



**2017/0002(COD)**

8.6.2017

**\*\*\*I**

## **DRAFT REPORT**

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))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Cornelia Ernst

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**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))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2017)0008),
  - having regard to Article 294(2) and Article 16(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0008/2017),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the contributions submitted by the Czech Chamber of Deputies, the Spanish Parliament and the Portuguese Parliament on the draft legislative act,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Legal Affairs (A8-0000/2017),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

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

#### **Recital 8**

*Text proposed by the Commission*

(8) In Declaration No 21 on the protection of personal data in the fields of judicial cooperation in criminal matters and police cooperation, annexed to the final act of the intergovernmental conference which

*Amendment*

(8) In Declaration No 21 on the protection of personal data in the fields of judicial cooperation in criminal matters and police cooperation, annexed to the final act of the intergovernmental conference which

adopted the Treaty of Lisbon, the conference acknowledged that specific rules on the protection of personal data and the free movement of personal data in the fields of judicial cooperation in criminal matters and police cooperation based on Article 16 TFEU could prove necessary because of the specific nature of those fields. ***This Regulation should therefore apply to Union agencies carrying out activities in the fields of judicial cooperation in criminal matters and police cooperation only to the extent that Union law applicable to such agencies does not contain specific rules on the processing of personal data.***

adopted the Treaty of Lisbon, the conference acknowledged that specific rules on the protection of personal data and the free movement of personal data in the fields of judicial cooperation in criminal matters and police cooperation based on Article 16 TFEU could prove necessary because of the specific nature of those fields.

Or. en

## Amendment 2

### 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, 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

#### *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, ***in so far as they are consistent with the provisions of Directive (EU) 2016/680.*** 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, 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

in the area of judicial cooperation in criminal matters and police cooperation.

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.

Or. en

### Amendment 3

#### 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 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.

Or. en

### Amendment 4

#### Proposal for a regulation

##### Recital 22

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

(22) When recipients established in the Union and subject to Regulation (EU) 2016/679 or Directive (EU) 2016/680, would like to have personal data transmitted to them by Union institutions and bodies, those recipients should ***demonstrate that the*** transmission is necessary for the attainment of their objective, is proportionate and does not go beyond what is necessary to attain that objective. Union institutions and bodies should demonstrate such necessity when they themselves initiate the transmission,

###### *Amendment*

(22) When recipients established in the Union and subject to Regulation (EU) 2016/679 or Directive (EU) 2016/680, would like to have personal data transmitted to them by Union institutions and bodies, those recipients should ***provide the controller with a reasoned request for transmission which should serve as a basis for the controller to assess whether that*** transmission is necessary for the attainment of their objective, is proportionate and does not go beyond what is necessary to attain that objective. Union

in compliance with the principle of transparency.

institutions and bodies should demonstrate such necessity when they themselves initiate the transmission, in compliance with the principle of transparency.

Or. en

## Amendment 5

### 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 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

##### *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 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 races. 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



certain associations or foundations the purpose of which is to permit the exercise of fundamental freedoms.

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.

Or. en

## **Amendment 6**

### **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.***

Or. en

## **Amendment 7**

### **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 Council<sup>15</sup>, 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*.

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<sup>15</sup> 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 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 Council<sup>15</sup>, 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.

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<sup>15</sup> 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).

Or. en

**Amendment 8**

**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*

*Amendment*

Legal acts adopted on the basis of the Treaties may impose restrictions

*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.

concerning specific principles and the rights of information, access to and rectification or erasure of personal data, the right to data portability 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.

Or. en

## **Amendment 9**

### **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***

*Amendment*

***deleted***

*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.*

Or. en

## **Amendment 10**

### **Proposal for a regulation Recital 39 a (new)**

*Text proposed by the Commission*

*Amendment*

**(39a) Regulation (EU) 2016/679 provides for controllers to demonstrate compliance by adherence to approved certification mechanisms. Likewise, Union institutions and bodies should be able to demonstrate compliance with this Regulation by obtaining certification in accordance with Article 42 of Regulation (EU) 2016/679.**

Or. en

## **Amendment 11**

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

*Text proposed by the Commission*

*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

(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 be able to make such a register public**.

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 establish a central register of records of their processing activities. For reasons of transparency, they should **make such a register public. Data subjects should have the possibility to consult that register through the data protection officer of the controller**.

Or. en

## Amendment 12

### Proposal for a regulation Recital 44

#### *Text proposed by the Commission*

(44) Union institutions and bodies should ensure the confidentiality of electronic communications as provided for by Article 7 of the Charter. In particular, Union institutions and bodies should ensure the security of their electronic communication networks, **protect the information related to end-users' terminal equipment accessing their publicly available websites and mobile applications in accordance with Regulation (EU) XXXX/XX [new ePrivacy Regulation]** and protect the personal data in directories of users.

#### *Amendment*

(44) Union institutions and bodies should ensure the confidentiality of electronic communications as provided for by Article 7 of the Charter. In particular, Union institutions and bodies should ensure the security of their electronic communication networks and protect the personal data in directories of users.

Or. en

## Amendment 13

### Proposal for a regulation Recital 50

#### *Text proposed by the Commission*

(50) Regulation (EU) 2016/679 established the European Data Protection Board as an independent body of the Union with legal personality. The Board should contribute to the consistent application of Regulation (EU) 2016/679 and Directive 2016/680 throughout the Union, including by advising the Commission. At the same time, the European Data Protection Supervisor should continue to exercise its supervisory and advisory functions in respect of all Union institutions and bodies, including on its own initiative or upon request. In order to ensure consistency of data protection rules throughout the Union, a consultation by the Commission should be obligatory ***following the adoption of*** legislative acts or during the preparation of delegated acts and implementing acts as defined in Article 289, 290 and 291 TFEU and ***following the adoption of*** recommendations and proposals relating to agreements with third countries and international organisations as provided for in Article 218 TFEU, which have an impact on the right to personal data protection. In such cases, the Commission should be obliged to consult the European Data Protection Supervisor, except when the Regulation (EU) 2016/679 provides for mandatory consultation of the European Data Protection Board, for example on adequacy decisions or delegated acts on standardised icons and requirements for certification mechanisms. Where the act in question is of particular importance for the protection of individuals' rights and freedoms with regard to the processing of personal data, the Commission should be able, in addition, to consult the European Data Protection Board. In those cases, the European Data Protection Supervisor

#### *Amendment*

(50) Regulation (EU) 2016/679 established the European Data Protection Board as an independent body of the Union with legal personality. The Board should contribute to the consistent application of Regulation (EU) 2016/679 and Directive 2016/680 throughout the Union, including by advising the Commission. At the same time, the European Data Protection Supervisor should continue to exercise its supervisory and advisory functions in respect of all Union institutions and bodies, including on its own initiative or upon request. In order to ensure consistency of data protection rules throughout the Union, a consultation by the Commission should be obligatory ***when adopting proposals for a legislative act*** or during the preparation of delegated acts and implementing acts as defined in Article 289, 290 and 291 TFEU and ***when adopting*** recommendations and proposals relating to agreements with third countries and international organisations as provided for in Article 218 TFEU, which have an impact on the right to personal data protection. In such cases, the Commission should be obliged to consult the European Data Protection Supervisor, except when the Regulation (EU) 2016/679 provides for mandatory consultation of the European Data Protection Board, for example on adequacy decisions or delegated acts on standardised icons and requirements for certification mechanisms. Where the act in question is of particular importance for the protection of individuals' rights and freedoms with regard to the processing of personal data, the Commission should be able, in addition, to consult the European Data Protection Board. In those cases, the European Data Protection Supervisor

should, as a member of the European Data Protection Board, coordinate its work with the latter with a view to issue a joint opinion. The European Data Protection Supervisor, and where applicable, the European Data Protection Board should provide its written advice within eight weeks. That time-frame should be shorter in case of urgency or otherwise appropriate, for example when the Commission is preparing delegated and implementing acts.

should, as a member of the European Data Protection Board, coordinate its work with the latter with a view to issue a joint opinion. The European Data Protection Supervisor, and where applicable, the European Data Protection Board should provide its written advice within eight weeks. That time-frame should be shorter in case of urgency or otherwise appropriate, for example when the Commission is preparing delegated and implementing acts.

Or. en

## Amendment 14

### Proposal for a regulation Recital 50 a (new)

*Text proposed by the Commission*

*Amendment*

***(50a) In accordance with Article 75 of Regulation (EU) 2016/679, the European Data Protection Supervisor will provide the secretariat of the European Data Protection Board.***

Or. en

## Amendment 15

### Proposal for a regulation Recital 65

*Text proposed by the Commission*

*Amendment*

(65) In certain instances, Union law provides for a model of coordinated supervision, shared between the European Data Protection Supervisor and the national supervisory authorities. ***Moreover, the European Data Protection Supervisor is the supervisory authority of Europol and a specific model of cooperation with the***

(65) In certain instances, Union law provides for a model of coordinated supervision, shared between the European Data Protection Supervisor and the national supervisory authorities. In order to improve the effective supervision and enforcement of substantive data protection rules, a single, coherent model of coordinated

***national supervisory authorities is established through a cooperation board with an advisory function.*** In order to improve the effective supervision and enforcement of substantive data protection rules, a single, coherent model of coordinated supervision should be introduced in the Union. The Commission should therefore, where appropriate, submit legislative proposals with a view to amending Union legal acts providing for a model of coordinated supervision, in order to align them with the coordinated supervision model of this Regulation. The European Data Protection Board should serve as a single forum for ensuring the effective coordinated supervision across the board.

supervision should be introduced in the Union. The Commission should therefore, where appropriate, submit legislative proposals with a view to amending Union legal acts providing for a model of coordinated supervision, in order to align them with the coordinated supervision model of this Regulation. The European Data Protection Board should serve as a single forum for ensuring the effective coordinated supervision across the board.

Or. en

## **Amendment 16**

### **Proposal for a regulation Article 2 – paragraph 1**

*Text proposed by the Commission*

1. This Regulation applies to the processing of personal data by all Union institutions and bodies ***insofar as such processing is carried out in the exercise of activities which fall, wholly or partially within the scope of Union law.***

*Amendment*

1. This Regulation applies to the processing of personal data by all Union institutions and bodies.

Or. en

## **Amendment 17**

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

*Text proposed by the Commission*

*Amendment*

**2a. This Regulation is without**



*prejudice to the specific rules, laid down for Union agencies established under Chapters 4 and 5 of Title V of Part Three TFEU, which particularise and complement the general rules laid down in this Regulation for the purposes mentioned in paragraphs 1 and 2, in so far as they are consistent with the provisions of Directive (EU) 2016/680.*

Or. en

## Amendment 18

### Proposal for a regulation

#### Article 3 – paragraph 1 – point d

*Text proposed by the Commission*

*Amendment*

*(d) the definition of ‘terminal equipment’ in point (1) of Article 1 of Commission Directive 2008/63/EC<sup>20</sup>.* *deleted*

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<sup>20</sup> *Commission Directive 2008/63/EC of 20 June 2008 on competition in the markets in telecommunications terminal equipment (OJ L 162 21.06.2008 p. 20).*

Or. en

#### *Justification*

*Due to the deletion of Article 35, this is not needed anymore.*

## Amendment 19

### Proposal for a regulation

#### Article 4 – paragraph 1 – point d

*Text proposed by the Commission*

*Amendment*

(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

(d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that *personal data that* are inaccurate, having regard to the purposes

the purposes for which they *were collected or for which they are further* processed, are erased or rectified without delay ('accuracy');

for which they *are* processed, are erased or rectified without delay ('accuracy');

Or. en

### *Justification*

*Aligning with GDPR.*

## **Amendment 20**

### **Proposal for a regulation Article 5 – paragraph 2**

*Text proposed by the Commission*

2. The tasks referred to in point (a) of paragraph 1 shall be laid down in Union law.

*Amendment*

2. The tasks referred to in point (a) of paragraph 1 shall be laid down in Union law. ***The basis for the processing referred to in point (b) of paragraph 1 shall be laid down in Union or Member State law to which the controller is subject.***

Or. en

## **Amendment 21**

### **Proposal for a regulation Article 8 a (new)**

*Text proposed by the Commission*

*Amendment*

#### ***Article 8a***

***Transfer of personal data between Union institutions and bodies***

***Without prejudice to Articles 4, 5, 6 and 10:***

***1. Personal data shall only be transferred within or to other Union institutions or bodies if the data are necessary for the legitimate performance of tasks covered by the competence of the recipient.***

***2. Where the data are transferred following a request from the recipient, both the controller and the recipient shall bear the responsibility for the legitimacy of this transfer.***

***The controller shall be required to verify the competence of the recipient and to make a provisional evaluation of the necessity for the transfer of the data. If doubts arise as to this necessity, the controller shall seek further information from the recipient.***

***The recipient shall ensure that the necessity for the transfer of the data can be subsequently verified.***

***3. The recipient shall process the personal data only for the purposes for which they were transmitted.***

Or. en

#### *Justification*

*This is a reintroduction of the old Article 7, as recommended by the EDPS.*

#### **Amendment 22**

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

##### **Article 9 – paragraph 1 – introductory part**

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

1. Without prejudice to Articles 4, 5, 6 ***and 10***, personal data shall only be transmitted to recipients established in the Union and subject to Regulation (EU) 2016/679 or to the national law adopted pursuant to Directive (EU) 2016/680, if the ***recipient*** establishes:

###### *Amendment*

1. Without prejudice to Articles 4, 5, 6, ***10, 14, 15(3) and 16(4)***, personal data shall only be transmitted to recipients established in the Union and subject to Regulation (EU) 2016/679 or to the national law adopted pursuant to Directive (EU) 2016/680, if the ***controller*** establishes, ***on the basis of a reasoned request by the recipient***:

Or. en

## 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 necessary to have the data transmitted, ***in particular where the transmission serves a public interest such as transparency or good administration, and it is proportionate to the purposes of the transmission.***

Or. en

## Amendment 24

### Proposal for a regulation

#### Article 10 – paragraph 3

*Text proposed by the Commission*

3. Personal data referred to in paragraph 1 may be processed for the purposes referred to in point (h) of paragraph 2 when those data are processed by or under the responsibility of a professional subject to the obligation of professional secrecy under Union ***law.***

*Amendment*

3. Personal data referred to in paragraph 1 may be processed for the purposes referred to in point (h) of paragraph 2 when those data are processed by or under the responsibility of a professional subject to the obligation of professional secrecy under Union ***or Member State law or rules established by national competent bodies or by another person also subject to an obligation of secrecy under Union or Member State law or rules established by national competent bodies.***

Or. en

*Justification*

*This paragraph should be fully aligned with GDPR.*

## Amendment 25

### 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 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:

*Amendment*

1. Legal acts adopted on the basis of the Treaties may restrict the application of Articles 14 to 22 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:

Or. en

## Amendment 26

### Proposal for a regulation

#### Article 25 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. In particular, any legislative measure 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.*

Or. en

### *Justification*

*Aligning with GDPR Article 23(2).*

### **Amendment 27**

#### **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*

Or. en

## Amendment 28

### 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.

Or. en

## Amendment 29

### 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.

Or. en

## Amendment 30

### Proposal for a regulation Article 25 – paragraph 5

*Text proposed by the Commission*

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

*Amendment*

*deleted*

Or. en

## Amendment 31

### 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.

Or. en

## Amendment 32

### 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

*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.

any necessary corrections have been made.

Or. en

### **Amendment 33**

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

*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. en

### **Amendment 34**

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

#### **Article 26 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Adherence to approved certification mechanisms as referred to in Article 42 of Regulation (EU) 2016/679 may be used as an element by which to demonstrate compliance with the obligations of the controller.***

Or. en

*Justification*

*Aligning with GDPR.*

### **Amendment 35**

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

#### **Article 27 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2a. An approved certification mechanism pursuant to Article 42 of Regulation (EU) 2016/679 may be used as an element to demonstrate compliance with the requirements set out in paragraphs 1 and 2 of this Article.**

Or. en

*Justification*

*Aligning with GDPR.*

### **Amendment 36**

#### **Proposal for a regulation Article 28 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

3. The data subject may exercise his or her rights under this Regulation in respect of and against **one or more** of the **joint** controllers, **taking into account their roles as determined in the terms of the arrangement referred to in paragraph 1.**

3. **Irrespective of the terms of the arrangement referred to in paragraph 1,** the data subject may exercise his or her rights under this Regulation in respect of and against **each** of the controllers.

Or. en

*Justification*

*Aligning with GDPR.*

### **Amendment 37**

#### **Proposal for a regulation Article 31 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

5. Union institutions and bodies **may decide to** keep their records of processing activities in a central register. **In this case,**

5. Union institutions and bodies **shall** keep their records of processing activities in a central register. **They shall** make the

*they may also decide to* make the register publicly accessible.

register publicly accessible.

Or. en

### **Amendment 38**

#### **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 through the data protection officer of the controller.**

Or. en

### **Amendment 39**

#### **Proposal for a regulation Chapter 4 – section 2 – title**

*Text proposed by the Commission*

*Amendment*

**SECURITY OF PERSONAL DATA AND  
CONFIDENTIALITY OF ELECTRONIC  
COMMUNICATIONS**

**SECURITY OF PERSONAL DATA**

Or. en

*Justification*

*"Security of personal data" and "Confidentiality of communications" should be two separate sections. This improves the clarity of the structure of the text.*

### **Amendment 40**

#### **Proposal for a regulation Article 33 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**3a. Adherence to an approved certification mechanism as referred to in Article 42 of Regulation (EU) 2016/679 may be used as an element by which to demonstrate compliance with the requirements set out in paragraph 1 of this Article.**

Or. en

*Justification*

*Aligning with GDPR.*

#### **Amendment 41**

#### **Proposal for a regulation Article 34**

*Text proposed by the Commission*

*Amendment*

**Article 34**

**deleted**

***Confidentiality of electronic communications***

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

Or. en

*Justification*

*Moved to the new section "Confidentiality of communications" for clarity of structure.*

#### **Amendment 42**

#### **Proposal for a regulation Article 35**

*Text proposed by the Commission*

*Amendment*

**Article 35**

**deleted**

***Protection of information related to end-users' terminal equipment***

***Union institutions and bodies shall protect the information related to end-users' terminal equipment accessing their publicly available websites and mobile applications in accordance with Regulation (EU) XX/XXXX [new ePrivacy Regulation], in particular Article 8 thereof.***

Or. en

**Amendment 43**

**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.***

Or. en

*Justification*

*Moved to the new section "Confidentiality of communications" for clarity of structure.*

## Amendment 44

### Proposal for a regulation Chapter 4 – section 2 a (new) – title

*Text proposed by the Commission*

*Amendment*

#### **CONFIDENTIALITY OF ELECTRONIC COMMUNICATIONS**

Or. en

#### *Justification*

*"Security of personal data" and "Confidentiality of communications" should be 2 separate sections. This improves the clarity of the structure of the text. The articles here are articles 34 and 36 as proposed by the Commission.*

## Amendment 45

### Proposal for a regulation Article 38 a (new)

*Text proposed by the Commission*

*Amendment*

#### **Article 38a**

#### **Confidentiality of electronic communications**

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

Or. en

#### *Justification*

*"Security of personal data" and "Confidentiality of communications" should be 2 separate sections. This improves the clarity of the structure of the text. The articles here are articles 34 and 36 as proposed by the Commission.*

## Amendment 46

### Proposal for a regulation Article 38 b (new)

*Text proposed by the Commission*

*Amendment*

#### **Article 38b**

##### **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.**

Or. en

#### *Justification*

*"Security of personal data" and "Confidentiality of communications" should be 2 separate sections. This improves the clarity of the structure of the text. The articles here are articles 34 and 36 as proposed by the Commission.*

## Amendment 47

### Proposal for a regulation Article 42 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. **Following the adoption of** proposals for a legislative act and **of** recommendations or proposals to the Council pursuant to Article 218 TFEU and when preparing delegated acts or implementing acts, **which have an impact on** the protection of **individuals'** rights and freedoms with regard to the processing of personal data, the Commission shall consult the European Data Protection

1. **When adopting** proposals for a legislative act and recommendations or proposals to the Council pursuant to Article 218 TFEU and when preparing delegated acts or implementing acts **on legislative and administrative measures relating to** the protection of **natural persons'** rights and freedoms with regard to the processing of personal data, the Commission shall consult the European

Supervisor.

Data Protection Supervisor.

Or. en

#### **Amendment 48**

##### **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 or body.

Or. en

#### **Amendment 49**

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

##### **Article 46 – paragraph 1 – point g a (new)**

*Text proposed by the Commission*

*Amendment*

**(ga) ensure that the rights and freedoms of data subjects are not adversely affected by processing operations.**

Or. en

#### **Amendment 50**

##### **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

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.

Regulation (EU) 2016/679 *or Article 36(3) of Regulation (EU) 2016/680, within the respective scope of those Regulations*, 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.

Or. en

## Amendment 51

### Proposal for a regulation Article 49 – paragraph 1

#### *Text proposed by the Commission*

1. In the absence of a decision pursuant to Article 45(3) of Regulation (EU) 2016/679, a controller or processor may transfer personal data to a third country or an international organisation only if the controller or processor has provided appropriate safeguards, and on condition that enforceable data subject rights and effective legal remedies for data subjects are available.

#### *Amendment*

1. In the absence of a decision pursuant to Article 45(3) of Regulation (EU) 2016/679 *or Article 36(3) of Regulation (EU) 2016/680, within the respective scope of those Regulations*, a controller or processor may transfer personal data to a third country or an international organisation only if the controller or processor has provided appropriate safeguards, and on condition that enforceable data subject rights and effective legal remedies for data subjects are available.

Or. en

## Amendment 52

### Proposal for a regulation Article 51 – paragraph 1 – introductory part

#### *Text proposed by the Commission*

1. In the absence of a decision

#### *Amendment*

1. In the absence of a decision

pursuant to Article 45(3) of Regulation (EU) 2016/679, or of appropriate safeguards pursuant to Article 49, a transfer or a set of transfers of personal data to a third country or an international organisation shall take place only on one of the following conditions:

pursuant to Article 45(3) of Regulation (EU) 2016/679 **or Article 36(3) of Regulation (EU) 2016/680, within the respective scope of those Regulations**, or of appropriate safeguards pursuant to Article 49, a transfer or a set of transfers of personal data to a third country or an international organisation shall take place only on one of the following conditions:

Or. en

### **Amendment 53**

#### **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 listed candidates*** in order to enable it to express a preference.

Or. en

### **Amendment 54**

#### **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 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 ***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.

Or. en

**Amendment 55**

**Proposal for a regulation  
Article 55 – paragraph 4**

*Text proposed by the Commission*

4. The European Data Protection Supervisor shall be assisted by a Secretariat. The officials and other staff members of the Secretariat shall be appointed by the European Data Protection Supervisor and their superior shall be the European Data Protection Supervisor. They shall be subject exclusively to his or her direction. Their numbers shall be decided each year as part of the budgetary procedure.

*Amendment*

4. The European Data Protection Supervisor shall be assisted by a Secretariat. The officials and other staff members of the Secretariat shall be appointed by the European Data Protection Supervisor and their superior shall be the European Data Protection Supervisor. They shall be subject exclusively to his or her direction. Their numbers shall be decided each year as part of the budgetary procedure. ***Article 75(2) of Regulation (EU) 2016/679 shall apply to the staff of the European Data Protection Supervisor involved in carrying out the tasks conferred on the European Data Protection Board by Union law.***

Or. en

## Amendment 56

### Proposal for a regulation

#### Article 58 – paragraph 1 – point a

*Text proposed by the Commission*

(a) monitor and enforce the application of this Regulation and other Union acts relating to the protection of natural persons with regard to the processing of personal data by a Union institution or body, ***with the exception of the processing of personal data by the Court of Justice of the European Union acting in its judicial capacity;***

*Amendment*

(a) monitor and enforce the application of this Regulation and other Union acts relating to the protection of natural persons with regard to the processing of personal data by a Union institution or body;

Or. en

## Amendment 57

### Proposal for a regulation

#### Article 59 – paragraph 3 – point b a (new)

*Text proposed by the Commission*

*Amendment*

***(ba) to authorise or not the processing operations as referred to in Article 40(4);***

Or. en

## Amendment 58

### Proposal for a regulation

#### Article 72 a (new)

*Text proposed by the Commission*

*Amendment*

***Article 72 a***

***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 proposal to amend those acts in order to ensure a consistent approach to the protection of personal data within the scope of this Regulation.*

Or. en

## EXPLANATORY STATEMENT

### I. Context of the Proposal

Article 16(1) of the Treaty on the Functioning of the European Union (“TFEU”), as introduced by the Lisbon Treaty, establishes the principle that everyone has the right to the protection of personal data concerning them. Moreover, in Article 16(2) TFEU, the Lisbon Treaty introduced a specific legal basis for adopting rules on the protection of personal data. Article 8 of the Charter of Fundamental Rights of the European Union enshrines the protection of personal data as a fundamental right, and Article 7 enshrines the right to respect for everyone’s private and family life, home and communications.

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. It was complemented by Decision No 1247/2002/EC.

On 27 April 2016, the European Parliament and the Council adopted the General Data Protection Regulation (EU) 2016/679 (“GDPR”), which will become applicable on 25 May 2018. This Regulation, in Article 98 calls for Regulation (EC) No 45/2001 to be adapted to the principles and rules laid down in the GDPR 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. Also on 27 April 2016, the European Parliament and the Council adopted the Directive (EU) 2016/680 (“Directive”) 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. This Directive provides for a comprehensive framework for the protection of personal data in the area of law enforcement. Its Article 62 calls for Union legislation regulating the processing of personal data by competent authorities to be adapted to the Directive. Nevertheless, some Union agencies operating in the area of law enforcement continue to have standalone regimes for the protection of personal data.

It is consistent with the coherent approach to personal data protection throughout the Union to align, as far as possible, the data protection rules for Union institutions, bodies, offices and agencies with the data protection rules adopted for the Member States. Whenever the provisions of the proposal are based on the same concept as the provisions of the GDPR, these two provisions should be interpreted homogeneously, in particular because the scheme of the proposal should be understood as the equivalent of the scheme of the GDPR.

The review of the Regulation (EC) No 45/2001 (“Regulation”) also takes into account the results of enquiries and stakeholder consultations, and the evaluation study on its application over the last 15 years.

## II. Rapporteur's changes

The Rapporteur generally believes that the proposed revision is a big step towards harmonizing data protection rules and provides a sound basis to work on.

However, the Rapporteur is disappointed that the European Commission did not opt for a full-blown single instrument covering all data processing operations of all Union bodies, agencies and institutions, thus missing a historical chance to create one strong and uniform standard for the protection of the fundamental right to data protection. The rapporteur believes that Union's citizens deserve such a clear uniform standard and has hence proposed to clarify the scope of this Regulation.

In order to ensure a strong and coherent framework for data protection throughout the Union, this Regulation should be applicable to all processing of personal data that is performed by any Union institution, body, office, or agency. At the same time, your Rapporteur acknowledges that the legislator has, on 27 April 2016, opted for a double-track approach as regards processing for law enforcement purposes. In so far as processing of personal data for law enforcement purposes by Union agencies is consistent with the rules laid down in Directive (EU) 2016/680, the standalone regimes for certain agencies should continue to apply, until brought in line with this Regulation.

Your Rapporteur has also undertaken a stringent alignment of this revision of the Regulation with the GDPR in order to streamline as much as possible the two texts, thus giving expression to the idea that the Union is held to the same standards when it comes to data protection as the Member States. The Rapporteur has therefore submitted a number of amendments aiming at streamlining the two instruments. Divergences between this Regulation and the GDPR should be well justified and kept to a minimum.

In the recent years, on the matter of the relation of Regulation (EC) 45/2001 and Regulation (EC) 1049/2001, the European Court of Justice (“ECJ”) has held in several cases that there is a balance to be found between the two fundamental rights and has implicitly appealed to the legislator to clarify better the link between Article 4 of the Regulation (EC) 1049/2001 and article 8 (now 9) of the Regulation (EC) 45/2001. The rapporteur has taken the approach to introduce in the text several elements of the recent court cases - Bavarian Lager, Dennekamp, ClientEarth - which essentially lay out the current ECJ case law elements and aim to specify some aspects that were brought up by the ECJ and the Advocate General itself in the several verdicts.

With regard to the exercise of rights of the data subject, the GDPR requires that restrictions to the exercise of these rights must be based on legal acts. Consequently, the Rapporteur proposes to delete here the possibility for Union institutions, bodies, offices and agencies to restrict the exercise of data subject's rights by way of internal rules.

Under Regulation (EC) 45/2001 required the Data Protection Officer (“DPO”) of Union institutions to keep a register of processing activities. The rapporteur believes that there is an added value in obliging EU institutions, bodies, offices and agencies to keep a central register of processing operations. Data subjects should be able to consult that register through the DPO.

The GDPR provides for the possibility of controllers to demonstrate compliance with the Regulation by adherence to approved certification mechanisms or codes of conduct. While your rapporteur believes that codes of conduct are not appropriate for public administration, she proposes to insert the necessary provisions for controllers under this Regulation to demonstrate compliance by way of adhering to approved certification mechanisms.

Your Rapporteur believes in the enormous contribution of the European Data Protection Supervisor (“EDPS”) in upholding the provisions of the Regulation, and has therefore kept the wording of the Regulation (EC) 45/2001 in allowing the Commission to consult the EDPS in the preparatory phases of adopting a proposal, leaving the Commission enough leeway, thus respecting its right of initiative. The rapporteur notes that independent supervision of data protection rules is a requirement of the Treaties. Accordingly, all institutions and bodies, including the Court of Justice, should be subject to independent supervision by the EDPS. In order to safeguard the independence of the EDPS, the Rapporteur proposes a slight modification to the nomination procedure.

The Commission proposal includes provisions concerning confidentiality of communications. The Rapporteur believes that in general, Union legislation on this matter should be applicable to Union institutions, bodies, offices and agencies as well. Only additional rules to particularise and complement the general framework should be inserted here. These rules should be part of a separate section of the text.

Finally, your Rapporteur welcomes the inclusion of the possibility of the EDPS to fine those Union institutions, bodies and agencies which do not uphold the Regulation's strict provisions, thus sending a strong signal to the data subjects and holding the Union to an equally high moral and legal obligation as the Member States' administrations.