

eBay Inc. position

Legal Affairs Committee draft opinion on the General Data Protection Regulation

eBay Inc. thanks Marielle Gallo MEP work for the Legal Affairs Committee on the General Data Protection Regulation proposal. We believe the draft opinion reinforces legal certainty and streamlines the general rules affecting data processing for companies.

In particular, we very much welcome amendments 8 and 36 (data portability); amendments 12 and 48 (data breach notifications) and amendment 71 (technology neutrality).

While a lot of other amendments clearly improve the Regulation requirements, eBay Inc. hereby suggests some additional changes, in particular on the definition of consent, the definition of main establishment, the extraterritorial scope of the Regulation, the compatibility of purposes, the processing of data relating to criminal convictions, the right to be forgotten and on administrative requirements, that we think fulfil the objectives set out by the rapporteur.

Definition and conditions for consent

eBay believes that requiring explicit consent in every situation where consent forms the legal basis for processing personal data is too strict and creates an unnecessary obstacle to online and mobile business models. Often, consent may be inferred from the user's action or request for a service. Therefore, eBay proposes a context-based approach to consent to avoid 'click-fatigue' amongst consumers and to improve their user experience. Furthermore, we propose the deletion of Article 7.4 as it could unjustifiably forbid the use of consent for certain businesses. The objective of this article is better achieved through the condition that consent shall only be valid if it is 'freely given'.

Recital 25

Text proposed by the Commission

Amendment

(25) Consent should be given **explicitly** by any appropriate method enabling a freely given specific and informed **indication of the data subject's wishes, either by a statement or by a clear affirmative action by the data subject, ensuring that individuals are aware that they give their consent to the processing of personal data, including by ticking a box when visiting an Internet website or by any other statement** or conduct which **clearly indicates in this context the data subject's acceptance of the proposed processing of their personal data. Silence or inactivity** should therefore not constitute consent. Consent should cover all processing activities carried out for the same purpose or purposes. **If the data subject's consent is to be given following an electronic request, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided.**

(25) Consent should be given by any appropriate method enabling a freely given specific and informed **expression of will, either by a statement or an action** or conduct which, **in view of the context and circumstances at the time consent is required, signifies the data subject's agreement to the processing of the personal data. Inactivity** should therefore not constitute consent. Consent should cover all processing activities carried out for the same purpose or purposes.

Recital 34

Text proposed by the Commission

Amendment

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

Deleted

Article 4 – paragraph 1 – point 8

Text proposed by the Commission

Amendment

(8) 'the data subject's consent' means any **freely given** specific, informed **and explicit indication of his or her wishes by which the data subject, either by a statement or by a clear affirmative action, signifies agreement to personal data relating to them being processed;**

(8) 'the data subject's consent' means any **free**, specific, **and informed expression of will, either by a statement or an action, which, in view of the context and circumstances at the time consent is required, signifies the data subject's agreement to the processing of the personal data;**

Article 7 – paragraph 4

Text proposed by the Commission

Amendment

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

Deleted

Main establishment and one-stop-shop

In order to reinforce legal certainty and avoid disputes over Data Protection Authorities competences, we believe it should be the controller's responsibility to designate its main establishment, and we suggest further clarification of the criteria for that designation. Such criteria should be similar to the checklist used by the European Commission in determining the lead data protection authority for the approval of Binding Corporate Rules¹. Secondly, it should be clarified that the designation of an establishment for data protection compliance purposes should be without prejudice to such designation for other purposes of EU law. Finally, eBay Inc. strongly supports the introduction of a 'one-stop-shop' approach with respect to the competence of the lead data protection authority in the Member States where the company has its main establishment, as it allows companies to operate in multiple Member States, while streamlining companies' relationship with enforcement authorities.

¹ European Commission's DG Justice Guidance on how to designate the lead authority in the framework of Binding Corporate Rules, accessible at: http://ec.europa.eu/justice/policies/privacy/binding_rules/designation_authority_en.htm

Recital 27

Text proposed by the Commission

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

Amendment

The main establishment of **an enterprise or group of undertakings** in the Union should be **designated** according to objective criteria and should imply the effective and real exercise of management activities determining the main decisions as to **data** processing through stable arrangements. This criterion **shall apply both to data controllers and data processors** and should not depend whether the processing of personal data is actually carried out at that location; the presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute such main establishment and are therefore no determining criteria for a main establishment. **Objective criteria for the designation of main establishment include the global or European headquarters of an enterprise or group of undertakings; the country where a group company of an enterprise or group of undertakings established on the territory of the European Union has delegated data protection responsibilities with respect to data processing subject to this Regulation (delegated data protection responsibilities may be inferred from formal arrangements between group companies as well as management decisions or other measures indicating the intention to centralise data protection responsibilities within the enterprise or group, such as the appointment of a group data protection officer or the designation of group compliance responsibilities); the legal entity which takes the most decisions in terms of purposes and means of data processing in group companies established in multiple Member States; or the group company which is best placed (in terms of management function and administrative requirements) to deal with the application and to enforce the group's compliance framework, such as the group's binding corporate rules.**

Recital (28 a new)

Text proposed by the Commission

Amendment

(28 a new) The designation of an establishment for data protection compliance purposes should be without prejudice to such designation for other purposes of European Union law such as tax, insolvency and other compliance purposes.

Article 4 – paragraph 1 - point 13

Text proposed by the Commission

Amendment

(13) 'main establishment' means **as regards the controller**, the place of **its** establishment in the Union where the main decisions as to **the purposes, conditions and means** of the processing of personal data are taken; **if no decisions as to the purposes, conditions and means of the processing of personal data are taken in the**

(13) 'main establishment' means the place of establishment **of the controller, the processor, the enterprise or group of companies** in the Union where the main decisions as to the processing of personal data are taken; **The controller should designate its main establishment based on objective criteria such as the**

Union, the main establishment is the place where the main processing activities in the context of the activities of an establishment of a controller in the Union take place. As regards the processor, 'main establishment' means the place of its central administration in the Union;

global or European headquarters of an enterprise or group of undertakings; the country where a group company of an enterprise or group of undertakings has delegated data protection responsibilities; the legal entity which takes the most decisions in terms of purposes and means of data processing in group companies established in multiple Member States; or the group company which is best placed to deal with the application and to enforce the group's compliance framework, such as the group's binding corporate rules.

Article 51 – paragraph 2

Text proposed by the Commission

2. Where the processing of personal data takes place in the context of the activities of an establishment of **a controller or a processor** in the Union, and the **controller or processor** is established in more than one Member State, the supervisory authority of the main establishment **of the controller or processor** shall **be competent** for the supervision of the processing activities of the **controller or the processor** in all Member States, without prejudice to the provisions of Chapter VII of this Regulation.

Amendment

2. Where the processing of personal data takes place in the context of the activities of an establishment of **an enterprise or group of undertakings** in the Union, and the **enterprise or group of undertakings** is established in more than one Member State, the supervisory authority of the main establishment shall **have final competence** for the supervision of the processing activities of the **enterprise or group of undertakings** in all Member States, without prejudice to the provisions of Chapter VII of this Regulation.

Extraterritorial scope of the Regulation

eBay acknowledges that it is desirable to have companies based outside of the EU respect EU data protection standards when processing personal data of EU citizens. However, in a cross-border context, we believe that the term 'offering' of goods and services does not constitute a valid legal basis for determining the applicable law and jurisdiction. In accordance with European Court of Justice jurisprudence, we suggest replacing the word 'offering' in Article 3.2(a) with 'targeting' or 'directing' goods or services and to clarify in corresponding recitals that the mere availability of the controller's website to a data subject residing in the Union is insufficient to trigger the application of EU data protection laws.

Recital 20

Text proposed by the Commission

In order to ensure that individuals are not deprived of the protection to which they are entitled under this Regulation, the processing of personal data of data subjects residing in the Union by a controller not established in the Union should be subject to this Regulation where the processing activities are related to the offering of goods or services to such data subjects, or to the monitoring of the behaviour of such data subjects.

Amendment

In order to ensure that individuals are not deprived of the protection to which they are entitled under this Regulation, the processing of personal data of data subjects residing in the Union by a controller not established in the Union should be subject to this Regulation where the processing activities are related to the offering of goods or services **expressly targeted** to such data subjects, or to the monitoring of the behaviour of such data subjects. **The mere availability of goods and services from third countries to data subjects residing in the Union should not trigger the application of EU data protection legislation.**

Article 3

Text proposed by the Commission

1. This Regulation applies to the processing of personal

Amendment

1. This Regulation applies to the processing of personal

data in the context of the activities of an establishment of a controller **or** a processor in the Union.

2. This Regulation applies to the processing of personal data of data subjects residing in the Union by a controller not established in the Union, where the processing activities are related to:

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

(b) the monitoring of their behaviour.

3. This Regulation applies to the processing of personal data by a controller not established in the Union, but in a place where the national law of a Member State applies by virtue of public international law.

data in the context of the activities of an establishment of a controller, a processor **or enterprise** in the Union.

2. This Regulation applies to the processing of personal data of data subjects residing in the Union by a controller not established in the Union, where the processing activities are related to:

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

(b) the monitoring of their behaviour.

3. This Regulation applies to the processing of personal data by a controller not established in the Union, but in a place where the national law of a Member State applies by virtue of public international law.

Compatibility of purposes

In order to avoid legal uncertainty when determining ‘compatibility’ of purposes, we suggest inserting in Article 5 criteria similar to Article 9.2 of the current Dutch Data Protection Act: similarity of purpose, nature of the data, consequences for the data subject, and adequate safeguards to protect the interests of the data subject. Furthermore, we would like to point out that Article 5(b) (prohibiting further processing in a way incompatible with initial purposes) and Article 6.4 (detailing the conditions for further processing of personal data which purpose is not compatible with the one for which the personal data have been initially collected) are inconsistent. We advise adding the objective of Article 6.4 to the compatibility criteria as suggested for Article 5.

Recital 40

Text proposed by the Commission

The processing of personal data for other purposes should be only allowed where the processing is compatible with those purposes for which the data have been initially collected, in particular where the processing is necessary for historical, statistical or scientific research purposes.

Where the other purpose is not compatible with the initial one for which the data are collected, the controller should obtain the consent of the data subject for this other purpose or should base the processing on another legitimate ground for lawful processing, in particular where provided by Union law or the law of the Member State to which the controller is subject. In any case, the application of the principles set out by this Regulation and in particular the information of the data subject on those other purposes should be ensured.

Amendment

The processing of personal data for other purposes should be only allowed where the processing is compatible with those purposes for which the data have been initially collected (**‘further processing’**), in particular where the processing is necessary for historical, statistical or scientific research purposes. **The further processing of personal data shall be deemed compatible if the further processing is based on the consent of the data subject, is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract, is necessary for compliance with a legal obligation to which the controller is subject, or is necessary in order to protect the vital interests of the data subject. When determining the compatibility between the purpose for which the data were collected and the purposes of the further processing necessary for the performance of a task carried out in the public interest, in the exercise of official authority vested in the controller or necessary for the purposes of the legitimate interests pursued by a controller, the controller shall take into account: the relationship between the purpose of the intended processing and the purpose for which the data were obtained, the nature of the data concerned, the consequences of the further processing for the data subject, and the extent to which appropriate measures and safeguards have been put in place to protect the interests of the data subject.** In any case, the application of the principles set out by this Regulation and in particular the information of the data subject on those other purposes should be ensured.

Article 5

Text proposed by the Commission

Personal data must be:

- (a) processed lawfully, fairly and in a transparent manner in relation to the data subject;
- (b) collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes;
- (c) adequate, relevant, and limited to the minimum necessary in relation to the purposes for which they are processed; they shall only be processed if, and as long as, the purposes could not be fulfilled by processing information that does not involve personal data;
- (d) accurate and kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay;
- (e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the data will be processed solely for historical, statistical or scientific research purposes in accordance with the rules and conditions of Article 83 and if a periodic review is carried out to assess the necessity to continue the storage;
- (f) processed under the responsibility and liability of the controller, who shall ensure and demonstrate for each processing operation the compliance with the provisions of this Regulation.

Amendment

1. Personal data must be:

- (a) processed lawfully, fairly and in a transparent manner in relation to the data subject;
- (b) collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes;
- (c) adequate, relevant, and limited to the minimum necessary in relation to the purposes for which they are processed; they shall only be processed if, and as long as, the purposes could not be fulfilled by processing information that does not involve personal data;
- (d) accurate and kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay;
- (e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the data will be processed solely for historical, statistical or scientific research purposes in accordance with the rules and conditions of Article 83 and if a periodic review is carried out to assess the necessity to continue the storage;
- (f) processed under the responsibility and liability of the controller, who shall ensure and demonstrate for each processing operation the compliance with the provisions of this Regulation.

2. *The further processing of personal data for other purposes than the purpose or purposes for which the data were collected shall be deemed compatible if the further processing has a legal basis in one of the grounds referred to in points (a) to (d) of paragraph 1 of Article 6.*

3. *Where the further processing of personal data is based on the grounds referred to in points (e) or (f) of paragraph 1 of Article 6, the controller shall take into account:*

- (a) *the relationship between the purpose of the intended processing and the purpose for which the data were obtained;***
- (b) *the nature of the data concerned;***
- (c) *the consequences of the further processing for the data subject; and***
- (d) *the extent to which appropriate measures and safeguards have been put in place to protect the interests of the data subject.***

Article 6

Text proposed by the Commission

1. Processing of personal data shall be lawful only if and to the extent that at least one of the following applies:
- (a) the data subject has given consent to the processing of their personal data for one or more specific purposes;

Amendment

1. Processing of personal data shall be lawful only if and to the extent that at least one of the following applies:
- (a) the data subject has given consent to the processing of their personal data for one or more specific purposes;

(b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;

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

(d) processing is necessary in order to protect the vital interests of the data subject;

(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;

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

2. Processing of personal data which is necessary for the purposes of historical, statistical or scientific research shall be lawful subject to the conditions and safeguards referred to in Article 83.

3. The basis of the processing referred to in points (c) and (e) of paragraph 1 must be provided for in:

(a) Union law, or

(b) the law of the Member State to which the controller is subject.

The law of the Member State must meet an objective of public interest or must be necessary to protect the rights and freedoms of others, respect the essence of the right to the protection of personal data and be proportionate to the legitimate aim pursued.

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

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the conditions referred to in point (f) of paragraph 1 for various sectors and data processing situations, including as regards the processing of personal data related to a child.

(b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;

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

(d) processing is necessary in order to protect the vital interests of the data subject;

(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;

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

2. Processing of personal data which is necessary for the purposes of historical, statistical or scientific research shall be lawful subject to the conditions and safeguards referred to in Article 83.

3. The basis of the processing referred to in points (c) and (e) of paragraph 1 must be provided for in:

(a) Union law, or

(b) the law of the Member State to which the controller is subject.

The law of the Member State must meet an objective of public interest or must be necessary to protect the rights and freedoms of others, respect the essence of the right to the protection of personal data and be proportionate to the legitimate aim pursued.

4. Deleted (transferred to Art. 5.2)

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the conditions referred to in point (f) of paragraph 1 for various sectors and data processing situations, including as regards the processing of personal data related to a child.

Processing of data relating to criminal convictions

While we welcome paragraph 2 of Article 9 which lists exceptions to the prohibition of processing personal data that are related to criminal convictions, the Regulation requires a *law* of the Member State or the Union authorizing the processing of criminal data. However, in most cases, such authorizations currently exist in the national data protection acts, which implement Directive 95/46/EC. In order to overcome this incoherence, we would suggest including in the Regulation itself additional exceptions which are already enshrined in national data protection laws. As an example, Article 22.2 of the current Dutch Data Protection Act allows for the processing of criminal data insofar relevant for the assessment of a request of the data subject, or for the protection of the controller or his employees against crimes. Similarly, Article 22.4 allows group companies to process criminal data in order to protect the interests of another group company.

Article 9 – paragraph 2

Text proposed by the Commission

Amendment

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

(j) Deleted

3 (new). Paragraph 1 shall not apply where processing of data relating to criminal convictions or related security measures is carried out:

(a) under the control of an official authority;

(b) when the processing is necessary for compliance with a legal or regulatory obligation to which a controller is subject;

(c) when the processing is necessary for the performance of a task carried out for important public interest reasons, and in so far as authorised by Union law or Member State law providing for adequate safeguards;

(d) when the processing is necessary for the assessment of a request of the data subject to provide a service to him or the assessment of an application of the data subject to take a decision against him, and insofar the controller has provided for adequate safeguards to protect the interests of the data subject;

(e) when the processing is necessary for the protection of the legitimate interests of a controller or to prevent harm to his employees, customers or persons under his care, and insofar the controller has provided for adequate safeguards to protect the interests of the data subject.

The processing of other data mentioned in paragraph 1 shall be allowed insofar as such processing is necessary in addition to the processing of offences, criminal convictions or related security measures as specified in this paragraph. A complete register of criminal convictions shall be kept only under the control of official authority.

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

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

Right to rectification

eBay believe a distinction should be made between user-generated data and data that are the results of an interaction between a user and a service provider. Indeed, Article 16 may prove to be an issue with regard to information of a subjective nature, such as feedback left by buyers and

sellers on the eBay marketplace. We therefore suggest excluding user-generated data from the scope of Article 16, with the exception of defamatory remarks.

Article 16

Text proposed by the Commission

The data subject shall have the right to obtain from the controller the rectification of personal data relating to them which are inaccurate. The data subject shall have the right to obtain completion of incomplete personal data, including by way of supplementing a corrective statement.

Amendment

1. The data subject shall have the right to obtain from the controller the rectification of personal data relating to them which are inaccurate. The data subject shall have the right to obtain completion of incomplete personal data, including by way of supplementing a corrective statement.

2. *The controller shall restrict processing of personal data where their accuracy is contested by the data subject, for a period enabling the controller to verify the accuracy of the data.*

3. *Paragraph 1 shall not apply to personal data published via information society services, with the exception of data which are of a defamatory nature.*

Right to be forgotten

While eBay understands the objective of the right to be forgotten, we are concerned by the requirement for controllers to “take all reasonable steps to inform third parties of the request to erase any links to, copies or replications of the data”. Article 17.2 does not seem to sufficiently take the nature of the Internet into account. Once information is publicly available, we do not have any control over the way in which these data are treated by third parties – e.g. they may be transferred, duplicated, etc. It would be therefore impossible for a data controller to comply with this obligation, and we suggest the deletion of paragraph 2. In this respect, although we welcome Amendment 11 of the draft report, with regard to Amendment 38, we would rather support Commission’s text.

Recital 54

Text proposed by the Commission

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

Amendment

deleted

Article 16 – new paragraph 2

Text proposed by the Commission

Amendment

Their accuracy is contested by the data subject, for a

period enabling the controller to verify the accuracy of the data;

Article 17

Text proposed by the Commission

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

- (a) the data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;
- (b) the data subject withdraws consent on which the processing is based according to point (a) of Article 6(1), or when the storage period consented to has expired, and where there is no other legal ground for the processing of the data;
- (c) the data subject **objects** to the processing of personal data pursuant to Article 19;
- (d) the processing of the data does not comply with this Regulation for other reasons.

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

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

- (a) for exercising the right of freedom of expression in accordance with Article 80;
- (b) for reasons of public interest in the area of public health in accordance with Article 81;
- (c) for historical, statistical and scientific research purposes in accordance with Article 83;
- (d) for compliance with a legal obligation to retain the personal data by Union or Member State law to which the controller is subject; Member State laws shall meet an objective of public interest, respect the essence of the right to the protection of personal data and be proportionate to the legitimate aim pursued;
- (e) in the cases referred to in paragraph 4.

4. Instead of erasure, the controller shall restrict processing of personal data where:

- (a) their accuracy is contested by the data subject, for a period enabling the controller to verify the accuracy of the data;**
- (b) the controller no longer needs the personal data for the accomplishment of its task but they have to be maintained for purposes of proof;**

Amendment

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

- (a) the data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;
- (b) the data subject withdraws consent on which the processing is based according to point (a) of Article 6(1), or when the storage period consented to has expired, and where there is no other legal ground for the processing of the data;
- (c) the data subject **has successfully objected** to the processing, **collection or retention** of personal data pursuant to Article 19;
- (d) the processing of the data does not comply with this Regulation for other reasons.

2. Deleted

2. The controller shall carry out the erasure within **reasonable** delay.

3. The controller may deny a request for erasure where processing of the personal data is necessary:

- (a) for exercising the right of freedom of expression in accordance with Article 80;
- (b) for reasons of public interest in the area of public health in accordance with Article 81;
- (c) for historical, statistical and scientific research purposes in accordance with Article 83;
- (d) for compliance with a legal obligation to retain the personal data by Union or Member State law to which the controller is subject; Member State laws shall meet an objective of public interest, respect the essence of the right to the protection of personal data and be proportionate to the legitimate aim pursued;
- e) in the cases referred to in paragraph 4.

4. Instead of erasure, the controller shall restrict processing of personal data where:

- (a) Deleted (move to 16.2 new)**
- (b) the controller no longer needs the personal data for the accomplishment of its task but they have to be maintained for purposes of proof;**
- (c) Deleted**

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

(d) Deleted

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

Administrative requirements

eBay believes instead of encouraging the use of privacy enhancing measures, thereby reducing the administrative obligations on controllers and processors, the proposal introduces new and onerous requirements that will substantially increase the compliance burden for businesses without mitigating potential privacy risks unless they are appropriately defined. More specifically, impact assessments should be applied on a risk based approach, compliance requirements should be eased for controllers that are part of a group and should in no circumstances be duplicated in sectors that are already regulated.

Recital 65

Text proposed by the Commission

Amendment

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

In order to demonstrate compliance with this Regulation, the controller or processor should document processing operations **which likely pose a significant risk to the fundamental rights of the data subjects, in particular their right to privacy**. Each controller and processor should be obliged to co-operate with the supervisory authority and make this documentation, on request, available to it, so that it might serve for monitoring those processing operations.

Recital 70

Text proposed by the Commission

Amendment

Directive 95/46/EC provided for a general obligation to notify processing of personal data to the supervisory authorities. While this obligation produces administrative and financial burdens, it did not in all cases contribute to improving the protection of personal data. Therefore such indiscriminate general notification obligation should be abolished, and replaced by effective procedures and mechanism which focus instead on those processing operations which are likely to present **specific** risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes. In such cases, a **data protection** impact assessment should be carried out by the controller **or processor** prior to the processing, which should include in particular the envisaged measures, safeguards and mechanisms for ensuring the protection of personal data and for demonstrating the compliance with this Regulation.

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Article 22

Text proposed by the Commission

Amendment

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

4. Paragraphs 1 and 3 of this article, do not apply to controllers, which are part of a group of undertakings, provided such group of undertakings, through its main

appropriate measures referred to in paragraph 1 other than those already referred to in paragraph 2, the conditions for the verification and auditing mechanisms referred to in paragraph 3 and as regards the criteria for proportionality under paragraph 3, and considering specific measures for micro, small and medium-sized-enterprises.

establishment or otherwise, has implemented a common framework of policies and measures as referred to in paragraphs 1 and 2, which cover the processing of personal data by such controllers.

5. Paragraphs 1 and 3 shall also not apply if and insofar as the controller is subject to a similar obligation by virtue of Union law and under supervision of an independent sectorial supervisory authority.

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

Article 28 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Each controller and, if any, the controller's representative, shall maintain documentation of all processing operations under its responsibility, ***which pose a significant risk to the fundamental rights of the data subjects, in particular their right to privacy, pursuant to the outcome of the privacy impact assessment as referred to in Article 33.***

Article 33 – title

Text proposed by the Commission

Data protection impact assessment

Amendment

Privacy impact assessment

Article 33 – paragraph 1

Text proposed by the Commission

1. Where processing operations present ***specific*** risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, the controller ***or the processor acting on the controller's behalf*** shall carry out an assessment of the impact of the envisaged processing operations on the ***protection of personal data***.

Amendment

1. Where processing operations ***are likely to*** present ***significant*** risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, the controller shall carry out an assessment of the impact of the envisaged processing operations on ***the rights and freedoms of the data subjects, especially their right to privacy***.

Article 33 – Paragraph 4

Text proposed by the Commission

4. The controller shall seek the views of data subjects or their representatives on the intended processing, without prejudice to the protection of commercial or public interests or the security of the processing operations.

Amendment

4. The controller shall seek the views of data subjects or their representatives on the intended processing, without prejudice to the protection of commercial or public interests or the security of the processing operations, ***unless this is factually impossible or would require a disproportionate effort on the part of the controller.***



For further information, please contact:

Claire Vasile, Manager Government Relations EU eBay Inc.: cvasile@ebay.com

About eBay Inc.

Founded in 1995 in San Jose, Calif., eBay Inc. (NASDAQ:EBAY) is about enabling commerce. We do so through eBay, the world's largest online marketplace, which allows users to buy and sell in nearly every country on earth; through PayPal, which enables individuals and businesses to securely, easily and quickly send and receive online payments; and through GSI, which facilitates ecommerce, multichannel retailing and digital marketing for global enterprises. X.commerce brings together the technology assets and developer communities of eBay, PayPal and Magento, an ecommerce platform, to support eBay Inc.'s mission of enabling commerce. We also reach millions through specialized marketplaces such as StubHub, the world's largest ticket marketplace, and eBay classifieds sites, which together have a presence in more than 1,000 cities around the world. For more information about the company and its global portfolio of online brands, visit www.ebayinc.com.