

Amazon EU Sarl

Proposed amendments to MEP Gallo's opinion on data protection

Amendment 1

Proposal for a regulation

Recital 20

Text proposed by the Commission

(20) 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

(20) 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, **and where this Regulation would not otherwise apply**, should be subject to this Regulation where the processing activities are related to the offering of goods or services **that are specifically targeted at** such data subjects, or to the monitoring of the behaviour of such data subjects.

Or. en

Justification

This amendment is consistent with the amendment to Art. 3.2.

Amendment 2

Proposal for a regulation

Recital 23

Text proposed by the Commission

(23) The principles of protection should apply to any information concerning an identified or identifiable person. To determine whether a person is identifiable, account should be taken of all the means likely reasonably to be used **either** by the controller **or by any other person** to identify the individual. The principles of data protection should not apply to **data rendered anonymous in such a way that the data subject is no longer identifiable**.

Amendment

(23) The principles of protection should apply to any information concerning and identified or identifiable person. To determine whether a person is identifiable, account should be taken of all the means **that are technically feasible, do not involve a disproportionate effort, and are** likely reasonably to be used by the controller **or the processor in the context of the specific processing activity and with the intention to identify the individual. Account shall also be taken of the technical and organizational measures put in place by the controller or processor to prevent identification of the individual**. The principles of data protection shall not apply to **processors when processors are not required to identify data subjects as part of their processing activities and where the use of such technical and organizational measures render it substantially unlikely for the processor to identify the data subject**.

Data that has been collected, altered or otherwise processed in such a way that its controller or processor can no longer attribute it to a data subject or that such attribution would require a disproportionate amount of time, cost and effort (anonymous data), shall not be considered as personal data for that controller or processor. This shall also apply in cases where the controller or processor has replaced any personal identifiers contained in the data with a code, provided and as long as the code does neither alone nor together with other data available to the controller or processor allow identification of the data subject.

Data that has been collected, altered or otherwise processed in such a way that the data subject's name and other identifying features have been replaced with another identifier so that identifiability of the data subject is considerably impeded (pseudonymous data) shall be considered as personal data.

The principles of data protection shall not apply to data that has been collected, altered or otherwise processed with the sole purpose of rendering it anonymous, pseudonymous or unable to be identified by the controller or processor.

Or. en

Justification

This amendment is consistent with the amendment to Art. 4.1. points (1), (2) and new (2a).

Amendment 3
Proposal for a regulation
Recital 24a (new)

Text proposed by the Commission

Amendment

Where service providers process data without being able to access personal data by means that are technically feasible, do not involve a disproportionate effort, and are reasonably likely to be used by a controller or a processor to take knowledge of the content of such data, such service providers shall be qualified as mere conduits pursuant to Article 12 of the Directive 2000/31/EC----- and shall not be responsible for any personal data transmitted or otherwise processed or made available through them.

Or. en

Justification

This amendment intends to take account of the fact that the traditional controller/processor concept structurally does not cater for many types of cloud computing services particularly where the cloud provider offers simple infrastructure services (processing power, storage, basic computing resources). Such providers are usually data agnostic. They regularly don't know whether information stored on or processed through their infrastructure is personal data and they usually have no control over or ability to access that data, nor do they require such

knowledge or access to provide their services. The reality shows that the relation of a number of cloud providers to data is fundamentally different from that of traditional processors. Recognition of such reality will help promote (rather than impede) the further development of cloud computing in Europe. The Regulation should provide for different actors with varying degrees of obligations and liabilities under the data protection laws.

Amendment 4

Proposal for a regulation

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, **commensurate to the context of and risk involved with the respective processing activity**, enabling a freely given specific, and informed indication of the data subject's wishes **and** ensuring that individuals are aware that they give their consent to the processing of personal data. **Consent may be given by a statement or an affirmative action by the data subject such as** ticking a box when visiting an Internet website or by any other statement, conduct or **measure** which clearly indicates in this context the data subject's acceptance of the proposed processing of their personal data. 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.

Or. en

Justification

This amendment is consistent with the amendment to Art. 4.1(8).

Amendment 5

Proposal for a regulation

Recital 27

Text proposed by the Commission

Amendment

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

(27) The main establishment of **an undertaking or a group of undertakings, whether controller or processor**, in the Union should be **designated by the undertaking or group of undertakings and the competent authority should be informed of such designation, subject to the consistency mechanism set out in Article 57. The designation of the main establishment should be based upon the following optional objective criteria:**

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.**

(1) location of the group's European headquarters;
(2) location of the entity within the group with delegated data protection responsibilities;
(3) location of the entity within the group which is best placed (in terms of management function, administrative burden etc.) to deal with and enforce the rules as set out in this Regulation;
(4) location where effective and real management activities are exercised determining the data processing through stable arrangements.

Priority shall be given to the criteria described under (1) above.

The location where the processing of personal data is actually carried out **shall not be a relevant criteria;** the presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute such main establishment and are therefore no determining criteria for a main establishment.

Or. en

Justification

This amendment is consistent with the amendment to Art. 4(13).

Amendment 6

Proposal for a regulation

Recital 33

Text proposed by the Commission

Amendment

(33) In order to ensure free consent, it should be clarified that consent does not provide a valid legal ground where the individual has no genuine and free choice and is subsequently not able to refuse or withdraw consent **without detriment**.

(33) In order to ensure free consent, it should be clarified that consent does not provide a valid legal ground where the individual has no genuine and free choice and is subsequently not able to refuse or withdraw consent.

Or. en

Justification

The change clarifies that free consent, including the ability to refuse or withdraw consent, cannot be made dependent on whether the data subject may incur a detriment as the result of consent withdrawal. This is particularly the case where benefits and services that are provided in the context of a contractual relationship are dependent upon consent. Withdrawal of consent shall be possible, but only in accordance with the contract's terms and data subjects should be aware that they may not be able to withdraw consent and maintain these benefits or services. The new language emphasizes this point so consumers make a well-reasoned decision before choosing to withdraw consent.

Amendment 7

Proposal for a regulation

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.

(34) Consent should not provide a valid legal ground for the processing of personal data, where ***consent is not freely given by*** the data subject. This ***can be*** the case where the data subject is in a situation of ***fundamental economic*** dependence from the controller ***that is*** 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.

Or. en

Justification

The notion of “significant imbalance” lacks clarity and will lead to confusion and legal uncertainty for both consumers and businesses. There is the risk that the utility of consent will be significantly restricted, as there is rarely an equal bargaining power between individuals and businesses. For instance, one could claim that there is significant imbalance where an individual relies upon the usage of a service for his business. Article 4(8) better addresses concerns about protecting consumers by mandating data subject’s consent must be “freely given”.

Amendment 8

Proposal for a regulation

Recital 62

Text proposed by the Commission

Amendment

(62) The protection of the rights and freedoms of data subjects as well as the responsibility and liability of controllers ***and processor***, also in relation to the monitoring by and measures of supervisory authorities, requires a clear attribution of the responsibilities under this Regulation, including where a controller determines the purposes, conditions and means of the processing jointly with other controllers or where a processing operation is carried out on behalf of a controller.

(62) The protection of the rights and freedoms of data subjects as well as the responsibility and liability of controllers, also in relation to the monitoring by and measures of supervisory authorities, requires a clear attribution of the responsibilities under this Regulation, including where a controller determines the purposes, conditions and means of the processing jointly with other controllers or where a processing operation is carried out on behalf of a controller.

Or. en

Justification

This amendment is meant to clarify wording in line with amendments to Article 26.1 and 26.2.

Amendment 9

Proposal for a regulation

Recital 63

(63) Where a controller not established in the Union is processing personal data of data subjects residing in the Union whose processing activities are related to the offering of goods or services **to** such data subjects, or to the monitoring their behaviour, the controller should designate a representative, unless the controller is established in a third country ensuring an adequate level of protection, or the controller is a small or medium sized enterprise or a public authority or body or where the controller is only occasionally offering goods or services to such data subjects. The representative should act on behalf of the controller and **may** be addressed by **any** supervisory authority.

(63) Where a controller not established in the Union is processing personal data of data subjects residing in the Union whose processing activities are related to the offering of goods or services **that are specifically targeted at** such data subjects, or to the monitoring **of** their behaviour, the controller should designate a representative, unless the controller is established in a third country ensuring an adequate level of protection, or the controller is a small or medium sized enterprise or a public authority or body or where the controller is only occasionally offering goods or services to such data subjects. The representative should act on behalf of the controller and **shall only** be addressed by **the** supervisory authority **of the establishment of the representative**.

Or. en

Justification

The inclusion of the term “targeting” is consistent with the amendment to Art. 3.2. The second change is intended to ensure respect of the EU principle of non-discrimination by affording the benefit of the one stop shop principle also to non-EU controllers who appoint an EU representative. They should benefit from one of the main anchors of the draft Regulation in the same way as EU established companies, given that they are subject to the same rights and obligations of the draft Regulation.

Amendment 10

Proposal for a regulation

Recital 64

(64) In order to determine whether **a controller is only occasionally** offering goods or services **to** data subjects residing in the Union, it should be ascertained whether it is apparent from the controller's overall activities that the offering of goods and services to such data subjects is **ancillary to those main activities**.

(64) In order to determine whether **the offering of** goods or services **is targeted at** data subjects residing in the Union, it should be ascertained whether it is apparent from the controller's overall activities that the offering of goods and services to such data subjects is **specifically and-intentionally directed at them, taking account of in particular the international nature of the activities, use of a language or a currency other than the language or currency generally used in the controller's country of establishment, the possibility of making and confirming a reservation in that other language, or the use of a top-level domain name with the .eu suffix or other than that of the country in which the controller is established. The mere accessibility of the controller's website by a data subject residing in the Union is insufficient**.

Or. en

Justification

This amendment is consistent with the amendment to Art. 3.2.

Amendment 11
Proposal for a regulation
Recital 65

Text proposed by the Commission

(65) 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.**

Amendment

(65) In order to demonstrate compliance with this Regulation, the controller should document **the main** processing operations. Each controller should be obliged to co-operate reasonably with the supervisory authority and make this documentation, on request, available to it.

Or. en

Justification

The proposed documentation obligation is disproportionate since it covers virtually every data processing activity. It risks defeating the objective of the draft Regulation to reduce administrative burdens. The changes aim to achieve effective data protection, by requiring organisations to document their main data processing activities. Processors should not be subject to the documentation requirement as they usually do not have access to data or other processing strategies which remain the remit of the controller. It should be left to the controller and processor to determine contractually who is best placed to adequately document the specific processing activities in compliance with this Regulation.

Amendment 12
Proposal for a regulation
Recital 70

Text proposed by the Commission

(70) 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.

Amendment

(70) 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 **significant** 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 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.

Or. en

Justification

The term “specific risk” is too vague and would open up to a seemingly infinite amount of criteria. The scope should be narrowed down to “significant risks” to be reflective of the real concerns. Processors should not be subject to the data impact assessment requirement as they usually do not have access to data or other processing strategies which remain the remit of the controller. In any case, it should be left to the controller and processor to determine contractually who is best placed to undertake an impact assessment, where required under this Regulation.

Amendment 13

Proposal for a regulation

Recital 105

Text proposed by the Commission

In order to ensure the consistent application of this Regulation throughout the Union, a consistency mechanism for co-operation between the supervisory authorities themselves and the Commission should be established. This mechanism should in particular apply where **a** supervisory authority intends to take a measure as regards processing operations that are related to the offering of goods or services **to** data subjects in several Member States, or to the monitoring such data subjects, that might substantially affect the free flow of personal data. ***It should also apply where any supervisory authority or the Commission requests that the matter should be dealt with in the consistency mechanism.*** This mechanism should be without prejudice to any measures that the Commission may take in the exercise of its powers under the Treaties.

Amendment

In order to ensure the consistent application of this Regulation throughout the Union, a consistency mechanism for co-operation between the supervisory authorities themselves and the Commission should be established. This mechanism should in particular apply where ***the competent*** supervisory authority intends to take a measure as regards processing operations that are related to the offering of goods or services ***specifically targeted at*** data subjects in several Member States, or to the monitoring such data subjects, ***and the controller not established in the Union, or as regards processing operations*** that might substantially affect the free flow of personal data. This mechanism should be without prejudice to any measures that the Commission may take in the exercise of its powers under the Treaties.

Or. en

Justification

Companies not established in the Union that are covered by the Regulation should not automatically be subject to the consistency mechanism in all circumstances. The competence of the data protection board with respect to such non- EU companies should be equivalent to that for EU companies. Only if the non-EU company does not appoint a representative is it justified to apply the consistency mechanism. This amendment is also consistent with the amendment to Article 58.1, Article 58.2 as well as Article 3.2 and Article 51.2.

Amendment 14

Proposal for a regulation

Recital 106

Text proposed by the Commission

In application of the consistency mechanism, the European Data Protection Board should, within a determined period of time, issue an opinion, if a ***simple*** majority of its members so decides or if so requested by any supervisory authority or the

Amendment

In application of the consistency mechanism, the European Data Protection Board should, within a determined period of time, issue an opinion, if a ***qualified*** majority of its members so decides or if so requested by any supervisory authority or the

Commission.

Commission.

Or. en

Justification

Majorities need to be substantial in accordance with current practice.

Amendment 15

Proposal for a regulation

Recital 108

Text proposed by the Commission

Amendment

There may be an urgent need to act in order to protect the interests of data subjects, in particular when the danger exists that the enforcement of a right of a data subject could be considerably impeded. Therefore, **a** supervisory authority should be able to adopt provisional measures with a specified period of validity when applying the consistency mechanism.

There may be an urgent need to act in order to protect the interests of data subjects, in particular when the danger exists that the enforcement of a right of a data subject could be considerably impeded. Therefore, **the competent** supervisory authority should be able to adopt provisional measures with a specified period of validity when applying the consistency mechanism.

Or. en

Justification

This amendment is consistent with the amendment to Article 51.2.

Amendment 16

Proposal for a regulation

Article 3 – paragraph 2

Text proposed by the Commission

Amendment

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.

2. This Regulation applies to the processing of personal data of data subjects residing in the Union, **in circumstances when Article 3(1) does not apply, but when** the processing activities **of the controller** are related to:
(a) the offering of goods or services **which are specifically targeted at** such data subjects in the Union; or
(b) the monitoring of their behaviour.

Or. en

Justification

While it is desirable that non-EU companies respect EU data protection standards when processing EU citizens' data, the term "offering" is too broad and unpredictable and does not constitute a valid legal notion in the context of cross-border activities to determine the applicable law and jurisdiction. Companies may not know that their customers are European residents. The wording does not take into account that goods and services may be offered passively online with no clear way to determine the location of the purchaser or end user. The use of the additional term "targeting" can be evaluated by objective criteria, thereby carrying much more legal certainty. It also reflects current EU jurisprudence.

Amendment 17

Proposal for a regulation

Article 4 – paragraph 1 – point 1

Text proposed by the Commission

(1) '**data subject**' means an identified natural person or a natural person who can be identified, directly or indirectly, by means reasonably likely to be used by the controller or **by any other natural or legal person, in particular** by reference to an identification number, location data, online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person;

Amendment

(1) '**Personal data**' means **any information concerning** an identified natural person or a natural person who can be identified ('**data subject**'), directly or indirectly, by means **that are technically feasible, do not involve a disproportionate effort, and are** reasonably likely to be used by the controller **or the processor in the context of the specific processing activity and with the intention to identify the data subject, including** by reference to an identification number, location data, online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person; **these factors as such need not necessarily be considered as personal data in all circumstances;**

Or. en

Justification

The proposed definition is very broad and will effectively result in the strict conditions of the Regulation applying to the vast majority of all processing operations, regardless of the context in which the data is processed, whether the data is attributable to a person, the realistic privacy risk and intention of identification. This all-encompassing approach risks leading to a disruptive consumer experience, particularly in the online environment, and risks removing any incentive for companies to invest in or make use of privacy-enhancing measures and processes as under such an approach any piece of information, even if anonymized, would have to be considered personal. This will, as a result, lead to less privacy protection rather than more, which would directly conflict with the intended objective of the Regulation. The suggested changes are intended to enhance protection of individuals' data by placing the focus on the most relevant data processing operations, on the parties who will have access to the data and by setting true incentives for industry to continuously invest in robust privacy-friendly technologies. In line with recital 24, it should be made clear in the Article 4 itself that it depends on the context whether identification numbers, location data, and online identifiers are to be considered personal data.

Amendment 18

Proposal for a regulation

Article 4 – paragraph 1 – point 2

Text proposed by the Commission

(2) '**personal data**' means any **information relating to a data subject**;

Amendment

(2) '**Anonymous data**' means any **data that has been collected, altered or otherwise processed in such a way that it can no longer be attributed to a data subject, including where any personally identifying features are replaced with a code so that the data subject can no longer be identified, or that such attribution would require a disproportionate amount of time, cost and effort; anonymous data shall not be**

considered personal data.

Or. en

Justification

Businesses should be incentivized to anonymize data, which will ultimately strengthen consumers' privacy protection. The changes aim at clarifying the meaning of anonymous data and, in line with recital 23, explicitly excluding such data from the scope of the Regulation.

Amendment 19

Proposal for a regulation

Article 4 – paragraph 1 – point 2a (new)

Text proposed by the Commission

Amendment

(2a) 'pseudonymous data' means any personal data that has been collected, altered or otherwise processed in such a way that the data subject's name and other identifying features are replaced with another identifier so that identifiability of the data subject is considerably impeded; pseudonymous data shall be considered as personal data.

Or. en

Justification

Businesses should be incentivized to invest in and use privacy-enhancing measures, such as pseudonymization, which will ultimately strengthen consumers' privacy protection. The changes aim at ensuring that the Regulation expressly recognises the existence and value of pseudonymous data. Similar approaches in existing data protection laws of some Member States (e.g. Germany) have proven successful.

Amendment 20

Proposal for a regulation

Article 4 – paragraph 1 – point 6

Text proposed by the Commission

Amendment

(6) 'processor' means a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller;

6) 'processor' means a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller ***and is able to access personal data by means that are technically feasible, do not involve a disproportionate effort, and are reasonably likely to be used by a controller or a processor to take knowledge of the content of such data;***

Or. en

Justification

This amendment is consistent with the amendment to Recital 24a (new).

Amendment 21

Proposal for a regulation

Article 4 – paragraph 1 – point 8

Text proposed by the Commission

(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;

Amendment

(8) 'the data subject's consent' means any freely given specific **and** informed indication of his or her wishes by which the data subject, either by a statement or clear action **or any other appropriate method commensurate to the context of and risk involved with the respective processing activity**, signifies agreement to personal data relating to them being processed;

Or. en

Justification

Requiring 'explicit' consent as the norm for every data use scenario, irrespective of the context of data processing and the privacy risks for data subjects, is overly formalistic and rigid. It risks inhibiting legitimate and innovative business practices in the off- and online environment and impacting user experience and expectations without adding anything to users' data protection. Consent as a means to gain user acceptance and protect fundamental rights may be devaluated as a consequence of consumers being overloaded with consent requests, making it difficult for them to understand the privacy impact of different data processing operations. The suggested changes aim at allowing for flexibility for businesses, avoiding confusing of consumers and ensuring that there is a role for implied consent in cases where a user's behaviour can safely be interpreted as a decision to accept certain uses of data.

Amendment 22

Proposal for a regulation

Article 4 – paragraph 1 – point 13

Text proposed by the Commission

(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 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;**

Amendment

(13) 'main establishment' means **the location as designated by the undertaking or group of undertakings, whether controller or processor, subject to the consistency mechanism set out in Article 57, on the basis of, but not limited to, the following optional objective criteria:**

(1) the location of the European headquarters of a group of undertakings;

(2) the location of the entity within a group of undertakings with delegated data protection responsibilities;

(3) the location of the entity within the group which is best placed in terms of management functions and administrative responsibilities to deal with and enforce the rules as set out in this Regulation; or

(4) the location where effective and real management activities are exercised determining the data processing through stable arrangements.

The competent authority shall be informed by the undertaking or group of undertakings of the designation of the main establishment.

Or. en

Justification

The ‘one-stop-shop’ approach with respect to the jurisdiction of regulators is particularly crucial for corporate groups operating in several Member States as they require legal certainty as to one ‘lead’ regulator being their single point of contact and by whom they may be addressed, and it is also essential to allow businesses and consumers to fully reap the benefits of the EU Single Market. It also has the potential to cut red tape, provide legal certainty and ensure a consistent and more efficient application of data protection rules across Europe. The current system has led to confusion as to competency questions and to conflicting approaches by regulators as a result of this. However, the proposed ‘main establishment’ terminology is too vague and narrow to work in different situations and provides too much room for diverging interpretation. To take account of today’s business reality and provide for clear-cut and common sense criteria allowing for flexibility and predictability for all stakeholders, one uniform test for determining an organization’s “main establishment” should be applied to “undertakings/groups of undertakings” as the relevant reference point (rather than applying different tests for controller and processor) and based on a set of relevant objective criteria, which a business can choose from in order to officially designate its location of ‘main establishment’, with effects for all processing activities of all entities part of the group. A similar concept to determine the lead DPA exists in relation to Binding Corporate Rules (BCRs) and should for consistency reasons also apply for the purpose of determining the place of ‘main establishment’ in the context of the draft Regulation. This approach will provide for legal certainty required by business while preventing the risk of forum shopping as well as disputes over the place of main establishment.

Amendment 23

Proposal for a regulation

Article 4 – paragraph 1 – point 14

Text proposed by the Commission

Amendment

(14) ‘representative’ means any natural or legal person established in the Union who, explicitly designated by the controller, acts and **may** be addressed by **any** supervisory authority **and other bodies in the Union instead of the controller**, with regard to the obligations of the controller under this Regulation;

(14) ‘representative’ means any natural or legal person established in the Union who, explicitly designated by the controller, acts and **shall only** be addressed by **the supervisory authority of the establishment of the representative**, with regard to the obligations of the controller under this Regulation;

Justification

The change is intended to ensure respect of the EU principle of non-discrimination by affording the benefit of the one stop shop principle also to non-EU controllers who appoint an EU representative. They should benefit from one of the main anchors of the draft Regulation in the same way as EU established companies, given that they are subject to the same rights and obligations of the draft Regulation.

Amendment 24

Proposal for a regulation

Article 4 – paragraph 1 – point 20 (new)

Text proposed by the Commission

Amendment

(20) ‘erasure’ means deleting personal data or rendering it unusable, unreadable, anonymous or indecipherable through the use of appropriate technological protection measures which are widely accepted as effective industry practices or industry standards, when applicable.

Or. en

Justification

This change is aimed at providing flexibility for different technical capabilities. Whether the data is deleted, rendered unusable, unreadable, irreversibly anonymous, or indecipherable, the main goal is that the data subject’s information can no longer be accessed or identified to the extent practicable by the controller or processor. The change of language will also provide assurance and comfort to data subjects in situations where information cannot be fully erased for a variety of reasons. Similar clarifications contained in existing data protection laws of some Member States (e.g. Germany) have proven successful.

Amendment 25

Proposal for a regulation

Article 6 – paragraph 1 – point (g) (new)

Text proposed by the Commission

Amendment

(g) only pseudonymous data is processed.

Or. en

Justification

This amendment is consistent with the amendment to new Art. 4.1(2a)

Amendment 26

Proposal for a regulation

Article 6 – paragraph 4

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

This amendment is consistent with the amendment to new Art. 4.1(2a)

Amendment 27

Proposal for a regulation

Article 7 – Paragraph 2

Text proposed by the Commission

Amendment

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

2. ***The controller shall select the method most appropriate to obtain meaningful consent from data subjects. The requirement to give consent must be presented in a manner distinguishable in its appearance.***

Or. en

Justification

The changes reflect the need to consider differences in the purpose and context for the collection of data. The goal to provide clear information to data subjects is preserved and strengthened. The current wording "distinguishable in its appearance" is vague, which could result in situations where the data subject may be confused as to the importance of each section of the matters. Further, some contractual arrangements are fully dependent upon the data subject providing consent and fully separating consent from other issues may confuse data subjects.

Amendment 28

Proposal for a regulation

Article 7 – Paragraph 3

Text proposed by the Commission

Amendment

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

3. The data subject shall have the right to withdraw his or her consent at any time, ***without prejudice to applicable laws and contractual arrangements***. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal.

Or. en

Justification

It should be clarified in the Regulation that while data subjects may withdraw their consent at any time, such withdrawal needs to be in accordance with the contractual terms. Many benefits and services that are provided in the context of a contractual relationship are dependent on consent for processing of data. Therefore, when data subjects withdraw consent, they may not be able to maintain these benefits or services. The new language emphasizes this point so consumers make a well-reasoned decision before choosing to withdraw consent.

Amendment 29

Proposal for a regulation

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

Or. en

Justification

The notion of “significant imbalance” lacks clarity and will lead to confusion and legal uncertainty for both consumers and businesses. There is the risk that the utility of consent will be significantly restricted, as there is rarely an equal bargaining power between individuals and businesses. For instance, one could claim that there is significant imbalance where an individual relies upon the usage of a service for his business. Article 4(8) better addresses concerns about protecting consumers by mandating data subject’s consent must be “freely given”.

Amendment 30

Proposal for a regulation

Article 19 – Paragraph 1

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

This amendment is consistent with the amendment to new Art. 4.1 point 2a. Data subjects’ right to object to data processing shall be extended to the processing of pseudonymous data.

Amendment 31

Proposal for a regulation

Article 20 – Paragraph 2 – point (d) (new)

Text proposed by the Commission

Amendment

(d) is based on pseudonymous data.

Or. en

Justification

This amendment is consistent with the amendment to new Art. 4.1 point 2a. Since the aim of pseudonymous data is to prevent identification of an individual, processing of such data for profiling purposes should be permitted.

Amendment 32

Proposal for a regulation

Article 22 – Paragraph 2a (new)

Text proposed by the Commission

Amendment

2a. Paragraph 2(a), (c), (d) shall not apply to controllers who have appointed a data protection

officer pursuant to Article 35.

Or. en

Justification

The appointment of a data protection officer should result in the exemption from administrative burdens, such as the documentation requirement, the obligation to undertake a data impact assessment, prior authorization and consultation. This practice has been widely successful in other Member States (e.g. Germany), encouraging the appointment of DPOs and ultimately leading to increases in both business efficiency and consumer protections.

Amendment 33

Proposal for a regulation

Article 22 – Paragraph 3

Text proposed by the Commission

Amendment

3. The controller shall implement mechanisms to ensure the verification of the effectiveness of the measures referred to in paragraphs 1 and 2. If proportionate, this verification shall be carried out by independent internal or external auditors.

3. The controller shall implement mechanisms to ensure the verification of the effectiveness of the measures referred to in paragraphs 1 and 2. If proportionate, this verification shall be carried out by independent internal or external auditors. ***Measures adhered to by the controller pursuant to Articles 38 and 39 shall be accepted as valid tool to prove compliance with the respective requirements of this Regulation.***

Or. en

Justification

The Regulation should offer clear regulatory incentives to controllers and processors to invest in security and privacy enhancing measures and making use of viable self-regulatory systems and certification schemes via waivers from administrative burdens and simplification mechanisms. Where controllers and processors propose additional safeguards to protect data, which are in line with or go beyond accepted industry standards and who can demonstrate this via conclusive certificates (e.g. via DPO, code of conduct, third party audit), they should benefit from less prescriptive requirements. This would allow for flexibility, legal certainty, less administrative burden, highest privacy and security standards for data subjects and transparency for regulators.

Amendment 34

Proposal for a regulation

Article 26 – Paragraph 1

Text proposed by the Commission

Amendment

1. Where a processing operation is to be carried out on behalf of a controller, the controller shall choose a processor providing sufficient guarantees to implement appropriate technical and organisational measures and procedures in such a way that the processing will meet the requirements of this Regulation and ensure the protection of the rights of the data subject, in particular in respect of the technical security measures and

1. Where a processing operation is to be carried out on behalf of a controller ***and which involves the processing of data that would permit the processor to reasonably identify the data subject***, the controller shall choose a processor providing sufficient guarantees to implement appropriate technical and organisational measures and procedures in such a way that the processing will meet the requirements of this

organizational measures governing the processing to be carried out and shall ensure compliance with those measures.

Regulation and ensure the protection of the rights of the data subject, in particular in respect of the technical security measures and organizational measures governing the processing to be carried out and shall ensure compliance with those measures. ***The controller remains solely responsible for ensuring compliance with the requirements of this Regulation.***

Or. en

Justification

Where it is technically not feasible for the processor to identify a data subject, e.g. due to the use of proper anonymization techniques, Article 26 shall not apply. The lessening of administrative burdens will incentivize investment in robust anonymisation technology and use of strong system of restricted access, ultimately strengthening data subject protections. The basic principle according to which primary and direct responsibility and liability for processing is incumbent upon the controller should be clearly stated in this Article. There should be no direct obligation and liability for processors beyond the existing status quo.

Amendment 35

Proposal for a regulation

Article 26 – Paragraph 2

Text proposed by the Commission

Amendment

2. The carrying out of processing by a processor shall be governed by a contract or other legal act binding the processor to the controller ***and stipulating in particular that the processor shall:***

2. The carrying out of processing by a processor shall be governed by a contract or other legal act binding the processor to the controller. ***The controller and processor shall be free to determine respective roles and responsibilities with respect to the requirements of this Regulation, and shall provide for the following:***

Or. en

Justification

Any regulatory allocation of responsibilities between controller and processor needs to take account of the contractual arrangements between the parties, in order to avoid potential contradictions, overlapping responsibilities, duplication of administrative burdens and inefficiencies in enforcement. It is important that the freedom and flexibility for controller-processor arrangements is preserved. Also, processors are often not in a position to automatically comply with all the requirements as stipulated in Article 26. Processors have limited and distinct obligations that do not simply mirror those of controllers. Independent obligations upon processors will create needless uncertainty in the controller-processor relationship, as processors will need to independently evaluate their obligations vis-à-vis controller instructions. Controller and processor should be free to determine the nature of their relationship to ensure proper levels of protection and best comply with the requirements while at the same time allowing sufficient flexibility for practical business solutions.

Amendment 36

Proposal for a regulation

Article 26 – Paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) act only on instructions from the controller, in

(a) ***the processor shall*** act only on instructions from

particular, where the transfer of the personal data used is prohibited;

the controller, in particular, where the transfer of the personal data used is prohibited;

Or. en

Justification

This amendment serves clarification purposes in line with amendments to Article 26.2.

Amendment 37

Proposal for a regulation

Article 26 – Paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) **employ only** staff who have committed themselves to confidentiality **or are under a statutory obligation of confidentiality**;

(b) staff **employed by the processor shall commit** to confidentiality;

Or. en

Justification

This amendment is meant to clarify wording in line with amendments to Article 26.2.

Amendment 38

Proposal for a regulation

Article 26 – Paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) **take all** required measures pursuant to Article 30;

(c) **agreement with respect to the** required measures pursuant to Article 30;

Or. en

Justification

This amendment is meant to clarify wording in line with amendments to Article 26.2.

Amendment 39

Proposal for a regulation

Article 26 – Paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) enlist another processor only with the prior permission of the controller;

deleted

Or. en

Justification

The apportionment of responsibilities between the controller and processor should be left to the parties to agree on and should be appropriately embodied in the contract. The requirement to obtain prior authorization from the controller for the processor to enlist sub-processors imposes burdens with no clear benefit in terms of enhanced data protection. Also, it is not workable particularly in the cloud context and especially if interpreted to require

prior authorization to use specific sub-processors. This requirement should be removed.

Amendment 40

Proposal for a regulation

Article 26 – Paragraph 2 – point e

Text proposed by the Commission

Amendment

(e) insofar as this is possible given the nature of the processing, ***create in*** agreement ***with the controller*** the ***necessary*** technical and organizational requirements ***for the fulfilment of*** the controller's ***obligation*** to respond to requests for exercising the data subject's rights laid down in Chapter III;

(e) insofar as this is possible given the nature of the processing ***and the processor's ability to assist with reasonable effort, an*** agreement ***as to*** the ***appropriate and relevant*** technical and organizational requirements ***which support the ability of the controller*** to respond to requests for exercising the data subject's rights laid down in Chapter III;

Or. en

Justification

This amendment is consistent with the amendment to Article 26.2. Furthermore, it clarifies the wording to take account of the fact that particularly in the cloud context certain processors are not in a position to assist the controller in complying with information requirements nor to make any determination as to the handling of the personal data.

Amendment 41

Proposal for a regulation

Article 26 – Paragraph 2 – point f

Text proposed by the Commission

Amendment

(f) ***assist the controller in ensuring compliance*** with the obligations pursuant to Articles ***30*** to 34;

(f) ***insofar as this is possible given the nature of the processing, the information available to the processor and his ability to assist with reasonable effort, an agreement on how compliance will be ensured*** with the obligations pursuant to Articles ***28*** to 34;

Or. en

Justification

This amendment is consistent with the amendment to Article 26.2 and Article 26.2 point e.

Amendment 42

Proposal for a regulation

Article 26 – Paragraph 2 – point g

Text proposed by the Commission

Amendment

(g) ***hand over all results to the controller after the end of the processing and*** not process the personal data ***otherwise***;

(g) ***assurance from the processor that he will*** not process the personal data ***further after the end of the agreed processing***;

Justification

This amendment is consistent with the amendment to Article 26.2. It also takes account of the fact that there may be no results as such to hand over if the data minimisation principle has been effectively applied. Making data available to the supervisory authority should be handled by the controller. Processors typically do not provide due diligence materials to a controller or DPA.

Amendment 43**Proposal for a regulation****Article 26 – Paragraph 2 – point h***Text proposed by the Commission*

(h) make available to the controller **and the supervisory authority** all information necessary to control compliance with the obligations laid down in this Article.

Amendment

(h) **agreement that, upon request, the processor will** make available to the controller all **available, relevant and permissible** information necessary to control compliance with the obligations laid down in this Article.

Justification

This amendment is consistent with the amendment to Article 26.2 and Article 26.2 point g.

Amendment 44**Proposal for a regulation****Article 26 – Paragraph 3a (new)***Text proposed by the Commission**Amendment*

3a. The controller is deemed to have fulfilled the obligations set out in paragraph 1 when employing a processor who has voluntarily self-certified or voluntarily obtained a third party certification, seal or mark showing the implementation of appropriate standard technical and organizational measures in response to the requirements set out in this Regulation.

Justification

The Regulation should offer clear regulatory incentives to controllers and processors to invest in security and privacy enhancing measures and making use of viable self-regulatory systems and certification schemes via waivers from administrative burdens and simplification mechanisms. Where controllers and processors propose additional safeguards to protect data, which are in line with or go beyond accepted industry standards and who can demonstrate this via conclusive certificates (e.g. via DPO, code of conduct, third party audit), they should benefit from less prescriptive requirements. This would allow for flexibility, legal certainty, less administrative burden, highest privacy and security standards for data subjects and transparency for regulators.

Amendment 45

Proposal for a regulation

Article 28 – Paragraph 1

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

The proposed documentation obligation is disproportionate since it covers virtually every data processing activity. It risks defeating the objective of the draft Regulation to reduce administrative burdens. The changes aim to achieve effective data protection, by requiring organisations to document their main data processing activities. Processors should not be subject to the documentation requirement as they usually do not have access to data or other processing strategies which remain the remit of the controller. This amendment is also consistent with the amendment to Article 26.2.

Amendment 46

Proposal for a regulation

Article 28 – Paragraph 2

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

This amendment is consistent with the amendment to Article 28.1.

Amendment 47

Proposal for a regulation

Article 28 – Paragraph 3

Text proposed by the Commission

Amendment

3. The controller **and the processor** and, if any, the controller's representative, shall make the documentation available, on request, to the supervisory authority.

3. The controller and, if any, the controller's representative, shall make the documentation available, on request, to the supervisory authority.

Or. en

Justification

This amendment is consistent with the amendment to Article 26.2, Article 26.2 point g and h, and Article 28.1.

Amendment 48
Proposal for a regulation
Article 28 – Paragraph 4

Text proposed by the Commission

Amendment

4. The obligations referred to in paragraphs 1 and 2 shall not apply to the following controllers **and processors**:

4. The obligations referred to in paragraphs 1 and 2 shall not apply to the following controllers:

Or. en

Justification

This amendment is consistent with the amendment to Article 26.2.

Amendment 49
Proposal for a regulation
Article 33 – Paragraph 1

Text proposed by the Commission

Amendment

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**.

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 **fundamental rights and freedoms of the data subjects**.

Or. en

Justification

This amendment is consistent with the amendment to 26.2. Furthermore, it proposes to limit the requirement for impact assessments to situations involving significant risks for data subjects, in order to funnel the priority towards assuring effective privacy protection rather than fulfilling burdensome administrative requirements. This is in line with the ethos of the data protection reform, which was intended to instil a culture of accountability backed by ex-post oversight rather than perpetuate ex-ante 'box-ticking.

Amendment 50
Proposal for a regulation
Article 33 – Paragraph 2

Text proposed by the Commission

Amendment

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

2. The following processing operations in particular **are likely to** present **such significant** risks **as** referred to in paragraph 1:

Or. en

Justification

This amendment is consistent with the amendment to Article 33.1.

Amendment 51
Proposal for a regulation
Article 33 – Paragraph 4

Text proposed by the Commission

Amendment

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

Or. en

Justification

Considering the data subject's need to be informed of the data processing in accordance with Article 14, an obligation to consult data subjects as part of the data impact assessment appears misplaced and unnecessary. It could also likely result in compromising important trade secrets.

Amendment 52
Proposal for a regulation
Article 34 – Paragraph 1

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

This amendment is consistent with the amendment to Article 26.1 and Article 26.2.

Amendment 53
Proposal for a regulation
Article 34 – Paragraph 2

Text proposed by the Commission

Amendment

2. The controller shall consult the supervisory

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

authority prior to the processing of personal data in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where:

Or. en

Justification

This amendment is consistent with the amendment to Article 26.1 and Article 26.2.

Amendment 54

Proposal for a regulation

Article 34 – Paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) a data protection impact assessment as provided for in Article 33 indicates that processing operations are by virtue of their nature, their scope or their purposes, likely to present a high degree of *specific* risks; or

(a) a data protection impact assessment as provided for in Article 33 indicates that processing operations are by virtue of their nature, their scope or their purposes, likely to present a high degree of *significant* risks; or

Or. en

Justification

This amendment is consistent with the amendment to Recital 70 and Article 33.1.

Amendment 55

Proposal for a regulation

Article 34 – Paragraph 6

Text proposed by the Commission

Amendment

6. The controller *or processor* shall provide the supervisory authority with the data protection impact assessment provided for in Article 33 and, on request, with any other information to allow the supervisory authority to make an assessment of the compliance of the processing and in particular of the risks for the protection of personal data of the data subject and of the related safeguards.

6. The controller shall provide the supervisory authority with the data protection impact assessment provided for in Article 33 and, on request, with any other information to allow the supervisory authority to make an assessment of the compliance of the processing and in particular of the risks for the protection of personal data of the data subject and of the related safeguards.

Or. en

Justification

This amendment is consistent with the amendment to Article 26.1 and Article 26.2.

Amendment 56

Proposal for a regulation

Article 35 – Paragraph 1

Text proposed by the Commission

Amendment

1. The controller **and** the processor shall designate a data protection officer in any case where:

1. The controller **or** the processor shall designate a data protection officer in any case where:

Or. en

Justification

Only one DPO should be required for all subsidiaries of a group established in the Union, regardless of size and activity, instead of a separate DPO for every Member State in which that entity operates. This allows for consistency and ease of communication for data subjects and supervisory authorities.

Amendment 57

Proposal for a regulation

Article 35 – paragraph 2

Text proposed by the Commission

Amendment

2. In the case referred to in point (b) of paragraph 1, a group of undertakings may appoint a single data protection officer.

2. In the case referred to in point (b) **and (c)** of paragraph 1, a group of undertakings may appoint a single data protection officer.

Or. en

Justification

Only one DPO should be required for all subsidiaries of a group established in the Union, regardless of size and activity, instead of a separate DPO for every Member State in which that entity operates. This allows for consistency and ease of communication for data subjects and supervisory authorities.

Amendment 58

Proposal for a regulation

Article 38 – paragraph 1

Text proposed by the Commission

Amendment

1. The Member States, the supervisory authorities and the Commission shall encourage the drawing up of codes of conduct intended to contribute to the proper application of this Regulation, taking account of the specific features of the various data processing sectors, in particular in relation to:

1. The Member States, the supervisory authorities and the Commission shall encourage the drawing up of **voluntary** codes of conduct **and self-regulatory schemes** intended to contribute to the proper application of this Regulation, taking account of the specific features of the various data processing sectors, in particular in relation to:

Or. en

Justification

This amendment aims to clarify the voluntary nature of self-regulation and to extend the scope of the Article to other self-regulatory mechanisms that have the same function and are hence as viable as codes of conducts.

Amendment 59

Proposal for a regulation

Article 38 – paragraph 2

Text proposed by the Commission

2. Associations and other bodies representing categories of controllers or processors in one Member State which intend to draw up codes of conduct or to amend or extend existing codes of conduct may submit them to an opinion of the supervisory authority in that Member State. The supervisory authority *may* give an opinion whether the draft **code of conduct** or the amendment is in compliance with this Regulation. The supervisory authority shall seek the views of data subjects or their representatives on these drafts.

Amendment

2. Associations and other bodies representing categories of controllers or processors in one Member State which intend to draw up codes of conduct, **self-regulatory schemes or self-certification mechanisms**, or to amend or extend existing codes of conduct, **self-regulatory schemes or self-certification mechanisms**, may submit them to an opinion of the supervisory authority in that Member State. The supervisory authority **shall** give a **binding** opinion whether the draft or the amendment **of such measure** is in compliance with this Regulation. The supervisory authority shall seek the views of data subjects or their representatives on these drafts.

Or. en

Justification

This amendment aims to extend the scope of the Article to other self-regulatory and self-certification mechanisms that have the same function and are hence as viable as codes of conducts.

Amendment 60

Proposal for a regulation

Article 38 – paragraph 3

Text proposed by the Commission

3. Associations and other bodies representing categories of controllers in several Member States may submit draft codes of conduct and amendments or extensions to existing **codes of conduct** to the Commission.

Amendment

3. Associations and other bodies representing categories of controllers **or processors** in several Member States may submit draft codes of conduct, **self-regulatory schemes or self-certification mechanisms**, and amendments or extensions to **such** existing **measures** to the Commission.

Or. en

Justification

This amendment is in line with the amendment proposed to Article 38.1 and 38.2. It also aims to clarify that the Article applies to processors, the omission of which seems to be a drafting error, as processors are included in Article 38.2.

Amendment 61

Proposal for a regulation

Article 39 – paragraph 1

Text proposed by the Commission

1. The Member States and the Commission shall encourage, in particular at European level, the

Amendment

1. The Member States and the Commission shall encourage, in particular at European level, the

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

establishment of data protection certification mechanisms, **including self-certification mechanisms**, and of data protection seals and marks, allowing data subjects to quickly assess the level of data protection provided by controllers and processors. The data protection certifications mechanisms shall contribute to the proper application of this Regulation, taking account of the specific features of the various sectors and different processing operations. **They shall be elaborated based on industry-led efforts and in consultation with the supervisory authorities, and shall be capable of global application, affordable and technology neutral.**

Or. en

Justification

This amendment aims to clarify that certification mechanisms and data protection seals and marks should be voluntary, industry-driven, enable competition and allow for innovative solutions for consumers. Given the global nature of the internet and increasing internationalisation of data flows, such certification mechanisms should be open to companies both inside and outside the EEA and be elaborated in consultation with relevant stakeholders. Certification mechanisms can help to reduce compliance burdens and foster competitiveness.

Amendment 62

Proposal for a regulation

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. **In situations referred to in Article 3(1) and** where 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 **solely** competent for the supervision of **all** processing activities **that are carried out by or on behalf of that** controller or processor in all Member States, **or in the case of a group of undertakings, by any member of the group, as far as they are subject to this Regulation. The competent supervisory authority of the main establishment shall cooperate with other supervisory authorities in accordance with** the provisions of Chapter VII of this Regulation.

Or. en

Justification

This amendment is consistent with the amendment to Article 4(13). It is intended to further strengthen the so-called one-stop shop concept, according to which the DPA of a company's main establishment is to be the lead for investigative actions and interpreting rules. Other DPAs should serve as liaison point when needed. This language will help to provide consumers and multinational companies with legal certainty as to which competent supervisory authority will have authority to supervise any data processing activities subject to the Regulation. It will also prevent multiple supervisory authorities from sanctioning the same company for the same incident.

Amendment 63
Proposal for a regulation
Article 51 – paragraph 2a (new)

Text proposed by the Commission

Amendment

2a. In situations referred to in Article 3(2) and where the controller has designated a representative in the Union pursuant to Article 25, the supervisory authority of the establishment of the representative shall be solely competent for the supervision, in all Member States, of all processing activities that are carried out by or on behalf of that controller.

Or. en

Justification

This amendment is consistent with the amendment to recital 63. It intends to ensure respect of the EU principle of non-discrimination by affording the benefit of the one stop shop principle also to non-EU controllers who appoint an EU representative. They should benefit from one of the main anchors of the draft Regulation in the same way as EU established companies, given that they are subject to the same rights and obligations of the draft Regulation.

Amendment 64
Proposal for a regulation
Article 52 – paragraph 1

Text proposed by the Commission

Amendment

1. The supervisory authority shall:

1. The **competent** supervisory authority **pursuant to Article 51** shall:

Or. en

Justification

This amendment is consistent with the amendment to Article 51.2.

Amendment 65
Proposal for a regulation
Article 52 – paragraph 3

Text proposed by the Commission

Amendment

3. The supervisory authority shall, upon request, advise any data subject in exercising the rights under this Regulation and, if appropriate, co-operate with the supervisory authorities in other Member States to this end.

3. The **competent** supervisory authority **pursuant to Article 51** shall, upon request, advise any data subject in exercising the rights under this Regulation and, if appropriate, co-operate with the supervisory authorities in other Member States to this end.

Or. en

Justification

This amendment is consistent with the amendment to Article 51.2.

Amendment 66

Proposal for a regulation

Article 53 – paragraph 1

Text proposed by the Commission

Amendment

1. Each supervisory authority shall have the power:

1. **The competent** supervisory authority **pursuant to Article 51** shall have the power:

Or. en

Justification

This amendment is consistent with the amendment to Article 51.2.

Amendment 67

Proposal for a regulation

Article 53 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) to order the controller **or the processor** to comply with the data subject's requests to exercise the rights provided by this Regulation;

(b) to order the controller to comply with the data subject's requests to exercise the rights provided by this Regulation;

Or. en

Justification

This amendment is consistent with the amendment to Article 26.1 and 26.2.

Amendment 68

Proposal for a regulation

Article 53 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) to order the controller **and the processor**, and, where applicable, the representative to provide any information relevant for the performance of its duties;

(c) to order the controller, and, where applicable, the representative to provide any information relevant for the performance of its duties;

Or. en

Justification

This amendment is consistent with the amendment to Article 26.1 and 26.2.

Amendment 69

Proposal for a regulation

Article 53 – paragraph 1 – point e

Text proposed by the Commission

Amendment

(e) to warn or admonish the controller **or the processor**;

(e) to warn or admonish the controller;

Or. en

Justification

This amendment is consistent with the amendment to Article 26.1 and 26.2.

Amendment 70

Proposal for a regulation

Article 53 – paragraph 2

Text proposed by the Commission

Amendment

2. **Each** supervisory authority shall have the investigative power to obtain from the controller **or the processor**:

2. **The competent** supervisory **authority pursuant to Article 51** shall have the investigative power to obtain from the controller:

Or. en

Justification

This amendment is consistent with the amendments to Article 26.1, 26.2 and 51.2.

Amendment 71

Proposal for a regulation

Article 53 – paragraph 3

Text proposed by the Commission

Amendment

3. **Each** supervisory authority shall have the power to bring violations of this Regulation to the attention of the judicial authorities and to engage in legal proceedings, in particular pursuant to Article 74(4) and Article 75(2).

3. **The competent** supervisory authority **pursuant to Article 51** shall have the power to bring violations of this Regulation to the attention of the judicial authorities and to engage in legal proceedings, in particular pursuant to Article 74(4) and Article 75(2).

Or. en

Justification

This amendment is consistent with the amendments to Article 51.2.

Amendment 72

Proposal for a regulation

Article 53 – paragraph 4

Text proposed by the Commission

Amendment

4. **Each** supervisory authority shall have the power to sanction administrative offences, in particular those referred to in Article 79(4), (5) and (6).

4. **The competent** supervisory authority **pursuant to Article 51** shall have the power to sanction administrative offences, in particular those referred to in Article 79(4), (5) and (6).

Or. en

Justification

This amendment is consistent with the amendments to Article 51.2.

Amendment 73

Proposal for a regulation

Article 53 – paragraph 4a (new)

Text proposed by the Commission

Amendment

4a. The competent supervisory authority pursuant to Article 51 shall serve as the primary contact and reference point for any action to be implemented in accordance with Chapter VII of this Regulation. Other supervisory authorities shall refer any matter concerning a controller under the jurisdiction of the competent supervisory authority to that authority.

Or. en

Justification

This amendment is consistent with the amendments to Article 51.2.

Amendment 74

Proposal for a regulation

Article 55 – paragraph 8

Text proposed by the Commission

Amendment

8. Where a supervisory authority does not act within one month on request of another supervisory authority, the requesting supervisory authorities **shall be competent to take a provisional measure on the territory of its Member State in accordance with Article 51(1) and** shall submit the matter to the European Data Protection Board in accordance with the procedure referred to in Article 57.

8. Where a supervisory authority does not act within one month on request of another supervisory authority, the requesting supervisory authorities shall submit the matter to the European Data Protection Board in accordance with the procedure referred to in Article 57.

Or. en

Justification

This amendment is consistent with the amendments to Article 51.2. The draft Regulation should reflect the practical viability and resources affecting mutual assistance duties between supervisory authorities.

Amendment 75
Proposal for a regulation
Article 55 – paragraph 9

Text proposed by the Commission

Amendment

9. The supervisory authority shall specify the period of validity of such provisional measure. This period shall not exceed three months. The supervisory authority shall, without delay, communicate those measures, with full reasons, to the European Data Protection Board and to the Commission.

deleted

Or. en

Justification

This amendment is consistent with the amendments to Article 51.2. The draft Regulation should reflect the practical viability and resources affecting mutual assistance duties between supervisory authorities.

Amendment 76
Proposal for a regulation
Article 58 – paragraph 1

Text proposed by the Commission

Amendment

1. Before **a** supervisory authority adopts a measure referred to in paragraph 2, this supervisory authority shall communicate the draft measure to the European Data Protection Board and the Commission.

1. Before **the competent** supervisory authority adopts a measure referred to in paragraph 2, this supervisory authority shall communicate the draft measure to the European Data Protection Board and the Commission.

Or. en

Justification

This amendment is consistent with the amendments to Article 51.2.

Amendment 77
Proposal for a regulation
Article 58 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) relates to processing activities which are related to the offering of goods or services **to** data subjects in several Member States, or to the monitoring of their behaviour; or

(a) relates to processing activities which are related to the offering of goods or services **specifically targeted at** data subjects in several Member States, or to the monitoring of their behavior, **and where the controller not established in the Union has not appointed a representative in the territory of the Union**; or

Or. en

Justification

The first part of this amendment is consistent with the amendment to Article 3.2. The second part of this amendment aims to limit the scope of applicability of the consistency mechanism to those cases where consistency of data protection enforcement is truly at stake. It would seem unjustified to automatically apply the consistency mechanism to non-EU established companies that are subject to the Regulation in all circumstances, particularly where these have appointed a representative in the EU. The competence of the data protection board over non- EU established companies that are subject to the Regulation should be equivalent to that over EU companies.

Amendment 78

Proposal for a regulation

Article 58 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) aims at adopting a list of the processing operations subject to prior consultation pursuant to Article 34(5);
or

deleted

Or. en

Justification

This amendment is consistent with the amendment to Article 58.2(a). The consistency mechanism should remain an exceptional mechanism and not a body of appeal of legitimate decisions of the competent Data Protection Authority. Otherwise there is the risk that the consistency mechanism becomes an appeal mechanism that slows down decision taking and becomes a bureaucratic step to the detriment of all actors.

Amendment 79

Proposal for a regulation

Article 58 – paragraph 3

Text proposed by the Commission

Amendment

3. Any supervisory authority or the European Data Protection Board may request that any matter shall be dealt with in the consistency mechanism, in particular where **a** supervisory authority does not submit a draft measure referred to in paragraph 2 or does not comply with the obligations for mutual assistance in accordance with Article 55 or for joint operations in accordance with Article 56.

3. Any supervisory authority or the European Data Protection Board may request that any matter shall be dealt with in the consistency mechanism, in particular where **the competent** supervisory authority does not submit a draft measure referred to in paragraph 2 or does not comply with the obligations for mutual assistance in accordance with Article 55 or for joint operations in accordance with Article 56.

Or. en

Justification

This amendment is consistent with the amendments to Article 51.2.

Amendment 80

Proposal for a regulation

Article 58 – paragraph 4

Text proposed by the Commission

Amendment

4. In order to ensure correct and consistent application of this Regulation, the Commission may request that any matter shall be dealt with in the consistency mechanism.

4. In order to ensure correct and consistent application of this Regulation, the Commission may request that any matter ***related to the category of measures referred to in paragraph 2*** shall be dealt with in the consistency mechanism.

Or. en

Justification

This amendment is consistent with the amendments to Article 51.2 point c.

Amendment 81

Proposal for a regulation

Article 58 – paragraph 7

Text proposed by the Commission

Amendment

7. The European Data Protection Board shall issue an opinion on the matter, if the European Data Protection Board so decides by ***simple*** majority of its members or any supervisory authority or the Commission so requests within one week after the relevant information has been provided according to paragraph 5. The opinion shall be adopted within one month by ***simple*** majority of the members of the European Data Protection Board. The chair of the European Data Protection Board shall inform, without undue delay, the supervisory authority referred to, as the case may be, in paragraphs 1 and 3, the Commission ***and*** the supervisory authority competent under Article 51 of the opinion and make it public.

7. The European Data Protection Board shall issue an opinion on the matter, if the European Data Protection Board so decides by ***qualified*** majority of its members or any supervisory authority or the Commission so requests within one week after the relevant information has been provided according to paragraph 5. The opinion shall be adopted within one month by ***qualified*** majority of the members of the European Data Protection Board. The chair of the European Data Protection Board shall inform, without undue delay, the supervisory authority referred to, as the case may be, in paragraphs 1 and 3, the Commission, the ***competent*** supervisory ***and the controller or processor*** of the opinion and make it public.

Or. en

Justification

This amendment is consistent with the amendments to Recital 106 and Article 51.2. The controller or processor should be informed about any opinion of the European Data Protection Board as far as they are concerned by the content of such opinion.

Amendment 82

Proposal for a regulation

Article 58 – paragraph 7

Text proposed by the Commission

Amendment

8. The ***supervisory*** authority referred to in paragraph 1 ***and the supervisory authority competent under***

8. The ***competent*** supervisory authority referred to in paragraph 1 shall take account of the opinion of the

Article 51 shall take account of the opinion of the European Data Protection Board and shall within two weeks after the information on the opinion by the chair of the European Data Protection Board, electronically communicate to the chair of the European Data Protection Board and to the Commission whether it maintains or amends its draft measure and, if any, the amended draft measure, using a standardised format.

European Data Protection Board and shall within two weeks after the information on the opinion by the chair of the European Data Protection Board, electronically communicate to the chair of the European Data Protection Board and to the Commission whether it maintains or amends its draft measure and, if any, the amended draft measure, using a standardised format.

Or. en

Justification

This amendment is consistent with the amendments to Article 51.2.

Amendment 83

Proposal for a regulation

Article 59 – paragraph 2

Text proposed by the Commission

Amendment

2. Where the Commission has adopted an opinion in accordance with paragraph 1, the supervisory authority concerned shall take utmost account of the Commission's opinion and inform the Commission and the European Data Protection Board whether it intends to maintain or amend its draft measure.

2. Where the Commission has adopted an opinion in accordance with paragraph 1, the **competent** supervisory authority concerned shall take utmost account of the Commission's opinion and inform the Commission and the European Data Protection Board whether it intends to maintain or amend its draft measure.

Or. en

Justification

This amendment is consistent with the amendments to Article 51.2.

Amendment 84

Proposal for a regulation

Article 59 – paragraph 4

Text proposed by the Commission

Amendment

4. Where the **supervisory** authority concerned intends not to follow the opinion of the Commission, it shall inform the Commission **and** the European Data Protection Board thereof within the period referred to in paragraph 1 and provide a justification. In this case the draft measure shall not be adopted for one further month.

4. Where the **competent** supervisory authority concerned intends not to follow the opinion of the Commission, it shall inform the Commission, the European Data Protection Board **and the controller or processor** thereof within the period referred to in paragraph 1 and provide a justification. In this case the draft measure shall not be adopted for one further month.

Or. en

Justification

The first part of the amendment is consistent with the amendment to Article 51.2. The controller or processor should be informed about any decision of the competent supervisory authority as far as they are directly or

indirectly, effectively or potentially concerned by the content of such decision.

Amendment 85

Proposal for a regulation

Article 61 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

The first part of the amendment is consistent with the amendment to Article 51.2. The controller or processor should be informed about any decision of the competent supervisory authority as far as they are directly or indirectly, effectively or potentially concerned by the content of such decision or any measure the competent authority intends to take.

Amendment 86

Proposal for a regulation

Article 61 – paragraph 2

Text proposed by the Commission

2. Where **a** supervisory authority has taken a measure pursuant to paragraph 1 and considers that final measures need urgently be adopted, it may request an urgent opinion of the European Data Protection Board, giving reasons for requesting such opinion, including for the urgency of final measures.

Amendment

2. Where **the competent** supervisory authority has taken a measure pursuant to paragraph 1 and considers that final measures need urgently be adopted, it may request an urgent opinion of the European Data Protection Board, giving reasons for requesting such opinion, including for the urgency of final measures.

Or. en

Justification

This amendment is consistent with the amendment to Article 51.2.

Amendment 87

Proposal for a regulation

Article 63 – paragraph 1

Text proposed by the Commission

Amendment

1. For the purposes of this Regulation, an enforceable measure of the supervisory authority of one Member State shall be enforced in all Member States concerned.

1. For the purposes of this Regulation, an enforceable measure of the **competent** supervisory authority of one Member State shall be enforced in all Member States concerned.

Or. en

Justification

This amendment is consistent with the amendment to Article 51.2.

Amendment 88

Proposal for a regulation

Article 63 – paragraph 2

Text proposed by the Commission

Amendment

2. Where **a** supervisory authority does not submit a draft measure to the consistency mechanism in breach of Article 58(1) to (5), the measure of the supervisory authority shall not be legally valid and enforceable.

2. Where **the competent** supervisory authority does not submit a draft measure to the consistency mechanism in breach of Article 58(1) to (5), the measure of the supervisory authority shall not be legally valid and enforceable.

Or. en

Justification

This amendment is consistent with the amendment to Article 51.2.

Amendment 89

Proposal for a regulation

Article 66 – paragraph 1

Text proposed by the Commission

Amendment

1. The European Data Protection Board shall ensure the consistent application of this Regulation. To this effect, the European Data Protection Board shall, on its own initiative **or** at the request of the Commission, in particular:

1. The European Data Protection Board shall ensure the consistent application of this Regulation. To this effect, the European Data Protection Board shall, on its own initiative, at the request of the Commission **or other interested parties**, in particular:

Or. en

Justification

Interested parties should have the possibility to access the European Data Protection Board and submit to it data protection related matters of concern in terms of consistent EU-wide application.

Amendment 90

Proposal for a regulation

Article 66 – paragraph 1 – point b

Text proposed by the Commission

(b) examine, on its own initiative or on request of one of its members or on request of the Commission, any question covering the application of this Regulation and issue guidelines, recommendations and best practices addressed to the supervisory authorities in order to encourage consistent application of this Regulation;

Amendment

(b) examine, on its own initiative or on request of one of its members or on request of the Commission **or other interested parties**, any question covering the application of this Regulation and issue guidelines, recommendations and best practices addressed to the supervisory authorities in order to encourage consistent application of this Regulation;

Or. en

Justification

This amendment is in line with amendment to Article 66.1.

Amendment 91

Proposal for a regulation

Article 66 – paragraph 4 (new)

Text proposed by the Commission

Amendment

4a. Where appropriate, the European Data Protection Board shall, in its execution of the tasks as outlined in this Article, consult interested parties and give them the opportunity to comment within a reasonable period. The European Data Protection Board shall, without prejudice to Article 72, make the results of the consultation procedure publicly available.

Or. en

Justification

This amendment intends to provide interested parties the opportunity to be consulted and provide comments within a reasonable timeframe before the European Data Protection Board adopts opinions or reports. The possibility for industry to be consulted also exists in other regulatory domains (e.g. the European Regulators Group BEREC in the context of the EU's telecoms regulatory framework).

Amendment 92

Proposal for a regulation

Article 77 – paragraph 1

1. Any person who has suffered damage as a result of an unlawful processing operation or of an action incompatible with this Regulation shall have the right to receive compensation from the controller **or the**

Amendment

1. Any person who has suffered damage as a result of an unlawful processing operation or of an action

processor for the damage suffered.

incompatible with this Regulation shall have the right to receive compensation from the controller for the damage suffered.

Or. en

Justification

This amendment is consistent with the amendments to Article 26.

Amendment 93

Proposal for a regulation

Article 77 – paragraph 2

Text proposed by the Commission

Amendment

2. Where more than one controller *or processor* is involved in the processing, each controller *or processor* shall be jointly and severally liable for the entire amount of the damage.

2. Where more than one controller is involved in the processing, each controller shall be jointly and severally liable for the entire amount of the damage, ***to the extent that liability has not already been established in the determination of responsibilities envisaged in Article 24.***

Or. en

Justification

This amendment is consistent with the amendments to Article 26.

Amendment 94

Proposal for a regulation

Article 77 – paragraph 3

Text proposed by the Commission

Amendment

3. The controller *or the processor* may be exempted from ***this*** liability, in whole or in part, if the controller *or the processor* proves that ***they are*** not responsible for the event giving rise to the damage.

3. The controller may be exempted from liability ***under paragraph 2***, in whole or in part, if the ***respective*** controller proves that ***it is*** not responsible for the event giving rise to the damage.

Justification

This amendment is consistent with the amendments to Article 26.

Amendment 95

Proposal for a regulation

Article 77 – paragraph 3a (new)

Text proposed by the Commission

Amendment

3a. If a processor processes personal data other than as instructed by the controller, he may be held liable should any person suffer damage as a result of such

processing.

Justification

This amendment is consistent with the amendments to Article 26.