



5.10.2017

OPINION

of the Committee on Legal Affairs

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC
(COM(2017)0008 – C8-0008/2017 – 2017/0002(COD))

Rapporteur for opinion: Angel Dzhambazki

PA_Legam

SHORT JUSTIFICATION

The principle that everyone has the right to the protection of personal data concerning them is established by Article 16(1) of the Treaty on the Functioning of the European Union (TFEU). A specific legal basis for adopting rules on the protection of personal data is introduced in Article 16(2) TFEU. In addition, Article 8 of the Charter of Fundamental Rights of the European Union enshrines the protection of personal data as a fundamental right.

The right to the protection of personal data also applies to the processing of personal data by EU institutions, bodies, offices and agencies. Regulation (EC) No 45/2001, the main piece of existing EU legislation on personal data protection in the Union institutions, was adopted in 2001 with two objectives in mind: to protect the fundamental right to data protection and to guarantee the free flow of personal data throughout the Union.

The European Parliament and the Council adopted on 27 April 2016 Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). The General Data Protection Regulation will become applicable on 25 May 2018. This Regulation calls for Regulation (EC) No 45/2001 to be adapted to the principles and rules laid down in Regulation (EU) 2016/679 in order to provide a strong and coherent data protection framework in the Union and to enable both instruments to be applicable at the same time.

In the Proposal, the Commission has set the changes necessary for the adaption of the 2001 Regulation to the General Data Protection Regulation in a fair and balanced way. However, on one point, the proposal deviates in an unfounded way from the General Data Protection Regulation and that is in relation to the age for consent for minors.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation

Recital 1

Text proposed by the Commission

(1) The protection of natural persons in relation to the processing of personal data is a fundamental right. Article 8(1) of the Charter of Fundamental Rights of the European Union (the ‘Charter’) and Article 16(1) of the Treaty on the Functioning of the European Union (TFEU) provide that

Amendment

(1) The protection of natural persons in relation to the processing of personal data is a fundamental right. Article 8(1) of the Charter of Fundamental Rights of the European Union (the ‘Charter’) and Article 16(1) of the Treaty on the Functioning of the European Union (TFEU) provide that

everyone has the right to the protection of personal data concerning them.

everyone has the right to the protection of personal data concerning them. ***This right is also guaranteed under Article 8 of the European Convention on Human Rights.***

Amendment 2

Proposal for a regulation Recital 2

Text proposed by the Commission

(2) Regulation (EC) No 45/2001 of the European Parliament and of the Council¹¹ provides natural persons with legally enforceable rights, specifies the data processing obligations of controllers within the Community institutions and bodies, and creates an independent supervisory authority, the European Data Protection Supervisor, responsible for monitoring the processing of personal data by the Union institutions and bodies. However, it does not apply to the processing of personal data in the course of an activity of Union institutions and bodies which fall outside the scope of Union law.

¹¹ Regulation (EC) No 45/2001 of the European Parliament and the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p.1).

Amendment

(2) Regulation (EC) No 45/2001 of the European Parliament and of the Council¹¹ provides natural persons with legally enforceable rights, specifies the data processing obligations of controllers within the Community institutions and bodies, and creates an independent supervisory authority, the European Data Protection Supervisor, responsible for monitoring the processing of personal data by the Union institutions and bodies. ***At the same time, Regulation (EC) No 45/2001 seeks to achieve two objectives: to protect the fundamental right to data protection and to guarantee the free flow of personal data throughout the Union.*** However, it does not apply to the processing of personal data in the course of an activity of Union institutions and bodies which fall outside the scope of Union law.

¹¹ Regulation (EC) No 45/2001 of the European Parliament and the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p.1).

Amendment 3

Proposal for a regulation Recital 5

Text proposed by the Commission

(5) It is in the interest of a coherent approach to personal data protection throughout the Union, and of the free movement of personal data within the Union, to align *as far as possible* the data protection rules for Union institutions *and bodies* with the data protection rules adopted for the public sector in the Member States. Whenever the provisions of this Regulation are based on the same concept as the provisions of Regulation (EU) 2016/679, those two provisions should be interpreted homogeneously, in particular because the scheme of this Regulation should be understood as equivalent to the scheme of Regulation (EU) 2016/679.

Amendment

(5) It is in the interest of a coherent approach to personal data protection throughout the Union, and of the free movement of personal data within the Union, to align the data protection rules for Union institutions, *bodies, offices and agencies* with the data protection rules adopted for the public sector in the Member States. Whenever the provisions of this Regulation are based on the same concept as the provisions of Regulation (EU) 2016/679, those two provisions should *under the case law of the Court of Justice of the European Union*^{1a}, be interpreted homogeneously, in particular because the scheme of this Regulation should be understood as equivalent to the scheme of Regulation (EU) 2016/679.

^{1a} *Judgment of the Court of Justice of 9 March 2010, Commission v Germany, C-518/07, ECLI:EU:C:2010:125, paragraphs 26 and 28.*

Amendment 4

Proposal for a regulation
Recital 10

Text proposed by the Commission

(10) Where the founding act of a Union agency carrying out activities which fall within the scope of Chapters 4 and 5 of Title V of the Treaty lays down a standalone data protection regime for the processing of operational personal data such regimes should be unaffected by this Regulation. However, the Commission should, in accordance with Article 62 of Directive (EU) 2016/680, by 6 May 2019 review Union acts which regulate processing by the competent authorities for the purposes of the prevention,

Amendment

(10) Where the founding act of a Union agency carrying out activities which fall within the scope of Chapters 4 and 5 of Title V of the Treaty lays down a standalone data protection regime for the processing of operational personal data such regimes should be unaffected by this Regulation, *as long as they are consistent with the provisions of Regulation (EU) 2016/679*. However, the Commission should, in accordance with Article 62 of Directive (EU) 2016/680, by 6 May 2019 review Union acts which regulate

investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security and, where appropriate, make the necessary proposals to amend those acts to ensure a consistent approach to the protection of personal data in the area of judicial cooperation in criminal matters and police cooperation.

processing by the competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security and, where appropriate, make the necessary proposals to amend those acts to ensure a consistent approach to the protection of personal data in the area of judicial cooperation in criminal matters and police cooperation.

Justification

Any data protection regime needs to be coherent with the General Data Protection Regulation.

Amendment 5

Proposal for a regulation Recital 14

Text proposed by the Commission

(14) Consent should be given by a clear affirmative act establishing a freely given, specific, informed and unambiguous indication of the data subject's agreement to the processing of personal data relating to him or her, such as by a written statement, including by electronic means, or an oral statement. This could include ticking a box when visiting an internet website, choosing technical settings for information society services or another statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of his or her personal data. Silence, pre-ticked boxes or inactivity should not therefore constitute consent. Consent should cover all processing activities carried out for the same purpose or purposes. When the processing has multiple purposes, consent should be given for all of them. If the data subject's consent is to be given following a request by electronic means, the request

Amendment

(14) Consent should be given by a clear affirmative act establishing a freely given, specific, informed and unambiguous indication of the data subject's agreement to the processing of personal data relating to him or her, such as by a written statement, including by electronic means, or an oral statement. This could include ticking a box when visiting an internet website, choosing technical settings for information society services or another statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of his or her personal data. Silence, pre-ticked boxes or inactivity should not therefore constitute consent. Consent should cover all processing activities carried out for the same purpose or purposes. When the processing has multiple purposes, consent should be given for all of them. If the data subject's consent is to be given following a request by electronic means, the request

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

must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided. ***At the same time, the data subject should have the right to withdraw consent at any time without affecting the lawfulness of processing based on consent before its withdrawal.***

Amendment 6

Proposal for a regulation Recital 18

Text proposed by the Commission

(18) The Union law ***including the internal rules referred to in this Regulation*** should be clear and precise and its application should be foreseeable to persons subject to it, in accordance with the case-law of the Court of Justice of the European Union and the European Court of Human Rights.

Amendment

(18) The Union law should be clear and precise and its application should be foreseeable to persons subject to it, in accordance with the case-law of the Court of Justice of the European Union and the European Court of Human Rights.

Amendment 7

Proposal for a regulation Recital 23

Text proposed by the Commission

(23) Personal data which are, by their nature, particularly sensitive in relation to fundamental rights and freedoms merit specific protection as the context of their processing could create significant risks to the fundamental rights and freedoms. Those personal data should include personal data revealing racial or ethnic origin, whereby the use of the term ‘racial origin’ in this Regulation does not imply an acceptance by the Union of theories which attempt to determine the existence of separate human races. The processing of photographs should not systematically be considered to be processing of special

Amendment

(23) Personal data which are, by their nature, particularly sensitive in relation to fundamental rights and freedoms merit specific protection as the context of their processing could create significant risks to the fundamental rights and freedoms. ***Such personal data should not be processed unless processing is allowed in specific cases as set out in this Regulation.*** Those personal data should include personal data revealing racial or ethnic origin, whereby the use of the term ‘racial origin’ in this Regulation does not imply an acceptance by the Union of theories which attempt to determine the existence of separate human

categories of personal data as they are covered by the definition of biometric data only when processed through a specific technical means allowing the unique identification or authentication of a natural person. In addition to the specific requirements for processing of sensitive data, the general principles and other rules of this Regulation should apply, in particular as regards the conditions for lawful processing. Derogations from the general prohibition for processing such special categories of personal data should be explicitly provided, inter alia, where the data subject gives his or her explicit consent or in respect of specific needs in particular where the processing is carried out in the course of legitimate activities by certain associations or foundations the purpose of which is to permit the exercise of fundamental freedoms.

faces. The processing of photographs should not systematically be considered to be processing of special categories of personal data as they are covered by the definition of biometric data only when processed through a specific technical means allowing the unique identification or authentication of a natural person. In addition to the specific requirements for processing of sensitive data, the general principles and other rules of this Regulation should apply, in particular as regards the conditions for lawful processing. Derogations from the general prohibition for processing such special categories of personal data should be explicitly provided, inter alia, where the data subject gives his or her explicit consent or in respect of specific needs in particular where the processing is carried out in the course of legitimate activities by certain associations or foundations the purpose of which is to permit the exercise of fundamental freedoms.

Amendment 8

Proposal for a regulation Recital 23 a (new)

Text proposed by the Commission

Amendment

(23a) Special categories of personal data which merit higher protection should be processed for health-related purposes only where necessary to achieve those purposes for the benefit of natural persons and society as a whole, in particular in the context of the management of health or social care services and systems. Therefore, this Regulation should provide for harmonised conditions for the processing of special categories of personal data concerning health, in respect of specific needs, in particular where the processing of such data is carried out for certain health-related purposes by persons subject to a legal

obligation of professional secrecy. Union law should provide for specific and suitable measures so as to protect the fundamental rights and the personal data of natural persons.

Amendment 9

Proposal for a regulation Recital 24

Text proposed by the Commission

(24) The processing of special categories of personal data may be necessary for reasons of public interest in the areas of public health without consent of the data subject. Such processing should be subject to suitable and specific measures so as to protect the rights and freedoms of natural persons. In that context, ‘public health’ should be interpreted as defined in Regulation (EC) No 1338/2008 of the European Parliament and of the Council¹⁵, namely all elements related to health, namely health status, including morbidity and disability, the determinants having an effect on that health status, health care needs, resources allocated to health care, the provision of, and universal access to, health care as well as health care expenditure and financing, and the causes of mortality. Such processing of data concerning health for reasons of public interest should not **result in personal data being processed** for other purposes **by third parties**.

¹⁵ Regulation (EC) No 1338/2008 of the European Parliament and of the Council of 16 December 2008 on Community statistics on public health and health and safety at work (OJ L 354, 31.12.2008, p. 70).

Amendment

(24) The processing of special categories of personal data may be necessary for reasons of public interest in the areas of public health without consent of the data subject. Such processing should be subject to **proportionate**, suitable and specific measures so as to protect the rights and freedoms of natural persons. In that context, ‘public health’ should be interpreted as defined in Regulation (EC) No 1338/2008 of the European Parliament and of the Council¹⁵, namely all elements related to health, namely health status, including morbidity and disability, the determinants having an effect on that health status, health care needs, resources allocated to health care, the provision of, and universal access to, health care as well as health care expenditure and financing, and the causes of mortality. Such processing of data concerning health for reasons of public interest should not **lead to any further processing** for other purposes.

¹⁵ Regulation (EC) No 1338/2008 of the European Parliament and of the Council of 16 December 2008 on Community statistics on public health and health and safety at work (OJ L 354, 31.12.2008, p. 70).

Justification

Health data is specifically sensitive and the processing of such sensitive data needs specific restrictions to the absolute necessary. Such data may in particular not end up in the possession of third parties who would further process it.

Amendment 10

Proposal for a regulation Recital 37 – paragraph 1

Text proposed by the Commission

Legal acts adopted on the basis of the Treaties ***or internal rules of Union institutions and bodies*** may impose restrictions concerning specific principles and the rights of information, access to and rectification or erasure of personal data, the right to data portability, confidentiality of electronic communications as well as the communication of a personal data breach to a data subject and certain related obligations of the controllers, as far as necessary and proportionate in a democratic society to safeguard public security, the prevention, investigation and prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security, including the protection of human life especially in response to natural or manmade disasters, internal security of Union institutions and bodies, other important objectives of general public interest of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, the keeping of public registers kept for reasons of general public interest or the protection of the data subject or the rights and freedoms of others, including social protection, public health and humanitarian purposes.

Amendment

Legal acts adopted on the basis of the Treaties may impose restrictions concerning specific principles and the rights of information, access to and rectification or erasure of personal data, the right to data portability, confidentiality of electronic communications as well as the communication of a personal data breach to a data subject and certain related obligations of the controllers, as far as necessary and proportionate in a democratic society to safeguard public security, the prevention, investigation and prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security, including the protection of human life especially in response to natural or manmade disasters, internal security of Union institutions and bodies, other important objectives of general public interest of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, the keeping of public registers kept for reasons of general public interest or the protection of the data subject or the rights and freedoms of others, including social protection, public health and humanitarian purposes.

Amendment 11

Proposal for a regulation
Recital 37 – paragraph 2

Text proposed by the Commission

Where a restriction is not provided for in legal acts adopted on the basis of the Treaties or their internal rules, Union institutions and bodies may in a specific case impose an ad hoc restriction concerning specific principles and the rights of data subject if such a restriction respects the essence of the fundamental rights and freedoms and, in relation to a specific processing operation, is necessary and proportionate in a democratic society to safeguard one or more of the objectives mentioned in paragraph 1. The restriction should be notified to the data protection officer. All restrictions should be in accordance with the requirements set out in the Charter and in the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Amendment

deleted

Amendment 12

Proposal for a regulation
Recital 42

Text proposed by the Commission

(42) In order to demonstrate compliance with this Regulation, controllers should maintain records of processing activities under their responsibility and processors should maintain records of categories of processing activities under their responsibility. Union institutions and bodies should be obliged to cooperate with the European Data Protection Supervisor and make their records, on request, available to it, so that they might serve for monitoring those processing operations. Union institutions and bodies should be able to establish a central register of records of their processing activities. For reasons of transparency, they should **also**

Amendment

(42) In order to demonstrate compliance with this Regulation, controllers should maintain records of processing activities under their responsibility and processors should maintain records of categories of processing activities under their responsibility. Union institutions and bodies should be obliged to cooperate with the European Data Protection Supervisor and make their records, on request, available to it, so that they might serve for monitoring those processing operations. Union institutions and bodies should be able to establish a central register of records of their processing activities. For reasons of transparency, they should **make**

be able to make such a register public.

such a register public. Data subjects should have the possibility to consult that register through the data protection officer of the controller.

Amendment 13

Proposal for a regulation

Recital 46

Text proposed by the Commission

(46) The controller should communicate to the data subject a personal data breach, without undue delay, where that personal data breach is likely to result in a high risk to the rights and freedoms of the natural person in order to allow him or her to take the necessary precautions. The communication should describe the nature of the personal data breach as well as recommendations for the natural person concerned to mitigate potential adverse effects. Such communications to data subjects should be made as soon as reasonably feasible and in close cooperation with the European Data Protection Supervisor, respecting guidance provided by it or by other relevant authorities such as law-enforcement authorities.

Amendment

(46) The controller should communicate to the data subject a personal data breach, without undue delay, where that personal data breach is likely to result in a high risk to the rights and freedoms of the natural person in order to allow him or her to take the necessary precautions. The communication ***should be confidential and*** should describe the nature of the personal data breach as well as recommendations for the natural person concerned to mitigate potential adverse effects. Such communications to data subjects should be made as soon as reasonably feasible and in close cooperation with the European Data Protection Supervisor, respecting guidance provided by it or by other relevant authorities such as law-enforcement authorities.

Amendment 14

Proposal for a regulation

Recital 52

Text proposed by the Commission

(52) When personal data are transferred from the Union institutions and bodies to controllers, processors or other recipients in third countries or to international organisations, the level of protection of natural persons ensured in the Union by this Regulation should ***not be undermined***, including in cases of onward transfers of

Amendment

(52) When personal data are transferred from the Union institutions and bodies to controllers, processors or other recipients in third countries or to international organisations, the level of protection of natural persons ensured in the Union by this Regulation should be ***guaranteed***, including in cases of onward transfers of

personal data from the third country or international organisation to controllers, processors in the same or another third country or international organisation. In any event, transfers to third countries and international organisations may only be carried out in full compliance with this Regulation. A transfer could take place only if, subject to the other provisions of this Regulation, the conditions laid down in the provisions of this Regulation relating to the transfer of personal data to third countries or international organisations are complied with by the controller or processor.

personal data from the third country or international organisation to controllers, processors in the same or another third country or international organisation. In any event, transfers to third countries and international organisations may only be carried out in full compliance with this Regulation, ***with Regulation (EU) 2016/679 and with the fundamental rights and freedoms enshrined in the Charter***. A transfer could take place only if, subject to the other provisions of this Regulation, the conditions laid down in the provisions of this Regulation relating to the transfer of personal data to third countries or international organisations are complied with by the controller or processor.

Amendment 15

Proposal for a regulation Recital 54

Text proposed by the Commission

(54) In the absence of an adequacy decision, the controller or processor should take measures to compensate for the lack of data protection in a third country by way of appropriate safeguards for the data subject. Such appropriate safeguards can consist of making use of standard data protection clauses adopted by the Commission, standard data protection clauses adopted by the European Data Protection Supervisor or contractual clauses authorised by the European Data Protection Supervisor. Where the processor is not a Union Institution or body those appropriate safeguards can also consist of binding corporate rules, codes of conduct and certification mechanisms used for international transfers under Regulation (EU) 2016/679. Those safeguards should ensure compliance with data protection requirements and the rights of the data subjects appropriate to processing within

Amendment

deleted

the Union, including the availability of enforceable data subject rights and of effective legal remedies, including to obtain effective administrative or judicial redress and to claim compensation, in the Union or in a third country. They should relate in particular to compliance with the general principles relating to personal data processing, the principles of data protection by design and by default. Transfers may also be carried out by Union institutions and bodies to public authorities or bodies in third countries or to international organisations with corresponding duties or functions, including on the basis of provisions to be inserted into administrative arrangements, such as a memorandum of understanding, providing for enforceable and effective rights for data subjects. Authorisation by the European Data Protection Supervisor should be obtained when the safeguards are provided for in administrative arrangements that are not legally binding.

Amendment 16

Proposal for a regulation Article 1 – paragraph 1

Text proposed by the Commission

1. This Regulation lays down rules relating to the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and rules relating to the free movement of personal data between themselves or to recipients established in the Union ***and subject to Regulation (EU) 2016/679¹⁸ or the provisions of national law adopted pursuant to Directive (EU) 2016/680¹⁹.***

¹⁸ *Regulation (EU) 2016/679 of the European Parliament and of the Council*

Amendment

1. This Regulation lays down rules relating to the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and rules relating to the free movement of personal data between themselves or to recipients established in the Union.

of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), OJ L 119, 4.5.2016, p. 1–88.

¹⁹ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, OJ L 119, 4.5.2016, p. 89–131.

Amendment 17

Proposal for a regulation Article 1 – paragraph 2

Text proposed by the Commission

2. This Regulation protects fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data.

Amendment

2. This Regulation protects fundamental rights and freedoms of natural persons ***enshrined in the Charter*** and in particular their right to the protection of personal data.

Amendment 18

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

Text proposed by the Commission

Amendment

2a. This Regulation shall also apply to Union agencies carrying out activities which fall within the scope of Chapters 4 and 5 of Title V of Part Three TFEU,

including where the founding acts of those Union agencies lay down a standalone data protection regime for the processing of operational personal data. The provisions of this Regulation shall take precedence over the conflicting provisions in the founding acts of those Union agencies.

Amendment 19

Proposal for a regulation

Article 4 – paragraph 1 – point d

Text proposed by the Commission

(d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they *were collected or for which they are further* processed, are erased or rectified without delay ('accuracy');

Amendment

(d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that *personal* data which are inaccurate or incomplete, having regard to the purposes for which they *are* processed, are erased or rectified without delay ('accuracy');

Amendment 20

Proposal for a regulation

Article 8 – title

Text proposed by the Commission

Conditions applicable to *children's* consent in relation to information society services

Amendment

Conditions applicable to *child's* consent in relation to information society services

Justification

This term is used also in the GDPR, Article 8, and should be used here consistently.

Amendment 21

Proposal for a regulation

Article 8 – paragraph 1

Text proposed by the Commission

(1) Where point (d) of Article 5(1) applies, in relation to the offer of information society services directly to a child, the processing of the personal data of a child shall be lawful where the child is at least **13** years old. Where the child is below the age of **13** years, such processing shall be lawful only if and to the extent that consent is given or authorised by the holder of parental responsibility over the child.

Amendment

(1) Where point (d) of Article 5(1) applies, in relation to the offer of information society services directly to a child, the processing of the personal data of a child shall be lawful where the child is at least **16** years old. Where the child is below the age of **16** years, such processing shall be lawful only if and to the extent that consent is given or authorised by the holder of parental responsibility over the child.

Amendment 22

Proposal for a regulation
Article 9 – title

Text proposed by the Commission

Transmissions of personal data to recipients, other than Union institutions and bodies, established in the Union **and subject to Regulation (EU) 2016/679 or Directive (EU) 2016/680**

Amendment

Transmissions of personal data to recipients, other than Union institutions and bodies, established in the Union

Amendment 23

Proposal for a regulation
Article 9 – paragraph 1 – point b

Text proposed by the Commission

(b) that it is necessary to have the data transmitted, ***it is proportionate*** to the ***purposes of the transmission and if*** there is ***no*** reason to assume that the data subject's rights and freedoms and legitimate interests might be prejudiced.

Amendment

(b) that it is ***strictly*** necessary to have the data transmitted ***having regard*** to the ***recipient's objectives, and that*** there is ***not any*** reason to assume that the data subject's rights and freedoms and legitimate interests might be prejudiced ***by the requested data transfer or the reasonably expected further use of that personal data by the recipient.***

Amendment 24

Proposal for a regulation
Article 11 – paragraph 1

Text proposed by the Commission

Processing of personal data relating to criminal convictions and offences or related security measures pursuant to Article 5(1) may be carried out only if authorised by Union law, ***which may include internal rules***, providing the appropriate specific safeguards for the rights and freedoms of data subjects.

Amendment

Processing of personal data relating to criminal convictions and offences or related security measures pursuant to Article 5(1) may be carried out only if authorised by Union law providing the appropriate specific safeguards for the rights and freedoms of data subjects.

Amendment 25

Proposal for a regulation
Article 16 – paragraph 5 – point b

Text proposed by the Commission

(b) the provision of such information proves impossible or would involve a disproportionate effort, in particular for processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes or in so far as the obligation referred to in paragraph 1 of this Article is likely to render impossible or seriously impair the achievement of the objectives of that processing;

Amendment

(b) the provision of such information proves impossible or would involve a disproportionate effort, in particular for processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes or in so far as the obligation referred to in paragraph 1 of this Article is likely to render impossible or seriously impair the achievement of the objectives of that processing. ***In such cases the controller shall take appropriate measures to protect the data subject's rights and freedoms and legitimate interest, including making the information publicly available;***

Amendment 26

Proposal for a regulation
Article 25 – paragraph 1 – introductory part

Text proposed by the Commission

1. Legal acts adopted on the basis of the Treaties ***or, in matters relating to the operation of the Union institutions and***

Amendment

1. Legal acts adopted on the basis of the Treaties may restrict the application of Articles 14 to 22, 34 and 38, as well as

bodies, internal rules laid down by the latter may restrict the application of Articles 14 to 22, 34 and 38, as well as Article 4 in so far as its provisions correspond to the rights and obligations provided for in Articles 14 to 22, when such a restriction respects the essence of the fundamental rights and freedoms and is a necessary and proportionate measure in a democratic society to safeguard:

Article 4 in so far as its provisions correspond to the rights and obligations provided for in Articles 14 to 22, when such a restriction respects the essence of the fundamental rights and freedoms and is a necessary and proportionate measure in a democratic society to safeguard:

Justification

The amendment seeks to align the provisions of this Regulation with the provisions of GDPR, following the EDPS opinion.

Amendment 27

Proposal for a regulation Article 25 – paragraph 1 – point d

Text proposed by the Commission

(d) the internal security of Union institutions and bodies, including of their electronic communication networks;

Amendment

(d) the internal security of Union institutions and bodies, including of their ***IT and*** electronic communication networks;

Amendment 28

Proposal for a regulation Article 25 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. In particular, any legal act referred to in paragraph 1 shall contain specific provisions at least, where relevant, as to :

- (a) the purposes of the processing or categories of processing;***
- (b) the categories of personal data;***
- (c) the scope of the restriction***

introduced;

(d) the safeguards to prevent abuse or unlawful access or transfer;

(e) the specification of the controller or categories of controllers;

(f) the storage periods and the applicable safeguards taking into account the nature, scope and purposes of the processing or categories of processing;

(g) the risks to the rights and freedoms of data subjects; and

(h) the right of data subjects to be informed about the restriction, unless that may be prejudicial to the purpose of the restriction.

Amendment 29

Proposal for a regulation Article 25 – paragraph 2

Text proposed by the Commission

Amendment

2. Where a restriction is not provided for by a legal act adopted on the basis of the Treaties or by an internal rule in accordance with paragraph 1, the Union institutions and bodies may restrict the application of Articles 14 to 22, 34 and 38, as well as Article 4 in so far as its provisions correspond to the rights and obligations provided for in Articles 14 to 22, if such a restriction respects the essence of the fundamental rights and freedoms, in relation to a specific processing operation, and is a necessary and proportionate measure in a democratic society to safeguard one or more of the objectives referred to in paragraph 1. The restriction shall be notified to the competent data protection officer.

deleted

Amendment 30

Proposal for a regulation
Article 25 – paragraph 3

Text proposed by the Commission

3. Where personal data are processed for scientific or historical research purposes or statistical purposes, Union law, ***which may include internal rules***, may provide for derogations from the rights referred to in Articles 17, 18, 20 and 23 subject to the conditions and safeguards referred to in Article 13 in so far as such rights are likely to render impossible or seriously impair the achievement of the specific purposes, and such derogations are necessary for the fulfilment of those purposes.

Amendment

3. Where personal data are processed for scientific or historical research purposes or statistical purposes, Union law may provide for derogations from the rights referred to in Articles 17, 18, 20 and 23 subject to the conditions and safeguards referred to in Article 13 in so far as such rights are likely to render impossible or seriously impair the achievement of the specific purposes, and such derogations are necessary for the fulfilment of those purposes.

Amendment 31

Proposal for a regulation
Article 25 – paragraph 4

Text proposed by the Commission

4. Where personal data are processed for archiving purposes in the public interest, Union law, ***which may include internal rules***, may provide for derogations from the rights referred to in Articles 17, 18, 20, 21, 22 and 23 subject to the conditions and safeguards referred to in Article 13 in so far as such rights are likely to render impossible or seriously impair the achievement of the specific purposes, and such derogations are necessary for the fulfilment of those purposes.

Amendment

4. Where personal data are processed for archiving purposes in the public interest, Union law may provide for derogations from the rights referred to in Articles 17, 18, 20, 21, 22 and 23 subject to the conditions and safeguards referred to in Article 13 in so far as such rights are likely to render impossible or seriously impair the achievement of the specific purposes, and such derogations are necessary for the fulfilment of those purposes.

Amendment 32

Proposal for a regulation
Article 25 – paragraph 5

Text proposed by the Commission

Amendment

5. *Internal rules referred to in paragraphs 1, 3 and 4 shall be sufficiently clear and precise and subject to appropriate publication.*

deleted

Amendment 33

Proposal for a regulation Article 25 – paragraph 6

Text proposed by the Commission

6. If a restriction is imposed pursuant to *paragraphs 1 or 2*, the data subject shall be informed, in accordance with Union law, of the principal reasons on which the application of the restriction is based and of his or her right to lodge a complaint with the European Data Protection Supervisor.

Amendment

6. If a restriction is imposed pursuant to *paragraph 1*, the data subject shall be informed, in accordance with Union law, of the principal reasons on which the application of the restriction is based and of his or her right to lodge a complaint with the European Data Protection Supervisor.

Amendment 34

Proposal for a regulation Article 25 – paragraph 7

Text proposed by the Commission

7. If a restriction imposed pursuant to *paragraphs 1 or 2* is relied upon to deny access to the data subject, the European Data Protection Supervisor shall, when investigating the complaint, only inform him or her of whether the data have been processed correctly and, if not, whether any necessary corrections have been made.

Amendment

7. If a restriction imposed pursuant to *paragraph 1* is relied upon to deny access to the data subject, the European Data Protection Supervisor shall, when investigating the complaint, only inform him or her of whether the data have been processed correctly and, if not, whether any necessary corrections have been made.

Amendment 35

Proposal for a regulation Article 25 – paragraph 8

Text proposed by the Commission

8. Provision of the information referred to in paragraphs 6 and 7 and in Article 46(2) may be deferred, omitted or

Amendment

8. Provision of the information referred to in paragraphs 6 and 7 and in Article 46(2) may be deferred, omitted or

denied if it would cancel the effect of the restriction imposed pursuant to paragraph 1 *or 2*.

denied if it would cancel the effect of the restriction imposed pursuant to paragraph 1.

Amendment 36

Proposal for a regulation Article 31 – paragraph 5

Text proposed by the Commission

(5) Union institutions and bodies *may decide to* keep their records of processing activities in a central register. *In this case, they may also decide to* make the register publicly accessible.

Amendment

(5) Union institutions and bodies *shall* keep their records of processing activities in a central register. *For reasons of transparency, they should also make such a register public so that the individual concerned can consult it without prejudice to the rights of other concerned parties.*

Amendment 37

Proposal for a regulation Article 31 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. Data subjects shall be able to consult the central register referred to in paragraph 5 through the data protection officer of the controller.

Amendment 38

Proposal for a regulation Article 34 – paragraph 1

Text proposed by the Commission

Union institutions and bodies shall ensure the confidentiality of electronic communications, *in particular by securing their electronic communication networks.*

Amendment

Union institutions and bodies shall ensure the confidentiality of electronic communications *in accordance with Regulation (EU) 2017/XXXX.*

Justification

The specific legislative proposal concerning the confidentiality of electronic communication will be the Regulation based on Commission proposal COM(2017)0010 and should thus be referred to.

Amendment 39

Proposal for a regulation

Article 36

Text proposed by the Commission

Amendment

Article 36

deleted

Directories of users

1. Personal data contained in directories of users and access to such directories shall be limited to what is strictly necessary for the specific purposes of the directory.

2. Union institutions and bodies shall take all the necessary measures to prevent personal data contained in those directories, regardless of whether they are accessible to the public or not, from being used for direct marketing purposes.

Amendment 40

Proposal for a regulation

Article 42 – paragraph 2

Text proposed by the Commission

Amendment

2. Where an act referred to in paragraph 1 is of particular importance for the protection of individuals' rights and freedoms with regard to the processing of personal data, the Commission **may** also consult the European Data Protection Board. In such cases the European Data Protection Supervisor and the European Data Protection Board shall coordinate their work with a view to issue a joint opinion.

2. Where an act referred to in paragraph 1 is of particular importance for the protection of individuals' rights and freedoms with regard to the processing of personal data, the Commission **shall** also consult the European Data Protection Board. In such cases the European Data Protection Supervisor and the European Data Protection Board shall coordinate their work with a view to issue a joint opinion.

Amendment 41

Proposal for a regulation

Article 44 – paragraph 4

Text proposed by the Commission

4. The data protection officer **may** be a staff member of the Union institution **or** body, **or fulfil the tasks on the basis of a service contract.**

Amendment

4. The data protection officer **shall** be a staff member of the Union institution, body, **office or agency.**

Justification

The outsourcing of a data protection officer seems not suitable for a Union institution.

Amendment 42

Proposal for a regulation

Article 46 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) ensure that the fundamental rights and freedoms of data subjects are not adversely affected by processing operations;

Amendment 43

Proposal for a regulation

Article 48 – paragraph 1

Text proposed by the Commission

Amendment

1. A transfer of personal data to a third country or international organisation may take place where the Commission has **decided** pursuant to Article 45(3) of Regulation (EU) 2016/679 that an adequate level of protection is ensured in the third country, a territory or one or more specified sectors within that third country, or within the international organisation and the personal data are transferred solely to allow tasks covered by the competence of the controller to be carried out.

1. A transfer of personal data to a third country or international organisation may take place where the Commission has **adopted an implementing act** pursuant to Article 45(3) of Regulation (EU) 2016/679 **which stipulates** that an adequate level of protection is ensured in the third country, a territory or one or more specified sectors within that third country, or within the international organisation and the personal data are transferred solely to allow tasks covered by the competence of the

controller to be carried out. *The implementing act shall provide for a mechanism for a periodic review, at least every four years, which shall take into account all relevant developments in the third country or the international organisation. The implementing act shall further indicate its territorial and sectorial application and shall identify the supervisory authority. Chapter V of Regulation (EU) 2016/679 shall apply.*

Justification

The rules on transfer of personal data to third countries or third country institutions must be coherent with the relevant rules in the General Data Protection Regulation in order not to create any loopholes or legal inconsistencies. Notably, the review mechanism should be emphasised.

Amendment 44

Proposal for a regulation Article 54 – paragraph 1

Text proposed by the Commission

1. The European Parliament and the Council shall appoint the European Data Protection Supervisor by common accord for a term of five years, on the basis of a list drawn up by the Commission following a public call for candidates. The call for candidates shall enable all interested parties throughout the Union to submit their applications. The list of candidates ***drawn up by the Commission*** shall be public. ***On the basis of the list drawn up by the Commission***, the competent committee of the European Parliament may decide to hold a hearing in order to enable it to express a preference.

Amendment

1. The European Parliament and the Council shall appoint the European Data Protection Supervisor by common accord for a term of five years, on the basis of a list drawn up ***jointly*** by the ***European Parliament, the Council and the Commission*** following a public call for candidates. The call for candidates shall enable all interested parties throughout the Union to submit their applications. The list of candidates shall be public ***and shall consist of at least five candidates***. The competent committee of the European Parliament may decide to hold a hearing ***of the candidates*** in order to enable it to express a preference.

Amendment 45

Proposal for a regulation Article 54 – paragraph 2

Text proposed by the Commission

2. The list drawn up by the Commission from which the European Data Protection Supervisor shall be chosen shall be made up of persons whose independence is beyond doubt and who are acknowledged as having the experience and skills required to perform the duties of European Data Protection Supervisor, for example because they belong or have belonged to the supervisory authorities established under Article 41 of Regulation (EU) 2016/679.

Amendment

2. The list drawn up **jointly** by the **European Parliament, the Council and the Commission** from which the European Data Protection Supervisor shall be chosen shall be made up of persons whose independence is beyond doubt and who are acknowledged as having **expert knowledge in data protection as well as** the experience and skills required to perform the duties of European Data Protection Supervisor, for example because they belong or have belonged to the supervisory authorities established under Article 41 of Regulation (EU) 2016/679.

Amendment 46

Proposal for a regulation

Article 63 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. In cases where the data subject is a child, Member States shall provide for specific safeguards, in particular with regard to legal aid.

Justification

Children may be more vulnerable than adults and specific safeguard clauses, notably as regards legal aid protection should be foreseen in Member States to guarantee children's rights.

Amendment 47

Proposal for a regulation

Chapter IX a (new)

Text proposed by the Commission

Amendment

Chapter IXa

Article 70a

Review Clause

1. *No later than 1 June 2021, and every five years thereafter, the Commission shall present to the European Parliament a report on the application of this Regulation, accompanied, if necessary, by appropriate legislative proposals.*
2. *The ex-post evaluation outlined in paragraph 1 shall pay particular attention to the appropriateness of the scope of this Regulation, the consistency with other legislative acts in the field of data protection and assess, in particular, the implementation of Chapter V of this Regulation.*
3. *No later than 1 June 2021, and every five years thereafter, the Commission shall report to the European Parliament on the application of Chapter VIII of this Regulation and the penalties and sanctions applied.*

Justification

In the light of better law-making and in particular the effective use of ex-post evaluations to capture the whole legislative cycle, it is of particular interest to follow the transposition, implementation and enforcement of EU law, and more generally, to monitor the impact, operation and effectiveness of its law. A comprehensive review clause, requesting an appropriate evaluation on the application of the Regulation, its scope and the foreseen derogation of powers as well as constituting proportionate reporting obligations serves this purpose.

Amendment 48

Proposal for a regulation **Article 72 a (new)**

Text proposed by the Commission

Amendment

Article 72a

Review of Union legal acts

By 25 May 2021, the Commission shall review other legal acts adopted on the basis of the Treaties which regulate processing of personal data, in particular by agencies established under Chapters 4

and 5 of Title V of Part Three TFEU, in order to assess the need to align them with this Regulation and to make, where appropriate, the necessary proposals to amend those acts in order to ensure a consistent approach to the protection of personal data within the scope of this Regulation.

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data
References	COM(2017)0008 – C8-0008/2017 – 2017/0002(COD)
Committee responsible Date announced in plenary	LIBE 3.4.2017
Opinion by Date announced in plenary	JURI 3.4.2017
Rapporteur Date appointed	Angel Dzhambazki 28.2.2017
Discussed in committee	13.7.2017 7.9.2017
Date adopted	2.10.2017
Result of final vote	+: 17 –: 0 0: 4
Members present for the final vote	Max Andersson, Joëlle Bergeron, Marie-Christine Boutonnet, Jean-Marie Cavada, Mary Honeyball, Sylvia-Yvonne Kaufmann, Gilles Lebreton, Jiří Maštálka, Emil Radev, Julia Reda, Evelyn Regner, Pavel Svoboda, József Szájer, Axel Voss, Francis Zammit Dimech, Tadeusz Zwiefka
Substitutes present for the final vote	Isabella Adinolfi, Jens Rohde, Virginie Rozière, Tiemo Wölken
Substitutes under Rule 200(2) present for the final vote	Arne Lietz

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

17	+
ALDE	Jean-Marie Cavada, Jens Rohde
EFDD	Joëlle Bergeron
PPE	Emil Radev, Pavel Svoboda, József Szájer, Axel Voss, Francis Zammit Dimech, Tadeusz Zwiefka
S&D	Mary Honeyball, Sylvia-Yvonne Kaufmann, Arne Lietz, Evelyn Regner, Virginie Rozière, Tiemo Wölken
VERTS/ALE	Max Andersson, Julia Reda

0	-

4	0
EFDD	Isabella Adinolfi
ENF	Marie-Christine Boutonnet, Gilles Lebreton
GUE/NGL	Jiri Mastálka

Key to symbols:

+ : in favour

- : against

0 : abstention