

Leaseurope, the European Federation for leasing and car rental believes that the European Commission's proposal for a General Data Protection Regulation provides a good starting point to further discussions and debate on the EU framework for the protection of personal data. We have taken note of the draft opinion of the Industry, Research and Energy Committee and would like to share our views on this document with you. The commentary below should be read in light of the Leaseurope observations on the Proposal.¹

The draft ITRE opinion on this Proposal addresses the concerns of the industry in a number of areas. **In particular we support the following amendments incorporated in the draft opinion:**

- Amendment 6 (Recital 38): Introduces data processing for legitimate interests of third parties, as this is considered indispensable for the day-to-day business activities of many companies e.g. using the addresses of third parties to reach new customers.
- Amendment 14 (Recital 67): Deletion the 24 hour period for reporting personal data breaches to the supervisory. It is amended to reflect 'a reasonable time period' in an effort to prevent the creation of a culture of over-reporting. Alternatively the potential harm to the data subjects should determine whether reporting is required. This is in line with Leaseurope's position.
- Amendment 25 (Article 4(8)): The definition of 'data subject's consent' has been altered. The reference to explicit indication and a 'statement of clear and affirmative action' have been removed. This is in line with the Leaseurope position, although we also advocated for tacit consent.
- Amendment 28 (Article 4(19)(a) NEW): A definition has been added to the Draft Opinion defining 'financial crime', as derived from the recommendations of the Financial Action Task Force on combatting money laundering and terrorist financing.
- Amendment 29 (Article 6(1)(a)): This article has been amended strives to ensure that for the purposes of legal certainty, the conditions established for lawful processing do not conflict with the conditions for consent outlined in Article 7.
- Amendment 32 (Article 6(4)): This article has been amended and widened to allow the full range legitimizers contained in Article 6(1)(a-f) to serve as lawful grounds for processing.
- Amendment 33 (Article 6(5)), Amendment 45 (Article 9(3)), Amendment 46 (Article 12(5)), Amendment 64 (Article 17(9)), Amendment 79 (Article 23(3)), Amendment 80 (Article 23(4)), amendment 89 (Article 31(5)), Amendment 91 (Article 32(5)): The delegated and implementing acts for these provisions have been deleted. This is in line with the Leaseurope position.
- Amendment 34 (Article 7(1)): This provision which provided for the controller to bear the burden of proof for the data subjects consent for specified purposes has been deleted, due to the fact that it is superfluous as the burden of proof for normal procedural law currently applies. This is in line with the Leaseurope position.

¹ See <http://www.leaseurope.org/uploads/Leaseurope%20Observations%20DPR.pdf>

- Amendment 35 (Article 7(1)(a) NEW): This new addition allows for the consent to be proportionate to the type of data to be processed and the purposes for the processing and is to be conducted through a properly conducted data impact assessment as described in Article 33.
- Amendment 39 (Article 7(4)): This article has been expanded to further explain the ambiguous term 'significant imbalance', by providing a situation whereby the imbalance makes it unlikely that consent was freely given.
- Amendment 48 (Article 14(&)(c)): The requirement to inform the data subject as to the length of time the data will be stored has been deleted. This is in line with the Leaseurope position.
- Amendment 83 & 84 (Article 28): The provision providing for documentation to be kept on each data processing activity has been deleted and replaced by a provision requiring documentation to only contain the necessary information for the supervisory authority to ascertain that the controller/processor has complied with the said Regulation.
- Amendment 88 (Article 31(1)): This provision has been amended to reflected situations where personal data breaches can be constituted as serious enough to warrant being reported to the supervisory authorities. This is in line with the Leaseurope position.
- Amendment 126-153 (Article 79): The Draft Opinion advocates to delete the extensive prescribed administrative sanctions provision, and in place advocates that the supervisory authority should first issue a written warning without imposing a sanction and then administer fines for repeated or deliberate breaches pertaining. The Draft Opinion also considered the particular category of personal data relevant to the calculation of the gravity of the breach.

Therefore, in addition, we would also like to suggest a further amendment:

Article 3

<i>Original Wording</i>	<i>Proposed Amendment</i>
<p>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.</p> <p>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:</p> <p>(a) the offering of goods or services to such data subjects in the Union; or</p> <p>(b) the monitoring of their behaviour.</p> <p>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.</p>	<p><i>Deleted</i></p>

Justification

This provision may have implications for enterprises that work within the framework of multiple jurisdictions and lead to legal uncertainty as data protection laws are not at the same rate of development worldwide. It is vital to avoid overlapping provisions which could lead to conflicting rules and result in major inefficiencies.

We would be pleased to answer any question you may have on these elements or to provide you with further information. Please do not hesitate to contact Leaseurope legal adviser Maeve Butler (m.butler@leaseurope.org, T: +32 2 778 05 62).

About Leaseurope

Leaseurope brings together 44 member associations representing the leasing, long term and/or short term automotive rental industries in the 32 European countries in which they are present. The scope of products covered by Leaseurope members' ranges from hire purchase and finance leases to operating leases of all asset categories (automotive, equipment and real estate). It also includes the short term rental of cars, vans and trucks.

The Federation's mission is to represent the European leasing and automotive rental industry, ensuring the sector's voice is heard by European and international policy makers.