Comments on IMCO draft opinion on the General Data Protection Regulation

EDRi welcomes the draft report, but would like to make some comments on selected proposed amendments below.

The left column repeats the Commission proposal; the right column contains the amendments proposed by the rapporteur. EDRi's comments can be found below. For ease of reading, the headings are highlighted:

- green for amendments which we welcome;
- yellow for amendments which pursue good aims, but could benefit from further suggested improvements;
- red for amendments which in our view should be reconsidered.

In each case, a short justification is given. We also provide short comments on some other amendments on which we do not have a strong position.

Amendment 1 Recital 13	
(13) The protection of individuals should be technologically neutral and not depend on the techniques used; otherwise this would create a serious risk of circumvention. The protection of individuals should apply to processing of personal data by automated means as well as to manual processing, if the data are contained or	(13) The protection of individuals should be technologically neutral and not depend on the techniques used; otherwise this would create a serious risk of circumvention. The protection of individuals should apply to processing of personal data by automated means as well as to manual processing, if the data are contained or

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are intended to be contained in a filing system. ***Files or sets of files as well as their cover pages, which are not structured according to specific criteria, should not fall within the scope of this Regulation.***	are intended to be contained in a filing system.
Comment: The Commission proposal echoes recital 27 of Directive 95/46/EC, while this amendment would put unsorted heaps of personal data into the scope, enlarging it significantly. If this is the desired change, then the material scope would need to be changed in Article 2(1) (in connection with Article 4(4)) as well.	

Amendment 2 **Recital 13 a (new)**	
	(13 a) Technological neutrality should also mean that similar acts, in similar conditions and with similar consequences should be legally equivalent, with no regard of their happening online or offline, unless the diverse dynamics of data processing in such environments does not make a substantial difference
Comment: It seems already clear that both on- and offline activities are covered by the regulation (see the short title of the proposal, as well as recital 13 and Article 2). If such clarification is needed, the word "not" in the last sentence, which seems to be typing mistake, should be removed, as it would actually weaken technological neutrality.	

Amendment 3 **Proposal for a regulation** Recital 23	
(23) The principles of protection should apply to any information concerning an identified or identifiable person. To determine whether a person is identifiable, account should be taken of all the means likely reasonably to be used either by the controller or by any other person to identify the individual. The principles of data protection should not apply to data rendered anonymous in such a way that the	(23) The principles of protection should apply to any information concerning an identified or identifiable person. To determine whether a person is identifiable, account should be taken of all the means likely reasonably to be used either by the controller or by any other person to identify the individual. The principles of data protection should not apply to data rendered anonymous in such a way that the

data subject is no longer identifiable.	data subject is no longer ***directly*** identifiable***, including, where possible, a separation of processed data from identity-revealing data. In the latter case, also pseudonymized data are useful if the key to link the pseudonymous with the identity is safe according to the state of the art***.
Comment: This drastically restricts the scope and is a departure from the approach of Directive 95/46/EC. It should be noted that as long as pseudonymous data are in principle identifiable, they should be in the scope of the Regulation. This does of course not prejudice the use of pseudonymisation to increase the protection of individuals. Additionally, removing pseudonymous data from the scope would raise questions of consistency with Council of Europe Convention 108.	

Amendment 4 **Proposal for a regulation** **Recital 23 a (new)**	
	(23 a) A large amount of personal data might be processed for purposes of fraud detection and prevention. The pursuit of such claims, regulated by Member States' or Union law, should be taken into account when the data minimization principle and the lawfulness of processing are assessed.
Comment: It is not clear whether such a recital on anti-fraud measures is needed. If anti-fraud measures are legally mandated (e.g. anti-money-laundering), processing is already lawful under Art. 6(1)(c) (legal obligation on controller). If they are intended for the controller's own aims, 6(1)(f) on legitimate interests (providing barriers to excessive use), or consent under 6(1)(a) could apply. It should also be noted that the current data protection directive does not contain such a recital, which did not seem to hamper fraud detection and prevention. In our opinion this additional recital would bring more confusion than benefit.	

Amendment 5 **Proposal for a regulation**

Recital 25	
(25) Consent should be given explicitly by any appropriate method enabling a freely given specific and informed indication of the data subject's wishes, either by a statement or by a clear affirmative action by the data subject, ensuring that individuals are aware that they give their consent to the processing of personal data, including by ticking a box when visiting an Internet website or by any other statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of their personal data. Silence or inactivity should therefore not constitute consent. Consent should cover all processing activities carried out for the same purpose or purposes. If the data subject's consent is to be given following an electronic request, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided.	(25) Consent should be given explicitly by any appropriate method enabling a freely given specific and informed indication of the data subject's wishes, either by a statement or by a clear affirmative action by the data subject, ensuring that individuals are aware that they give their consent to the processing of personal data, including by ticking a box when visiting an Internet website or by any other statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of their personal data. ***The consent can be implicit only when the data subject acts in such a way that a certain amount of personal data must necessarily be processed, for instance by asking for particular goods or services, and in such case the consent is referred only to the minimum necessary.*** 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: This amendment seriously dilutes the concept of consent. It also confuses two different grounds for processing personal data: consent and existing contractual relationship. It is worth pointing out that consent is only one ground for lawfulness of data processing among several others. In fact, the situation described in the justification (life insurance) is already covered under Art.6(1)(b) (processing necessary for performance of contract), so there is no need for an exception here. Moreover, it should be noted that according to the principle of data minimisation, data processing (regardless of its legal grounds) should always be limited to the minimum necessary. Finally, the amount of data which is deemed necessary to the performance of a contract does not depend on the actions taken by the data subject (which is suggested in the amended recital) but on the essence and nature of the contract in question. See also the Article 29 Working Part opinion on consent, p. 7: http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2011/wp187_en.pdf and the comments on amendment 33 below.	

Amendment 6 **Proposal for a regulation** Recital 27	
(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 ***or a processor*** 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.
Comment: While consistency is indeed very important, there is a legal reason why the Commission drafted the recital this way: the ability to exercise "management activities determining the main decisions as to the purposes, conditions and means of processing through stable arrangements" is precisely what defines a controller (see Article 4(5) of the Proposal) as opposed to a processor. Processors do per definition not exercise such activities, so using the place where they take place for determining the main establishment does not work. The Commission proposal of using the central administration (and not the place where the processing actually takes place) for determining the main establishment of a processor yields results consistent with those of the procedure for controllers. See amendment 34 below for comments on the active text.	

Amendment 7 **Proposal for a regulation** **Recital 27 a (new)**

	(27 a) The representative is liable, together with the controller, for any behaviour that is contrary to the present Regulation.
Comment: This recital further stresses the representative's responsibility, consistent with Article 78(2).	

Amendment 8 **Proposal for a regulation** Recital 29	
(29) Children deserve specific protection of their personal data, as they may be less aware of risks, consequences, safeguards and their rights in relation to the processing of personal data. ***To determine when an individual is a child, this Regulation should take over*** the definition laid down by the UN Convention on the Rights of the Child.	(29) Children deserve specific protection of their personal data, as they may be less aware of risks, consequences, safeguards and their rights in relation to the processing of personal data. ***At the same time, given the higher average technology-dependence of younger generations, a distinction shall be made between*** the definition laid down by the UN Convention on the Rights of the Child ***and the "minor age" criterion***.
Comment: This change is not absolutely necessary to create three groups of data subjects by age (children strictly speaking, other minors, adults), see below the comment on amendment 35.	

Amendment 9 **Proposal for a regulation** Recital 34	
(34) Consent should not provide a valid legal ground for the processing of personal data, where there is a clear imbalance between the data subject and the controller. This is especially the case where the data subject is in a situation of dependence from the controller, among others, where personal data are processed by the employer of employees' personal data in the employment context.	(34) Consent should not provide a valid legal ground for the processing of personal data, where there is a clear imbalance between the data subject and the controller. This is especially the case where the data subject is in a situation of dependence from the controller, among others, where personal data are processed by the employer of employees' personal data in the employment context.

Where the controller is a public authority, there would be an imbalance only in the specific data processing operations where the public authority can impose ***an*** obligation by virtue of its relevant public powers and the consent cannot be deemed as freely given, taking into account the interest of the data subject.	Where the controller is a public authority, there would be an imbalance only in the specific data processing operations where the public authority can impose ***a new and unjustified*** obligation by virtue of its relevant public powers and the consent cannot be deemed as freely given, taking into account the interest of the data subject.
Comment: Restricting the application to newly established obligations would create two different levels of protection: a lower one for processing operations related to existing obligations and a higher one for newly established ones. Such a grandfathering clause would impede consistent protection of personal data. Moreover, adding an additional and quite judgemental criterion, i.e. that such new obligation be "unjustified", will lead to interpretative doubts and limit the application of this principle. Similar to the comment on amendment 5, it should be noted that consent is only of several grounds for lawfulness. For instance, the example given in the justification would be covered under Article 6(1)(e) in any case. For processing by public authorities, this provision, as well as Article 6(1)(c) are often more pertinent than consent.	

Amendment 10 **Proposal for a regulation** **Recital 49**	
(49) The information in relation to the processing of personal data relating to the data subject should be given to them at the time of collection, or, where the data are not collected from the data subject, within a reasonable period, depending on the circumstances of the case. Where data can be legitimately disclosed to another recipient, the data subject should be informed when the data are first disclosed to the recipient.	(49) The information in relation to the processing of personal data relating to the data subject should be given to them at the time of collection, or, where the data are not collected from the data subject, within a reasonable period, depending on the circumstances of the case. Where data can be legitimately disclosed to another recipient, the data subject should be informed when the data are first disclosed to the recipient. ***At the same time, no processing other than storing should be allowed before the data subject is fully aware of the information referred to here.***
Comment: This amendment helps to protect data subject rights for data collected from third sources. See also below comment on amendment 39.	

Amendment 11 **Proposal for a regulation** Recital 53	
(53) Any person should have the right to have personal data concerning them rectified and ***a*** ***'***right to ***be forgotten'*** where the retention of such data is not in compliance with this Regulation. In particular, data subjects should have the right that their personal data are erased and no longer processed, where the data are no longer necessary in relation to the purposes for which the data are collected or otherwise processed, where data subjects have withdrawn their consent for processing or where they object to the processing of personal data concerning them or where the processing of their personal data otherwise does not comply with this Regulation. This right is particularly relevant, when the data subject has given their consent as a child, when not being fully aware of the risks involved by the processing, and later wants to remove such personal data especially on the Internet. However, the further retention of the data should be allowed where it is necessary for historical, statistical and scientific research purposes, for reasons of public interest in the area of public health, for exercising the right of freedom of expression, when required by law or where there is a reason to restrict the processing of the data instead of erasing them.	(53) Any person should have the right to have personal data concerning them rectified and ***the*** right to ***have such personal data erased*** where the retention of such data is not in compliance with this Regulation. In particular, data subjects should have the right that their personal data are erased and no longer processed, where the data are no longer necessary in relation to the purposes for which the data are collected or otherwise processed, where data subjects have withdrawn their consent for processing or where they object to the processing of personal data concerning them or where the processing of their personal data otherwise does not comply with this Regulation. This right is particularly relevant, when the data subject has given their consent as a child, when not being fully aware of the risks involved by the processing, and later wants to remove such personal data especially on the Internet. However, the further retention of the data should be allowed where it is necessary for historical, statistical and scientific research purposes, for reasons of public interest in the area of public health, for exercising the right of freedom of expression, when required by law or where there is a reason to restrict the processing of the data instead of erasing them.
Comment:	

Amendment 12

Proposal for a regulation Recital 54	
(54) To strengthen the ***'***right to ***be forgotten'*** in the online environment, ***the*** right ***to erasure*** should also be extended in such a way that a controller who has ***made*** the personal data public should be obliged to inform third parties which are processing such data that a data subject requests them to erase any links to, or copies or replications of that personal data. To ensure this information, the controller should take all reasonable steps, including technical measures, in relation to data for the publication of which the controller is responsible. In relation to a third party publication of personal data, the controller should be considered responsible for the publication, where the controller has authorised the publication by the third party.	(54) To strengthen the right to ***erasure*** in the online environment, ***such*** right should also be extended in such a way that a controller who has ***transferred*** the personal data ***or made them*** public ***without being instructed to do so by the data subject*** should be obliged to inform third parties which are processing such data that a data subject requests them to erase any links to, or copies or replications of that personal data. To ensure this information, the controller should take all reasonable steps, including technical measures, in relation to data for the publication of which the controller is responsible. In relation to a third party publication of personal data, the controller should be considered responsible for the publication, where the controller has authorised the publication by the third party.
Comment: See below comment on amendment 46.	

Amendment 13 **Proposal for a regulation** **Recital 55 a (new)**	
	(55 a) In partial derogation to the principle set out in the previous recital, account must be taken of the cases where the personal data collected represent, for the relevance of such personal data that might be only internal to the controller, property of the data controller. In such cases, if the processed data are meaningless for the data subject, the data controller should have no obligation of portability.
Comment: Article 18, which this recital relates to, serves two related purposes:	

(1) Strengthening the right of access by mandating that data be provided in a commonly used electronic format if they have been processed using such a format.
(2) Strengthening control over data by mandating that data provided by the DS and processed in an automated system on the basis of contract or consent can be transferred to another automated system.

This recital does not differentiate between these two aspects and could therefore be abused to frustrate the right of access (see also below comments on amendment 49). Moreover, this recital attempts at creating a dangerous limitation on the right to data portability, namely introduces the criterion of "ownership" and "meaningfulness" from the data subject's perspective. Neither of this criteria should be relied on in order to limit data portability if data subject wishes to have his/her data transferred to another automated system.

Amendment 14 **Proposal for a regulation** **Recital 55 b (new)**	
	(55 b) Some personal data, once processed by the data controller or processor, produce outcomes that are used only internally by the data controller and whose format is meaningless even for the data subject. In this case, the right to data portability should not apply, while the other rights, in particular the right to object and the right of access and the right to rectification, are still valid.

Comment: Recital 55 and Article 18 only mandate using a "commonly used format" for access if such a format is already used by the controller for its own processing. Providing the data in the format used by the controller itself does not create an additional administrative burden, but helps to curtail situations in which controllers provide information in a format which is less useful to the data subject than the format the controller itself uses. Again, this amendment does not clearly distinguish between the right of access and the right to data portability; see also the comments on amendments 13 and 49.

Amendment 15

Proposal for a regulation Recital 58	
(58) Every natural person should have the right not to be subject to a measure which is based on profiling by means of automated processing. However, such measure should be ***allowed*** when expressly ***authorised*** by law, carried out in the course of entering or performance of a contract, or when the data subject has ***given*** his consent. In any case, such processing should be subject to suitable safeguards, including specific information of the data subject and the right to obtain human intervention and that such measure should not concern a child.	(58) Every natural person should have the right not to be subject to a measure which is based on profiling by means of automated processing. However, such measure should be ***forbidden only*** when expressly ***stated*** by law, ***not*** carried out in the course of entering or performance of a contract, or when the data subject has ***withdrawn*** his consent. In any case, such processing should be subject to suitable safeguards, including specific information of the data subject and the right to obtain human intervention and that such measure should not concern a child. ***The data subject, when this profiling is not necessary for entering or performing a contract, should always have the possibility to opt-out.***
Comment: This amendment further dilutes an already weak and imperfect provision on profiling. It goes exactly to the contrary of what EDRi perceived as consumer (citizen) needs in information society. Profiling has already become one of the main challenges for data and privacy protection and this trend will not be reversed. While the Commission at least noted this problem and suggested a way to limit the risks related to widespread use of profiling, the proposed amendment renders this attempt meaningless. Reversing the approach to profiling is also a departure from the approach of Article 19 of the current Directive 95/46/EC. The wording proposed by the Commission already leaves ample room for exceptions; further extending these, especially by changing to an opt-out approach would hamper DS rights, especially since they might not be aware of the profiling taking place in the first place. It should also be noted that the notions of "withdrawn" consent and opt-out seem to imply implicit consent in the first place, a notion that is not fully consistent with the existing and the proposed legal framework. Additionally, it should be noted that under the amended ePrivacy Directive (2002/58/EC as amended by 2009/136/EC), opt-in is already required for cookies, which are the most common means used for online profiling. See also below comments on amendments 51 and 53.	

Amendment 16
Proposal for a regulation
Recital 61 a (new)

	(61 a) Data protection by design is a very useful tool as it allows the data subject to be fully in control of his own data protection, of the information he shares and with the subject with whom he shares. When considering this principle as well as data protection by default, the context should heavily influence the assessment of lawfulness of processing.
Comment: See comments on amendment 55 below.	

Amendment 17 **Proposal for a regulation** Recital 63	
(63) Where a controller not established in the Union is processing personal data of data subjects residing in the Union whose processing activities are related to the offering of goods or services to such data subjects, or to the monitoring their behaviour, the controller should designate a representative, unless the controller is established in a third country ensuring an adequate level of protection, or the controller is a ***small or medium sized enterprise or a*** public authority or body or where the controller is only occasionally offering goods or services to such data subjects. The representative should act on behalf of the controller and may be addressed by any supervisory authority.	(63) Where a controller not established in the Union is processing personal data of data subjects residing in the Union whose processing activities are related to the offering of goods or services to such data subjects, or to the monitoring their behaviour, the controller should designate a representative, unless the controller is established in a third country ensuring an adequate level of protection, or the controller is a public authority or body or where the controller is only occasionally offering goods or services to such data subjects. The representative should act on behalf of the controller and may be addressed by any supervisory authority.
Comment: This amendment would increase the accountability of controllers based in 3rd countries; see also below comment on amendment 57.	

Amendment 18 **Proposal for a regulation**

Recital 67	
(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 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 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.	(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, ***addressing such economic loss and social harm should be the first and utmost priority. After that***, the controller should notify the breach to the supervisory authority without undue delay. 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***,*** damage to reputation ***or money loss***. The notification ***to the supervisory authority*** 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.
Comment: The intention of the amendment is laudable, but it opens a door for controllers to delay notification by claiming to focus on fixing the breach first. However, taking measures to contain and mitigate the breach and the requirements for notifying the DPA within a set amount	

of time go hand in hand: once a breach has been notified to the DPA, its follow-up actions will in turn increase pressure on the controller to fix the breach. Removing the clear time limit (and the need for a justification if it is exceeded) would reduce the perceived urgency of fixing breaches from the controllers' point of view. Additionally, it should be noted that a lot of the information required in the notification is in fact related to measures taken to contain or mitigate the breach, so that "fixing vs. notifying" becomes a false dichotomy, because the strict deadline for controllers to notify the breach in fact forces them to address the breach and notify quickly. See also the comment on amendments 62 and 63 below

Amendment 19 **Proposal for a regulation** Recital 69	
(69) In ***setting detailed rules concerning the format and procedures applicable to*** the notification of personal data breaches, due consideration should be given to the circumstances of the breach, including whether or not personal data had been protected by appropriate technical protection measures, effectively limiting the likelihood of identity fraud or other forms of misuse. Moreover, such rules and procedures should take into account the legitimate interests of law enforcement authorities in cases where early disclosure could unnecessarily hamper the investigation of the circumstances of a breach.	(69) In ***assessing the level of detail of*** the notification of personal data breaches, due consideration should be given to the circumstances of the breach, including whether or not personal data had been protected by appropriate technical protection measures, effectively limiting the likelihood of identity fraud or other forms of misuse. Moreover, such rules and procedures should take into account the legitimate interests of law enforcement authorities in cases where early disclosure could unnecessarily hamper the investigation of the circumstances of a breach.
Comment: Empowering the Commission to set detailed rules on breach notifications could contribute to a consistent application of the regulation.	

Amendment 20 **Proposal for a regulation** Recital 75	
(75) Where the processing is carried out in the public sector or where, in the private sector,	(75) Where the processing is carried out in the public sector or where, in the private sector,

processing is carried out by ***a large*** enterprise***, or where its*** core activities, regardless of the size of the enterprise, involve processing operations which require regular and systematic monitoring, a person should assist the controller or processor to monitor internal compliance with this Regulation. Such data protection officers, whether or not an employee of the controller, should be in a position to perform their duties and tasks independently.	processing is carried out by ***an*** enterprise ***whose*** core activities, regardless of the size of the enterprise, involve processing operations which require regular and systematic monitoring, a person should assist the controller or processor to monitor internal compliance with this Regulation. Such data protection officers, whether or not an employee of the controller, should be in a position to perform their duties and tasks independently.
Comment: Also when regular and systematic monitoring is not a controller's core business, compliance with data protection requirements is important. Data Protection Officers (DPOs) are a proven organisational measure to increase this compliance. While appointing a DPO entails a certain amount of administrative burden, the higher number of data subjects (employees, customers, etc.) who would be affected by non-compliance by a large controller justifies this. Already now, some Member States demand the appointment of a DPO for significantly smaller enterprises. See also below the comments on amendments to 67 to 69.	

Amendment 21 **Proposal for a regulation** Recital 97	
(97) Where the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union takes place in more than one Member State, one single supervisory authority should be competent for monitoring the activities of the controller or processor throughout the Union and taking the related decisions, in order to ***increase the consistent application,*** provide legal certainty and reduce administrative burden for such controllers and processors.	(97) Where the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union takes place in more than one Member State, one single supervisory authority should be competent for monitoring the activities of the controller or processor throughout the Union and taking the related decisions, in order to provide legal certainty and reduce administrative burden for such controllers and processors.
Comment: While it is true that the one-stop-shop does not necessarily improve consistency between DPAs, it increases consistency seen from the controller's point of view, as its subsidiaries in different MS are all supervised by the same DPA.	

Amendment 22 **Proposal for a regulation** Recital 105	
(105) In order to ensure the consistent application of this Regulation throughout the Union, a consistency mechanism for co-operation between the supervisory authorities themselves and the Commission should be established. This mechanism should in particular apply where a supervisory authority intends to take a measure as regards processing operations that are related to the offering of goods or services to data subjects in several Member States, **,** or to the monitoring such data subjects, or that might substantially affect the free flow of personal data. It should also apply where any supervisory authority or the Commission requests that the matter should be dealt with in the consistency mechanism. This mechanism should be without prejudice to any measures that the Commission may take in the exercise of its powers under the Treaties.	(105) In order to ensure the consistent application of this Regulation throughout the Union, a consistency mechanism for co-operation between the supervisory authorities themselves and the Commission should be established. This mechanism should in particular apply where a supervisory authority intends to take a measure as regards processing operations that are related to the offering of goods or services to data subjects in several Member States, or to the monitoring ***of*** such data subjects, or that might substantially affect the free flow of personal data. It should also apply where any supervisory authority or the Commission requests that the matter should be dealt with in the consistency mechanism**.** ***Furthermore, the data subjects should have the right to obtain consistency, if they deem a measure by a Data Protection Authority of a Member State has not fulfilled this criterion***. This mechanism should be without prejudice to any measures that the Commission may take in the exercise of its powers under the Treaties.
Comment: See comments on amendment 74 below.	

Amendment 23 **Proposal for a regulation** **Recital 111**	
(111) Every data subject should have the right to lodge a complaint with a supervisory authority in any Member State and have the right to a judicial remedy if they consider that their rights under this Regulation are infringed	(111) Every data subject should have the right to lodge a complaint with a supervisory authority in any Member State and have the right to a judicial remedy 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.	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. ***If the data subject deems consistency is not fulfilled, a complaint to the European Data Protection Board can be filed.***
Comment: see comments on amendments 74, 78, and 79 below.	

Amendment 24 **Proposal for a regulation** **Recital 112**	
(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 and is constituted according to the law of a Member State*** should have the right to lodge a complaint with a supervisory authority or exercise the right to a judicial remedy on behalf of data subjects, or to lodge, independently of a data subject's complaint, an own complaint where it considers that a personal data breach has occurred.	(112) Any body, organisation or association which aims to protects the rights and interests of ***citizens*** should have the right to lodge a complaint with a supervisory authority or exercise the right to a judicial remedy on behalf of data subjects, or to lodge, independently of a data subject's complaint, an own complaint where it considers that a personal data breach has occurred.
Comment: Enlarging the range of those bodies, organisations and associations entitled to lodge complaints with DPAs can contribute to wider use of collective redress mechanisms. Relaxing the criterion of being "established according to the law of a Member State" would increase the range of bodies, organizations and associations entitled to bring complaints to informal associations and entities constituted in third states. See also amendment 76 below.	

Amendment 25 **Proposal for a regulation** Recital 113	
(113) Each natural or legal person should have the right to a judicial remedy against decisions	(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**.**	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***, or before the European Data Protection Board on grounds of inconsistency with the application of the present Regulation in other Member States***
Comment: See comments on amendments 74 below.	

Amendment 26 **Proposal for a regulation** Recital 114	
(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 request any body, organisation or association aiming to protect the rights and interests of ***data subjects in relation to the protection of their data*** to bring on the data subject's behalf proceedings against that supervisory authority to the competent court in the other Member State.	(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 request any body, organisation or association aiming to protect the rights and interests of ***citizens*** to bring on the data subject's behalf proceedings against that supervisory authority to the competent court in the other Member State.
Comment: See comments on amendment 24 above and 76 below.	

Amendment 27 **Proposal for a regulation** Recital 120

(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.	(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. ***In order to strengthen the internal market, the administrative sanctions should be consistent across Member States.*** The consistency mechanism may also be used to cover divergences in the application of administrative sanctions.
Comment: While a level playing field in the internal market is desirable, such a provision would raise several problems: (1) it is not clear how this could be reconciled with the independence of DPAs; (2) there may very well be differences between the amounts needed to be effective and dissuasive. See also below comments on amendment 79.	

Amendment 28 **Proposal for a regulation** Recital 122	
(122) The processing of personal data concerning health, as a special category of data which deserves higher protection, may often be justified by a number of legitimate reasons for the benefit of individuals and society as a whole, in particular in the context of ensuring continuity of cross-border healthcare. Therefore this Regulation should provide for harmonised conditions for the processing of personal data concerning health, subject to specific and suitable safeguards so as to protect the fundamental rights and the personal data of	(122) The processing of personal data concerning health, as a special category of data which deserves higher protection, may often be justified by a number of legitimate reasons for the benefit of individuals and society as a whole, in particular in the context of ensuring continuity of cross-border healthcare. Therefore this Regulation should provide for harmonised conditions for the processing of personal data concerning health, subject to specific and suitable safeguards so as to protect the fundamental rights and the personal data of

individuals. This includes the right for individuals to have access to their personal data concerning their health, for example the data in their medical records containing such information as diagnosis, examination results, assessments by treating physicians and any treatment or interventions provided.	individuals. This includes the right for individuals to have access***, directly or through previously delegated persons,*** to their personal data concerning their health, for example the data in their medical records containing such information as diagnosis, examination results, assessments by treating physicians and any treatment or interventions provided.
Comment: Following the justification for this amendment, the possibility of delegation could be narrowed to cases in which this has been (1) previously delegated and (2) the DS is currently unable to exercise those rights herself.	

Amendment 29 **Proposal for a regulation** Recital 122 a (new)	
	(122 a) A professional who process personal data concerning health should receive, if possible, anonymized or pseudonymized data, leaving the knowledge of the identity only to the General Practitioner or to the Specialist who has requested such data processing.
Comment: This amendment further stresses the general requirement of data minimization.	

Amendment 30 **Proposal for a regulation** **Article 3 – paragraph 2 – point a**	
(a) the offering of goods ***or*** services to such data subjects in the Union***; or***	(a) the offering of goods ***and*** services to such data subjects in the Union***, including services provided without financial costs to the individual, or;***
Comment: While such services would also be covered under the Commission proposal, this amendment would further clarify this. However, it would technically exclude goods offered for free (which would be covered under Commission's proposed wording).	

Amendment 31 **Proposal for a regulation** **Article 4 – paragraph 1 – point 1**	
(1) ‘data subject’ means an identified natural person or a natural person who can be identified, directly or indirectly, by ***means reasonably likely to be used by*** the controller or by any other natural or legal person, in particular by reference to an identification number, location data, online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person***;***	(1) ′data subject′ means an identified natural person or a natural person who can be identified, directly or indirectly, by the controller or by any other natural or legal person, in particular by reference to an identification number, location data, online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person***. In order to determine whether a person can be identified, account should be taken of:*** ***a) the means likely reasonably to be used by the controller or any other natural or legal person who accesses the data to identify such a person and*** ***b) the measures that the controller or the processor has put in place in order to prevent the information from fully identifying a natural person*** ***A natural person is "indirectly identifiable" when the data processed allows the controller to solely individualise one person from another and the controller cannot verify its identity.***
Comment: As mentioned above in the comments on amendment 3, this would be a departure from the proven concept of data subject. Introducing the additional category of “indirectly identifiable” data subject is not helpful, since for many applications (e.g. targeted advertising), “direct identification” is not needed; in these cases, the amendment would reduce the protection afforded to individuals.	

Amendment 32 **Proposal for a regulation** **Article 4 – paragraph 1 – point 2**	
(2) 'personal data' means ***any*** information relating to ***a*** data subject;	(2) 'personal data' means information relating to ***an identifiable*** data subject;
Comment: this follows from amendment 31 (as with the wording proposed by the Commission, data subjects are by definition identifiable) and would exclude data on "indirectly identifiable" persons from the scope. This would unduly restrict the protection offered by the Regulation.	

Amendment 33 **Proposal for a regulation** **Article 4 – paragraph 1 – point 8**	
(8) 'the data subject's consent' means any freely given specific, informed and explicit indication of his or her wishes by which the data subject, either by a statement or by a clear affirmative action, signifies agreement to personal data relating to them being processed;	(8) 'the data subject's consent' means any freely given specific, informed and explicit indication of his or her wishes by which the data subject, either by a statement or by a clear affirmative action, signifies agreement to personal data relating to them being processed; ***by 'clear affirmative action' is meant any unequivocal action that is the result of a choice and that implies, for its complete execution, a necessary data processing;***
Comment: This amendment would create a category of situations in which consent is assumed and inferred from the action taken by the data subject, thus diluting the concept. In our opinion the protection of consumer (citizen) interests would require quite the opposite amendment, i.e. stressing the fact that informed consent can never be interpreted from behaviour that is not an explicit indication of wishes. It should also be kept in mind that consent is only one of several possible reasons for lawful processing. The situation envisaged in the justification (if processing personal data is strictly necessary for the provision of a good or a service, requiring such good or service can be considered as an explicit indication of wishes) is essentially equivalent to "processing that is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering a contract", which is already a reason for lawfulness under Article 6(1)(b).Consequently, there is no need to change the definition of "consent". See also the Article 29 Working Part opinion on consent, p. 7: http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-	

recommendation/files/2011/wp187_en.pdf, as well as the comments on amendment 5 above.

Amendment 34 **Proposal for a regulation** **Article 4 – paragraph 1 – point 13**	
(13) ***'***main establishment***'*** means ***as regards*** the controller***, the place of*** its establishment in the Union where the main decisions as to the purposes, conditions and means of the processing of personal data are taken; if no decisions as to the purposes, conditions and means of the processing of personal data are taken in the Union, the main establishment is the place where the main processing activities in the context of the activities of an establishment of a controller in the Union take place. ***As regards the processor, 'main establishment' means the place of its central administration in the Union;***	(13) ***'***main establishment***'*** means ***the place where*** the controller ***or the processor has*** its establishment in the Union where the main decisions as to the purposes, conditions and means of the processing of personal data are taken; if no decisions as to the purposes, conditions and means of the processing of personal data are taken in the Union, the main establishment is the place where the main processing activities in the context of the activities of an establishment of a controller ***or a processor*** in the Union take place.
Comment: As mentioned in the comments on amendment 6 above, there is a legal reason for the Commission to draft this provision in this way: as a processor is per definition not able to take "main decisions as to the purposes, conditions and means of the processing of personal data", the place where such decisions take place cannot be used as a criterion to determine the main establishment. Following the logic that the place where decisions are made and not the physical site of the processing matters, using the central administration as the main establishment is an appropriate solution.	

Amendment 35 **Proposal for a regulation** **Article 4 – paragraph 1 – point 18**	
(18) 'child' means any person below the age of ***18*** years;	(18) 'child' means any person below the age of ***14*** years;
Comment: While it is true that further differentiation between minors of different ages could be	

helpful to address the different issues faced by them, this amendment would simply remove all additional protections from minors aged 14 to 17 and treat them as adults, unless a separate category of "minor persons" would be introduced.

In fact, the COM proposal already contains a distinction between two categories of minors:

(1) Processing personal data of children below the age of 13 is prohibited under Article 8(1) unless the parents/custodians give or authorise consent (this provision is partly meant to provide consistency with US law);

(2) For all minors, recitals 38, 46, 53 and 58 as well as Articles 6(1)(f), 11(2), 17(1), 33(2)(d) and 38(1)(e) need to be taken into account when offering services to them; these do not prohibit the offering of online services to such minors, but provide for some additional safeguards.

This approach allows offering information society services to minors, while also providing for appropriate safeguards, taking into their age into account.

Amendment 36 **Proposal for a regulation** **Article 6 – paragraph 5**	
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: Given that the point referred to contains two assessments to be made (on the balance between (a) controllers' interests and (b) data subjects' interests and fundamental rights and freedoms for adults and minors separately), it could be helpful to delegate to the Commission the power to further specify these conditions, as else there could be a risk of incoherent application of the regulation in different MS, which could impede on the functioning of the internal market.	

Amendment 37

Proposal for a regulation **Article 7 – paragraph 3**	
3. The data subject shall have the right to withdraw his or her consent at any time. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal.	3. The data subject shall have the right to withdraw his or her consent at any time. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal. ***If the consent is still necessary for the execution of a contract, its withdrawal implies the willingness to terminate the contract.***
Comment: It should be noted that consent is not the only reason for lawfulness of processing. Necessity of processing for the performance of a contract is an independent reason for lawfulness (see Article 6(1)(b)), so no consent would be necessary in the example given in the justification. In the light of this, it would not be advisable to dilute the concept of consent; please see also the comments on amendments 5 and 33 for similar issues. The proposed amendment is not only unnecessary, as explained above, but dangerous as it may be interpreted as a justification for making the conclusion of the contract conditional upon obtaining consent for data processing ("forced consent"), while this tendency should be perceived as harmful and infringing data protection standards. As long as data is necessary for the conclusion or execution of the contract, such data can be processed without consent. At the same time data subject's consent for the processing of additional data cannot be treated as condition of obtaining a given good or a service.	

Amendment 38 **Proposal for a regulation** **Article 13 – paragraph 1**	
The controller shall communicate any rectification or erasure carried out in accordance with Articles 16 and 17 to each recipient to whom the data have been disclosed***, unless this proves impossible or involves a disproportionate effort***.	Any rectification or erasure carried out in accordance with Articles 16 and 17 ***is extended*** to each recipient to whom the data have been disclosed ***without the control of the data subject***.
Comment: This amendment would reduce the enforcement of data subject rights in situations where data have been transferred to third parties. It would for example exclude data shared with third parties for direct marketing purposes if the data subject (possibly unwittingly) consented.	

Also, data subjects may forget that they authorised such a transfer, while on the other hand the controller would need to store proof of the authorisation to prove the lawfulness of the transfer. In the light of this, the Commission proposal provides a way to safeguard data subject rights while at the same time providing a hedge against disproportionate efforts.

Amendment 39 **Proposal for a regulation** **Article 14 – paragraph 4 – point b**	
(b) where the personal data are not collected from the data subject, at the time of the recording or within a reasonable period after the collection, having regard to the specific circumstances in which the data are collected or otherwise processed, or, if a disclosure to another recipient is envisaged***, and*** at the latest when the data are first disclosed.	(b) where the personal data are not collected from the data subject, at the time of the recording or within a reasonable period after the collection, having regard to the specific circumstances in which the data are collected or otherwise processed, or, if a disclosure to another recipient is envisaged***;*** at the latest***,*** ***either*** when the data are first disclosed ***or when they are first processed, according to which occurs first***.
Comment: "processing" as defined in Article 4(3) includes collecting and storing, so this amendment would require information at the moment of collection. This would impose a stricter standard in case disclosure is envisaged.	

Amendment 40 **Proposal for a regulation** **Article 14 – paragraph 5 – point b**	
(b) the data are not collected from the data subject and the provision of such information proves impossible or would involve a disproportionate effort; or	(b) the data are ***meant to serve solely the purposes of art. 83, are*** not collected from the data subject and the provision of such information proves impossible or would involve a disproportionate effort; or
Comment: This amendment limits the use of exceptions to data subject rights.	

Amendment 41 **Proposal for a regulation** **Article 14 – paragraph 7**	
7. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria for categories of recipients referred to in point (f) of paragraph 1, the requirements for the notice of potential access referred to in point (g) of paragraph 1, the criteria for the further information necessary referred to in point (h) of paragraph 1 for specific sectors and situations, and the conditions and appropriate safeguards for the exceptions laid down in point (b) of paragraph 5. In doing so, the Commission shall take the appropriate measures for micro, small and medium-sized-enterprises.	***deleted***
Comment: Point (h) of Article 14(1) could indeed benefit from further guidance.	

Amendment 42 **Proposal for a regulation** **Article 15 – paragraph 1 – point d**	
(d) the period for which the personal data will be stored;	(d) the period for which the personal data will be stored ***and the time of collection***;
Comment: In principle this could be a good addition, but it could rather go under point (g) of the same Article, as the date of collection would well complement information on the source of the data. Additionally, the justification for the amendment links providing the date of collection to proving consent, which according to recital 32 is in any case incumbent on the controller. Here, it should be noted that the obligation to prove consent if it is used as the reason for lawfulness is independent from access rights.	

Amendment 43 **Proposal for a regulation** **Article 15 – paragraph 1 – subparagraph 1 (new)**	
	(i) on request, and free of charge, the data controller shall also provide a proof of the lawfulness of processing in a reasonable time;
Comment: While the idea is good (and seems to be inspired by Article 11(1)(i) of Regulation 45/2001: "(i) the legal basis of the processing operation for which the data are intended,"), the wording could be improved. Replacing "proof of" by "reasons for" would reflect the fact that in the end, determination of lawfulness is left to the Courts.	

Amendment 44 **Proposal for a regulation** **Article 15 – paragraph 3**	
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 communication to the data subject of the content of the personal data referred to in point (g) of paragraph 1.	***deleted***
Comment:	

Amendment 45 **Proposal for a regulation** **Article 17 – title**	
Right to ***be forgotten and to*** erasure	Right to erasure

Amendment 46 **Proposal for a regulation** **Article 17 – paragraph 2**	
2. Where the controller referred to in paragraph 1 has ***made*** the personal data public, it shall take all reasonable steps***, including technical measures,*** in relation to data for the publication of which the controller is responsible, to inform third parties which are processing such data, that a data subject requests them to erase any links to, or copy or replication of that personal data. Where the controller has authorised a third party publication of personal data, the controller shall be considered responsible for that publication.	2. Where the controller referred to in paragraph 1 has ***transferred*** the personal data***, or has made such data*** public ***without being clearly instructed by the data subject to do so***, it shall take all reasonable steps in relation to data for the publication of which the controller is responsible, to inform third parties which are processing such data, that a data subject requests them to erase any links to, or copy or replication of that personal data. Where the controller has authorised a third party publication of personal data, the controller shall be considered responsible for that publication.
Comment: The inclusion of transfers here mostly duplicates existing obligations under Article 13, while adding "without being clearly instructed to do so" reduces the scope of the obligations under this Article. In any case, extreme care should be taken to reconcile the requirements under Article 17 with the freedom of expression. See on this also the opinion of the Fundamental Rights Agency (http://fra.europa.eu/sites/default/files/fra-opinion-data-protection-oct-2012.pdf)	

Amendment 47 **Proposal for a regulation** **Article 17 – paragraph 9**	
9. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying: ***(a) the criteria and requirements for the application of paragraph 1 for***	***deleted***

specific sectors and in specific data processing situations; ***(b) the conditions for deleting links, copies or replications of personal data from publicly available communication services as referred to in paragraph 2;*** ***(c) the criteria and conditions for restricting the processing of personal data referred to in paragraph 4.***	
Comment:	

Amendment 48 **Proposal for a regulation** **Article 18 – paragraph 3**	
3. The Commission may specify the electronic format referred to in paragraph 1 and the technical standards, modalities and procedures for the transmission of personal data pursuant to paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).	***deleted***
Comment:	

Amendment 49 **Proposal for a regulation** **Article 18 – paragraph 3 a (new)**	
	3 a. Where the processed data are, at least partially, meaningless for the data subject,

	the obligations following from the present article do not apply,
Comment: As mentioned above in the comments on amendments 13 and 14, this amendment conflates two different aspects of this Article. The obligation under Article 18(1) to provide data in a commonly readable format further safeguards the right to access (by adding this requirement, which is absent from Article 15(2)). Article 18(2) in turn only applies to data provided by the DS. It is not clear how this data might be "meaningless" to the data subject. In any case, the term "meaningless" is unclear and would only cause confusion.	

Amendment 50 **Proposal for a regulation** **Article 19 – paragraph 3**	
3. Where an objection is upheld pursuant to paragraphs 1 and 2, the controller shall no longer use or otherwise process the personal data concerned.	3. Where an objection is upheld pursuant to paragraphs 1 and 2, the controller shall no longer use***, store*** or otherwise process the personal data concerned.
Comment: As the justification states, this is for clarification, since strictly speaking "storing" is processing.	

Amendment 51 **Proposal for a regulation** **Article 20 – paragraph 1**	
1. Every natural person shall have the right not to be subject to a measure which produces legal effects concerning this natural person or significantly affects this natural person, and which is based solely on automated processing intended to evaluate certain personal aspects relating to this natural person or to analyse or predict in particular the natural person's performance at work, economic situation, location, health, personal preferences, reliability or behaviour.	***Deleted***

Comment: Given the adverse effects profiling can have on data subjects and the risks for discrimination inherent in such measures, upholding a general prohibition with some exception would be strongly advisable. However, it also has to be noted that the approach put forward in the amendment would result in fewer changes as it might seem at first. The Commission proposal set out a general prohibition with some exceptions. The amendment removes the general prohibition, but still maintains that profiling may only be used in a limited list of cases that are substantially identical to those given as exceptions from the general prohibition in the original proposal. Nevertheless, given the risks involved, having a general prohibition as the baseline is preferable because it sends a clear message to controllers against the use of profiling unless such use falls within one of the exceptions. In those cases where profiling is used, there should be strong safeguards to ensure that data subject know the logic involved in the profiling mechanism. In our opinion this is necessary in order to revert, or at least constrain, an existing trend to rely on profiling in all types of marketing and economic activity. For the same reason our advise would be to strengthen Article 20 by broadening the definition of "measures based on profiling".

Amendment 52 **Proposal for a regulation** **Article 20 – paragraph 2 – introductory part**	
2. Subject to the other provisions of this Regulation, a person ***may be subjected to a measure of the kind referred to in paragraph 1*** only if the processing:	2. Subject to the other provisions of this Regulation, a ***measure which produces legal effects on a*** person ***or significantly affects this person, based solely on automated processing intended to evaluate certain personal aspects relating to this person or to analyse or predict in particular the person's performance at work, economic situation, location, health, personal preferences, reliability or behaviour, is lawful*** only if the processing:
Comment: See comment on amendment 51 above. In addition, our advice would be to strengthen article 20 par. 2 by extending the application of the principles contained in this article to profiling itself, as a specific type of data processing.	

Amendment 53 **Proposal for a regulation** **Article 20 – paragraph 2 – point c**	
(c) is based on the data subject's consent, subject to the conditions laid down in Article 7 ***and to suitable safeguards***.	(c) is based on the data subject's consent, subject to the conditions laid down in Article 7***, in Article 15 and Article 16***.
Comment: The proposed wording would further weaken the protection of data subjects, as the wording "suitable safeguards" is wider and can contain conditions going beyond those stipulated in the amendment.	

Amendment 54 **Proposal for a regulation** **Article 22 – paragraph 4**	
4. 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 referred to in paragraph 1 other than those already referred to in paragraph 2, the conditions for the verification and auditing mechanisms referred to in paragraph 3 and as regards the criteria for proportionality under paragraph 3, and considering specific measures for micro, small and medium-sized-enterprises.	***deleted***
Comment:	

Amendment 55 **Proposal for a regulation** **Article 23 – paragraph 2**	
2. The controller shall implement mechanisms	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.	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. ***Also***, those mechanisms shall ensure that by default personal data are not made accessible to an indefinite number of individuals***, unless justified pursuant to Article 6***.
Comment: The principle of data protection by default, to which the amendment proposes changes, states that controllers shall provide data protection-friendly standard settings. The amendment would open a wide door for ignoring this principle, going far beyond the cases mentioned in the justification, as for example "legitimate interests of the controller" would be included as well. The principle simply states that within the range of possible and lawful settings, the most privacy-friendly ones shall be chosen by default. The example of election law mandating the publication of birth dates of candidates given in the justification would not be affected by this, as it creates a clear legal obligation on the controller to publish (lex specialis). In the context of a social network, the principle would for example require that profiles shall not be publicly visible by default.	

Amendment 56 **Proposal for a regulation** **Article 24 – paragraph 1**	
Where a controller determines the purposes, conditions and means of the processing of personal data jointly with others, the joint controllers shall determine their respective responsibilities for compliance with the obligations under this Regulation, in particular as regards the procedures and mechanisms for exercising the rights of the data subject, by means of an arrangement between them.	Where a controller determines the purposes, conditions and means of the processing of personal data jointly with others, the joint controllers shall determine their respective responsibilities for compliance with the obligations under this Regulation, in particular as regards the procedures and mechanisms for exercising the rights of the data subject, by means of an arrangement between them. ***Where such determination is lacking or is not sufficiently clear, the data subject can exercise his rights with any of the controllers***

	and they shall be equally liable.
Comment: This amendment creates an incentive for controllers to clearly delineate their respective responsibilities.	

Amendment 57 **Proposal for a regulation** **Article 25 – paragraph 2 – point b**	
(b) an enterprise employing fewer than 250 persons; or	***deleted***
Comment: The size of a controller should not affect its accountability.	

Amendment 58 **Proposal for a regulation** **Article 26 – paragraph 5**	
5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the responsibilities, duties and tasks in relation to a processor in line with paragraph 1, and conditions which allow facilitating the processing of personal data within a group of undertakings, in particular for the purposes of control and reporting.	***deleted***
Comment:	

Amendment 59 **Proposal for a regulation** **Article 28 – paragraph 3**

3. The controller and the processor and, if any, the controller's representative, shall make the documentation available, on request, to the supervisory authority.	3. The controller and the processor and, if any, the controller's representative, shall make the documentation available, on request, to the supervisory authority ***and, in an electronic format, to the data subject***.
Comment: The justification seems to confuse this documentation and the information to be given to DS (which does not need to include point (h) of art 28(2)). These two serve different purposes and audiences – the documentation to be provided to the DPA will be far more technical and legal in style and possibly less understandable for a lay public.	

Amendment 60 **Proposal for a regulation** **Article 28 – paragraph 4 – point b**	
(b) an enterprise or an organisation ***employing fewer than 250 persons*** that is processing personal data only as an activity ancillary to its main activities.	(b) an enterprise or an organisation that is processing personal data only as an activity ancillary to its main activities.
Comment: This amendment would exclude **all** enterprises that only process personal data as an ancillary activity from having to keep proper documentation, so for example a large industrial enterprise would not need to document its processing of staff data. In addition, the very concept of "ancillary activity" when it comes to data processing will pose serious interpretative doubts, taking into account the fact that economic activity in general is increasingly based on processing personal data even if this is not the core business of the company (e.g. building profiles, targeted advertising etc.). The intention of the threshold was to create an exception to lower the administrative burden on MSMEs. For larger enterprises, the higher number of data subjects who could be harmed by noncompliance justifies having to keep this documentation. Instead of creating an exception to lower administrative burden on MSMEs, the amendments harmonises the requirements on a lower level. While we agree that the threshold of 250 employees may not be tailored to serve the purpose behind this legal provision, we would rather advise replacing it with a threshold of a given number of customers (i.e. persons possibly affected by noncompliance). See also comments on amendment 67 (obligation to appoint DPOs) for similar reasoning.	

Amendment 61

Proposal for a regulation Article 28 – paragraph 5	
5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the documentation referred to in paragraph 1, to take account of in particular the responsibilities of the controller and the processor and, if any, the controller's representative.	***deleted***
Comment: While the main contents of the documentation are set out in Article 28(2), the Commssion proposal would allow complementing these with additional information, providing a level playing field in the internal market.	

Amendment 62 **Proposal for a regulation** **Article 31 – paragraph 1**	
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.***	1. In the case of a personal data breach, the controller shall without undue delay notify the personal data breach to the supervisory authority.
Comment: In the absence of a fixed period for notification, there would be significantly less pressure on controllers to promptly notify breaches. Of course, measures to contain and mitigate breaches are very important immediately following a breach, but this does not make notification less of a priority. In fact, by demanding that the notification shall include recommendations on how to mitigate possible adverse effect and a description of the measures taken to address the breach (Article 31(3) (c) and (e)), the Commission proposal further pushes controllers to quick reactions. Having notified in turn creates further pressure to fix the breach, as the DPA will be aware of the breach. Additionally, having a fixed period in which to notify creates a level playing field for controllers in different Member States, as otherwise interpretations might differ.	

In short: the message of the amendment to controllers is "fix it first, and then tell the DPA without waiting too long", while the Commission proposal's message is "fix it and tell the DPA how you did it/what you plan to do and do so within 24 hours". The latter sends a stronger signal that breaches must be addressed as a matter of urgency. See also comment on amendment 18 above.

Amendment 63 **Proposal for a regulation** **Article 31 – paragraph 4**	
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 enable the supervisory authority to verify compliance with this Article. The documentation shall only include the information necessary for that purpose.	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 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.
Comment: This amendment only further reiterates existing obligations, as controllers have to be able to prove compliance with Article 30 in any case (see Articles 22(1) in connection with 22(2)(b)).	

Amendment 64 **Proposal for a regulation** **Article 31 – paragraph 5**	
5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for establishing the data breach referred to in paragraphs 1 and 2 and for the particular circumstances in which a controller and a processor is required to notify the personal	***deleted***

data breach.	
Comment:	

Amendment 65 **Proposal for a regulation** Article 32 – paragraph 1	
1. When the personal data breach is likely to adversely affect the protection of the personal data or privacy 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.	1. When the personal data breach is likely to adversely affect the protection of the personal data or privacy of the data subject, ***or when the intervention of the data subject can decisively mitigate the possible adverse effects of the personal data breach,*** the controller shall, ***together with the other urgent measures and before*** the notification referred to in Article 31, communicate the personal data breach to the data subject without undue delay.
Comment: Removing the obligation to wait until after the notification to the DPA can indeed be helpful for quick information of DS in situations like the one mentioned in the justification. On the other hand, mandating that this information be sent before the notification to the DPA could result in premature information based on an insufficient understanding of the breach, especially if the controller wants to quickly notify the breach to the DPA. The best way might be to remove the coupling with the notification and simply state that the controller shall inform the DS without undue delay.	

Amendment 66 **Proposal for a regulation** **Article 32 – paragraph 5**	
5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements as to the circumstances in which a personal data breach is likely to adversely affect the personal data referred to in paragraph 1.	***deleted***

Comment: The justification links the criteria for notifying data subjects of a breach to the data protection impact assessment (DPIA). However, not every processing operation that could have such consequences if a breach occurs would necessitate a DPIA (e.g. credit card information in payment systems). For this reason, it would make sense to allow the Commission to establish clear rules on when notification of data subjects is necessary (e.g. making it mandatory for credit card breaches).

Amendment 67 **Proposal for a regulation** **Article 35 – paragraph 1 – point b**	
(b) the processing is carried out by an enterprise employing 250 persons or more; or	***deleted***
Comment: While, as the justification for the proposed deletion correctly states, the controller's size on its own should not affect the level of data protection, the threshold of 250 employees should not be seen as an additional burden on large controllers, but as an exception for small controllers: appointing a DPO is a proven way of enhancing controllers' accountability and compliance; however, the additional administrative burden created by this might outweigh the benefits (since the number of concerned DS tends to be lower) in the case of small controllers, which is the reason for this exception. It should also be noted that currently some MS already require the appointment of DPOs for smaller controllers. While we agree that the threshold of 250 employees may not be tailored to serve the purpose behind this legal provision, we would rather advise replacing it with a different criterion, such as the number of persons possibly affected by noncompliance.	

Amendment 68 **Proposal for a regulation** **Article 35 – paragraph 2**	
2. In the case referred to in point (b) of paragraph 1, a group of undertakings may appoint a single data protection officer.	***deleted***
Comment: see above comment on amendment 67.	

Amendment 69 **Proposal for a regulation** **Article 35 – paragraph 11**	
11. 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 core activities of the controller or the processor referred to in point (c) of paragraph 1 and the criteria for the professional qualities of the data protection officer referred to in paragraph 5.	***deleted***
Comment: Having clear and uniform rules on what such "core activities" are would contribute to a consistent application of the Regulation and a level playing field in the internal market. The same applies to having consistent rules on the professional qualities of DPOs. In case the delegation is removed, substantive rules should be included in the Regulation itself.	

Amendment 70 **Proposal for a regulation** **Article 37 – paragraph 2**	
2. 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 tasks, certification, status, powers and resources of the data protection officer referred to in paragraph 1.	***deleted***
Comment: The text in Art. 37(1), as it currently stands, only refers to the tasks and powers of DPOs; it does not lay out the required status (for example a certain amount of organizational independence, or protection against disciplinary measures for actions carried out in their role of DPO). Such further clarification via delegated acts might therefore be useful.	

Amendment 71 **Proposal for a regulation** **Article 41 – paragraph 2 – point a**	
(a) the rule of law, relevant legislation in force, both general and sectoral, including concerning public security, defence, national security and criminal law, the professional rules and security measures which are complied with in that country or by that international organisation, as well as effective and enforceable rights including effective administrative and judicial redress for data subjects, in particular for those data subjects residing in the Union whose personal data are being transferred;	(a) the rule of law, relevant legislation in force, both general and sectoral, including concerning public security, defence, national security and criminal law, the professional rules and security measures which are complied with in that country or by that international organisation, ***jurisprudential precedents*** as well as effective and enforceable rights including effective administrative and judicial redress for data subjects, in particular for those data subjects residing in the Union whose personal data are being transferred;
Comment: Precedents are indeed worth considering for assessing the adequacy of the level of data protection in common law countries.	

Amendment 72 **Proposal for a regulation** **Article 41 – paragraph 7**	
7. The Commission shall publish in the Official Journal of the European Union a list of those third countries, territories and processing sectors within a third country and international organisations where it has decided that an adequate level of protection is or is not ensured.	7. The Commission shall publish in the Official Journal of the European Union ***and on its website*** a list of those third countries, territories and processing sectors within a third country and international organisations where it has decided that an adequate level of protection is or is not ensured.
Comment: This would help to ensure transparency regarding adequacy decisions and would also codify current practices, since these decisions are already published on the Commission website, although so far there is no requirement to do so.	

Amendment 73 **Proposal for a regulation** **Article 62**	
[...]	***deleted***
Comment: In addition to the reasons given in the justification for deleting this article, it should also be noted that paragraph 1 point (a) of the Commission proposal would likely have infringed on the DPAs independence. Points (c) and (d) of the same paragraph can indeed better be done by the EDPB itself. However, declaring standard data protection clauses generally valid would not be covered by the EDPB's proposed mandate in Article 66 and would require further amendments.	

Amendment 74 **Proposal for a regulation** **Article 63 a (new)**	
	Article 63 a ***Appealing procedures*** ***Without prejudice to the competences of the judiciary system of the Member States and of the Union, the European Data Protection Board can issue binding opinions if:*** ***(a) a data subject or data controller appeals on ground of inconsistent application of the present Regulation across the Member States and*** ***(b) the Consistency Mechanism described in Article 58 to 63 has failed to ensure that a simple majority of the members of the European Data Protection Board agrees on a measure.*** ***Before issuing such opinion, the European Data Protection Board shall***

	take into consideration every information the competent Data Protection Authority knows, including the point of view of the interested parties.
Comment: Point (a) would task the EDPB with dealing with complaints against "inconsistent application" of the Regulation; the question remains whether such a procedure is really necessary, given that incorrect application of the Regulation by DPAs can already be appealed against in Court. Point (b) of this amendment replaces the Commission's power under Article 62(1)(a). Removing the replace the Commission's final power of deciding disputes between the DPAs in the EDPB is a good thing, as having this power would constitute an interference with the independence of the DPAs (see on this points also the EDPS Opinion on the Data Protection Reform Package, especially pts. 248-255, as well as the Opinion of the Article 29 Working Party, p. 20). Removing the Commission from such decisions would additionally require amendments to Article 60.	

Amendment 75 **Proposal for a regulation** **Article 66 – paragraph 1 – point d**	
(d) issue opinions on draft decisions of supervisory authorities pursuant to the consistency mechanism referred to in Article 57;	(d) issue opinions on draft decisions of supervisory authorities pursuant to the consistency mechanism referred to in Article 57 ***and in Article 63a***;
Comment:	

Amendment 76 **Proposal for a regulation** **Article 73 – paragraph 2**	
2. Any body, organisation or association which aims to protect ***data subjects***' rights and	2. Any body, organisation or association which aims to protect ***citizens***' rights and interests

interests ***concerning the protection of their personal data 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.	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.
Comment: This provision could contribute to wider use of collective redress mechanisms. Keeping "data subjects' rights" instead of "citizens" could cause uncertainty as regards complaints by third-country nationals and stateless persons. Therefore we would advocate for changing the wording of this article as proposed in the amendment. See also amendment 24 above.	

Amendment 77 **Proposal for a regulation** **Article 74 – paragraph 1**	
1. Each natural or legal person shall have the right to a judicial remedy against decisions of a supervisory authority concerning them.	1. ***Without prejudice to the procedure described in Article 63a,*** each natural or legal person shall have the right to a judicial remedy against decisions of a supervisory authority concerning them.
Comment:	

Amendment 78 **Proposal for a regulation** **Article 78 – paragraph 1**	
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	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.	did not comply with the obligation to designate a representative. The penalties provided for must be effective, ***consistent*** proportionate and dissuasive.
Comment: It is not clear how this provision could be interpreted and enforced in practice, neither is it clear whether this refers to consistency regarding different kinds of breaches or between Member States or the "jurisprudence" of a given Data Protection Authority or else. In any case, there might very well be different perceptions based on historical and cultural factors.	

Amendment 79 **Proposal for a regulation** **Article 79 – paragraph 2**	
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, ***consistent*** 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.
Comment: It is not clear how this consistency criterion would be enforced, given that it is wider in scope than the procedure introduced in amendment 74 (which only covers consistency between Member States). Additionally, this would likely infringe on DPA's independence. Incorrect application of the Regulation by DPAs can always be addressed using judicial procedures.	

Amendment 80 **Proposal for a regulation** **Article 81 – paragraph 1 – introductory part**

1. Within the limits of this Regulation and in accordance 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 and specific measures to safeguard the data subject's legitimate interests, and be necessary for:	1. Within the limits of this Regulation and in accordance 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 be necessary for:
Comment:	

Amendment 81 **Proposal for a regulation** **Article 81 – paragraph 3**	
3. The Commission shall be empowered to adopt 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, as well as criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1.	***deleted***
Comment: These delegated acts would in fact contribute to the consistency of the application of the Regulation, the exact aim of amendment 80.	

Amendment 82 **Proposal for a regulation** **Article 83 – paragraph 3**	
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	***deleted***

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.	
Comment: These delegated acts could in fact contribute to the consistency of the application of the Regulation.	

Amendment 83 **Proposal for a regulation** **Article 84 – paragraph 2**	
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.	2. Each Member State shall notify to the Commission the rules adopted pursuant to paragraph 1, ***in order for the Commission to verify the consistency with the other Member States rules,*** by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.
Comment: According to paragraph (1) of the same article, these rules have to stay "within the limits of this Regulation", already ensuring a certain degree of consistency. Additionally, the perceptions on the best way to reconcile these two might differ between MS.	

Amendment 84 **Proposal for a regulation** **Article 86 – paragraph 2**	
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***	2. The delegation of power referred to in Article 8(3), Article 9(3), Article 12(5), Article ***20(5***), Article 23(3), Article 30(3), Article ***33(6***), Article 34(8), Article 39(2), Article 43(3), Article 44(7), Article 79(***7***) and Article ***82***(3) shall be conferred on the Commission for

336), 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.	an indeterminate period of time from the date of entry into force of this Regulation.
Comment: see comments made on the respective Articles.	

Amendment 85 **Proposal for a regulation** **Article 86 – paragraph 3**	
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 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.	3. The delegation of power referred to in Article 8(3), Article 9(3), Article 12(5), Article ***20(5***), Article 23(3), Article 30(3), Article 33(6), Article 34(8), Article 39(2), Article 43(3), Article 44(7), Article 79(***7***), ***and*** Article 82(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.
Comment: see comments made on the respective Articles.	

Amendment 86 **Proposal for a regulation**

Article 86 – paragraph 5	
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 12(5), Article ***20(5***), Article 23(3), Article 30(3), Article 33(6), Article 34(8), Article 39(2), Article 43(3), Article 44(7), Article 79(***7***), ***and*** Article 82(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: see comments made on the respective Articles.	