Proposal for a regulation of the European Parliament and of the Council on the protection of individual 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))

Compromise amendements on Articles 30-91

COMP Article 30
17.10.2013

Article 30
Security of processing

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***~~, ***taking into account the results of a data protection impact assessment pursuant to Article 33,*** having regard to the state of the art and the costs of their implementation.

1a. Having regard to the state of the art and the cost of implementation, such a security policy shall include:
(a) the ability to ensure that the integrity of the personal data is validated;
(b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of systems and services processing personal data;
(c) the ability to restore the availability and access to data in a timely manner in the event of a physical or technical incident that impacts the availability, integrity and confidentiality of information systems and services;
(d) in the case of sensitive personal data processing according to Articles 8 and 9, additional security measures to ensure situational awareness of risks and the ability to take preventive, corrective and mitigating action in near real time against vulnerabilities or incidents detected that could pose a risk to the data;
(e) a process for regularly testing, assessing and evaluating the effectiveness of security policies, procedures and plans put in place to ensure ongoing effectiveness.

2. The ~~***controller and the processor***~~ ***measures referred to in paragraph 1*** shall~~***, following an evaluation of the risks, take the measures referred to in paragraph 1 to***~~ ***at least:***
(a) ensure that personal data can be accessed only by authorised personnel for legally authorised purposes;
(b) protect personal data ***stored or transmitted*** against accidental or unlawful destruction, ~~***or***~~ accidental loss ***or alteration, and unauthorised or unlawful storage,*** ~~***and to prevent any unlawful forms of, in particular any unauthorised***~~ processing, ***access or*** disclosure, ~~***dissemination, or access***~~; and

(c) ensure the implementation of a security policy with respect to the processing of personal data.

3. The ***European Data Protection Board*** ~~***Commission***~~ shall be ***entrusted with the task*** ~~***empowered to adopt delegated acts in accordance with Article 86 for the purpose***~~ of ***issuing guidelines, recommendations and best practices in accordance with Article 66 paragraph 1(b)*** ~~***further specifying the criteria and conditions***~~ for the technical and organizational 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).***~~

Recitals

(66) In order to maintain security and to prevent processing in breach of this Regulation, the controller or processor should evaluate the risks inherent to the processing and implement measures to mitigate those risks. These measures should ensure an appropriate level of security, taking into account the state of the art and the costs of their implementation in relation to the risks and the nature of the personal data to be protected. When establishing technical standards and organisational measures to ensure security of processing, ~~***the Commission should promote***~~ technological neutrality, interoperability and innovation ***should be promoted***, and, where appropriate, ***cooperation with*** third countries ***should be encouraged***.

COMP Article 31
17.10.2013

Article 31
Notification of a personal data breach to the supervisory authority

1. In the case of a personal data breach, the controller shall without undue delay ~~***and, 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 where it is not made within 24 hours***~~.

2. ~~***Pursuant to point (f) of Article 26(2),***~~ ***T***he processor shall alert and inform the controller ***without undue delay*** ~~***immediately***~~ after the establishment of a personal data breach.

3. The notification referred to in paragraph 1 must at least:
(a) describe the nature of the personal data breach including the categories and number of data subjects concerned and the categories and number of data records concerned;
(b) communicate the identity and contact details of the data protection officer or other contact point where more information can be obtained;
(c) recommend measures to mitigate the possible adverse effects of the personal data breach;
(d) describe the consequences of the personal data breach;
(e) describe the measures proposed or taken by the controller to address the personal data breach ***and mitigate its effects***.
The information may if necessary be provided in phases.

4. The controller shall document any personal data breaches, comprising the facts surrounding the breach, its effects and the remedial action taken. This documentation must ***be sufficient to*** enable the supervisory authority to verify compliance with this Article ***and with Article 30***. The documentation shall only include the information necessary for that purpose.

4a. The supervisory authority shall keep a public register of the types of breaches notified.

5. The ***European Data Protection Board*** ~~***Commission***~~ shall be ***entrusted with the task*** ~~***empowered to adopt delegated acts in accordance with Article 86 for the purpose***~~ of ***issuing guidelines, recommendations and best practices in accordance with Article 66 paragraph 1(b)*** ~~***further specifying the criteria and requirements***~~ for establishing the data breach ***and determining the undue delay*** 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.

~~***6. The Commission may lay down the standard format of such notification to the supervisory authority, the procedures applicable to the notification requirement and the form and the modalities for the documentation referred to in paragraph 4, including the time limits for erasure of the information contained therein. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).***~~

Recitals

(67) A personal data breach may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud, to the individual concerned. Therefore~~***, as soon as the controller becomes aware that such a breach has occurred,***~~ the controller should notify the breach to the supervisory authority without undue delay, ***which should be presumed to be not later than*** ~~***and, where feasible, within***~~ ***72*** hours. ~~***Where this cannot be achieved within 24 hours.***~~ ***If applicable,*** an explanation of the reasons for the delay should accompany the notification. The individuals whose personal data could be adversely affected by the breach should be notified without undue delay in order to allow them to take the necessary precautions. A breach should be considered as adversely affecting the personal data or privacy of a data subject where it could result in, for example, identity theft or fraud, physical harm, significant humiliation or damage to reputation. The notification should describe the nature of the personal data breach as well as recommendations as well as recommendations for the individual concerned to mitigate potential adverse effects. Notifications to data subjects should be made as soon as reasonably feasible, and in close cooperation with the supervisory authority and respecting guidance provided by it or other relevant authorities (e.g. law enforcement authorities). For example, the chance for data subjects to mitigate an immediate risk of harm would call for a prompt notification of data subjects whereas the need to implement appropriate measures against continuing or similar data breaches may justify a longer delay.

COMP Article 32
10.7.2013

Article 32
Communication of a personal data breach to the data subject

1. When the personal data breach is likely to adversely affect the protection of the personal data***, ~~or~~ the*** privacy, ***the rights or the legitimate interests*** of the data subject, the controller shall, after the notification referred to in Article 31, communicate the personal data breach to the data subject without undue delay.

2. The communication to the data subject referred to in paragraph 1 shall ***be comprehensive and use clear and plain language. It shall*** describe the nature of the personal data breach and contain at least the information and the recommendations provided for in points (b)***, ~~and~~*** (c) **and** ***(d)*** of Article 31(3) ***and information about the rights of the data subject, including redress***.

3. The communication of a personal data breach to the data subject shall not be required if the controller demonstrates to the satisfaction of the supervisory authority that it has implemented appropriate technological protection measures, and that those measures were applied to the data concerned by the personal data breach. Such technological protection measures shall render the data unintelligible to any person who is not authorised to access it.

4. Without prejudice to the controller's obligation to communicate the personal data breach to the data subject, if the controller has not already communicated the personal data breach to the data subject of the personal data breach, the supervisory authority, having considered the likely adverse effects of the breach, may require it to do so.

5. The ***European Data Protection Board ~~Commission~~*** shall be ***entrusted with the task ~~empowered to adopt delegated acts in accordance with Article 86 for the purpose~~*** of ***issuing guidelines, recommendations and best practices in accordance with Article 66 paragraph 1(b) ~~further specifying the criteria and requirements~~*** as to the circumstances in which a personal data breach is likely to adversely affect the personal data ***or the privacy, the rights or the legitimate interests of the data subject*** referred to in paragraph 1.

~~6. The Commission may lay down the format of the communication to the data subject referred to in paragraph 1 and the procedures applicable to that communication. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).~~

COMP Article 32a (-33, first Article of Section 3 of Chapter IV)
17.10.2013

Article 32a
Respect to Risk

1. The controller, or where applicable the processor, shall carry out a risk analysis of the potential impact of the intended data processing on the rights and freedoms of the data subjects, assessing whether its processing operations are likely to present specific risks.

2. The following processing operations are likely to present specific risks:

(a) processing of personal data relating to more than 5000 data subjects during any consecutive 12-month period;

(b) processing of special categories of personal data as referred to in Article 9(1), location data or data on children or employees in large scale filing systems;

(c) profiling on which measures are based that produce legal effects concerning the individual or similarly significantly affect the individual;

(d) processing of personal data for the provision of health care, epidemiological researches, or surveys of mental or infectious diseases, where the data are processed for taking measures or decisions regarding specific individuals on a large scale;

(e) automated monitoring of publicly accessible areas on a large scale;

(f) other processing operations for which the consultation of the data protection officer or supervisory authority is required pursuant to point (b) of Article 34(2);

(g) where a personal data breach would likely adversely affect the protection of the personal data, the privacy, the rights or the legitimate interests of the data subject;

(h) the core activities of the controller or the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects;

(i) where personal data are made accessible to a number of persons which cannot reasonably be expected to be limited.

3. According to the result of the risk analysis:

(a) where any of the processing operations referred to in paragraph 2 (a) or (b) exist, controllers not established in the Union shall designate a representative in the Union in line with the requirements and exemptions laid down in Article 25;

(b) where any of the processing operations referred to in paragraph 2 (a), (b) or (h) exist, the controller shall designate a data protection officer in line with the requirements and exemptions laid down in Article 35;

(c) where any of the processing operations referred to in paragraph 2 (a), (b), (c), (d), (e), (f), (g) or (h) exist, the controller or the processor acting on the controller's behalf shall carry out a data protection impact assessment pursuant to Article 33;

(d) where processing operations referred to in paragraph 2 (f) exist, the controller shall consult the data protection officer, or in case a data protection officer has not been appointed, the supervisory authority pursuant to Article 34.

4. The risk analysis shall be reviewed at the latest after one year, or immediately, if the nature, the scope or the purposes of the data processing operations change significantly. Where pursuant to paragraph 3 (c) the controller is not obliged to carry out a data protection impact assessment, the risk analysis shall be documented.

COMP AM Article 58a
07.10.2013

Article 58a
Consistency in individual cases

1. Before taking a measure intended to produce legal effects within the meaning of Article 54a, the lead authority shall share all relevant information and submit the draft measure to all other competent authorities. The lead authority shall not adopt the measure if a competent authority has, within a period of three weeks, indicated it has serious objections to the measure.

2. Where a competent authority has indicated that it has serious objections to a draft measure of the lead authority, or where the lead authority does not submit a draft measure referred to in paragraph 1 or does not comply with the obligations for mutual assistance in accordance with Article 55 or for joint operations in accordance with Article 56, the issue shall be considered by the European Data Protection Board.

3. The lead authority and/or other competent authorities involved and the Commission shall without undue delay electronically communicate to the European Data Protection Board using a standardised format any relevant information, including as the case may be a summary of the facts, the draft measure, the grounds which make the enactment of such measure necessary, the objections raised against it and the views of other supervisory authorities concerned.

4. The European Data Protection Board shall consider the issue, taking into account the impact of the draft measure of the lead authority on the fundamental rights and freedoms of data subjects, and shall decide by simple majority of its members whether to issue an opinion on the matter within two weeks after the relevant information has been provided pursuant to paragraph 3.

5. In case the European Data Protection Board decides to issue an opinion, it shall do so within six weeks and make the opinion public.

6. The lead authority shall take utmost 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. Where the lead authority intends not to follow the opinion of the European Data Protection Board, it shall provide a reasoned justification.

7. In case the European Data Protection Board still objects to the measure of the supervisory authority as referred to in paragraph 5, it may within one month adopt by a two thirds majority a measure which shall be binding upon the supervisory authority.

Recitals

(106a) In order to ensure the consistent application of this Regulation, the European Data Protection Board may in individual cases adopt a decision which is binding on the competent supervisory authorities.

COMP AM Article 59
07.10.2013

~~*Article 59*~~
~~*Opinion by the Commission*~~

~~*1. Within ten weeks after a matter has been raised under Article 58, or at the latest within six weeks in the case of Article 61, the Commission may adopt, in order to ensure correct and consistent application of this Regulation, an opinion in relation to matters raised pursuant to Articles 58 or 61.*~~

~~*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.*~~

~~*3. During the period referred to in paragraph 1, the draft measure shall not be adopted by the supervisory authority.*~~

~~*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.*~~

Recitals

~~*(107) In order to ensure compliance with this Regulation, the Commission may adopt an opinion on this matter, or a decision, requiring the supervisory authority to suspend its draft measure.*~~

COMP AM Article 60
07.10.2013

~~*Article 60*~~
~~*Suspension of a draft measure*~~

~~*1. Within one month after the communication referred to in Article 59(4), and where the Commission has serious doubts as to whether the draft measure would ensure the correct application of this Regulation or would otherwise result in its inconsistent application, the Commission may adopt a reasoned decision requiring the supervisory authority to suspend the adoption of the draft measure, taking into account the opinion issued by the European Data Protection Board pursuant to Article 58(7) or Article 61(2), where it appears necessary in order to:*~~
~~*(a) reconcile the diverging positions of the supervisory authority and the European Data Protection Board, if this still appears to be possible; or*~~
~~*(b) adopt a measure pursuant to point (a) of Article 62(1).*~~

~~*2. The Commission shall specify the duration of the suspension which shall not exceed 12 months.*~~

~~*3. During the period referred to in paragraph 2, the supervisory authority may not adopt the draft measure.*~~

COMP AM Article 60a
07.10.2013

Article 60a
Notification of Parliament and Council

The Commission shall notify the Council and the European Parliament at regular intervals, at least every two years, on the basis of a report from the Chair of the European Data Protection Board, of the matters dealt with under the consistency procedure, setting out the conclusions drawn by the Commission and the European Data Protection Board with a view to ensuring the consistent implementation and application of this regulation.

COMP AM Article 61
07.10.2013

Article 61
Urgency procedure

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 ***58a*** ~~***57***~~, 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.

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.

3. Any supervisory authority may request an urgent opinion where the competent supervisory authority has not taken an appropriate measure in a situation where there is an urgent need to act, in order to protect the interests of data subjects, giving reasons for requesting such opinion, including for the urgent need to act.

4. ~~***By derogation from Article 58(7), an***~~ ***An*** urgent opinion referred to in paragraphs 2 and 3 of this Article shall be adopted within two weeks by simple majority of the members of the European Data Protection Board.

Recitals

(108) 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.

COMP AM Article 62
16.10.2013

Article 62
Implementing Acts

1. The Commission may adopt implementing acts ***of general application***, ***after requesting an opinion of the European Data Protection Board,*** for:

~~(a) deciding on the correct application of this Regulation in accordance with its objectives and requirements in relation to matters communicated by supervisory authorities pursuant to Article 58 or 61, concerning a matter in relation to which a reasoned decision has been adopted pursuant to Article 60(1), or concerning a matter in relation to which a supervisory authority does not submit a draft measure and that supervisory authority has indicated that it does not intend to follow the opinion of the Commission adopted pursuant to Article 59;~~

(b) deciding***~~, within the period referred to in Article 59(1),~~*** whether it declares draft standard data protection clauses referred to in point (d) of Article ***42 ~~58~~***(2), as having general validity;

~~(c) specifying the format and procedures for the application of the consistency mechanism referred to in this section;~~

(d) specifying the arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the European Data Protection Board, in particular the standardised format referred to in Article 58(5), (6) and (8).

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

~~2. On duly justified imperative grounds of urgency relating to the interests of data subjects in the cases referred to in point (a) of paragraph 1, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 87(3). Those acts shall remain in force for a period not exceeding 12 months.~~

3. The absence or adoption of a measure under this Section does not prejudice any other measure by the Commission under the Treaties.

COMP AM Article 63
07.10.2013

Article 63
Enforcement

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.

2. Where a supervisory authority does not submit a draft measure to the consistency mechanism in breach of Article 58(1) ***and (2) ~~to (5)~~ or adopts a measure despite an indication of serious objection pursuant to Article 58a(1)***, the measure of the supervisory authority shall not be legally valid and enforceable.

Recitals

(109) The application of this mechanism should be a condition for the legal validity and enforcement of the respective decision by a supervisory authority. In other cases of cross-border relevance, mutual assistance and joint investigations might be carried out between the concerned supervisory authorities on a bilateral or multilateral basis without triggering the consistency mechanism.

COMP AM Article 64
14.10.2013

CHAPTER VII
CO-OPERATION AND CONSISTENCY

SECTION 3
EUROPEAN DATA PROTECTION BOARD

Article 64
European Data Protection Board

1. A European Data Protection Board is hereby set up.

2. The European Data Protection Board shall be composed of the head of one supervisory authority of each Member State and of the European Data Protection Supervisor.

3. Where in a Member State more than one supervisory authority is responsible for monitoring the application of the provisions pursuant to this Regulation, they shall nominate the head of one of those supervisory authorities as joint representative.

4. The Commission shall have the right to participate in the activities and meetings of the European Data Protection Board and shall designate a representative. The chair of the European Data Protection Board shall, without delay, inform the Commission on all activities of the European Data Protection Board.

Recitals

(110) At Union level, a European Data Protection Board should be set up. It should replace the Working Party on the Protection of Individuals with Regard to the Processing of Personal Data established by Directive 95/46/EC. It should consist of a head of a supervisory authority of each Member State and of the European Data Protection Supervisor. The European Data Protection Board should contribute to the consistent application of this Regulation throughout the Union, including by advising the ***institutions of the Union*** ~~***Commission***~~ and promoting cooperation of the supervisory authorities throughout the Union***, including the coordination of joint operations***. The European Data Protection Board should act independently when exercising its tasks. ***The European Data Protection Board should strengthen the dialogue with concerned stakeholders such as data subjects' associations, consumer organisations, data controllers and other relevant stakeholders and experts.***

COMP AM Article 65
07.10.2013

Article 65
Independence

1. The European Data Protection Board shall act independently when exercising its tasks pursuant to Articles 66 and 67.

2. Without prejudice to requests by the Commission referred to in point (b) of paragraph 1 and in paragraph 2 of Article 66, the European Data Protection Board shall, in the performance of its tasks, neither seek nor take instructions from anybody.

COMP AM Article 66
14.10.2013

Article 66
Tasks of the European Data Protection Board

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 ***European Parliament, Council or*** Commission, in particular:

(a) advise the ***European Institutions*** ~~***Commission***~~ on any issue related to the protection of personal data in the Union, including on any proposed amendment of this Regulation;

(b) examine, on its own initiative or on request of one of its members or on request of the ***European Parliament, Council or*** 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***,*** ***including on the use of enforcement powers***;

(c) review the practical application of the guidelines, recommendations and best practices referred to in point (b) and report regularly to the Commission on these;

(d) issue opinions on draft decisions of supervisory authorities pursuant to the consistency mechanism referred to in Article 57;

(da) provide an opinion on which authority should be the lead authority pursuant to Article 54a(3);

(e) promote the co-operation and the effective bilateral and multilateral exchange of information and practices between the supervisory authorities***, including the coordination of joint operations and other joint activities, where it so decides at the request of one or several supervisory authorities***;

(f) promote common training programmes and facilitate personnel exchanges between the supervisory authorities, as well as, where appropriate, with the supervisory authorities of third countries or of international organisations;

(g) promote the exchange of knowledge and documentation on data protection legislation and practice with data protection supervisory authorities worldwide.

(ga) give its opinion to the Commission in the preparation of delegated and implementing acts based on this Regulation;

(gb) give its opinion on codes of conduct drawn up at Union level pursuant to Article 38(4);

(gc) give its opinion on criteria and requirements for the data protection certification mechanisms pursuant to Article 39(9).

(gd) maintain a public electronic register on valid and invalid certificates pursuant to Article 39(8);

(ge) provide assistance to a national supervisory authorities, at their request;

(gf) establish and make public a list of the processing operations which are subject to prior consultation pursuant to Article 34;

(gg) maintain a registry of sanctions imposed on controllers or processors by the competent supervisory authorities.

2. Where the ***European Parliament, Council or*** Commission requests advice from the European Data Protection Board, it may lay out a time limit within which the European Data Protection Board shall provide such advice, taking into account the urgency of the matter.

3. The European Data Protection Board shall forward its opinions, guidelines, recommendations, and best practices to the ***European Parliament, Council and*** Commission and to the committee referred to in Article 87 and make them public.

4. The Commission shall inform the European Data Protection Board of the action it has taken following the opinions, guidelines, recommendations and best practices issued by the European Data Protection Board.

4a. The European Data Protection Board shall, where appropriate, 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.

4b. The European Data Protection Board shall be entrusted with the task of issuing guidelines, recommendations and best practices in accordance with paragraph 1 (b) for establishing common procedures for receiving and investigating information concerning allegations of unlawful processing and for safeguarding confidentiality and sources of information received.

COMP AM Article 67
07.10.2013

Article 67
Reports

1. The European Data Protection Board shall regularly and timely inform the ***European Parliament, Council and*** Commission about the outcome of its activities. It shall draw up ***~~an annual~~ a*** report ***at least every two years*** on the situation regarding the protection of natural persons with regard to the processing of personal data in the Union and in third countries. The report shall include the review of the practical application of the guidelines, recommendations and best practices referred to in point (c) of Article 66(1).

2. The report shall be made public and transmitted to the European Parliament, the Council and the Commission.

COMP AM Article 68
07.10.2013

Article 68
Procedure

1. The European Data Protection Board shall take decisions by a simple majority of its members***, unless otherwise provided in its rules of procedure***.

2. The European Data Protection Board shall adopt its own rules of procedure and organise its own operational arrangements. In particular, it shall provide for the continuation of exercising duties when a member's term of office expires or a member resigns, for the establishment of subgroups for specific issues or sectors and for its procedures in relation to the consistency mechanism referred to in Article 57.

COMP AM Article 69
07.10.2013

Article 69
Chair

1. The European Data Protection Board shall elect a chair and ***at least*** two deputy chairpersons from amongst its members. ~~***One deputy chairperson shall be the European Data Protection Supervisor, unless he or she has been elected chair.***~~

2. The term of office of the chair and of the deputy chairpersons shall be five years and be renewable.

2a. The position of the chair shall be a full-time position.

COMP AM Article 70
07.10.2013

Article 70
Tasks of the chair

1. The chair shall have the following tasks:
(a) to convene the meetings of the European Data Protection Board and prepare its agenda;
(b) to ensure the timely fulfilment of the tasks of the European Data Protection Board, in particular in relation to the consistency mechanism referred to in Article 57.

2. The European Data Protection Board shall lay down the attribution of tasks between the chair and the deputy chairpersons in its rules of procedure.

COMP AM Article 71
07.10.2013

Article 71
Secretariat

1. The European Data Protection Board shall have a secretariat. The European Data Protection Supervisor shall provide that secretariat.

2. The secretariat shall provide analytical, ***legal,*** administrative and logistical support to the European Data Protection Board under the direction of the chair.

3. The secretariat shall be responsible in particular for:
(a) the day-to-day business of the European Data Protection Board;
(b) the communication between the members of the European Data Protection Board, its chair and the Commission and for communication with other institutions and the public;
(c) the use of electronic means for the internal and external communication;
(d) the translation of relevant information;
(e) the preparation and follow-up of the meetings of the European Data Protection Board;
(f) the preparation, drafting and publication of opinions and other texts adopted by the European Data Protection Board.

COMP AM Article 72
07.10.2013

Article 72
Confidentiality

1. The discussions of the European Data Protection Board ***may ~~shall~~*** be confidential ***where necessary, unless otherwise provided in the rules of procedure***. ***The agendas of the meetings of the Board shall be made public***.

2. Documents submitted to members of the European Data Protection Board, experts and representatives of third parties shall be confidential, unless access is granted to those documents in accordance with Regulation (EC) No 1049/2001 or the European Data Protection Board otherwise makes them public.

3. The members of the European Data Protection Board, as well as experts and representatives of third parties, shall be required to respect the confidentiality obligations set out in this Article. The chair shall ensure that experts and representatives of third parties are made aware of the confidentiality requirements imposed upon them.

COMP AM Article 73
14.10.2013

CHAPTER VIII
REMEDIES, LIABILITY AND SANCTIONS

Article 73
Right to lodge a complaint with a supervisory authority

1. Without prejudice to any other administrative or judicial remedy ***and the consistency mechanism***, every data subject shall have the right to lodge a complaint with a supervisory authority in any Member State if they consider that the processing of personal data relating to them does not comply with this Regulation.

2. Any body, organisation or association which ~~***aims to protect data subjects' rights and interests concerning the protection of their personal data***~~ ***acts in the public interest*** and has been properly constituted according to the law of a Member State shall have the right to lodge a complaint with a supervisory authority in any Member State on behalf of one or more data subjects if it considers that a data subject's rights under this Regulation have been infringed as a result of the processing of personal data.

3. Independently of a data subject's complaint, any body, organisation or association referred to in paragraph 2 shall have the right to lodge a complaint with a supervisory authority in any Member State, if it considers that ~~***a personal data***~~ breach ***of this regulation*** has occurred.

Recitals

(111) ~~***Every***~~ data subject***s*** should have the right to lodge a complaint with a supervisory authority in any Member State and have the right to a***n effective*** judicial remedy ***in accordance with Article 47 of the Charter of Fundamental Rights*** if they consider that their rights under this Regulation are infringed or where the supervisory authority does not react on a complaint or does not act where such action is necessary to protect the rights of the data subject.

(112) Any body, organisation or association which ~~***aims to protects the rights and interests of data subjects in relation to the protection of their data***~~ ***acts in the public interest*** and is constituted according to the law of a Member State should have the right to lodge a complaint with a supervisory authority ***on behalf of data subjects with their consent*** or exercise the right to a judicial remedy ***if mandated by the*** ~~***on behalf of***~~ data

subject~~s~~, or to lodge, independently of a data subject's complaint, an own complaint where it considers that a ~~***personal data***~~ breach ***of this Regulation*** has occurred.

COMP AM Article 74
14.10.2013

Article 74
Right to a judicial remedy against a supervisory authority

1. ***Without prejudice to any other administrative or non-judicial remedy,*** each natural or legal person shall have the right to a judicial remedy against decisions of a supervisory authority concerning them.

2. ***Without prejudice to any other administrative or non-judicial remedy,*** each data subject shall have the right to a judicial remedy obliging the supervisory authority to act on a complaint in the absence of a decision necessary to protect their rights, or where the supervisory authority does not inform the data subject within three months on the progress or outcome of the complaint pursuant to point (b) of Article 52(1).

3. Proceedings against a supervisory authority shall be brought before the courts of the Member State where the supervisory authority is established.

4. ***Without prejudice to the consistency mechanism a*** ~~A~~ data subject which is concerned by a decision of a supervisory authority in another Member State than where the data subject has its habitual residence, may request the supervisory authority of the Member State where it has its habitual residence to bring proceedings on its behalf against the competent supervisory authority in the other Member State.

5. The Member States shall enforce final decisions by the courts referred to in this Article.

Recitals

(113) Each natural or legal person should have the right to a judicial remedy against decisions of a supervisory authority concerning them. Proceedings against a supervisory authority should be brought before the courts of the Member State, where the supervisory authority is established.

(114) In order to strengthen the judicial protection of the data subject in situations where the competent supervisory authority is established in another Member State than the one where the data subject is residing, the data subject may ***mandate*** any body, organisation or association ~~***aiming to protect the rights and interests of data subjects in relation to the protection of their data***~~ ***acting in the public interest*** to bring proceedings against that supervisory authority to the competent court in the other Member State.

(115) In situations where the competent supervisory authority established in another Member State does not act or has taken insufficient measures in relation to a complaint,

the data subject may request the supervisory authority in the Member State of his or her habitual residence to bring proceedings against that supervisory authority to the competent court in the other Member State. ***This does not apply to non-EU-residents.*** The requested supervisory authority may decide, subject to judicial review, whether it is appropriate to follow the request or not.

COMP AM Article 75
08.10.2013

Article 75
Right to a judicial remedy against a controller or processor

1. Without prejudice to any available administrative remedy, including the right to lodge a complaint with a supervisory authority as referred to in Article 73, every natural person shall have the right to a judicial remedy if they consider that their rights under this Regulation have been infringed as a result of the processing of their personal data in non-compliance with this Regulation.

2. Proceedings against a controller or a processor shall be brought before the courts of the Member State where the controller or processor has an establishment. Alternatively, such proceedings may be brought before the courts of the Member State where the data subject has its habitual residence, unless the controller is a public authority ***of the Union or a Member State*** acting in the exercise of its public powers.

3. Where proceedings are pending in the consistency mechanism referred to in Article 58, which concern the same measure, decision or practice, a court may suspend the proceedings brought before it, except where the urgency of the matter for the protection of the data subject's rights does not allow to wait for the outcome of the procedure in the consistency mechanism.

4. The Member States shall enforce final decisions by the courts referred to in this Article.

Recitals

(116) For proceedings against a controller or processor, the plaintiff should have the choice to bring the action before the courts of the Member States where the controller or processor has an establishment or***, in case of EU residence,*** where the data subject resides, unless the controller is a public authority ***of the Union or a Member State*** acting in the exercise of its public powers.

(117) Where there are indications that parallel proceedings are pending before the courts in different Member States, the courts should be obliged to contact each other. The courts should have the possibility to suspend a case where a parallel case is pending in another Member State. Member States should ensure that court actions, in order to be effective, should allow the rapid adoption of measures to remedy or prevent an infringement of this Regulation.

COMP AM Article 76
08.10.2013

Article 76
Common rules for court proceedings

1. Any body, organisation or association referred to in Article 73(2) shall have the right to exercise the rights referred to in Articles 74***, ~~and~~*** 75 ***and 77 ~~on behalf of~~ if mandated by*** one or more data subjects.

2. Each supervisory authority shall have the right to engage in legal proceedings and bring an action to court, in order to enforce the provisions of this Regulation or to ensure consistency of the protection of personal data within the Union.

3. Where a competent court of a Member State has reasonable grounds to believe that parallel proceedings are being conducted in another Member State, it shall contact the competent court in the other Member State to confirm the existence of such parallel proceedings.

4. Where such parallel proceedings in another Member State concern the same measure, decision or practice, the court may suspend the proceedings.

5. Member States shall ensure that court actions available under national law allow for the rapid adoption of measures including interim measures, designed to terminate any alleged infringement and to prevent any further impairment of the interests involved.

COMP AM Article 77
14.10.2013

Article 77
Right to compensation and liability

1. Any person who has suffered damage***, including non-pecuniary damage,*** as a result of an unlawful processing operation or of an action incompatible with this Regulation shall have the right to ***~~receive~~ claim*** 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 ***of those*** controller***s*** or processor***s*** shall be jointly and severally liable for the entire amount of the damage***, unless they have an appropriate written agreement ~~establishing liability in the determination of~~ determining the responsibilities pursuant to 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.

Recitals

(118) Any damage***, whether pecuniary or not,*** which a person may suffer as a result of unlawful processing should be compensated by the controller or processor, who may be exempted from liability ***only*** if they prove that they are not responsible for the damage, in particular where he establishes fault on the part of the data subject or in case of force majeure.

COMP AM Article 78
08.10.2013

Article 78
Penalties

1. Member States shall lay down the rules on penalties, applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented, including where the controller did not comply with the obligation to designate a representative. The penalties provided for must be effective, proportionate and dissuasive. ~~***The rules on penalties adopted in accordance with this Article shall be subject to appropriate procedural safeguards in conformity with the general principles of Union law and the Charter of Fundamental Rights, including those concerning the right to an effective judicial remedy, due process and the principle of ne bis in idem.***~~

2. Where the controller has established a representative, any penalties shall be applied to the representative, without prejudice to any penalties which could be initiated against the controller.

3. Each Member State shall notify to the Commission those provisions of its law which it adopts pursuant to paragraph 1, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.

Recitals

(119) Penalties should be imposed to any person, whether governed by private or public law, who fails to comply with this Regulation. Member States should ensure that the penalties should be effective, proportionate and dissuasive and should take all measures to implement the penalties. ***The rules on penalties should be subject to appropriate procedural safeguards in conformity with the general principles of Union law and the Charter of Fundamental Rights, including those concerning the right to an effective judicial remedy, due process and the principle of ne bis in idem.***

(119a) In applying penalties, Member States should show full respect for appropriate procedural safeguards, including the right to an effective judicial remedy, due process, and the principle of ne bis in idem.

(120) In order to strengthen and harmonise administrative sanctions against infringements of this Regulation, each supervisory authority should have the power to sanction administrative offences. This Regulation should indicate these offences and the upper limit for the related administrative fines, which should be fixed in each individual case proportionate to the specific situation, with due regard in particular to the nature, gravity and duration of the breach. The consistency mechanism may also be used to cover divergences in the application of administrative sanctions.

COMP Article 79
17.10.2013

Article 79
Administrative sanctions

1. Each supervisory authority shall be empowered to impose administrative sanctions in accordance with this Article. ***The supervisory authorities shall co-operate with each other in accordance with Articles 46 and 57 to guarantee a harmonized level of sanctions within the Union.***

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.***~~

2a. To anyone who does not comply with the obligations laid down in this Regulation, the supervisory authority shall impose at least one of the following sanctions:
a) a warning in writing in cases of first and non-intentional non-compliance;
b) regular periodic data protection audits;
c) a fine up to 100 000 000 EUR or up to 5% of the annual worldwide turnover in case of an enterprise, whichever is greater.

2b. If the controller or the processor is in possession of a valid "European Data Protection Seal" pursuant to Article 39, a fine pursuant to paragraph 2a(c) shall only be imposed in cases of intentional or negligent incompliance.

2c. The administrative sanction shall take into account the following factors:
a) the nature, gravity and duration of the incompliance,
b) the intentional or negligent character of the infringement,
c) the degree of responsibility of the natural or legal person and of previous breaches by this person,
d) the repetitive nature of the infringement,
e) the degree of co-operation with the supervisory authority, in order to remedy the infringement and mitigate the possible adverse effects of the infringement,
f) the specific categories of personal data affected by the infringement,
(fa) the level of damage, including non-pecuniary damage, suffered by the data subjects,
(fb) the action taken by the controller or processor to mitigate the damage suffered by data subjects,
(fc) any financial benefits intended or gained, or losses avoided, directly or indirectly from the infringement,

g) the degree of technical and organisational measures and procedures implemented pursuant to:

i) Article 23 - Data protection by design and by default
ii) Article 30 - Security of processing
iii) Article 33 - Data protection impact assessment
iv) Article 33 a (new) - Data protection compliance review
v) Article 35 - Designation of the data protection officer

(ga) the refusal to cooperate with or obstruction of inspections, audits and controls carried out by the supervisory authority pursuant to Article 53,
(gb) other aggravating or mitigating factors applicable to the circumstance of the case.

~~***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.***~~

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

~~***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:***~~
~~***(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;***~~
~~***(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;***~~
~~***(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;***~~
~~***(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;***~~
~~***(e) does not or not sufficiently determine the respective responsibilities with co-controllers pursuant to Article 24;***~~
~~***(f) does not or not sufficiently maintain the documentation pursuant to Article 28, Article 31(4), and Article 44(3);***~~

~~*(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.*~~

~~*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:*~~
~~*(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;*~~
~~*(b) processes special categories of data in violation of Articles 9 and 81;*~~
~~*(c) does not comply with an objection or the requirement pursuant to Article 19;*~~
~~*(d) does not comply with the conditions in relation to measures based on profiling pursuant to Article 20;*~~
~~*(e) does not adopt internal policies or does not implement appropriate measures for ensuring and demonstrating compliance pursuant to Articles 22, 23 and 30;*~~
~~*(f) does not designate a representative pursuant to Article 25;*~~
~~*(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;*~~
~~*(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;*~~
~~*(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;*~~
~~*(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;*~~
~~*(k) misuses a data protection seal or mark in the meaning of Article 39;*~~
~~*(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;*~~
~~*(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);*~~
~~*(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);*~~
~~*(o) does not comply with the rules for safeguarding professional secrecy pursuant to Article 84.*~~

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

Recitals

(120) In order to strengthen and harmonise administrative sanctions against infringements of this Regulation, each supervisory authority should have the power to sanction administrative offences. This Regulation should indicate these offences and the upper limit for the related administrative fines, which should be fixed in each individual case proportionate to the specific situation, with due regard in particular to the nature, gravity and duration of the breach. The consistency mechanism may also be used to cover divergences in the application of administrative sanctions.

COMP AM Article 80
15.10.2013

Article 80
Processing of personal data and freedom of expression

1. Member States shall provide for exemptions or derogations from the provisions on the general principles in Chapter II, the rights of the data subject in Chapter III, on controller and processor in Chapter IV, on the transfer of personal data to third countries and international organisations in Chapter V, the independent supervisory authorities in Chapter VI, ~~***and***~~ on co-operation and consistency in Chapter VII ***and specific data processing situations in Chapter IX whenever this is necessary*** ~~***for the processing of personal data carried out solely for journalistic purposes or the purpose of artistic or literary expression***~~ in order to reconcile the right to the protection of personal data with the rules governing freedom of expression ***in accordance with the Charter of Fundamental Rights of the European Union***.

2. Each Member State shall notify to the Commission those provisions of its law which it has adopted pursuant to paragraph 1 by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment law or amendment affecting them.

Recitals

(121) ***Whenever necessary, exemptions or derogations*** ~~***The processing of personal data solely for journalistic purposes, or for the purposes of artistic or literary expression should qualify for exemption***~~ from the requirements of certain provisions of this Regulation for the processing of personal data ***should be provided for*** in order to reconcile the right to the protection of personal data with the right to freedom of expression, and notably the right to receive and impart information, as guaranteed in particular by Article 11 of the Charter of Fundamental Rights of the European Union. ~~***This should apply in particular to processing of personal data in the audiovisual field and in news archives and press libraries.***~~ Therefore, Member States should adopt legislative measures, which should lay down exemptions and derogations which are necessary for the purpose of balancing these fundamental rights. Such exemptions and derogations should be adopted by the Member States on general principles, on the rights of the data subject, on controller and processor, on the transfer of data to third countries or international organisations, on the independent supervisory authorities***,*** ~~***and***~~ on co-operation and consistency***, and on specific data processing situations***. This should not, however, lead Member States to lay down exemptions from the other provisions of this Regulation. In order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary to interpret notions relating to that freedom~~***, such as journalism,*** broadly ~~***Therefore, Member States should classify activities as "journalistic" for the purpose of the exemptions and derogations to be laid down under this Regulation if the object of***~~ ***to cover all these*** activities ***which aim at is***

the disclosure to the public of information, opinions or ideas, irrespective of the medium which is used to transmit them, ***also taking into account technological development***. They should not be limited to media undertakings and may be undertaken for profit-making or for non-profit making purposes.

COMP Article 80a
7.10.2013

Article 80a
Access to documents

1. Personal data in documents held by a public authority or a public body may be disclosed by this authority or body in accordance with Union or Member State legislation regarding public access to official documents, which reconciles the right to the protection of personal data with the principle of public access to official documents.

2. Each Member State shall notify to the Commission provisions of its law which it adopts pursuant to paragraph 1 by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.

Recitals

(18) This Regulation allows the principle of public access to official documents to be taken into account when applying the provisions set out in this Regulation. ***Personal data in documents held by a public authority or public body may be disclosed by that authority or body in accordance with Union or Member State law regarding public access to official documents, which reconciles the right to data protection with the right of public access to official documents and constitutes a fair balance of the various interests involved***.

COMP Article 81
16.10.2013

Article 81
Processing of personal data concerning health

1. ~~***Within the limits of***~~ ***In accordance with the rules set out in*** this Regulation, ~~***and in accordance***~~ ***in particular*** with point (h) of Article 9(2), processing of personal data concerning health must be on the basis of Union law or Member State law which shall provide for suitable, ***consistent,*** and specific measures to safeguard the data subject's ~~***legitimate***~~ interests ***and fundamental rights,*** to the extent that these are necessary ***and proportionate***, ***and of which the effects shall be foreseeable by the data subject,*** for:

(a) the purposes of preventive or occupational medicine, medical diagnosis, the provision of care or treatment or the management of health-care services, and where those data are processed by a health professional subject to the obligation of professional secrecy or another person also subject to an equivalent obligation of confidentiality under Member State law or rules established by national competent bodies; or

(b) reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety, inter alia for medicinal products or medical devices, ***and if the processing is carried out by a person bound by a confidentiality obligation;*** or

(c) other reasons of public interest in areas such as social protection, especially in order to ensure the quality and cost-effectiveness of the procedures used for settling claims for benefits and services in the health insurance system ***and the provision of health services. Such processing of personal data concerning health for reasons of public interest shall not result in data being processed for other purposes, unless with the consent of the data subject or on the basis of Union or Member State law.***

1a. When the purposes referred to in points (a) to (c) of paragraph 1 can be achieved without the use of personal data, such data shall not be used for those purposes, unless based on the consent of the data subject or Member State law.

1b. Where the data subject's consent is required for the processing of medical data exclusively for public health purposes of scientific research, the consent may be given for one or more specific and similar researches. However, the data subject may withdraw the consent at any time.

1c. For the purpose of consenting to the participation in scientific research activities in clinical trials, the relevant provisions of Directive 2001/20/EC shall apply.

2. Processing of personal data concerning health which is necessary for historical, statistical or scientific research purposes~~***, such as patient registries set up for improving***~~

~~diagnoses and differentiating between similar types of diseases and preparing studies for therapies, is~~ shall be permitted only with the consent of the data subject, and shall be subject to the conditions and safeguards referred to in Article 83.

2a. Member States law may provide for exceptions to the requirement of consent for research, as referred to in paragraph 2, with regard to research that serves a high public interests, if that research cannot possibly be carried out otherwise. The data in question shall be anonymised, or if that is not possible for the research purposes, pseudonymised under the highest technical standards, and all necessary measures shall be taken to prevent unwarranted re-identification of the data subjects. However, the data subject shall have the right to object at any time in accordance with Article 19.

3. The Commission shall be empowered to adopt, ***after requesting an opinion of the European Data Protection Board,*** delegated acts in accordance with Article 86 for the purpose of further specifying ***~~other reasons of~~*** public interest in the area of public health as referred to in point (b) of paragraph 1 ***and high public interest in the area of research as referred to in paragraph 2a~~, as well as criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1~~***.

3a. Each Member State shall notify to the Commission those provisions of its law which it adopts pursuant to paragraph 1, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.

Recitals

(122a) A professional who processes personal data concerning health should receive, if possible, anonymised or pseudonymised data, leaving the knowledge of the identity only to the General Practitioner or to the Specialist who has requested such data processing.

(123) The processing of personal data concerning health may be necessary for reasons of public interest in the areas of public health, without consent of the data subject. In that context, 'public health' should be interpreted as defined in Regulation (EC) No 1338/2008 of the European Parliament and of the Council of 16 December 2008 on Community statistics on public health and health and safety at work, meaning all elements related to health, namely health status, including morbidity and disability, the determinants having an effect on that he
alth status, health care needs, resources allocated to health care, the provision of, and universal access to, health care as well as health care expenditure and financing, and the causes of mortality. ***~~Such processing of personal data concerning health for reasons of public interest should not result in personal data being processed for other purposes by third parties such as employers, insurance and banking companies.~~***

(123a) The processing of personal data concerning health, as a special category of data, may be necessary for reasons of historical, statistical or scientific research.

Therefore this Regulation foresees an exemption from the requirement of consent in cases of research that serves a high public interest.

COMP Article 82
16.10.2013

Article 82
Minimum standards for processing **data** in the employment context

1. Member States may, ***in accordance with the rules set out in this Regulation, and taking into account the principle of proportionality,*** adopt by ***~~law~~ legal provisions*** specific rules regulating the processing of employees' personal data in the employment context, in particular ***~~for~~ but not limited to*** the purposes of the recruitment ***and job applications within the group of undertakings,*** the performance of the contract of employment, including discharge of obligations, laid down by law ***and*** by collective agreements, ***in accordance with national law and practice,*** management, planning and organisation of work, health and safety at work, and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship. ***Member States may allow for collective agreements to further specify the provisions set out in this Article.***

1a. The purpose of processing such data must be linked to the reason it was collected for and stay within the context of employment. Profiling or use for secondary purposes shall not be allowed.

1b. Consent of an employee shall not provide a legal basis for the processing of data by the employer when the consent has not been given freely.

1c. Notwithstanding the other provisions of this Regulation, the legal provisions of Member States referred to in paragraph 1 shall include at least the following minimum standards:
(a) the processing of employee data without the employees' knowledge shall not be permitted. Notwithstanding sentence 1, Member States may, by law, provide for the admissibility of this practice, by setting appropriate deadlines for the deletion of data, providing there exists a suspicion based on factual indications that must be documented that the employee has committed a crime or serious dereliction of duty in the employment context, providing also the collection of data is necessary to clarify the matter and providing finally the nature and extent of this data collection are necessary and proportionate to the purpose for which it is intended. The privacy and private lives of employees shall be protected at all times. The investigation shall be carried out by the competent authority;
(b) the open optical-electronic and/or open acoustic-electronic monitoring of parts of an undertaking which are not accessible to the public and are used primarily by employees for private activities, especially in bathrooms, changing rooms, rest areas, and bedrooms, shall be prohibited. Clandestine surveillance shall be inadmissible under all circumstances;

(c) where undertakings or authorities collect and process personal data in the context of medical examinations and/or aptitude tests, they must explain to the applicant or employee beforehand the purpose for which these data are being used, and ensure that afterwards they are provided with these data together with the results, and that they receive an explanation of their significance on request. Data collection for the purpose of genetic testing and analyses shall be prohibited as a matter of principle;
(d) whether and to what extent the use of telephone, e-mail, internet and other telecommunications services shall also be permitted for private use may be regulated by collective agreement. Where there is no regulation by collective agreement, the employer shall reach an agreement on this matter directly with the employee. In so far as private use is permitted, the processing of accumulated traffic data shall be permitted in particular to ensure data security, to ensure the proper operation of telecommunications networks and telecommunications services and for billing purposes.
Notwithstanding sentence 3, Member States may, by law, provide for the admissibility of this practice, by setting appropriate deadlines for the deletion of data, providing there exists a suspicion based on factual indications that must be documented that the employee has committed a crime or serious dereliction of duty in the employment context, providing also the collection of data is necessary to clarify the matter and providing finally the nature and extent of this data collection are necessary and proportionate to the purpose for which it is intended. The privacy and private lives of employees shall be protected at all times. The investigation shall be carried out by the competent authority;
(e) workers' personal data, especially sensitive data such as political orientation and membership of and activities in trade unions, may under no circumstances be used to put workers on so-called 'blacklists', and to vet or bar them from future employment. The processing, the use in the employment context, the drawing-up and passing-on of blacklists of employees or other forms of discrimination shall be prohibited. Member States shall conduct checks and adopt adequate sanctions in accordance with Article 79(6) to ensure effective implementation of this point.

1d. Transmission and processing of personal employee data between legally independent undertakings within a group of undertakings and with professionals providing legal and tax advice shall be permitted, providing it is relevant to the operation of the business and is used for the conduct of specific operations or administrative procedures and is not contrary to the interests and fundamental rights of the person concerned which are worthy of protection. Where employee data are transmitted to a third country and/or to an international organization, Chapter V shall apply.

2. Each Member State shall notify to the Commission those provisions of its law which it adopts pursuant to ***paragraphs 1 and 1b***, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.

3. The Commission shall be empowered, ***after requesting an opinion from the European Data Protection Board,*** to adopt delegated acts in accordance with Article 86

for the purpose of further specifying the criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1.

Recital

(124) The general principles on the protection of individuals with regard to the processing of personal data should also be applicable to the employment ***and the social security*** context. ***Member States should be able*** to regulate the processing of employees' personal data in the employment ***and the processing of personal data in the social security*** context, ***in accordance with the rules and minimum standards set out in*** this Regulation***. Where a statutory basis is provided in the Member State in question for the regulation of employment matters by agreement between employee representatives and the management of the undertaking or the controlling undertaking of a group of undertakings (collective agreement) or under Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees,*** the processing of personal data in ***an*** employment ***context may also be regulated by such an agreement.***

COMP Article 82a
7.10.2013

Article 82a
Processing in the social security context

1. Member States may, in accordance with the rules set out in this Regulation, adopt specific legislative rules particularising the conditions for the processing of personal data by their public and private institutions and departments in the social security context if carried out in the public interest.

2. Each Member State shall notify to the Commission those provisions which it adopts pursuant to paragraph 1, by the date specified in Article 91(2) at the latest and any subsequent amendment affecting them.

COMP Article 83
17.10.2013

Article 83
Processing for historical, statistical and scientific research purposes

1. ***In accordance with the rules set out in this Regulation***, personal data may be processed for historical, statistical or scientific research purposes only if:

(a) these purposes cannot be otherwise fulfilled by processing data which does not permit or not any longer permit the identification of the data subject;

(b) data enabling the attribution of information to an identified or identifiable data subject is kept separately from the other information ~~***as long as these purposes can be fulfilled in this manner***~~ ***under the highest technical standards, and all necessary measures are taken to prevent unwarranted re-identification of the data subjects.***

~~***2. Bodies conducting historical, statistical or scientific research may publish or otherwise publicly disclose personal data only if:***~~
~~***(a) the data subject has given consent, subject to the conditions laid down in Article 7;***~~
~~***(b) the publication of personal data is necessary to present research findings or to facilitate research insofar as the interests or the fundamental rights or freedoms of the data subject do not override these interests; or***~~
~~***(c) the data subject has made the data public.***~~

~~***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 processing of personal data for the purposes referred to in paragraph 1 and 2 as well as any necessary limitations on the rights of information to and access by the data subject and detailing the conditions and safeguards for the rights of the data subject under these circumstances.***~~

Recitals

(125) The processing of personal data for the purposes of historical, statistical or scientific research should, in order to be lawful, also respect other relevant legislation such as on clinical trials.

(126) Scientific research for the purposes of this Regulation should include fundamental research, applied research, and privately funded research and in addition should take into account the Union's objective under Article 179(1) of the Treaty on the Functioning of the European Union of achieving a European Research Area. ***The processing of personal data for historical, statistical and scientific research purposes should not result in***

personal data being processed for other purposes, unless with the consent of the data subject or on the basis of Union or Member State law.

COMP Article 83a
7.10.2013

Article 83a
Processing of personal data by archive services

1. Once the initial processing for which they were collected has been completed, personal data may be processed by archive services whose main or mandatory task is to collect, conserve, provide information about, exploit and disseminate archives in the public interest, in particular in order to substantiate individuals' rights or for historical, statistical or scientific research purposes. These tasks shall be carried out in accordance with the rules laid down by Member States concerning access to and the release and dissemination of administrative or archive documents and in accordance with the rules set out in this Regulation, specifically with regard to consent and the right to object.

2. Each Member State shall notify to the Commission provisions of its law which it adopts pursuant to paragraph 1 by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.

Recitals

(125a) Personal data may also be processed subsequently by archive services whose main or mandatory task is to collect, conserve, provide information about, exploit and disseminate archives in the public interest. Member State legislation should reconcile the right to the protection of personal data with the rules on archives and on public access to administrative information. Member States should encourage the drafting, in particular by the European Archives Group, of rules to guarantee the confidentiality of data vis-à-vis third parties and the authenticity, integrity and proper conservation of data.

COMP Article 84
7.10.2013

Article 84
Obligations of secrecy

1. ***In accordance with the rules set out in*** this Regulation, Member States ***~~may adopt~~ shall ensure*** specific rules ***are in place setting ~~set~~*** out the ***~~investigative~~*** powers by the supervisory authorities laid down in Article 53***~~(2)~~*** in relation to controllers or processors that are subjects under national law or rules established by national competent bodies to an obligation of professional secrecy or other equivalent obligations of secrecy, where this is necessary and proportionate to reconcile the right of the protection of personal data with the obligation of secrecy. These rules shall only apply with regard to personal data which the controller or processor has received from or has obtained in an activity covered by this obligation of secrecy.

2. Each Member State shall notify to the Commission the rules adopted pursuant to paragraph 1, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.

Recitals

(127) As regards the powers of the supervisory authorities to obtain from the controller or processor access personal data and access to its premises, Member States may adopt by law, within the limits of this Regulation, specific rules in order to safeguard the professional or other equivalent secrecy obligations, in so far as necessary to reconcile the right to the protection of personal data with an obligation of professional secrecy.

COMP Article 85
14.10.2013

Article 85
Existing data protection rules of churches and religious associations

1. Where in a Member State, churches and religious associations or communities apply, at the time of entry into force of this Regulation, ***~~comprehensive~~ adequate*** rules relating to the protection of individuals with regard to the processing of personal data, such rules may continue to apply, provided that they are brought in line with the provisions of this Regulation.

2. Churches and religious associations which apply ***~~comprehensive~~ adequate*** rules in accordance with paragraph 1 shall ***~~provide for the establishment of an independent supervisory authority in accordance with Chapter VI of this Regulation~~ obtain a compliance opinion pursuant to Article 38***.

Recitals

(128) This Regulation respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States, as recognised in Article 17 of the Treaty on the Functioning of the European Union. As a consequence, where a church in a Member State applies, at the time of entry into force of this Regulation, ***~~comprehensive~~ adequate*** rules relating to the protection of individuals with regard to the processing of personal data, these existing rules should continue to apply if they are brought in line with this Regulation ***and recognised as compliant***. ***~~Such churches and religious associations should be required to provide for the establishment of a completely independent supervisory authority.~~***

COMP Article 85a
10.10.2013

Article 85a
Respect of fundamental rights

This Regulation shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the TEU.

Recital

(139) In view of the fact that, as underlined by the Court of Justice of the European Union, the right to the protection of personal data is not an absolute right, but must be considered in relation to its function in society and be balanced with other fundamental rights, in accordance with the principle of proportionality, this Regulation respects all fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union as enshrined in the Treaties, notably the right to respect for private and family life, home and communications, the right to the protection of personal data, the freedom of thought, conscience and religion, the freedom of expression and information, the freedom to conduct a business, the right to an effective remedy and to a fair trial as well as cultural, religious and linguistic diversity.

COMP AM Article 85b (Beginning of Chapter X)
16.10.2013

Article 85b
Standard Forms

The Commission may, taking into account the specific features and necessities of various sectors and data processing situations, lay down standard forms for

a) specific methods to obtain verifiable consent referred to in Article 8(1),
b) the communication referred to in Article 12(2), including the electronic format,
c) providing the information referred to in paragraphs 1 to 3 of Article 14,
d) requesting and granting access to the information referred to in Article 15(1), including for communicating the personal data to the data subject,
e) documentation referred to in paragraph 1 of Article 28,
f) breach notifications pursuant to Article 31 to the supervisory authority and the documentation referred to in Article 31(4),
g) prior consultations referred to in Article 34, and for informing the supervisory authorities pursuant to Article 34(6).

2. In doing so, the Commission shall take the appropriate measures for micro, small and medium-sized enterprises.

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

Recitals

(130) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission for: specifying standard forms in relation to the processing of personal data of a child; standard procedures and forms for exercising the rights of data subjects; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access; the right to data portability; standard forms in relation to the responsibility of the controller to data protection by design and by default and to the documentation; specific requirements for the security of processing; the standard format and the procedures for the notification of a personal data breach to the supervisory authority and the communication of a personal data breach to the data subject; standards and procedures for a data protection impact assessment; forms and procedures for prior authorisation and prior consultation; technical standards and mechanisms for certification; the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an international organisation; disclosures not authorized by Union law; mutual assistance; joint operations; decisions under the consistency mechanism. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament

and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers[1]. In this context, the Commission should consider specific measures for micro, small and medium-sized enterprises.

(131) The examination procedure should be used for the adoption of specifying standard forms in relation to the consent of a child; standard procedures and forms for exercising the rights of data subjects; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access;, the right to data portability; standard forms in relation to the responsibility of the controller to data protection by design and by default and to the documentation; specific requirements for the security of processing; the standard format and the procedures for the notification of a personal data breach to the supervisory authority and the communication of a personal data breach to the data subject; standards and procedures for a data protection impact assessment; forms and procedures for prior authorisation and prior consultation; technical standards and mechanisms for certification; the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an international organisation; disclosures not authorized by Union law; mutual assistance; joint operations; decisions under the consistency mechanism, given that those acts are of general scope.

(132) ~~***The Commission should adopt immediately applicable implementing acts where, in duly justified cases relating to a third country or a territory or a processing sector within that third country or an international organisation which does not ensure an adequate level of protection and relating to matters communicated by supervisory authorities under the consistency mechanism, imperative grounds of urgency so require.***~~
(technical amendment due to the changes in Article 44)

[1] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, OJ L 55, 28.2.2011, p. 13.

COMP AM Article 86
15.10.2013

Article 86
Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in ***[Articles XXX]*** shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

3. The delegation of power referred to in ***[Articles XXX]*** may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to ***[Articles XXX]*** shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of ***six*** ~~***two***~~ months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by ***six*** ~~***two***~~ months at the initiative of the European Parliament or the Council.

COMP AM Article 87
10.10.2013

Article 87
Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

~~***3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.***~~

COMP AM Article 88
14.10.2013

Article 88
Repeal of Directive 95/46/EC

1. Directive 95/46/EC is repealed.

2. References to the repealed Directive shall be construed as references to this Regulation. References to the Working Party on the Protection of Individuals with regard to the Processing of Personal Data established by Article 29 of Directive 95/46/EC shall be construed as references to the European Data Protection Board established by this Regulation.

Recitals

(133) Since the objectives of this Regulation, namely to ensure an equivalent level of protection of individuals and the free flow of data throughout the Union, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(134) Directive 95/46/EC should be repealed by this Regulation. However, Commission decisions adopted and authorisations by supervisory authorities based on Directive 95/46/EC should remain in force. ***Commission decisions and authorisations by supervisory authorities relating to transfers of personal data to third countries pursuant to Article 41(8) should remain in force for a transition period of five years after the entry into force of this Regulation unless amended, replaced or repealed by the Commission before the end of this period.***

COMP Article 89
15.10.2013

Article 89
Relationship to and amendment of Directive 2002/58/EC

1. This Regulation shall not impose additional obligations on natural or legal persons in relation to the processing of personal data in connection with the provision of publicly available electronic communications services in public communication networks in the Union in relation to matters for which they are subject to specific obligations with the same objective set out in Directive 2002/58/EC.

2. Article***s*** 1(2)***, 4 and 15*** of Directive 2002/58/EC shall be deleted.

2a. The Commission shall present, without delay and by the date referred to in Article 91(2) at the latest, a proposal for the revision of the legal framework for the processing of personal data and the protection of privacy in electronic communications, in order to align the law with this regulation and ensure consistent and uniform legal provisions on the fundamental right to protection of personal data in the European Union.

Recitals

(135) This Regulation should apply to all matters concerning the protection of fundamental rights and freedom vis-à-vis the processing of personal data, which are not subject to specific obligations with the same objective set out in Directive 2002/58/EC, including the obligations on the controller and the rights of individuals. In order to clarify the relationship between this Regulation and Directive 2002/58/EC, the latter Directive should be amended accordingly.

COMP Article 89a
7.10.2013

Article 89a
Relationship to and amendment of Regulation (EC) 2001/45

1. The rules set out in this Regulation shall be applied to the processing of personal data by Union institutions, bodies, offices and agencies in relation to matters for which they are not subject to additional rules set out in Regulation (EC) 2001/45.

2. The Commission shall present, without delay and by the date specified in Article 91(2) at the latest, a proposal for the revision of the legal framework applicable to the processing of personal data by the Union institutions, bodies, offices and agencies.

COMP Article 90
10.10.2013

Article 90
Evaluation

The Commission shall submit reports on the evaluation and review of this Regulation to the European Parliament and the Council at regular intervals. The first report shall be submitted no later than four years after the entry into force of this Regulation. Subsequent reports shall be submitted every four years thereafter. The Commission shall, if necessary, submit appropriate proposals with a view to amending this Regulation, and aligning other legal instruments, in particular taking account of developments in information technology and in the light of the state of progress in the information society. The reports shall be made public.

COMP Article 91
9.10.2013

Article 91
Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

2. It shall apply from [*two years from the date referred to in paragraph 1*].

This Regulation shall be binding in its entirety and directly applicable in all Member States.