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Committee on Industry, Research and Energy

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DRAFT OPINION

of the Committee on Industry, Research and Energy

for the Committee on Civil Liberties, Justice and Home Affairs

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

Rapporteur: Seán Kelly

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SHORT JUSTIFICATION

On 25 January 2012 the European Commission presented a comprehensive reform of the EU's data protection rules. The proposed regulation aims to harmonise online privacy rights and guarantee the free movement of such data within the European Union.

The proposed regulation also aims to:

- adapt data protection to the changed demand of the digital world, knowing that the current provisions have been adopted 17 years ago when less than 1% of the Europeans used the internet;
- prevent the current divergences in enforcement of the 1995 rules by the different member States and ensure that the fundamental rights to personal data protection is applied in a uniform way in all areas of the Union's activities;
- reinforce consumer confidence in online services with a better information about the rights and data protection with the introduction of the right to rectification, to be forgotten and to erasure, to data portability and the right to object;
- boost the Digital Single Market reducing the current fragmentation and the administrative burdens and, more generally, play an important role in the Europe 2020 Strategy.

Compared to the existing Directive 95/46/EC, the proposed regulation introduces a mandatory data protection officer for the public sector, and, in the private sector, for large enterprises with more than 250 persons and for those enterprises whose core activity concerns the processing of personal data.

Improvements have also been made concerning the transfer of personal data to third countries or international organisations.

The current proposal establishes the European data Protection Board and provides sanctions, penalties and rights to compensation in case of infringement of the Regulation.

Your rapporteur substantially supports the main aims of the Commission proposal.

The proposed changes should help avoid excessive administrative burdens for enterprises, especially for those enterprises that have embedded privacy accountability, and guarantee a certain level of flexibility concerning some provisions of the Regulation, in particular those regarding the accountability mechanism and the notification to the supervisory authority. Some definitions and aspects of the original text need also to be clarified, contextualised and simplified.

Your rapporteur has prioritised a qualitative rather than a quantitative approach to data protection which focuses on corporate governance, based on the aforementioned

accountability principle, as opposed to the over-reliance on consent or bureaucratic documentation procedures, which nevertheless also play a role in data protection.

It is important to also place emphasis on the role of technical solutions such as privacy by design, pseudonymisation and anonymisation of data, prioritising the protection of sensitive data and targeted compliance measures.

Your rapporteur wishes to highlight the importance of avoiding unintended consequences which may have negative consequences in the areas of freedom of the press, health research, the fight against financial crime, the fight against fraud in sport and innovation in the delivery of energy smart grids and intelligent transport systems.

Another aspect of the proposal concerns the important number of delegated acts. Your rapporteur considers that the use of the delegated acts is too extensive and proposes to delete the majority of them.

AMENDMENTS

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

Amendment 1 **Proposal for a regulation** **Recital 1 a (new)**

Text proposed by the Commission

Amendment

(1a) The protection of the freedom of expression and information is a fundamental right in accordance with Article 11 of the European Charter of Fundamental Rights. This right includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The freedom and pluralism of the media should be respected.

Or. en

Justification

Explicit reference should be made to the freedom of information and the right to free expression which are fundamental rights in the European Union, pursuant to Article 11 of the

Amendment 2
Proposal for a regulation
Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) This Regulation does not sit in isolation from other legal acts of the Union. The liability limitations of the e-commerce directive have a horizontal structure and therefore apply to all information. This Regulation determines what constitutes a data protection infringement while the e-commerce directive sets the conditions by which the information service provider is liable for third party infringements of the law.

Or. en

Justification

It is necessary to further explain in a recital the reasons for a reference to the liability limitations of the e-commerce directive.

Amendment 3
Proposal for a regulation
Recital 27

Text proposed by the Commission

Amendment

(27) The main establishment of a controller in the Union should be determined according to objective criteria and should imply the effective and real exercise of management activities determining the main decisions as to the purposes, conditions and means of processing through stable arrangements. This criterion should not depend whether the processing of personal data is actually carried out at that location; the presence and use of technical means and technologies for

(27) Where a controller or a processor has multiple establishments in the Union, including but not limited to cases where the controller or the processor is a group of undertakings, the main establishment of a controller in the Union for the purposes of this Regulation should be determined 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

processing personal data or processing activities do not, in themselves, constitute such main establishment and are therefore no determining criteria for a main establishment. ***The main establishment of the processor should be the place of its central administration in the Union.***

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.

Or. en

Justification

Amendment ties in with amended definition of main establishment in Article 4, paragraph 13 and recognises that in many instances the same organization can perform activities as a controller and as a processor. The current definitions could create a situation where the main establishment of the same organization could be different, depending on the processing, defeating the concept of main establishment.

Amendment 4 **Proposal for a regulation** **Recital 31**

Text proposed by the Commission

(31) In order for processing to be lawful, personal data should be processed on ***the basis*** of the ***consent of the person concerned or some other*** legitimate ***basis***, laid down by law, either in this Regulation or in other Union or Member State law as referred to in this Regulation.

Amendment

(31) In order for processing to be lawful, personal data should be processed on ***one*** of the legitimate ***bases*** laid down by law, either in this Regulation or in other Union or Member State law as referred to in this Regulation.

Or. en

Justification

This amendment encourages an appropriate use of consent, as equal among the other grounds for lawful processing set out in Article 6.

Amendment 5
Proposal for a regulation
Recital 33 a (new)

Text proposed by the Commission

Amendment

(33a) Consent may not be the primary or the most desirable means of legitimising the processing of personal data. The use of consent in the right context is crucial, but it should be relied on as the legitimate basis for processing only when data subjects can meaningfully and easily provide and revoke their consent. When used in inappropriate contexts, consent loses its value and places an unnecessary burden on the data subject. For example, consent is not an appropriate justification when the processing is necessary for a service the user has requested or when subjects cannot refuse consent without impacting the underlying service. In these and other contexts, data controllers should aim to ensure the lawfulness of the processing on another legitimate ground.

Or. en

Justification

This amendment aligns the text with the Article 29 Working Party Opinion 15/2011 on the definition of consent (p. 10) by reinforcing the point that consent may be unhelpful or outright harmful to privacy protection when overused, particularly in information services.

Amendment 6
Proposal for a regulation
Recital 38

Text proposed by the Commission

Amendment

(38) The legitimate interests of a controller may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding. This would need careful assessment in particular where

(38) The legitimate interests of a controller, ***or of the third party or parties in whose interest the data is processed***, may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not

the data subject is a child, given that children deserve specific protection. The data subject should have the right to object the processing, on grounds relating to their particular situation and free of charge. To ensure transparency, the controller should be obliged to explicitly inform the data subject on the legitimate interests pursued and on the right to object, and also be obliged to document these legitimate interests. Given that it is for the legislator to provide by law the legal basis for public authorities to process data, this legal ground should not apply for the processing by public authorities in the performance of their tasks.

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

Or. en

Justification

Data processing for legitimate interests of third parties must continue to remain possible, as under the Data Protection Directive 95/46/EC, provided that the necessary conditions are met. This form of data processing is indispensable for the legitimate, day-to-day business activities of many companies. The use of third-party addresses, for instance, is particularly important for reaching new customers.

Amendment 7 **Proposal for a regulation** **Recital 40**

Text proposed by the Commission

(40) The processing of personal data for other purposes should be only allowed where the processing is compatible with those purposes for which the data have been initially collected, in particular where the processing is necessary for historical, statistical or scientific research purposes. Where the other purpose is not compatible with the initial one for which the data are collected, the controller should ***obtain the consent of the data subject for this other***

Amendment

(40) The processing of personal data for other purposes should be only allowed where the processing is compatible with those purposes for which the data have been initially collected, in particular where the processing is necessary for historical, statistical or scientific research purposes. Where the other purpose is not compatible with the initial one for which the data are collected, the controller should base the processing on ***a*** legitimate ground for

purpose or should base the processing on ***another*** legitimate ground for lawful processing, in particular where provided by Union law or the law of the Member State to which the controller is subject. In any case, the application of the principles set out by this Regulation and in particular the information of the data subject on those other purposes should be ensured.

lawful processing, in particular where provided by Union law or the law of the Member State to which the controller is subject. In any case, the application of the principles set out by this Regulation and in particular the information of the data subject on those other purposes should be ensured.

Or. en

Justification

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

Amendment 8 **Proposal for a regulation** **Recital 49**

Text proposed by the Commission

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

Amendment

(49) The information in relation to the processing of personal data relating to the data subject should be given to them at the time of collection, or, where the data are not collected from the data subject, within a reasonable period, depending on the circumstances of the case. Where data can be legitimately disclosed to another recipient ***without the data subject's consent or renewed consent***, the data subject should be informed when the data are first disclosed to the recipient, ***should the data subject request to be provided with this information.***

Or. en

Justification

If data are legitimately disclosed to another recipient, there should be no need for a constant, iterative process of informing the data subject. This may lead to unintended consequences such as the data subject removing their consent to legitimate processing, or even worse, the

data subject becoming desensitised to information pertaining to the status of their personal data.

Amendment 9
Proposal for a regulation
Recital 53 a (new)

Text proposed by the Commission

Amendment

(53a) A data subject should always have the option to give broad consent for his or her data to be used for historical, statistical or scientific research purposes, and to withdraw consent at any time.

Or. en

Justification

Broad consent is a necessity for conducting research in fields of medicine that rely on biobanks and tissue banks among other forms. Biobanks are collections of biological samples and data, accumulated over a period of time, used for medical research and diagnostic purposes. These repositories store data from millions of data subjects, which is used by scientists to perform research. The option of broad consent given to a data subject at their first encounter with a doctor allows the researchers to use this data without having to go back to the data subject for every minor research they are conducting and is thus a necessary and practical solution for protecting and fostering public health research.

Amendment 10
Proposal for a regulation
Recital 58

Text proposed by the Commission

Amendment

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

(58) Every natural person should have the right not to be subject to a measure which is based on profiling by means of automated processing ***and which produces legal effects concerning that natural person or significantly affects that natural person. Actual effects should be comparable in their intensity to legal effects to fall under this provision. This is not the case for measures relating to commercial communication, like for***

subject and the right to obtain human intervention and that such measure should not concern a child.

example in the field of customer relationship management or customer acquisition. However, *a measure based on profiling by automated data processing and which produces legal effects concerning a natural person or significantly affects a natural person* should be allowed when expressly authorised by law, carried out in the course of entering or performance of a contract, or when the data subject has given his consent. In any case, such processing should be subject to suitable safeguards, including specific information of the data subject and the right to obtain human intervention and that such measure should not concern a child.

Or. en

Justification

The amendment clarifies that commercial communication, like for example in the field of customer relationship management or customer acquisition does not significantly affect a natural person in the sense of Article 20 paragraph 1. Actual effects must be comparable in their intensity to legal effects to fall under this provision.

Amendment 11 **Proposal for a regulation** **Recital 60**

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Important to clarify that it is the controller who is responsible, liable and accountable directly to the data subject.

Amendment 12
Proposal for a regulation
Recital 61 a (new)

Text proposed by the Commission

Amendment

(61a) This Regulation encourages enterprises to develop internal programmes that will identify the processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, and to put in place appropriate data protection safeguards and develop innovative data protection-by-design solutions and data protection enhancing techniques. Enterprises that can publicly demonstrate that they have embedded data protection accountability do not also require the application of the additional oversight mechanisms of prior consultation and prior authorisation.

Or. en

Justification

This amendment aligns the text with an approach in which accountability is an alternative process that properly incentivises good organizational practices. Such an alignment also shifts the burden of the costs of compliance and assurance to the marketplace rather than the public purse.

Amendment 13
Proposal for a regulation
Recital 65

Text proposed by the Commission

Amendment

(65) In order to demonstrate compliance with this Regulation, the controller ***or***

(65) In order to demonstrate compliance with this Regulation, the controller,

processor should document each processing *operation*. Each controller and processor should be obliged to co-operate with the supervisory authority and make this documentation, on request, available to it, so that it might serve for monitoring those processing operations.

processor or its representative in the Union, where applicable, should document each *type of processing of personal data*. Each controller and processor should be obliged to co-operate with the supervisory authority and make this documentation, on request, available to it, so that it might serve for monitoring those processing operations.

Or. en

Justification

It is important that the Regulation recognizes the different responsibilities and tasks of processors and controllers and the representative, in the case of non EU based companies to whom the Regulation applies. The documentation should be proportionate and not excessively burdensome.

Amendment 14 **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

Amendment

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

fraud, physical harm, significant humiliation or damage to reputation. The notification should describe the nature of the personal data breach as well as recommendations as well as recommendations for the individual concerned to mitigate potential adverse effects. Notifications to data subjects should be made as soon as reasonably feasible, and in close cooperation with the supervisory authority and respecting guidance provided by it or other relevant authorities (e.g. law enforcement authorities). For example, the chance for data subjects to mitigate an immediate risk of harm would call for a prompt notification of data subjects whereas the need to implement appropriate measures against continuing or similar data breaches may justify a longer delay.

significant humiliation or damage to reputation. The notification should describe the nature of the personal data breach as well as recommendations as well as recommendations for the individual concerned to mitigate potential adverse effects. Notifications to data subjects should be made as soon as reasonably feasible, and in close cooperation with the supervisory authority and respecting guidance provided by it or other relevant authorities (e.g. law enforcement authorities). For example, the chance for data subjects to mitigate an immediate risk of harm would call for a prompt notification of data subjects whereas the need to implement appropriate measures against continuing or similar data breaches may justify a longer delay.

Or. en

Justification

Data breach notifications should be qualitative more than quantitative. Focus should be placed on the potential to harm the data subject and prompt measures should be taken to address the breach and to notify where appropriate the supervisory authority and the data subject. We must avoid a culture of over-reporting which could overwhelm the limited resources of supervisory authorities.

Amendment 15 **Proposal for a regulation** **Recital 70 a (new)**

Text proposed by the Commission

Amendment

(70a) Directive 2002/58/EC sets out personal data breach notification obligations for the processing of personal data in connection with the provision of publicly available electronic communications services in public communications networks in the Union. Where providers of publicly available electronic communications services also

provide other services, they continue to be subject to the breach notification obligations of Directive 2002/58/EC, not this Regulation. Such providers should be subject to a single personal data breach notification regime for both personal data processed in connection with the provision of a publicly available electronic communications service and for any other personal data for which they are a controller.

Or. en

Justification

Electronic communications service providers should be subject to a single notification regime for any breaches relating to the data they process, not multiple regimes depending on the service offered. This ensures a level playing field among industry players.

Amendment 16
Proposal for a regulation
Recital 85 a (new)

Text proposed by the Commission

Amendment

(85a) A group of companies planning to submit for approval binding corporate rules may propose a supervisory authority as the lead authority. This should be the supervisory authority of the Member State in which the main establishment of the controller or processor is situated.

Or. en

Justification

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

Amendment 17
Proposal for a regulation
Recital 87

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

The fight against fraud in sports, such as match fixing and doping, is an important public interest that requires coordinated, international interventions among all responsible instances, including public enforcement agencies and sports bodies.

Amendment 18
Proposal for a regulation
Recital 121

Text proposed by the Commission

(121) The processing of personal data solely for journalistic purposes, or for the purposes of artistic or literary expression should qualify for exemption from the requirements of certain provisions of this Regulation in order to reconcile the right to the protection of personal data with the right to freedom of expression, and notably the right to receive and impart information, as guaranteed in particular by Article 11 of the Charter of Fundamental Rights of the European Union. This should apply in

Amendment

(121) The processing of personal data solely for journalistic purposes, or for the purposes of artistic or literary expression should qualify for exemption from the requirements of certain provisions of this Regulation in order to reconcile the right to the protection of personal data with the right to freedom of expression, and notably the right to receive and impart information, as guaranteed in particular by Article 11 of the Charter of Fundamental Rights of the European Union. This should apply in

particular to processing of personal data in the audiovisual field and in news archives and press libraries. ***Therefore, Member States should adopt legislative measures, which should lay down exemptions and derogations which are necessary for the purpose of balancing these fundamental rights. Such exemptions and derogations should be adopted by the Member States on general principles, on the rights of the data subject, on controller and processor, on the transfer of data to third countries or international organisations, on the independent supervisory authorities and on co-operation and consistency. This should not, however, lead Member States to lay down exemptions from the other provisions of this Regulation.*** In order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary to interpret notions relating to that freedom, such as journalism, broadly. ***Therefore, Member States should classify activities as ‘journalistic’ for the purpose of the exemptions and derogations to be laid down under this Regulation if the object of these activities is the disclosure to the public of information, opinions or ideas, irrespective of the medium which is used to transmit them. They should not be limited to media undertakings and may be undertaken for profit-making or for non-profit making purposes.***

particular to processing of personal data in the audiovisual field and in news archives and press libraries. In order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary to interpret notions relating to that freedom, such as journalism, broadly ***and*** irrespective of the medium which is used to transmit them.

Or. en

Justification

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

Amendment 19
Proposal for a regulation
Recital 123 a (new)

Text proposed by the Commission

Amendment

(123a) The processing of personal data concerning health, as a special category of data, may be necessary for reasons of historical, statistical or scientific research. Therefore this Regulation should ensure that the harmonisation of conditions provided for the processing of personal data concerning health, subject to specific and suitable safeguards so as to protect the fundamental rights and the personal data of individuals, do not act as a barrier to translational, clinical and public health research.

Or. en

Justification

Ensuring seamless access to medical data is crucial for public health research. This Regulation makes it essential to find a balance between protecting individual data and respecting public health researchers enough to provide them with the means to conduct medical research. One of the aims of this Regulation is to harmonize data protection across different sectors. It is thus important to note that any harmonization of data protection across countries or sectors must protect public health research sector and not constitute a barrier to crucial research addressing the great societal challenges.

Amendment 20
Proposal for a regulation
Recital 129

Text proposed by the Commission

Amendment

(129) In order to fulfil the objectives of this Regulation, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 of the Treaty

(129) In order to fulfil the objectives of this Regulation, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 of the Treaty

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

on the Functioning of the European Union should be delegated to the Commission, ***in certain limited circumstances.*** It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

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

Or. en

Amendment 21
Proposal for a regulation
Article 2 – paragraph 2 – point b

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 22
Proposal for a regulation
Article 2 – paragraph 2 – point e a (new)

Text proposed by the Commission

Amendment

(ea) that has been rendered permanently, irreversibly anonymous;

Or. en

Amendment 23
Proposal for a regulation
Article 4 – point 2 a (new)

Text proposed by the Commission

Amendment

(2a) 'pseudonymous data' means any personal data that has been collected, altered or otherwise processed so that it of itself cannot be attributed to a data subject without the use of additional data which is subject to separate and distinct technical and organisational controls to ensure such non attribution;

Justification

Defining and promoting the use of pseudonymous data will likely have the effect of encouraging the practice of “pseudonymising” data, by encryption, which is in the benefit of all data subjects as, by definition, personal data is altered so that it of itself cannot be attributed to a data subject without the use of additional data which is subject to separate and distinct technical and organisational controls.

Amendment 24
Proposal for a regulation
Article 4 – point 2 b (new)

Text proposed by the Commission

Amendment

(2b) 'anonymous data' means information that has never related to a data subject or has been collected, altered or otherwise processed so that it cannot be attributed to a data subject;

Or. en

Justification

It is important to define the meaning of anonymous data in order to provide clarification on the scope of the Regulation. Recital 23 makes reference to anonymous data, to which the principles of data protection should not be applied. Providing a definition of anonymous data ensures more legal certainty.

Amendment 25
Proposal for a regulation
Article 4 – 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 ***and informed*** indication of his or her wishes by which the data subject signifies agreement to personal data relating to them being processed;

Justification

This ties in with the approach to consent in Recital 33 (a) (new). Rather than legislating the precise form of consent, this should be guided by an impact assessment that determines the precise needs in a particular user experience context. Requirements for specific, informed and explicit consent have been retained, but apply only where an impact assessment has not been conducted.

Amendment 26
Proposal for a regulation
Article 4 – point 9 a (new)

Text proposed by the Commission

Amendment

(9a) 'Special categories of personal data' means information which shows the racial or ethnic origin, political beliefs, religion or belief or membership of a trade union as well as genetic data, data concerning health or sex life and data relating to criminal convictions or related security measures;

Justification

The processing of "special categories of personal data" is already subject to specific requirements (see Article 9). This group of sensitive data should, for reasons of proportionality, also be taken into account when determining other obligations of the controller (see amendment to Article 31). The addition of this definition creates more legal certainty.

Amendment 27
Proposal for a regulation
Article 4 – point 13

Text proposed by the Commission

Amendment

(13) 'main establishment' means as regards the controller, the place of its establishment in the Union where the main decisions as to the purposes,

(13) 'main establishment' means the location as determined by the data controller or data processor on the basis of the following transparent and objective

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;

criteria: the location of the group's European headquarters, or, the location of the company within the group with delegated data protection responsibilities, or, the location of the company which is best placed (in terms of management function, administrative capability etc) to address and enforce the rules as set out in this Regulation, or, the place where the main decisions as to the purposes of processing are taken for the regional group;

Or. en

Justification

This amendment seeks to provide clarity reflecting the real situation of companies acting across a number of different jurisdictions. This should not be interpreted as a charter for "forum shopping", as the company must provide transparent, objective criteria to justify the location of its main establishment for the purposes of the regulation.

Amendment 28 **Proposal for a regulation** **Article 4 – point 19 a (new)**

Text proposed by the Commission

Amendment

(19a) 'financial crime' means criminal offences in connection with organised crime, racketeering, terrorism, terrorist financing, trafficking in human beings, migrant smuggling, sexual exploitation, trafficking in narcotic drugs and psychotropic substances, illegal arms trafficking, trafficking in stolen goods, corruption, bribery, fraud, counterfeiting currency, counterfeiting and piracy of products, environmental offences, kidnapping, illegal restraint and hostage-taking, robbery, theft, smuggling, offences related to taxation, extortion, forgery, piracy, insider trading and market manipulation.

Or. en

Justification

It is necessary to add a definition of 'financial crime', derived from the recommendations of the Financial Action Task Force, as the processing of personal data will be allowed in order to prevent, investigate or detect financial crime.

Amendment 29

Proposal for a regulation

Article 6 – paragraph 1 – point a

Text proposed by the Commission

(a) the data subject has given consent to the processing ***of their personal data for one or more specific purposes;***

Amendment

(a) the data subject has given consent to the processing;

Or. en

Justification

The conditions for granting consent are laid down in Article 7. The proposed deletion ensures for the purposes of legal certainty, that the conditions established for lawful processing do not conflict with the conditions for consent under Article 7.

Amendment 30

Proposal for a regulation

Article 6 – paragraph 1 – point f

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Data processing for legitimate interests of third parties must continue to remain possible, as under the Data Protection Directive 95/46/EC, provided that the necessary conditions are met. This form of data processing is indispensable for the legitimate, day to day business activities of many companies. The use third-party addresses, for instance, is particularly important for reaching new customers.

Amendment 31

Proposal for a regulation

Article 6 – paragraph 3 – subparagraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) international conventions to which the Union or a Member State is a party.

Or. en

Justification

A public interest can also be expressed in international conventions, even in the absence of specific national or EU laws. Such conventions would still need to respect the essence of the right to the protection of personal data and be proportionate to the legitimate aim pursued. Moreover, any processing of personal data on this basis would obviously have to comply with all other aspects of the Regulation as well.

Amendment 32

Proposal for a regulation

Article 6 – paragraph 4

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

It is important to also include legitimate interests, such as the sector-specific example of providing a more efficient energy supply chain through the provision of smart grids. Whereas a data subject's energy consumption may not have explicitly been collected for the purpose of providing a more efficient overall supply, if it is in the legitimate interest of the service provider to use this information to achieve this goal, flexibility should be provided to ensure this is possible.

Amendment 33 **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

Amendment 34 **Proposal for a regulation** **Article 7 – paragraph 1**

Text proposed by the Commission

Amendment

1. The controller shall bear the burden of proof for the data subject's consent to the processing of their personal data for specified purposes. *deleted*

Or. en

Justification

Superfluous as the burden of proof under normal procedural law applies currently.

Amendment 35
Proposal for a regulation
Article 7 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The form of consent captured for the processing of a data subject's personal data shall be proportionate to the type of data processed and the purpose for the processing, as determined through a properly conducted data protection impact assessment as described in Article 33.

Or. en

Justification

This amendment ties the identification of proportionate consent to the results of impact assessments, which will encourage their use. Where no data protection impact assessment has been conducted, a default requirement of explicit consent would continue to apply.

Amendment 36
Proposal for a regulation
Article 7 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Unless another form of consent is determined to be proportionate by such an impact assessment, consent shall be captured in a specific, informed and explicit statement or other clear affirmative action.

Or. en

Justification

This amendment ties the identification of proportionate consent to the results of impact assessments, which will encourage their use. Where no data protection impact assessment has been conducted, a default requirement of explicit consent would continue to apply.

Amendment 37
Proposal for a regulation
Article 7 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Data subjects should be given clear and unambiguous conditions for offering their consent. If the intention is to ensure that consent language does not get lost amidst other technical jargon, perhaps the term “distinguishable” should not be used but the term “conspicuous” should be used instead. It should be highlighted, not distinguished.

Amendment 38
Proposal for a regulation
Article 7 – paragraph 3

Text proposed by the Commission

3. The data subject shall have the right to withdraw his or her consent at any time. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal.

Amendment

3. The data subject shall have the right to withdraw his or her consent ***vis à vis the controller who processes personal data on the basis of consent*** at any time. ***If the consent is part of a contractual or statutory relationship the withdrawal shall depend on the contractual or legal conditions.*** The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal. ***It is acknowledged that the withdrawal of consent may serve to terminate the relationship with the controller.***

Or. en

Justification

This amendment is indispensable for the implementation of the right of withdrawal in practice to ensure legal certainty: it serves to clarify that the original consent recipient is the sole addressee of the revocation. This clarification is essential for the cases where the data based on consent were passed on to third parties or published.

Amendment 39
Proposal for a regulation
Article 7 – paragraph 4

Text proposed by the Commission

4. Consent shall not provide a legal basis for the processing, where there is a significant imbalance between the position of the data subject and the controller.

Amendment

4. Consent shall not provide a legal basis for the processing, ***when it has not been given freely, particularly in such a case*** where there is a significant imbalance between the position of the data subject and the controller ***as regards this specific consent.***

Or. en

Justification

This amendment seeks to clarify the somewhat vague "significant imbalance" term, by providing for scenarios, such as when the data subject is either employed by the controller or the controller is a public authority, and this imbalance makes it unlikely that consent was given freely.

Amendment 40
Proposal for a regulation
Article 8 – paragraph 3

Text proposed by the Commission

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the methods to obtain verifiable consent referred to in paragraph 1. In doing so, the Commission shall consider specific measures for micro, small and medium-sized enterprises.

Amendment

deleted

Amendment 41
Proposal for a regulation
Article 9 – paragraph 1

Text proposed by the Commission

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

Amendment

1. The processing of *special categories of personal data* shall be prohibited.

Justification

Special categories of personal data have been defined in Article 4, paragraph 1, point 9 a (new) and thus there is no need to reiterate the definition here.

Amendment 42
Proposal for a regulation
Article 9 – paragraph 2 – point g

Text proposed by the Commission

(g) processing is necessary for the performance of a task carried out in the public interest, on the basis of Union law, *or* Member State *law* which shall provide for suitable measures to safeguard the data subject's legitimate interests; or

Amendment

(g) processing is necessary for the performance of a task carried out in the public interest, on the basis of Union law, *Member State law, international conventions to which the Union or a Member State is a party*, which shall provide for suitable measures to safeguard the data subject's legitimate interests; or

Justification

A public interest can also be expressed in international conventions, even in the absence of specific national or EU laws. Such conventions would still need to respect the essence of the

right to the protection of personal data and be proportionate to the legitimate aim pursued. Moreover, any processing of personal data on this basis would obviously have to comply with all other aspects of the Regulation as well.

Amendment 43

Proposal for a regulation

Article 9 – paragraph 2 – point h

Text proposed by the Commission

(h) processing of data concerning health is necessary for health purposes and subject to the conditions and safeguards referred to in Article 81; or

Amendment

(h) processing of data concerning health is necessary for health purposes, ***including for historical, statistical or scientific research*** and subject to the conditions and safeguards referred to in Article 81; or

Or. en

Justification

This clarification is necessary in order to safeguard the processing of medical data used for historical, statistical or scientific research purposes. Scientists heavily rely on patient registries and biobanks to conduct epidemiological, clinical and translational research, thus making it necessary to ensure the processing of personal data for health purposes.

Amendment 44

Proposal for a regulation

Article 9 – paragraph 2 – point j

Text proposed by the Commission

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

Amendment

(j) processing of data relating to criminal convictions or related security measures is carried out either ***subject to the conditions and safeguards referred to in Article 83a*** or under the ***supervision of a supervisory*** authority or when the processing is necessary for compliance with ***or to avoid a breach of*** a legal or regulatory obligation to which a controller is subject, or for the performance of a task carried out for important public interest reasons, and in so far as authorised by Union law or Member State law providing for adequate safeguards. A complete register of criminal

convictions shall be kept only under the control of official authority

Or. en

Justification

The amendment clarifies the wording of the Commission by providing a supervised control for organisation that process criminal conviction data. Also, the amendment clarifies that not every instance of processing carried out for legal or regulatory compliance reasons will be specifically required by law. In certain cases such processing will be undertaken as part of a prudent risk management process designed to prevent a breach of the law.

Amendment 45
Proposal for a regulation
Article 9 – paragraph 3

Text proposed by the Commission

Amendment

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

Or. en

Amendment 46
Proposal for a regulation
Article 12 – paragraph 5

Text proposed by the Commission

Amendment

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

Or. en

Amendment 47
Proposal for a regulation
Article 14 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

The requirement to communicate contract terms and general conditions is an issue adequately regulated under civil law. From a data protection perspective there is therefore only the need to provide information regarding the purposes or the legitimate interests of processing.

Amendment 48
Proposal for a regulation
Article 14 – paragraph 1 – point c

Text proposed by the Commission

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

Amendment

deleted

Or. en

Justification

In many case the duration of data storage cannot be determined in advance (for example, such as in the case of a permanent contract). There may also be a legitimate need for continued storage of data even after termination of the contractual relationship.

Amendment 49
Proposal for a regulation
Article 14 – paragraph 1 – point e

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 50
Proposal for a regulation
Article 14 – paragraph 1 – point h

Text proposed by the Commission

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

Amendment

deleted

Or. en

Justification

The blanket clause-like extension of the already substantial information obligations is likely to result in considerable legal uncertainty. Neither the company concerned, nor the consumer can from this formulation assess with legal certainty what information in each individual case must be made available.

Amendment 51
Proposal for a regulation
Article 14 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Where the personal data are collected from the data subject, the controller shall inform the data subject, in addition to the information referred to in paragraph 1, whether the provision of personal data is obligatory.

Or. en

Justification

The information needs of data subjects are adequately taken into account, if they are informed whether the data provision is obligatory. Where this is not indicated, the provision of the data is consequently optional. The consumer is already accustomed to this practice. There is no reason to change this effective and functioning system. Information about whether the provision of information is mandatory or optional and the possible consequences of the refusal of the data would unnecessarily expand the information requirements. It is also unnecessary in many cases because it is already obvious from the context. In the course of ordering a product it is for example necessary to specify a shipping address, so that the product can actually be delivered.

Amendment 52
Proposal for a regulation
Article 14 – paragraph 3

Text proposed by the Commission

3. Where the personal data are not collected from the data subject, the controller shall inform the data subject, in addition to the information referred to in paragraph 1, from which source the personal data originate.

Amendment

3. Where the personal data are not collected from the data subject, the controller shall inform the data subject, in addition to the information referred to in paragraph 1, from which source the personal data originate, ***except where the data originate from a publicly available source or where the transfer is provided by law or the processing is used for purposes relating to the professional activities of the person concerned.***

Or. en

Justification

Without the exceptions listed in the amendment, the obligation to provide information concerning the source of the data would be disproportionate.

Amendment 53

Proposal for a regulation

Article 14 – paragraph 4 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

The data subject's right to informational self-determination is adequately taken into account if the relevant information is provided at this time.

Amendment 54

Proposal for a regulation

Article 14 – paragraph 5 – point b

Text proposed by the Commission

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

Amendment

(b) the data are not collected from the data subject ***or the data processed does not allow the verification of identity (indirectly identifiable or pseudonymous data)*** and the provision of such information proves impossible or would involve a disproportionate effort; or

Justification

The right of access implies that the controller can fully identify the individual, this is not always the case, for instance, when it only holds indirectly identified information.

Amendment 55
Proposal for a regulation
Article 15 – paragraph 1 – point e

Text proposed by the Commission

(e) the existence of the right to request from the controller rectification or erasure of personal data concerning the data subject or to object to the processing of such personal data;

Amendment

(e) the existence of the right to request from the controller rectification ***in accordance with Article 16*** or erasure of personal data concerning the data subject or to object to the processing of such personal data;

Or. en

Amendment 56
Proposal for a regulation
Article 15 – paragraph 1 – point f

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

A duty to specify the contact details of the supervisory authority associated with liability in respect of any misinformation would make a continuous review of the relevant information necessary, thus leading to disproportionate efforts especially for small and medium-sized enterprises.

Amendment 57
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

Amendment 58
Proposal for a regulation
Article 17 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. The data subject shall have the right to obtain from the controller the erasure of personal data relating to them and the abstention from further **dissemination** of such data, especially in relation to personal data which are made available by the data subject while he or she was a child, where one of the following grounds applies:

1. The data subject shall have the right to obtain from the controller the erasure of personal data relating to them and the abstention from further **processing** of such data, especially in relation to personal data which are made available by the data subject while he or she was a child, where one of the following grounds applies:

Or. en

Amendment 59
Proposal for a regulation
Article 17 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) the data subject withdraws consent on which the processing is based according to point (a) of Article 6(1), or when the **storage** period consented to has expired, and where there is no other legal ground

(b) the data subject withdraws consent on which the processing is based according to point (a) of Article 6(1), or when the **retention** period consented to has expired, and where there is no other legal ground

for the processing of the data;

for the processing of the *data, or unless it would require a disproportionate effort by the data controller to ensure deletion of all data;*

Or. en

Amendment 60
Proposal for a regulation
Article 17 – paragraph 2

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

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

Amendment 61
Proposal for a regulation
Article 17 – paragraph 3 – introductory part

Text proposed by the Commission

Amendment

3. The controller shall carry out the erasure without delay, except to the extent that the retention of the personal data is necessary:

3. The controller shall carry out the erasure without delay, *under the conditions of paragraph 1, and to the extent technically*

or practically feasible for the controller,
except to the extent that the retention of the
personal data is necessary:

Or. en

Justification

The reference to paragraph 1 provides clarification in order to prevent the impression that the conditions set in paragraphs 1 and 3 are conflicting.

Amendment 62
Proposal for a regulation
Article 17 – paragraph 3 – point d

Text proposed by the Commission

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

Amendment

(d) for compliance with a legal obligation to retain the personal data by Union or Member State law to which the controller is subject;

Or. en

Justification

There may be laws of other member states that require a controller to refuse the right to be forgotten. Data may need to be held for accounting reasons under financial reporting rules for example.

Amendment 63
Proposal for a regulation
Article 17 – paragraph 4 – point d a (new)

Text proposed by the Commission

Amendment

(da) the controller has to store the personal data in order to ensure that based on an objection pursuant to Article 19, further processing of the respective

data is excluded.

Or. en

Justification

An objection to the processing of personal data pursuant to Article 19 regularly excludes the processing of the respective data for the future. To ensure that the respective data is not actually used for future data processing measures, it must not be deleted but blocked or otherwise marked.

Amendment 64
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

Amendment 65
Proposal for a regulation
Article 18 – paragraph 1

Text proposed by the Commission

Amendment

1. The data subject shall have the right, where personal data are processed by

1. The data subject shall have the right, where personal data are processed by

electronic means and in a structured and commonly used format, to obtain from the controller a copy of data undergoing processing in an electronic and structured format which is commonly used and allows for further use by the data subject.

electronic means and in a structured and commonly used format, to obtain from the controller, *where technically feasible and appropriate*, a copy of data undergoing processing in an electronic and structured format which is commonly used and allows for further use by the data subject.

Or. en

Amendment 66
Proposal for a regulation
Article 18 – paragraph 2

Text proposed by the Commission

2. Where the data subject has provided the personal data and the processing is based on consent or on a contract, the data subject shall have the right to transmit those personal data and any other information provided by the data subject and retained by an automated processing system, into another one, in an electronic format which is commonly used, without hindrance from the controller from whom the personal data are withdrawn.

Amendment

2. Where the data subject has provided the personal data and the processing is based on consent or on a contract, the data subject shall have the right to transmit those personal data and any other information provided by the data subject, *where technically feasible and appropriate*, and retained by an automated processing system, into another one, in an electronic format which is commonly used, without hindrance from the controller from whom the personal data are withdrawn.

Or. en

Amendment 67
Proposal for a regulation
Article 18 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The rights referred to in paragraphs 1 and 2 shall not adversely affect the rights and freedoms of others, including trade secrets or intellectual property rights. The result of such considerations shall not be that all information is refused to the data subject.

Justification

Use of language from Recital 51 in relation to access to data. Due regard must be given to the limits to data portability, especially in relation to the legitimate interests of businesses to protect trade secrets and intellectual property rights, within reason.

Amendment 68
Proposal for a regulation
Article 18 – paragraph 3

Text proposed by the Commission

3. ***The Commission may specify the electronic format referred to in paragraph 1 and the technical standards, modalities and procedures for the transmission of personal data pursuant to paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).***

Amendment

3. The electronic format, ***related functionalities*** and procedures for the transmission of personal data pursuant to paragraph 2, ***shall be determined by the controller by reference to the most appropriate industry standards available or as defined by industry stakeholders or standardisation bodies.***

Justification

Organisations should be given the possibility to determine the format of the transmission of personal data in light of the product and service involved, as well as the prevailing technology. The above change will ensure the necessary flexibility in this regard.

Amendment 69
Proposal for a regulation
Article 19 – paragraph 1

Text proposed by the Commission

1. The data subject shall have the right to object, ***on*** grounds relating to their particular situation, at any time to the processing of personal data ***which is based on points (d), (e) and (f) of Article 6(1), unless the controller demonstrates compelling legitimate grounds for the processing which override the interests or***

Amendment

1. The data subject shall have the right to object ***in the cases of points (d), (e) and (f) of Article 6(1) on predominant, and protection-worthy*** grounds relating to their particular situation, at any time to the processing of ***their*** personal data. ***In the case of a justified objection the processing by the controller may no longer refer to***

fundamental rights and freedoms of the data subject.

this data

Or. en

Justification

The changes reflect the effective and proven provision on objection of Article 14a) of Directive 95/46/EC. There is no reason to change the current system. There are no known practical problems in this area, which would justify a legislative change. This applies even more so as the Regulation will now apply directly and thus without the flexibility of the Directive.

Amendment 70

Proposal for a regulation

Article 20 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(ca) is necessary to protect the vital interests of the data subject or in the public interest as provided by points (d) and (e) of Article 5;

Or. en

Amendment 71

Proposal for a regulation

Article 20 – paragraph 2 – point c b (new)

Text proposed by the Commission

Amendment

(cb) is necessary to protect the rights available to other data subjects, for example for the purposes of detecting fraud, or for the purposes of detecting irregularities or other illegal activity according to Union law or Member State law;

Or. en

Amendment 72
Proposal for a regulation
Article 20 – paragraph 2 – point c c (new)

Text proposed by the Commission

Amendment

(cc) concerns data which have been made anonymous.

Or. en

Justification

Data that are rendered permanently anonymous as per the definition in Article 4, paragraph 1, point 2 b (new).

Amendment 73
Proposal for a regulation
Article 20 – paragraph 5

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 74
Proposal for a regulation
Article 22 – paragraph 2 – point d

Text proposed by the Commission

Amendment

*(d) complying with the requirements for **prior authorisation or** prior consultation of the supervisory authority pursuant to Article 34(1) and (2);*

(d) complying with the requirements for prior consultation of the supervisory authority pursuant to Article 34(1) and (2);

Or. en

Amendment 75
Proposal for a regulation
Article 22 – paragraph 2 – point e a (new)

Text proposed by the Commission

Amendment

(ea) clear and accessible data governance policies that are proportionate to the amount and type of personal data processed by the controller and the risk of harm to data protection involved in the processing of the data;

Or. en

Justification

The additional sections are intended to provide the basis for a true, enforceable accountability mechanism that can be flexible enough to accommodate both large enterprises and smaller organizations. Such a concept is in line with best practices already in place in other compliance regimes, such as anti-bribery provisions.

Amendment 76
Proposal for a regulation
Article 22 – paragraph 2 – point e b (new)

Text proposed by the Commission

Amendment

(eb) evidence of top-level management commitment to implementing the data governance policies throughout the enterprise so as to ensure compliance with this Regulation.

Or. en

Justification

The additional sections are intended to provide the basis for a true, enforceable accountability mechanism that can be flexible enough to accommodate both large enterprises and smaller organizations. Such a concept is in line with best practices already in place in other compliance regimes, such as anti-bribery provisions.

Amendment 77
Proposal for a regulation
Article 22 – paragraph 4

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 78
Proposal for a regulation
Article 23 – title

Text proposed by the Commission

Amendment

Data protection by design **and by default**

Data protection by design

Or. en

Amendment 79
Proposal for a regulation
Article 23 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of specifying any further criteria and requirements for appropriate measures and mechanisms referred to in paragraph 1 and 2, in

deleted

particular for data protection by design requirements applicable across sectors, products and services.

Or. en

Amendment 80
Proposal for a regulation
Article 23 – paragraph 4

Text proposed by the Commission

Amendment

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

Or. en

Amendment 81
Proposal for a regulation
Article 25 – paragraph 4

Text proposed by the Commission

Amendment

4. The designation of a representative by the controller shall be without prejudice to legal actions which could be initiated against the controller itself. *deleted*

Or. en

Justification

The representative acts on behalf of the controller and is the controller in the EU. Non bis in idem.

Amendment 82
Proposal for a regulation
Article 28 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Each controller and processor and, if any, the controller's representative, shall maintain documentation of **the policies and measures taken to ensure that the processing of personal data** under its responsibility **is performed in compliance with Article 22**.

Or. en

Justification

A prescriptive documentation requirement for each data processing activity is unachievable both for multinational enterprises and for smaller enterprises and would not lead to greater privacy protection for customers. The proposed amendment avoids legalistic, onerous compliance programmes for data protection that create paperwork but do not result in better operational practices on the ground.

Amendment 83

Proposal for a regulation

Article 28 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The documentation shall contain the information necessary for the supervisory authority to ascertain that the controller or processor has complied with this Regulation, including a description of any of the applicable internal measures and mechanisms intended to comply with Article 22.

Or. en

Justification

A prescriptive documentation requirement for each data processing activity is unachievable both for multinational enterprises and for smaller enterprises and would not lead to greater privacy protection for customers. The proposed amendment avoids legalistic, onerous compliance programmes for data protection that create paperwork but do not result in better operational practices on the ground.

Amendment 84
Proposal for a regulation
Article 28 – paragraph 2

Text proposed by the Commission

Amendment

2. The documentation shall contain at least the following information:

deleted

(a) the name and contact details of the controller, or any joint controller or processor, and of the representative, if any;

(b) the name and contact details of the data protection officer, if any;

(c) the purposes of the processing, including the legitimate interests pursued by the controller where the processing is based on point (f) of Article 6(1);

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

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

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

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

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

Or. en

Amendment 85
Proposal for a regulation
Article 28 – paragraph 5

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 86
Proposal for a regulation
Article 30 – paragraph 1

Text proposed by the Commission

Amendment

1. The controller and the processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected, having regard to the state of the art and the costs of their implementation.

1. The controller and the processor shall implement appropriate technical and organisational measures, ***including pseudonymisation***, to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected, having regard to the state of the art and the costs of their implementation.

Or. en

Amendment 87
Proposal for a regulation
Article 30 – paragraph 3

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 88
Proposal for a regulation
Article 31 – paragraph 1

Text proposed by the Commission

Amendment

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

1. In the case of a personal data breach **relating to special categories of personal data, personal data which are subject to professional secrecy, personal data relating to criminal offences or to the suspicion of a criminal act or personal data relating to bank or credit card accounts, which seriously threaten the rights or legitimate interests of the data subject, the controller shall without undue delay notify the personal data breach to the supervisory authority.**

Or. en

Justification

Data breach notifications should be qualitative and not merely quantitative. If a material, serious breach posing harm to data subjects occurs, the controller should first of all focus on rectifying the breach before notifying the supervisory authority. Stipulating firm yet

unpracticable deadlines on all potential forms of data breaches would lead to a lack of quality control as to what constitutes a real threat to data subjects and worse still, may serve by their volume and frequency to overwhelm supervisory authorities with notifications.

Amendment 89
Proposal for a regulation
Article 31 – paragraph 5

Text proposed by the Commission

Amendment

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for establishing the data breach referred to in paragraphs 1 and 2 and for the particular circumstances in which a controller and a processor is required to notify the personal data breach.

deleted

Or. en

Amendment 90
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 referred to in Article 31(1) seriously threatens the rights or legitimate interests of the data subject, the controller shall, after the notification referred to in that Article, communicate the personal data breach to the data subject without undue delay.

Or. en

Justification

To ensure proportionality, it is necessary to qualitatively limit this notification requirement to certain types of personal data and only in case of serious adverse effects. This will prevent the competent authorities being overloaded with reports concerning minor claims.

Amendment 91
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*

Or. en

Amendment 92
Proposal for a regulation
Article 33 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

In the interests of legal certainty it is necessary to clearly stipulate which specific risks pertain, in an exhaustive manner.

Amendment 93
Proposal for a regulation
Article 33 – paragraph 4

Text proposed by the Commission

Amendment

4. The controller shall seek the views of data subjects or their representatives on the intended processing, without prejudice *deleted*

to the protection of commercial or public interests or the security of the processing operations.

Or. en

Justification

To actively seek the views of data subjects represents a disproportionate burden on data controllers.

Amendment 94
Proposal for a regulation
Article 34 – title

Text proposed by the Commission

Amendment

Prior authorisation and prior consultation

Prior consultation

Or. en

Justification

Internal consistency with objectives set out in Recital 70.

Amendment 95
Proposal for a regulation
Article 34 – paragraph 1

Text proposed by the Commission

Amendment

1. The controller or the processor as the case may be shall obtain an authorisation from the supervisory authority prior to the processing of personal data, in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where a controller or processor adopts contractual clauses as provided for in point (d) of Article 42(2) or does not provide for the appropriate safeguards in a legally binding instrument as referred to in Article 42(5) for the transfer of personal data to a third

deleted

country or an international organisation.

Or. en

Justification

Prior authorization or consultation with supervisory authorities will lead to a misallocation of privacy resources and place a significant burden on already overextended supervisory authorities, create significant, inevitable delays in the rollout of new products and services, and generally disincentivise the creation of effective corporate privacy programmes. Requiring enterprises that have invested in these internal programmes to submit to compulsory consultation with the supervisory authority will have an adverse impact on their ability to develop and release to the market new products and services which benefit consumers and the economy.

Amendment 96

Proposal for a regulation

Article 34 – paragraph 2 – introductory part

Text proposed by the Commission

2. The controller or processor acting on the controller's behalf shall consult the supervisory authority prior to the processing of personal data in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where:

Amendment

2. The controller or processor acting on the controller's behalf shall consult the supervisory authority, prior to the processing of *special categories of* personal data *as provided for in Article 9*, in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where:

Or. en

Justification

It is important to have a risk-based prior consultation model. The need for a notification every time a processing operation is changed will generate a huge amount of notifications to the supervisory authority, and it is highly unlikely they will be able to process all of them. For processing operations that deal with sensitive data or when a processor sets up then a notification should be required.

Amendment 97

Proposal for a regulation

Article 34 – paragraph 4

Text proposed by the Commission

4. The supervisory authority shall establish and make public a list of the processing operations which are subject to prior consultation pursuant to point (b) of paragraph 2. The supervisory authority shall communicate those lists to the European Data Protection Board.

Amendment

4. The supervisory authority shall establish and make public a list of the **types of** processing operations which are subject to prior consultation pursuant to point (b) of paragraph 2. The supervisory authority shall communicate those lists to the European Data Protection Board.

Or. en

Amendment 98
Proposal for a regulation
Article 34 – paragraph 5

Text proposed by the Commission

5. Where the list provided for in paragraph 4 involves processing activities which are related to the offering of goods or services to data subjects in several Member States, or to the monitoring of their behaviour, or may substantially affect the free movement of personal data within the Union, the supervisory authority shall apply the consistency mechanism referred to in Article 57 prior to the adoption of the list.

Amendment

5. Where the list provided for in paragraph 4 involves **types of** processing activities which are related to the offering of goods or services to data subjects in several Member States, or to the monitoring of their behaviour, or may substantially affect the free movement of personal data within the Union, the supervisory authority shall apply the consistency mechanism referred to in Article 57 prior to the adoption of the list.

Or. en

Amendment 99
Proposal for a regulation
Article 34 – paragraph 8

Text proposed by the Commission

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for determining the high degree of

Amendment

deleted

specific risk referred to in point (a) of paragraph 2.

Or. en

Amendment 100
Proposal for a regulation
Article 36 – paragraph 1

Text proposed by the Commission

1. The controller or the processor shall ***ensure that*** the data protection officer ***is properly and in a timely manner involved in all issues which relate to the protection of personal data.***

Amendment

1. ***The executive management of*** the controller or the processor shall ***support*** the data protection officer ***in performing their duties and shall provide staff, premises, equipment and any other resources necessary to carry out the roles and duties referred to in Article 37.***

Or. en

Justification

The role and duties of the data protection officer should also be defined at a more strategic level to ensure the effectiveness of data protection with the appropriate reporting line to executive management.

Amendment 101
Proposal for a regulation
Article 37 – paragraph 1 – point d

Text proposed by the Commission

(d) to ensure that the documentation referred to in Article 28 is maintained;

Amendment

(d) to ensure that the ***core*** documentation referred to in Article 28 is maintained;

Or. en

Amendment 102
Proposal for a regulation
Article 37 – paragraph 1 – point e

Text proposed by the Commission

(e) to monitor *the documentation, notification and communication of* personal data breaches pursuant to Articles 31 and 32;

Amendment

(e) *to develop processes to monitor, document, notify and communicate* personal data breaches pursuant to Articles 31 and 32;

Or. en

Amendment 103
Proposal for a regulation
Article 37 – paragraph 1 – point f

Text proposed by the Commission

(f) to monitor the performance of the data protection impact assessment by the controller or processor and the application for prior authorisation or prior consultation, if required pursuant Articles 33 and 34;

Amendment

(f) *to develop processes that* monitor the performance of the data protection impact assessment by the controller or processor and the application for prior authorisation or prior consultation, if required pursuant Articles 33 and 34;

Or. en

Amendment 104
Proposal for a regulation
Article 37 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) to ensure that accountability measures exist as defined in points (c) to (eb) of Article 22(2).

Or. en

Justification

Clarifying the central role of the Data Protection Officer in the chain of accountability to top-level management.

Amendment 105
Proposal for a regulation
Article 37 – paragraph 1 – point g

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 106
Proposal for a regulation
Article 39 – paragraph 1

Text proposed by the Commission

1. The Member States and the Commission shall encourage, in particular at European level, the establishment of data protection certification mechanisms and of data protection seals and marks, allowing data subjects to quickly assess the level of data protection provided by controllers and processors. The data protection certifications mechanisms shall contribute to the proper application of this Regulation, taking account of the specific features of the various sectors and different processing operations.

Amendment

1. The Member States and the Commission shall encourage, in particular at European level, the establishment of data protection certification mechanisms and of data protection seals and marks, allowing data subjects *and Member State authorities* to quickly assess the level of data protection provided by controllers and processors. The data protection certifications mechanisms shall contribute to the proper application of this Regulation, taking account of the specific features of the various sectors and different processing operations.

Or. en

Justification

This amendment encourages and enables the creation of a system in which regulators accredit independent assessors, for both whole-enterprise assessments and product- or technology-specific assessments.

Amendment 107
Proposal for a regulation
Article 42 – paragraph 1

Text proposed by the Commission

1. Where the Commission has taken no decision pursuant to Article 41, a controller or processor may transfer personal data to a third country or an international organisation only if the controller or processor has adduced appropriate safeguards with respect to the protection of personal data in a legally binding instrument.

Amendment

1. Where the Commission has taken no decision pursuant to Article 41, ***or decides that a third country, or a territory or a processing sector within that third country, or an international organisation does not ensure an adequate level of protection in accordance with paragraph 5 of that Article,*** a controller or processor may transfer personal data to a third country or an international organisation ***transferring data on an international basis*** only if the controller or processor has adduced appropriate safeguards with respect to the protection of personal data in a legally binding instrument.

Or. en

Amendment 108
Proposal for a regulation
Article 42 – paragraph 2 – point c

Text proposed by the Commission

(c) standard data protection clauses adopted by a supervisory authority ***in accordance with the consistency mechanism referred to in Article 57*** when declared generally valid by the Commission pursuant to point (b) of Article 62(1); or

Amendment

(c) standard data protection clauses adopted by a supervisory authority when declared generally valid by the Commission pursuant to point (b) of Article 62(1); or

Or. en

Justification

There is no justification to trigger the consistency mechanism for the adoption of model clauses; it is not the case today either.

Amendment 109
Proposal for a regulation
Article 42 – paragraph 4

Text proposed by the Commission

4. Where a transfer is based on contractual clauses as referred to in point (d) of paragraph 2 of this Article the controller or processor shall obtain prior authorisation of the contractual clauses according to point (a) of Article 34(1) from the supervisory authority. If the transfer is related to processing activities which ***concern data subjects in another Member State or other Member States, or*** substantially affect the free movement of personal data within the Union, the supervisory authority shall apply the consistency mechanism referred to in Article 57.

Amendment

4. Where a transfer is based on contractual clauses as referred to in point (d) of paragraph 2 of this Article the controller or processor shall obtain prior authorisation of the contractual clauses according to point (a) of Article 34(1) from the supervisory authority. If the transfer is related to processing activities which substantially affect the free movement of personal data within the Union, the supervisory authority shall apply the consistency mechanism referred to in Article 57.

Or. en

Justification

The consistency mechanism should be used only when justified, i.e. when the transfer substantially affects the free movement of data, but not when it affects data subjects for more than one Member State, as that penalizes with more administrative burden those controllers and processors that have activities in more than one member state. The competent supervisory authority, the hosting competent authority should not have its competence in its territory undermined. The so called one-stop shop would be significantly undermined otherwise. As this is a regulation that is directly applicable in all Member States, there should be no doubt that the competent supervisory authority of the controller or the processor will only authorize contractual clauses applicable to the controller or the processor. The consistency mechanism can however apply in cases where the transfer of data is to be prohibited, or there is already a possibility to coordinate investigations. Finally, an equivalent obligation to submit the approval of contractual clauses by the Article 29 WP does not exist in the current legislative homework (i.e. Directive 95/46).

Amendment 110
Proposal for a regulation
Article 43 – paragraph 1 – introductory part

Text proposed by the Commission

1. A supervisory authority shall ***in***

Amendment

1. A supervisory authority shall approve

accordance with the consistency mechanism set out in Article 58 approve binding corporate rules, provided that they:

binding corporate rules, provided that they:

Or. en

Justification

There is no justification to trigger the consistency mechanism for the approval of BCRs. This is not the case under the current data protection framework.

Amendment 111 Proposal for a regulation Article 44 – title

Text proposed by the Commission

Amendment

Derogations

Other legitimate grounds for international transfers

Or. en

Amendment 112 Proposal for a regulation Article 44 – paragraph 1 – point h

Text proposed by the Commission

Amendment

(h) the transfer is necessary for the purposes of the legitimate interests pursued by the controller or the processor, ***which cannot be qualified as frequent or massive***, and where the controller or processor has assessed all the circumstances surrounding the data transfer operation or the set of data transfer operations and based on this assessment adduced appropriate safeguards with respect to the protection of personal data, where necessary.

(h) the transfer is necessary for the purposes of the legitimate interests pursued by the controller or the processor, and where the controller or processor has assessed all the circumstances surrounding the data transfer operation or the set of data transfer operations and based on this assessment adduced appropriate safeguards with respect to the protection of personal data, where necessary.

Or. en

Justification

In today's data driven society, there is no justification to single out massive or frequent transfers as this does not meet the realities of data flows and therefore would be at odds with the objective of ensuring free flow of data.

Amendment 113 **Proposal for a regulation** **Article 44 – paragraph 5**

Text proposed by the Commission

5. The public interest referred to in point (d) of paragraph 1 must be recognised in Union law or in the law of the Member State to which the controller is subject.

Amendment

5. The public interest referred to in point (d) of paragraph 1 must be recognised in ***international conventions, in*** Union law or in the law of the Member State to which the controller is subject.

Or. en

Justification

A public interest can also be expressed in international conventions, even in the absence of specific national or EU laws. Such conventions would still need to respect the essence of the right to the protection of personal data and be proportionate to the legitimate aim pursued. Moreover, any processing of personal data on this basis would obviously have to comply with all other aspects of the Regulation as well.

Amendment 114 **Proposal for a regulation** **Article 44 – 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 'important grounds of public interest' within the meaning of point (d) of paragraph 1 as well as the criteria and requirements for appropriate safeguards referred to in point (h) of paragraph 1.

Amendment

deleted

Or. en

Amendment 115
Proposal for a regulation
Article 46 – paragraph 1

Text proposed by the Commission

1. Each Member State shall provide ***that one or more public authorities are*** responsible for monitoring the application of this Regulation and for contributing to its consistent application throughout the Union, in order to protect the fundamental rights and freedoms of natural persons in relation to the processing of their personal data and to facilitate the free flow of personal data within the Union. For these purposes, the supervisory authorities shall co-operate with each other and the Commission.

Amendment

1. Each Member State shall provide ***a lead public supervisory authority*** responsible for monitoring the application of this Regulation and for contributing to its consistent application throughout the Union, in order to protect the fundamental rights and freedoms of natural persons in relation to the processing of their personal data and to facilitate the free flow of personal data within the Union. For these purposes, the supervisory authorities shall co-operate with each other and the Commission.

Or. en

Justification

A lead supervisory authority should be clearly assigned in order to streamline the implementation of a true one-stop shop.

Amendment 116
Proposal for a regulation
Article 46 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Each supervisory authority shall have the power to sanction administrative offences, in particular those referred to in Article 79(4), (5) and (6). Supervisory authorities may only issue sanctions for controllers or processors with their main establishment within the same Member State or, in coordination with Articles 56 and 57 if the supervisory authority of the main establishment fails to take action.

Justification

Clarifies and underlines the role of supervisory authorities in relation to sanctions.

Amendment 117
Proposal for a regulation
Article 47 – paragraph 1

Text proposed by the Commission

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

Amendment

1. The supervisory authority shall act with complete independence in exercising the duties and powers entrusted to it, ***notwithstanding co-operative and consistency arrangements related to Chapter VII.***

Or. en

Justification

Due regard must be given to the supervisory authorities' obligations to each other under the consistency mechanism.

Amendment 118
Proposal for a regulation
Article 53 – paragraph 1 – point d

Text proposed by the Commission

(d) to ensure the compliance with prior ***authorisations and prior*** consultations referred to in Article 34;

Amendment

(d) to ensure the compliance with prior consultations referred to in Article 34;

Or. en

Amendment 119
Proposal for a regulation
Article 53 – paragraph 1 – point j a (new)

Text proposed by the Commission

Amendment

(ja) to inform the controller and/or the processor of the judicial remedies available against its decision.

Or. en

Justification

The provisions on supervisory authority powers against the controller and/or the processor should be complemented with explicit legal safeguards for controllers and/or processors.

Amendment 120
Proposal for a regulation
Article 55 – paragraph 1

Text proposed by the Commission

Amendment

1. Supervisory authorities shall provide each other relevant information and mutual assistance in order to implement and apply this Regulation in a consistent manner, and shall put in place measures for effective co-operation with one another. Mutual assistance shall cover, in particular, information requests and supervisory measures, such as requests to carry out prior ***authorisations and*** consultations, inspections and prompt information on the opening of cases and ensuing developments where data subjects in several Member States are likely to be affected by processing operations.

1. Supervisory authorities shall provide each other relevant information and mutual assistance in order to implement and apply this Regulation in a consistent manner, and shall put in place measures for effective co-operation with one another. Mutual assistance shall cover, in particular, information requests and supervisory measures, such as requests to carry out prior consultations, inspections and prompt information on the opening of cases and ensuing developments where data subjects in several Member States are likely to be affected by processing operations.

Or. en

Amendment 121
Proposal for a regulation
Article 56 – paragraph 4

Text proposed by the Commission

4. Supervisory authorities shall lay down the practical aspects of specific co-operation actions.

Amendment

4. Supervisory authorities shall lay down the practical aspects of specific co-operation actions ***in their rules of procedure. The rules of procedures shall be made public in the Official Journal of the European Union.***

Or. en

Amendment 122
Proposal for a regulation
Article 61 – paragraph 1

Text proposed by the Commission

1. In exceptional circumstances, where a supervisory authority considers that there is an urgent need to act in order to protect the interests of data subjects, in particular when the danger exists that the enforcement of a right of a data subject could be considerably impeded by means of an alteration of the existing state or for averting major disadvantages or for other reasons, by way of derogation from the procedure referred to in Article 58, it may immediately adopt provisional measures with a specified period of validity. The supervisory authority shall, without delay, communicate those measures, with full reasons, to the European Data Protection Board and to the Commission.

Amendment

1. In exceptional circumstances, where a supervisory authority considers that there is an urgent need to act in order to protect the interests of data subjects, in particular when the danger exists that the enforcement of a right of a data subject could be considerably impeded by means of an alteration of the existing state or for averting major disadvantages or for other reasons, by way of derogation from the procedure referred to in Article 58, it may immediately adopt provisional measures with a specified period of validity. The supervisory authority shall, without delay, communicate those measures, with full reasons, to the European Data Protection Board, ***the controller or processor concerned*** and to the Commission.

Or. en

Justification

There are no legal safeguards for companies directly affected by these measures.

Amendment 123
Proposal for a regulation
Article 68 – paragraph 2

Text proposed by the Commission

2. The European Data Protection Board shall adopt its own rules of procedure and organise its own operational arrangements. In particular, it shall provide for the continuation of exercising duties when a member's term of office expires or a member resigns, for the establishment of subgroups for specific issues or sectors and for its procedures in relation to the consistency mechanism referred to in Article 57.

Amendment

2. The European Data Protection Board shall adopt its own rules of procedure and organise its own operational arrangements. In particular, it shall provide for the continuation of exercising duties when a member's term of office expires or a member resigns, for the establishment of subgroups for specific issues or sectors and for its procedures in relation to the consistency mechanism referred to in Article 57 **and the legal safeguards applicable to controllers or processors concerned.**

Or. en

Justification

There are no explicit legal safeguards for controllers or processors concerned.

Amendment 124
Proposal for a regulation
Article 79 – paragraph 2

Text proposed by the Commission

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

Amendment

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

authority in order to remedy the breach.

Or. en

Justification

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

Amendment 125
Proposal for a regulation
Article 79 – paragraph 3

Text proposed by the Commission

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

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

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

Amendment

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

Or. en

Justification

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

Amendment 126
Proposal for a regulation
Article 79 – paragraph 4 – introductory part

Text proposed by the Commission

Amendment

4. The supervisory authority shall impose a fine up to 250 000 EUR, or in case of an enterprise up to 0,5 % of its annual worldwide turnover, to anyone who, intentionally or negligently: *deleted*

Or. en

**Amendment 127
Proposal for a regulation
Article 79 – paragraph 4 – point a**

Text proposed by the Commission

Amendment

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

Or. en

**Amendment 128
Proposal for a regulation
Article 79 – paragraph 4 – point b**

Text proposed by the Commission

Amendment

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

Or. en

**Amendment 129
Proposal for a regulation
Article 79 – paragraph 5 – introductory part**

Text proposed by the Commission

Amendment

5. The supervisory authority shall impose a fine up to 500 000 EUR, or in case of an enterprise up to 1 % of its annual worldwide turnover, to anyone who, intentionally or negligently:

deleted

Or. en

**Amendment 130
Proposal for a regulation
Article 79 – paragraph 5 – point a**

Text proposed by the Commission

Amendment

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

deleted

Or. en

**Amendment 131
Proposal for a regulation
Article 79 – paragraph 5 – point b**

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 132
Proposal for a regulation
Article 79 – paragraph 5 – point c

Text proposed by the Commission

Amendment

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

Or. en

Amendment 133
Proposal for a regulation
Article 79 – paragraph 5 – point d

Text proposed by the Commission

Amendment

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

Or. en

Amendment 134
Proposal for a regulation
Article 79 – paragraph 5 – point e

Text proposed by the Commission

Amendment

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

Or. en

Amendment 135
Proposal for a regulation
Article 79 – paragraph 5 – point f

Text proposed by the Commission

Amendment

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

Or. en

Amendment 136
Proposal for a regulation
Article 79 – paragraph 5 – point g

Text proposed by the Commission

Amendment

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

Or. en

Amendment 137
Proposal for a regulation
Article 79 – paragraph 6 – introductory part

Text proposed by the Commission

Amendment

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

Or. en

Amendment 138
Proposal for a regulation
Article 79 – paragraph 6 – point a

Text proposed by the Commission

Amendment

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

Or. en

Amendment 139
Proposal for a regulation
Article 79 – paragraph 6 – point b

Text proposed by the Commission

Amendment

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

Or. en

Amendment 140
Proposal for a regulation
Article 79 – paragraph 6 – point c

Text proposed by the Commission

Amendment

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

Or. en

Amendment 141
Proposal for a regulation
Article 79 – paragraph 6 – point d

Text proposed by the Commission

Amendment

(d) does not comply with the conditions in *deleted*

relation to measures based on profiling pursuant to Article 20;

Or. en

Amendment 142
Proposal for a regulation
Article 79 – paragraph 6 – point e

Text proposed by the Commission

Amendment

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

Or. en

Amendment 143
Proposal for a regulation
Article 79 – paragraph 6 – point f

Text proposed by the Commission

Amendment

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

Or. en

Amendment 144
Proposal for a regulation
Article 79 – paragraph 6 – point g

Text proposed by the Commission

Amendment

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

Or. en

Amendment 145
Proposal for a regulation
Article 79 – paragraph 6 – point h

Text proposed by the Commission

Amendment

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

Or. en

Amendment 146
Proposal for a regulation
Article 79 – paragraph 6 – point i

Text proposed by the Commission

Amendment

(i) does not carry out a data protection impact assessment pursuant or processes personal data without prior authorisation or prior consultation of the supervisory authority pursuant to Articles 33 and 34; *deleted*

Or. en

Amendment 147
Proposal for a regulation
Article 79 – paragraph 6 – point j

Text proposed by the Commission

Amendment

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

Or. en

Amendment 148
Proposal for a regulation
Article 79 – paragraph 6 – point k

Text proposed by the Commission

Amendment

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

Or. en

Amendment 149
Proposal for a regulation
Article 79 – paragraph 6 – point l

Text proposed by the Commission

Amendment

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

Or. en

Amendment 150
Proposal for a regulation
Article 79 – paragraph 6 – point m

Text proposed by the Commission

Amendment

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

Or. en

Amendment 151
Proposal for a regulation
Article 79 – paragraph 6 – point n

Text proposed by the Commission

Amendment

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

Or. en

Amendment 152
Proposal for a regulation
Article 79 – paragraph 6 – point o

Text proposed by the Commission

Amendment

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

Or. en

Amendment 153
Proposal for a regulation
Article 79 – paragraph 7

Text proposed by the Commission

Amendment

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

Or. en

Amendment 154
Proposal for a regulation
Article 80 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 155
Proposal for a regulation
Article 80 – paragraph 2

Text proposed by the Commission

2. Each Member State shall notify to the Commission those provisions of its law which it has adopted pursuant to paragraph 1 by the date specified in

Amendment

deleted

Article 91(2) at the latest and, without delay, any subsequent amendment law or amendment affecting them.

Or. en

Amendment 156
Proposal for a regulation
Article 81 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying other reasons of public interest in the area of public health as referred to in point (b) of paragraph 1, as well as criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1. **deleted**

Or. en

Amendment 157
Proposal for a regulation
Article 82 – paragraph 3

Text proposed by the Commission

Amendment

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

Or. en

Amendment 158
Proposal for a regulation
Article 83 a (new)

Text proposed by the Commission

Amendment

Article 83a

***Processing of criminal convictions data
for the purpose of the prevention of
financial crime***

***Within the limits of this Regulation and in
accordance with point (j) of Article 9(2),
processing of personal data concerning
criminal convictions or related security
measures shall be permitted if it provides
for appropriate measures to protect the
data subject's fundamental rights and
freedoms and is for:***

***(a) the purposes of the prevention,
investigation or detection of financial
crime, or***

***(a) reasons of public interest such as
protecting against cross-border threats of
financial crime,***

***and in either case, must necessarily be
carried out without the consent of the data
subject being sought so as not to prejudice
those purposes.***

Or. en

Justification

The amendment adds a provision in order to allow the processing of criminal convictions data for the purpose of the prevention of financial crime. The EU has demonstrated its commitment to fight against financial crime with recent initiatives such as the review of the Anti-Money laundering Directive, the anti-corruption package, the anti-fraud strategy, and the establishment of the European Parliament special committee on organised crime, corruption and money laundering. This provision is therefore a needed complementary measure that will allow an effective fight against financial crime. Finally, no consent should be asked in this scenario as this would not be forthcoming. Actors of financial crime would not be keen in providing consent and this would therefore defeat the purpose of processing the data.

Amendment 159
Proposal for a regulation
Article 83 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 160
Proposal for a regulation
Article 83 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Where personal data is collected for statistical and public health purposes, such data should be made anonymous immediately after the end of data collection, checking or matching operations, except if the identification data remain necessary for statistical[1], and public health purposes such as epidemiological, translational and clinical research.

Or. en

([1] Paragraph 8 of the Appendix to the Council Recommendation No. R (97) concerning protection of personal data collected and processed for statistical purposes – Adopted by the Committee of Ministers on 30 September 1997 at the 602nd meeting of the Ministers' Deputies.)

Justification

Epidemiological research relies heavily on using “linked data” and cannot be done with completely anonymised or pseudonymised data. Linked research has been a luxury for certain countries in the European Union, whereas with the measures suggested in this binding Regulation, there is a possibility of this kind of crucial research to come to a halt.

Amendment 161
Proposal for a regulation
Article 83 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Where the data subject is required to give his/her consent for the processing of medical data exclusively for public health research purposes, the option of broad consent may be available to the data subject for the purposes of epidemiological, translational and clinical research.

Or. en

Justification

In many fields of medicine and science, it is crucial for researchers to be able to follow the data of a certain patient they have been monitoring. This enables the researchers to understand and constantly improve their search for new treatments and cures. Importantly, epidemiological research involves monitoring populations to decipher trends in lifestyle, genetics, diseases among others, and is crucial for furthering public health research, an example of which is patient registries. Thus record linkage should remain possible, when it comes to the case of using medical data solely for the furthering of public health research, specifically epidemiological, translational and clinical research. With respect to the point on broad consent, the current Directive on Data Protection (95/46/EC) allows for exceptions for the processing of data for public health research and the general aim of the proposed Regulation is to apply the principle of explicit consent for the processing of personal data. For public health research purposes, such as epidemiological, clinical and translational research it becomes virtually impossible to acquire the consent of every single data subject required for research. Public health researchers need to have access to the past, current and future medical records of patients in order to conduct their research. The option of broad consent gives the data subject a measure of control over their data and the option for their data being used for furthering public health research.

Amendment 162
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

deleted

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.

Or. en

Amendment 163
Proposal for a regulation
Article 86 – paragraph 2

Text proposed by the Commission

2. The delegation of power referred to in *Article 6(5), Article 8(3), Article 9(3), Article 12(5), Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 22(4), Article 23(3), Article 26(5), Article 28(5), Article 30(3), Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11), Article 37(2), Article 39(2), Article 43(3), Article 44(7), Article 79(6), Article 81(3), Article 82(3) and Article 83(3)* shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

Amendment

2. The delegation of power referred to in Article 14(7), Article 26(5), Article 33(6), Article 35(11), Article 37(2), Article 39(2) **and** Article 43(3) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

Or. en

Amendment 164
Proposal for a regulation
Article 89 – paragraph 2

Text proposed by the Commission

2. Article 1(2) of Directive 2002/58/EC shall be deleted.

Amendment

2. Article 1(2), **Article 2(b) and (c) and Articles 6 and 9** of Directive 2002/58/EC shall be deleted.

Or. en

Justification

In their recent Opinion on Geolocation Services in Smart Mobile Devices, the Article 29 Working Party acknowledges the relevant and primary legal framework for regulating location data should be the Directive 95/46EC. Since the GDPR now includes “location data” as defined in Article 4(1), deleting Article 2(c) and 9 of Directive 2002/58/EC ensures legal certainty and consistency for individuals and business, removes dual regulation and supports a harmonised internal market on location based services and location privacy. Such an internal market will help drive consumer confidence and trust supporting the digital agenda and growth. Article 6 of Directive 2002/58/EC did define “Traffic Data” as personal data without any exemptions. This was fully correct at the time the rule was established. However, today traffic data from publicly available electronic communications services is increasingly used for machine-to-machine (m2m) communication – the so-called Internet of the Things. Protecting such traffic data does however not require the same levels of protection such as personal data does. The Internet of Things is crucial for the delivery of smart grids, smart cities and other technological innovations in the near future so it is incumbent on policymakers to provide a stable regulatory environment for such innovation.