



Comments on the draft JURI opinion on the General Data Protection Regulation

EDRi welcomes the draft opinion, but would like to provide some comments on the Rapporteur's proposed amendments. For ease of reading, the amendments on which EDRi has comments are highlighted as follows:

- **Green** for amendments EDRi supports;
- **Yellow** for amendments that could benefit from certain improvements, but which go in the right direction;
- **Red** for amendments which should be reconsidered;
- **Grey** for amendments on which EDRi does not have a strong position.

The left column repeats the Commission proposal with the elements the Rapporteur wants to delete highlighted in bold, while the right column repeats the amendments proposed by the Rapporteur, with her additions highlighted in bold. Below, you will find a short justification for EDRi's position. We also provide some comments on some amendments on which we do not have a strong position.

We would also like to draw your attention to our website <http://protectmydata.eu/>, where we provide further analysis of the proposal and propose amendments to many recitals and Articles.

Amendment 1 Proposal for a Regulation Recital 15

<i>Commission Proposal</i>	<i>Amendment</i>
(15) This Regulation should not apply to processing of personal data by a natural person, which are exclusively personal or domestic, such as correspondence and the holding of addresses, and without any gainful interest and thus without any connection with a professional or commercial activity. The exemption should	(15) This Regulation should not apply to processing of personal data by a person, which are exclusively personal or domestic, such as correspondence and the holding of addresses, and without any gainful interest and thus without any connection with a professional or commercial activity, and which do not involve

also not apply to controllers or processors which provide the means for processing personal data for such personal or domestic activities.	<i>making such data accessible to an indefinite number of people.</i> The exemption should also not apply to controllers or processors which provide the means for processing personal data for such personal or domestic activities.
Comment: EDRi supports this stricter definition of the household exception, which brings greater clarity, especially in the online context.	

Amendment 2
Proposal for a Regulation
Recital 24

<i>Commission Proposal</i>	<i>Amendment</i>
(24) When using online services, individuals may be associated with online identifiers provided by their devices, applications, tools and protocols, such as Internet Protocol addresses or cookie identifiers. This may leave traces which, combined with unique identifiers and other information received by the servers, may be used to create profiles of the individuals and identify them. It follows that identification numbers, location data, online identifiers or other specific factors as such need not necessarily be considered as personal data in all circumstances.	(24) When using online services, individuals may be associated with online identifiers provided by their devices, applications, tools and protocols, such as Internet Protocol addresses or cookie identifiers. This may leave traces which, combined with unique identifiers and other information received by the servers, may be used to create profiles of the individuals and identify them. It follows that <i>a study should be undertaken, on a case-by-case basis and in accordance with technological developments, of whether</i> identification numbers, location data, online identifiers or other specific factors as such need not necessarily be considered as personal data in all circumstances.
Comment: EDRi completely agrees that online identifiers merit protections. For this reason, we support this amendment's intention, but would call for stronger wording. We suggested wording on http://protectmydata.eu/recitals/recitals-21-30/recital-24/ , saying that online identifiers should be considered personal data unless they are demonstrably not linked to natural persons (for example, IP addresses of email servers).	

Amendment 3
Proposal for a Regulation
Recital 25

<i>Commission Proposal</i>	<i>Amendment</i>
(25) Consent should be given explicitly by any <i>appropriate method</i> enabling a freely given	(25) Consent should be given explicitly by any <i>method appropriate to the media used</i> enabling

specific and informed indication of the data subject's wishes, either by a statement or by a clear affirmative action by the data subject, ensuring that individuals are aware that they give their consent to the processing of personal data, including by ticking a box when visiting an Internet website or by any other statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of their personal data. Silence or inactivity should therefore not constitute consent. Consent should cover all processing activities carried out for the same purpose or purposes. If the data subject's consent is to be given following an electronic request, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided.	a freely given specific and informed indication of the data subject's wishes, either by a statement or by a clear affirmative action by the data subject, ensuring that individuals are aware that they give their consent to the processing of personal data, including by ticking a box when visiting an Internet website or by any other statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of their personal data. Silence or inactivity should therefore not constitute consent. Consent should cover all processing activities carried out for the same purpose or purposes. If the data subject's consent is to be given following an electronic request, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided.
Comment: It seems appropriate to also specify that consent needs to be given in an active way, that is to say that inactivity (for example, not unticking preticked boxes) and simple usage of a service on their own do not constitute consent.	

Amendment 4 Proposal for a Regulation Recital 27	
<i>Commission Proposal</i>	<i>Amendment</i>
(27) The main establishment of a controller in the Union should be determined according to objective criteria and should imply the effective and real exercise of management activities determining the main decisions as to the purposes, conditions and means of processing through stable arrangements. This criterion should not depend whether the processing of personal data is actually carried out at that location; the presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute such main establishment and are therefore no determining criteria for a main establishment. The main establishment of the processor should be the place of its central administration in the Union.	(27) The main establishment of a controller in the Union should be determined according to objective criteria and should imply the effective and real exercise of management activities determining the main decisions as to the purposes, conditions and means of processing through stable arrangements. This criterion should not depend whether the processing of personal data is actually carried out at that location; the presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute such main establishment and are therefore no determining criteria for a main establishment. <i>‘Main establishment of the controller’ means the place in the EU where personal data protection policy is determined,</i>

	<i>taking into account the dominant influence of the establishment over others, particularly in the case of a group of companies, the implementation of rules on personal data protection and rules relevant for data protection.</i> The main establishment of the processor should be the place of its central administration in the Union.
Comment: This amendment follows the call for more clarity launched by several organisations, including EDRI. See also amendment 23 below	

Amendment 5
Proposal for a regulation
Recital 38

<i>Commission Proposal</i>	<i>Amendment</i>
(38) The legitimate interests of a controller may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding. This would need careful assessment in particular where the data subject is a child, given that children deserve specific protection. The data subject should have the right to object the processing, on grounds relating to their particular situation and free of charge. To ensure transparency, the controller should be obliged to explicitly inform the data subject on the legitimate interests pursued and on the right to object, and also be obliged to document these legitimate interests. Given that it is for the legislator to provide by law the legal basis for public authorities to process data, this legal ground should not apply for the processing by public authorities in the performance of their tasks.	(38) The legitimate interests of a person may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding. This would need careful assessment in particular where the data subject is a child, given that children deserve specific protection. The data subject should have the right to object the processing, on grounds relating to their particular situation and free of charge. To ensure transparency, the controller or the third parties to whom the data are sent should be obliged to explicitly inform the data subject on the legitimate interests pursued and on the right to object, and also be obliged to document these legitimate interests. Given that it is for the legislator to provide by law the legal basis for public authorities to process data, this legal ground should not apply for the processing by public authorities in the performance of their tasks.
Comment: See comment on amendment 24 below.	

Amendment 6
Proposal for a Regulation
Recital 48

<i>Commission Proposal</i>	<i>Amendment</i>
(48) The principles of fair and transparent processing require that the data subject should be informed in particular of the existence of the processing operation and its purposes, how long the data will be stored, on the existence of the right of access, rectification or erasure and on the right to lodge a complaint. Where the data are collected from the data subject, the data subject should also be informed whether they are obliged to provide the data and of the consequences, in cases they do not provide such data.	(48) The principles of fair and transparent processing require that the data subject should be informed in particular of the existence of the processing operation and its purposes, <i>the criteria enabling determination of</i> how long the data will be stored <i>for each purpose</i> , on the existence of the right of access, rectification or erasure and on the right to lodge a complaint. Where the data are collected from the data subject, the data subject should also be informed whether they are obliged to provide the data and of the consequences, in cases they do not provide such data.
Comment: This amendment will lead to more clarity in cases where data are conserved for several purposes. We welcome this part of the amendment. Nonetheless, it is important that data subjects are provided with precise periods, in order to avoid a situation in which controllers only provide unclear criteria which do not clarify the situation for the data subject. See also the following amendment 7 and amendment 31 below.	

Amendment 7
Proposal for a Regulation
Recital 51

<i>Commission Proposal</i>	<i>Amendment</i>
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<p>(51) Any person should have the right of access to data which has been collected concerning them, and to exercise this right easily, in order to be aware and verify the lawfulness of the processing. Every data subject should therefore have the right to know and obtain communication in particular for what purposes the data are processed, <i>for what period</i>, which recipients receive the data, what is the logic of the data that are undergoing the processing and what might be, at least when based on profiling, the consequences of such processing. This right should not adversely affect the rights and freedoms of others, including trade secrets or intellectual property and in particular the copyright protecting the software. However, the result of these considerations should not be that all information is refused to the data subject.</p>	<p>(51) Any person should have the right of access to data which has been collected concerning them, and to exercise this right easily, in order to be aware and verify the lawfulness of the processing. Every data subject should therefore have the right to know and obtain communication in particular for what purposes the data are processed, <i>the criteria enabling determination of how long the data will be stored for each purpose</i>, which recipients receive the data, what is the logic of the data that are undergoing the processing and what might be, at least when based on profiling, the consequences of such processing. This right should not adversely affect the rights and freedoms of others, including trade secrets or intellectual property and in particular the copyright protecting the software. However, the result of these considerations should not be that all information is refused to the data subject.</p>
<p>Comment: See comment on amendment 6 above.</p>	

<p>Amendment 8 Proposal for a Regulation Recital 55</p>	
<p><i>Commission Proposal</i></p>	<p><i>Amendment</i></p>
<p><i>(55) To further strengthen the control over their own data and their right of access, data subjects should have the right, where personal data are processed by electronic means and in a structured and commonly used format, to obtain a copy of the data concerning them also in commonly used electronic format. The data subject should also be allowed to transmit those data, which they have provided, from one automated application, such as a social network, into another one. This should apply where the data subject provided the data to the automated processing system, based on their consent or in the performance of a contract.</i></p>	<p><i>deleted</i></p>
<p>Comment: The right to data portability is a corollary to the right of access. Currently, the problem</p>	

is that when replying to access requests, controllers sometimes provide data in a format that does not lend itself to further use by the data subject. This creates lock-in effects, especially for social networks and other online services. The right to data portability would contribute to a more competitive environment for this kind of services by allowing people to change service providers more easily. If the aim is simply to avoid any possible confusion due to the fact that these two related rights are regulated in two different Articles, it would be possible to include the provisions of Article 18 in Article 15. See also amendment [36](#) below.

Amendment 9
Proposal for a Regulation
Recital 60

<i>Commission Proposal</i>	<i>Amendment</i>
(60) Comprehensive responsibility and liability of the controller for any processing of personal data carried out by the controller or on the controller's behalf should be established. In particular, the controller should ensure and be obliged to demonstrate the compliance of each processing operation with this Regulation.	(60) Overall responsibility and liability of the controller for any processing of personal data carried out by the controller or on the controller's behalf should be established. In particular, the controller should ensure and be obliged to demonstrate the compliance of each processing operation with this Regulation.
Comment:	

Amendment 10
Proposal for a Regulation
Recital 62

<i>Commission Proposal</i>	<i>Amendment</i>
(62) The protection of the rights and freedoms of data subjects as well as the responsibility and liability of controllers and processor, also in relation to the monitoring by and measures of supervisory authorities, requires a clear attribution of the responsibilities under this Regulation, including where a controller determines the purposes, conditions and means of the processing jointly with other controllers or where a processing operation is carried out on behalf of a controller.	(62) <i>The protection of the rights and freedoms of data subjects as well as the responsibility and liability of controllers and processor, also in relation to the monitoring by and measures of supervisory authorities, requires a clear attribution of the responsibilities under this Regulation, including where a controller determines the purposes, conditions and means of the processing jointly with other controllers or where a processing operation is carried out on behalf of a controller. In the event of joint and several liability, a processor which has made amends for damage done to the data subject may appeal against the controller for reimbursement if it has acted in conformity</i>

	<i>with the legal act binding it to the controller.</i>
Comment: This amendment creates a clearer situation for processors.	

Amendment 11 Proposal for a Regulation Recital 65	
<i>Commission Proposal</i>	<i>Amendment</i>
(65) In order to demonstrate compliance with this Regulation, the controller or processor should document each processing operation . Each controller and processor should be obliged to co-operate with the supervisory authority and make this documentation, on request, available to it, so that it might serve for monitoring those processing operations.	(65) In order to demonstrate compliance with this Regulation, the controller or processor should keep a documentary record of all the processing systems and procedures for which they are responsible . Each controller and processor should be obliged to co-operate with the supervisory authority and make this documentation, on request, available to it, so that it might serve for monitoring those processing operations.
Comment:	

Amendment 12 Proposal for a Regulation Recital 67	
<i>Commission Proposal</i>	<i>Amendment</i>
(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 and, where feasible, within 24 hours. Where this cannot be achieved within 24 hours, 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	(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 a breach which would have a significant impact on the data subject has occurred, the controller should notify the breach to the supervisory authority without undue delay. The individuals whose personal data could be significantly 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 significantly adversely affecting the personal data or privacy of a data subject where it could

<p>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.</p>	<p>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.</p>
<p>Comment: As the Rapporteur rightly points out, the main aim of a controller who became aware of a breach in the first period of time is to stop the breach. However, it is advisable to have a fixed and short deadline for the notification to the DPA, since such a deadline puts more pressure on the controller to stop the breach. In the absence of such a clear deadline, there is a risk that controllers will justify considerably delaying notifications by saying that fixing the breach a long time. The preferable solution would be to have a fixed, but slightly longer deadline. This could be 72 hours, as already suggested by the EDPS and EDRI. See also amendment 48 below.</p>	

Amendment 13 Proposal for a Regulation Recital 82	
<i>Commission Proposal</i>	<i>Amendment</i>
<p>(82) The Commission may equally recognise that a third country, or a territory or a processing sector within a third country, or an international organisation offers no adequate level of data protection. Consequently the transfer of personal data to that third country should be <i>prohibited</i>. <i>In that case, provision should be made for consultations between the Commission and such third countries or international organisations.</i></p>	<p>(82) The Commission may equally recognise that a third country, or a territory or a processing sector within a third country, or an international organisation offers no adequate level of data protection. Consequently the transfer of personal data to that third country should be <i>authorised subject to appropriate guarantees or under the derogations set out in this Regulation.</i></p>

Comment: Although the amendment is an improvement compared to the Commission proposal, it would be preferable to have a ban on transfers as the starting point, if there is a negative adequacy decision. Such wording would underline that transfers to non-adequate recipients would be exceptions.

Amendment 14
Proposal for a Regulation
Recital 85 a (new)

<i>Commission Proposal</i>	<i>Amendment</i>
	<i>(85a) A group of companies planning to submit for approval binding corporate rules may propose a supervisory authority as the lead authority. This should be the supervisory authority of the Member State in which the main establishment of the controller or processor is situated.</i>

Comment: Given that the active text (see amendment [56](#) below) clearly says that the lead DPA is the DPA competent for the main establishment, the added value of letting the group of undertakings propose a lead DPA is not clear.

Amendment 15
Proposal for a Regulation
Recital 115

<i>Commission Proposal</i>	<i>Amendment</i>
<i>(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. The requested supervisory authority may decide, subject to judicial review, whether it is appropriate to follow the request or not.</i>	<i>deleted</i>

Comment:

Amendment 16
Proposal for a Regulation
Recital 118

<i>Commission Proposal</i>	<i>Amendment</i>
(118) Any damage 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 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.	<i>(118) Any damage 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 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. In the event of joint and several liability, a processor which has made amends for damage done to the person concerned may appeal against the controller for reimbursement if it has acted in conformity with the legal act binding it to the controller.</i>
Comment: This amendment clarifies that a processor which acted in compliance with its contract with the controller can have recourse against the controller. This reinforces the final responsibility of the controller.	

Amendment 17
Proposal for a Regulation
Recital 129

<i>Commission Proposal</i>	<i>Amendment</i>
(129) In order to fulfil the objectives of this Regulation, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. In particular, delegated acts should be adopted in respect of lawfulness of processing; specifying the criteria and conditions in relation to the consent of a child; processing of special categories of data; <i>specifying the criteria and conditions for manifestly excessive requests and fees for exercising the rights of the data</i>	(129) In order to fulfil the objectives of this Regulation, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. In particular, delegated acts should be adopted in respect of lawfulness of processing; specifying the criteria and conditions in relation to the consent of a child; processing of special categories of data; criteria and requirements for the information to the data subject and in relation to the right of access; the right to be

<p>subject; criteria and requirements for the information to the data subject and in relation to the right of access; the right to be forgotten and to erasure; measures based on profiling; criteria and requirements in relation to the responsibility of the controller and to data protection by design and by default; a processor; criteria and requirements for the documentation and the security of processing; criteria and requirements for establishing a personal data breach and for its notification to the supervisory authority, and on the circumstances where a personal data breach is likely to adversely affect the data subject; the criteria and conditions for processing operations requiring a data protection impact assessment; the criteria and requirements for determining a high degree of specific risks which require prior consultation; designation and tasks of the data protection officer; codes of conduct; criteria and requirements for certification mechanisms; criteria and requirements for transfers by way of binding corporate rules; transfer derogations; administrative sanctions; processing for health purposes; processing in the employment context and processing for historical, statistical and scientific research purposes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.</p>	<p>forgotten and to erasure; measures based on profiling; criteria and requirements in relation to the responsibility of the controller; a processor; criteria and requirements for the documentation; criteria and requirements for establishing a personal data breach and for its notification to the supervisory authority, and on the circumstances where a personal data breach is likely to adversely affect the data subject; the criteria and conditions for processing operations requiring a data protection impact assessment; the criteria and requirements for determining a high degree of specific risks which require prior consultation; designation and tasks of the data protection officer; codes of conduct; criteria and requirements for certification mechanisms; transfers by way of binding corporate rules; derogations concerning transfers; processing for health purposes; processing in the employment context and processing for historical, statistical and scientific research purposes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.</p>
Comment:	

Amendment 18 Proposal for a Regulation Recital 130	
<i>Commission Proposal</i>	<i>Amendment</i>
(130) In order to ensure uniform conditions for the implementation of this Regulation,	(130) In order to ensure uniform conditions for the implementation of this Regulation,

<p>implementing powers should be conferred on the Commission for: specifying standard forms in relation to the processing of personal data of a child; <i>standard procedures and forms for exercising the rights of data subjects</i>; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access; <i>the right to data portability</i>; standard forms in relation to the responsibility of the controller <i>to data protection by design and by default</i> 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. In this context, the Commission should consider specific measures for micro, small and medium-sized enterprises.</p>	<p>implementing powers should be conferred on the Commission for: specifying standard forms in relation to the processing of personal data of a child; standard forms for the information to the data subject; standard forms and procedures in relation to the right of access; standard forms in relation to the responsibility of the controller 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. In this context, the Commission should consider specific measures for micro, small and medium-sized enterprises.</p>
Comment:	

Amendment 19 Proposal for a Regulation Recital 131	
<i>Commission Proposal</i>	<i>Amendment</i>
(131) The examination procedure should be used	(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; <i>the right to data portability</i> ; standard forms in relation to the responsibility of the controller <i>to data protection by design and by default and</i> 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; <i>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</i> ; disclosures not authorized by Union law; mutual assistance; joint operations; decisions under the consistency mechanism, given that those acts are of general scope.	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; standard forms in relation to the responsibility of the controller 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; disclosures not authorized by Union law; mutual assistance; joint operations; decisions under the consistency mechanism, given that those acts are of general scope.
Comment:	

Amendment 20 Proposal for a Regulation Recital 139	
<i>Commission Proposal</i>	<i>Amendment</i>
(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 <i>fundamental</i> 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	(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 rights <i>established by the Charter of Fundamental Rights of the European Union</i> , in accordance with the principle of proportionality, this Regulation respects all fundamental rights and observes the principles recognised in the Charter of Fundamental Rights

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.	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.
<p>Comment: This amendment appears, possibly unintentionally, to restrict the right of Member States to take their own national constitutions and priorities into account when assessing the fundamental right to privacy in the context of other rights. On the other hand, as current commercial practice has created an environment whereby personal data are a property right within the context of the Charter, this amendment would most probably result in privacy being given an even higher ranking when courts come to “balance” rights..</p>	

Amendment 21 Proposal for a Regulation Article 2 – paragraph 2 – point d	
<i>Commission Proposal</i>	<i>Amendment</i>
d) by a natural person without any gainful interest in the course of its own exclusively personal or household activity;	d) by a natural person without any gainful interest in the course of its own exclusively personal or household activity <i>and on condition that no personal data are made accessible to an indefinite number of people;</i>
<p>Comment: As already mentioned in our comments on amendment 1, EDRi welcomes this change, which limits the application of this exception.</p>	

Amendment 22 Proposal for a Regulation Article 4 – point 2 bis	
<i>Commission Proposal</i>	<i>Amendment</i>
	<i>(2a) ‘data rendered sufficiently anonymous’ means data, the information on personal or material characteristics contained in which can no longer be associated with an identified or identifiable individual or could only be so associated at a disproportionate cost in terms</i>

	<i>of time and financial and human resources;</i>
<p>Comment: The problem with this formulation is that with technological progress, the means for de-anonymising data advance quickly. In other words: it is likely that measures that are 'disproportionate' today will not be 'disproportionate' in several years, which removes the increased legal certainty that the amendment was intended to create.</p> <p>Furthermore, it should be noted that the French version of recital 23, which is the motivation behind this amendment, is slightly different from other language versions:</p> <p>French: “données qui ont été rendues suffisamment anonymes pour que la personne concernée ne soit plus identifiable”</p> <p>English: “data rendered anonymous in such a way the data subject is no longer identifiable”</p> <p>German: “Daten [...], die in einer Weise anonymisiert worden sind, dass die betroffene Person nicht mehr identifiziert werden kann”</p> <p>Spanish: “datos convertidos en anónimos de forma que el interesado a quien se refieren ya no resulte identificable”</p> <p>In the other language versions, there is no element of 'suffisamment' ('sufficiently'), which suggests the possibility of varying degrees of anonymisation. Instead, they talk about complete anonymisation. For this reason, it seems appropriate to interpret recital 23 in line with other language versions. This is also more prudent, taking technological progress into account.</p>	

Amendment 23 Proposal for a Regulation Article 4 – point 13	
<i>Commission Proposal</i>	<i>Amendment</i>
(13) ‘main establishment’ means as regards the controller, the place of its establishment in the Union where <i>the main decisions as to the purposes, conditions and means of the processing of personal data are taken</i> ; if no decisions as to the purposes, conditions and means of the processing of personal data are taken in the Union, the main establishment is the place where the main processing activities in the context of the activities of an establishment of a controller in the Union take place. As regards the processor, ‘main establishment’ means the place of its central administration in the Union;	(13) ‘main establishment’ means as regards the controller, the place of its establishment in the Union where personal data <i>protection policy is determined, taking into account the dominant influence of the establishment over others, particularly in the case of a group of companies, the implementation of rules on personal data protection and rules relevant for data protection</i> ; if no decisions as to the purposes, conditions and means of the processing of personal data are taken in the Union, the main establishment is the place where the main processing activities in the context of the activities of an establishment of a controller in the Union take place. As regards the processor, ‘main establishment’ means the

	place of its central administration in the Union;
Comment: As already indicated in our comments on amendment 4 , EDRI supports this definition of the term 'main establishment'.	

Amendment 24
Proposal for a Regulation
Article 6 – paragraph 1 – point f

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

Comment: This formulation dilutes the concept of purpose limitation, effectively destroying one of the key pillars of data protection. To give an example: when a data consents to a data transfer, this is usually done for a specific purpose. If the legitimate interest of this third party, which can be different from those of the controller, constituted a reason for lawfulness, the principle of purpose limitation would be seriously infringed. This would leave citizens with little or no control over their personal data. See also amendment [5](#) above.

Amendment 25
Proposal for a Regulation
Article 6 – paragraph 5

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

Comment:

Amendment 26
Proposal for a Regulation
Article 7 – paragraph 4 a (new)

<i>Commission Proposal</i>	<i>Amendment</i>
	4a. The legislation of the Member State in which a person lacking the legal capacity to act resides shall apply when determining the conditions under which consent is given or authorised by that person.

Comment: This amendment increases legal certainty regarding the consent of persons without legal capacity to act.

Amendment 27
Proposal for a Regulation
Article 8 – paragraph 1

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

Comment: EDRi welcomes the Rapporteur's proposal to enlarge the scope of this provision to all goods and services offered directly to children below the age of 13. This will ensure better protection for them.

Amendment 28
Proposal for a Regulation
Article 11 – paragraph 2

<i>Commission Proposal</i>	<i>Amendment</i>
2. The controller shall provide any information and any communication relating to the processing of personal data to the data subject in	2. The controller shall provide any information and any communication relating to the processing of personal data to the data subject in

an intelligible form, using clear and plain language, <i>adapted to the data subject</i> , in particular for any information addressed specifically to a child.	an intelligible form, using clear and plain language, in particular for any information addressed specifically to a child.
Comment: In her justification for this amendment, the rapporteur considers that children are the only group in need of adapted information, but there are also other groups which could benefit from such adapted information, for example people with physical limitations or lack of technical awareness.	

Amendment 29 Proposal for a Regulation Article 12 – paragraph 5	
<i>Commission Proposal</i>	<i>Amendment</i>
<i>5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for the manifestly excessive requests and the fees referred to in paragraph 4.</i>	<i>deleted</i>
Comment:	

Amendment 30 Proposal for a Regulation Article 12 – paragraph 6	
<i>Commission Proposal</i>	<i>Amendment</i>
<i>6. The Commission may lay down standard forms and specifying standard procedures for the communication referred to in paragraph 2, including the electronic format. In doing so, the Commission shall take the appropriate measures for micro, small and medium-sized-enterprises. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).</i>	<i>deleted</i>
Comment:	

Amendment 31
Proposal for a Regulation
Article 14 – paragraph 1 – point c

<i>Commission Proposal</i>	<i>Amendment</i>
c) the period for which the personal data will be stored;	c) <i>the criteria for determining</i> the period for which the personal data will be stored <i>for each purpose</i> ;
<p>Comment: This amendment includes two changes: (1) distinguishing between retention for different purposes (if they exist) and (2) to replace the 'period' with the 'criteria allowing' to determine it. EDRi supports the first part, but has some doubts on the wording of the second part. The reason is that this part could open a loophole allowing controllers to provide data subjects only with unclear criteria instead of a fixed period (see also comments on amendment 6).</p>	

Amendment 32
Proposal for a Regulation
Article 14 – paragraph 1 – point g

<i>Commission Proposal</i>	<i>Amendment</i>
g) where applicable, that the controller intends to transfer to a third country or international organisation and <i>on the level of protection afforded by that third country or international organisation by reference to</i> an adequacy decision by the Commission;	h) any further information <i>which the controller considers</i> necessary to guarantee fair processing in respect of the data subject, having regard to the specific circumstances in which the personal data are collected.
<p>Comment: On the one hand, it seems reasonable that if an adequacy decision exists, the controller should not have to supply additional information. On the other hand, if there is no decision, it seems appropriate to include an obligation for the controller to specify the appropriate safeguards adduced, namely the binding corporate rules or other basis for the transfer.</p>	

Amendment 33
Proposal for a Regulation
Article 14 – paragraph 1 – point h

<i>Commission Proposal</i>	<i>Amendment</i>
h) any further information necessary to guarantee fair processing in respect of the data subject, having regard to the specific circumstances in which the personal data are collected.	h) any further information <i>which the controller considers</i> necessary to guarantee fair processing in respect of the data subject, having regard to the specific circumstances in which the personal data are collected.

Comment: As the Rapporteur explains, it should be clarified that controllers can provide a higher level of transparency. Nonetheless, the Commission proposal does not stop controllers from providing additional information. On the other hand, by specifying that the decision on which other elements are deemed necessary is to be made by the controller, the risk of less benevolent controllers omitting this information is created. To give an example: for measures based on profiling, additional information on the logic behind the measure should be provided. In this case, it would seem advisable to leave the decision which other information should be provided to the DPA, which could oblige the controller to supply it.

Amendment 34
Proposal for a Regulation
Article 15 – paragraph 2

<i>Commission Proposal</i>	<i>Amendment</i>
2. The data subject shall have the right to obtain from the controller communication of the personal data undergoing processing. Where the data subject makes the request in electronic form, the information shall be provided in electronic form, unless otherwise requested by the data subject.	2. The data subject shall have the right to obtain from the controller communication of the personal data undergoing processing. Where the data subject makes the request in electronic form, the information shall be provided in electronic form, unless otherwise requested by the data subject. <i>The controller shall use all reasonable measures to verify the identity of a data subject requesting access to data.</i>
Comment: It is true, as the Rapporteur says, that the right of access should not be abused. It is also true that controllers may not collect and store data just to be able to respond to access requests (see recital 52). In any case, the controller already has to verify the authenticity of the request. It should be specified that data collected for the purpose of verifying requests must only be used for this purpose.	

Amendment 35
Proposal for a Regulation
Article 17 – paragraph 2 a (new)

<i>Commission Proposal</i>	<i>Amendment</i>
	<i>2a. The controller referred to in paragraph 1 shall inform the data subject of the action taken in response to their request by the third parties referred to in paragraph 2.</i>
Comment: A similar provision should also be added to Article 13.	

Amendment 36
Proposal for a Regulation
Article 18

<i>Commission Proposal</i>	<i>Amendment</i>
[...]	<i>deleted</i>
Comment: See comment on amendment 8 above.	

Amendment 37
Proposal for a Regulation
Article 21 – paragraph 2

<i>Commission Proposal</i>	<i>Amendment</i>
2. In particular, any legislative measure referred to in paragraph 1 shall contain specific provisions at least as to the objectives to be pursued by the processing and the determination of the controller.	2. In particular, any legislative measure referred to in paragraph 1 shall contain specific provisions at least as to <i>the aim of the processing</i> , the objectives to be pursued by the processing and the determination of the controller.
Comment: EDRi advocates phrasing the restrictions in Article 21 more narrowly. The Rapporteur's amendment is a good first step in this direction. However, we would suggest adding further specifications. See http://protectmydata.eu/articles/articles-21-30/article-21/ for suggested wording.	

Amendment 38
Proposal for a Regulation
Article 22 – titre

<i>Commission Proposal</i>	<i>Amendment</i>
<i>Responsibility</i> of the controller	<i>Overall principle of responsibility</i> of the controller.
Comment: Giving a new and clearer name to this Article helps to reinforce this principle.	

Amendment 39
Proposal for a Regulation
Article 23 – paragraph 2

<i>Commission Proposal</i>	<i>Amendment</i>
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2. The controller shall implement mechanisms for ensuring that, by default, only those personal data are processed which are necessary for each specific purpose of the processing and are especially not collected or retained beyond the minimum necessary for those purposes, both in terms of the amount of the data and the time of their storage. In particular, those mechanisms shall ensure that by default personal data are not made accessible to an indefinite number of individuals.	2. The controller shall implement mechanisms for ensuring that, by default, <i>only those personal data are collected for purposes which are defined, explicit and legitimate</i> and only those personal data are processed which are necessary for each specific purpose of the processing and are especially not collected or retained beyond the minimum necessary for those purposes, both in terms of the amount of the data and the time of their storage. In particular, those mechanisms shall ensure that by default personal data are not made accessible to an indefinite number of individuals.
<p>Comment: Limiting data collection is a corollary of the principles of data protection by design and by default. It should also be specified that these measures should be put in place using technical and/or organisational measures and that the aim is to increase data subjects' ability to control their own data. EDRproposes wording to improve this provision on http://protectmydata.eu/articles/articles-21-30/article-23/ .</p>	

Amendment 40
Proposal for a Regulation
Article 23 – paragraph 3

<i>Commission Proposal</i>	<i>Amendment</i>
<i>3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of specifying any further criteria and requirements for appropriate measures and mechanisms referred to in paragraph 1 and 2, in particular for data protection by design requirements applicable across sectors, products and services.</i>	<i>deleted</i>
Comment:	

Amendment 41
Proposal for a Regulation
Article 23 – paragraph 4

<i>Commission Proposal</i>	<i>Amendment</i>
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4. The Commission may lay down technical standards for the requirements laid down in paragraph 1 and 2. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).	deleted
Comment:	

Amendment 42
Proposal for a Regulation
Article 28 – paragraph 1

<i>Commission Proposal</i>	<i>Amendment</i>
1. Each controller and processor and, if any, the controller's representative, shall maintain documentation of all processing operations under its responsibility.	1. Each controller and processor and, if any, the controller's representative, shall maintain documentation of all processing systems and procedures under its responsibility.
Comment: This amendment and the following ones (until amendment 46) aim at a reorganisation of the documentation obligations. The Rapporteur justifies them by referring to the EDPS opinion. However, these amendments only introduce part of the EDPS' recommendations: documentation obligations are eased, but the balancing measures – that is to say the obligation to provide additional documentation on request of the DPA and removing the exemption for SMEs – are missing (see pt. 190 of the EDPS opinion). For this reason, EDRi suggests to follow the EDPS' recommendation more comprehensively.	

Amendment 43
Proposal for a Regulation
Article 28 – paragraph 2 – partie introductive

<i>Commission Proposal</i>	<i>Amendment</i>
2. The documentation shall contain at least the following information:	2. The documentation shall contain the following information:
Comment: It is obvious that, in order to be in compliance with this Article, it is enough to document the elements listed in it. The Commission proposal also allows controllers who want to be more transparent to add additional elements.	

Amendment 44

Proposal for a Regulation Article 28 – paragraph 2 – point d	
<i>Commission Proposal</i>	<i>Amendment</i>
<i>d) a description of categories of data subjects and of the categories of personal data relating to them;</i>	<i>deleted</i>
Comment: See comments on amendment 42 above.	

Amendment 45 Proposal for a Regulation Article 28 – paragraph 2 – point e	
<i>Commission Proposal</i>	<i>Amendment</i>
<i>e) the recipients or categories of recipients of the personal data, including the controllers to whom personal data are disclosed for the legitimate interest pursued by them;</i>	<i>deleted</i>
Comment: See comments on amendment 42 above.	

Amendment 46 Proposal for a Regulation Article 28 – paragraph 2 – point g	
<i>Commission Proposal</i>	<i>Amendment</i>
<i>g) a general indication of the time limits for erasure of the different categories of data;</i>	<i>deleted</i>
Comment: See comments on amendment 42 above.	

Amendment 47 Proposal for a Regulation Article 30 – paragraph 3	
<i>Commission Proposal</i>	<i>Amendment</i>

<p>3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for the technical and organisational measures referred to in paragraphs 1 and 2, including the determinations of what constitutes the state of the art, for specific sectors and in specific data processing situations, in particular taking account of developments in technology and solutions for privacy by design and data protection by default, unless paragraph 4 applies.</p>	<p><i>deleted</i></p>
<p>Comment:</p>	

<p>Amendment 48 Proposal for a Regulation Article 31 – paragraph 1</p>	
<p><i>Commission Proposal</i></p>	<p><i>Amendment</i></p>
<p>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 in cases where it is not made within 24 hours.</p>	<p>1. In the case of a personal data breach which has a considerable effect on the data subject, the controller shall, without undue delay after having become aware of it, notify the personal data breach to the supervisory authority.</p>
<p>Comment: EDRi would be in favour of a fixed period for the notification, for the reasons given in our comments to amendment 12.</p>	

<p>Amendment 49 Proposal for a Regulation Article 33 – paragraph 2 – introduction</p>	
<p><i>Commission Proposal</i></p>	<p><i>Amendment</i></p>
<p>2. The following processing operations in particular present specific risks referred to in paragraph 1:</p>	<p>2. The following processing operations present specific risks referred to in paragraph 1:</p>

Comment: In order to ensure that these categories can be interpreted to adapt to new technological developments, it is preferable to have a non-exhaustive list.

Amendment 50
Proposal for a Regulation
Article 33 – paragraph 4

<i>Commission Proposal</i>	<i>Amendment</i>
4. The controller shall seek the views of data subjects or their representatives on the intended processing, without prejudice to the protection of commercial or public interests or the security of the processing operations.	deleted
Comment: Consulting data subjects can help to obtain important information on the impact of planned processing operations. For this reason, the Commission's wording should be upheld.	

Amendment 51
Proposal for a Regulation
Article 34 – titre

<i>Commission Proposal</i>	<i>Amendment</i>
Prior authorisation and prior consultation	Prior consultation
Comment:	

Amendment 52
Proposal for a Regulation
Article 34 – paragraph 1

<i>Commission Proposal</i>	<i>Amendment</i>
1. The controller or the processor as the case may be shall obtain an authorisation from the supervisory authority prior to the processing of personal data, in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where a controller or processor adopts contractual clauses as provided for in point (d) of Article 42(2) or does not provide for the appropriate	deleted

<i>safeguards in a legally binding instrument as referred to in Article 42(5) for the transfer of personal data to a third country or an international organisation.</i>	
Comment: This amendment simply moves part of the Article to a different part of the Regulation.	

Amendment 53 Proposal for a Regulation Article 40 a (new)	
<i>Commission Proposal</i>	<i>Amendment</i>
	Article 40 a Prior authorisation <i>The controller or the processor as the case may be shall obtain an authorisation from the supervisory authority prior to the processing of personal data, in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where a controller or processor adopts contractual clauses as provided for in point (d) of Article 42(2) or does not provide for the appropriate safeguards in a legally binding instrument as referred to in Article 42(5) for the transfer of personal data to a third country or an international organisation.</i>
Comment: This amendment simply moves part of the Article to a different part of the Regulation.	

Amendment 54 Proposal for a Regulation Article 41 – paragraph 3	
<i>Commission Proposal</i>	<i>Amendment</i>
3. The Commission may decide that a third country, or a territory or a processing sector within that third country, or an international organisation ensures an adequate level of protection within the meaning of paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure set	3. The Commission may decide that a third country, or a territory or a processing sector within that third country, or an international organisation ensures an adequate level of protection within the meaning of paragraph 2.

<i>out in Article 87(2).</i>	
Comment: As the Rapporteur explains, the EDPB should be consulted in this context. It seems appropriate to specifically mention this consultation in this Article.	

Amendment 55 Proposal for a Regulation Article 42 – paragraph 1	
<i>Commission Proposal</i>	<i>Amendment</i>
1. Where the Commission has taken no decision pursuant to Article 41, a controller or processor may transfer personal data to a third country or an international organisation only if the controller or processor has adduced appropriate safeguards with respect to the protection of personal data in a legally binding instrument.	1. Where the Commission has taken no decision pursuant to Article 41, <i>or if it finds that a third country, a region or a data processing sector in a third country, or an international organisation, does not offer a sufficient level of data protection,</i> a controller or processor may transfer personal data to a third country or an international organisation only if the controller or processor has adduced appropriate safeguards with respect to the protection of personal data in a legally binding instrument.
Comment: This amendment follows the EDPS opinion.	

Amendment 56 Proposal for a Regulation Article 43 – paragraph 2 a (new)	
<i>Commission Proposal</i>	<i>Amendment</i>
	<i>2a. The supervisory authority which approves the binding corporate rules shall be that of the place of the main establishment of the controller or processor.</i>
Comment: EDRi welcomes the clarification on the competent DPA, but has some fears regarding a race to the bottom. It would seem advisable to specifically submit this kind of approval to the consistency mechanism.	

Amendment 57 Proposal for a Regulation Article 51 – paragraph 1 a (new)
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<i>Commission Proposal</i>	<i>Amendment</i>
	<i>1a. In the event of a complaint by a data subject or a body, organisation or association referred to in Article 73(2), the supervisory authority responsible shall be that of the Member State in which the complaint was made. It shall be competent to take action on the complaint. It shall also be competent to supervise the controller's processing activities or those of a processor, without prejudice to paragraph 2.</i>
Comment:	

Amendment 58
Proposal for a Regulation
Article 51 – paragraph 2

<i>Commission Proposal</i>	<i>Amendment</i>
<i>2. Where the processing of personal data takes place in the context of the activities of an establishment of a controller or a processor in the Union, and the controller or processor is established in more than one Member State, the supervisory authority of the main establishment of the controller or processor shall be competent for the supervision of the processing activities of the controller or the processor in all Member States, without prejudice to the provisions of Chapter VII of this Regulation.</i>	<i>2. In the context of the activities of a controller or a processor established in more than one Member State, the supervisory authority of the Member State where the main establishment of the controller or processor is situated shall be competent for the supervision of the processing activities of the controller or the processor in all Member States. This supervisory authority shall be obliged to cooperate with the other supervisory authorities and with the Commission, pursuant to the provisions of Chapter VII of this Regulation.</i>

Comment: Improving cooperation between DPAs also helps to reduce the burden on DPAs competent for supervising big controllers. We welcome this provision, but have to point out that the aim is above all cooperation between the DPAs themselves. As the Rapporteur notes in her justification for amendment [60](#), Chapter VII gives too much weight to the Commission.

Amendment 59
Proposal for a Regulation
Article 59 – paragraph 4

<i>Commission Proposal</i>	<i>Amendment</i>
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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. <i>In this case the draft measure shall not be adopted for one further month.</i>	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.
Comment: It is important to safeguard the independence of DPAs.	

Amendment 60 Proposal for a Regulation Article 62 – paragraph 2	
<i>Commission Proposal</i>	<i>Amendment</i>
<i>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.</i>	<i>deleted</i>
Comment: As the Rapporteur points out, the Commission proposal infringes on the independence of the EDPB.	

Amendment 61 Proposal for a Regulation Article 74 – paragraph 4	
<i>Commission Proposal</i>	<i>Amendment</i>
<i>4. 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.</i>	<i>deleted</i>

Comment: Although the Rapporteur's reservations towards this provision have their reasons, the alternative has to be considered as well: if the data subject would be obliged to go to court against the DPA of another Member State, this would pose problem regarding language and access to justice.

Amendment 62
Proposal for a Regulation
Article 79 – paragraph 2

<i>Commission Proposal</i>	<i>Amendment</i>
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.	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, <i>the particular categories of personal data</i> , 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.

Comment: If sensitive data have been involved in a breach of the Regulation, this should lead to higher fines. Additionally, it should be added that repeat offenders could face higher fines.

Amendment 63
Proposal for a Regulation
Article 79 – paragraph 3

<i>Commission Proposal</i>	<i>Amendment</i>
<i>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:</i> <i>a) a natural person is processing personal data without a commercial interest; or</i> <i>b) an enterprise or an organisation employing fewer than 250 persons is processing personal data only as an activity ancillary to its main</i>	<i>3. The supervisory authority may give a written warning without imposing a sanction. The supervisory authority may impose a fine of up to EUR 1 000 000 for repeated, deliberate breaches or, in the case of a company, of up to 2 % of its annual worldwide turnover.</i>

<i>activities.</i>	
<p>Comment: this radical reduction of the provisions on administrative sanctions would help to protect the independence of DPAs by giving them a bigger margin of appreciation. On the other hand, EDRi would like to recall the opinion of the EDPS (pts. 275-279), which called for more guidance on the level of fines. It would seem a good idea for the EDPB to take care of this quickly after being constituted by issuing guidelines. See also the following amendments until amendment 66.</p>	

Amendment 64 Proposal for a Regulation Article 79 – paragraph 4	
<i>Commission Proposal</i>	<i>Amendment</i>
<i>[...]</i>	<i>deleted</i>
<p>Comment: see comments on amendment 63 above.</p>	

Amendment 65 Proposal for a Regulation Article 79 – paragraph 5	
<i>Commission Proposal</i>	<i>Amendment</i>
<i>[...]</i>	<i>deleted</i>
<p>Comment: see comments on amendment 63 above.</p>	

Amendment 66 Proposal for a Regulation Article 79 – paragraph 6	
<i>Commission Proposal</i>	<i>Amendment</i>
<i>[...]</i>	<i>deleted</i>
<p>Comment: see comments on amendment 63 above.</p>	

Amendment 67 Proposal for a Regulation Article 79 – paragraph 7	
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<i>Commission Proposal</i>	<i>Amendment</i>
[...]	deleted
Comment:	

Amendment 68

Proposal for a Regulation
Article 86 – paragraph 2

<i>Commission Proposal</i>	<i>Amendment</i>
2. The delegation of power referred to in Article 6(5) , Article 8(3), Article 9(3), Article 12(5) , Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 22(4), Article 23(3), Article 26(5), Article 28(5), Article 30(3), Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11), Article 37(2), Article 39(2), Article 43(3), Article 44(7), Article 79(6) , Article 81(3), Article 82(3) and Article 83(3) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.	2. The delegation of power referred to in Article 6(5) , Article 8(3), Article 9(3), Article 12(5) , Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 22(4), Article 23(3), Article 26(5), Article 28(5), Article 30(3), Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11), Article 37(2), Article 39(2), Article 43(3), Article 44(7), Article 79(6) , Article 81(3), Article 82(3) and Article 83(3) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.
CommentComment:	

Amendment 69

Proposal for a Regulation
Article 86 – paragraph 3

<i>Commission Proposal</i>	<i>Amendment</i>
3. The delegation of power referred to in Article 6(5) , Article 8(3), Article 9(3), Article 12(5) , Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 22(4), Article 23(3), Article 26(5), Article 28(5), Article 30(3) , Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11), Article 37(2), Article 39(2), Article 43(3), Article 44(7), Article 79(6) , Article 81(3), Article 82(3) and	3. The delegation of power referred to in Article 8(3), Article 9(3), Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 22(4), Article 23(3), Article 26(5), Article 28(5), Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11), Article 37(2), Article 39(2), Article 43(3), Article 44(7), Article 81(3), Article 82(3) and Article 83(3) may be revoked at any time by the European

Article 83(3) 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.	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.
Comment:	

Amendment 70	
Proposal for a Regulation Article 86 – paragraph 5	
<i>Commission Proposal</i>	<i>Amendment</i>
5. A delegated act adopted pursuant to Article 6(5) , Article 8(3), Article 9(3), Article 12(5) , Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 22(4), Article 23(3), Article 26(5), Article 28(5), Article 30(3) , Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11), Article 37(2), Article 39(2), Article 43(3), Article 44(7), Article 79(6) , Article 81(3), Article 82(3) and Article 83(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 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 two months at the initiative of the European Parliament or the Council.	5. A delegated act adopted pursuant to Article 8(3), Article 9(3), Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 22(4), Article 23(3), Article 26(5), Article 28(5), Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11), Article 37(2), Article 39(2), Article 43(3), Article 44(7), Article 81(3), Article 82(3) and Article 83(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 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 two months at the initiative of the European Parliament or the Council.
Comment:	

Amendment 71
Proposal for a Regulation

Article 86 – paragraph 5a (new)	
<i>Commission Proposal</i>	<i>Amendment</i>
	<i>5a. The Commission will promote technological neutrality on adoption of the acts referred to in this Article.</i>
Comment: Ensuring technological neutrality is very important in order to make sure that these acts are “future-proof”.	