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*Committee on the Internal Market and Consumer Protection*

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**2012/0011(COD)**

8.11.2012

# **AMENDMENTS**

## **87 - 459**

**Draft opinion**

**Lara Comi**

(PE496.497v01-00)

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

Proposal for a regulation

(COM(2012)0011 – C7-0025/12 – 2012/0011(COD))

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**EN**

*United in diversity*

**EN**

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**Amendment 87**  
**Kyriacos Triantaphyllides**

**Proposal for a regulation**  
**Recital 2**

*Text proposed by the Commission*

(2) The processing of personal data is designed to serve man; the principles and rules on the protection of individuals with regard to the processing of their personal data should, whatever the nationality or residence of natural persons, respect their fundamental rights and freedoms, notably their right to the protection of personal data. *It should contribute to the accomplishment of an area of freedom, security and justice and of an economic union, to economic and social progress, the strengthening and the convergence of the economies within the internal market, and the well-being of individuals.*

*Amendment*

(2) The processing of personal data is designed to serve man; the principles and rules on the protection of individuals with regard to the processing of their personal data should, whatever the nationality or residence of natural persons, respect their fundamental rights and freedoms, notably their right to the protection of personal data. *During the processing and transfer of data within the internal market, the right to protection of privacy and protection of personal data, as defined in Article 8 of the Charter of Fundamental Rights and in Article 16.2 TFEU, should be respected. The processing and transmission of data in the single market should be limited by the right to protection under Article 8 of the Charter of Fundamental Rights.*

Or. el

**Amendment 88**  
**Kyriacos Triantaphyllides**

**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

*Amendment*

(4) The *process of* 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

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.

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.

Or. el

**Amendment 89**  
**Kyriacos Triantaphyllides**

**Proposal for a regulation**  
**Recital 6**

*Text proposed by the Commission*

(6) These developments require building a strong and more coherent data protection framework in the Union, backed by strong enforcement, given the importance to create the trust that will allow the digital economy to develop across the internal market. Individuals should have control of their own personal data and legal and practical certainty for individuals, economic operators and public authorities should be reinforced.

*Amendment*

(6) These developments require building a strong and more coherent data protection framework in the Union, backed by strong enforcement ***of legislation protecting personal data***, given the importance to create the trust that will allow the digital economy to develop across the internal market. Individuals should have control of their own personal data and legal and practical certainty for individuals, economic operators and public authorities should be reinforced.

Or. el

**Amendment 90**  
**Anna Maria Corazza Bildt**

**Proposal for a regulation**  
**Recital 6 a (new)**

*Text proposed by the Commission*

*Amendment*

***(6 a) 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 91**  
**Kyriacos Triantaphyllides**

**Proposal for a regulation**  
**Recital 7**

*Text proposed by the Commission*

(7) The objectives and principles of Directive 95/46/EC remain sound, but it has not prevented fragmentation in the way data protection is implemented across the Union, legal uncertainty and a widespread public perception that there are significant risks for the protection of individuals associated notably with online activity. Differences in the level of protection of the rights and freedoms of individuals, notably to the right to the protection of personal data, with regard to the processing of personal data afforded in the Member States may ***prevent the free flow of personal data throughout the Union.*** *These differences may therefore constitute an obstacle to the pursuit of economic activities at the level of the Union, distort competition and impede authorities in the discharge of their responsibilities under Union law. This difference in levels of protection is due to the existence of differences in the implementation and application of Directive 95/46/EC.*

*Amendment*

(7) The objectives and principles of Directive 95/46/EC remain sound, but it has not prevented fragmentation in the way data protection is implemented across the Union, legal uncertainty and a widespread public perception that there are significant risks for the protection of individuals associated notably with online activity. Differences in the level of protection of the rights and freedoms of individuals, notably to the right to the protection of personal data, with regard to the processing of personal data afforded in the Member States may constitute an obstacle to the ***provision of adequate data protection for citizens and by extension infringe their rights.*** *A Directive is therefore being proposed to ensure effective compliance with the principle of subsidiarity and contribute to better data protection in Member States where the protection level is higher.*

Or. el

**Amendment 92**  
**Kyriacos Triantaphyllides**

**Proposal for a regulation**  
**Recital 8**

*Text proposed by the Commission*

(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 should be ensured throughout the Union.

*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 should be ensured throughout the Union.  
***Harmonisation should allow Member States to adopt in their national law provisions preventing any potential degradation in the level of personal data protection in Member States where the law provides more stringent protection.***

Or. el

**Amendment 93**  
**Kyriacos Triantaphyllides**

**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) ***Since there is a risk that personal data protection may be subordinated to the free movement of data, there is a risk of an imbalance between the objectives of the fundamental right to data protection and the objectives of the single market to the detriment of the former, and on the basis that Member States should retain the right to impose stricter limits on the protection of personal data than those provided for in the new legislation, and with a view to ensuring an enhanced level of protection for physical persons throughout the Union, a new Directive*** is

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.

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 **Directive** 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 **Directive**. 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.

Or. el

#### **Amendment 94**

**Christel Schaldemose, Anna Hedh, Catherine Stihler**

#### **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

###### *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.

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. 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.

Or. en

#### **Amendment 95**

**Andreas Schwab, Lara Comi, Rafał Trzaskowski, Marielle Gallo, Pablo Arias Echeverría**

#### **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

*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 does not involve making such data accessible to an indefinite number of people.*** The



personal data for such personal or domestic activities.

exemption should also not apply to controllers or processors which provide the means for processing personal data for such personal or domestic activities.

Or. fr

### *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 96 Kyriacos Triantaphyllides**

#### **Proposal for a regulation Recital 21**

*Text proposed by the Commission*

*Amendment*

***(21) In order to determine whether a processing activity can be considered to 'monitor the behaviour' of data subjects, it should be ascertained whether individuals are tracked on the internet with data processing techniques which consist of applying a 'profile' to an individual, particularly in order to take decisions concerning her or him or for analysing or predicting her or his personal preferences, behaviours and attitudes.***

***deleted***

Or. el

### **Amendment 97 Kyriacos Triantaphyllides**

#### **Proposal for a regulation Recital 21 a (new)**

*Text proposed by the Commission*

*Amendment*

***(21 a) Clear proof that the behaviour of physical persons is being monitored in order to analyse or to predict their personal preferences, behaviour, habits and attitudes is provided by search engines that derive part of their revenue from targeted advertising, exploiting the collection of personal data of their visitors or the analysis of their profile and they should fall clearly within the scope of the Directive. The same should apply to social networks and websites that offer server space and, in some cases, software storage, which also could collect user data for commercial purposes.***

Or. el

**Amendment 98**

**Christel Schaldemose, Anna Hedh, Catherine Stihler**

**Proposal for a regulation**

**Recital 23 a (new)**

*Text proposed by the Commission*

*Amendment*

***(23 a) 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.***

Or. en

**Amendment 99**

**Rafał Trzaskowski**

**Proposal for a regulation**

**Recital 24**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

*One has to make clear when such identifiers should be considered personal data and this could be definitely examined by looking into the intentions of entities processing them.*

**Amendment 100**

**Christel Schaldemose, Anna Hedh, Catherine Stihler**

**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

*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.

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 **should as a principle** be considered as personal data in all circumstances.

Or. en

## **Amendment 101**

**Andreas Schwab, Rafal Trzaskowski, Marielle Gallo**

### **Proposal for a regulation**

#### **Recital 24**

##### *Text proposed by the Commission*

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

##### *Amendment*

(24) When using online services, individuals may be associated with online identifiers provided by their devices, applications, tools and protocols, such as Internet Protocol addresses or cookie identifiers. This may leave traces which, combined with unique identifiers and other information received by the servers, may be used to create profiles of the individuals and identify them. It follows that **a study should be 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.

Or. fr

##### *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 102**  
**Morten Løkkegaard**

**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 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.

Or. en

**Amendment 103**  
**Matteo Salvini**

**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

*Amendment*

(25) Consent should be given by any appropriate method enabling a freely given, specific and informed indication of the data subject's wishes. **Consent can be given** either by a statement or by a clear

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.

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 **such as selecting default settings**, which clearly indicates in *the specific* context the data subject's **agreement**. Silence or inactivity should not constitute consent. **Any request to give consent electronically must be clear, concise and not unnecessarily disruptive or burdensome to the data subject and** to the use of the service for which it is provided, **and should facilitate clear choice**.

Or. en

#### *Justification*

*Consent should not be the primary means of ensuring the 'lawfulness' of processing. Requirements for consent and limitations on the processing of personal data should be proportionate to the sensitivity of data and any assessed risks to the data protection and privacy of individuals arising from the use of personal data.*

### **Amendment 104 Malcolm Harbour**

#### **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

##### *Amendment*

(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.

or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of their personal data. ***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.

Or. en

#### *Justification*

*The Regulation should be discouraged from imposing overly prescriptive requirements for consent. This amendment aims to ensure the continued use of implied consent and processing in accordance with Directive 2002/58/EC through the appropriate settings of a browser or other application. (c.f. recital 66 of Directive 136/2009/EC).*

### **Amendment 105** **Kyriacos Triantaphyllides**

#### **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

##### *Amendment*

(25) Consent should be given explicitly by any appropriate method enabling a freely given specific and informed indication of the ***adult*** data subject's wishes, ***as specifically described in the New York Convention***, 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

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.

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.

Or. el

**Amendment 106**  
**Andreas Schwab, Rafał Trzaskowski**

**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. 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.

Or. fr



**Amendment 107**  
**Malcolm Harbour**

**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 in the Union, ***including a controller that is also a processor***, 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 ***that is not also a controller*** should be the place of its central administration in the Union.

Or. en

*Justification*

*In the case of a controller that is also a processor it makes little sense to apply different tests to determine which regulator has the authority over the organisation. This amendment ensures that such controllers are fully able to benefit from the one-stop-shop.*

**Amendment 108**  
**Andreas Schwab, Rafał Trzaskowski**

**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 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. ***‘Main establishment of the controller’ means the place in the EU where personal data protection policy is determined, taking into account the dominant influence of that establishment over others, particularly in the case of a group of companies, as regards the implementation of rules on personal data protection and rules which have a bearing on data protection.*** The main establishment of the processor should be the place of its central administration in the Union.

Or. fr

*Justification*

*Both national supervisory authorities and the EDPS want to see a more precise definition of ‘main establishment’, in particular to take account of the specific case of groups of companies operating in more than one Member State. This is essential in order to determine which is the relevant competent authority.*

**Amendment 109**  
**Anna Maria Corazza Bildt**

**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.***

Or. en

**Amendment 110**  
**Emma McClarkin**

**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

*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 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

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.

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.*

Or. en

#### *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 111** **Bernadette Vergnaud**

#### **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

##### *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 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.

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. 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.

Or. fr

#### *Justification*

*The principles of the adequacy, relevance and non-excessiveness of data collected for processing purposes offer a very high level of genuine guarantees to the data subjects concerned. This is the wording of Directive 95/46/EC. The principle of ‘minimum data necessary’ makes it very difficult for companies to address their clients in a personalised, targeted manner, even if the latter have no objection.*

#### **Amendment 112** **Matteo Salvini**

#### **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 **must** 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.

Or. en

## *Justification*

*Emphasise that consent should not be considered the general rule regards the processing of personal data but reserved for those contexts where consent is appropriate and in circumstances in which it truly can be given freely.*

### **Amendment 113** **Christian Engström**

#### **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. Default settings such as pre-ticked boxes, silence, or the simple use of a service do not imply consent.***

Or. en

### **Amendment 114** **Matteo Salvini**

#### **Proposal for a regulation** **Recital 33 a (new)**

##### *Text proposed by the Commission*

##### *Amendment*

***(33 a) Consent should be relied on as the legitimate basis for processing only when data subjects can meaningfully provide and revoke their consent. In other cases, data controllers should ensure the fair and lawful processing of personal data on other legitimate grounds. Obtaining***

*explicit informed consent can carry high costs for individuals. Consent may not be the most desirable means of legitimising the processing of personal data. The use of consent should be reserved for contexts that pose a risk of harm to individuals and/or situations where the processing of personal data would infringe an individual's rights to data protection and privacy. When used in inappropriate contexts, consent loses its value and places an unnecessary burden on the data subject. 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 requested.*

Or. en

#### *Justification*

*An excessive prominent notice and consent regime may undermine privacy when overused or used out of context, particularly in online services. Where consent is necessary it should be specific, informed and meaningful, and when used outside that context it loses its value and role in all contexts regards ensuring meaningful transparency, choice and control for data subjects.*

#### **Amendment 115** **Morten Løkkegaard**

#### **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***

##### *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. 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

***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.

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. ***However, imbalance between the controller and the data subject is not a problem where Union or Member State law has made the data subject's consent a specific condition for a specific type of processing of the personal data or set of processing operations.***

Or. en

**Amendment 116**  
**Christian Engström**

**Proposal for a regulation**  
**Recital 34**

*Text proposed by the Commission*

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

*Amendment*

(34) Consent should not provide a valid legal ground for the processing of personal data, where there is a clear imbalance between the data subject and the controller. This is especially the case where the data subject is in a situation of dependence from the controller, among others:

-where personal data are processed by the employer of employees' personal data in the employment context ***or;***

***-where the processor or controller is in a dominant market position as regards the products or services offered to the data***



***subject or;***

-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.

Or. en

**Amendment 117**  
**Rafał Trzaskowski**

**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 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.

Or. en

*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 118**  
**Rafal Trzaskowski**

**Proposal for a regulation**  
**Recital 34 a (new)**

*Text proposed by the Commission*

*Amendment*

***(34 a) 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.***

Or. en

*Justification*

*Adding such a recital would have an awareness-raising meaning. Although the possibility to terminate a contract steams 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 119**

**Andreas Schwab, Lara Comi, Marielle Gallo, Pablo Arias Echeverría**

### **Proposal for a regulation**

#### **Recital 38**

##### *Text proposed by the Commission*

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

##### *Amendment*

(38) The legitimate interests of a **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 **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.

Or. fr

##### *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 120**  
**Rafal Trzaskowski**

**Proposal for a regulation**  
**Recital 38**

*Text proposed by the Commission*

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

*Amendment*

(38) The legitimate interests of a 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 ***free of charge. A legitimate interests pursued by controller may include: direct marketing of controller's goods and services, enforcement of the controller's claims and ensuring the security of the system, network and information. When data subject withdraws his or her consent, the controller shall be also allowed to refuse further provision of services if the processing is necessary because of the nature of the service or the functioning of the filling system***. 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.

Or. en

*Justification*

*For the purpose of creating legal certainty across the Internal Market it should be made clear*

*in the text what kind of activity could be perceived as a legitimate interest of the controller. Direct marketing is a tool enabling companies also to improve their offer and their service to the benefit of the consumer, who maintains the right to object and the right to be informed.*

## **Amendment 121**

**Matteo Salvini**

### **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 ensured.

##### *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, 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 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 ensured.

Or. en

##### *Justification*

*Consent is a legitimate basis but should not be prioritised over other legitimate bases so as to encourage its use where it is unnecessary.*

## **Amendment 122**

**Christel Schaldemose, Anna Hedh, Catherine Stihler**

**Proposal for a regulation**  
**Recital 40 a (new)**

*Text proposed by the Commission*

*Amendment*

***(40 a) 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.***

Or. en

*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 123**  
**Christel Schaldemose, Anna Hedh, Catherine Stihler**

**Proposal for a regulation**  
**Recital 40 b (new)**

*Text proposed by the Commission*

*Amendment*

***(40 b) 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.***

Or. en

**Amendment 124**  
**Christel Schaldemose, Anna Hedh, Catherine Stihler**

**Proposal for a regulation**  
**Recital 42**

*Text proposed by the Commission*

(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.

*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, ***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.

Or. en

**Amendment 125**  
**Bernadette Vergnaud**

**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.

Or. fr

*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 126**

**Andreas Schwab, Lara Comi, Rafał Trzaskowski, Pablo Arias Echeverría**

**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 which may be used to determine*** 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.

Or. fr

*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 127**

**Andreas Schwab, Lara Comi, Rafał Trzaskowski, Pablo Arias Echeverría**



**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.

Or. fr

*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 128**  
**Andreas Schwab, Rafal Trzaskowski, Marielle Gallo**

**Proposal for a regulation**  
**Recital 55**

*Text proposed by the Commission*

*Amendment*

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

**deleted**

Or. fr

*Justification*

*Data subjects have the right of access 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 personal data and creates confusion regarding the exact scope of the right of access, which is a key right.*

## **Amendment 129**

**Andreas Schwab, Rafał Trzaskowski, Marielle Gallo**

### **Proposal for a regulation**

#### **Recital 60**

*Text proposed by the Commission*

*Amendment*

**(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

**(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.

demonstrate the compliance of each processing operation with this Regulation.

Or. fr

*Justification*

*Strengthens the protection of personal data. A general principle that responsibility rests with the controller needs to be explicitly laid down.*

**Amendment 130**

**Matteo Salvini**

**Proposal for a regulation**

**Recital 61 a (new)**

*Text proposed by the Commission*

*Amendment*

***(61 a) 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.***

Or. en

*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 131

Christel Schaldemose, Anna Hedh, Catherine Stihler

### Proposal for a regulation

#### Recital 61 a (new)

*Text proposed by the Commission*

*Amendment*

***(61 a) 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.***

Or. en

## Amendment 132

Andreas Schwab, Lara Comi, Rafał Trzaskowski, Marielle Gallo, Pablo Arias Echeverría

### Proposal for a regulation

#### Recital 62

*Text proposed by the Commission*

*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.

(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.***

Or. fr

*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 133  
Malcolm Harbour**

**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***

Or. en

*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 134**

**Andreas Schwab, Lara Comi, Rafał Trzaskowski, Marielle Gallo, Pablo Arias Echeverría**

#### **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 **keep a documentary record of all the** processing **systems and procedures for which they are responsible**. 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.

Or. fr

###### *Justification*

*The wording of this provision should be brought into line with that of the proposal for a directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data. As stated by the EDPS in his opinion of 7 March 2012, the Commission proposal that every processing operation should be documented runs counter to the objective of the proposal for a regulation of reducing the administrative burden generated by the data protection rules.*

#### **Amendment 135**

**Philippe Juvin**

#### **Proposal for a regulation**

##### **Recital 67**

*Text proposed by the Commission*

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

(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 may significantly adversely affect the protection of the personal data or the privacy of the data subject concerned** 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 **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*

*The obligation to notify the personal data breach must not place disproportionate administrative constraints on controllers and must leave them the scope to react quickly and effectively, by concentrating on resolving the problem as a matter of priority. Consequently, that obligation should be limited to cases which are likely to have a significant adverse effect on the protection of the personal data or privacy of the data subject (see recital 67).*

**Amendment 136**  
**Matteo Salvini**

**Proposal for a regulation**  
**Recital 67**

*Text proposed by the Commission*

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

*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 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



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.

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.

Or. en

### *Justification*

*The time period must not be fixed in law – this must depend upon the specific operational and technical complexities, and the investigative and forensic processes needed, to understand the nature and extent of any given incident. The law must insist on such incidents being treated with utmost urgency and the requirement of ‘undue delay’ gives sufficient emphasis, while maintaining pragmatic flexibility.*

### **Amendment 137**

**Andreas Schwab, Rafal Trzaskowski**

### **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

#### *Amendment*

(67) A personal data breach may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud, to the individual concerned. Therefore, as soon as the controller becomes aware that a breach ***which would have a significant impact on the data subject*** has occurred, the controller should notify the breach to the supervisory authority without undue delay. The individuals whose personal data could be ***significantly*** adversely affected by the breach should be notified without

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.

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.

Or. fr

#### *Justification*

*In the event of a breach, the controller must initially concentrate on taking all appropriate measures to prevent it continuing. An obligation to notify the competent supervisory authority within 24 hours, combined 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, the notification requirement must not apply in the case of minor breaches, as otherwise the supervisory authorities would be over-burdened.*

#### **Amendment 138**

**Christel Schaldemose, Anna Hedh, Catherine Stihler**

#### **Proposal for a regulation**

#### **Recital 67**

*Text proposed by the Commission*

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

(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 **72** hours. Where this cannot be achieved within **72** 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 **and which is likely to lead to significant risk of harm to the data subject, thereby avoiding information overload for the data subject,** 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.

**Amendment 139**  
**Matteo Salvini**

**Proposal for a regulation**  
**Recital 70 a (new)**

*Text proposed by the Commission*

*Amendment*

***(70 a) 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.***

Or. en

*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 140**  
**Bernadette Vergnaud**

**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.***

Or. fr

*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 141**  
**Andreas Schwab**

**Proposal for a regulation**  
**Recital 115**

*Text proposed by the Commission*

*Amendment*

***(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.***

***deleted***

Or. fr

*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 142**

**Andreas Schwab, Lara Comi, Rafał Trzaskowski, Marielle Gallo, Pablo Arias Echeverría**

**Proposal for a regulation**  
**Recital 118**

*Text proposed by the Commission*

*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***

***(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 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.***

Or. fr

### *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 143**

**Andreas Schwab, Lara Comi, Rafał Trzaskowski, Pablo Arias Echeverría**

### **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***

##### *Amendment*

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

*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 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.

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 and appropriate transmission of relevant documents to the European Parliament and Council.

Or. fr

#### **Amendment 144**

**Andreas Schwab, Lara Comi, Rafał Trzaskowski, Pablo Arias Echeverría**



**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 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<sup>46</sup>. In this context, the Commission should consider specific measures for micro, small and medium-sized enterprises.

*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 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<sup>46</sup>. In this context, the Commission should consider specific measures for micro, small and medium-sized enterprises.

**Amendment 145****Andreas Schwab, Lara Comi, Rafał Trzaskowski, Pablo Arias Echeverría****Proposal for a regulation****Recital 131***Text proposed by the Commission*

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

*Amendment*

(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.

## Amendment 146

Andreas Schwab, Lara Comi, Marielle Gallo, Pablo Arias Echeverría

### 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.

Or. fr

## Amendment 147

Morten Løkkegaard

### Proposal for a regulation

#### Article 2 – paragraph 2 – point b

##### *Text proposed by the Commission*

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

##### *Amendment*

***deleted***

Or. en

### *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 148**

**Andreas Schwab, Lara Comi, Marielle Gallo, Pablo Arias Echeverría**

#### **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;**

Or. fr

### *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 149**

**Philippe Juvin**

#### **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);**

Or. fr

*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 150**  
**Malcolm Harbour**

**Proposal for a regulation**  
**Article 2 – paragraph 2 – point e a (new)**

*Text proposed by the Commission*

*Amendment*

***(e a) that has been rendered anonymous.***

Or. en

*Justification*

*By definition anonymous data does not constitute personal data.*

**Amendment 151**  
**Rafał Trzaskowski**

**Proposal for a regulation**  
**Article 2 – paragraph 2 – point e a (new)**

*Text proposed by the Commission*

*Amendment*

***(e a) of natural person pursuing economic activity, which identify this person on the market;***

Or. en

*Justification*

*The Regulation should not apply to natural persons, who run a company under their own name. The Regulation as proposed by the Commission creates problems when deciding what constitutes a personal data, especially in the context of the obligations to provide information, stemming from the Regulation.*

**Amendment 152**

**Christel Schaldemose, Anna Hedh, Catherine Stihler**

**Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

***(e a) 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.***

Or. en

**Amendment 153**

**Rafał Trzaskowski**

**Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

***(e b) of a natural person which are made public in the course of exercising professional duties such as name, contact details and function;***

Or. en

**Amendment 154**

**Rafał Trzaskowski**

**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;*

Or. en

**Amendment 155**  
**Catherine Stihler**

**Proposal for a regulation**  
**Article 3 a (new)**

*Text proposed by the Commission*

*Amendment*

*Article 3 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)*

Or. en

*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 156**  
**Christel Schaldemose, Anna Hedh, Catherine Stihler**

**Proposal for a regulation**  
**Article 3 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. This Regulation applies to the processing of personal data in the context

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.

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.***

Or. en

**Amendment 157**  
**Rafał Trzaskowski**

**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 ***directing*** of goods or services to such data subjects in the Union, ***irrespective of whether these are provided free of charge in relation to the data subject or not,*** or

Or. en

*Justification*

*"Directing" is a terminology used by the European Court of Justice in Pammelr and Alpenhof case. It should be also made clear that the Regulation applies irrespective of the whether a payment from the data subject is required.*

**Amendment 158**  
**Morten Løkkegaard**

**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.***

Or. en



**Amendment 159**  
**Philippe Juvin**

**Proposal for a regulation**  
**Article 4 – paragraph 1 – point 1**

*Text proposed by the Commission*

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

Or. fr

*Justification*

*Adherence to the principle of technological neutrality.*

**Amendment 160**  
**Christian Engström**

**Proposal for a regulation**  
**Article 4 – paragraph 1 – point 1**

*Text proposed by the Commission*

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

*Amendment*

(1) 'data subject' means an identified natural person or a natural person who can be identified **or singled out**, 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 **a unique identifier**, location data, online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic,

*social* identity of that person;

cultural, *social or gender* identity *or sexual orientation* of that person;

Or. en

#### **Amendment 161**

**Christel Schaldemose, Anna Hedh, Catherine Stihler**

#### **Proposal for a regulation**

#### **Article 4 – paragraph 1 – point 1**

##### *Text proposed by the Commission*

(1) ‘data subject’ means an identified natural person or a natural person who can be identified, directly or indirectly, by means *reasonably* likely to be used by the controller or by any other natural or legal person, in particular by reference to an identification number, location data, online 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, *or singled out and treated differently*, by means 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;

Or. en

#### **Amendment 162**

**Christel Schaldemose, Anna Hedh, Catherine Stihler**

#### **Proposal for a regulation**

#### **Article 4 – paragraph 1 – point 1**

##### *Text proposed by the Commission*

(1) ‘data subject’ means an identified natural person or a natural person who can be identified, directly or indirectly, by means reasonably likely to be used by the controller or by any other natural or legal person, in particular by reference to an identification number, location data, online identifier or to one or more factors specific

##### *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, *Internet Protocol addresses*, online

to the physical, physiological, genetic, mental, economic, cultural or social identity of that person;

identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person;

Or. en

**Amendment 163**  
**Malcolm Harbour, Adam Bielan**

**Proposal for a regulation**  
**Article 4 – paragraph 1 – point 1**

*Text proposed by the Commission*

(1) ‘data subject’ means an identified natural person or **a** natural person who can be **identified**, directly or indirectly, by means reasonably likely to be used by the controller or by any other natural or legal person, in particular by reference to **an** identification number, location data, online 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 **an identifiable** natural person who can be **uniquely**, 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 **a name**, 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. ***If identification requires a disproportionate amount of time, effort or material resources, the natural living person shall not be considered identifiable;***

Or. en

*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 164**  
**Rafał Trzaskowski**

**Proposal for a regulation**  
**Article 4 – paragraph 1 – point 1**

*Text proposed by the Commission*

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

Or. en

*Justification*

*Leaving 'any other natural or legal person' without binding it to the controller is on the other hand hard to imagine in practice as the controller would then be never sure if the processed data are personal or not.*

**Amendment 165**  
**Morten Løkkegaard**

**Proposal for a regulation**  
**Article 4 – paragraph 1 – point 2**

*Text proposed by the Commission*

(2) ‘personal data’ means any information relating to a data subject;

*Amendment*

(2) ‘personal data’ means any information relating to a data subject; ***data that cannot be related to a data subject such as anonymised data or some pseudonymised data fall outside the scope of this regulation; Business Contact Information fall outside this regulation;***

Or. en

### *Justification*

*Anonymised data and some pseudonymised data can concern a data subject, but can no longer be linked to that data subject for technical reasons. An example would be a person's diploma without his or her name, address and social security number on it. Data that can no longer be linked to a data subject should not be under this regulation.*

#### **Amendment 166**

**Andreas Schwab, Lara Comi, Rafał Trzaskowski, Marielle Gallo, Pablo Arias Echeverría**

#### **Proposal for a regulation**

**Article 4 – paragraph 1 – point 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***(2 a) 'Anonymous data' means any data that has been collected, altered or otherwise processed in such a way that it can no longer be attributed to a data subject or that such attribution would require a disproportionate amount of time, cost and effort; anonymous data shall not be considered personal data.***

Or. en

### *Justification*

*Businesses should be incentivized to anonymize 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 167**

**Philippe Juvin**

#### **Proposal for a regulation**

**Article 4 – paragraph 1 – point 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***(2a) ‘data rendered anonymous’ means data relating to an identified natural person or a natural person who can be identified and which have been modified in such a way that this data subject cannot be identified;***

Or. fr

*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 168**

**Malcolm Harbour, Adam Bielan**

**Proposal for a regulation**

**Article 4 – paragraph 1 – point 3 – point a (new)**

*Text proposed by the Commission*

*Amendment*

***a) ‘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.***

Or. en

*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 169**

**Christian Engström**

**Proposal for a regulation**  
**Article 4 – paragraph 1 – point 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***(3 a) '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;***

Or. en

**Amendment 170**  
**Josef Weidenholzer**

**Proposal for a regulation**  
**Article 4 – paragraph 1 – point 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***(3a) 'profiling' means any form of automated processing intended to evaluate certain personal aspects relating to the natural person or to analyse or predict this natural person's performance at work, economic situation, place of residence, health, personal preferences, behaviour, etc.***

Or. de

**Amendment 171**  
**Malcolm Harbour, Adam Bielan**

**Proposal for a regulation**  
**Article 4 – paragraph 1 – point 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***(3 a) '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***

Or. en

*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 172**  
**Rafał Trzaskowski**

**Proposal for a regulation**  
**Article 4 – paragraph 1 – point 5**

*Text proposed by the Commission*

*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, ***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;

(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 173****Matteo Salvini****Proposal for a regulation****Article 4 – paragraph 1 – 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 ***and informed*** indication of his or her wishes by which the data subject signifies agreement to personal data relating to them being processed;

*Justification*

*The Regulation should recognise different forms of consent, and that any requirement for explicit consent should be reserved for those categories of data and contexts that pose significant risk to the data protection and privacy of individuals. The Regulation should not seek to prescribe the form of consent, as this will quickly be undermined by changes in technology, services, and consumer attitudes, and may not create effective user privacy experiences.*

**Amendment 174****Morten Løkkegaard****Proposal for a regulation****Article 4 – paragraph 1 – 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 **and** informed 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;

Or. en

**Amendment 175**

**Malcolm Harbour, Adam Bielan**

**Proposal for a regulation**

**Article 4 – paragraph 1 – 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 **form of statement or conduct by the data subject indicating assent to the data processing proposed. Silence or inactivity does not in itself indicate acceptance;**

Or. en

*Justification*

*The process for obtaining consent, i.e. the mechanism of information provided to the subject followed by the data subject's reaction, is the basic mechanism for forming an agreement, in this case for the processing of personal data. Using the time-honoured terminology for this, as reflected in the Common European Sales law, would simplify the text, create certainty by putting consent on a firm and established basis and avoid distinctions that would prove very difficult to apply in practice.*

**Amendment 176**

**Rafał Trzaskowski**

**Proposal for a regulation**  
**Article 4 – paragraph 1 – point 8 a (new)**

*Text proposed by the Commission*

*Amendment*

***(8 a) 'profiling' means 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;***

Or. en

*Justification*

*Addressed in Article 20, the definition of profiling should be included in Article 4*

**Amendment 177**  
**Morten Løkkegaard**

**Proposal for a regulation**  
**Article 4 – paragraph 1 – point 9**

*Text proposed by the Commission*

*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;

(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***

Or. en

*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 178**

**Malcolm Harbour, Adam Bielan**

#### **Proposal for a regulation**

#### **Article 4 – paragraph 1 – 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, ***which is likely to adversely affect the protection of the personal data or privacy of the data subject.***

Or. en

*Justification*

*This amendment helps to avoid both unnecessary obligations upon data controllers and data processors and also the potential for "notification fatigue" for the data subject. A minimum threshold for triggering the obligation to notify, based upon the level of risk for the data subject, will increase protection for the data subject without becoming burdensome. This change is in line with Directive 2009/136/EC*

#### **Amendment 179**

**Andreas Schwab, Marielle Gallo**

#### **Proposal for a regulation**

#### **Article 4 – paragraph 1 – 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***

*Amendment*

(13) ‘main establishment’ means ***the location as designated by the undertaking or group of undertakings, whether controller or processor, on the basis of, but not limited to, the following optional***

*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;*

*objective criteria:*

*(1) the location of the European headquarters of a group of undertakings;*

*(2) the location of the entity within a group of undertakings with delegated data protection responsibilities;*

*(3) 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*

*(4) 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;*

Or. en

#### *Justification*

*One uniform test for determining an organization’s “main establishment” should be applied as the relevant reference point, based on relevant objective criteria, which a business can choose from in order to officially designate its location of ‘main establishment’, with effects for all processing activities of all entities part of the group. A similar concept exists in relation to Binding Corporate Rules. This approach will provide for legal certainty while preventing the risk of forum shopping.*

**Amendment 180**  
**Malcolm Harbour, Adam Bielan**

**Proposal for a regulation**  
**Article 4 – paragraph 1 – 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:*

- (1) the location of the European headquarters of a group of undertakings;*
  - (2) the location of the entity within a group of undertakings with delegated data protection responsibilities;*
  - (3) 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*
  - (4) 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.*

Or. en

### *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 181** **Rafał Trzaskowski**

##### **Proposal for a regulation** **Article 4 – paragraph 1 – point 18**

###### *Text proposed by the Commission*

(18) ‘child’ means any person below the age of **18** years;

###### *Amendment*

(18) ‘child’ means any person below the age of **13** years;

Or. en

#### **Amendment 182** **Malcolm Harbour**

##### **Proposal for a regulation** **Article 5 – paragraph 1 – 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;

Or. en

### *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 183**

**Bernadette Vergnaud**

#### **Proposal for a regulation**

#### **Article 5 – paragraph 1 – 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;

Or. fr

*Justification*

*The principles of the adequacy, relevance and non-excessiveness of data collected for processing purposes offer a very high level of genuine guarantees to the data subjects concerned. This is the wording of Directive 95/46/EC. The principle of ‘minimum data necessary’ makes it very difficult for companies to address their clients in a personalised, targeted manner, even if the latter have no objection.*

### **Amendment 184**

**Malcolm Harbour**

#### **Proposal for a regulation**

#### **Article 5 – paragraph 1 – 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

*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 **Article 83** and if a periodic review is carried out to assess the necessity to continue the storage;

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;

Or. en

#### *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 185** **Catherine Stihler**

#### **Proposal for a regulation** **Article 6 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 6 a**

***The data will not be used against the data subject in a disciplinary hearing, or to blacklist, vet or bar them from employment***

Or. en

#### *Justification*

*Further specification is needed that personal data will never be used against the data subject in an employment context*

#### **Amendment 186** **Morten Løkkegaard**

#### **Proposal for a regulation** **Article 6 – paragraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

(c) processing is necessary for compliance with **a** legal obligation to which **the** controller is subject;

(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.***

Or. en

**Amendment 187**  
**Rafał Trzaskowski**

**Proposal for a regulation**  
**Article 6 – paragraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

(c) processing is necessary for compliance with a legal obligation to which the controller is subject;

(c) processing is necessary for compliance with a legal obligation to which the controller is subject ***or for exercising the rights of the controller.***;

Or. en

*Justification*

*The right of the controller to process personal data when exercising his or hers rights steaming from the Regulation should be explicit.*

**Amendment 188**  
**Morten Løkkegaard**

**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

(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;

authority vested in the controller *or for the performance of a task carried out for assessing creditworthiness or for fraud prevention and detection purposes*;

Or. en

**Amendment 189**  
**Christian Engström**

**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 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.*

*deleted*

Or. en

**Amendment 190**  
**Emma McClarkin**

**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 rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a

(f) processing is necessary for the purposes of the legitimate interests pursued by a controller *or controllers*, 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

child. This shall not apply to processing carried out by public authorities in the performance of their tasks.

where the data subject is a child. This shall not apply to processing carried out by public authorities in the performance of their tasks.

Or. en

#### *Justification*

*Many circumstances exist where processing is carried out by more than one data controller. This situation can often occur when a shared database exists which is used to combat fraud, confirm identity and determine creditworthiness. This amendment is necessary to ensure the application of the legitimate interests provision applies.*

### **Amendment 191**

**Anna Hedh**

#### **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.

Or. en

#### *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 192**

**Bernadette Vergnaud**

### **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.

Or. fr

##### *Justification*

*The text of Directive 95/46/EC which the amendment takes over provides for the possibility of communicating data to third parties. It follows that the person concerned can contest this, which has also been taken over and clearly reinforced in Article 19 of this Regulation, and will also apply to off-line activities. Making provision for the communication of data to third parties will ensure that businesses, organisations and NGOs can continue conducting market surveys.*

## **Amendment 193**

**Andreas Schwab, Lara Comi, Marielle Gallo, Pablo Arias Echeverría**

### **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.

Or. fr

*Justification*

*Proposal 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 194**  
**Morten Løkkegaard**

**Proposal for a regulation**  
**Article 6 – paragraph 1 – point f a (new)**

*Text proposed by the Commission*

*Amendment*

***(f a) The data are collected from public registers, lists or documents accessible by everyone;***

Or. en

**Amendment 195**  
**Christel Schaldemose, Anna Hedh, Catherine Stihler**

**Proposal for a regulation**  
**Article 6 – paragraph 1 – point f a (new)**

*Text proposed by the Commission*

*Amendment*

***(f a) 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.***

Or. en

**Amendment 196**  
**Malcolm Harbour, Adam Bielan**

**Proposal for a regulation**  
**Article 6 – paragraph 1 – point f a (new)**

*Text proposed by the Commission*

*Amendment*

***(f a) processing is necessary for fraud detection and prevention purposes according to applicable financial regulation or established industry, or professional body, codes of practice.***

Or. en

*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 197**  
**Morten Løkkegaard**

**Proposal for a regulation**  
**Article 6 – paragraph 1 – point f b (new)**

*Text proposed by the Commission*

*Amendment*

***(f b) The processing is necessary to defend an interest, collecting evidences as judicial proofs or file an action.***

Or. en

## **Amendment 198**

**Malcolm Harbour, Adam Bielan**

### **Proposal for a regulation**

#### **Article 6 – paragraph 1 – point f b (new)**

*Text proposed by the Commission*

*Amendment*

***(f b) only pseudonymous data is processed.***

Or. en

#### *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 199**

**Morten Løkkegaard**

### **Proposal for a regulation**

#### **Article 6 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*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, ***respect the essence*** of the ***right to the protection of personal data*** and be proportionate to the legitimate aim

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***



pursued.

***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.***

Or. en

#### *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 200 Matteo Salvini**

#### **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 paragraph 1. This shall in particular apply to any change of terms and general conditions of a contract.

Or. en

#### *Justification*

*Designing for consent in context and to ensure effective privacy experiences is in line with the objectives of proposals to recital 25.*

**Amendment 201**  
**Bernadette Vergnaud**

**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**

Or. fr

*Justification*

*The texts defining legitimate interest are clear and the case-law on the subject is consistent. It is therefore unnecessary to resort to a delegated act to specify the conditions under paragraph 1(f). The matter of consent for the processing of personal data of children is dealt with in Article 8 of this Regulation.*

**Amendment 202**  
**Andreas Schwab, Rafal Trzaskowski, Marielle Gallo**

**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**

Or. fr

## *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 203**

**Matteo Salvini**

#### **Proposal for a regulation**

##### **Article 7 – paragraph 1**

*Text proposed by the Commission*

**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.**

*Amendment*

**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.**

Or. en

### **Amendment 204**

**Matteo Salvini**

#### **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*

**deleted**

Or. en

**Amendment 205**  
**Morten Løkkegaard**

**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. The withdrawal of the consent is effective 30 days after the receipt of the declaration.**

Or. en

**Amendment 206**  
**Mitro Repo**

**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. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal **or in cases where data must be processed for regulatory, anti-fraud or legal purposes. If the consent is still necessary for the execution of a contract, its withdrawal implies the willingness to terminate the contract.**

*Justification*

*Financial service providers are required to retain data to meet legal and regulatory obligations. Therefore the right to withdraw consent should also take into account situations where data must be processed for regulatory, anti-fraud or legal purposes.*

**Amendment 207**  
**Malcolm Harbour**

**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. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal. ***Where the processing of personal data is an essential element to the controllers' ability to provide adequate security in the provision of a service to the data subject, the withdrawal of consent can lead to the termination of the service.***

*Justification*

*When a withdrawal of consent compromises the ability of a service provider to adequately safeguard the personal data of the data subject, the service provider should not be obliged to provide the aforementioned service. For example, a bank should not be obliged to continue to offer a credit card if the data subject has withdrawn their consent to allow the processing of their personal data in order to prevent fraudulent activity.*

**Amendment 208**  
**Matteo Salvini**

**Proposal for a regulation**  
**Article 7 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3 a. For the processing of special categories of personal data described in Article 9, consent shall be captured by a freely given, informed and explicit statement or other clear and affirmative action, by which the data subject signifies their agreement.***

Or. en

**Amendment 209**

**Matteo Salvini**

**Proposal for a regulation**

**Article 7 – paragraph 3 b (new)**

*Text proposed by the Commission*

*Amendment*

***3 b. Consents captured before the coming into effect of this Regulation shall remain valid after such coming into effect.***

Or. en

**Amendment 210**

**Malcolm Harbour**

**Proposal for a regulation**

**Article 7 – paragraph 4**

*Text proposed by the Commission*

*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.***

*deleted*

Or. en

### *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 211** **Morten Løkkegaard**

#### **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 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; ***on the labour market there is not considered to be a significant imbalance between employer and employee.***

Or. en

### *Justification*

*In general it is important that an employer can 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 212** **Morten Løkkegaard**

#### **Proposal for a regulation** **Article 7 – paragraph 4 a (new)**

##### *Text proposed by the Commission*

##### *Amendment*

***4 a. Paragraph 4 shall not apply where the data subject's consent is required by***

*law.*

Or. en

**Amendment 213**  
**Christian Engström**

**Proposal for a regulation**  
**Article 7 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4 a. 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).***

Or. en

**Amendment 214**  
**Christel Schaldemose, Anna Hedh, Catherine Stihler**

**Proposal for a regulation**  
**Article 7 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4 a. 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.***

Or. en



**Amendment 215**  
**Andreas Schwab, Rafal Trzaskowski**

**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.***

Or. fr

**Amendment 216**  
**Christel Schaldemose, Anna Hedh, Catherine Stihler**

**Proposal for a regulation**  
**Article 7 – paragraph 4 b (new)**

*Text proposed by the Commission*

*Amendment*

***4 b. 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.***

Or. en

**Amendment 217**  
**Christel Schaldemose, Anna Hedh, Catherine Stihler**

**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

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.

processing of personal data of a child below **18** 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 data besides the purpose of the consent*.

Or. en

**Amendment 218**  
**Josef Weidenholzer**

**Proposal for a regulation**  
**Article 8 – paragraph 1**

*Text proposed by the Commission*

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.

*Amendment*

1. For the purposes of this Regulation, in relation to the offering of 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.

Or. de

**Amendment 219**  
**Andreas Schwab, Lara Comi, Rafał Trzaskowski, Marielle Gallo, Pablo Arias Echeverría**

**Proposal for a regulation**  
**Article 8 – paragraph 1**

*Text proposed by the Commission*

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.

*Amendment*

1. For the purposes of this Regulation, in relation to the offering of **goods or** 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 **legal representative**. The controller shall make reasonable efforts to obtain verifiable consent, taking into consideration available technology.

Or. fr

*Justification*

*Ensuring increased protection of children's personal data will entail enlarging the scope of Article 8 and not limiting it to information society services.*

**Amendment 220**

**Anna Maria Corazza Bildt**

**Proposal for a regulation**

**Article 8 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1 a. 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;***

Or. en

**Amendment 221**

**Rafał Trzaskowski**

**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**

Or. en

*Justification*

*Adopting a regulation with a direct application should result in creating precise and predictable legal frames, which content and potential effects are known at the time of passing the law. This legislation carries enormous consequences for the business environment and if not passed in enough detail will force companies to operate in a highly uncertain environment until all delegated acts are adopted and made public. Moreover each and every time entities involved in processing personal data would have to adapt to newly adopted conditions which could prove burdensome and costly. It shall be enough to mention that as currently foreseen by the Proposal some heavy administrative sanctions are predicted for the infringement on rights that are yet to be specified by the Commission (Article 79(4a) in conjunction with Article 12). More precision will definitely serve also the consumer. If left in the Regulation, delegated acts should be adopted within a short and specified time frame.*

**Amendment 222**  
**Josef Weidenholzer**

**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-***

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.

*sized enterprises.*

Or. de

**Amendment 223**  
**Malcolm Harbour**

**Proposal for a regulation**  
**Article 8 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4 a. 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.***

Or. en

*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 224**  
**Morten Løkkegaard**

**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, ***significant social problems, private information*** and the processing of genetic data or data concerning health or

measures shall be prohibited.

sex life or criminal convictions or related security measures shall be prohibited.

Or. en

*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 225**  
**Catherine Stihler**

**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.

Or. en

*Justification*

*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. For example, this regulation must ensure that the personal data of trade union health and safety representatives are not illegally accessed and then used against them (to intimidate them, bar them from further employment etc.), which could have dangerous consequences on the vital work they carry out.*

**Amendment 226**  
**Catherine Stihler**

**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

Or. en

**Amendment 227**  
**Morten Løkkegaard**

**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

Or. en

**Amendment 228**  
**Morten Løkkegaard**

**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

Or. en

**Amendment 229**  
**Rafal Trzaskowski**

**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

Or. en

**Amendment 230**  
**Morten Løkkegaard**

**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.

Or. en

*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 231**  
**Morten Løkkegaard**

**Proposal for a regulation**  
**Article 9 – paragraph 2 – point j a (new)**

*Text proposed by the Commission*

*Amendment*

***(j a) 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.*

Or. en

**Amendment 232**  
**Rafał Trzaskowski**

**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*

Or. en

**Amendment 233**  
**Christian Engström**

**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.*

Or. en

#### **Amendment 234**

**Andreas Schwab, Rafał Trzaskowski**

#### **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.

Or. fr

##### *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 235**

**Christian Engström**

**Proposal for a regulation**  
**Article 11 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2 a. 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.***

Or. en

**Amendment 236**  
**Christian Engström**

**Proposal for a regulation**  
**Article 11 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***2 b. The Commission may lay down technical standards for the purpose of further specifying the mode of description laid down in paragraph 3 concerning e.g. the processing, storage duration, transfer or deletion of data by establishing icons or other instruments in order to provide information in a standardised way. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87 (2).***

Or. en

## Amendment 237

Christel Schaldemose, Anna Hedh, Catherine Stihler

### 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.***

Or. en

## Amendment 238

Emma McClarkin

### 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

##### *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.

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 ***or unless the controller has reason to believe that providing the information in electronic form would create a significant risk of fraud.***

Or. en

#### *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 239** **Rafał Trzaskowski**

#### **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 ***vexatious or*** 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.

Or. en

**Amendment 240**  
**Christian Engström**

**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.

Or. en

**Amendment 241**  
**Emma McClarkin**

**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 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. ***The controller may charge a nominal fee set by the law of the Member State to which the controller is subject for providing the information or taking the action requested if the controller is a credit reference***

*agency responding to a request from a consumer for access their credit file.*

Or. en

*Justification*

*Existing legal requirements determine the manner in many EU Member States concerning access to credit files by consumers. The ability for credit reference agencies to charge a nominal fee allows for coverage of costs incurred in relation to follow up enquiries, and is commonly used mechanism to confirm the identity of the applicant and so prevent fraud.*

**Amendment 242**  
**Malcolm Harbour**

**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.

Or. en

*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 243**  
**Andreas Schwab, Rafal Trzaskowski**

**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**

Or. fr

*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 244**  
**Andreas Schwab, Rafal Trzaskowski**

**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**

Or. fr

*Justification*

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

**Amendment 245**

**Kyriacos Triantaphyllides**

**Proposal for a regulation**

**Article 13 – paragraph 1**

*Text proposed by the Commission*

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.***

*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.

Or. el

**Amendment 246**

**Morten Løkkegaard**

**Proposal for a regulation**

**Article 14 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 14 a***

***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.***

Or. en

*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 247**  
**Rafal Trzaskowski**

**Proposal for a regulation**  
**Article 14 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. Where personal data relating to a data subject are collected, the controller shall provide the data subject with **at least** the following information:

*Amendment*

1. Where personal data relating to a data subject are collected, the controller shall provide the data subject with the following information:

Or. en

**Amendment 248**  
**Bernadette Vergnaud**

**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 criteria and/or legal requirements for determining*** the period for which the personal data will be stored;

Or. fr

*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 249**  
**Andreas Schwab, Lara Comi, Rafal Trzaskowski, Marielle Gallo, Pablo Arias Echeverría**

**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 criteria for determining*** the period for which the personal data will be stored ***for each purpose***;

Or. fr

*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 250**

**Andreas Schwab, Lara Comi, Rafał Trzaskowski, Pablo Arias Echeverría**

**Proposal for a regulation**  
**Article 14 – paragraph 1 – point g**

*Text proposed by the Commission*

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;

*Amendment*

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;

Or. fr

*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 251**

**Andreas Schwab, Rafał Trzaskowski**

**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.

Or. fr

*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 252**  
**Catherine Stihler**

**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.***

Or. en

*Justification*

*Data subjects have the right to immediate notification if it has been found that their personal data have been accessed illegally to be used against them (for example to blacklist trade union activists and bar them from employment)*

**Amendment 253**  
**Catherine Stihler**

**Proposal for a regulation**  
**Article 14 – paragraph 5 – point b**

*Text proposed by the Commission*

*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; or*** **deleted**

Or. en

*Justification*

*Data subjects must always have the right to know if their personal data have been accessed illegally, especially if these will then be used against them, for example to blacklist trade union activists and bar them from employment, as there is ample evidence to support these illegal practices (Ref: ICO UK 2009 Consultancy Association Case on blacklisting)*

**Amendment 254**  
**Kyriacos Triantaphyllides**

**Proposal for a regulation**  
**Article 14 – paragraph 5 – point b**

*Text proposed by the Commission*

*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; or*** **deleted**

Or. el

**Amendment 255**  
**Malcolm Harbour, Adam Bielan**

**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 EU recommendation 2003/361**; or

Or. en

*Justification*

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

**Amendment 256**  
**Morten Løkkegaard**

**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 **and by paying the cost of extracting the information**, confirmation as to whether or not personal data relating to the data subject are being processed **in order to be aware and verify the lawfulness of the processing**. Where such personal data are being processed, the controller shall provide the following information:

Or. en

**Amendment 257**  
**Rafał Trzaskowski**

**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 *rules according to* which the *period for which* data will be stored *is determined*;

Or. en

**Amendment 258**  
**Malcolm Harbour**

**Proposal for a regulation**  
**Article 15 – paragraph 1 – point h a (new)**

*Text proposed by the Commission*

*Amendment*

*(h a) where applicable, where data is collected and processed in exchange for the provision of free services, the controller's value estimate of the subject's processed data.*

Or. en

*Justification*

*Personal data is a tradable commodity and data subjects are largely unaware of the value of their data for data controllers and processors. Providing the controller's value estimate to the data subject, where this has been requested, would enable data subjects to take a fully informed decision about use of their data, and would also help to curtail a one sided market by empowering consumers.*

**Amendment 259**  
**Rafał Trzaskowski**

**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. Where the data subject makes the request in electronic form, the information shall be provided in electronic form, ***if available in a structured and commonly used format***, unless otherwise requested by the data subject. ***This is without prejudice to the right of the controller to determine other form of handling requests for information specified in point 1 if it is justified by the necessity of verifying the identity of subject requesting such information;***

Or. en

**Amendment 260**

**Christel Schaldemose, Anna Hedh, Catherine Stihler**

**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.

Or. en

**Amendment 261**

**Andreas Schwab, Lara Comi, Rafał Trzaskowski, Pablo Arias Echeverría**

**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. 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.***

Or. fr

*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 262**

**Christel Schaldemose, Anna Hedh, Catherine Stihler**

**Proposal for a regulation**

**Article 15 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4 a. 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.***

Or. en

*Justification*

*See Article 13, paragraph 2, of Directive 95/46/EC, OJ L 281/95.*

**Amendment 263**  
**Malcolm Harbour**

**Proposal for a regulation**  
**Article 16 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***Paragraph 1 shall not apply to pseudonymous data.***

Or. en

*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 264**  
**Malcolm Harbour, Adam Bielan**

**Proposal for a regulation**  
**Article 17 – title**

*Text proposed by the Commission*

*Amendment*

Right to ***be forgotten and to*** erasure

Right to erasure

Or. en

*Justification*

*The right to be forgotten is a notion which is largely incompatible with how information on data subjects circulates in the online environment. Recognition of a data subject's right to be forgotten would require an undue level of bureaucratic compliance expenditure and likely be impossible to implement / guarantee. Nevertheless, in a range of circumstances, a right to*

*erasure can be upheld.*

**Amendment 265**

**Christel Schaldemose, Anna Hedh, Catherine Stihler**

**Proposal for a regulation**

**Article 17 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 17 a**

***In compliance 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 to have the possibility of having documentary evidence of a given case history.***

Or. en

**Amendment 266**

**Malcolm Harbour, Adam Bielan**

**Proposal for a regulation**

**Article 17 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1 a. The right to erasure shall not apply when the retention of personal data is necessary for the performance of a contract between an organisation and the data subject, or when there is a regulatory requirement to retain this data, or for fraud prevention purposes;***

Or. en

*Justification*

*This new proposal sets down appropriate circumstances for limiting the data subjects' right to erasure in terms of what is necessary for business and regulatory purposes.*

**Amendment 267**  
**Malcolm Harbour, Adam Bielan**

**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;***

***deleted***

Or. en

*Justification*

*It is difficult to clearly identify when personal data is definitively no longer of use for business purposes. Systematically deleting data where there is no immediate use would bring disproportionate compliance costs.*

**Amendment 268**  
**Morten Løkkegaard**

**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 otherwise processed **and the legal mandatory retention period has expired;*****

Or. en

**Amendment 269**  
**Mitro Repo**

**Proposal for a regulation**  
**Article 17 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) the data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;

*Amendment*

(a) the data are no longer necessary in relation to the purposes for which they were collected or otherwise processed **and when the data controller has no legal or regulatory ground to retain the data;**

Or. en

#### **Amendment 270**

**Malcolm Harbour, Adam Bielan**

#### **Proposal for a regulation**

#### **Article 17 – paragraph 1 – point b**

*Text proposed by the Commission*

(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;**

*Amendment*

(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;

Or. en

#### *Justification*

*This requirement is too broad and would lead to heavy compliance costs since data would have to be systematically deleted if there is no legal justification for holding it.*

#### **Amendment 271**

**Emma McClarkin**

#### **Proposal for a regulation**

#### **Article 17 – paragraph 1 – point c**

*Text proposed by the Commission*

(c) the data subject objects to the processing of personal data pursuant to

*Amendment*

(c) the data subject objects to the processing of personal data pursuant to

Article 19;

Article 19, *and the objection is upheld*;

Or. en

*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 272**

**Malcolm Harbour, Adam Bielan**

**Proposal for a regulation**

**Article 17 – paragraph 1 – point d**

*Text proposed by the Commission*

*Amendment*

***(d) the processing of the data does not comply with this Regulation for other reasons.***

***deleted***

Or. en

*Justification*

*The potential implications of this clause are unclear and would need to be explained.*

**Amendment 273**

**Rafał Trzaskowski**

**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,***

***deleted***

*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.*

Or. en

#### *Justification*

*The obligation to inform recipients of the fact that the right to erasure has been exercised by the data subject is already foreseen in Article 13.*

**Amendment 274**  
**Morten Løkkegaard**

**Proposal for a regulation**  
**Article 17 – paragraph 2**

#### *Text proposed by the Commission*

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.

#### *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 *those* third parties which are processing such data *contractually on behalf of the controller*, 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. *Anonymised data, some pseudonymised data and publicly unavailable or unreadable data are excepted*

Or. en



**Amendment 275**  
**Christian Engström**

**Proposal for a regulation**  
**Article 17 – paragraph 2**

*Text proposed by the Commission*

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.

*Amendment*

2. Where the controller referred to in paragraph 1 has made the personal 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. Where the controller has authorised a third party publication of personal data, the controller shall be considered responsible for that publication

Or. en

**Amendment 276**  
**Andreas Schwab, Marielle Gallo**

**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 of the action taken in response to their request by the third parties referred to in paragraph 2.***

Or. fr

*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 277**  
**Emma McClarkin**

**Proposal for a regulation**  
**Article 17 – paragraph 3 – point e a (new)**

*Text proposed by the Commission*

*Amendment*

***(e a) for prevention or detection of fraud, confirming identity, and/or determining creditworthiness, or ability to pay.***

Or. en

*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 278**  
**Rafał Trzaskowski**

**Proposal for a regulation**  
**Article 17 – paragraph 4 – point c**

*Text proposed by the Commission*

*Amendment*

***(c) the processing is unlawful and the data subject opposes their erasure and requests the restriction of their use instead;***

***deleted***

Or. en

**Amendment 279**  
**Rafał Trzaskowski**

**Proposal for a regulation**  
**Article 17 – paragraph 4 – point d**

*Text proposed by the Commission*

*Amendment*

***(d) the data subject requests to transmit the personal data into another automated processing system in accordance with Article 18(2).*** ***deleted***

Or. en

## **Amendment 280**

**Andreas Schwab, Rafal Trzaskowski, Marielle Gallo**

### **Proposal for a regulation**

#### **Article 18**

*Text proposed by the Commission*

*Amendment*

***Article 18*** ***deleted***

#### ***Right to data portability***

***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.***

***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.***

***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 set out in Article 87(2).***

Or. fr

*Justification*

*Data subjects have the right of access 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 key right.*

**Amendment 281  
Morten Løkkegaard**

**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 from the controller a copy of data undergoing processing.

Or. en

**Amendment 282  
Josef Weidenholzer**

**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

*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 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.

electronic means, 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.

Or. de

**Amendment 283**  
**Morten Løkkegaard**

**Proposal for a regulation**  
**Article 18 – paragraph 2**

*Text proposed by the Commission*

*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 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.***

***deleted***

Or. en

**Amendment 284**  
**Malcolm Harbour**

**Proposal for a regulation**  
**Article 18 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

***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***

3. 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 ***shall be determined by the***

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

*controller by reference to harmonised industry standards, or where these are not already defined, shall be developed by industry stakeholders through standardisation bodies.*

Or. en

#### *Justification*

*The European Commission should not be the decision making body for establishing a harmonised electronic data transfer format. The approach proposed by this amendment is furthermore more technologically neutral and is more appropriate given the range of sectors covered by this Regulation.*

#### **Amendment 285** **Kyriacos Triantaphyllides**

#### **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).

Or. el

#### **Amendment 286** **Emma McClarkin**

#### **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.

Or. en

*Justification*

*This amendment is designed to demonstrate that legitimate grounds should constitute sufficient grounds for processing, as per Article 6.*

**Amendment 287**  
**Josef Weidenholzer**

**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.

Or. de

**Amendment 288**  
**Rafał Trzaskowski**

**Proposal for a regulation**  
**Article 19 – paragraph 3**

*Text proposed by the Commission*

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.

*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 ***for the purposes determined in the objection.***

Or. en

**Amendment 289**  
**Malcolm Harbour, Adam Bielan**

**Proposal for a regulation**  
**Article 19 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3 a. 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.***

Or. en

*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 290**  
**Malcolm Harbour, Adam Bielan**



**Proposal for a regulation**  
**Article 20 – title**

*Text proposed by the Commission*

*Amendment*

Measures based on ***profiling***

Measures based on ***automated processing***

Or. en

*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 291**  
**Morten Løkkegaard**

**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. Every natural person shall have the right not to be subject to a measure which produces legal effects concerning 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.

Or. en

**Amendment 292**  
**Christian Engström**

**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 natural person shall have the right, ***both offline and online***, 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.

Or. en

**Amendment 293**

**Christel Schaldemose, Anna Hedh, Catherine Stihler**

**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 natural person shall have the right ***both offline and online*** not to be subject to a measure 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. ***Children can not be subject to a measure of this article.***

Or. en

**Amendment 294**  
**Malcolm Harbour, Adam Bielan**

**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.***

Or. en

*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 295**  
**Malcolm Harbour, Adam Bielan**

**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***

*Amendment*

***deleted***

*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.*

Or. en

*Justification*

*Deletion following proposed amendment to paragraph 1.*

**Amendment 296**  
**Morten Løkkegaard**

**Proposal for a regulation**  
**Article 20 – paragraph 2 – introductory part**

*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:

*Amendment*

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 if the processing:

Or. en

**Amendment 297**  
**Christian Engström**

**Proposal for a regulation**  
**Article 20 – paragraph 2 – introductory part**

*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:

*Amendment*

2. Subject to the other provisions of this Regulation, ***including paragraphs (3) and (4)***, a person may be subjected to a measure of the kind referred to in paragraph 1 only if the processing:

Or. en

## **Amendment 298**

**Anna Maria Corazza Bildt**

### **Proposal for a regulation**

#### **Article 20 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2 a. In any case, children should not be subject to measures of profiling, as referred to in paragraph 1;***

Or. en

## **Amendment 299**

**Christian Engström**

### **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

(a) is ***necessary for*** 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, ***including the right to be provided with meaningful information about the logic used in the profiling, and the right to obtain human intervention,***

*including an explanation of the decision reached after such* intervention; or

Or. en

**Amendment 300**  
**Josef Weidenholzer**

**Proposal for a regulation**  
**Article 20 – paragraph 2 – point a**

*Text proposed by the Commission*

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

*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, ***and the right to information on the structure and architecture of the system used and the implications of profiling;*** or

Or. de

**Amendment 301**  
**Morten Løkkegaard**

**Proposal for a regulation**  
**Article 20 – paragraph 2 – point b**

*Text proposed by the Commission*

(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

*Amendment*

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

Or. en

**Amendment 302**  
**Rafal Trzaskowski**

**Proposal for a regulation**  
**Article 20 – paragraph 2 – point b**

*Text proposed by the Commission*

(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

*Amendment*

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

Or. en

**Amendment 303**  
**Christian Engström**

**Proposal for a regulation**  
**Article 20 – paragraph 2 – point b**

*Text proposed by the Commission*

(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

*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, **and which protects the data subjects against possible discrimination resulting from measures described in paragraph 1**; or

Or. en

**Amendment 304**  
**Christian Engström**

**Proposal for a regulation**  
**Article 20 – paragraph 2 – point c**

*Text proposed by the Commission*

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

*Amendment*

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

*including effective protection against possible discrimination resulting from measures described in paragraph 1.*

Or. en

**Amendment 305**  
**Rafał Trzaskowski**

**Proposal for a regulation**  
**Article 20 – paragraph 2 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

*(c a) is carried out for the purpose of monitoring and prevention of fraud*

Or. en

**Amendment 306**  
**Emma McClarkin**

**Proposal for a regulation**  
**Article 20 – paragraph 2 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

*(c a) is carried out to prevent or detect fraud, confirm identity and/or to determine creditworthiness or ability to pay, in each case when suitable measures to safeguard the data subject's legitimate interests have been adduced, such as the right to obtained human intervention.*

Or. en

*Justification*

*This amendment is to ensure that profiling can be used to prevent fraud and identity theft through creditworthiness assessment.*



**Amendment 307**  
**Rafał Trzaskowski**

**Proposal for a regulation**  
**Article 20 – paragraph 2 – point c b (new)**

*Text proposed by the Commission*

*Amendment*

*(c b) is carried out based on a well founded suspicion of committing a crime to the detriment of the controller, especially banks, financial and credit institutions and their clients*

Or. en

**Amendment 308**  
**Rafał Trzaskowski**

**Proposal for a regulation**  
**Article 20 – paragraph 2 – point c c (new)**

*Text proposed by the Commission*

*Amendment*

*(c c) is carried out for the purpose of assessing credit worthiness, assuring safety and reliability of services provided by the controller*

Or. en

**Amendment 309**  
**Malcolm Harbour, Adam Bielan**

**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*

*deleted*

**Article 9.**

Or. en

*Justification*

*Deletion following proposed amendment to paragraph 1.*

**Amendment 310**  
**Christian Engström**

**Proposal for a regulation**  
**Article 20 – paragraph 3**

*Text proposed by the Commission*

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.

*Amendment*

3. Automated processing of personal data intended to evaluate certain personal aspects relating to a natural person shall not ***include or generate any data that fall under*** the special categories of personal data referred to in Article 9, ***except when they fall under the exceptions listed in Article 9(2).***

Or. en

**Amendment 311**  
**Christian Engström**

**Proposal for a regulation**  
**Article 20 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3 a. Profiling that (whether intentionally or otherwise) has the effect of discriminating against individuals on the basis of race or ethnic origin, political opinions, religion or beliefs, trade union membership, or sexual orientation, or that (whether intentionally or otherwise) result in measures which have such effect, shall***

*be prohibited.*

Or. en

**Amendment 312**  
**Josef Weidenholzer**

**Proposal for a regulation**  
**Article 20 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. Profiling ‘whether intentional or not’ shall be prohibited if the data collected could lead to discrimination against individuals and affect sensitive personal areas – such as information and data on gender, provenance, political and religious beliefs, membership of parties and clubs, sexual orientation, etc.***

Or. de

**Amendment 313**  
**Christian Engström**

**Proposal for a regulation**  
**Article 20 – paragraph 3 b (new)**

*Text proposed by the Commission*

*Amendment*

***3 b. 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.***

Or. en

**Amendment 314**  
**Malcolm Harbour, Adam Bielan**

**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**

Or. en

*Justification*

*Deletion following proposed amendment to paragraph 1.*

**Amendment 315**  
**Christian Engström**

**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.

4. In the cases referred to in paragraph 2, the information to be provided by the controller under Articles 14 **and 15** 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, **as well as the access to the logic underpinning the data undergoing processing.**

Or. en

**Amendment 316**  
**Rafał Trzaskowski**

**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**

Or. en

**Amendment 317**  
**Malcolm Harbour, Adam Bielan**

**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**

Or. en

*Justification*

*Deletion following proposed amendment to paragraph 1.*

**Amendment 318**  
**Christian Engström**

**Proposal for a regulation**  
**Article 20 – 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 suitable measures to safeguard the data **subject's** legitimate interests referred to in paragraph 2.

*Amendment*

**5. Within six months of the coming into force of this Regulation, the Commission shall 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 **subjects'** legitimate interests referred to in paragraph 2. **The Commission shall consult representatives of data subjects and the Data Protection Board on its proposals before issuing them.**

Or. en

**Amendment 319**  
**Josef Weidenholzer**

**Proposal for a regulation**  
**Article 20 – 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 suitable measures to safeguard the data subject's legitimate interests referred to in paragraph 2.

*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. **In doing so, the Commission should above all work closely with representatives from data protection organisations.**

Or. de

**Amendment 320**  
**Andreas Schwab, Lara Comi, Pablo Arias Echeverría**

**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.

Or. fr

*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 321**

**Andreas Schwab, Lara Comi, Rafał Trzaskowski, Marielle Gallo, Pablo Arias Echeverría**

**Proposal for a regulation**

**Article 22 – title**

*Text proposed by the Commission*

***Responsibility*** of the controller

*Amendment*

***Overall principle of responsibility*** of the controller.

Or. fr

*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 322**

**Rafał Trzaskowski**

**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*

Or. en

#### **Amendment 323**

**Christel Schaldemose, Anna Hedh, Catherine Stihler**

#### **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 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.

1. Having regard to the state of the art, 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.

Or. en

#### **Amendment 324**

**Malcolm Harbour, Adam Bielan**



**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. Where required, mandatory measures may be adopted to ensure that categories of goods or services are designed and have default settings meeting the 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].**

Or. en

*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 325**  
**Christel Schaldemose, Anna Hedh, Catherine Stihler**

**Proposal for a regulation**  
**Article 23 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1 a. Anonymisation or pseudonymisation of personal data should be applied by the data processor where feasible and proportionate according to the purpose of processing.***

Or. en

## **Amendment 326**

**Andreas Schwab, Rafal Trzaskowski**

### **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. The controller shall implement mechanisms for ensuring that, by default, ***only those personal data are collected for purposes which are defined, explicit and legitimate and*** 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.

Or. fr

### *Justification*

*Data protection by default is a new principle introduced by the proposal for a regulation. The scope of this is not clear. The general principles of data processing set out in Article 5 of the proposal for a regulation should therefore be brought together in order to avoid creating legal uncertainty and to ensure a higher degree of protection.*

## Amendment 327

Christel Schaldemose, Anna Hedh, Catherine Stihler

### Proposal for a regulation

#### Article 23 – paragraph 2

*Text proposed by the Commission*

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

*Amendment*

2. The controller shall implement mechanisms for ensuring that, by default, only those personal data are processed which are necessary for each specific purpose of the processing, ***that the settings automatically comply with the general principles of data protection of this Regulation***, 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.

Or. en

## Amendment 328

Malcolm Harbour, Adam Bielan

### 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***

*Amendment*

***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.***

*individuals.*

Or. en

*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 329**

**Andreas Schwab, Rafal Trzaskowski**

**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**

Or. fr

*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 330**

**Malcolm Harbour, Adam Bielan**

**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**

Or. en

*Justification*

*This amendment is in accordance with the proposed change to Article 23 (1).*

**Amendment 331**  
**Andreas Schwab, Rafal Trzaskowski**

**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**

Or. fr

*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 332**  
**Malcolm Harbour, Adam Bielan**

**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**

Or. en

*Justification*

*This amendment is in accordance with the proposed change to Article 23 (1).*

**Amendment 333**  
**Malcolm Harbour**

**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 ensure compliance with those measures.

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.***

Or. en

*Justification*

*Where, due to proper anonymization 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 334  
Malcolm Harbour**

**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***

Or. en

*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 335  
Christel Schaldemose, Anna Hedh, Catherine Stihler**

**Proposal for a regulation  
Article 26 – paragraph 2 – point h a (new)**

*Text proposed by the Commission*

*Amendment*

***(h a) When a processor is processing data on behalf of the controller, the processor must implement privacy by design and privacy by default.***

Or. en

**Amendment 336  
Malcolm Harbour**

**Proposal for a regulation  
Article 26 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3 a. 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.***

Or. en

*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 337  
Andreas Schwab, Rafał Trzaskowski**



**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 all processing **systems and procedures** under its responsibility.

Or. fr

*Justification*

*The wording of this provision should be brought into line with that of the proposal for a directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data. As stated by the EDPS in his opinion of 7 March 2012, the Commission proposal that every processing operation should be documented runs counter to the objective of the proposal for a regulation of reducing the administrative burden generated by the data protection rules.*

**Amendment 338**  
**Malcolm Harbour, Adam Bielan**

**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.

Or. en

*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 339**

**Andreas Schwab, Rafal Trzaskowski, Marielle Gallo**

**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:

Or. fr

*Justification*

*The list of information contained in the documentation must be exhaustive in order to guarantee legal certainty.*

**Amendment 340**

**Malcolm Harbour, Adam Bielan**

**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 **core** documentation shall contain at least the following information:

Or. en

*Justification*

*This change follows the amendments to recital 65 and Article 28(1).*

**Amendment 341**

**Malcolm Harbour, Adam Bielan**

**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.

Or. en

*Justification*

*This amendment helps to reduce administrative burdens on both data controllers and data processors.*

**Amendment 342**  
**Andreas Schwab, Marielle Gallo**

**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*

Or. fr

*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 343**  
**Andreas Schwab, Marielle Gallo**

**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***

Or. fr

*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 344**  
**Malcolm Harbour, Adam Bielan**

**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 referred to in point (h) of Article 44(1), ***the documentation of appropriate*** safeguards;

(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***;

Or. en

*Justification*

*This amendment helps to reduce administrative burdens on both data controllers and data processors.*



*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.***

***deleted***

Or. en

**Amendment 348**  
**Rafał Trzaskowski**

**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***

Or. en

**Amendment 349**  
**Rafał Trzaskowski**

**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 350**  
**Rafał Trzaskowski**

**Proposal for a regulation**  
**Article 30 – paragraph 2**

*Text proposed by the Commission*

2. The controller and the processor shall, following an evaluation of the risks, take the measures referred to in paragraph 1 to protect personal data against ***accidental or unlawful destruction or accidental loss and to prevent any unlawful forms of processing, in particular any unauthorised disclosure, dissemination or access, or alteration of*** personal data.

*Amendment*

2. The controller and the processor shall, following an evaluation of the risks, take the measures referred to in paragraph 1 to protect personal data against personal data ***breach***.

**Amendment 351**  
**Rafał Trzaskowski**

**Proposal for a regulation**  
**Article 30 – paragraph 3**

*Text proposed by the Commission*

***3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for the technical and organisational measures referred to in paragraphs 1 and 2, including the determinations of what constitutes the state of the art, for specific sectors and in specific data processing situations, in particular taking account of developments in technology and solutions for privacy by design and data protection by default, unless paragraph 4 applies.***

*Amendment*

***deleted***

**Amendment 352**  
**Andreas Schwab, Rafal Trzaskowski, Marielle Gallo**

**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**

Or. fr

*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 353**  
**Rafal Trzaskowski**

**Proposal for a regulation**  
**Article 30 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

**4. The Commission may adopt, where necessary, implementing acts for** **deleted**



*specifying the requirements laid down in paragraphs 1 and 2 to various situations, in particular to:*

*(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).*

Or. en

**Amendment 354**  
**Rafał Trzaskowski**

**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 **significant** personal data breach, the controller shall without undue delay notify the personal data breach to the supervisory authority. **Data breach shall be considered significant if it could adversely affect privacy of the data subject.**

Or. en

**Amendment 355**  
**Matteo Salvini**

**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, the controller shall without undue delay notify the personal data breach to the supervisory authority.

Or. en

*Justification*

*The time period must not be fixed in law – this must depend upon the specific operational and technical complexities, and the investigative and forensic processes needed, to understand the nature and extent of any given incident. The law must insist upon such incidents being treated with utmost urgency, and the requirement of ‘undue delay’ gives sufficient emphasis, while maintaining pragmatic flexibility.*

**Amendment 356**  
**Morten Løkkegaard**

**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 will have significant risk of harm to citizens, the controller shall without undue delay**, 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.

Or. en

## *Justification*

*If there are too many reports of trivial breaches, citizens will no longer take care when they are notified. Moreover, one should keep in mind that reporting will only come from controllers that have so much control of security that they actually realize that there has been a data breach. For this reason it is important that only the important data breaches are reported, otherwise citizens may get an inaccurate picture of the controllers, it is reassuring to have data stored with. It is unrealistic to make a sensible reporting of an important break in less than 24 hours. Too quick notification will often result in subsequent adjustments to be issued and such announcements would undermine citizens' confidence - especially if there are more of these announcements.*

### **Amendment 357** **Christian Engström**

#### **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, the controller shall without undue delay and, where feasible, not later than **72** 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 **72** hours.

Or. en

### **Amendment 358** **Andreas Schwab, Rafal Trzaskowski**

#### **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

##### *Amendment*

1. In the case of a personal data breach **which significantly affects the data subject**, the controller shall, without undue delay after having become aware of it,

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.***

notify the personal data breach to the supervisory authority.

Or. fr

#### *Justification*

*In the event of a breach, the controller must initially concentrate on putting into practice all appropriate measures to prevent it continuing. An obligation to notify the competent supervisory authority within 24 hours together with sanctions for failing to do so might have the opposite effect. 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 359** **Philippe Juvin**

#### **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. ***When the*** personal data breach ***is likely to have a serious adverse effect on the protection of the personal data or privacy of the data subject,*** 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.

Or. fr

#### *Justification*

*The obligation to notify the personal data breach must not place disproportionate*

*administrative constraints on controllers and must leave them the scope to react quickly and effectively, by concentrating on resolving the problem as a priority. Consequently, that obligation should be limited to cases which are likely to have a serious adverse effect on the protection of the personal data or privacy of the data subject (see recital 67).*

#### **Amendment 360**

**Malcolm Harbour, Adam Bielan**

#### **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, the controller shall, without undue delay, notify the personal data breach to the supervisory authority.

Or. en

##### *Justification*

*The proposed timeframe of 24 hours to notify the supervisory authority does not leave enough time for the controller to fully assess the impact and the consequences of the breach and identify the best mitigating plan. Therefore it is more appropriate to utilise the language of Directive 2009/136/EC in regards to data breach notification.*

#### **Amendment 361**

**Rafał Trzaskowski**

#### **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 362**  
**Rafał Trzaskowski**

**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**

Or. en

**Amendment 363**  
**Rafał Trzaskowski**

**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**

Or. en

**Amendment 364**  
**Morten Løkkegaard**

**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. ***In the case of any significantly harmful personal data breach***, 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.

Or. en

**Amendment 365**  
**Philippe Juvin**

**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 serious adverse effect on*** 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.

Or. fr

*Justification*

*The obligation to notify the personal data breach must not place disproportionate administrative constraints on controllers and must leave them the scope to react quickly and effectively, by concentrating on resolving the problem as a priority. Consequently, that obligation should be limited to cases which are likely to have a serious adverse effect on the*

*protection of the personal data or privacy of the data subject (see recital 67).*

**Amendment 366**  
**Rafał Trzaskowski**

**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 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.

Or. en

**Amendment 367**  
**Christian Engström**

**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 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 ***within the 72 hours after having become aware of the data breach.***

Or. en

**Amendment 368**  
**Christel Schaldemose, Anna Hedh, Catherine Stihler**



**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 or privacy of the data subject, ***inter alia by identity theft or fraud, physical harm, significant humiliation or damage to 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*** without undue delay ***and within 72 hours***.

Or. en

**Amendment 369**  
**Morten Løkkegaard**

**Proposal for a regulation**  
**Article 32 – paragraph 1 – subparagraph 1 (new)**

*Text proposed by the Commission*

*Amendment*

***Exemptions from data breach provisions should be awarded where sophisticated encryption is used or if measures are taken to adequately compensate those affected.***

Or. en

**Amendment 370**  
**Christel Schaldemose, Anna Hedh, Catherine Stihler**

**Proposal for a regulation**  
**Article 32 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. The communication to the data subject

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).

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).

Or. en

**Amendment 371**  
**Morten Løkkegaard**

**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.

Or. en

**Amendment 372**  
**Rafał Trzaskowski**

**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***

*Amendment*

***deleted***

*as to the circumstances in which a personal data breach is likely to adversely affect the personal data referred to in paragraph 1.*

Or. en

**Amendment 373**  
**Rafał Trzaskowski**

**Proposal for a regulation**  
**Article 32 – paragraph 6**

*Text proposed by the Commission*

*Amendment*

*6. The Commission may lay down the 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).*

*deleted*

Or. en

**Amendment 374**  
**Morten Løkkegaard**

**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, *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 375**  
**Malcolm Harbour**

**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, 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, ***unless the activities concerned do not present a risk to the privacy of the data subject.***

Or. en

*Justification*

*Making impact assessments optional removes undue obligations on data controllers and processors whose activities do not present a risk to the privacy of the data subject. This provision works in conjunction with amendments to Article 79, with the choice to have an impact assessment being one of the factors to be taken into consideration when deciding on administrative sanctions.*

**Amendment 376**  
**Andreas Schwab**

**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 377**  
**Morten Løkkegaard**

**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 378**  
**Morten Løkkegaard**

**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

*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.

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.**

Or. en

**Amendment 379**  
**Andreas Schwab**

**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**

Or. fr

*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 380**  
**Morten Løkkegaard**

**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**

**deleted**

*operations.*

Or. en

**Amendment 381**  
**Morten Løkkegaard**

**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***

Or. en

**Amendment 382**  
**Malcolm Harbour**

**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.

Or. en

#### *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 383** **Rafał Trzaskowski**

#### **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***

Or. en

#### **Amendment 384** **Rafał Trzaskowski**



**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**

Or. en

**Amendment 385**  
**Rafał Trzaskowski**

**Proposal for a regulation**  
**Article 34 – paragraph 8**

*Text proposed by the Commission*

*Amendment*

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

Or. en

**Amendment 386**  
**Rafał Trzaskowski**

**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** **deleted**

*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).*

Or. en

**Amendment 387**  
**Malcolm Harbour**

**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:

Or. en

*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 388**  
**Josef Weidenholzer**

**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

1. The controller and the processor shall **involve the respective works council in**

case where:

*designating* a data protection officer in any case where:

Or. de

**Amendment 389**

**Christel Schaldemose, Anna Hedh, Catherine Stihler**

**Proposal for a regulation**

**Article 35 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

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

*deleted*

Or. en

**Amendment 390**

**Josef Weidenholzer**

**Proposal for a regulation**

**Article 35 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

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

*deleted*

Or. de

**Amendment 391**

**Josef Weidenholzer**

**Proposal for a regulation**

**Article 35 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

5. The controller or processor shall

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.

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.***

Or. de

**Amendment 392**  
**Rafał Trzaskowski**

**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*

***deleted***

Or. en

**Amendment 393**  
**Morten Løkkegaard**

**Proposal for a regulation**  
**Article 35 – paragraph 7**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

*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 394**  
**Josef Weidenholzer**

**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. During ***and after*** 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. ***A higher level of protection against dismissal must apply for the data protection officer.***

Or. de

**Amendment 395**  
**Rafal Trzaskowski**

**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.

Or. en

**Amendment 396**  
**Rafal Trzaskowski**

**Proposal for a regulation**  
**Article 35 – paragraph 11**

*Text proposed by the Commission*

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

*Amendment*

***deleted***

Or. en

**Amendment 397**  
**Morten Løkkegaard**

**Proposal for a regulation**  
**Article 36 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

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

2. The data protection officer shall directly report to the management of the controller or the processor.

Or. en

*Justification*

*Management should always have the possibility to give instructions to the staff including the DPO and the DPO should not be able to act independently from management. Management have the responsibility for ALL activities in an organisation including data protection. If this should also hold true in the future, managers must be able to instruct the DPO and prevent him or her from acting alone.*

## **Amendment 398 Malcolm Harbour**

### **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 processor has adduced appropriate safeguards with respect to the protection of personal data in a legally binding instrument.

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 399**  
**Malcolm Harbour**

**Proposal for a regulation**  
**Article 42 – paragraph 2 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

*(c a) 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 400**  
**Morten Løkkegaard**

**Proposal for a regulation**  
**Article 44 – paragraph 1 – point h**

*Text proposed by the Commission*

*Amendment*

(h) the transfer is necessary for the

(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.

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.

Or. en

**Amendment 401**  
**Rafał Trzaskowski**

**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***

Or. en

**Amendment 402**  
**Andreas Schwab, Marielle Gallo**

**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, organisation or association referred to in Article 73(2), the supervisory authority responsible shall be that of the Member State in which the complaint was made. That authority shall be competent to take action on the complaint. It shall also be competent to supervise the controller's processing activities or those of a processor, without prejudice to paragraph 2.*

Or. fr

### *Justification*

*Article 51 is a key provision in this Regulation. It introduces the principle of the lead authority. However, it is important to clarify to citizens the competencies of the supervisory authority receiving the complaint.*

### **Amendment 403**

**Andreas Schwab, Rafal Trzaskowski, Marielle Gallo**

### **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 of the controller or processor ***is situated*** shall be competent for the supervision of the processing activities of the controller or the processor in all Member States. ***This supervisory authority shall be obliged to cooperate with the other supervisory authorities and with the Commission, pursuant*** to the provisions of Chapter VII of this Regulation.

Or. fr

*Justification*

*It should be specified that, if the controller or the processor is established in more than one Member State, the lead authority does not have exclusive competence and must cooperate with the other supervisory authorities involved and with the European Commission.*

**Amendment 404**  
**Bernadette Vergnaud**

**Proposal for a regulation**  
**Article 51 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. By 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. However, and without prejudice to the provisions of Chapter VII of this Regulation, the main establishment shall make an additional declaration to the competent supervisory authority of the Member State where it is situated, should that authority so require.***

Or. fr

*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 operations 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 405**  
**Andreas Schwab, Rafal Trzaskowski**

**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.

Or. fr

*Justification*

*There does not seem to be a good reason for this additional period.*

**Amendment 406**  
**Andreas Schwab, Rafal Trzaskowski**

**Proposal for a regulation**  
**Article 62 – paragraph 2**

*Text proposed by the Commission*

***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.***

*Amendment*

*deleted*

Or. fr

*Justification*

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

**Amendment 407**

**Christel Schaldemose, Anna Hedh, Catherine Stihler**

**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.***

Or. en

**Amendment 408**

**Andreas Schwab**

**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***

*Amendment*

***deleted***

*result of the processing of personal data.*

Or. fr

**Amendment 409**  
**Christian Engström**

**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 ***acting in the public interest rather than only on an individual's behalf which*** 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.

Or. en

**Amendment 410**  
**Matteo Salvini**

**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. 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.

Or. en

### *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 411 Andreas Schwab**

#### **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*

Or. fr

### *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 412 Andreas Schwab, Rafal Trzaskowski**

#### **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** *deleted*

*more data subjects.*

Or. fr

**Amendment 413**  
**Christian Engström**

**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, 75 **and** 77 on behalf of one or more data subjects.

Or. en

**Amendment 414**  
**Christel Schaldemose, Anna Hedh, Catherine Stihler**

**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 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.

Or. en

**Amendment 415**  
**Catherine Stihler**



**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, ***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***.

Or. en

**Amendment 416**  
**Catherine Stihler**

**Proposal for a regulation**  
**Article 78 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2 a. Any person or enterprise that is known to have infringed the provisions of this regulation, for example by illegally accessing employees' personal data to blacklist them or bar them from employment, should be excluded from receiving EU grants and funding and from taking part in calls for tender for other public procurement contracts at EU, national or public authority level until all legal proceedings are proven to be completed and all compensation has been paid in full to all victims.***

Or. en

*Justification*

*The Regulation must make clear that companies' infringement of data protection rules will not be tolerated and that their access to EU funding will be blocked whilst they remain involved in such activities.*

**Amendment 417**  
**Malcolm Harbour**

**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.

Or. en

*Justification*

*In accordance with the "one-stop-shop" principle this amendment ensures that multiple data protection authorities cannot sanction businesses for the same violation.*

**Amendment 418**  
**Rafal Trzaskowski**

**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. supervisory authority, **competent in accordance with Article 51** shall be empowered to impose administrative sanctions in accordance with this Article.

Or. en

**Amendment 419**  
**Andreas Schwab, Rafal Trzaskowski**

**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 intentional or negligent character of the infringement, ***the particular categories of personal data***, 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.

Or. fr

*Justification*

*The fact of data being ‘sensitive’ or not should also affect the amount of the fine imposed.*

**Amendment 420**  
**Malcolm Harbour**

**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

*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 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

degree of co-operation with the supervisory authority in order to remedy the breach.

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.***

Or. en

### *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 421 Malcolm Harbour**

### **Proposal for a regulation Article 79 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2 a. 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 422**  
**Malcolm Harbour**

**Proposal for a regulation**  
**Article 79 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***2 b. 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 423**  
**Andreas Schwab, Marielle Gallo**

**Proposal for a regulation**  
**Article 79 – paragraph 3 – introductory part**

*Text proposed by the Commission*

*Amendment*

***3. In case of a first and non-intentional non-compliance with this Regulation, a warning in writing may be given and no***

***3. The supervisory authority may give a written warning without imposing a sanction. The supervisory authority may***

*sanction imposed, where:*

*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.*

Or. fr

*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 424**  
**Morten Løkkegaard**

**Proposal for a regulation**  
**Article 79 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3 a. In case of full compliance with this regulation no sanction shall be imposed***

Or. en

**Amendment 425**  
**Andreas Schwab, Rafał Trzaskowski, Marielle Gallo**

**Proposal for a regulation**  
**Article 79 – paragraph 3 – point a**

*Text proposed by the Commission*

*Amendment*

***a) a natural person is processing personal data without a commercial interest; or***      ***deleted***

Or. fr

### *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 426**

**Christel Schaldemose, Anna Hedh, Catherine Stihler**

#### **Proposal for a regulation**

**Article 79 – paragraph 3 – point b**

*Text proposed by the Commission*

*Amendment*

***(b) an enterprise or an organisation employing fewer than 250 persons is processing personal data only as an activity ancillary to its main activities.*** ***deleted***

Or. en

#### **Amendment 427**

**Andreas Schwab, Rafal Trzaskowski, Marielle Gallo**

#### **Proposal for a regulation**

**Article 79 – paragraph 3 – point b**

*Text proposed by the Commission*

*Amendment*

***b) an enterprise or an organisation employing fewer than 250 persons is processing personal data only as an activity ancillary to its main activities.*** ***deleted***

Or. fr

### *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 428**

**Andreas Schwab, Marielle Gallo**

#### **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).**

Or. fr

*Justification*

*See Article 79, paragraph 3.*

#### **Amendment 429**

**Morten Løkkegaard**

#### **Proposal for a regulation**

#### **Article 79 – paragraph 4 – introductory part**

*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***

**4. The supervisory authority shall impose a fine up to 250 000 EUR, to anyone who,**



*worldwide turnover*, to anyone who, intentionally or negligently:

intentionally or negligently:

Or. en

**Amendment 430**  
**Rafał Trzaskowski**

**Proposal for a regulation**  
**Article 79 – paragraph 4 – introductory part**

*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:

4. The supervisory authority *may* 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:

Or. en

**Amendment 431**  
**Andreas Schwab, Marielle Gallo**

**Proposal for a regulation**  
**Article 79 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

5. [...]

*deleted*

Or. fr

*Justification*

*See Article 79, paragraph 3.*

**Amendment 432**  
**Morten Løkkegaard**

**Proposal for a regulation**  
**Article 79 – paragraph 5 – introductory part**

*Text proposed by the Commission*

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:

*Amendment*

5. The supervisory authority shall impose a fine up to 500 000 EUR, to anyone who, intentionally or negligently:

Or. en

**Amendment 433**  
**Rafał Trzaskowski**

**Proposal for a regulation**  
**Article 79 – paragraph 5 – introductory part**

*Text proposed by the Commission*

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:

*Amendment*

5. The supervisory authority ***may*** 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:

Or. en

**Amendment 434**  
**Andreas Schwab, Marielle Gallo**

**Proposal for a regulation**  
**Article 79 – paragraph 6**

*Text proposed by the Commission*

**6. [...]**

*Amendment*

***deleted***

Or. fr

*Justification*

*See Article 79, paragraph 3.*

**Amendment 435**  
**Morten Løkkegaard**

**Proposal for a regulation**  
**Article 79 – paragraph 6 – introductory part**

*Text proposed by the Commission*

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:

*Amendment*

6. The supervisory authority shall impose a fine up to 1 000 000 EUR or, to anyone who, intentionally or negligently:

Or. en

**Amendment 436**  
**Rafal Trzaskowski**

**Proposal for a regulation**  
**Article 79 – paragraph 6 – introductory part**

*Text proposed by the Commission*

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:

*Amendment*

6. The supervisory authority ***may*** 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:

Or. en

**Amendment 437**  
**Catherine Stihler**

**Proposal for a regulation**  
**Article 79 – paragraph 6 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

***(a a) uses employees' or potential employees' personal data to blacklist them, vet them or bar them from access to future employment***

Or. en

*Justification*

*Illegally accessing and misusing employees' or potential employees' personal data (often regarding, but not limited to, their trade union affiliation and activities) in order to blacklist them, bar them from future employment or any other measure that has the potential to hinder their work and/or have a major effect on their future work and career, is a gross breach of their fundamental rights to privacy and freedom of association and warrants the imposition of the highest sanction.*

#### **Amendment 438**

**Andreas Schwab, Rafal Trzaskowski, Marielle Gallo**

#### **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***

Or. fr

*Justification*

*See Article 79, paragraph 3.*

#### **Amendment 439**

**Mitro Repo**

**Proposal for a regulation**  
**Article 81 – paragraph 1 – point c**

*Text proposed by the Commission*

(c) other reasons of public interest in areas such as social protection, 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**.

*Amendment*

(c) other reasons of public interest in areas such as social protection, especially in order to ensure the quality and cost-effectiveness of the procedures used for settling claims for benefits and services **for** insurance **purposes**.

Or. en

*Justification*

*The scope of the article should cover collecting and processing health data for all insurance purposes, i.e. health, life, accident, third party liabilities insurance and reinsurance.*

**Amendment 440**  
**Morten Løkkegaard**

**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.

Or. en

#### **Amendment 441**

**Christel Schaldemose, Anna Hedh, Catherine Stihler**

#### **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 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. ***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.***

Or. en

#### **Amendment 442**

**Anna Hedh**

#### **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 employment relationship.

**1. Member States may, in accordance with national law and practices,** adopt specific rules regulating the processing of employees' personal data in the employment context **on the labour market**, in particular **but not limited to** 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.

Or. en

#### **Amendment 443**

**Anna Hedh**

#### **Proposal for a regulation**

#### **Article 82 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

**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.**

**deleted**

Or. en

#### **Amendment 444**

**Anna Hedh**

**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).**

Or. en

**Amendment 445**  
**Christel Schaldemose, Anna Hedh, Catherine Stihler**

**Proposal for a regulation**  
**Article 83 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**3 a. 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.**

Or. en

**Amendment 446**  
**Christel Schaldemose, Anna Hedh, Catherine Stihler**

**Proposal for a regulation**  
**Article 83 – paragraph 3 b (new)**



*Text proposed by the Commission*

*Amendment*

***3 b. 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.***

Or. en

**Amendment 447**

**Andreas Schwab, Rafal Trzaskowski**

**Proposal for a regulation  
Article 86 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

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.

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 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 be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

Or. fr

**Amendment 448**

**Bernadette Vergnaud**

**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*

2. The delegation of power referred to in 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.

Or. fr

*Justification*

*The texts defining legitimate interest are clear and the case-law on the subject is consistent. There is therefore no need for a delegated act to define the conditions laid down in paragraph 1(f). The matter of consent for the processing of personal data of children is dealt with in Article 8 of this Regulation.*

**Amendment 449**  
**Rafał Trzaskowski**

**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

*Amendment*

2. The delegation of power referred to in Article 6(5), Article 8(3), Article 12(5), Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 23(3), Article 26(5), Article 37(2), Article 39(2), Article 43(3), 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.

indeterminate period of time from the date of entry into force of this Regulation.

Or. en

#### **Amendment 450**

**Andreas Schwab, Rafal Trzaskowski**

#### **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.

Or. fr

#### **Amendment 451**

**Bernadette Vergnaud**

#### **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 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.

Or. fr

*Justification*

*The texts defining legitimate interest are clear and the case-law on the subject is consistent. There is therefore no need for a delegated act to define the conditions laid down in paragraph 1(f). The matter of consent for the processing of personal data of children is dealt with in Article 8 of this Regulation.*

**Amendment 452**  
**Rafał Trzaskowski**

**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)**,

*Amendment*

3. The delegation of power referred to in Article 6(5), Article 8(3), Article 12(5), Article 14(7), Article 15(3), Article 17(9), Article 20(6), 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)* 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.

*Article 30(3), Article 37(2), Article 39(2), Article 43(3), 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.

Or. en

### **Amendment 453**

**Andreas Schwab, Rafal Trzaskowski**

#### **Proposal for a regulation**

#### **Article 86 – paragraph 5**

##### *Text proposed by the Commission*

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

##### *Amendment*

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

extended by two months at the initiative of the European Parliament or the Council.

European Parliament or the Council.

Or. fr

#### **Amendment 454**

**Bernadette Vergnaud**

#### **Proposal for a regulation**

#### **Article 86 – paragraph 5**

##### *Text proposed by the Commission*

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

##### *Amendment*

5. A delegated act adopted pursuant to 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.

Or. fr

##### *Justification*

*The texts defining legitimate interest are clear and the case-law on the subject is consistent. The texts defining legitimate interest are clear and the case-law on the subject is consistent. The matter of consent for the processing of personal data of children is dealt with in Article 8 of this Regulation.*

**Amendment 455**  
**Rafal Trzaskowski**

**Proposal for a regulation**  
**Article 86 – paragraph 5**

*Text proposed by the Commission*

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

*Amendment*

5. A delegated act adopted pursuant to Article 6(5), Article 8(3), Article 12(5), Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 23(3), Article 26(5), Article 37(2), Article 39(2), Article 43(3), 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.

Or. en

**Amendment 456**  
**Andreas Schwab, Lara Comi, Marielle Gallo, Pablo Arias Echeverría**

**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.***

Or. fr

**Amendment 457**  
**Matteo Salvini**

**Proposal for a regulation**  
**Article 89 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1 a. 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.***

Or. en

*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 458**  
**Matteo Salvini**

**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.

Or. en

*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 459**  
**Morten Løkkegaard**

**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.***

Or. en