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*Committee on the Internal Market and Consumer Protection*

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**2012/0011(COD)**

25.9.2012

## **DRAFT OPINION**

of the Committee on the Internal Market and Consumer Protection

for the Committee on Civil Liberties, Justice and Home Affairs

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

Rapporteur: Lara Comi

PA\_Legam

## SHORT JUSTIFICATION

Data protection is a fundamental right and citizens' trust needs to be ensured to enable them to benefit better of the on-line environment. The approach needs to be updated for the new technologic tools and the data flows stemming from them, so that the current provisions of Directive 95/46/EC are not fully addressing the needs of the Digital Single Market.

The variety of the available business models, technologies and services – including those of great importance in the context of e-commerce and Internal Market – have resulted in a vast spectrum of data protection issues. Companies and governments are using these technologies often without the individuals being aware of the impact they may have.

On 25 January 2012, the European Commission presented proposals of a new regulation<sup>1</sup> and directive<sup>2</sup> on the protection of individuals with regard to the processing of personal data and on the free movement of such data. The proposed regulation aims to complement the provisions of the e-Privacy Directive (2002/58/EC) and ensure that legal certainty and consistency are paramount for effective work across the EU in this area.

The proposed regulation aims to harmonise rights, ensuring the free flow of information, cut red tape and improve enforcement. More transparency will increase trust, and new provisions will make the EU more attractive as a business destination. The proposed regulation also aims to:

- modernise the EU legal system for the protection of personal data, in particular to meet the challenges resulting from globalisation and the use of new technologies;
- strengthen individuals' rights, and at the same time reduce administrative formalities to ensure a unhindered flow of personal data within the EU;
- improve the clarity and coherence of the EU rules for personal data protection and achieve a consistent and effective implementation and application of this fundamental right in all areas of the Union's activities.

### **The internal market dimension**

The proposal has a high potential for enhancing the internal market and creating a level-playing field for all businesses active in the EU. Key elements include:

- the shift of the legislative instrument (from directive to regulation);
- the 'one-stop shop' principle regarding the competent supervisory authority in cross-border cases;
- the marketplace principle (which makes EU data protection standards also applicable to businesses based outside the EU, if they are active within the EU);

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<sup>1</sup> Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation), COM(2012) 11 final; hereinafter referred to also as "General Regulation".

<sup>2</sup> Directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data, COM(2012) 10 final.

- the general principle of accountability (which replaces the obligation of data controllers or processors to make a general notification about their processing to their national regulator);
- the strengthening of the existing tools and the introduction of new ones for a consistent implementation and enforcement in all Member States;

### **Strengthening the rights of the consumer**

As for strengthening the rights of consumers, it seems that the balance of competing interests such as consumer awareness, autonomy, protection and the internal market has been struck through the promotion of transparency.

Improvements have been made especially in relation to the notion of consent as one of the legitimating factors for processing personal data, to the data subject rights as powerful tools of consumer protection and to the conditions for lawfulness of data transfers outside the EU. Nonetheless, there remain many areas of the Proposal which require further refinement and clarification. This is particularly the case with the practicalities of implementation particularly in relation to some rights. This ambiguity must be resolved and in particular the following elements require attention:

- clarify in article 17 to what extent, once informed by a data controller that a data subject has exercised the right of erasure, the data held by the third party data controller must also be deleted;
- the specific protection required for minors up to the age of 14 as they are still children;
- the proposed definition of “personal data”;
- the role that anonymization and pseudonimization can play to protect the data subject;
- the Proposal should be refined as regards precise division and determination of the obligations and responsibilities of the data controller and data processor;
- profiling operations and the differences in “profiling” in the different sectors of the economy or legal relations need to be considered thoroughly as well as taking the consequences of overly restrictive regulation in this area.

With this in mind the Rapporteur would like to focus especially on the:

- definitions;
- rights of the data subject;
- obligations of data controller and processor with reference to consumer rights;
- consistency.

The Rapporteur would also like to embrace a wider view of technological neutrality; as well as address the:

- purpose limitation principle;
- use of Delegated and Implementing Acts in association to the proposed package; and,
- practical implementation of the provisions.

## AMENDMENTS

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

### **Amendment 1** **Proposal for a regulation** **Recital 13**

*Text proposed by the Commission*

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

*Amendment*

(13) The protection of individuals should be technologically neutral and not depend on the techniques used; otherwise this would create a serious risk of circumvention. The protection of individuals should apply to processing of personal data by automated means as well as to manual processing, if the data are contained or are intended to be contained in a filing system.

Or. en

*Justification*

*As there is no mention of such "specific criteria", this recital might be confusing.*

### **Amendment 2** **Proposal for a regulation** **Recital 13 a (new)**

*Text proposed by the Commission*

*Amendment*

*(13 a) Technological neutrality should also mean that similar acts, in similar conditions and with similar consequences should be legally equivalent, with no regard of their happening online or offline, unless the diverse dynamics of data processing in such environments*

*does not make a substantial difference among them.*

Or. en

*Justification*

*A recital to better assess the difference between online and offline was necessary. Without it, some economic actors could perceive this regulation as specifically meant to address online and, in particular, social networking issues.*

**Amendment 3**  
**Proposal for a regulation**  
**Recital 23**

*Text proposed by the Commission*

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

*Amendment*

(23) The principles of protection should apply to any information concerning an identified or identifiable person. To determine whether a person is identifiable, account should be taken of all the means likely reasonably to be used either by the controller or by any other person to identify the individual. The principles of data protection should not apply to data rendered anonymous in such a way that the data subject is no longer ***directly*** identifiable, ***including, where possible, a separation of processed data from identity-revealing data. In the latter case, also pseudonymized data are useful if the key to link the pseudonymous with the identity is safe according to the state of the art.***

Or. en

*Justification*

*The definition of "personal data" needs clarifications to make it useful in both consumer experience and business running. The introduction of pseudonymous and anonymous data is helpful in this domain.*

**Amendment 4**  
**Proposal for a regulation**  
**Recital 23 a (new)**

*Text proposed by the Commission*

*Amendment*

***(23 a) A large amount of personal data might be processed for purposes of fraud detection and prevention. The pursuit of such claims, regulated by Member States' or Union law, should be taken into account when the data minimization principle and the lawfulness of processing are assessed.***

Or. en

*Justification*

*This Amendment wants to underline a principle that is not in contrast with the present Regulation, but at the same time is not clearly stated.*

**Amendment 5**  
**Proposal for a regulation**  
**Recital 25**

*Text proposed by the Commission*

*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

(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. ***The consent can be implicit only when the data subject acts in such a way that a certain amount of personal data must necessarily be processed, for instance by asking for particular goods or services,***

an electronic request, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided.

***and in such case the consent is referred only to the minimum necessary.*** 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

#### *Justification*

*In order to smooth some daily life situation, both online and offline, it was necessary to add some specific words for the cases where the consent can be assumed by the context. For instance: asking a doctor for a diagnosis implies the treatment of some personal data, without necessarily an explicit action as defined at the beginning of this recital. In the same instance, the doctor can talk to a specialist, if necessary to deliver the diagnosis, without necessarily asking for permission.*

### **Amendment 6** **Proposal for a regulation** **Recital 27**

#### *Text proposed by the Commission*

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

#### *Amendment*

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

*the processor should be the place of its central administration in the Union.*

establishment.

Or. en

*Justification*

*This amendment completes the amendment to Art. 4(13)*

**Amendment 7**  
**Proposal for a regulation**  
**Recital 27 a (new)**

*Text proposed by the Commission*

*Amendment*

***(27 a) The representative is liable, together with the controller, for any behaviour that is contrary to the present Regulation.***

Or. en

*Justification*

*The liability of the representative is not sufficiently clearly stated, and this recital helps to underline it.*

**Amendment 8**  
**Proposal for a regulation**  
**Recital 29**

*Text proposed by the Commission*

*Amendment*

(29) Children deserve specific protection of their personal data, as they may be less aware of risks, consequences, safeguards and their rights in relation to the processing of personal data. ***To determine when an individual is a child, this Regulation should take over*** the definition laid down by the UN Convention on the Rights of the Child.

(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. ***At the same time, given the higher average technology-dependence of younger generations, a distinction shall be made between*** the definition laid down by the UN Convention on the Rights of the Child ***and the "minor age" criterion.***

*Justification*

*This amendment is consistent with the amendment to Art. 4(18).*

**Amendment 9**  
**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. Where the controller is a public authority, there would be an imbalance only in the specific data processing operations where the public authority can impose *a new and unjustified* obligation by virtue of its relevant public powers and the consent cannot be deemed as freely given, taking into account the interest of the data subject.

Or. en

*Justification*

*The reference to public authority imbalance needs clarification as most of the public authorities falling under the scope of the present Regulation come at risk. For instance, a Custom Authority willing to examine the goods arriving from outside the Union can do it without the consent of the sender and the receiver, even though there is a significant imbalance and consent might not have been given. The "new" refers to the usual lack of retroactivity of laws.*

**Amendment 10**  
**Proposal for a regulation**  
**Recital 49**

*Text proposed by the Commission*

(49) The information in relation to the processing of personal data relating to the data subject should be given to them at the time of collection, or, where the data are not collected from the data subject, within a reasonable period, depending on the circumstances of the case. Where data can be legitimately disclosed to another recipient, the data subject should be informed when the data are first disclosed to the recipient.

*Amendment*

(49) The information in relation to the processing of personal data relating to the data subject should be given to them at the time of collection, or, where the data are not collected from the data subject, within a reasonable period, depending on the circumstances of the case. Where data can be legitimately disclosed to another recipient, the data subject should be informed when the data are first disclosed to the recipient. ***At the same time, no processing other than storing should be allowed before the data subject is fully aware of the information referred to here.***

Or. en

*Justification*

*This amendment matches the amendment to Art. 14(4b).*

**Amendment 11**  
**Proposal for a regulation**  
**Recital 53**

*Text proposed by the Commission*

(53) Any person should have the right to have personal data concerning them rectified and ***a ‘right to be forgotten’*** where the retention of such data is not in compliance with this Regulation. In particular, data subjects should have the right that their personal data are erased and no longer processed, where the data are no longer necessary in relation to the purposes for which the data are collected or otherwise processed, where data subjects have withdrawn their consent for processing or where they object to the processing of personal data concerning them or where the processing of their personal data otherwise does not comply

*Amendment*

(53) Any person should have the right to have personal data concerning them rectified and ***the right to have such personal data erased*** where the retention of such data is not in compliance with this Regulation. In particular, data subjects should have the right that their personal data are erased and no longer processed, where the data are no longer necessary in relation to the purposes for which the data are collected or otherwise processed, where data subjects have withdrawn their consent for processing or where they object to the processing of personal data concerning them or where the processing of their personal data otherwise does not comply

with this Regulation. This right is particularly relevant, when the data subject has given their consent as a child, when not being fully aware of the risks involved by the processing, and later wants to remove such personal data especially on the Internet. However, the further retention of the data should be allowed where it is necessary for historical, statistical and scientific research purposes, for reasons of public interest in the area of public health, for exercising the right of freedom of expression, when required by law or where there is a reason to restrict the processing of the data instead of erasing them.

with this Regulation. This right is particularly relevant, when the data subject has given their consent as a child, when not being fully aware of the risks involved by the processing, and later wants to remove such personal data especially on the Internet. However, the further retention of the data should be allowed where it is necessary for historical, statistical and scientific research purposes, for reasons of public interest in the area of public health, for exercising the right of freedom of expression, when required by law or where there is a reason to restrict the processing of the data instead of erasing them.

Or. en

#### *Justification*

*This amendment matches the amendment to the title of Art. 17.*

### **Amendment 12** **Proposal for a regulation** **Recital 54**

#### *Text proposed by the Commission*

(54) To strengthen the ‘right to *be forgotten*’ in the online environment, *the* right to *erasure* should also be extended in such a way that a controller who has *made* the personal data public should be obliged to inform third parties which are processing such data that a data subject requests them to erase any links to, or copies or replications of that personal data. To ensure this information, the controller should take all reasonable steps, including technical measures, in relation to data for the publication of which the controller is responsible. In relation to a third party publication of personal data, the controller should be considered responsible for the publication, where the controller has authorised the publication by the third

#### *Amendment*

(54) To strengthen the right to *erasure* in the online environment, *such* right should also be extended in such a way that a controller who has *transferred* the personal data *or made them* public *without being instructed to do so by the data subject* should be obliged to inform third parties which are processing such data that a data subject requests them to erase any links to, or copies or replications of that personal data. To ensure this information, the controller should take all reasonable steps, including technical measures, in relation to data for the publication of which the controller is responsible. In relation to a third party publication of personal data, the controller should be considered responsible for the publication, where the controller

party.

has authorised the publication by the third party.

Or. en

*Justification*

*This amendment accompanies the amendment to Article 17(2).*

**Amendment 13**  
**Proposal for a regulation**  
**Recital 55 a (new)**

*Text proposed by the Commission*

*Amendment*

***(55 a) In partial derogation to the principle set out in the previous recital, account must be taken of the cases where the personal data collected represent, for the relevance of such personal data that might be only internal to the controller, property of the data controller. In such cases, if the processed data are meaningless for the data subject, the data controller should have no obligation of portability.***

Or. en

*Justification*

*This amendment is meant to clarify the amendment to create a paragraph (3a) in Article 18. It refers, for instance, to data regarding the shopping history of a data subject, collected in the large organized distribution, or the credit worthiness assessment of a data subject done by a financial institution. In such cases, transferring processed data would bias the competition as it would provide the new comers an advantage against the incumbent.*

**Amendment 14**  
**Proposal for a regulation**  
**Recital 55 b (new)**

*Text proposed by the Commission*

*Amendment*

***(55 b) Some personal data, once processed by the data controller or processor,***

*produce outcomes that are used only internally by the data controller and whose format is meaningless even for the data subject. In this case, the right to data portability should not apply, while the other rights, in particular the right to object and the right of access and the right to rectification, are still valid.*

Or. en

#### *Justification*

*This amendment is meant to clarify the "meaningfulness" introduced in the previous amendment.*

### **Amendment 15** **Proposal for a regulation** **Recital 58**

#### *Text proposed by the Commission*

(58) Every natural person should have the right not to be subject to a measure which is based on profiling by means of automated processing. However, such measure should be **allowed** when expressly **authorised** by law, carried out in the course of entering or performance of a contract, or when the data subject has **given** his consent. In any case, such processing should be subject to suitable safeguards, including specific information of the data subject and the right to obtain human intervention and that such measure should not concern a child.

#### *Amendment*

(58) Every natural person should have the right not to be subject to a measure which is based on profiling by means of automated processing. However, such measure should be **forbidden only** when expressly **stated** by law, **not** carried out in the course of entering or performance of a contract, or when the data subject has **withdrawn** his consent. In any case, such processing should be subject to suitable safeguards, including specific information of the data subject and the right to obtain human intervention and that such measure should not concern a child. ***The data subject, when this profiling is not necessary for entering or performing a contract, should always have the possibility to opt-out.***

Or. en

### *Justification*

*This Amendment tries to clarify the Amendments to Art. 20, reversing the approach of profiling: allowed unless the opposite of the cases already foreseen is verified. The introduction of the opt-out for profiling completes the framework on the consumer protection side.*

**Amendment 16**  
**Proposal for a regulation**  
**Recital 61 a (new)**

*Text proposed by the Commission*

*Amendment*

***(61 a) Data protection by design is a very useful tool as it allows the data subject to be fully in control of his own data protection, of the information he shares and with the subject with whom he shares. When considering this principle as well as data protection by default, the context should heavily influence the assessment of lawfulness of processing.***

Or. en

### *Justification*

*This Amendment clarifies the Amendment to art. 23(2). It refers to cases where the data subject has the choice to opt in a data processing system, and in that case the whole range of consequences shall be taken into consideration. For instance, when signing in a social network, the data subjects should accept that some information be public for the other users to connect with him, while the same level of publicity of data should not be accepted by a data subject that asks for a loan.*

**Amendment 17**  
**Proposal for a regulation**  
**Recital 63**

*Text proposed by the Commission*

*Amendment*

(63) Where a controller not established in the Union is processing personal data of data subjects residing in the Union whose processing activities are related to the offering of goods or services to such data subjects, or to the monitoring their

(63) Where a controller not established in the Union is processing personal data of data subjects residing in the Union whose processing activities are related to the offering of goods or services to such data subjects, or to the monitoring their

behaviour, the controller should designate a representative, unless the controller is established in a third country ensuring an adequate level of protection, or the controller is a *small or medium sized enterprise or a* public authority or body or where the controller is only occasionally offering goods or services to such data subjects. The representative should act on behalf of the controller and may be addressed by any supervisory authority.

behaviour, the controller should designate a representative, unless the controller is established in a third country ensuring an adequate level of protection, or the controller is a public authority or body or where the controller is only occasionally offering goods or services to such data subjects. The representative should act on behalf of the controller and may be addressed by any supervisory authority.

Or. en

### *Justification*

*The size of the data controller does not influence the protection of the data subject.*

## **Amendment 18**

### **Proposal for a regulation**

#### **Recital 67**

#### *Text proposed by the Commission*

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

#### *Amendment*

(67) A personal data breach may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud, to the individual concerned. Therefore, *addressing such economic loss and social harm should be the first and utmost priority. After that*, the controller should notify the breach to the supervisory authority without undue delay. The individuals whose personal data could be adversely affected by the breach should be notified without undue delay in order to allow them to take the necessary precautions. 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, damage to reputation *or money loss*. The notification *to the supervisory authority* should describe the

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.

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. en

#### *Justification*

*This Amendment is meant to clarify the actions that are desirable in case of data breach, and the Amendments to Article 31 and to Article 32.*

### **Amendment 19** **Proposal for a regulation** **Recital 69**

#### *Text proposed by the Commission*

(69) In ***setting detailed rules concerning the format and procedures applicable to*** the notification of personal data breaches, due consideration should be given to the circumstances of the breach, including whether or not personal data had been protected by appropriate technical protection measures, effectively limiting the likelihood of identity fraud or other forms of misuse. Moreover, such rules and procedures should take into account the legitimate interests of law enforcement authorities in cases where early disclosure

#### *Amendment*

(69) In ***assessing the level of detail of*** the notification of personal data breaches, due consideration should be given to the circumstances of the breach, including whether or not personal data had been protected by appropriate technical protection measures, effectively limiting the likelihood of identity fraud or other forms of misuse. Moreover, such rules and procedures should take into account the legitimate interests of law enforcement authorities in cases where early disclosure could unnecessarily hamper the

could unnecessarily hamper the investigation of the circumstances of a breach.

investigation of the circumstances of a breach.

Or. en

*Justification*

*This Amendment follows the deletion of Article 32(5).*

**Amendment 20**  
**Proposal for a regulation**  
**Recital 75**

*Text proposed by the Commission*

(75) Where the processing is carried out in the public sector or where, in the private sector, processing is carried out by ***a large*** enterprise, ***or where its*** core activities, regardless of the size of the enterprise, involve processing operations which require regular and systematic monitoring, a person should assist the controller or processor to monitor internal compliance with this Regulation. Such data protection officers, whether or not an employee of the controller, should be in a position to perform their duties and tasks independently.

*Amendment*

(75) Where the processing is carried out in the public sector or where, in the private sector, processing is carried out by ***an*** enterprise ***whose*** core activities, regardless of the size of the enterprise, involve processing operations which require regular and systematic monitoring, a person should assist the controller or processor to monitor internal compliance with this Regulation. Such data protection officers, whether or not an employee of the controller, should be in a position to perform their duties and tasks independently.

Or. en

*Justification*

*This Amendment is linked to the Amendment of Art. 35(1b).*

**Amendment 21**  
**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

*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 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.

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 provide legal certainty and reduce administrative burden for such controllers and processors.

Or. en

### *Justification*

*The "one-stop shop" provision does not, in itself, increase the consistency. For this aim, some Amendments have been presented in the relevant Articles, to leave the responsibility for consistency to the European Data Protection Board.*

## **Amendment 22**

### **Proposal for a regulation**

#### **Recital 105**

#### *Text proposed by the Commission*

(105) In order to ensure the consistent application of this Regulation throughout the Union, a consistency mechanism for co-operation between the supervisory authorities themselves and the Commission should be established. This mechanism should in particular apply where a supervisory authority intends to take a measure as regards processing operations that are related to the offering of goods or services to data subjects in several Member States, , or to the monitoring such data subjects, or that might substantially affect the free flow of personal data. It should also apply where any supervisory authority or the Commission requests that the matter should be dealt with in the consistency mechanism. This mechanism should be without prejudice to any measures that the Commission may take in the exercise of its

#### *Amendment*

(105) In order to ensure the consistent application of this Regulation throughout the Union, a consistency mechanism for co-operation between the supervisory authorities themselves and the Commission should be established. This mechanism should in particular apply where a supervisory authority intends to take a measure as regards processing operations that are related to the offering of goods or services to data subjects in several Member States, or to the monitoring ***of*** such data subjects, or that might substantially affect the free flow of personal data. It should also apply where any supervisory authority or the Commission requests that the matter should be dealt with in the consistency mechanism. ***Furthermore, the data subjects should have the right to obtain consistency, if they deem a measure by a***

powers under the Treaties.

***Data Protection Authority of a Member State has not fulfilled this criterion.*** This mechanism should be without prejudice to any measures that the Commission may take in the exercise of its powers under the Treaties.

Or. en

#### *Justification*

*This Amendment introduces the new Article 63a.*

### **Amendment 23** **Proposal for a regulation** **Recital 111**

#### *Text proposed by the Commission*

(111) Every data subject should have the right to lodge a complaint with a supervisory authority in any Member State and have the right to a judicial remedy if they consider that their rights under this Regulation are infringed or where the supervisory authority does not react on a complaint or does not act where such action is necessary to protect the rights of the data subject.

#### *Amendment*

(111) Every data subject should have the right to lodge a complaint with a supervisory authority in any Member State and have the right to a judicial remedy if they consider that their rights under this Regulation are infringed or where the supervisory authority does not react on a complaint or does not act where such action is necessary to protect the rights of the data subject. ***If the data subject deems consistency is not fulfilled, a complaint to the European Data Protection Board can be filed.***

Or. en

### **Amendment 24** **Proposal for a regulation** **Recital 112**

#### *Text proposed by the Commission*

(112) Any body, organisation or association which aims to protect the rights and interests of ***data subjects in***

#### *Amendment*

(112) Any body, organisation or association which aims to protect the rights and interests of ***citizens*** should have

*relation to the protection of their data and is constituted according to the law of a Member State* should have the right to lodge a complaint with a supervisory authority or exercise the right to a judicial remedy on behalf of data subjects, or to lodge, independently of a data subject's complaint, an own complaint where it considers that a personal data breach has occurred.

the right to lodge a complaint with a supervisory authority or exercise the right to a judicial remedy on behalf of data subjects, or to lodge, independently of a data subject's complaint, an own complaint where it considers that a personal data breach has occurred.

Or. en

### *Justification*

*This Amendment completes the Amendment to Article 73(2).*

### **Amendment 25** **Proposal for a regulation** **Recital 113**

#### *Text proposed by the Commission*

(113) Each natural or legal person should have the right to a judicial remedy against decisions of a supervisory authority concerning them. Proceedings against a supervisory authority should be brought before the courts of the Member State, where the supervisory authority is established.

#### *Amendment*

(113) Each natural or legal person should have the right to a judicial remedy against decisions of a supervisory authority concerning them. Proceedings against a supervisory authority should be brought before the courts of the Member State, where the supervisory authority is established, *or before the European Data Protection Board on grounds of inconsistency with the application of the present Regulation in other Member States*

Or. en

### **Amendment 26** **Proposal for a regulation** **Recital 114**

*Text proposed by the Commission*

(114) In order to strengthen the judicial protection of the data subject in situations where the competent supervisory authority is established in another Member State than the one where the data subject is residing, the data subject may request any body, organisation or association aiming to protect the rights and interests of ***data subjects in relation to the protection of their data*** to bring on the data subject's behalf proceedings against that supervisory authority to the competent court in the other Member State.

*Amendment*

(114) In order to strengthen the judicial protection of the data subject in situations where the competent supervisory authority is established in another Member State than the one where the data subject is residing, the data subject may request any body, organisation or association aiming to protect the rights and interests of ***citizens*** to bring on the data subject's behalf proceedings against that supervisory authority to the competent court in the other Member State.

Or. en

*Justification*

*This Amendment is justified by the Amendment to Article 73(2).*

**Amendment 27**  
**Proposal for a regulation**  
**Recital 120**

*Text proposed by the Commission*

(120) In order to strengthen and harmonise administrative sanctions against infringements of this Regulation, each supervisory authority should have the power to sanction administrative offences. This Regulation should indicate these offences and the upper limit for the related administrative fines, which should be fixed in each individual case proportionate to the specific situation, with due regard in particular to the nature, gravity and duration of the breach. The consistency mechanism may also be used to cover divergences in the application of administrative sanctions.

*Amendment*

(120) In order to strengthen and harmonise administrative sanctions against infringements of this Regulation, each supervisory authority should have the power to sanction administrative offences. This Regulation should indicate these offences and the upper limit for the related administrative fines, which should be fixed in each individual case proportionate to the specific situation, with due regard in particular to the nature, gravity and duration of the breach. ***In order to strengthen the internal market, the administrative sanctions should be consistent across Member States.*** The consistency mechanism may also be used to cover divergences in the application of

administrative sanctions.

Or. en

*Justification*

*This Amendment anticipates the consistency requirement of the administrative sanctions in Article 78 and Article 79.*

**Amendment 28**  
**Proposal for a regulation**  
**Recital 122**

*Text proposed by the Commission*

(122) The processing of personal data concerning health, as a special category of data which deserves higher protection, may often be justified by a number of legitimate reasons for the benefit of individuals and society as a whole, in particular in the context of ensuring continuity of cross-border healthcare. Therefore this Regulation should provide for harmonised conditions for the processing of personal data concerning health, subject to specific and suitable safeguards so as to protect the fundamental rights and the personal data of individuals. This includes the right for individuals to have access to their personal data concerning their health, for example the data in their medical records containing such information as diagnosis, examination results, assessments by treating physicians and any treatment or interventions provided.

*Amendment*

(122) The processing of personal data concerning health, as a special category of data which deserves higher protection, may often be justified by a number of legitimate reasons for the benefit of individuals and society as a whole, in particular in the context of ensuring continuity of cross-border healthcare. Therefore this Regulation should provide for harmonised conditions for the processing of personal data concerning health, subject to specific and suitable safeguards so as to protect the fundamental rights and the personal data of individuals. This includes the right for individuals to have access, ***directly or through previously delegated persons***, to their personal data concerning their health, for example the data in their medical records containing such information as diagnosis, examination results, assessments by treating physicians and any treatment or interventions provided.

Or. en

*Justification*

*This Amendment is needed to allow access to information by a patient's relative, over all where the patient is not able to take decisions or to use such information, due to the gravity of the illness.*

**Amendment 29**  
**Proposal for a regulation**  
**Recital 122 a (new)**

*Text proposed by the Commission*

*Amendment*

***(122 a) A professional who process personal data concerning health should receive, if possible, anonymized or pseudonymized data, leaving the knowledge of the identity only to the General Practitioner or to the Specialist who has requested such data processing.***

Or. en

*Justification*

*This Amendment means to suggest a further tool for the protection of citizens whose health data are controlled or processed by a professional who does not need to know the identity of the data subject.*

**Amendment 30**  
**Proposal for a regulation**  
**Article 3 – paragraph 2 – point a**

*Text proposed by the Commission*

*Amendment*

(a) the offering of goods ***or*** services to such data subjects in the Union; ***or***

(a) the offering of goods ***and*** services to such data subjects in the Union, ***including services provided without financial costs to the individual, or;***

Or. en

*Justification*

*This addition helps to clarify that the objective pursued is not relevant to the application of this Regulation, and that no-profit or free services shall have the same obligations of the other actors, if similar conditions apply.*

**Amendment 31**  
**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 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. ***In order to determine whether a person can be identified, account should be taken of:***

***a) the means likely reasonably to be used by the controller or any other natural or legal person who accesses the data to identify such a person and***

***b) the measures that the controller or the processor has put in place in order to prevent the information from fully identifying a natural person.***

***A natural person is "indirectly identifiable" when the data processed allows the controller to solely individualise one person from another and the controller cannot verify its identity.***

Or. en

*Justification*

*The definition proposed by the Commission is too wide. More specification on the means helps to clarify this issue.*

**Amendment 32**  
**Proposal for a regulation**  
**Article 4 – paragraph 1 – point 2**

*Text proposed by the Commission*

*Amendment*

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

(2) ‘personal data’ means information relating to **an identifiable** data subject;

Or. en

*Justification*

*Narrowing the definition increases the certainty of the law, and avoids useless burdens to the controllers of data that are not directly relevant for the data subject*

**Amendment 33**

**Proposal for a regulation**

**Article 4 – paragraph 1 – point 8**

*Text proposed by the Commission*

*Amendment*

(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;

(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; **by ‘clear affirmative action’ is meant any unequivocal action that is the result of a choice and that implies, for its complete execution, a necessary data processing;**

Or. en

*Justification*

*Whenever processing personal data is strictly necessary for the provision of a good or a service, requiring such good or service can be considered as an explicit indication of wishes.*

**Amendment 34**

**Proposal for a regulation**

**Article 4 – paragraph 1 – point 13**

*Text proposed by the Commission*

*Amendment*

(13) ‘main establishment’ means **as**

(13) ‘main establishment’ means **the place**

*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;*

*where* the controller *or the processor has* 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 *or a processor* in the Union take place.

Or. en

#### *Justification*

*The same definition should regard the processor as well as the controller, if the processor has direct relations with the data subject.*

### **Amendment 35** **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 **14** years;

Or. en

#### *Justification*

*Any person below the age of 18 is already a minor. Given the high propensity to the use of technology by younger generations, a distinction should be made between children and minors, where the latter ones, if adequately informed, have different issues if compared with the former ones. Pretending that minors in the upper age range do not use online services means making the Regulation unapplicable, while for offline applications national laws apply on the responsibility taken by minors.*

**Amendment 36**  
**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. en

*Justification*

*There is no need for further specifications.*

**Amendment 37**  
**Proposal for a regulation**  
**Article 7 – paragraph 3**

*Text proposed by the Commission*

*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.

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. ***If the consent is still necessary for the execution of a contract, its withdrawal implies the willingness to terminate the contract.***

Or. en

*Justification*

*Long term contracts (e.g.: life insurances) might not be executable if the consent is withdrawn. This more detailed explanation is necessary for the data subject to be aware of the consequences of his choice.*

**Amendment 38**  
**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*

Any rectification or erasure carried out in accordance with Articles 16 and 17 ***is extended*** to each recipient to whom the data have been disclosed ***without the control of the data subject.***

Or. en

*Justification*

*Selling a database to a third party does not exempt the data controller from executing her obligations. If, instead, the data subject has voluntarily or consciously transferred some information through the data controller, the latter does not bear further responsibility.*

**Amendment 39**  
**Proposal for a regulation**  
**Article 14 – paragraph 4 – point b**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

*Providing these information is an additional safeguard for the data subject. Therefore, before it is completed there can be neither processing or disclosure.*

**Amendment 40**  
**Proposal for a regulation**  
**Article 14 – paragraph 5 – point b**

*Text proposed by the Commission*

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

*Amendment*

(b) the data are ***meant to serve solely the purposes of art. 83, are*** not collected from the data subject and the provision of such information proves impossible or would involve a disproportionate effort; or

Or. en

*Justification*

*This provision emanates directly from art. 11(2) of the Directive 95/46/EC, but without this specification it would have resulted as a loophole in consumer protection. This amendment restores the match between the original intentions and the wording.*

**Amendment 41**  
**Proposal for a regulation**  
**Article 14 – paragraph 7**

*Text proposed by the Commission*

***7. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria for categories of recipients referred to in point (f) of paragraph 1, the requirements for the notice of potential access referred to in point (g) of paragraph 1, the criteria for the further information necessary referred to in point (h) of paragraph 1 for specific sectors and situations, and the conditions and appropriate safeguards for the exceptions laid down in point (b) of paragraph 5. In doing so, the Commission shall take the appropriate measures for micro, small and medium-sized enterprises.***

*Amendment*

***deleted***

*Justification*

*There is no need for such further specifications.*

**Amendment 42**  
**Proposal for a regulation**  
**Article 15 – paragraph 1 – point d**

*Text proposed by the Commission*

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

*Amendment*

(d) the period for which the personal data will be stored ***and the time of collection***;

*Justification*

*This adds clarity, and helps the data subject to check whether the consent has really been given. On the other side, it makes it less burdensome for the data controller to prove the circumstances of the consent.*

**Amendment 43**  
**Proposal for a regulation**  
**Article 15 – paragraph 1 – subparagraph 1 (new)**

*Text proposed by the Commission*

*Amendment*

***(i) on request, and free of charge, the data controller shall also provide a proof of the lawfulness of processing in a reasonable time;***

*Justification*

*If the data controller provides this proof directly to the data subject, the number of lawsuits should be reduced.*

**Amendment 44**  
**Proposal for a regulation**  
**Article 15 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

**3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the communication to the data subject of the content of the personal data referred to in point (g) of paragraph 1.**

*deleted*

Or. en

*Justification*

*This addition does not seem necessary.*

**Amendment 45**  
**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 title proposed by the Commission is misleading.*

**Amendment 46**  
**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

2. Where the controller referred to in paragraph 1 has ***transferred*** the personal data, ***or has made such data*** public ***without being clearly instructed by the data subject to do so***, it shall take all

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.

reasonable steps 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

### *Justification*

*This provision targets particularly the transfer of data that are object of an erasure request. It must be clear that, if the data subject made them public, or instructed the controller to do so, or did it through the controller, the responsibility is still beared by the data subject. On the other side, the controller is responsible for applying this provision also to data that have been voluntarily transferred or released to third parties that have no relation with the data subject.*

### **Amendment 47** **Proposal for a regulation** **Article 17 – paragraph 9**

*Text proposed by the Commission*

*Amendment*

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

***deleted***

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

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

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

Or. en

*Justification*

*There seems to be no need for such further specifications.*

**Amendment 48**  
**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 implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).***

***deleted***

Or. en

*Justification*

*Once the format is portable, the market can provide it without the Commission's intervention*

**Amendment 49**  
**Proposal for a regulation**  
**Article 18 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3 a. Where the processed data are, at least partially, meaningless for the data subject, the obligations following from the present article do not apply,***

Or. en

*Justification*

*Some data, once processed, are interesting only for the controller (e.g.: data processed for credit worthiness, or shopping history collected by the large distribution through fidelity cards) and releasing them to competitors might be harmful. The data subject still has the right to access, but without implying portability.*

**Amendment 50**  
**Proposal for a regulation**  
**Article 19 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

*Justification*

*Storing unprocessable data is costly for the controller and dangerous for the data subject in case the database is accessed by non authorized parties. This is only a specification.*

**Amendment 51**  
**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.***

***deleted***

Or. en

*Justification*

*The approach followed departs from a negative judgement of profiling, which is instead very useful in marketing, for financial services and for the customization of goods and services. This paragraph must be canceled to reverse the approach and allow profiling, except when it can have the consequences specified later.*

**Amendment 52**  
**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 *measure which produces legal effects on a person or significantly affects this person, based solely on automated processing intended to evaluate certain personal aspects relating to this person or to analyse or predict in particular the person's performance at work, economic situation, location, health, personal preferences, reliability or behaviour, is lawful* only if the processing:

Or. en

**Amendment 53**  
**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, *in Article 15 and Article 16*.

Or. en

*Justification*

*Changing the approach, profiling is allowed if the data subject is aware of it and has the possibility to access the personal information used (art. 15) and change them if wrong (art. 16).*

**Amendment 54**  
**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

*Justification*

*The text is already clear enough, and no further specification seems necessary.*

**Amendment 55**  
**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 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. ***Also***, those mechanisms shall ensure that by default personal data are not made accessible to an indefinite number of individuals, ***unless justified pursuant to Article 6.***

Or. en

### *Justification*

*This article is heavily influenced by the Lingvist case. Nonetheless, there are some cases where the accessibility of some data by an indefinite number of people is justified by law (e.g.: the birth date of the candidates to electoral offices) or by the services provided (e.g.: social networks). Depending on the cases, the amount of accessible data can be wider or narrower.*

#### **Amendment 56** **Proposal for a regulation** **Article 24 – paragraph 1**

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

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

##### *Amendment*

Where a controller determines the purposes, conditions and means of the processing of personal data jointly with others, the joint controllers shall determine their respective responsibilities for compliance with the obligations under this Regulation, in particular as regards the procedures and mechanisms for exercising the rights of the data subject, by means of an arrangement between them. ***Where such determination is lacking or is not sufficiently clear, the data subject can exercise his rights with any of the controllers and they shall be equally liable.***

Or. en

### *Justification*

*This amendment gives the data subject more protection in this peculiar case.*

#### **Amendment 57** **Proposal for a regulation** **Article 25 – paragraph 2 – point b**

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

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

##### *Amendment*

***deleted***

*Justification*

*A company that act as data controllers for the personal data of European data subjects must be directly liable in front of the European authority. Being a micro- or small- or medium-sized enterprise does not make the difference in this context.*

**Amendment 58**  
**Proposal for a regulation**  
**Article 26 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

***5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the responsibilities, duties and tasks in relation to a processor in line with paragraph 1, and conditions which allow facilitating the processing of personal data within a group of undertakings, in particular for the purposes of control and reporting.***

***deleted***

*Justification*

*These specifications are not necessary. The intra-group transfers are already considered in another part of the present proposal.*

**Amendment 59**  
**Proposal for a regulation**  
**Article 28 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

**3. The controller and the processor and, if any, the controller's representative, shall make the documentation available, on request, to the supervisory authority.**

**3. The controller and the processor and, if any, the controller's representative, shall make the documentation available, on request, to the supervisory authority *and, in an electronic format, to the data***

*subject.*

Or. en

*Justification*

*The privacy policy should be made available to the data subject as well as to the supervisory authority.*

**Amendment 60**  
**Proposal for a regulation**  
**Article 28 – paragraph 4 – point b**

*Text proposed by the Commission*

(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.

*Amendment*

(b) an enterprise or an organisation that is processing personal data only as an activity ancillary to its main activities.

Or. en

*Justification*

*The size of the data controller does not matter for the purpose of data protection.*

**Amendment 61**  
**Proposal for a regulation**  
**Article 28 – paragraph 5**

*Text proposed by the Commission*

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

*Amendment*

*deleted*

Or. en

*Justification*

*There is no need for such further specification.*

**Amendment 62**  
**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*

*After a data breach, the priority should be to take appropriate measures meant to reduce the damages. An explicit deadline shifts the priority to the notification.*

**Amendment 63**  
**Proposal for a regulation**  
**Article 31 – paragraph 4**

*Text proposed by the Commission*

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

*Amendment*

4. The controller shall document any personal data breaches, comprising the facts surrounding the breach, its effects and the remedial action taken. This documentation must enable the supervisory authority to verify compliance with this Article ***and with Article 30***. The documentation shall only include the information necessary for that purpose.

Or. en

*Justification*

*The data controller must prove that he has taken any reasonably possible measure to avoid data breaches, besides showing he has managed correctly the breaches occurred.*

**Amendment 64**  
**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

*Justification*

*There is no need for such further specification.*

**Amendment 65**  
**Proposal for a regulation**  
**Article 32 – paragraph 1**

*Text proposed by the Commission*

*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 without undue delay.

1. When the personal data breach is likely to adversely affect the protection of the personal data or privacy of the data subject, **or when the intervention of the data subject can decisively mitigate the possible adverse effects of the personal data breach**, the controller shall, **together with the other urgent measures and before** the notification referred to in Article 31, communicate the personal data breach to the data subject without undue delay.

*Justification*

*There are cases where the cooperation of the data subject is fundamental to reduce the adverse effects of the data breach. For instance, if credit card numbers are stolen, the data subject is the only one empowered to separate due payments by undue ones. Therefore, his cooperation is even more important than the notification to the Authority. Adding such cases, and giving them the priority, becomes then very important.*

**Amendment 66**  
**Proposal for a regulation**  
**Article 32 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

**5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements as to the circumstances in which a personal data breach is likely to adversely affect the personal data referred to in paragraph 1.** **deleted**

*Justification*

*The Data Protection Authority, in the Impact Assessment, has every necessary information to judge whether the consequences of a data breach are likely to adversely affect the personal data or privacy of the data subject.*

**Amendment 67**  
**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**

*Justification*

*The size of the data controller and processor does not impact the protection of the personal data of the data subject.*

**Amendment 68**  
**Proposal for a regulation**  
**Article 35 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

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

Or. en

*Justification*

*After deleting point (b) of paragraph (1), this paragraph does not make sense anymore.*

**Amendment 69**  
**Proposal for a regulation**  
**Article 35 – paragraph 11**

*Text proposed by the Commission*

*Amendment*

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

Or. en

*Justification*

*Such further specifications are not necessary.*

**Amendment 70**  
**Proposal for a regulation**  
**Article 37 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

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

**deleted**

Or. en

*Justification*

*There is no need for such further specifications.*

**Amendment 71**  
**Proposal for a regulation**  
**Article 41 – paragraph 2 – point a**

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

*Justification*

*In some Countries the precedent rulings of the Courts have a high relevance (e.g.: Common*

*Law Countries).*

**Amendment 72**  
**Proposal for a regulation**  
**Article 41 – paragraph 7**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

*The website makes it easier to update and, in many cases, to find.*

**Amendment 73**  
**Proposal for a regulation**  
**Article 62**

*Text proposed by the Commission*

*[...]*

*Amendment*

***deleted***

Or. en

*Justification*

*It is not wise to overload the Commission with such tasks, that can be more effectively fulfilled by the European Data Protection Board.*

**Amendment 74**  
**Proposal for a regulation**  
**Article 63 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 63 a**

**Appealing procedures**

***Without prejudice to the competences of the judiciary system of the Member States and of the Union, the European Data Protection Board can issue binding opinions if:***

***(a) a data subject or data controller appeals on ground of inconsistent application of the present Regulation across the Member States and***

***(b) the Consistency Mechanism described in Article 58 to 63 has failed to ensure that a simple majority of the members of the European Data Protection Board agrees on a measure.***

***Before issuing such opinion, the European Data Protection Board shall take into consideration every information the competent Data Protection Authority knows, including the point of view of the interested parties.***

Or. en

*Justification*

*Notwithstanding the competence of the Data Protection Authority of the main establishment Country, an additional measure is needed to ensure consistency in the whole single market for the remote case of a measure so controversial that the whole consistency mechanism has failed to produce a wide consensus.*

**Amendment 75**

**Proposal for a regulation**

**Article 66 – paragraph 1 – point d**

*Text proposed by the Commission*

(d) issue opinions on draft decisions of supervisory authorities pursuant to the consistency mechanism referred to in

*Amendment*

(d) issue opinions on draft decisions of supervisory authorities pursuant to the consistency mechanism referred to in

*Justification*

*This amendment matches the new Article 63a*

**Amendment 76**  
**Proposal for a regulation**  
**Article 73 – paragraph 2**

*Text proposed by the Commission*

2. Any body, organisation or association which aims to protect *data subjects*' rights and interests *concerning the protection of their personal data and has been properly constituted according to the law of a Member State* shall have the right to lodge a complaint with a supervisory authority in any Member State on behalf of one or more data subjects if it considers that a data subject's rights under this Regulation have been infringed as a result of the processing of personal data.

*Amendment*

2. Any body, organisation or association which aims to protect *citizens*' rights and interests 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.

*Justification*

*The Commission's proposal is too narrow. Widening the number of subjects entitled to lodge complaints is a guarantee for the rights of the data subjects.*

**Amendment 77**  
**Proposal for a regulation**  
**Article 74 – paragraph 1**

*Text proposed by the Commission*

1. Each natural or legal person shall have the right to a judicial remedy against decisions of a supervisory authority concerning them.

*Amendment*

1. *Without prejudice to the procedure described in Article 63a*, each natural or legal person shall have the right to a judicial remedy against decisions of a

supervisory authority concerning them.

Or. en

*Justification*

*This amendment matches the new Article 63a.*

**Amendment 78**  
**Proposal for a regulation**  
**Article 78 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall lay down the rules on penalties, applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented, including where the controller did not comply with the obligation to designate a representative. The penalties provided for must be effective, proportionate and dissuasive.

*Amendment*

1. Member States shall lay down the rules on penalties, applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented, including where the controller did not comply with the obligation to designate a representative. The penalties provided for must be effective, **consistent** proportionate and dissuasive.

Or. en

*Justification*

*Penalties must be applied consistently throughout the European Union.*

**Amendment 79**  
**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

*Amendment*

2. The administrative sanction shall be in each individual case effective, **consistent** 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.

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. en

*Justification*

*Administrative sanctions must be applied consistently throughout the European Union.*

**Amendment 80**

**Proposal for a regulation**

**Article 81 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. Within the limits of this Regulation and in accordance with point (h) of Article 9(2), processing of personal data concerning health must be on the basis of Union law or Member State law which shall provide for suitable and specific measures to safeguard the data subject's legitimate interests, and be necessary for:

*Amendment*

1. Within the limits of this Regulation and in accordance with point (h) of Article 9(2), processing of personal data concerning health must be on the basis of Union law or Member State law which shall provide for suitable, **consistent** and specific measures to safeguard the data subject's legitimate interests, and be necessary for:

Or. en

*Justification*

*Adding the consistency requirement allows the Member States' laws to have less degrees of freedom, bearing in mind the objective of the Single Market.*

**Amendment 81**

**Proposal for a regulation**

**Article 81 – 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***

*Amendment*

***deleted***

*specifying other reasons of public interest in the area of public health as referred to in point (b) of paragraph 1, as well as criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1.*

Or. en

*Justification*

*There is no need for such further specifications.*

**Amendment 82**  
**Proposal for a regulation**  
**Article 83 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

*3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the processing of personal data for the purposes referred to in paragraph 1 and 2 as well as any necessary limitations on the rights of information to and access by the data subject and detailing the conditions and safeguards for the rights of the data subject under these circumstances.*      *deleted*

Or. en

*Justification*

*There is no need for such further specifications.*

**Amendment 83**  
**Proposal for a regulation**  
**Article 84 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. Each Member State shall notify to the

2. Each Member State shall notify to the

Commission the rules adopted pursuant to paragraph 1, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.

Commission the rules adopted pursuant to paragraph 1, *in order for the Commission to verify the consistency with the other Member States rules*, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.

Or. en

#### *Justification*

*The Single market needs consistent application of the present Regulation.*

#### **Amendment 84** **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(II)**, **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 **20(5)**, Article 23(3), Article 30(3), Article **33(6)**, Article 34(8), Article 39(2), Article 43(3), Article 44(7), Article 79(7) and Article **82(3)** shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

Or. en

#### *Justification*

*It is necessary to match the amendments that deleted such power. Where there has been a correction of the paragraph referred to, a typing error had been found.*

#### **Amendment 85** **Proposal for a regulation** **Article 86 – paragraph 3**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

*This amendment completes the ones deleting this power. Where the referred Article has been amended, a typing mistake had been found.*

**Amendment 86**  
**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)**,

*Amendment*

5. A delegated act adopted pursuant to Article 8(3), Article 9(3), Article 12(5), Article **20(5)**, Article 23(3), Article 30(3), Article 33(6), Article 34(8), Article 39(2), Article 43(3), Article 44(7), Article 79(7), **and** Article 82(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of

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.

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

*Justification*

*This amendment is necessary to make effective those amendments that deleted the power referred to at the beginning of this article.*