

## ITRE Compromise Amendments

**Draft opinion of Mr. Kelly on the proposal for a regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free of movement of such data.**

### Compromise amendments proposals

***(CAs on recitals (CA 1-29) to be technically aligned once the CAs on articles (CA 30-77) are finalised)***

#### **CA 1 to Recital 8 (replacing am. 176 - Andersdotter, and 177 - Rübige)**

(8) In order to ensure consistent and high level of protection of individuals and to remove the obstacles to flows of personal data, the level of protection of the rights and freedoms of individuals with regard to the processing of such data should be equivalent in all Member States ***and identical where possible***. Consistent and homogenous application of the rules for the protection of the fundamental rights and freedoms of natural ***and legal*** persons with regard to the processing of personal data should be ensured throughout the Union.

#### **CA 2 to Recital 11 (replacing am. 180 - Andersdotter, 181 - Gyürk, and 182 - Dati)**

(11) In order to ensure a consistent level of protection for individuals throughout the Union and to prevent divergences hampering the free movement of data within the internal market, a Regulation is necessary to provide legal certainty and transparency for economic operators, including micro, small and medium-sized enterprises, and to provide individuals in all Member States with the same level of legally enforceable rights and obligations and responsibilities for controllers and processors, to ensure consistent monitoring of the processing of personal data, and equivalent sanctions in all Member States as well as effective co-operation by the supervisory authorities of different Member States. ***Where demonstrably necessary and without undermining either protection of personal data or single market principles***, to take account of the specific situation of micro, small and medium-sized enterprises, this Regulation includes a number of derogations. In addition, the Union institutions and bodies, Member States and their supervisory authorities are encouraged to take account of the specific needs of micro, small and medium-sized enterprises in the application of this Regulation ***in consultation with the parties concerned, and also take into account the 'Think Small First' principle, so that the interests of micro, small and medium-sized enterprises are taken into account at the very early stages of policy making***. The notion of micro, small and medium-sized enterprises should draw upon Commission Recommendation

2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

**CA 3 to Recital 23 (replacing am. 189 - Andersdotter, and 190 - Valean, Creutzmann, Rohde, Kelly)**

(23) The principles of protection should apply **only to specific** any information concerning an identified or identifiable person. To determine whether a person is identifiable, account should be taken: **(i) only of those** means likely **[deletion: reasonably]** to be used by the controller or by any other **natural or legal** person to identify the individual, **and (ii) of the [deletion: reasonable] likeliness of a person being identified.** The principles of data protection should not apply to data rendered anonymous in such a way that the data subject is no longer identifiable **from the data, taking full account of the technological "state of the art" and technological trends.**

**CA 4 to Recital 24 (replacing am. 192 - Andersdotter, 193 - Valean, Creutzmann, Kelly,)**

(24) When using online services, individuals may be associated with **one or more** online identifiers provided by their devices, applications, tools and protocols, such as Internet Protocol addresses, **cookie identifiers or other unique** identifiers. **These identifiers may** leave traces which, combined with other information received by the servers, may be used **to single out natural persons.** It follows that identification numbers, location data, online identifiers or other specific factors **may** not necessarily be considered as personal data .

***This Regulation should be applicable to processing involving [deletion: such] personal data, unless the[se] identifiers demonstrably do not relate to natural persons, such as for example the IP addresses of web servers and thus cannot be considered as 'personal data' as defined in Article 4(2).***

**CA 5 to Recital 25 (replacing am. 195 - Andersdotter, 197 - Ticau, and 198 - Valean, Creutzmann, Kelly)**

(25) Consent should be given **unambiguously** by any appropriate method **within the context of the product or service being offered** enabling a freely given specific and informed indication of the data subject's wishes, 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. **Informed consent should be facilitated insofar as possible by user-friendly information about the types of processing to be carried out.** Silence, **mere use of a service**, or inactivity, **such as not un-ticking pre-ticked boxes**, 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.

**CA 6 to Recital 26 (replacing am. 200 - Valean, Creutzmann, Kelly, and 201 - Rohde)**

(26) Personal data relating to health should include in particular all **personal** data pertaining to the health status of a data subject **including genetic information**; information about the registration of the individual for the provision of health services; information about payments or eligibility for healthcare with respect to the individual; a number, symbol or particular assigned to an individual to uniquely identify the individual for health purposes; any information about the individual collected in the course of the provision of health services to the individual; **personal data** derived from the testing or examination of a body part, bodily substance **or** biological **sample**; identification of a person as provider of healthcare to the individual; or any information on e.g. a disease, disability, disease risk, medical history, clinical treatment, or the actual physiological or biomedical state of the data subject independent of its source, such as e.g. from a physician or other health professional, a hospital, a medical device, or an in vitro diagnostic test.

**CA 7 to Recital 27 (replacing am. 3 - Rapporteur, 202 - Chichester, and 203 - Andersdotter)**

(27) **Where a controller or a processor has multiple establishments in the Union, including but not limited to cases where the controller or the processor is a group of undertakings**, the main establishment of a controller in the Union **for the purposes of this Regulation** 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 **not** determining criteria for a main establishment. **[deletion: The main establishment of the processor...]**

**CA 8 to Recital 29 (replacing am. 205 - Andersdotter, and 206 - Harkin, Kelly)**

(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. **Such protection is particularly important in the context of social networks, where children should be aware of the identities of those with whom they are communicating.** 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. **No reference to child protection in this Regulation should be understood as**

***an implicit instruction that protection of personal data of adults should be treated with less care than would have been the case if the reference was not included.***

**CA 9 to Recital 32 (replacing am. 209 - Ticau, and 210 - Andersdotter)**

(32) Where processing is based on the data subject's consent, the controller should have the burden of proving that the data subject has given the consent to the processing operation. In particular in the context of a written declaration on another matter, safeguards should ensure that the data subject is aware that and to what extent consent is given. ***To comply with the principle of data minimisation, this burden of proof should not be understood neither as requiring positive identification of data subjects unless necessary nor as causing more data to be processed than otherwise have been the case.***

**CA 10 to Recital 33 (replacing am. 211 - Andersdotter, and 212 - Ticau)**

(33) In order to ensure free consent, it should be clarified that consent does not provide a valid legal ground where the individual has no genuine and free choice and is subsequently not able to refuse or withdraw consent without detriment. ***Consent should also not provide a legal basis for data processing when the data subject has no access to different equivalent services. Default settings such as pre-ticked boxes, silence, or the simple use of a service do not imply consent. Consent can only be obtained for processing that is lawful and thus not excessive in relation to the purpose. Disproportional data processing cannot be legitimised though obtaining consent.***

**CA 11 to Recital 34 (replacing am. 215 - Niebler, 216 - Ticau, and 217 - Andersdotter)**

(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, ***[deletion: where personal data are processed by...] where a controller has a substantial market power with respect to certain products or services and where these products or services are offered on condition of consent to the processing of personal data, or where a unilateral and nonessential change in terms of service gives a data subject no option other than accept the change or abandon an online resource in which they have invested significant time.*** 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.

**CA12 to Recital 38 (replacing am. 6 - Rapporteur, 221 - Ticau, and 222 - Johansson)**

(38) The legitimate interests of a controller, ***or of the third party or parties in whose interest the data is processed***, may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding. ***To ensure clarity, the Data Protection Board will set out comprehensive guidelines on what can be defined as "legitimate interest". Processing*** would need careful assessment in particular where the data subject is a child, given that children deserve specific protection. The data subject should have the right to object the processing, free of charge. To ensure transparency, the controller should be obliged to explicitly inform the data subject on the legitimate interests pursued and on the right to object, and also be obliged to document these legitimate interests. Given that it is for the legislator to provide by law the legal basis for public authorities to process data, this legal ground should not apply for the processing by public authorities in the performance of their tasks.

**CA 13 to Recital 40 (replacing am. 7 - Rapporteur, 223 - Andersdotter, 224 - Ticau, and 225 - Valean, Creutzmann, Kelly)**

(40) The processing of personal data for other purposes should be only allowed where the processing is compatible with those purposes for which the data have been initially collected, ***such as*** where the processing is necessary for historical, statistical or scientific purposes. Where the other purpose is not compatible with the initial one for which the data are collected, the controller should obtain the consent of the data subject for this other purpose ***[deletion: or should base the processing on another legitimate ground...]***. In any case, the application of the principles set out by this Regulation and in particular the information of the data subject on those other purposes should be ensured.

**CA 14 to Recital 41 (replacing am. 227 - Andersdotter, and 228 - Ticau)**

(41) Personal data which are, by their nature, particularly sensitive and vulnerable in relation to fundamental rights or privacy, deserve specific protection. Such data should not be processed, unless the data subject gives his ***informed*** consent. However, derogations from this prohibition should be explicitly provided for in respect of specific needs, in particular where the processing is carried out in the course of legitimate activities by certain associations or foundations the purpose of which is to permit the exercise of fundamental freedoms ***of the data subjects in question***.

**CA 15 to Recital 45 (replacing am. 230 - Andersdotter, and 231 - Ticau)**

(45) If the data processed by a controller do not permit the controller to identify a natural person, the data controller should not be obliged to acquire additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation. In case of a request for access, the controller should be entitled to ask the data subject for further information to enable the data controller to locate the personal data which that person seeks. ***The data controller shall not invoke a possible lack of information to refuse a request of access, when this information can be provided by the data subject to enable such access.***

**CA 16 to Recital 51 (replacing am. 236 - Valean, Creutzmann, Kelly, and 237 - Andersdotter)**

(51) Any person should have the right of access to ***personal*** data which has been collected concerning them, and to exercise this right easily, in order to be aware and verify the lawfulness of the processing. Every data subject should therefore have the right to know and obtain communication in particular for what purposes the ***personal*** data are processed, for what period, which recipients receive the ***personal*** data, what is the logic of the ***personal*** data that are undergoing the processing and what might be the consequences ***[deletion: , at least when...]*** of such processing. This right should not adversely affect the rights and freedoms of others, including trade secrets or intellectual property, ***such as in relation to copyright*** protecting the software. However, the result of these considerations should not be that all information is refused to the data subject.

**CA 17 to Recital 52 (replacing am. 238 - Valean, Creutzmann, Kelly, and 239 - Andersdotter)**

(52) The controller should use all reasonable measures ***within the context of the product or service being provided, or otherwise within the context of the relationship between the controller and the data subject, and the sensitivity of the personal data being processed*** to verify the ***authenticity of a subject access request***, in particular in the context of online services and online identifiers. A controller should not retain ***nor be forced to gather*** personal data for the unique purpose of being able to react to potential requests.

**CA 18 to Recital 58 (replacing am. 10 - Rapporteur, 245 - Andersdotter, and 246 - Rübig)**

(58) Every natural ***and legal*** person should have the right not to be subject to a measure which is based on profiling by means of automated processing ***and which produces legal effects concerning that natural or legal person or significantly affects that natural or legal person. Actual effects should be comparable in their intensity to legal effects to fall under this***

*provision. This is not the case for measures relating to commercial communication, like for example in the field of customer relationship management or customer acquisition. However, a measure based on profiling by automated data processing and which produces legal effects concerning a natural or legal person or significantly affects a natural person 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. Specifically, such processing should never, whether intentionally or not, lead to the discrimination of data subjects on the basis of race or ethnic origin, political opinions, religion or beliefs, trade union membership, or sexual orientation. Given the risk of discrimination, such processing should not be used in order to predict very rare characteristics.*

CA 19 to Recital 60 (replacing am. 11 - Rapporteur, and 248 - Andersdotter)

(60) **Overall** responsibility and liability of the controller for any processing of personal data carried out by the controller or on the controller's behalf should be established *in order to ensure accountability*. In particular, the controller should ensure and be obliged to demonstrate the compliance of each processing operation with this Regulation. **Otherwise unnecessary data processing may not be justified on the basis of the need to respect this obligation.**

CA 20 to Recital 61 (replacing am. 249 - Andersdotter, and 250 - Valean, Creutzmann, Kelly)

(61) **To meet consumer and business expectations around the** protection of the rights and freedoms of data subjects with regard to the processing of personal data, appropriate organisational measures **should be** taken, both at the time of the design of the processing and **its underlying technologies as well as** at the time of the processing itself, to ensure that the requirements of this Regulation are met. **Measures having as an objective to increase consumer information and ease of choice shall be encouraged, based on industry cooperation and favouring innovative solutions, products and services. Data protection by design is the process by which data protection and privacy are integrated in the development of products and services through both technical and organisational measures. Data protection by default means that products and services are by default configured in a way that limits the processing and especially the disclosure of personal data. In particular, personal data should not be disclosed to an unlimited number of persons by default.**

CA 21 to Recital 61a (new) (replacing am. 12 - Rapporteur, and 251 - Andersdotter)

**(61a) This Regulation encourages enterprises to develop internal programmes that will identify the processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, and to put in place appropriate data protection safeguards and develop innovative data protection-by-design solutions and data protection enhancing techniques. Enterprises would then demonstrate publicly and proactively their compliance with the provisions and spirit of this Regulation and thus increase the trust of the European citizens. Corporate accountability on personal data protection cannot however exempt an enterprise from any obligation laid down in this Regulation.**

**CA 22 to Recital 65 (replacing am. 13 - Rapporteur, 256 - Valean, Creutzmann, Rohde, Kelly, and 257 - Del Castillo Vera)**

(65) In order to demonstrate compliance with this Regulation, the controller should document each processing operation **under its responsibility**. Each controller should be obliged to co-operate with the supervisory authority and make this documentation, on request, available to it, so that it might serve for monitoring those processing operations.

**CA 23 to Recital 66 (replacing am. 258 - Gyürk, and 259 - Andersdotter)**

(66) In order to maintain security and to prevent processing in breach of this Regulation, the controller or processor should evaluate the risks inherent to the processing and implement measures to mitigate those risks. **In particular, the controller or processor shall duly take into account the greater risks arising from the processing of personal data of the data subject, due to the sensitive nature of the data.** These measures should ensure an appropriate level of security, taking into account the state of the art and the costs of their implementation in relation to the risks and the nature of the personal data to be protected. When establishing technical standards and organisational measures to ensure security of processing, **[deletion: the Commission should promote]** technological neutrality, interoperability and innovation **should be promoted**, and, where appropriate, cooperate with third countries **should be encouraged**.

**CA 24 to Recital 67 (replacing am. 14 - Rapporteur, 260 - Kalfin, 261 - Ticau, and 262 - Rübzig)**

(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. Where this cannot be achieved within **a reasonable time period**, 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.

**CA 25 to Recital 87 (replacing am. 17 - Rapporteur, and 275 - Andersdotter)**

(87) These derogations should in particular apply to data transfers required and necessary for the protection of important grounds of public interest, for example in cases of international data transfers between competition authorities, tax or customs administrations, financial supervisory authorities, between services competent for social security matters, ***between bodies responsible for fighting fraud in sports***, or to competent authorities for the prevention, investigation, detection and prosecution of criminal offences. ***Transferring personal data for such important grounds of public interest should only be used for occasional transfers. In each and every case, a careful assessment of all circumstances of the transfer needs to be carried out.***

**CA 26 to Recital 97 (replacing am. 284 - Andersdotter, and 285 - Valean, Creutzmann, Rohde, Kelly)**

(97) Where the processing of personal data ***[deletion: in the context of the activities...]*** 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. ***When carrying out these activities, this supervisory authority should take appropriate steps to cooperate with its counterparts in other Member States where there are data subjects likely to be affected by the processing operations, involving the European Data Protection Board where appropriate, including by carrying out joint investigations. Appropriate mechanisms should be put in place to ensure that smaller supervisory authorities have the financial, administrative and human resources capacity to deal with any extra burdens that this places on them.***

**CA 27 to Recital 121 (replacing am. 18 - Rapporteur, 292 - Niebler and 293 - Andersdotter)**

(121) The processing of personal data **[deletion: solely]** for journalistic purposes, or for the purposes of artistic or literary expression should qualify for exemption from the requirements of certain provisions of this Regulation in order to reconcile the right to the protection of personal data with the right to freedom of expression, and notably the right to receive and impart information, as guaranteed in particular by Article 11 of the Charter of Fundamental Rights of the European Union. This should apply in particular to processing of personal data in the audiovisual field and in news archives and press libraries. In order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary to interpret notions relating to that freedom, such as journalism, broadly **and** irrespective of the medium which is used to transmit them.

#### **CA 28 to Recital 129 (replacing am. 20 - Rapporteur, and 298 - Rübzig)**

(129) In order to fulfil the objectives of this Regulation, namely to protect the fundamental rights and freedoms of natural **and legal** persons and in particular their right to the protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission, **in certain limited circumstances**. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

#### **CA 29 to Recital 130 (replacing am. 299 - Valean, Creutzmann, 300 - Valean, Creutzmann, 301 - Gyürk, and 302 - Dati)**

(130) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. ***In implementing the provisions of this Regulation, it shall be ensured that no mandatory requirements for specific technical features are imposed on products and services, including terminal or other electronic communications equipment, which could impede the placing of equipment on the market and the free circulation of such equipment in and between Member States.*** In this context, the Commission should consider specific measures for micro, small and medium-sized enterprises ***in consultation with the parties concerned, as these measures should not overly burden these enterprises.***

#### **CA 30**

##### **Article 2 - paragraph 1**

(Replacing amendments 308 - Valean, Creutzmann, and 309 - Kalfin)

1. This Regulation applies to the processing of personal data wholly or partly by automated means, **without discrimination between such processing means and the technology used**, and to the processing other than by

automated means of personal data which form part of a filing system or are intended to form part of a filing system.

### **CA 31**

#### **Article 4 – paragraph 1 – point 1**

(Replacing amendments 323, Andersdotter, 324 - Valean, Creutzmann, 325 - Rübiger, and 326 - Niebler)

(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, **working together with the controller**, in particular by reference to an identification number **or other unique identifier**, location data, online identifier or to one or more factors specific to the **gender**, physical, physiological, genetic, mental, economic, cultural or social identity **or sexual orientation** of that person **and who is not acting in his/her professional capacity**;

### **CA 32**

#### **Article 4 – paragraph 1 – point 2**

(Replacing amendments 327 - Rohde, Bendtsen, and 328 - Valean, Creutzmann)

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

### **CA 33**

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

(Replacing amendments 23 - Rapporteur, and 331 - Rohde)

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

### **CA 34**

#### **Article 4 – paragraph 1 – point 2 b (new)**

(Replacing amendments 24 - Rapporteur, 330 - Rohde, and 333 - Chichester)

**(2 b)** 'anonymous data' means any personal data that has been collected, altered or otherwise processed in such a way that it can no longer be attributed to a data subject; anonymous data shall not be considered personal data

## CA 35

### Article 4 – paragraph 1 – point 8

(Replacing amendments 25 - Rapporteur, 338 - Niebler, 339 - Chichester, and 340 - Valean, Creutzmann)

(8) ‘the data subject's consent’ means any freely given specific, informed and **unambiguous** indication of his or her wishes by which the data subject signifies agreement to personal data relating to them being processed; ***Silence or inactivity does not in itself indicate acceptance;***

## CA 36

### Article 4 – paragraph 1 – point 14

(Replacing amendments 351 - Valean, Creutzmann, Rohde, and 352 - Rohde, Valean)

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

## CA 37

### Article 5 - paragraph 1 - point c

(Replacing amendments 358 Valean/Creutzmann and 359 - Audy)

adequate, relevant, and **proportionate and not excessive** in relation to the purposes for which they are processed; they shall only be processed if, and as long as, the purposes could not be fulfilled by processing information that does not involve personal data;

## CA 38

### Article 6 – paragraph 1 – point a

(Replacing amendments 29 - Rapporteur, 363 - Audy, and 364 - Ticau)

(a) the data subject has given consent to the processing of their personal data;

## CA 39

### Article 6 – paragraph 1 – point f

(Replacing amendments 30 - Rapporteur, Valean, 371 - Vidal-Quadras, and 372 - Kelly, Valean, Niebler)

(f) processing is necessary for the purposes of the legitimate interests pursued by, **or on behalf of a controller or a processor, or by a third party or parties in whose interest the data is processed, including for the security of processing**, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. The interest or fundamental rights and freedoms of the data subject shall not override processing carried out by public authorities in the performance of their tasks **or enterprises in the exercise of their legal obligations, and in order to safeguard against fraudulent behaviour.**

#### **CA 40**

Replacing Amendments 374 - Kelly, del Castillo, Niebler, 377 - Vidal-Quadras, 380 - Rohde

#### **Article 6 - paragraph 1 - point f a (new)**

**processing is limited to pseudonymised data, where the data subject is adequately protected and the recipient of the service is given a right to object pursuant to Art. 19 (3) (new).**

#### **CA 41**

Replacing Amendments 376 - Niebler, 381 - Valean, Creutzmann

#### **Article 6 - paragraph 1 - point f b (new)**

**processing is necessary for the purpose of anonymisation or pseudonymisation of personal data;**

#### **CA 42**

#### **Article 7 – paragraph 3**

(Replacing amendments 38 - Rapporteur, 397 - Chichester)

3. The data subject shall have the right to withdraw his or her consent at any time. **If the consent is part of a contractual or statutory relationship the withdrawal shall depend on the contractual or legal conditions.** The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal.

#### **CA 43**

#### **Article 7 – paragraph 4**

(Replacing amendments 39 - Rapporteur, 400 - Lange, and 401 - Rübig)

4. Consent shall not provide a legal basis for the processing, **when it has not**

been given freely,

#### CA 44

##### Article 9 - paragraph 1

##### Replacing amendments 410 - Rohde, Bendtsen, 411 - Ticau

The processing of personal data, revealing race or ethnic origin, political opinions, religion or beliefs, trade-union membership, and the processing of genetic data or data concerning health or sex life or criminal convictions, ***criminal offences, including offences and matters which have not lead to conviction, significant social problems***, or related security measures shall be prohibited.

#### CA 45

##### Article 9 – paragraph 2 – point b

(Replacing amendments 413 - Rohde, and 414 - Andersdotter)

(b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller in the field of employment law **or collective agreements on the labour market** in so far as it is authorised by Union law or Member State law providing for adequate safeguards **for the fundamental rights and the interests of the data subject**; or

#### CA 46

##### Article 9 – paragraph 2 – point g

(Replacing amendments 42 - Rapporteur 416 - Andersdotter, and 417 - Rohde)

(g) processing **and sharing** is necessary for the performance of a task carried out in the public interest, on the basis of Union law, **Member State law, international conventions to which the Union or a Member State is a party**, which shall provide for suitable measures to safeguard the data subject's **fundamental rights and** legitimate interests; or

#### CA 47

##### Article 9 – paragraph 2 – point j

(Replacing amendments 44 - Rapporteur, 421 - Rohde, 422 - Andersdotter and 423 - Valean, Creutzmann)

(j) processing of data relating to criminal convictions or related security measures is carried out either **subject to the conditions and safeguards**

**referred to in Article 83a or under the supervision of a supervisory authority or when the processing is necessary for compliance with or to avoid a breach of a legal or regulatory obligation or collective agreements on the labour market** to which a controller is subject, or for the performance of a task carried out for important public interest reasons, and in so far as authorised by Union law or Member State law providing for adequate safeguards **for the fundamental rights of the data subject**. A complete register of criminal convictions shall be kept only under the control of official authority.

## CA 48

### Article 10 – paragraph 1

(Replacing amendments 428 - Valean, Creutzmann, 429 - Valean, Creutzmann, 430 - Rübiger, 431 - Kelly, Del Castillo Vera, Niebler, 432 - Proust, and 433 - Andersdotter)

If the data processed by a controller do not permit the controller, through means used by the controller to identify a data subject, **in particular when rendered anonymous or pseudonymous**, the controller shall not acquire additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation.

## CA 49

### Article 14 – paragraph 1 – point c

(Replacing amendments 447 - Andersdotter, 448 - Audy, 449 - Vidal-Quadras, and 450 - Niebler)

(c) the **expected** period for which the personal data will be stored;

## CA 50

### Article 14 – paragraph 3

(Replacing amendments 52 - Rapporteur, 459 - Andersdotter, and 460 - Lange)

3. Where the personal data are not collected from the data subject, the controller shall inform the data subject, **as far as possible**, in addition to the information referred to in paragraph 1, from which source the personal data originate, **except where the data originate from a publicly available source or where the transfer is provided by law or the processing is used for purposes relating to the professional activities of the person concerned**.

## CA 51

### Article 14 – paragraph 5 – point b

(Replacing amendments 54 - Rapporteur, and 462 - Chichester)

(b) the data are not collected from the data subject **or the data processes do not allow the verification of identity** and the provision of such information proves impossible or would involve a disproportionate effort such as by **generating excessive administrative burden, especially when the processing is carried out by a SME as defined in EU recommendation 2003/361**; or

## **CA 52**

### **Article 15 – paragraph 1 – introductory part**

(Replacing amendments 466 - Andersdotter, and 467 - Rohde)

1. The data subject shall have the right to obtain from the controller at any time, on request, **in clear and plain language**, confirmation as to whether or not personal data relating to the data subject are being processed. **With the exception of data being used for historical, statistical or scientific research purposes**, the controller shall provide the following information **when personal data are being processed**:

## **CA 53**

### **Article 17 – paragraph 1 – introductory part**

(Replacing amendments 58 - Rapporteur, 481 - Korhola, and 482 - Andersdotter)

1. The data subject **has** the right to obtain from the controller the erasure of personal data relating to them and the abstention from further **processing** of such data, **unless the data controller is a public authority or an entity commissioned by the authority or otherwise acting on the behalf of the authority, including** in relation to personal data which are made available by the data subject while he or she was a child, where one of the following grounds applies:

## **CA 54**

### **Article 17 – paragraph 1 – point b**

(Replacing amendments 59 - Rapporteur, 484 - Andersdotter, and 485 - Rohde, Vaele)

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



## CA 55

### Article 17 – paragraph 3 – introductory part

(Replacing amendments 61 - Rapporteur, , 495 - Vidal-Quadras, and 496 - Valean, Creutzmann)

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

## CA 56

### Article 18 – paragraph 1

(Replacing amendments 65 - Rapporteur, 503 - Rohde, 504 - Andersdotter, and 505 - Ticau)

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

## CA 57

### Article 18 – paragraph 2

(Replacing amendments 66 - Rapporteur, 506 - Rohde, Valean, 507 - Andersdotter, and 508 - Ticau)

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

## CA 58

### Article 18 - paragraph 3

(Replacing Amendments 68 - Rapporteur, 512 - del Castillo, 513 - Chichester, 514 - Rohde, Valean)

The electronic format, related functionalities and procedures for the transmission of personal data pursuant to paragraph 2, shall be determined by the controller by reference to the most appropriate industry standards available or as defined by industry stakeholders or standardisation bodies. The Commission shall promote and assist industry, stakeholders and standardisation bodies in the mapping and adoption of technical standards, modalities and procedures for the transmission of personal data pursuant to

paragraph 2.

## CA 59

## CA 60

### Article 20 – paragraph 1

(Replacing amendments 523 - Kelly, 524 - Rohde, 525 - Chichester, 526 - Valean, Chichester, and 527 - Andersdotter)

1. **A data subject** shall have the right not to be subject to a **measure which adversely affects this data subject, both offline and online** which is based solely on automated processing **of data** intended to evaluate certain personal aspects relating to **a data subject** or to analyse or predict in particular the **data subject's** performance at work, economic situation, location, health, personal preferences, reliability or behaviour.

## CA 61

**Article 23 – paragraph 1**(Replacing amendments 594 - Gyürk, 595 - Rohde, and 596 - Valean, Creutzmann, Kelly)

1. Having regard to the state of the art, the cost of implementation **and international best practice**, the controller shall, both at the time of the determination of the means for processing and at the time of the processing itself, implement appropriate measures and procedures in such a way that the processing will meet the requirements of this Regulation and ensure the protection of the rights of the data subject.

**Notwithstanding, the controller should only be burdened with measures that are proportionate to the risk of data processing reflected by the nature of the personal data to be processed.**

## CA 62

### Article 26 - paragraph 1

(Replacing Amendments 614 - Chichester, 615 - Rohde, Valean, 616 - Kelly, Valean, Niebler)

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

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

## **CA 63**

### **26.2 - introductory part**

(617 - Kelly, Niebler, 618 - Valean, Creutzman, Rohde)

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

## **CA 64**

### 26.2.a

(619 - Valean, Creutzmann, Rohde, 620 - Kelly, Niebler)

the processor shall act only on instructions from the controller, in particular, where the transfer of the personal data used is prohibited;

## **CA 65**

### 26.2.e

(627 - Valean, Creutzmann, Rohde, 628 - Kelly, Niebler)

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

## **CA 66**

### 26.2.f

(629 - Valean, Creutzmann, Rohde, 630 - Kelly, Niebler)

insofar as this is possible given the nature of processing, the information available to the processor and his ability to assist with reasonable effort, an agreement on how compliance will be ensured with the obligations pursuant to Articles 30 to 34.

## **CA 67**

### 26.2.g

(631 - Valean, Creutzmann, Rohde, 632 - Kelly, Niebler)

hand over all results to the controller after the end of the processing and/or destroy it in a commercially accepted manner.

## **CA 68**

### **Article 28 – paragraph 1**

(Replacing amendments 82 - Rapporteur, 641 - Del Castillo Vera, 642 - Valean, Creutzmann, 643 - Chichester, and 644 - Rohde, Valean)

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

## **CA 69**

### **669 (Valean, Creutzmann) and 670 (Kelly, Valean, Niebler)**

The legal obligations, as referred to in paragraphs 1 and 2, which would require processing of personal data to the extent strictly necessary for the purposes of ensuring network and information security, constitute a legitimate interest pursued by or on behalf of a data controller or processor, as referred to in Article 6 (1) f.

## **CA 70**

### **Article 31 – paragraph 1**

(Replacing amendments 88 - Rapporteur, 674 - Valean, Creutzmann, and 676 - Rohde, Valean)

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

## **CA 71**

### **Article 32 – paragraph 1**

(Replacing amendments 90 - Rapporteur, 682 - Ticau, and 683 -

Andersdotter)

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

## CA 72

### Article 32 paragraph 3

(686 - Rohde, Valean, 687 - Valean, Creutzmann, Kelly)

The communication of a personal data breach to the data subject shall not be required if the **data breach has not produced significant harm and the controller (deletion: demonstrates to the satisfaction of the supervisory authority that it)** has implemented appropriate technological protection measures, and that those measures were applied to the data concerned by the personal data breach. Such technological protection measures shall render the data unintelligible, **unusable or anonymised** to any person who is not authorised access to it.

## CA 73

### Article 33 – paragraph 1

(Replacing amendments 691 - Kelly, Valean, 692 - Rohde, Valean, 693 - Valean, Creutzmann, Kelly, and 695 - Del Castillo Vera)

1. Where processing operations present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, the controller shall carry out an assessment of the impact of the envisaged processing operations on the protection of personal data. **A single assessment shall be sufficient to address a set of processing operations that present similar risks. SMEs shall only be required to perform an impact assessment after their third year of incorporation where data processing is deemed as a core activity of their business.**

## CA 74

### Article 33 – paragraph 2 – point a

(Replacing amendments 697 - Valean, Creutzmann, Kelly, 698 - Andersdotter, and 699 - Rübiger)

(a) a systematic and extensive evaluation of personal aspects relating to a natural person or for analysing or predicting in particular the natural person's economic situation, location, health, personal preferences, reliability or behaviour, which is based on automated processing and on which measures are based that produce legal effects **to the detriment of the individual, including any further processing operation of the kind referred to in Article 20(1) of this Regulation;**

## CA 75

### Article 33 – paragraph 3

(Replacing amendments 704 - Rohde, and 705 Andersdotter)

3. The assessment shall contain at least a general description of the envisaged processing operations, an assessment of the risks to the rights and freedoms of data subjects, **including the risk of discrimination being embedded in or reinforced by the operation,** the measures envisaged to address the risks, safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Regulation, taking into account the rights and legitimate interests of data subjects and other persons concerned **and also taking into account modern technologies and methods that can improve citizens' privacy. Where European guidelines exist, such guidelines should be taken into account for the impact assessment.**

## CA 76

### Article 34 – paragraph 2 – introductory part

(Replacing amendments 96 - Rapporteur, 721 - Valean, Creutzmann, Rohde)

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

## CA 77

### Article 34 - paragraph 3

(726 - Valean, Creutzmann, 727 - Kelly, Valean)

Where the **competent** supervisory authority **determines in accordance with its power (deletion: is of the opinion)** that the intended processing does not comply with this Regulation, in particular where risks are insufficiently identified or mitigated, it shall prohibit the intended processing and make appropriate proposals to remedy such incompliance. **Such a decision shall**

**be subject to appeal in a competent court and it may not be enforceable while being appealed unless the processing results to immediate serious harm suffered by data subjects.**

## **CA 78**

### **Article 36 - paragraph 1**

(100 - Rapporteur, 747 - Ticaú, 748 - Valean, Creutzmann)

**The executive management of the controller or the processor shall support the data protection organisation or data protection officer in performing their duties and shall provide staff, premises, equipment and any other resources necessary to carry out the roles and duties referred to in Article 37.**

## **CA 79**

### **Article 36 - paragraph 2**

(749 - Rohde, 750 - Valean, Creutzmann)

**The data protection organisation or data protection officer shall perform his or her duties and tasks independently and shall directly report to the management of the controller or the processor.**

## **CA 80**

### **Article 42 – paragraph 1**

(Replacing amendments 107 - Rapporteur, 774 - Valean, Creutzmann, 775 - Chichester, and 776 - Andersdotter)

1. Where the Commission has taken no decision pursuant to Article 41, **or decides that a third country, or a territory or a processing sector within that third country, or an international organisation does not ensure an adequate level of protection in accordance with paragraph 5 of this Article**, a controller or processor may transfer personal data to a third country or an international organisation **transferring data on an international basis** only if the controller or processor has adduced appropriate safeguards with respect to the protection of personal data in a legally binding instrument, **and where appropriate pursuant to an impact assessment, where the controller or processor has ensured that the recipient of data in a third country maintains high standards of data protection.**

**These safeguards shall, at least, guarantee the observance of the principles of personal data processing as established in Article 5 and guarantee data subject rights as established in Chapter III.**

## CA 81

### Article. 42 - paragraph 4

(Replacing amendments 109 - Rapporteur, 785 - Andersdotter, and 786 - Kelly, Valean)

4. The controller or processor shall obtain prior authorisation of the contractual clauses according to point (a) of Article 34(1) from the **competent** supervisory authority **for transfers according to this Article**. If the transfer is related to processing activities which substantially affect the free movement of personal data within the Union, the **competent** supervisory authority shall apply the consistency mechanism referred to in Article 57.

## CA 82

### Article 43 - paragraph. 1, intro

(Replacing amendments 110 - Rapporteur, and 790 - Valean, Creutzmann)

The competent supervisory authority shall **authorize through a single act of approval** binding corporate rules **for a group of undertakings. These rules will allow multiple intracompany international transfers in and out of Europe**, provided that they:

## CA 83

### Article 44 - paragraph 5

(Replacing amendments 113 - Rapporteur, and 802 - Andersdotter)

5. The public interest referred to in point (d) of paragraph 1 must be recognised in **international conventions, in** Union law or in the law of the Member State to which the controller is subject. **This derogation shall only be used for occasional transfers. In each and every case, a careful assessment of all circumstances of the transfer needs to be carried out.**

## CA 84

### Article 58 - paragraph 1

(822 - Valean, Creutzmann, Rohde, Kelly, 823 - Kalfin)

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

## CA 85



### **Article 61 - paragraph 1**

(Replacing amendments 122 - Rapporteur, 841 - Rohde, Valean, and 842 - Valean, Creutzmann)

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

### **CA 86**

### **Article 77 - paragraph 1**

(Replacing amendments 860 - Andersdotter, 861 - Valean, Creutzmann, Rohde, Kelly, and 862 - Del Castillo Vera)

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

### **CA 87**

### **Article 77 - paragraph 2**

(Replacing amendments 863 - Andersdotter, 864 - Valean, Creutzmann, Kelly, and 865 - Del Castillo Vera)

2. Where more than one controller is involved in the processing, each controller shall be jointly and severally liable for the entire amount of the damage ***to the extent that the joint controllers' respective liability has not been determined in the legal arrangement referred to in Article 24. In the case of a group of undertakings, the entire group shall be liable as a single economic entity.***

### **CA 88**

### **Article 79 - paragraph 2**

(Replacing amendments 124 - Rapporteur, 869 - Valean, Creutzmann, and 870 - Chichester)

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 **sensitivity of the data in issue, the** intentional or negligent character of the infringement, the degree of **harm created by the violation, 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. **While some discretion is granted in the imposition of such sanctions to take into account the circumstances outlined above and other facts specific to the situation, divergences in the application of administrative sanctions may be subject to review pursuant to the consistency mechanism. Where appropriate, the data protection authority shall also be empowered to require that a data protection officer is appointed if the body, organisation or association has opted not to do so.**

## CA 89

### Article 83 - paragraph 1, intro

(Replacing amendments 890 - Valean, Creutzmann, Kelly, 891 - Andersdotter, 892 - Ticau, 893 - Chichester, and 894 - Valean, Creutzmann)

1. **Without prejudice to** this Regulation, personal data **not falling within the categories of data covered by Article 8 of the Regulation** may be processed for historical, statistical or scientific **purposes under paragraph 2 of Article 6 and point (i) of Article 9(2)** only if:

## CA 90

### Article 89 - paragraph 2

(Replacing amendments 164 - Rapporteur, and 915 - Proust)

2. Article 1(2), **Article 2(b) and (c), Article 4(3), (4) and (5) and Articles 6 and 9** of Directive 2002/58/EC shall be deleted.