ITRE Opinion on the General Data Protection Regulation

Comments on key compromise amendments

CA 4 / Recital 24	The amendment states that 'identification numbers, location data, online identifiers or other specific factors **may** not necessarily be considered as personal data'. This creates legal confusion. It essentially says that "online identifiers" may not be considered to be online identifiers.	Reject
CA5 - Recital 25	This proposal also creates legal confusion – replacing a clear concept ("explicit") with an unclear one (unambiguous). Consent must be explicit and informed	Reject
CA 7 - Recital 27	This is a positive amendment which improves the clarity of the proposal	Accept
CA 8 – Recital 29	This amendment is contradictory. The first part suggests that all communications online should be subject to a verification of identity, which is clearly disproportionate. However, the second part of the compromise suggests that no additional restrictions are required. The overall effect is to create legal uncertainty.	Reject
CA 9 - Recital 32	It is helpful to clarify that the burden of proof should not be understood as requiring positive identification of data subjects or more data processing	Accept
CA 10 – Recital 33	This is a positive amendment. The last sentence is particularly valuable.	Accept
CA 11 – Recital 34	This is a useful clarification of the concept of "significant imbalance".	Accept
CA 12 – Recital 38	The first part of this amendment creates huge legal uncertainty. It is difficult to imagine a proportionate processing by multiple third parties, all of whom have "legitimate interests" that outweigh those of the data subject *and* where consent is not a more appropriate legal ground for data processing	Reject
CA 13 – Recital 40	This amendment permits for the use of personal data for new and incompatible purposes on the condition of obtaining consent from data subject. Even when based on (strong) consent, data should never be used for incompatible purposes; it would allow controllers to stockpile data on file and re- use in unexpected or for unrelated issues. The current 95/46/EC Directive prevents 'incompatible' use and it should remain that way especially because 'compatible' is already quite flexible and often interpreted very broadly.	Reject
CA 14 – Recital 41	It is difficult to understand why this compromise seeks to use "informed" consent rather than the stricter level of "explicit" consent in relation to the processing of sensitive data	Reject.
CA 17 – Recital 52	This amendment seeks to solve a problem that does not exist. The original proposal says that "reasonable measures" should be used. The reference to "context" (which can change) adds confusion for citizens and business while adding nothing.	Reject
CA 18 – Recital 58	The first part of this amendment is unnecessary. It is illogical to seek to cover both natural and legal persons by the same provision. Secondly, the effects will be very different on natural and legal persons. The second part of the amendment does not present problems.	Reject
CA 20 – Recital 61	As currently phrased, it is certain that the recital would have no effect. This provision should be mandatory	Reject
CA 26 – Recital 97	This helps clarify the roles of DPAs to ensure consistency across the EU	Accept

CA 31 – Article 4(1)(1)	This amendment both weakens the Commission's text and adds a major loophole. The "working with the controller" wording is unclear and means that large numbers of personally identifiable individuals would not be "data subjects" under the Regulation	Reject
CA 33 – Article 4(1)(2)(a)	This definition is far too wide. For example, a phone number or even a person's name could fall under the definition of "pseudonymous data"!	Reject
CA 34 – Article 4(1)(2)(b)	This oversimplifies "anonymisation" and fails to take account of technological progress. This unnecessarily interferes with the work of data protection authorities as they are better placed to establish "anonymity" on a case by case basis.	Reject
CA 35 – Article 4(1)(8)	Replacing "explicit" with "unambiguous" both weakens the concept and creates legal uncertainty	Reject
CA 39 – Article 6(1)(f)	This amendment extends this provision beyond is logical limits. It is difficult to imagine a case where multiple third parties could obtain data and, without consent, process the data because their "legitimate interests" outweighed those of the data subject. The other provisions in the compromise are either unnecessary or covered elsewhere in the Regulation	Reject
CA 40 – Article 6(1)(f)(a)	This makes little sense in the context of other compromise amendments on pseudonymisation and suggests an almost uncontrolled processing of indirectly identifiable data.	Reject
CA 53 – Article 17(1) (introductory part)	There is quite simply no need to exclude public authorities from this article: when there is no legal ground for processing, data processing should always stop unless there is a justification in the law to keep the data on file.	Reject
CA 54 – Article 17(1)(b)	Broadly acceptable, although the drafting is weak as the text incorrectly assumes that storage of data is not a form of processing	Accept
CA 55 – Article 17(3) Introductory part	This amendment is based on a misunderstanding. For cases where further dissemination (a form of processing) is necessary, an exemption should be based on Article 21 of the Regulation which contains general rules for exemption and allows for deviation from i.a. Article 17. Article 17(3) merely regulates erasure and should not be used for the exact opposite.	Reject
CA 56 – Article 18(1)	This amendment helps clarify the scope of the right to data portability	Accept
CA 57 – Article 18(2)	This amendment helps clarify the scope of the right to data portability	Accept
CA 68 – Article 28(1)	Helpful clarification	Accept
CA 72 – Article 32(3)	Restricts notifications to instances where damage has already happened, which is far too limited	Reject
CA 83 – Article 44(5)	This helps to limit the use of "public interest" for the international transfer of personal data	Accept