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*Committee on Industry, Research and Energy*

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**2012/0011(COD)**

8.11.2012

## **DRAFT OPINION**

of the Committee on Industry, Research and Energy

for the Committee on Civil Liberties, Justice and Home Affairs

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PE496.562v01-00

**EN**

*United in diversity*

**EN**

on the proposal for a regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)  
(COM(2012)0011 – C7-0025/2012 – 2012/0011(COD))

Rapporteur: Seán Kelly

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## AMENDMENTS

The Committee on Industry, Research and Energy calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

**Amendment 1**  
**Proposal for a regulation**  
**Recital 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***TELEFÓNICA Amendment***

***(1a) The protection of the freedom of expression and information is a fundamental right in accordance with Article 11 of the European Charter of Fundamental Rights. This right includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The freedom and pluralism of the media should be respected.***

Or. en

*Justification*

*Explicit reference should be made to the freedom of information and the right to free expression which are fundamental rights in the European Union, pursuant to Article 11 of the European Charter of Fundamental Rights.*

Or. en

Or. en

Or. en

Or. en

Or. en

**Amendment 22**

**Proposal for a regulation**

**Article 2 – paragraph 2 – point e a (new)**

*Text proposed by the Commission*

*Amendment*

***(ea) that has been rendered permanently,***

*irreversibly anonymous;*

Or. en

**Amendment 23**  
**Proposal for a regulation**  
**Article 4 – point 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***(2a) 'pseudonymous data' means any personal data that has been collected, altered or otherwise processed so that it of itself cannot be attributed to a data subject without the use of additional data which is subject to separate and distinct technical and organisational controls to ensure such non attribution;***

Or. en

*Justification*

*Defining and promoting the use of pseudonymous data will likely have the effect of encouraging the practice of “pseudonymising” data, by encryption, which is in the benefit of all data subjects as, by definition, personal data is altered so that it of itself cannot be attributed to a data subject without the use of additional data which is subject to separate and distinct technical and organisational controls.*

**Amendment 24**  
**Proposal for a regulation**  
**Article 4 – point 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***(2b) 'anonymous data' means information that has never related to a data subject or has been collected, altered or otherwise processed so that it cannot be attributed to a data subject;***

Or. en

*Justification*

*It is important to define the meaning of anonymous data in order to provide clarification on the scope of the Regulation. Recital 23 makes reference to anonymous data, to which the principles of data protection should not be applied. Providing a definition of anonymous data ensures more legal certainty.*

**Amendment 25**  
**Proposal for a regulation**  
**Article 4 – point 8**

*Text proposed by the Commission*

*Amendment*

(8) 'the data subject's consent' means any freely given specific, ***informed and explicit*** indication of his or her wishes by which the data subject, ***either by a***

(8) 'the data subject's consent' means any freely given specific ***and informed*** indication of his or her wishes by which the data subject signifies agreement to

*statement or by a clear affirmative action,*  
signifies agreement to personal data  
relating to them being processed;

personal data relating to them being  
processed;

Or. en

*Justification*

*This ties in with the approach to consent in Recital 33 (a) (new). Rather than legislating the precise form of consent, this should be guided by an impact assessment that determines the precise needs in a particular user experience context. Requirements for specific, informed and explicit consent have been retained, but apply only where an impact assessment has not been conducted.*

**Amendment 26**

**Proposal for a regulation**

**Article 4 – point 9 a (new)**

*Text proposed by the Commission*

*Amendment*

***(9a) 'Special categories of personal data'  
means information which shows the  
racial or ethnic origin, political beliefs,  
religion or belief or membership of a  
trade union as well as genetic data, data  
concerning health or sex life and data  
relating to criminal convictions or related  
security measures;***

Or. en

### *Justification*

*The processing of "special categories of personal data" is already subject to specific requirements (see Article 9). This group of sensitive data should, for reasons of proportionality, also be taken into account when determining other obligations of the controller (see amendment to Article 31). The addition of this definition creates more legal certainty.*

#### **Amendment 27**

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

#### **Article 4 – 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 determined by the data controller or data processor on the basis of the following transparent and objective criteria: the location of the group's European headquarters, or, the location of the company within the group with delegated data protection responsibilities, or, the location of the company which is best placed (in terms of management function, administrative capability etc) to address and enforce the rules as set out in this Regulation, or, the place where the main decisions as to the purposes of processing are taken for the regional group;*

Or. en



### *Justification*

*This amendment seeks to provide clarity reflecting the real situation of companies acting across a number of different jurisdictions. This should not be interpreted as a charter for "forum shopping", as the company must provide transparent, objective criteria to justify the location of its main establishment for the purposes of the regulation.*

### **Amendment 28**

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

#### **Article 4 – point 19 a (new)**

*Text proposed by the Commission*

*Amendment*

***(19a) 'financial crime' means criminal offences in connection with organised crime, racketeering, terrorism, terrorist financing, trafficking in human beings, migrant smuggling, sexual exploitation, trafficking in narcotic drugs and psychotropic substances, illegal arms trafficking, trafficking in stolen goods, corruption, bribery, fraud, counterfeiting currency, counterfeiting and piracy of products, environmental offences, kidnapping, illegal restraint and hostage-taking, robbery, theft, smuggling, offences related to taxation, extortion, forgery, piracy, insider trading and market manipulation.***

Or. en

*Justification*

*It is necessary to add a definition of 'financial crime', derived from the recommendations of the Financial Action Task Force, as the processing of personal data will be allowed in order to prevent, investigate or detect financial crime.*

Or. en

Or. en

**Amendment 34**  
**Proposal for a regulation**  
**Article 7 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

*1. The controller shall bear the burden of proof for the data subject's consent to the processing of their personal data for specified purposes.*      *deleted*

Or. en

*Justification*

*Superfluous as the burden of proof under normal procedural law applies currently.*

**Amendment 35**  
**Proposal for a regulation**  
**Article 7 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*Telefónica Amendment*

*1a. The form of consent captured for the processing of a data subject's personal data shall be proportionate to the type of data processed and the purpose for the processing, as determined through a properly conducted data protection impact assessment as described in Article 33.*

*~~1a. The form of consent captured for the processing of a data subject's personal data shall be proportionate to the type of data processed and the purpose for the processing, as determined through a properly conducted data protection impact assessment as described in Article 33.~~*

Or. en

*Justification*

This Amendment and its Justification seems to be in contradiction with MEP Kelly's Amendment 25 on Art. 4.8. We support MEP Kelly approach to Amendment 25, therefore for the sake of legal certainty we suggest the deletion of Amendment 35.

**Amendment 36**  
**Proposal for a regulation**  
**Article 7 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

*Telefónica Amendment*

***1b. Unless another form of consent is determined to be proportionate by such an impact assessment, consent shall be captured in a specific, informed and explicit statement or other clear affirmative action.***

~~***1b. Unless another form of consent is determined to be proportionate by such an impact assessment, consent shall be captured in a specific, informed and explicit statement or other clear affirmative action.***~~

Or. en

*Telefónica Justification*

This Amendment is in contradiction with MEP Kelly's Amendment 25 on Art. 4.8. We support MEP Kelly approach to Amendment 25, therefore for the sake of legal certainty we suggest the deletion of Amendment 36.

**Amendment 37**  
**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. 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 ***conspicuously*** in its appearance from this other matter.

*Justification*

*Data subjects should be given clear and unambiguous conditions for offering their consent. If the intention is to ensure that consent language does not get lost amidst other technical jargon, perhaps the term “distinguishable” should not be used but the term “conspicuous” should be used instead. It should be highlighted, not distinguished.*

**Amendment 38**  
**Proposal for a regulation**  
**Article 7 – paragraph 3**

*Text proposed by the Commission*

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.

*Amendment*

3. The data subject shall have the right to withdraw his or her consent *vis à vis the controller who processes personal data on the basis of consent* at any time. *If the consent is part of a contractual or statutory relationship the withdrawal shall depend on the contractual or legal conditions.* The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal. *It is acknowledged that the withdrawal of consent may serve to terminate the relationship with the controller.*

### *Justification*

*This amendment is indispensable for the implementation of the right of withdrawal in practice to ensure legal certainty: it serves to clarify that the original consent recipient is the sole addressee of the revocation. This clarification is essential for the cases where the data based on consent were passed on to third parties or published.*

#### **Amendment 39** **Proposal for a regulation** **Article 7 – paragraph 4**

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

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.

##### *Amendment*

4. Consent shall not provide a legal basis for the processing, ***when it has not been given freely, particularly in such a case*** where there is a significant imbalance between the position of the data subject and the controller ***as regards this specific consent.***

Or. en

### *Justification*

*This amendment seeks to clarify the somewhat vague "significant imbalance" term, by providing for scenarios, such as when the data subject is either employed by the controller or the controller is a public authority, and this imbalance makes it unlikely that consent was given freely.*

#### **Amendment 40** **Proposal for a regulation**

## Article 8 – paragraph 3

*Text proposed by the Commission*

**1. For the purposes of this Regulation, in relation to the offering of information society services directly to a child, the processing of personal data of a child below the age of 13 years shall only be lawful if and to the extent that consent is given or authorised by the child's parent or custodian. The controller shall make reasonable efforts to obtain verifiable consent, taking into consideration available technology.**

**3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the methods to obtain verifiable consent referred to in paragraph 1. In doing so, the Commission shall consider specific measures for micro, small and medium-sized enterprises.**

*Amendment*

1. For the purposes of this Regulation, ~~in relation to the offering of information society services directly to a child~~, the processing of personal data of a child below the age of 13 years shall only be lawful if and to the extent that consent is given or authorised by the child's parent or custodian. The controller shall make reasonable efforts to obtain verifiable consent, taking into consideration available technology.

*deleted*

Justification

The only mention of requirements that apply to a specific age-group is found in the new Article 8, referring only to requirements related to “a child below the age of 13 years” and to “information society services directly to a child”. This definition-by-omission leads to the conclusion that any service not considered part of the “information society” will be

subject to different requirements for processing the data of a child (under 18 years of age); those services and/or their requirements, however, are not contemplated further in this Article or anywhere else in the current Regulation proposal.

Or. en

Or. en

Or. en

Or. en

Or. en

Or. en



Or. en

Or. en

Or. en

Or. en

**Amendment 58**  
**Proposal for a regulation**  
**Article 17 – paragraph 1 – introductory part**

*Text proposed by the Commission*

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

*Amendment*

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

*Telefónica Amendment*

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

Or. en

**Amendment 59**  
**Proposal for a regulation**  
**Article 17 – paragraph 1 – point b**

*Text proposed by the Commission*

(b) the data subject withdraws consent on which the processing is based according to point (a) of Article 6(1), or when the **storage** period consented to has expired, and where there is no other legal ground for the processing of the data;

*Amendment*

(b) the data subject withdraws consent on which the processing is based according to point (a) of Article 6(1), or when the **retention** period consented to has expired, and where there is no other legal ground for the processing of the **data, or unless it would require a disproportionate effort by the data controller to ensure deletion of all** data;

*Telefónica Amendment*

**New paragraph 17.2.**

***new par. (2) The controller shall take all reasonable steps to communicate any erasure to each legal entity to whom the data have been disclosed, unless this involves a disproportionate effort.***

Or. en

**Amendment 60**  
**Proposal for a regulation**  
**Article 17 – paragraph 2**

*Text proposed by the Commission*

***2. Where the controller referred to in paragraph 1 has made the personal data public, it shall take all reasonable steps, including technical measures, in relation to data for the publication of which the controller is responsible, to inform third***

*Amendment*

***deleted***

*Telefónica Amendment*

**New paragraph Art. 17.3.**

***(2) (3) Where the controller referred to in paragraph 1 has made the personal data public, it shall take all reasonable steps, including technical measures, in relation to data for the publication of which the***

*parties which are processing such data, that a data subject requests them to erase any links to, or copy or replication of that personal data. Where the controller has authorised a third party publication of personal data, the controller shall be considered responsible for that publication.*

controller is responsible, to inform ~~third parties~~ *legal entities to whom the original controller had authorised to further process personal data upon request of the data subject* and which are processing such data, that a data subject requests them to erase any links to, or copy or replication of that personal data.  
*In any case the controller will not be responsible for the personal data that the data subject by a voluntary act has made public.*

Or. en

### *Justification*

The Right to be Forgotten is, in our view, not something new as data controllers already have to delete personal data whenever the data subject ask for erasure or cancellation. The basic principles on Data Quality (art. 6), Right of access and Right of rectification (Art. 12) and Consent (Art. 7) of Directive 95/46/EC are the basis of this “new right to be forgotten”.

However, although we probably have a common understanding of what we want to achieve, the wording of the current proposal, especially of Art 17.2, extends the concept well beyond “personal data” and may oblige companies to delete data that is not personal in nature, such as information that someone has voluntarily published on the internet. Data controllers must inform any third party to “erase any links to, or copy or replication of that personal data”. This information obligation is triggered by a request by the data subject to the original controller to erase data. This is technically far more challenging, if not impossible. This extended interpretation cannot and should not be the objective of this article.

With this extended scope of “personal data”, this provision is difficult to apply in practice for social networking, blogs and Internet search businesses: the original controller of that data might not be aware of any third party processing. The controller would therefore have to track content across their service or worse across the entire Internet. In other words, by requiring that controllers inform any third parties, this provision seems to envisage that companies can oversee the entirety of the World Wide Web and control the information on it – an obligation that is directly at odds with the open architecture of the Internet. The e-Commerce Directive already recognises that it would be unreasonable to ask companies to monitor the Internet. It makes it clear that companies that act as intermediaries in the provision of services of the Information Society should not be required to do so.

In order to render this provision workable, we propose the following modifications:

This obligation should only be applied to personal data that the data subject has made available to the Data Controller specifically. Other data, for example, a journalist writing an article, tweets or someone commenting on a blog post, should be excluded from the scope of this obligation. Companies are only asked to “forget” personal data, not somebody’s complete history. The data controller should not be responsible for the personal data that the data subject himself has made public.

The right to be forgotten should be limited to the original Data Controller who received the personal data directly from the user who contracted the service, and any third party who processes data on behalf of the Data Controller.

It should be clarified that no tracking of data published on own services is required from the controller and that the information obligation is only triggered by explicit request by the data subject and only to those third legal entities the controller directly authorised to further process personal data.

Telefónica welcomes the inclusion of Art. 13 on rights in relation to recipients, by which the obligation to inform is limited if it proves impossible or involves a disproportionate effort. Therefore, for the sake of legal certainty, Art. 13 should be moved in order to complete Art. 17.2. This would reinforce the wording related to “reasonable steps”: “...the original controller shall take all reasonable steps, including technical measures, unless this proves impossible or involves a disproportionate effort”.

**Amendment 61**  
**Proposal for a regulation**  
**Article 17 – paragraph 3 – introductory part**

*Text proposed by the Commission*

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

*Amendment*

3. The controller shall carry out the erasure without delay, ***under the conditions of paragraph 1, and to the extent technically or practically feasible for the controller,*** except to the extent that the retention of the personal data is necessary:

Or. en

*Justification*

*The reference to paragraph 1 provides clarification in order to prevent the impression that the conditions set in paragraphs 1 and 3 are conflicting.*

**Amendment 62**  
**Proposal for a regulation**  
**Article 17 – paragraph 3 – point d**

*Text proposed by the Commission*

(d) for compliance with a legal obligation to retain the personal data by Union or Member State law to which the controller is subject; ***Member State laws shall meet an objective of public interest, respect the***

*Amendment*

(d) for compliance with a legal obligation to retain the personal data by Union or Member State law to which the controller is subject;

*essence of the right to the protection of personal data and be proportionate to the legitimate aim pursued;*

Or. en

*Justification*

*There may be laws of other member states that require a controller to refuse the right to be forgotten. Data may need to be held for accounting reasons under financial reporting rules for example.*

**Amendment 63**

**Proposal for a regulation**

**Article 17 – paragraph 4 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

*(da) the controller has to store the personal data in order to ensure that based on an objection pursuant to Article 19, further processing of the respective data is excluded.*

Or. en

*Justification*

*An objection to the processing of personal data pursuant to Article 19 regularly excludes the processing of the respective data for the future. To ensure that the respective data is not actually used for future data processing measures, it must not be deleted but blocked or otherwise marked.*

**Amendment 64**  
**Proposal for a regulation**  
**Article 17 – paragraph 9**

*Text proposed by the Commission*

*Amendment*

**9. The Commission shall be empowered to  
adopt delegated acts in accordance with  
Article 86 for the purpose of further  
specifying:** *deleted*

**(a) the criteria and requirements for the  
application of paragraph 1 for specific  
sectors and in specific data processing  
situations;**

**(b) the conditions for deleting links,  
copies or replications of personal data  
from publicly available communication  
services as referred to in paragraph 2;**

**(c) the criteria and conditions for  
restricting the processing of personal data  
referred to in paragraph 4.**

Or. en

**Amendment 65**  
**Proposal for a regulation**  
**Article 18 – paragraph 1**

*Text proposed by the Commission*

1. The data subject shall have the right, where personal data are processed by electronic means and in a structured and commonly used format, to obtain from the controller a copy of data undergoing processing in an electronic and structured format which is commonly used and allows for further use by the data subject.

*Amendment*

1. The data subject shall have the right, where personal data are processed by electronic means and in a structured and commonly used format, to obtain from the controller, ***where technically feasible and appropriate***, a copy of data undergoing processing in an electronic and structured format which is commonly used and allows for further use by the data subject.

*TELEFÓNICA Amendement*

~~***1. The data subject shall have the right, where personal data are processed by electronic means and in a structured and [...].***~~

Or. en

**Amendment 66**  
**Proposal for a regulation**  
**Article 18 – paragraph 2**

*Text proposed by the Commission*

2. Where the data subject has provided the personal data and the processing is based on consent or on a contract, the data subject shall have the right to transmit those personal data and any other information provided by the data subject and retained by an automated processing system, into another one, in an electronic format which is commonly used, without

*Amendment*

2. Where the data subject has provided the personal data and the processing is based on consent or on a contract, the data subject shall have the right to transmit those personal data and any other information provided by the data subject, ***where technically feasible and appropriate***, and retained by an automated processing system, into another one, in an

~~***2. Where the data subject has provided the personal data and the processing is based on consent or on a contract, [...].***~~



hindrance from the controller from whom the personal data are withdrawn.

electronic format which is commonly used, without hindrance from the controller from whom the personal data are withdrawn.

Or. en

**Amendment 67**  
**Proposal for a regulation**  
**Article 18 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. The rights referred to in paragraphs 1 and 2 shall not adversely affect the rights and freedoms of others, including trade secrets or intellectual property rights. The result of such considerations shall not be that all information is refused to the data subject.***

Or. en

*Justification*

*Use of language from Recital 51 in relation to access to data. Due regard must be given to the limits to data portability, especially in relation to the legitimate interests of businesses to protect trade secrets and intellectual property rights, within reason.*

**Amendment 68**  
**Proposal for a regulation**  
**Article 18 – paragraph 3**

*Text proposed by the Commission*

3. ***The Commission may specify*** the electronic format ***referred to in paragraph 1 and the technical standards, modalities*** and procedures for the transmission of personal data pursuant to paragraph 2. ***Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).***

*Amendment*

3. The electronic format, ***related functionalities*** and procedures for the transmission of personal data pursuant to paragraph 2, ***shall be determined by the controller by reference to the most appropriate industry standards available or as defined by industry stakeholders or standardisation bodies.***

~~3. ***The Commission may specify the electronic format referred to in paragraph 1 and the technical standards, [...].***~~

Or. en

***Telefónica Justification***

Data portability is fraught with technical and competition issues and therefore easier said than done. But apart from this enforcement difficulties, Telefónica would like to make a more important point: in essence, it is a competition or market organisation measure to be addressed in the proper regulation, but not related to data protection or privacy.

Transparency as a whole will be of further more importance to obtain confidence from our customers, therefore the market will provide for the most suitable forms of Data Subjects Access Rights. Some of our Operating Businesses are already today providing answers to customer requests for data in an electronic form and the customers are free to use it however they want. This will evolve in the future due to increasing amounts of data and the necessary process development going along with it.

We would, therefore, suggest striking it from this Regulation and strengthening and make easier the right to access to data. In other words, to reinforce the data Subject Access Rights.

Competition issues around Cloud services are not solved by providing a general data portability right. Cloud provides different services with different technical, business and competition implications with different portability possibilities, the data is not the same and the services are not the same, except that we would aim at building "uniform" cloud based services in Europe (which is not really the idea of the European Cloud Strategy). We cannot provide a blank slate regarding portability for all the services around cloud business without considering the service provided and the competition constraints in each business proposition based on Cloud: hosting, IaaS, processing, SaaS, etc.

It is not so easy to move data from one provider to another, especially if the cloud provider provides value added services and not only infrastructure. And this will not be solved by a generic data portability right.

Service costs and prices will clearly increase without not clear benefit in most of the cases, innovation will be constrained by European formats, standards and rules, and the European cloud services will be still less competitive from the end user perspective although implement user's data portability rights.

- **MEP Kelly's Draft Opinion** tries to introduce some improvements in the wording of Art.18, but at the end there seems to be no difference between Art. 18 as amended by MEP Kelly and Art. 15 on right of access for the data subjects. Having a sound right of access (art. 15) would solve the problems the new right to Data Portability is willing to address, without any negative effects as identified above.

**Amendment 69**  
**Proposal for a regulation**  
**Article 19 – paragraph 1**

*Text proposed by the Commission*

1. The data subject shall have the right to object, *on* grounds relating to their

*Amendment*

1. The data subject shall have the right to object *in the cases of points (d), (e) and (f)*

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**EN**

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.**

**of Article 6(1) on predominant, and protection-worthy grounds** relating to their particular situation, at any time to the processing of **their** personal data. **In the case of a justified objection** the processing **by the controller may no longer refer to this data**

Or. en

#### *Justification*

*The changes reflect the effective and proven provision on objection of Article 14a) of Directive 95/46/EC. There is no reason to change the current system. There are no known practical problems in this area, which would justify a legislative change. This applies even more so as the Regulation will now apply directly and thus without the flexibility of the Directive.*

#### **Amendment ... Proposal for a regulation Article 20**

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

#### **TITLE : Measures based on profiling**

1) Every natural person shall have the right not to be subject to a measure which produces legal effects concerning this natural person or significantly affects this

##### *Amendment*

##### *Telefónica Amendment*

#### ***TITLE: Measures based on profiling AUTOMATED DECISION MAKING***

**(1)** Every natural person shall have the right not to be subject to a ~~measure~~ **decision** which produces legal effects concerning this natural person or

natural person, and which is based solely on automated processing intended to evaluate certain personal aspects relating to this natural person or to analyse or predict in particular the natural person's performance at work, economic situation, location, health, personal preferences, reliability or behaviour.

2. Subject to the other provisions of this Regulation, a person may be subjected to a measure of the kind referred to in paragraph 1 only if the processing:

- (a) is carried out in the course of the entering into, or performance of, a contract, where the request for the entering into or the performance of the contract, lodged by the data subject, has been satisfied or where suitable measures to safeguard the data subject's legitimate interests have been adduced, such as the right to obtain human intervention; or
- (b) is expressly authorized by a Union or Member State law which also lays down suitable measures to safeguard the data subject's legitimate interests; or
- (c) is based on the data subject's consent,

significantly affects this natural person, and which is based solely on automated processing *of data* intended to evaluate certain personal aspects relating to this natural person, ~~or to analyse or predict in particular the natural person's~~ such as his/her performance at work, ~~economic situation, location, health, personal preferences~~ *creditworthiness*, reliability or behaviour.

(2) Subject to other provisions of this Regulation, a person may be subjected to a **measure decision** of the kind referred to in paragraph 1 **only** if that decision:

- (a) ~~is carried out~~ **is taken** in the course of the entering into, or performance of, a contract, **where provided** the request for the entering into or the performance of the contract, lodged by the data subject, has been satisfied or **where that there are** suitable measures to safeguard his legitimate interests, **such as arrangements allowing him to put his point of**

subject to the conditions laid down in Article 7 and to suitable safeguards.

3. Automated processing of personal data intended to evaluate certain personal aspects relating to a natural person shall not be based solely on the special categories of personal data referred to in Article 9.

4. In the cases referred to in paragraph 2, the information to be provided by the controller under Article 14 shall include information as to the existence of processing for a measure of the kind referred to in paragraph 1 and the envisaged effects of such processing on the data subject.

**view; or**

- (b) is **expressly** authorised by a Union or Member State law which also lays down measures to safeguard the data subject's legitimate interest; or
- (c) is based on the data subject's consent, subject to the conditions laid down in Article 7 and to suitable safeguards.

~~3. Automated processing of personal data intended to evaluate certain personal aspects relating to a natural person shall not be based solely on the special categories of personal data referred to in Article 9.~~

4. In the cases referred to in paragraph 2, the information to be provided by the controller under Article 14 shall include information as to the existence of processing for a **measured decision** of the kind referred to in paragraph 1 ~~and the envisaged effects of such processing on the data subject.~~

Or. en

Or. en

Or. en

### *Justification*

The provisions on profiling are excessive and unclear, whilst we cannot see how they will enhance the user's privacy. There is a perception that profiling per se is bad. We would highlight that profiling can have very positive applications (eg.: traffic management).

Evenmore, Telefónica believes that "profiling" is not the main issue, but rather the consent is with automated decisions. The off and online world (both Private and Public Sectors) makes use of profiling day in day out in order to make decisions about what products, services, prices, levels of service, etc. are to be offered to customers. We understand that online behavioural advertising is singled out as a specific cause for concern which this Article seeks to regulate. In this sense we proposed to replace references to "profiling" and "measures" with "automated decision taking" in the recital and the article itself.

Article 20.4 obliges data controllers to ensure that data subjects are given sufficient information about the 'envisaged effects' of such processing on them. In addition, Article 33.2.a. obliges organisations to conduct Privacy Impact Assessments for such processing and to seek the views of the data subject or their representatives on it (Art. 33.4).

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**EN**





Or. en

Or. en

Or. en

*Justification*

*The representative acts on behalf of the controller and is the controller in the EU. Non bis in idem.*

**Amendment 82**  
**Proposal for a regulation**  
**Article 28 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

1. Each controller and processor and, if any, the controller's representative, shall maintain documentation of ***the policies and measures taken to ensure that the processing of personal data*** under its responsibility ***is performed in compliance with Article 22.***

*Telefónica Amendment*

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

Or. en

*Justification*

*A prescriptive documentation requirement for each data processing activity is unachievable both for multinational enterprises and for smaller enterprises and would not lead to greater privacy protection for customers. The proposed amendment avoids legalistic, onerous compliance programmes for data protection that create paperwork but do not result in better operational practices on the ground.*

**Amendment 83**

**Proposal for a regulation**

**Article 28 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. The documentation shall contain the information necessary for the supervisory authority to ascertain that the controller or processor has complied with this Regulation, including a description of any of the applicable internal measures and mechanisms intended to comply with Article 22.***

Or. en

*Justification*

With the aim to reduce administrative burden on controllers, Art. 28 replaces the general obligation to notify individual processing operations to the supervisory authority under Articles 18(1) and 19 of Directive 95/46/EC. However, we believe this new obligation to maintain documentation of all processing operations will involve heavy bureaucratic requirements and therefore seriously risk increasing rather than reducing the administrative burden, compared to the current rules.

We are also concerned that identical obligations apply to data controllers and data processors (which currently are not subject to any notification obligation). This poses a particular problem in the area of cloud computing. Indeed, imposing disproportionate documentation obligations on data processors -identical to the controllers' obligations- risks severely slowing the development and roll out of new cloud computing offerings and services in Europe.

Finally, we firmly believe Article 28 conflicts with the principles of accountability and efficiency that are set out in Article 22 of the GDPR, therefore it should be simplified in order to become effective and proportionate. Only Article 28.2.a. and 28.2.b. should be maintained, combined with a general duty to keep an inventory and description of the way the controller ensures that processing operations comply with data protection rules.

Finally, we suggest to delete the possibility for the Commission to adopt delegated and implementing acts in line with Art.29 Working Party's Opinion 8/2012 (October 5th, 2012, p. 27).

**Amendment 84**  
**Proposal for a regulation**  
**Article 28 – paragraph 2**

| <i>Text proposed by the Commission</i>  | <i>Amendment</i> | <i>Telefónica Amendment</i>  |
|---|------------------|--|
| <b>2. The documentation shall contain at least the following information:</b> | <b>deleted</b>   | <b>2. The documentation shall contain at least the following information:</b><br><b>(a) the name and contact details of the controller, or any joint controller or processor, and of the representative, if any;</b><br><b>(b) the name and contact details of the data protection officer, if any;</b><br><b>new: (c) a general description of its uses</b> |

*of personal data*

*(a) the name and contact details of the controller, or any joint controller or processor, and of the representative, if any;*

*(b) the name and contact details of the data protection officer, if any;*

*(c) the purposes of the processing, including the legitimate interests pursued by the controller where the processing is based on point (f) of Article 6(1);*

*(d) a description of categories of data subjects and of the categories of personal data relating to them;*

*(e) the recipients or categories of recipients of the personal data, including the controllers to whom personal data are disclosed for the legitimate interest pursued by them;*

*(f) where applicable, transfers of data to a third country or an international organisation, including the identification*

*Deleted*

*Telefónica agrees with MEP Kelly's Amendment to delete the rest of the letters of Art. 28.2. as well as paragraph 5 of Article 28.*

*of that third country or international organisation and, in case of transfers referred to in point (h) of Article 44(1), the documentation of appropriate safeguards;*

*(g) a general indication of the time limits for erasure of the different categories of data;*

*(h) the description of the mechanisms referred to in Article 22(3).*

Or. en

**Amendment 85**  
**Proposal for a regulation**  
**Article 28 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

*5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the documentation referred to in paragraph 1, to take account of in particular the responsibilities of the controller and the processor and, if any, the controller's representative.*

*deleted*

**Amendment 86**  
**Proposal for a regulation**  
**Article 30 – paragraph 1**

*Text proposed by the Commission*

1. The controller and the processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected, having regard to the state of the art and the costs of their implementation.

*Amendment*

1. The controller and the processor shall implement appropriate technical and organisational measures, ***including pseudonymisation***, to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected, having regard to the state of the art and the costs of their implementation.

**Amendment 87**  
**Proposal for a regulation**  
**Article 30 – paragraph 3**

*Text proposed by the Commission*

***3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further***

***deleted***

*Amendment*

*Telefónica Amendment*

*specifying the criteria and conditions for the technical and organisational measures referred to in paragraphs 1 and 2, including the determinations of what constitutes the state of the art, for specific sectors and in specific data processing situations, in particular taking account of developments in technology and solutions for privacy by design and data protection by default, unless paragraph 4 applies.*

*(4) The Commission may adopt, where necessary, implementing acts for specifying the requirements laid down in paragraphs 1 and 2 to various situations, in particular to:*

- (a) prevent any unauthorised access to personal data;*
- (b) prevent any unauthorised disclosure, reading, copying, modification, erasure or removal of personal data;*
- (c) ensure the verification of the lawfulness of processing operations.*

*Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).*

~~*(4) The Commission may adopt, where necessary, implementing acts for specifying the requirements laid down in paragraphs 1 and 2 to various situations, in particular to:*~~

- ~~*(a) prevent any unauthorised access to personal data;*~~
- ~~*(b) prevent any unauthorised disclosure, reading, copying, modification, erasure or removal of personal data;*~~
- ~~*(c) ensure the verification of the lawfulness of processing operations.*~~

~~*Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).*~~

Justification

We suggest to delete the

possibility for the Commission to adopt delegated and implementing acts as the Commission does not know the technology and the architecture of companies. To meet the state of the art protection measures and to ensure the adequate and proportionate protection of personal data it is more appropriate to let companies build up the protection mechanism while implementing new products and services during the product development process itself.

Or. en

**Amendment 88**  
**Proposal for a regulation**  
**Article 31 – paragraph 1**

*Text proposed by the Commission*

1. In the case of a personal data breach, *the controller shall without undue delay and,*

*Amendment*

1. In the case of a personal data breach *relating to special categories of personal*



*where feasible, not later than 24 hours after having become aware of it, notify the personal data breach to the supervisory authority. The notification to the supervisory authority shall be accompanied by a reasoned justification in cases where it is not made within 24 hours.*

*date, personal data which are subject to professional secrecy, personal data relating to criminal offences or to the suspicion of a criminal act or personal data relating to bank or credit card accounts, which seriously threaten the rights or legitimate interests of the data subject, the controller shall without undue delay notify the personal data breach to the supervisory authority.*

Or. en

#### *Justification*

*Data breach notifications should be qualitative and not merely quantitative. If a material, serious breach posing harm to data subjects occurs, the controller should first of all focus on rectifying the breach before notifying the supervisory authority. Stipulating firm yet unpracticable deadlines on all potential forms of data breaches would lead to a lack of quality control as to what constitutes a real threat to data subjects and worse still, may serve by their volume and frequency to overwhelm supervisory authorities with notifications.*

**Amendment 89**  
**Proposal for a regulation**  
**Article 31 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

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

*deleted*

***for establishing the data breach referred to in paragraphs 1 and 2 and for the particular circumstances in which a controller and a processor is required to notify the personal data breach.***

Or. en

*of privacy resources and place a significant burden on already overextended supervisory authorities, create significant, inevitable delays in the rollout of new products and services, and generally disincentivise the creation of effective corporate privacy programmes. Requiring enterprises that have invested in these internal programmes to submit to compulsory consultation with the supervisory authority will have an adverse impact on their ability to develop and release to the market new products and services which benefit consumers and the economy.*

**Amendment 116**  
**Proposal for a regulation**  
**Article 46 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

*Telefónica Amendment*

***3a. Each supervisory authority shall have the power to sanction administrative offences, in particular those referred to in***

~~***3a. Each supervisory authority shall have the power to sanction administrative offences, in particular those referred to in***~~

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*Article 79(4), (5) and (6). Supervisory authorities may only issue sanctions for controllers or processors with their main establishment within the same Member State or, in coordination with Articles 56 and 57 if the supervisory authority of the main establishment fails to take action.*

~~*Article 79(4), (5) and (6). Supervisory authorities may only issue sanctions for controllers or processors with their main establishment within the same Member State or, in coordination with Articles 56 and 57 if the supervisory authority of the main establishment fails to take action.*~~

Or. en

*Justification*

*We would suggest to delete this Amendment as it seems in contradiction with MEP Kelly's Amendments 126 to 152, where Article 79.4., 79.5. and 79.6. are deleted.*

Or. en

**Amendment ...**  
**Proposal for a regulation**  
**Article 77**

*Text proposed by the Commission*

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 processor for the damage suffered.

*Amendment*

*Telefónica Amendment*

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 processor~~ for the damage suffered.

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, to the extent that liability has not already been established in the determination of responsibilities envisaged in Article 24.

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.

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, to the extent that liability has not already been established in the determination of responsibilities envisaged in Article 24.

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 it is~~ not responsible for the event giving rise to the damage.

Or. en

#### *Justification*

Liability should be maintained on the data controller as it is currently the case further to the Directive 1995/46/EC. The controller is the one who has the direct link with the data subject and is the one responsible vis-à-vis the data subject. If the controller considers any eventual damage was due to the processor's incorrect processing, the data controller will ask compensation from the processor. Furthermore, the controller and the processor normally establish the liability relationship in the contractual arrangements, for cases where the processor does not act as requested by the data controller.

This article instead of helping data subjects creates confusion for controllers, processors and even more importantly for data subjects.

**Amendment 124**  
**Proposal for a regulation**  
**Article 79 – paragraph 2**

*Text proposed by the Commission*

2. The administrative sanction shall be in each individual case effective, proportionate and dissuasive. The amount of the administrative fine shall be fixed with due regard to the nature, gravity and duration of the breach, the intentional or negligent character of the infringement, the degree of responsibility of the natural or legal person and of previous breaches by this person, the technical and organisational measures and procedures implemented pursuant to Article 23 and the degree of co-operation with the supervisory authority in order to remedy the breach.

*Amendment*

2. The administrative sanction shall be in each individual case effective, proportionate and dissuasive. The amount of the administrative fine shall be fixed with due regard to the nature, gravity and duration of the breach, the intentional or negligent character of the infringement, the ***particular categories of personal data, the*** degree of responsibility of the natural or legal person and of previous breaches by this person, the technical and organisational measures and procedures implemented pursuant to Article 23 and the degree of co-operation with the supervisory authority in order to remedy the breach.

Or. en

*Justification*

*The fact of data being ‘sensitive’ or not should also affect the amount of the fine imposed.*

**Amendment 125**  
**Proposal for a regulation**  
**Article 79 – paragraph 3**

*Text proposed by the Commission*

**3. In case of a first and non-intentional non-compliance with this Regulation, a warning in writing may be given and no sanction imposed, where:**

**(a) a natural person is processing personal data without a commercial interest; or**

**(b) an enterprise or an organisation employing fewer than 250 persons is processing personal data only as an activity ancillary to its main activities.**

*Amendment*

**3. The supervisory authority may give a written warning without imposing a sanction. The supervisory authority may impose a fine of up to EUR 1 000 000 for repeated, deliberate breaches or, in the case of a company, of up to 1% of its annual worldwide turnover.**

Or. en

*Justification*

*The maximum amount of the fine which can be imposed by a supervisory authority, which may be as much as EUR 1 million and, for companies, 1% of their annual worldwide turnover, must be retained. However, the independence of supervisory authorities established by Article 8(3) of the Charter of Fundamental Rights of the European Union must be maintained. In addition, the consistency mechanism, and in particular Article 58(3) and (4), could contribute to a harmonised policy in the EU for administrative sanctions.*

**Amendment 126**  
**Proposal for a regulation**  
**Article 79 – paragraph 4 – introductory part**

*Text proposed by the Commission*

*Amendment*

***4. The supervisory authority shall impose a fine up to 250 000 EUR, or in case of an enterprise up to 0,5 % of its annual worldwide turnover, to anyone who, intentionally or negligently:*** ***deleted***

Or. en

**Amendment 127**  
**Proposal for a regulation**  
**Article 79 – paragraph 4 – point a**

*Text proposed by the Commission*

*Amendment*

***(a) does not provide the mechanisms for requests by data subjects or does not respond promptly or not in the required format to data subjects pursuant to Articles 12(1) and (2);*** ***deleted***

Or. en



**Amendment 128**  
**Proposal for a regulation**  
**Article 79 – paragraph 4 – point b**

*Text proposed by the Commission*

*Amendment*

*(b) charges a fee for the information or  
for responses to the requests of data  
subjects in violation of Article 12(4).*      *deleted*

Or. en

**Amendment 129**  
**Proposal for a regulation**  
**Article 79 – paragraph 5 – introductory part**

*Text proposed by the Commission*

*Amendment*

*5. The supervisory authority shall impose  
a fine up to 500 000 EUR, or in case of  
an enterprise up to 1 % of its annual  
worldwide turnover, to anyone who,  
intentionally or negligently:*      *deleted*

Or. en

**Amendment 130**  
**Proposal for a regulation**  
**Article 79 – paragraph 5 – point a**

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*Text proposed by the Commission*

*Amendment*

*(a) does not provide the information, or does provide incomplete information, or does not provide the information in a sufficiently transparent manner, to the data subject pursuant to Article 11, Article 12(3) and Article 14;* *deleted*

Or. en

**Amendment 131**  
**Proposal for a regulation**  
**Article 79 – paragraph 5 – point b**

*Text proposed by the Commission*

*Amendment*

*(b) does not provide access for the data subject or does not rectify personal data pursuant to Articles 15 and 16 or does not communicate the relevant information to a recipient pursuant to Article 13;* *deleted*

Or. en

**Amendment 132**  
**Proposal for a regulation**  
**Article 79 – paragraph 5 – point c**

*Text proposed by the Commission*

*Amendment*

***(c) does not comply with the right to be forgotten or to erasure, or fails to put mechanisms in place to ensure that the time limits are observed or does not take all necessary steps to inform third parties that a data subjects requests to erase any links to, or copy or replication of the personal data pursuant Article 17;***

***deleted***

Or. en

**Amendment 133**

**Proposal for a regulation**

**Article 79 – paragraph 5 – point d**

*Text proposed by the Commission*

*Amendment*

***(d) does not provide a copy of the personal data in electronic format or hinders the data subject to transmit the personal data to another application in violation of Article 18;***

***deleted***

Or. en

**Amendment 134**  
**Proposal for a regulation**  
**Article 79 – paragraph 5 – point e**

*Text proposed by the Commission*

*Amendment*

*(e) does not or not sufficiently determine  
the respective responsibilities with co-  
controllers pursuant to Article 24;*      *deleted*

Or. en

**Amendment 135**  
**Proposal for a regulation**  
**Article 79 – paragraph 5 – point f**

*Text proposed by the Commission*

*Amendment*

*(f) does not or not sufficiently maintain  
the documentation pursuant to Article 28,  
Article 31(4), and Article 44(3);*      *deleted*

Or. en

**Amendment 136**  
**Proposal for a regulation**  
**Article 79 – paragraph 5 – point g**

*Text proposed by the Commission*

*Amendment*

***(g) does not comply, in cases where special categories of data are not involved, pursuant to Articles 80, 82 and 83 with rules in relation to freedom of expression or with rules on the processing in the employment context or with the conditions for processing for historical, statistical and scientific research purposes.***

*deleted*

Or. en

**Amendment 137**

**Proposal for a regulation**

**Article 79 – paragraph 6 – introductory part**

*Text proposed by the Commission*

*Amendment*

***6. The supervisory authority shall impose a fine up to 1 000 000 EUR or, in case of an enterprise up to 2 % of its annual worldwide turnover, to anyone who, intentionally or negligently:***

*deleted*

Or. en

**Amendment 138**  
**Proposal for a regulation**  
**Article 79 – paragraph 6 – point a**

*Text proposed by the Commission*

*Amendment*

*(a) processes personal data without any or sufficient legal basis for the processing or does not comply with the conditions for consent pursuant to Articles 6, 7 and 8;* *deleted*

Or. en

**Amendment 139**  
**Proposal for a regulation**  
**Article 79 – paragraph 6 – point b**

*Text proposed by the Commission*

*Amendment*

*(b) processes special categories of data in violation of Articles 9 and 81;* *deleted*

Or. en

**Amendment 140**  
**Proposal for a regulation**  
**Article 79 – paragraph 6 – point c**

*Text proposed by the Commission*

*Amendment*

***(c) does not comply with an objection or the requirement pursuant to Article 19;***      ***deleted***

Or. en

**Amendment 141**  
**Proposal for a regulation**  
**Article 79 – paragraph 6 – point d**

*Text proposed by the Commission*

*Amendment*

***(d) does not comply with the conditions in relation to measures based on profiling pursuant to Article 20;***      ***deleted***

Or. en

**Amendment 142**  
**Proposal for a regulation**  
**Article 79 – paragraph 6 – point e**

*Text proposed by the Commission*

*Amendment*

***(e) does not adopt internal policies or does not implement appropriate measures for ensuring and demonstrating***      ***deleted***

*compliance pursuant to Articles 22, 23 and 30;*

Or. en

**Amendment 143**  
**Proposal for a regulation**  
**Article 79 – paragraph 6 – point f**

*Text proposed by the Commission*

*Amendment*

*(f) does not designate a representative pursuant to Article 25;*      *deleted*

Or. en

**Amendment 144**  
**Proposal for a regulation**  
**Article 79 – paragraph 6 – point g**

*Text proposed by the Commission*

*Amendment*

*(g) processes or instructs the processing of personal data in violation of the obligations in relation to processing on behalf of a controller pursuant to Articles 26 and 27;*      *deleted*

Or. en



**Amendment 145**  
**Proposal for a regulation**  
**Article 79 – paragraph 6 – point h**

*Text proposed by the Commission*

*Amendment*

*(h) does not alert on or notify a personal data breach or does not timely or completely notify the data breach to the supervisory authority or to the data subject pursuant to Articles 31 and 32;* *deleted*

Or. en

**Amendment 146**  
**Proposal for a regulation**  
**Article 79 – paragraph 6 – point i**

*Text proposed by the Commission*

*Amendment*

*(i) does not carry out a data protection impact assessment pursuant or processes personal data without prior authorisation or prior consultation of the supervisory authority pursuant to Articles 33 and 34;* *deleted*

Or. en

**Amendment 147**  
**Proposal for a regulation**  
**Article 79 – paragraph 6 – point j**

*Text proposed by the Commission*

*Amendment*

*(j) does not designate a data protection officer or does not ensure the conditions for fulfilling the tasks pursuant to Articles 35, 36 and 37;*      *deleted*

Or. en

**Amendment 148**  
**Proposal for a regulation**  
**Article 79 – paragraph 6 – point k**

*Text proposed by the Commission*

*Amendment*

*(k) misuses a data protection seal or mark in the meaning of Article 39;*      *deleted*

Or. en

**Amendment 149**  
**Proposal for a regulation**  
**Article 79 – paragraph 6 – point l**

*Text proposed by the Commission*

*Amendment*

***(l) carries out or instructs a data transfer to a third country or an international organisation that is not allowed by an adequacy decision or by appropriate safeguards or by a derogation pursuant to Articles 40 to 44;*** ***deleted***

Or. en

**Amendment 150**  
**Proposal for a regulation**  
**Article 79 – paragraph 6 – point m**

*Text proposed by the Commission*

*Amendment*

***(m) does not comply with an order or a temporary or definite ban on processing or the suspension of data flows by the supervisory authority pursuant to Article 53(1);*** ***deleted***

Or. en

**Amendment 151**  
**Proposal for a regulation**  
**Article 79 – paragraph 6 – point n**

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*Text proposed by the Commission*

*Amendment*

***(n) does not comply with the obligations to assist or respond or provide relevant information to, or access to premises by, the supervisory authority pursuant to Article 28(3), Article 29, Article 34(6) and Article 53(2);*** ***deleted***

Or. en

**Amendment 152**  
**Proposal for a regulation**  
**Article 79 – paragraph 6 – point o**

*Text proposed by the Commission*

*Amendment*

***(o) does not comply with the rules for safeguarding professional secrecy pursuant to Article 84.*** ***deleted***

Or. en

**Amendment 153**  
**Proposal for a regulation**  
**Article 79 – paragraph 7**

*Text proposed by the Commission*

*Amendment*

***7. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of updating the amounts of the administrative fines referred to in paragraphs 4, 5 and 6, taking into account the criteria referred to in paragraph 2.***

*deleted*

Or. en

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**EN**