach should be notified without undue delay in order to allow them to take the necessary precautions. A breach should be considered as *significantly* adversely affecting the personal data or privacy of a data subject where it could result in, for example, identity theft or fraud, physical harm, significant humiliation or damage to reputation. The notification should describe the nature of the personal data breach as well as recommendations as well as recommendations for the individual concerned to mitigate potential adverse effects. Notifications to data subjects should be made as soon as reasonably feasible, and in close cooperation with the supervisory authority and respecting guidance provided by it or other relevant authorities (e.g. law enforcement authorities). For example, the chance for data subjects to mitigate an immediate risk of harm would call for a prompt notification of data subjects whereas the need to implement appropriate measures against continuing or similar data breaches may justify a longer delay.

Justification

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

Amendment 19

Proposal for a regulation Recital 82

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 20

Proposal for a regulation Recital 85 a (new)

Text proposed by the Commission

Amendment

(85a) A group of companies planning to submit for approval binding corporate rules may propose a supervisory authority as the lead authority. This should be the supervisory authority of the Member State in which the main establishment of the controller or processor is situated.

Justification

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

Amendment 21
Proposal for a regulation

Recital 87

Text proposed by the Commission

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

Amendment

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

Amendment 22

Proposal for a regulation

Recital 115

Text proposed by the Commission

(115) In situations where the competent supervisory authority established in another Member State does not act or has taken insufficient measures in relation to a complaint, the data subject may request the supervisory authority in the Member State of his or her habitual residence to bring proceedings against that supervisory authority to the competent court in the other Member State. The requested supervisory authority may decide, subject to judicial review, whether it is appropriate to follow the request or not.

Amendment

deleted

Justification

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

Amendment 23

Proposal for a regulation Recital 118

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 24 Proposal for a regulation

Recital 121 a (new)

Text proposed by the Commission

Amendment

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

legislation to which the public authority or public body is subject. Such legislation shall reconcile the right to the protection of personal data with the principle of public access to official documents.

Amendment 25

Proposal for a regulation Recital 129

Text proposed by the Commission

(129) In order to fulfil the objectives of this Regulation, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. In particular, delegated acts should be adopted in respect of ***lawfulness of processing; specifying the criteria and conditions in relation to the consent of a child; processing of special categories of data; specifying the criteria and conditions for manifestly excessive requests and fees for exercising the rights of the data subject; criteria and requirements for the information to the data subject and in relation to the right of access; the right to be forgotten and to erasure; measures based on profiling; criteria and requirements in relation to the responsibility of the controller and to data protection by design and by default; a processor; criteria and requirements for the documentation and the security of processing; criteria and requirements for establishing a personal data breach and for its notification to the supervisory authority, and on the circumstances where a personal data breach is likely to adversely affect the data subject; the***

Amendment

(129) In order to fulfil the objectives of this Regulation, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. In particular, delegated acts should be adopted in respect of specifying the criteria and conditions in relation to the consent of a child; criteria and requirements for the information to the data subject and in relation to the right of access; criteria and requirements in relation to the responsibility of the controller; a processor; criteria and requirements for the documentation; designation and tasks of the data protection officer; codes of conduct; criteria and requirements for certification mechanisms; transfers by way of binding corporate rules; processing in the employment context and processing for historical, statistical and scientific research purposes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and

criteria and conditions for processing operations requiring a data protection impact assessment; the criteria and requirements for determining a high degree of specific risks which require prior consultation; designation and tasks of the data protection officer; codes of conduct; criteria and requirements for certification mechanisms; criteria and requirements for transfers by way of binding corporate rules; *transfer derogations; administrative sanctions; processing for health purposes;* processing in the employment context and processing for historical, statistical and scientific research purposes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

Council.

Amendment 26
Proposal for a regulation

Recital 130

Text proposed by the Commission

(130) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission for: specifying standard forms in relation to the processing of personal data of a child; standard procedures and forms for exercising the rights of data subjects; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access; the right to data portability; standard forms in relation to the responsibility of the controller to data protection by design and by default and to

Amendment

(130) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission for: specifying standard forms in relation to the processing of personal data of a child; standard procedures and forms for exercising the rights of data subjects; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access; the right to data portability; standard forms in relation to the responsibility of the controller to data protection by design and by default and to

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

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

Amendment 27

Proposal for a regulation Recital 131

Text proposed by the Commission

(131) The examination procedure should be used for the adoption of specifying standard forms in relation to the consent of a child; standard procedures and forms for exercising the rights of data subjects; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access; ***the right to data portability***; standard forms in relation to the

Amendment

(131) The examination procedure should be used for the adoption of specifying standard forms in relation to the consent of a child; standard procedures and forms for exercising the rights of data subjects; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access; standard forms in relation to the responsibility of the controller to the

responsibility of the controller *to data protection by design and by default* and to the documentation; specific requirements for the security of processing; the standard format and the procedures for the notification of a personal data breach to the supervisory authority and the communication of a personal data breach to the data subject; standards and procedures for a data protection impact assessment; forms and procedures for prior authorisation and prior consultation; technical standards and mechanisms for certification; *the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an international organisation*; disclosures not authorized by Union law; mutual assistance; joint operations; decisions under the consistency mechanism, given that those acts are of general scope.

documentation; specific requirements for the security of processing; the standard format and the procedures for the notification of a personal data breach to the supervisory authority and the communication of a personal data breach to the data subject; standards and procedures for a data protection impact assessment; forms and procedures for prior authorisation and prior consultation; technical standards and mechanisms for certification; disclosures not authorized by Union law; mutual assistance; joint operations; decisions under the consistency mechanism, given that those acts are of general scope.

Amendment 28

Proposal for a regulation Recital 139

Text proposed by the Commission

(139) In view of the fact that, as underlined by the Court of Justice of the European Union, the right to the protection of personal data is not an absolute right, but must be considered in relation to its function in society and be balanced with other *fundamental* rights, in accordance with the principle of proportionality, this Regulation respects all fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union as enshrined in the Treaties, notably the right to respect for private and family life, home and communications, the right to the protection of personal data, the freedom of thought, conscience and religion, the freedom of

Amendment

(139) In view of the fact that, as underlined by the Court of Justice of the European Union, the right to the protection of personal data is not an absolute right, but must be considered in relation to its function in society and be balanced with other rights *established by the Charter of Fundamental Rights of the European Union*, in accordance with the principle of proportionality, this Regulation respects all fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union as enshrined in the Treaties, notably the right to respect for private and family life, home and communications, the right to the protection of personal data, the freedom of

expression and information, the freedom to conduct a business, the right to an effective remedy and to a fair trial as well as cultural, religious and linguistic diversity.

thought, conscience and religion, the freedom of expression and information, the freedom to conduct a business, the right to an effective remedy and to a fair trial as well as cultural, religious and linguistic diversity.

Amendment 29
Proposal for a regulation

Article 2 – paragraph 2 – point b

Text proposed by the Commission

Amendment

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

deleted

Amendment 30

Proposal for a regulation
Article 2 – paragraph 2 – point d

Text proposed by the Commission

Amendment

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

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

Justification

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

Amendment 31
Proposal for a regulation

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

Text proposed by the Commission

Amendment

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

Justification

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

Amendment 32
Proposal for a regulation

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

Text proposed by the Commission

Amendment

(eb) that has been rendered anonymous.

Justification

By definition anonymous data does not constitute personal data.

Amendment 33
Proposal for a regulation

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

Text proposed by the Commission

Amendment

(ec) by competent authorities for the purposes of drawing up electoral rolls.

Justification

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

Amendment 34
Proposal for a regulation

Article 4 – point 1

Text proposed by the Commission

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

Amendment

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

Amendment 35
Proposal for a regulation

Article 4 – point 2 a (new)

Text proposed by the Commission

Amendment

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

Amendment 36
Proposal for a regulation

Article 4 – point 3 a (new)

Text proposed by the Commission

Amendment

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

such non attribution;

Amendment 37
Proposal for a regulation

Article 4 – point 3 b (new)

Text proposed by the Commission

Amendment

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

Justification

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

Amendment 38
Proposal for a regulation

Article 4 – point 5

Text proposed by the Commission

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

Amendment

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

Amendment 39
Proposal for a regulation

Article 4 – point 10

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 40
Proposal for a regulation

Article 4 – point 13

Text proposed by the Commission

(13) 'main establishment' means **as regards the controller**, the place of **its** establishment in the Union where the main decisions as to the purposes, conditions and means of the processing of personal data

Amendment

(13) 'main establishment' means the place of establishment **of the undertaking or group of undertakings** in the Union, **whether controller or processor**, where the main decisions as to the purposes,

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

conditions and means of the processing of personal data are taken.

The following objective criteria may be considered among others:

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

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

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

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

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

Amendment 41
Proposal for a regulation

Article 4 – point 19 a (new)

Text proposed by the Commission

Amendment

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

**Amendment 42
Proposal for a regulation**

Article 4 – point 19 b (new)

Text proposed by the Commission

Amendment

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

**Amendment 43
Proposal for a regulation**

Article 4 – point 19 c (new)

Text proposed by the Commission

Amendment

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

**Amendment 44
Proposal for a regulation**

Article 5 – point c

Text proposed by the Commission

Amendment

(c) adequate, relevant, and ***limited to the minimum necessary*** in relation to the purposes for which they are processed; they shall only be processed if, and as long

(c) adequate, relevant, and ***not excessive*** in relation to the purposes for which they are processed; they shall only be processed if, and as long as, the purposes could not be

as, the purposes could not be fulfilled by processing information that does not involve personal data;

fulfilled by processing information that does not involve personal data;

Justification

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

Amendment 45
Proposal for a regulation

Article 5 – point d

Text proposed by the Commission

(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;

Amendment

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

Justification

Clearer, simpler, and more effective.

Amendment 46
Proposal for a regulation

Article 5 – point e

Text proposed by the Commission

(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the data will be processed solely for historical, statistical or scientific research purposes in accordance with the rules and conditions of **Article 83**

Amendment

(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the data will be processed solely for historical, statistical, **aggregated** or scientific research purposes in accordance with the rules and conditions

and if a periodic review is carried out to assess the necessity to continue the storage;

of **Articles 81 and 83** and if a periodic review is carried out to assess the necessity to continue the storage;

Amendment 47

Proposal for a regulation

Article 6 – paragraph 1 – point f

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 48

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(fa) processing is necessary for fraud detection and prevention purposes according to applicable financial regulation or established industry, or professional body, codes of practice.

Justification

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

Amendment 49
Proposal for a regulation

Article 6 – paragraph 4

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 50

Proposal for a regulation
Article 6 – paragraph 5

Text proposed by the Commission

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

Amendment

deleted

Justification

The proposal for a regulation provides for a considerable number of delegated acts, which is

not justified. More precisely, this area is covered in case law, and the matter of consent for the processing of personal data of children is dealt with in Article 8.

Amendment 51
Proposal for a regulation

Article 7 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 52
Proposal for a regulation

Article 7 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

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

Amendment 53
Proposal for a regulation

Article 7 – paragraph 4

Text proposed by the Commission

4. Consent shall not provide a legal basis for the processing, where there is a significant imbalance between the position

Amendment

4. Consent shall not provide a legal basis for the processing, where there is a significant, imbalance between the position

of the data subject and the controller.

of the data subject and the controller,
which results in a lack of freedom in the provision of consent.

Justification

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

Amendment 54

Proposal for a regulation

Article 7 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

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

Amendment 55

Proposal for a regulation

Article 8 – paragraph 1

Text proposed by the Commission

Amendment

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

1. For the purposes of this Regulation, the processing of personal data of a child below the age of 13 years ***would normally require*** that consent is given or authorised by the child's parent or ***legal representative***. ***The appropriate form for obtaining consent should be based on any risk posed to the child by the amount of data, its type and the nature of the processing***. The controller shall make reasonable efforts to obtain verifiable consent, taking into consideration available technology. ***The methods to obtain verifiable consent shall not lead to the***

further processing of personal data which would otherwise not be necessary.

Amendment 56
Proposal for a regulation

Article 8 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

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

Justification

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

Amendment 57
Proposal for a regulation

Article 9 – paragraph 1

Text proposed by the Commission

Amendment

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

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

Justification

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

Amendment 58

Proposal for a regulation

Article 9 – paragraph 2 – point f

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 59

Proposal for a regulation

Article 9 – paragraph 2 – point j

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 60
Proposal for a regulation

Article 9 – paragraph 3

Text proposed by the Commission

Amendment

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

Justification

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

Amendment 61
Proposal for a regulation

Article 10

Text proposed by the Commission

Amendment

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

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

Amendment 62

Proposal for a regulation Article 11 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 63 Proposal for a regulation

Article 12 – paragraph 2

Text proposed by the Commission

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

Amendment

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

data subject.

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

Justification

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

Amendment 64 Proposal for a regulation

Article 12 – paragraph 4

Text proposed by the Commission

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

Amendment

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

Justification

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

which could be used for fraudulent purposes.

Amendment 65

Proposal for a regulation Article 12 – paragraph 5

Text proposed by the Commission

Amendment

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

Justification

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

Amendment 66

Proposal for a regulation Article 12 – paragraph 6

Text proposed by the Commission

Amendment

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

Justification

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

Amendment 67
Proposal for a regulation

Article 14 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

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

Amendment 68
Proposal for a regulation

Article 14 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Amendment 69
Proposal for a regulation

Article 14 – paragraph 1 – point c

Text proposed by the Commission

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

Amendment

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

Amendment 70
Proposal for a regulation

Article 14 – paragraph 1 – point e

Text proposed by the Commission

Amendment

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

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

Justification

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

Amendment 71

Proposal for a regulation

Article 14 – paragraph 1 – point g

Text proposed by the Commission

Amendment

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

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

Justification

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

Amendment 72

Proposal for a regulation

Article 14 – paragraph 1 – point h

Text proposed by the Commission

Amendment

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

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

are collected.

circumstances in which the personal data are collected.

Justification

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

Amendment 73
Proposal for a regulation

Article 14 – paragraph 4 – point a

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 74
Proposal for a regulation

Article 14 – paragraph 4 – point b

Text proposed by the Commission

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

Amendment

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

used for communication with the person concerned, at the latest at the time of the first communication to that person.

Amendment 75
Proposal for a regulation

Article 14 – paragraph 5 – point b

Text proposed by the Commission

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

Amendment

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

¹ OJ L 124, 20.5.2003, p. 36.

Justification

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

Amendment 76
Proposal for a regulation

Article 14 – paragraph 7

Text proposed by the Commission

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

Amendment

deleted

referred to in point (h) of paragraph 1 for specific sectors and situations, and the conditions and appropriate safeguards for the exceptions laid down in point (b) of paragraph 5. In doing so, the Commission shall take the appropriate measures for micro, small and medium-sized-enterprises.

Justification

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

Amendment 77
Proposal for a regulation

Article 15 – paragraph 1 – point d

Text proposed by the Commission

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

Amendment

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

Amendment 78
Proposal for a regulation

Article 15 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 79
Proposal for a regulation

Article 17 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

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

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

Amendment 80
Proposal for a regulation

Article 17 – paragraph 2

Text proposed by the Commission

Amendment

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

deleted

Justification

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

Amendment 81
Proposal for a regulation

Article 17 – paragraph 3 – point a

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 82
Proposal for a regulation

Article 17 – paragraph 3 – point b

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 83
Proposal for a regulation

Article 17 – paragraph 3 – point d

Text proposed by the Commission

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

Amendment

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

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

interest, respect the essence of the right to the protection of personal data and be proportionate to the legitimate aim pursued;

Amendment 84
Proposal for a regulation

Article 17 – paragraph 9

Text proposed by the Commission

Amendment

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

deleted

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

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

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

Justification

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

Amendment 85
Proposal for a regulation

Article 19 – paragraph 3

Text proposed by the Commission

Amendment

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

3. Where an objection is upheld pursuant to paragraph 1, the controller shall *inform the data subject of the compelling*

personal data concerned.

legitimate grounds which apply in accordance with paragraph 1 or, if he does not do so, he shall no longer use or otherwise process the personal data concerned; where the objection is upheld pursuant to paragraph 2, the controller shall no longer use or otherwise process the personal data concerned.

Justification

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

**Amendment 86
Proposal for a regulation**

Article 20 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 87
Proposal for a regulation

Article 20 – paragraph 2

Text proposed by the Commission

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

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

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

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

Amendment

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

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

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

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

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

Amendment 88
Proposal for a regulation

Article 20 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. Automated processing of personal data intended to evaluate certain personal aspects relating to a natural person shall

not be used to identify or individualise children.

Justification

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

Amendment 89

Proposal for a regulation

Article 20 – paragraph 5

Text proposed by the Commission

Amendment

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

deleted

Amendment 90

Proposal for a regulation Article 21 – paragraph 2

Text proposed by the Commission

2. In particular, any legislative measure referred to in paragraph 1 shall contain specific provisions at least as to the objectives to be pursued by the processing and the determination of the controller.

Amendment

2. In particular, any legislative measure referred to in paragraph 1 shall contain specific provisions at least as to ***the aim of the processing***, the objectives to be pursued by the processing and the determination of the controller.

Justification

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

Amendment 91

Proposal for a regulation Article 22 – title

Text proposed by the Commission

Responsibility of the controller

Amendment

Overall principle of responsibility of the controller.

Justification

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

Amendment 92

Proposal for a regulation

Article 22 – paragraph 2 – introductory wording

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 93
Proposal for a regulation

Article 22 – paragraph 2 – point e

Text proposed by the Commission

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

Amendment

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

Amendment 94
Proposal for a regulation

Article 22 – paragraph 4

Text proposed by the Commission

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

Amendment

deleted

Amendment 95
Proposal for a regulation

Article 23 – paragraph 1

Text proposed by the Commission

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

Amendment 96
Proposal for a regulation

Article 23 – paragraph 2

Text proposed by the Commission

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

Amendment 97

Proposal for a regulation
Article 23 – paragraph 3

Text proposed by the Commission

3. The Commission shall be empowered to adopt delegated acts in accordance with

Amendment

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

Amendment

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

Amendment

deleted

Article 86 for the purpose of specifying any further criteria and requirements for appropriate measures and mechanisms referred to in paragraph 1 and 2, in particular for data protection by design requirements applicable across sectors, products and services.

Justification

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

Amendment 98

**Proposal for a regulation
Article 23 – paragraph 4**

Text proposed by the Commission

Amendment

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

Justification

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

Amendment 99

Proposal for a regulation

Article 24

Text proposed by the Commission

Amendment

Where a controller determines the purposes, **conditions and means** of the

Where a controller determines the purposes of the processing of personal data jointly

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

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

Amendment 100
Proposal for a regulation

Article 25 – paragraph 2 – point b

Text proposed by the Commission

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

Amendment

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

Amendment 101
Proposal for a regulation

Article 26 – paragraph 5

Text proposed by the Commission

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the responsibilities, duties and tasks in relation to a processor in line with paragraph 1, and conditions which allow facilitating the processing of personal data within a group of undertakings, in particular for the purposes of control and reporting.

Amendment

deleted

Justification

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

Amendment 102
Proposal for a regulation

Article 28 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 103
Proposal for a regulation

Article 28 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

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

Justification

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

Amendment 104

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

Text proposed by the Commission

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

Amendment

(d) where applicable, transfers of data to a third country or an international organisation, including the identification of that third country or international organisation and, in case of transfers

referred to in point (h) of Article 44(1), the documentation of appropriate safeguards;

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

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

Justification

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

Amendment 105 Proposal for a regulation

Article 28 – paragraph 5

Text proposed by the Commission

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

Amendment

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

Amendment 106 Proposal for a regulation

Article 28 – paragraph 6

Text proposed by the Commission

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

Amendment

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

87(2).

set out in Article 87(2).

Amendment 107
Proposal for a regulation

Article 29 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 108
Proposal for a regulation

Article 29 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Justification

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

established in the Union.

Amendment 109

Proposal for a regulation Article 30 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for the technical and organisational measures referred to in paragraphs 1 and 2, including the determinations of what constitutes the state of the art, for specific sectors and in specific data processing situations, in particular taking account of developments in technology and solutions for privacy by design and data protection by default, unless paragraph 4 applies. **deleted**

Justification

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

Amendment 110

Proposal for a regulation

Article 30 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Amendment

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

(a) prevent any unauthorised access to personal data;

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

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

Amendment 111

Proposal for a regulation Article 31 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 112

Proposal for a regulation

Article 31 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 113

Proposal for a regulation

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

Text proposed by the Commission

Amendment

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

Amendment 114
Proposal for a regulation

Article 31 – paragraph 5

Text proposed by the Commission

Amendment

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for establishing the data breach referred to in paragraphs 1 and 2 and for the particular circumstances in which a controller and a processor is required to notify the personal data breach.

deleted

Justification

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

Amendment 115

Proposal for a regulation
Article 33 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

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

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

Justification

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

Amendment 116

**Proposal for a regulation
Article 33 – paragraph 4**

Text proposed by the Commission

Amendment

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

deleted

Justification

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

Amendment 117

Proposal for a regulation

Article 33 – paragraph 5

Text proposed by the Commission

Amendment

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

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

Justification

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

Amendment 118 **Proposal for a regulation**

Article 33 – paragraph 6

Text proposed by the Commission

Amendment

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

Justification

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

Amendment 119

Proposal for a regulation **Article 34 – title**

Text proposed by the Commission

Amendment

Prior authorisation and prior consultation **Prior consultation**

Justification

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

Amendment 120

Proposal for a regulation Article 34 – paragraph 1

Text proposed by the Commission

Amendment

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

Amendment 121

Proposal for a regulation

Article 34 – paragraph 7

Text proposed by the Commission

Amendment

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

subjects.

Justification

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

Amendment 122
Proposal for a regulation

Article 35 – paragraph 1 – point b

Text proposed by the Commission

Amendment

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

deleted

Amendment 123
Proposal for a regulation

Article 35 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. SME controllers and processors shall designate a data protection officer only where the SMEs' core activities consist of data processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects.

Justification

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

Amendment 124
Proposal for a regulation

Article 35 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 125
Proposal for a regulation

Article 35 – paragraph 4

Text proposed by the Commission

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

Amendment

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

Amendment 126
Proposal for a regulation

Article 35 – paragraph 5

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 127
Proposal for a regulation

Article 35 – paragraph 7

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 128
Proposal for a regulation

Article 35 – paragraph 11

Text proposed by the Commission

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

Amendment

deleted

Amendment 129
Proposal for a regulation

Article 36 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 130
Proposal for a regulation

Article 37 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

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

Amendment 131
Proposal for a regulation

Article 37 – paragraph 2

Text proposed by the Commission

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

Amendment

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

referred to in paragraph 1.

Justification

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

Amendment 132
Proposal for a regulation

Article 38 – paragraph 1 – point a (new)

Text proposed by the Commission

Amendment

aa) respect for consumer rights;

Amendment 133
Proposal for a regulation

Article 39 – paragraph 1

Text proposed by the Commission

Amendment

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

1. The Member States and the Commission shall encourage, in particular at European level, the establishment of data protection certification ***policies*** and of data protection seals and marks, allowing data subjects to quickly assess the level of data protection provided by controllers and processors. The data protection ***certification policies*** shall contribute to the proper application of this Regulation, ***and to achieving the actions and benefits mentioned therein***, taking account of the specific features of the various sectors and different processing operations.

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

the field.

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

Justification

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

Amendment 134

Proposal for a regulation Article 40 a (new)

Text proposed by the Commission

Amendment

Article 40 a

Prior authorisation

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

Amendment 135
Proposal for a regulation

Article 41 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 136

Proposal for a regulation
Article 41 – paragraph 3

Text proposed by the Commission

3. The Commission may decide that a third country, or a territory or a processing sector within that third country, or an international organisation ensures an adequate level of protection within the meaning of paragraph 2. **Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).**

Amendment

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

Justification

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

Amendment 137
Proposal for a regulation

Article 41 – paragraph 6

Text proposed by the Commission

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

Amendment

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

Justification

The term ‘restricted’ should be used instead of ‘prohibited’.

Amendment 138

Proposal for a regulation
Article 42 – paragraph 1

Text proposed by the Commission

1. Where the Commission has taken no decision pursuant to Article 41, a controller or processor may transfer personal data to a third country or an international organisation only if the controller or processor has adduced appropriate safeguards with respect to the protection of personal data in a legally binding instrument.

Amendment

1. Where the Commission has taken no decision pursuant to Article 41, ***or if it finds that a third country, a region or a data processing sector in a third country, or an international organisation, does not offer a sufficient level of data protection,*** a controller or processor may transfer personal data to a third country or an international organisation only if the controller or processor has adduced appropriate safeguards with respect to the protection of personal data in a legally binding instrument, ***and where appropriate pursuant to an impact assessment, where the controller or processor has ensured***

that the recipient of data in a third country maintains high standards of data protection.

Amendment 139

Proposal for a regulation Article 43 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

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

Justification

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

Amendment 140

Proposal for a regulation

Article 44 – paragraph 1 – point d

Text proposed by the Commission

Amendment

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

(d) the transfer is necessary for important grounds of public interest ***for example in cases of international data transfers between competition authorities, tax or customs administrations, financial supervisory authorities, between services competent for social security matters, or to competent authorities for the prevention, investigation, detection and prosecution of criminal offences;*** or

Amendment 141
Proposal for a regulation

Article 44 – paragraph 1 – point e

Text proposed by the Commission

Amendment

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

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

Justification

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

Amendment 142
Proposal for a regulation

Article 44 – paragraph 7

Text proposed by the Commission

Amendment

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

deleted

Justification

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

Amendment 143
Proposal for a regulation

Article 47 – paragraph 1

Text proposed by the Commission

Amendment

1. The supervisory **authority** shall act with

1. The supervisory **authorities** shall act

complete independence in exercising the duties and powers entrusted to *it*.

with complete independence in exercising the duties and powers entrusted to *them*.

Amendment 144
Proposal for a regulation

Article 47 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 145
Proposal for a regulation

Article 47 – paragraph 5

Text proposed by the Commission

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

Amendment

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

Amendment 146
Proposal for a regulation

Article 47 – paragraph 6

Text proposed by the Commission

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

Amendment

6. Each Member State shall, *in line with its internal distribution of competencies*, ensure that the supervisory *authorities have their* own staff which shall be

supervisory authority.

appointed by and be subject to the direction of the head of the supervisory authority.

Amendment 147
Proposal for a regulation

Article 47 – paragraph 7

Text proposed by the Commission

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

Amendment

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

Amendment 148
Proposal for a regulation

Article 48 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 149
Proposal for a regulation

Article 48 – paragraph 3

Text proposed by the Commission

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

Amendment

3. The duties of a member shall end in the event of the expiry of the term of office *or in the event of incapacity to hold office, incompatibility*, resignation, *dismissal*,

accordance with paragraph 5.

final conviction of an intentional crime or compulsory retirement.

Amendment 150
Proposal for a regulation

Article 48 – paragraph 4

Text proposed by the Commission

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

Amendment

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

Amendment 151
Proposal for a regulation

Article 49 – point a

Text proposed by the Commission

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

Amendment

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

Amendment 152
Proposal for a regulation

Article 49 – point b

Text proposed by the Commission

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

Amendment

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

Amendment 153
Proposal for a regulation

Article 49 – point c

Text proposed by the Commission

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

Amendment

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

Amendment 154
Proposal for a regulation

Article 49 – point d

Text proposed by the Commission

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

Amendment

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

Amendment 155
Proposal for a regulation

Article 49 – point e

Text proposed by the Commission

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

Amendment

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

Amendment 156
Proposal for a regulation

Article 49 – point f

Text proposed by the Commission

(f) the regulations and common conditions

Amendment

(f) the regulations and common conditions

governing the duties of the members and staff of the supervisory *authority*;

governing the duties of the members and staff of the supervisory *authorities*;

Amendment 157
Proposal for a regulation

Article 49 – point g

Text proposed by the Commission

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

Amendment

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

Amendment 158
Proposal for a regulation

Article 50

Text proposed by the Commission

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

Amendment

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

Amendment 159

Proposal for a regulation
Article 51 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. In the event of a complaint by a data subject or a body or organisation or association referred to in Article 73(2), the supervisory authority responsible for

taking action on the complaint shall be that of the Member State in which the complaint is made.

Amendment 160

Proposal for a regulation Article 51 – paragraph 2

Text proposed by the Commission

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

Amendment

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

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

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

Amendment 161

Proposal for a regulation

Article 52 – paragraph 1 – point d

Text proposed by the Commission

(d) conduct investigations either on its own initiative *or* on the basis of a complaint *or* on request of another supervisory

Amendment

(d) conduct investigations either on its own initiative, on the basis of a complaint, on request of another supervisory authority *or*

authority, and inform the data subject concerned, if the data subject has addressed a complaint to this supervisory authority, of the outcome of the investigations within a reasonable period;

following a police complaint, and inform the data subject concerned, if the data subject has addressed a complaint to this supervisory authority, of the outcome of the investigations within a reasonable period;

Justification

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

Amendment 162
Proposal for a regulation

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

Text proposed by the Commission

Amendment

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

Justification

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

Amendment 163
Proposal for a regulation

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

Text proposed by the Commission

Amendment

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

Amendment 164
Proposal for a regulation

Article 54

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 165

**Proposal for a regulation
Article 59 – paragraph 4**

Text proposed by the Commission

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

Amendment

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

Justification

This additional time period seems unreasonable.

Amendment 166

**Proposal for a regulation
Article 62 – paragraph 2**

Text proposed by the Commission

2. On duly justified imperative grounds of

Amendment

deleted

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

Justification

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

Amendment 167
Proposal for a regulation

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

Text proposed by the Commission

Amendment

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

Amendment 168
Proposal for a regulation

Article 69 – paragraph 1

Text proposed by the Commission

Amendment

1. The European Data Protection Board shall elect a chair and two deputy chairpersons from amongst its members. ***One deputy chairperson shall be the European Data Protection Supervisor, unless he or she has been elected chair.***

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

Justification

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

Amendment 169
Proposal for a regulation

Article 73 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 170
Proposal for a regulation

Article 73 – paragraph 3

Text proposed by the Commission

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

Amendment

deleted

Amendment 171
Proposal for a regulation

Article 74 – paragraph 2

Text proposed by the Commission

2. Each data subject shall have the right to a judicial remedy obliging the supervisory authority to act on a complaint in the absence of a decision necessary to protect their rights, or where the supervisory authority does not inform the

Amendment

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

data subject within three months on the progress or outcome of the complaint pursuant to point (b) of Article 52(1).

have been rejected if, six months after the complaint was lodged, the authority has not definitively resolved the complaint.

Justification

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

Amendment 172

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

Text proposed by the Commission

Amendment

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

deleted

Justification

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

Amendment 173

Proposal for a regulation

Article 75 – paragraph 3

Text proposed by the Commission

Amendment

3. Where proceedings are pending in the consistency mechanism referred to in Article 58, which concern the same measure, decision or practice, a court may suspend the proceedings brought before it,

3. Where proceedings are pending in the consistency mechanism referred to in Article 58, which concern the same measure, decision or practice, a court may, at the request of any of the parties and

except where the urgency of the matter for the protection of the data subject's rights does not allow to wait for the outcome of the procedure in the consistency mechanism.

after hearing all the parties, suspend the proceedings brought before it, except where the urgency of the matter for the protection of the data subject's rights does not allow to wait for the outcome of the procedure in the consistency mechanism.

Justification

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

Amendment 174
Proposal for a regulation

Article 76 – paragraph 1

Text proposed by the Commission

Amendment

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

deleted

Justification

There is no practical need for such a mechanism.

Amendment 175
Proposal for a regulation

Article 77 – paragraph 2

Text proposed by the Commission

Amendment

2. Where more than one controller or processor is involved in the processing, each controller or processor shall be jointly and severally liable for the entire amount of the damage.

2. Where more than one controller or processor is involved in the processing, each controller or processor shall be jointly and severally liable for the entire amount of the damage. ***In the event of joint and several liability, a processor which has made amends for damage done to the person concerned may appeal against the***

controller for reimbursement if it has acted in conformity with the legal act referred to in Article 26(2).

Amendment 176
Proposal for a regulation

Article 79 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 177

Proposal for a regulation
Article 79 – paragraph 2

Text proposed by the Commission

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

Amendment

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

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

(b) the sensitivity of the data in issue,

(c) the intentional or negligent character of the infringement,

(d) the degree of cooperation or refusal or obstruction to cooperate with any

enforcement process,

(e) the measures having been taken by the natural or legal person to ensure compliance with relevant obligations,

(f) the degree of harm or risk of harm created by the violation,

(g) the degree of responsibility of the natural or legal person and of previous breaches by this person,

(h) the technical and organisational measures and procedures implemented pursuant to Article 23 and the degree of cooperation with the supervisory authority in order to remedy the breach.

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

Amendment 178

Proposal for a regulation Article 79 – paragraph 2 a

Text proposed by the Commission

Amendment

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

Justification

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

Amendment 179
Proposal for a regulation

Article 79 – paragraph 3 – points a and b

Text proposed by the Commission

(a) a natural person is processing personal data without a commercial interest; or

(b) an enterprise or an organisation employing fewer than 250 persons is processing personal data only as an activity ancillary to its main activities.

Amendment

(a) an enterprise or an organisation employing fewer than 250 persons is willing to cooperate with the supervisory authority for the introduction of corrective measures designed to avoid similar cases of non-compliance in future. Cooperation in this area shall be governed by binding agreements with the supervisory authority. Failure to collaborate with the duly accredited supervisory authority within six months from the beginning of the proceedings shall incur the fine which would originally have been imposed.

(b) a public administration collaborates with a supervisory authority to establish ways of avoiding similar infringements in future. Collaboration in this area shall be determined on the basis of the agreements or decisions adopted by the administration concerned, which shall be referred to at the outset with regard to the measures taken. Failure to collaborate with the duly accredited supervisory authority within one year from the beginning of the proceedings shall incur the fine which would originally have been imposed.

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

two years if the sanctions are accompanied by fines up to 250 000 EUR, or in case of an enterprise up to 0,5 % of its annual worldwide turnover; four years if the sanctions are accompanied by fines up to 500 000 EUR, or in case of an enterprise up to 1 % of its annual worldwide turnover; six years if the sanctions are accompanied by fines up to

1 000 000 EUR or, in case of an enterprise up to 2 % of its annual worldwide turnover.

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

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

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

Justification

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

Amendment 180

Proposal for a regulation Article 79 – paragraphs 4 to 7

Text proposed by the Commission

Amendment

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

deleted

a) does not provide the mechanisms for requests by data subjects or does not

respond promptly or not in the required format to data subjects pursuant to Articles 12(1) and (2);

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

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

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

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

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

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

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

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

g) does not comply, in cases where special categories of data are not involved, pursuant to Articles 80, 82 and 83 with

rules in relation to freedom of expression or with rules on the processing in the employment context or with the conditions for processing for historical, statistical and scientific research purposes.

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

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

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

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

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

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

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

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

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

i) does not carry out a data protection impact assessment pursuant or processes personal data without prior authorisation or prior consultation of the supervisory authority pursuant to Articles 33 and 34;

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

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

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

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

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

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

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

Amendment 181

Proposal for a regulation

Article 80 – paragraph 1

Text proposed by the Commission

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

Amendment

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

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

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

Justification

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

Amendment 182 **Proposal for a regulation**

Article 80 – paragraph 2

Text proposed by the Commission

Amendment

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

deleted

Amendment 183 **Proposal for a regulation**

Article 80 a (new)

Text proposed by the Commission

Amendment

Article 80a

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

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

Justification

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

Amendment 184

Proposal for a regulation

Article 81 – paragraph 3

Text proposed by the Commission

Amendment

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

deleted

Justification

Our only current objection to this provision concerns the delegation of power to the Commission under paragraph 3. This, in our opinion, goes beyond acceptable limits for

legislative delegation and the matters referred to should accordingly be dealt with in this instrument, either now or in the form of subsequent amendments which may be necessary to ensure its future effectiveness.

Amendment 185
Proposal for a regulation

Article 82 – paragraph 3

Text proposed by the Commission

Amendment

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

Justification

The delegation of power to the Commission under paragraph 3 is excessive and the measures referred to should accordingly be taken under existing terms of reference.

Amendment 186
Proposal for a regulation

Article 83 – paragraph 1 – introductory wording

Text proposed by the Commission

Amendment

1. Within the limits of this Regulation, personal data may be processed for historical, statistical or scientific research purposes only if:

1. Within the limits of this Regulation, personal data may be processed for historical, statistical or scientific research purposes, **as well as for preliminary official or administrative investigations to determine natural filiation** only if:

Justification

In order to facilitate investigations to determine natural filiation following the theft or abduction of infants, we propose an addition to the first paragraph to clearly establish the legitimacy of the procedures followed for the purpose of such inquiries.

Amendment 187
Proposal for a regulation

Article 83 – paragraph 1 – point a

Text proposed by the Commission

(a) these purposes cannot *be otherwise fulfilled* by processing data which does not permit or not any longer permit the identification of the data subject;

Amendment

(a) these purposes cannot *reasonably be achieved* by processing data which does not permit or not any longer permit the identification of the data subject; and

Amendment 188
Proposal for a regulation

Article 83 – paragraph 1 – point b

Text proposed by the Commission

(b) data enabling the attribution of information to an identified or identifiable data subject is kept separately from the other information as long as these purposes can be fulfilled in this manner.

Amendment

(b) data enabling the attribution of information to an identified or identifiable data subject is kept separately from the other information as long as these purposes can be fulfilled in this manner.

Personal data processed as part of a preliminary official or administrative investigation for the determination of natural filiation shall only be disclosed to those concerned as and when appropriate and without prejudice to any statutory criminal proceedings.

Justification

In order to facilitate investigations to determine natural filiation following the theft or abduction of infants, this final paragraph should be added to the first section to ensure adequate protection of the confidentiality of personal data being used for the purposes of preliminary judicial or administrative investigations, so as to ensure that they are only disclosed as and when legally admissible.

Amendment 189
Proposal for a regulation

Article 83 – paragraph 2 – introductory wording

Text proposed by the Commission

Amendment

2. Bodies conducting historical, statistical or scientific research may publish or otherwise publicly disclose personal data only if:

2. Bodies conducting historical, statistical, **aggregated** or scientific research may publish or otherwise publicly disclose personal data only if:

Amendment 190
Proposal for a regulation

Article 83 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Further processing of data for historical, statistical, aggregated or scientific research purposes shall not be considered as incompatible under point (b) of Article 5 provided that the processing

(a) is subject to the conditions and safeguards of this Article; and

(b) complies with all other relevant legislations.

Justification

The current proposal for Article 83 appears to allow processing of health data, in identifiable form, for research purposes without reference to consent. The only safeguards (that identifiable data must be kept separate and that researchers can use identifiable data only if research cannot be fulfilled by using non-identifiable data) significantly lowers the protection of health data. There is a risk that the current proposal will allow for researchers to use identifiable data without consent.

Amendment 191
Proposal for a regulation

Article 83 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements

deleted

for the processing of personal data for the purposes referred to in paragraph 1 and 2 as well as any necessary limitations on the rights of information to and access by the data subject and detailing the conditions and safeguards for the rights of the data subject under these circumstances.

Amendment 192
Proposal for a regulation

Article 85 – paragraph 2

Text proposed by the Commission

2. Churches and religious associations which apply comprehensive rules in accordance with paragraph 1 shall provide for the establishment of an independent supervisory authority in accordance with Chapter VI of this Regulation.

Amendment

2. Churches and religious associations which apply comprehensive rules in accordance with paragraph 1 shall provide for the establishment of an independent supervisory authority in accordance with Chapter VI of this Regulation *or alternatively obtain the certification necessary for the procedures required under Article 39.*

Justification

As an alternative to the provision requiring an independent supervisory authority, a certification requirement might also be appropriate, particularly in respect of the less wealthy denominations.

Amendment 193

Proposal for a regulation
Article 86 – paragraph 2

Text proposed by the Commission

2. The *delegation of* power referred to in **Article 6(5)**, Article 8(3), Article 9(3), **Article 12(5)**, Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 22(4), Article 23(3), Article 26(5), Article 28(5), Article 30(3), Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11),

Amendment

2. The power *to adopt delegated acts* referred to in Article 8(3), Article 9(3), Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 22(4), Article 23(3), Article 26(5), Article 28(5), Article 30, Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11), Article 37(2),

Article 37(2), Article 39(2), Article 43(3), Article 44(7), **Article 79(6)**, Article 81(3), Article 82(3) and Article 83(3) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

Article 39(2), Article 43(3), Article 44(7), Article 81(3), Article 82(3) and Article 83(3) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

Amendment 194

Proposal for a regulation Article 86 – paragraph 3

Text proposed by the Commission

3. The delegation of power referred to in **Article 6(5)**, Article 8(3), Article 9(3), **Article 12(5)**, Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 22(4), Article 23(3), Article 26(5), Article 28(5), **Article 30(3)**, Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11), Article 37(2), Article 39(2), Article 43(3), Article 44(7), **Article 79(6)**, Article 81(3), Article 82(3) and Article 83(3) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Amendment

3. The delegation of power referred to in Article 8(3), Article 9(3), Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 22(4), Article 23(3), Article 26(5), Article 28(5), Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11), Article 37(2), Article 39(2), Article 43(3), Article 44(7), Article 81(3), Article 82(3) and Article 83(3) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Amendment 195

Proposal for a regulation Article 86 – paragraph 5

Text proposed by the Commission

5. A delegated act adopted pursuant to **Article 6(5)**, Article 8(3), Article 9(3), **Article 12(5)**, Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 22(4),

Amendment

5. A delegated act adopted pursuant to Article 8(3), Article 9(3), Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 22(4), Article 23(3), Article 26(5),

Article 23(3), Article 26(5), Article 28(5), **Article 30(3)**, Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11), Article 37(2), Article 39(2), Article 43(3), Article 44(7), **Article 79(6)**, Article 81(3), Article 82(3) and Article 83(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

Article 28(5), Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11), Article 37(2), Article 39(2), Article 43(3), Article 44(7), Article 81(3), Article 82(3) and Article 83(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

Amendment 196

Proposal for a regulation

Article 86 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. The Commission will promote technological neutrality on adoption of the acts referred to in this Article.

PROCEDURE

Title	Protection of individuals with regard to the processing of personal data, and the free movement of such data (General Data Protection Regulation)		
References	COM(2012)0011 – C7-0025/2012 – 2012/0011(COD)		
Committee responsible Date announced in plenary	LIBE 16.2.2012		
Opinion by Date announced in plenary	JURI 14.6.2012		
Rapporteur Date appointed	Marielle Gallo 14.6.2012		
Discussed in committee	10.7.2012	6.11.2012	21.2.2013
Date adopted	19.3.2013		
Result of final vote	+: 14	–: 6	0: 4
Members present for the final vote	Raffaele Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Marielle Gallo, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Klaus-Heiner Lehne, Jiří Maštálka, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Rebecca Taylor, Alexandra Thein, Rainer Wieland, Cecilia Wikström, Zbigniew Ziobro, Tadeusz Zwiefka		
Substitute(s) present for the final vote	Piotr Borys, Eva Lichtenberger, Axel Voss		
Substitute(s) under Rule 187(2) present for the final vote	Ricardo Cortés Lastra		

POSTUPAK

Naslov	Zaštita pojedinaca pri obradi osobnih podataka i slobodni protok takvih podataka (Opća uredba o zaštiti podataka)			
Referentni dokumenti	COM(2012)0011 – C7-0025/2012 – 2012/0011(COD)			
Datum podnošenja EP-u	25.1.2012			
Nadležni odbor Datum objave na plenarnoj sjednici	LIBE 16.2.2012			
Odbor(i) čije se mišljenje traži Datum objave na plenarnoj sjednici	ECON 16.2.2012	EMPL 24.5.2012	ITRE 16.2.2012	IMCO 16.2.2012
	JURI 14.6.2012			
Odbori koji nisu dali mišljenje Datum odluke	ECON 13.2.2012			
Izvjestitelj(i) Datum imenovanja	Jan Philipp Albrecht 12.4.2012			
Razmatranje u odboru	27.2.2012	31.5.2012	9.7.2012	19.9.2012
	5.11.2012	10.1.2013	21.1.2013	20.3.2013
	6.5.2013	21.10.2013		
Datum usvajanja	21.10.2013			
Rezultat konačnog glasovanja	+: -: 0:	48 1 3		
Zastupnici nazočni na konačnom glasovanju	Jan Philipp Albrecht, Edit Bauer, Rita Borsellino, Emine Bozkurt, Arkadiusz Tomasz Bratkowski, Salvatore Caronna, Philip Claeys, Carlos Coelho, Agustín Díaz de Mera García Consuegra, Ioan Enciu, Frank Engel, Cornelia Ernst, Tanja Fajon, Kinga Gál, Kinga Göncz, Sylvie Guillaume, Salvatore Iacolino, Sophia in 't Veld, Teresa Jiménez-Becerril Barrio, Juan Fernando López Aguilar, Baroness Sarah Ludford, Monica Luisa Macovei, 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			
Zamjenici nazočni na konačnom glasovanju	Alexander Alvaro, Silvia Costa, Dimitrios Droutsas, Evelyne Gebhardt, Monika Hohlmeier, Jan Mulder, Raül Romeva i Rueda, Carl Schlyter, Marco Scurria			
Zamjenici nazočni na konačnom glasovanju prema čl. 187. st. 2.	Jean-Pierre Audy, Pilar Ayuso, Miloslav Ransdorf, Britta Reimers, Kay Swinburne, Rafał Trzaskowski, Pablo Zalba Bidegain			
Datum podnošenja	22.11.2013			