

56

BRE-JBZ

From: Kaai, Geran
Sent: vrijdag 3 april 2015 16:00
To: Verweij, Ellen
Subject: FW: Technische amendementen VNO/MKB
Attachments: Technische Amendementen DPR - Definitief_converted.doc

Follow Up Flag: Follow up
Flag Status: Completed

From: [redacted] [mailto:[redacted]]
Sent: woensdag 6 maart 2013 15:50
To: Westerink, Jeroen; Kaai, Geran
Subject: Technische amendementen VNO/MKB

Beste Jeroen, Beste Geran,

Hierbij zend ik jullie graag onze lijst met 'technische amendementen' inzake de data protectie verordening. Dit zijn dus amendementen die naar onze mening niet politiek zijn, maar ingaan op:

- het simpelweg juridisch zuiver verwoorden van het artikel;
- het voorkomen van dubbele data breach notifications door joined controllers;
- het includen van allianties (zoals er in de EU steeds meer komen) onder de binding corporate rules;
- het aan de controller laten *hoe* information requests beantwoord worden (dát ze beantwoord moeten staat buiten kijf);
- het wegnemen van het risico dat ondernemingen het slachtoffer worden van conflicterende wettelijke vereisten (uit andere EU wetgeving);
- het verduidelijken van de informatieverplichting van de processor naar de controller;
- etc...

Deze amendementen zijn al bekend bij een aantal EPers, maar ik verwacht niet dat deze ook door hen zijn ingediend. Om deze -op het oog kleine- onvolkomenheden die het bedrijfsleven en ook consumenten flink hinderen als ze niet worden opgelost, alsnog in de definitieve verordening een plek te laten vinden, stuur ik deze daarom graag aan jullie. Zien jullie mogelijkheden deze punten op enig moment mee te nemen?

Bij vragen altijd bereid.
Met vriendelijke groet,

[redacted]

[redacted]
secretaris e-informatiebeleid/ict
VNO-NCW - MKB-Nederland

E-mail: [redacted]
Telefoon: +31 (0)70 - [redacted]
Mobiel: +31 (0)6 - [redacted]

Website: www.vno-ncw.nl - www.mkb.nl

Bezuidenhoutseweg 12, 2594 AV Den Haag
Postbus 93002, 2509 AA Den Haag

Vanaf vrijdag 8 maart tot maandag 25 maart ben ik niet aanwezig. In die periode kunt u voor urgente zaken contact opnemen met het secretariaat via nummer +31 (0)70 - 3490354.

E-MAIL DISCLAIMER:

<http://www.vno-ncw.nl/html/e-maildisclaimer.htm>

of ontvang de disclaimer door een leeg e-mailbericht te sturen aan: or receive a copy by sending a blank e-mail message to: disclaimer@vno-ncw.nl

Amendment

Proposal for a regulation

Recital 20

Text proposed by the Commission

In order to ensure that individuals are not deprived of the protection to which they are entitled under this Regulation, the processing of personal data of data subjects residing in the Union by a controller not established in the Union should be subject to this Regulation where the processing activities are related to the offering of goods or services to such data subjects, or to the monitoring of the behaviour of such data subjects.

Amendment

In order to ensure that individuals are not deprived of the protection to which they are entitled under this Regulation, the processing of personal data of data subjects residing in the Union by a controller not established in the Union should be subject to this Regulation where the processing activities are related to the offering of goods or services *directed* to such data subjects, or to the monitoring of the behaviour of such data subjects.

Justification

This amendment matches the amendment to Article 3(2).

Amendment

Proposal for a regulation

Recital 30

Text proposed by the Commission

Any processing of personal data should be lawful, fair and transparent in relation to the individuals concerned. In particular, the specific purposes for which the data are processed should be explicit and legitimate and determined at the time of the collection of the data. The data should be adequate, relevant and limited to the minimum necessary for the purposes for which the data are processed; this requires in particular ensuring that the data collected are not excessive and that the period for which the data are stored is limited to a strict minimum. Personal data should only be processed if the purpose of the processing could not be fulfilled by other means. Every reasonable step should be taken to ensure that personal data which are inaccurate are rectified or deleted. In order to ensure that the data are not kept longer than necessary, time limits should be established by the controller for erasure **or for a periodic review.**

Amendment

Any processing of personal data should be lawful, fair and transparent in relation to the individuals concerned. In particular, the specific purposes for which the data are processed should be explicit and legitimate and determined at the time of the collection of the data. The data should be adequate, relevant and limited to the minimum necessary for the purposes for which the data are processed; this requires in particular ensuring that the data collected are not excessive and that the period for which the data are stored is limited to a strict minimum. Personal data should only be processed if the purpose of the processing could not be fulfilled by other means. Every reasonable step should be taken to ensure that personal data which are inaccurate are rectified or deleted. In order to ensure that the data are not kept longer than necessary, time limits should be established by the controller for erasure **where possible.**

Justification

As data retention depends on the purposes of the processing and the often the controller does not know upfront how long such purposes will continue to exist (e.g., in case of a customer relationship or employment relationship), it is also not possible to establish time limits for the retention of the data in all cases.

Amendment

Proposal for a regulation

Recital 32

Text proposed by the Commission

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.

Amendment

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, **such as the capitalising or highlighting of the relevant provision in online terms and conditions.**

Justification

The information available to the data subject at the time consent is required, is an important factor whether or not the controller may rely on consent. This addition provides a practical example how to achieve the clarity of the consent clause in any Terms & Conditions.

Amendment

Proposal for a regulation

Recital 34

Text proposed by the Commission

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.

Amendment

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. **However, consent should always be a valid legal ground where Union or Member State law has made the data subject's consent a specific condition for a specific type of processing of the personal data or set of processing operations or where the purpose or purposes of the processing of the personal data is in the interest or for the**

benefit of the data subject, regardless of any imbalance between the parties.

Justification

The imbalance should not be a problem in case the processing is required by Union or Member State law as a specific condition for the processing (other than article 6.1). E.g., the Dutch Medical Examinations Act requires employee consent for the disclosure of a medical report prepared by the company doctor to the employer.

Furthermore, consent should be possible where the purpose of the processing is in the interest of the data subject. E.g., an employer should be allowed to ask the consent of an expat to disclose his personal data to a tax advisor or moving company, paid for by the employer. In this example, the tax advisor or moving company are controllers of the personal data as they render their services directly to the employee. This means that the disclosure needs a basis in article 6.1 of this Regulation. Because the use of such services cannot be made a condition of the expat contract under labour law and the disclosure cannot be based on any other processing basis as mentioned in article 6.1 except consent, the expat's consent

would be required in such case.

Amendment

Proposal for a regulation

Recital 35

Text proposed by the Commission

Processing should be lawful where it is necessary in the context of a contract or the intended entering into a contract.

Amendment

Processing should be lawful where it is necessary in the context of a contract or the intended entering into a contract. **In such case, (additional) consent of the data subject for the same processing shall not be required.**

Justification

Often, controllers ask data subject for their consent for the processing of the personal data in the context of a service in order to be sure they have a basis for the processing of the personal data. This happens especially in online environments. In such situation, consent is neither legally required per Article 6.1(b), nor is it sound business practice, as for example a withdrawal of consent to process the personal data would in most cases also imply the termination of the contract. However, termination of contracts is and should not be subject to the legal basis for processing of personal data, but is governed by the terms & conditions of the service and applicable contract law. To

*avoid that controllers make such mistakes
and to avoid false expectations with data
subjects, this amendment clarifies that
consent is not required if the data are
processed in the context of a contract.*

Amendment

Proposal for a regulation

Recital 40

Text proposed by the Commission

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, in particular where the processing is necessary for historical, statistical or scientific research 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 or should base the processing on another legitimate ground for lawful processing, in particular where provided by Union law or the law of the Member State to which the controller is subject. 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.

Amendment

The processing of personal data for other purposes should be allowed where the processing is compatible with those purposes for which the data have been initially collected (**‘further processing’**), in particular where the processing is necessary for historical, statistical, scientific **or applies** research purposes.

When determining the compatibility between the purpose for which the data were collected and the purposes of the further processing, the controller shall take into account: the relationship between the purpose of the intended processing and the purpose for which the data were obtained, the nature of the data concerned, the consequences of the further processing for the data subject, and the extent to which appropriate measures and safeguards have been put in place to protect the interests of the data subject. The further processing of personal data for non-compatible purposes shall only be allowed if the further processing is based on the consent of the data subject, 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 into a contract, is necessary for compliance with a legal obligation to which the controller is subject, or is necessary in order to protect the vital interests of the data subject. 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. Where the personal data are collected for two or more non-compatible purposes, such processing shall be allowed, provided such processing meets the requirements of this Regulation.

Justification

- 'Only' has been transferred to the part of non-compatible purposes (former Article 6.4).

- This Amendment provides the criteria for assessing compatibility between the purpose for which the data were collected and the purposes of the further processing. Such criteria are part of the current Dutch Personal Data Protection Act and have proven to be a very useful instrument to determine compatibility in practice.

- Furthermore, as Article 6.4 makes clear,

it is understood that further processing of personal data for non-compatible purposes is also allowed in case the further processing is based on consent, contact, compliance and vital interests. This is already implicitly understood in the Directive. It should not be part of Article 6, but of Article 5. Contrary to the Commission's proposal, it is believed that further processing in the interest of public tasks of the controller should not be mentioned in the list of non-compatible purposes; instead such further processing should always meet the test of 'compatibility' as mentioned in the beginning of this Recital.

- The final sentence clarifies that it is possible to collect data for two or more non-compatible purposes.

Amendment

Proposal for a regulation

Recital 42

Text proposed by the Commission

Derogating from the prohibition on processing sensitive categories of data should also be allowed if done by a law, and subject to suitable safeguards, so as to protect personal data and other fundamental rights, where grounds of public interest so justify and in particular for health purposes, including public health and social protection and the management of health-care services, especially in order to ensure the quality and cost-effectiveness of the procedures used for settling claims for benefits and services in the health insurance system, or for historical, statistical and scientific research purposes.

Amendment

Derogating from the prohibition on processing sensitive categories of data should also be allowed if done by a law, and subject to suitable safeguards, so as to protect personal data and other fundamental rights, where grounds of public interest so justify and in particular for health purposes, including public health and social protection and the management of health-care services, **such as IT, administration or financial services,** especially in order to ensure the quality and cost-effectiveness of the procedures used for settling claims for benefits and services in the health insurance system, or for historical, statistical and scientific research purposes. **Healthcare management service providers, such as IT, administration or financial services, which require data concerning health for the purpose of providing their services to a healthcare professional or healthcare organisation should process such data only on the basis of a contract with the healthcare provider.**

Justification

This amendment clarifies that the basis of their processing of health data is the contract with the healthcare provider. This means that healthcare management services are to be treated as the 'long arm' of the healthcare professional or healthcare organization and that the specific conditions of Article 81.1 do not apply to them.

Amendment

Proposal for a regulation

Recital 53

Text proposed by the Commission

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,

Amendment

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, where they object to the **collection or retention** of personal data concerning them or where the processing of their personal data **is illegal.** However, the further retention of the data should be allowed where it is necessary for historical, statistical, and scientific research purposes, **for purposes of proof,** 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.

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.

Justification

This amendment reflect the amendments to art. 17.

Amendment

Proposal for a regulation

Recital 56

Text proposed by the Commission

In cases where personal data might lawfully be processed **to protect the vital interests of the data subject, or** on grounds of public interest, official authority or the legitimate interests of a controller, any data subject should nevertheless be entitled to object to the processing of any data relating to them. The burden of proof should be on the controller to demonstrate that their legitimate interests may override the interests or the fundamental rights and freedoms of the data subject.

Amendment

In cases where personal data might lawfully be processed on grounds of public interest, official authority or the legitimate interests of a controller, any data subject should nevertheless be entitled to object to the processing of any data relating to them. The burden of proof should be on the controller to demonstrate that their legitimate interests may override the interests or the fundamental rights and freedoms of the data subject.

Justification

This amendment matches the amendment to Article 19. The right to object is not practically relevant in case the data are processed to protect the vital interests of the data subject (life and death situations).

Amendment

Proposal for a regulation

Recital 63

Text proposed by the Commission

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.

Amendment

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 **directed** 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.

Justification

Technical addition. The addition of the word 'directed' exempts controllers established outside the Union that are not targeting their services at data subjects residing in the EU. This way a non-EU website offering services to non-EU data

subjects but is occasionally visited by EU data subjects should not designate a representative. As soon as any targeting occurs (by for instance offering a service in a specific EU-language or otherwise), the controller will have to apply EU data protection regime. (See also ECJ in Alpenhof v Heller).

Amendment

Proposal for a regulation

Recital 64

Text proposed by the Commission

In order to determine whether a controller is only occasionally offering goods and services to data subjects residing in the Union, it should be ascertained whether it is apparent from the controller's overall activities that the offering of goods and services to such data subjects is ancillary to those main activities.

Amendment

Deleted

Justification

By using the word 'directed' in the previous recital, the case law of the ECJ in Alpenhof v. Heller makes this recital superfluous.

Amendment

Proposal for a regulation

Recital 66

Text proposed by the Commission

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

Amendment

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

Justification

Both the controller and the processor should evaluate security risks.

Amendment

Proposal for a regulation

New Recital 67b

Text proposed by the Commission

Amendment

In order to avoid multiple notifications or communication with respect to the same breach, joint controllers or groups of undertakings should be able to designate a controller or undertaking responsible for the notification or communication on their behalf.

Justification

This amendment matches the amendment to Articles 31 and 32.

Amendment

Proposal for a regulation

Recital 72

Text proposed by the Commission

There are circumstances under which it may be sensible and economic that the subject of a **data protection** impact assessment should be broader than a single project, for example where public authorities or bodies intend to establish a common application or processing platform or where several controllers plan to introduce a common application or processing environment across an industry sector or segment or for a widely used horizontal activity.

Amendment

There are circumstances under which it may be sensible and economic that the subject of a **privacy** impact assessment should be broader than a single project, for example where public authorities or bodies intend to establish a common application or processing platform or where several controllers plan to introduce a common application or processing environment across an industry sector or segment or for a widely used horizontal activity.

Justification

This amendment matches the amendment to Article 33.

Amendment

Proposal for a regulation

Recital 73

Text proposed by the Commission

Data protection impact assessments should be carried out by a public authority or public body if such an assessment has not already been made in the context of the adoption of the national law on which the performance of the tasks of the public authority or public body is based and which regulates the specific processing operation or set of operations in question.

Amendment

Privacy impact assessments should be carried out by a public authority or public body if such an assessment has not already been made in the context of the adoption of the national law on which the performance of the tasks of the public authority or public body is based and which regulates the specific processing operation or set of operations in question.

Justification

This amendment matches the amendment to Article 33.

Amendment

Proposal for a regulation

Recital 85

Text proposed by the Commission

A corporate group should be able to make use of approved binding corporate rules for its international transfers from the Union to organisations within the same corporate group of undertakings, as long as such corporate rules include essential principles and enforceable rights to ensure appropriate safeguards for transfers or categories of transfers of personal data.

Amendment

A corporate group should be able to make use of approved binding corporate rules for its international transfers from the Union to organisations within the same corporate group of undertakings, **including an alliance**, as long as such corporate rules include essential principles and enforceable rights to ensure appropriate safeguards for transfers or categories of transfers of personal data.

Justification

This amendment matches the amendment to Article 4.17. It clarifies that the group of undertakings, which may adopt BCRs, can be – under certain conditions – fluid. In such case, it is likely that the BCRs will apply to one or a few processings which are essential to the alliance (e.g., a shared customer database).

Amendment

Proposal for a regulation

Recital 86

Text proposed by the Commission

Provisions should be made for the possibility for transfers in certain circumstances where the data subject has given his consent, where the transfer is necessary in relation to a contract or a legal claim, where important grounds of public interest **laid down by Union or Member State law** so require or where the transfer is made from a register established by law and intended for consultation by the public or persons having a legitimate interest. In this latter case such a transfer should not involve the entirety of the data or entire categories of the data contained in the register and, when the register is intended for consultation by persons having a legitimate interest, the transfer should be made only at the request of those persons or if they are to be the recipients.

Amendment

Provisions should be made for the possibility for transfers in certain circumstances where the data subject has given his consent, where the transfer is necessary in relation to a contract or a legal claim, where important grounds of public interest so require or where the transfer is made from a register established by law and intended for consultation by the public or persons having a legitimate interest. In this latter case such a transfer should not involve the entirety of the data or entire categories of the data contained in the register and, when the register is intended for consultation by persons having a legitimate interest, the transfer should be made only at the request of those persons or if they are to be the recipients.

Justification

This amendment matches the amendment to Article 44.5.

The fact that the data processing is necessary in the public interest may also be

assessed by the controller. The delegated acts of the Commission pursuant to Article 44.7 should ensure that no misuse of this ground is made.

Amendment

Proposal for a regulation

Recital 88

Text proposed by the Commission

Transfers which cannot be qualified as **frequent** or massive, could also be possible for the purposes of the legitimate interests pursued by the controller or the processor, when they have assessed all the circumstances surrounding the data transfer. For the purposes of processing for historical, statistical and scientific research purposes, the legitimate expectations of society for an increase of knowledge should be taken into consideration.

Amendment

Transfers which cannot be qualified as **structural** or massive, could also be possible for the purposes of the legitimate interests pursued by the controller or the processor, when they have assessed all the circumstances surrounding the data transfer. For the purposes of processing for historical, statistical and scientific research purposes, the legitimate expectations of society for an increase of knowledge should be taken into consideration.

Justification

This amendment matches the amendment to Article 44.1(h)

Amendment

Proposal for a regulation

Recital 89

Text proposed by the Commission

In any case, where the Commission has taken no decision on the adequate level of data protection in a third country, the controller **or processor** should **make use of** solutions that provide data subjects with a guarantee that they will continue to benefit from the fundamental rights and safeguards as regards processing of their data in the Union once this data has been transferred.

Amendment

In any case, where the Commission has taken no decision on the adequate level of data protection in a third country, the controller should **assess the adequacy of the country, sector or recipient or solutions should be used** that provide data subjects with a guarantee that they will continue to benefit from the fundamental rights and safeguards as regards processing of their data in the Union once this data has been transferred.

Justification

This amendment matches the amendment to Article 41.

Furthermore, it means that processors may not conduct such an assessment.

Amendment

Proposal for a regulation

Recital 97

Text proposed by the Commission

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.

Amendment

Where the processing of personal data in the context of the activities of an establishment of **an enterprise** in the Union takes place in more than one Member State, one single supervisory authority should be competent for monitoring the activities of the **enterprise** 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.

Justification

Technical. The term controller and processor are defined terms. The term enterprise is more neutral, as the controller of a particular cross-border processing operation may not be the parent company of the entity in the other Member State.

Amendment

Proposal for a regulation

Recital 98

Text proposed by the Commission

The competent authority, providing such one-stop shop, should be the supervisory authority of the Member State in which the **controller or processor** has its main establishment.

Amendment

The competent authority, providing such one-stop shop, should be the supervisory authority of the Member State in which the **enterprise** has its main establishment.

Justification

Technical. The term controller and processor are defined terms. The term enterprise is more neutral, as the controller of a particular cross-border processing operation may not be the parent company of the entity in the other Member State.

Amendment

Proposal for a regulation

New Recital 124a

Text proposed by the Commission

Amendment

Moreover, such a law should not impact the full harmonization across Member States with respect to HR-operations or other processing of employee data, such as the processing of such data by processors, the security measures required for such data, data breach notifications, or any international transfers of such data. Those issues should be exclusively governed by Union law.

Justification

This amendment matches the amendment to article 82

Amendment

Proposal for a regulation

Article 2 – paragraph 2d

Text proposed by the Commission

(d) by a natural person **without any gainful interest** in the course of **its own exclusively** personal or household activity;
(e) by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties.

Amendment

(d) by a natural person **or group of natural persons** in the course of a personal or household activity, **or in the context of gainful activities, which cannot be considered as commercial or professional;**

Justification

- *The deletion of 'exclusively' is technical and tries to avoid that personal data which are shared in a personal setting (e.g., providing a friend with another friend's phone number) falls within the scope of this Regulation.*
- *The deletion of 'own' is intended to avoid that personal activities which involve multiple persons, e.g., an activity with family or friends, falls within the scope of this Regulation.*
- *Furthermore, groups of persons can also conduct activities that should not be covered by the Regulation, such as families, groups of friends, etc.*
- *Also, private persons often conduct activities with the intention to earn some*

money, but such activities cannot be considered a commercial enterprise or a profession (e.g., teenagers providing baby-sitting services, or people selling their car on an auction site). Applying the Regulation to such activities would be unreasonable. Therefore, the Commission's proposal for the exclusion of 'personal or domestic' activities is too narrow. The amendment clarifies that such 'commercial' activities do not fall within the scope of this Regulation.

Amendment

Proposal for a regulation

Article 3 – paragraph 1

Text proposed by the Commission

1. This Regulation applies to the processing of personal data in the context of the activities of an establishment of a **controller or a processor** in the Union.

Amendment

1. This Regulation applies to the processing of personal data in the context of the activities of a **public authority or public body, or in the context of the a activities of an establishment of an enterprise or any other entity acting as a controller or processor** in the Union, as well as the processing of personal data by a natural person residing in the Union.

Justification

Technical change to repair a mistake made in Directive 95/46 with regard to term 'establishment of the controller', which was too simplistic.

First of all, the terms 'controller' and 'processor' have a data protection specific meaning (see definitions in art. 4). This means that – within a multinational enterprise – the controller for a particular processing may often not be the parent company of the establishment in another Member State, and therefore has no 'establishments' other than his own

establishment. The term 'enterprise' better fits the objective of Art. 3.1., as all establishments in the Union belong to the same enterprise.

Furthermore, Art. 3.1 should also mention 'natural persons' as they don't have an 'establishment', but 'reside'.

The terms 'public authority' and 'public body' have been added for sake of completeness. The term 'any other entity acting as a controller or processor' includes foundations and associations.

Amendment

Proposal for a regulation

Article 3 – paragraph 2

Text proposed by the Commission

2. This Regulation applies to the processing of personal data of data subjects residing in the Union by a controller not established in the Union, where the processing activities are related to:

- (a) the offering of goods or services to such data subjects in the Union; or
- (b) the monitoring of their behaviour.

Amendment

2. This Regulation applies to the processing of personal data of data subjects residing in the Union by a controller not established **or residing** in the Union, where the processing activities are related to:

- (a) the offering of goods or services **directed** to such data subjects in the Union; or
- (b) the monitoring of their behaviour.

Justification

The addition of the words 'directed' exempts controllers established outside the Union that are not targeting their services at data subjects residing in the EU. This way a non-EU website offering services to non-EU data subjects but is occasionally visited by EU data subjects should not comply with the regime. As soon as any targeting occurs (for instance, by offering a service in a specific EU-language or otherwise), the controller will have to apply EU data protection regime.

Amendment

Proposal for a regulation

Article 3 – paragraph 3

Text proposed by the Commission

3. This Regulation applies to the processing of personal data by a controller not established in the Union, but in a place where the national law of a Member State applies by virtue of public international law.

Amendment

3. This Regulation applies to the processing of personal data by a controller not established **or residing** in the Union, but in a place where the national law of a Member State applies by virtue of public international law.

Justification

This amendment matches the amendment to Art. 3(1).

Amendment

Proposal for a regulation

Article 4 – paragraph 17

Text proposed by the Commission

(17) ‘binding corporate rules’ means personal data protection policies which are adhered to by a controller or processor established on the territory of a Member State of the Union for transfers or a set of transfers of personal data to a controller or processor in one or more third countries within a group of undertakings;

Amendment

(17) ‘binding corporate rules’ means personal data protection policies which are adhered to by a controller or processor established on the territory of a Member State of the Union for transfers or a set of transfers of personal data to a controller or processor in one or more third countries within a group of undertakings, **a part thereof, or another form of cooperation between undertakings, such as an alliance;**

Justification

This amendment clarifies that the group of undertakings, which may adopt BCRs, can be – under certain conditions – fluid. In such case, it is likely that the BCRs will apply to one or a few processings which are essential to the alliance (e.g., a shared customer database).

Amendment

Proposal for a regulation

Article 4 – new paragraph 22

Text proposed by the Commission

Amendment

**(22) ‘Scientific research’ means
fundamental research, applied research,
and privately funded research.**

Justification

*This definition incorporates Recital 126
into the definitions of Article 4.*

Amendment

Proposal for a regulation

Article 5 – paragraph 1

Text proposed by the Commission

Personal data must be:

Amendment

1. Personal data must be:

Justification

*Consequential change in numbering in
view of amendment to Art. 5(2) NEW.*

Amendment

Proposal for a regulation

Article 5 – new paragraph 2

Text proposed by the Commission

Amendment

2. Notwithstanding paragraph 5.1(b), further processing of personal data for purposes not compatible with the purpose or purposes for which the data were collected only be allowed if the further processing has a legal basis in one of the grounds referred to in Article 6(1)(a) to (d).

Justification

Article 6(4) introduces the possibility of further processing of data for incompatible purposes in cases where another legal basis can be found in grounds for legitimate processing in points (a) to (d) of article 6(1). This paragraph should be added to article 5(2) as it is an exception to a principle of processing as reflected in art. 5(1)(b). The ground 'public task' has been deleted from the Commission's proposal as such processing should meet the compatibility test of article 5.3(new).

Amendment

Proposal for a regulation

Article 5 – new paragraph 3

Text proposed by the Commission

Amendment

3. In order to determine whether the further processing is compatible with the purposes for which the personal data were collected, the controller shall take into account:

- (a) the relationship between the purpose of the further processing and the purpose for which the data were collected;**
- (b) the nature of the data concerned;**
- (c) the consequences of the further processing for the data subject; and**
- (d) the extent to which appropriate measures and safeguards have been put in place to protect the interests of the data subject.**

Justification

Article 5(3) provides the criteria for assessing compatible use of data, similar to the current criteria provided for in the Dutch Personal Data Protection Act.

Amendment

Proposal for a regulation

Article 6 – paragraph 1 (f)

Text proposed by the Commission

(f) processing is necessary for the purposes of the legitimate interests pursued by **a** controller, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. This shall not apply to processing carried out by public authorities in the performance of their tasks.

Amendment

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

Justification

Although this was already allowed under the wording of the Commission (“a controller”), the amendment restores the wording of Directive 95/46 and clarifies that the data may be disclosed to a third party.

Amendment

Proposal for a regulation

Article 6 – paragraph 4

Text proposed by the Commission

4. Where the purpose of further processing is not compatible with the one for which the personal data have been collected, the processing must have a legal basis at least in one of the grounds referred to in points (a) to (e) of paragraph 1. This shall in particular apply to any change of terms and general conditions of a contract.

Amendment

Deleted.

Justification

This paragraph was moved to article 5(2) new as it provides an exception to a principle of processing as stated in Article 5(1)(b).

Amendment

Proposal for a regulation

Article 11 – paragraph 1

Text proposed by the Commission

1. The controller shall **have** transparent and easily accessible **policies with regard to the processing of personal data** and for the exercise of data subjects' rights.

Amendment

1. The controller shall **provide** in a transparent and easily accessible **manner the information referred to in Article 14** and **information on** the exercise of data subjects' rights.

Justification

The changes are technical. One does not provide 'policies', but information in a 'notice', which reflect the policies.

Amendment

Proposal for a regulation

Article 12 – paragraph 1

Text proposed by the Commission

1. The controller shall establish procedures for providing the information referred to in Article 14 and for the exercise of the rights of data subjects referred to in Article 13 and Articles 15 to 19. The controller shall provide in particular mechanisms for facilitating the request for the actions referred to in Article 13 and Articles 15 to 19. **Where personal data are processed by automated means, the controller shall also provide means for requests to be made electronically.**

Amendment

1. The controller shall establish procedures for providing the information referred to in Article 14 and for the exercise of the rights of data subjects referred to in Article 13 and Articles 15 to 19. The controller shall provide in particular mechanisms for facilitating the request for the actions referred to in Article 13 and Articles 15 to 19.

Justification

Art 12.1 already obliges controllers to establish procedures for providing the information referred to in Article 14 and for the exercise of the rights of data subjects referred to in Article 13 and Articles 15 to 19. The choice of how to provide the information should be left to the controller.

Amendment

Proposal for a regulation

Article 12 – paragraph 2

Text proposed by the Commission

2. The controller shall inform the data subject without delay and, at the latest within **one month** of receipt of the request, whether or not any action has been taken pursuant to Article 13 and Articles 15 to 19 and shall provide the requested information. This period may be prolonged for a further **month**, if several data subjects exercise their rights and their cooperation is necessary to a reasonable extent to prevent an unnecessary and disproportionate effort on the part of the controller. The information shall be given in writing. **Where the data subject makes the request in electronic form, the information shall be provided in electronic form, unless otherwise requested by the data subject.**

Amendment

2. The controller shall inform the data subject without delay and, at the latest within **four weeks** of receipt of the request, whether or not any action has been taken pursuant to Article 13 and Articles 15 to 19 and shall provide the requested information. This period may be prolonged for a further **four weeks**, if several data subjects exercise their rights and their cooperation is necessary to a reasonable extent to prevent an unnecessary and disproportionate effort on the part of the controller. The information shall be given in writing.

Justification

Art 12.1 already obliges controllers to establish procedures for providing the information referred to in Article 14 and for the exercise of the rights of data subjects referred to in Article 13 and Articles 15 to 19. The choice of how to provide the information should be left to the controller.

Furthermore, as months have different

*lengths, it is more practical to use a fixed
deadline of 4 weeks.*

Amendment

Proposal for a regulation

Article 13

Text proposed by the Commission

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.

Amendment

The controller shall communicate any rectification carried out in accordance with Articles 16 to each recipient to whom the data have been disclosed, unless this proves impossible, involves a disproportionate effort, **or where the disclosure was based on a legal obligation to disclose the data to such third party.**

Justification

The erasure of the data with controller A does not influence the erasure with controller B, as the processing by controller B is not dependent on the lawfulness or the purposes of the processing by controller A. Therefore, the reference to article 17 should be removed. Most disclosures to third party controllers (e.g., government agencies, social security organizations, etc) take place on the basis of a legal obligation. To lower the burden of compliance with article 13.1, such disclosures should be excluded.

Amendment

Proposal for a regulation

Article 16 – New paragraph 2

Text proposed by the Commission

Amendment

2. The controller shall restrict processing of personal data where their accuracy is contested by the data subject, for a period enabling the controller to verify the accuracy of the data.

Justification

This paragraph was moved from article 17.4, since it belongs in this article 16.

Amendment

Proposal for a regulation

Article 17 – Paragraph 1c

Text proposed by the Commission

(c) the data subject **objects** to the **processing** of personal data pursuant to Article 19;

Amendment

(c) the data subject **has successfully objected** to the **collection or retention** of personal data pursuant to Article 19;

Justification

Only when there are no legitimate grounds for processing the data, the data can be erased. Objection to processing is not a ground for erasing data. Only successful objection provides this ground for erasure.

Amendment

Proposal for a regulation

Article 17 – Paragraph 1d

Text proposed by the Commission

(d) the processing of the data does not comply with **this Regulation for other reasons.**

Amendment

(d) the processing of the data does not comply with **Articles 5, 6, 8 and 9.**

Justification

Only when there are no legitimate grounds for processing the data, the data can be erased. Objection to processing is not a ground for erasing data. Only successful objection provides this ground for erasure.

Amendment

Proposal for a regulation

Article 17 – Paragraph 3

Text proposed by the Commission

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

Amendment

3. The controller may deny a request for erasure where the processing of the personal data is necessary:

Justification

For reasons of clarity par. 3 (old) has been split.

In order to allow for some organisational flexibility in complying with this obligation, the word “reasonable” has been added.

The changes in par. 3 (new) are technical and the result of the split.

Amendment

Proposal for a regulation

Article 17 – Paragraph 4a

Text proposed by the Commission

(a) their accuracy is contested by the data subject, for a period enabling the controller to verify the accuracy of the data;

Amendment

Deleted

Justification

This section has been moved to article 16(2) new, as the situation described in sub a has nothing to do with erasure. If the accuracy of the data is contested, the data should be updated if necessary, not deleted.

Amendment

Proposal for a regulation

Article 17 – Paragraph 4b

Text proposed by the Commission

(b) the controller no longer needs the personal data for the accomplishment of its task but they have to be maintained for purposes of proof;

Amendment

*(a) the **data has** to be maintained for purposes of proof;*

Justification

Ad b): These changes are technical, as , this purpose of proof are also a “need”.

Amendment

Proposal for a regulation

Article 19 – Paragraph 1

Text proposed by the Commission

Right to object

1. The data subject shall have the right to object, on grounds relating to their particular situation, at any time to the processing of personal data which is based on points (d), (e) and (f) of Article 6(1), **unless the controller demonstrates compelling legitimate grounds for the processing which override the interests or fundamental rights and freedoms of the data subject.**

Amendment

Right to object

1. The data subject shall have the right to object, on grounds relating to their particular situation, at any time to the processing of personal data which is based on points (e) and (f) of Article 6(1).

Justification

Technical change. The wording of the Commission is not correct, as it would mean that the legitimate interests under 6.1(f) now would need to be 'compelling', therefore effectively requiring extra weight of such interest. This should not be the case (and was not the case in Directive 95/46). The right to objection means that the general weighing of interests of Art. 6.1() now needs to be 'individualised' for the data subject concerned. This means that the same interests of the controller as the ones mentioned in Article 6.1(f) need to be taken into account. It's the interests of the data subject that need to be compelling in the sense that they should override the generic balancing of interests under Article

6.1(f). This amendment restores the system of the right of objection as mentioned in Directive 95/46.

Amendment

Proposal for a regulation

Article 19 – New paragraph 1a

Text proposed by the Commission

Amendment

1a. Where an objection is justified, the particular processing to which the objection was made, shall be terminated, unless the legitimate grounds as referred to in Article 6(1) sub (e) or (f) override the interests or fundamental rights and freedoms of the data subject. The controller shall inform the data subject of his decision and, if the request is denied, of the arguments underlying the decision.

Justification

Technical change. The wording of the Commission is not correct, as it would mean that the legitimate interests under 6.1(f) now would need to be 'compelling', therefore effectively requiring extra weight of such interest. This should not be the case (and was not the case in Directive 95/46). The right to objection means that the general weighing of interests of Art. 6.1() now needs to be 'individualised' for the data subject concerned. This means that

the same interests of the controller as the ones mentioned in Article 6.1(f) need to be taken into account. It's the interests of the data subject that need to be compelling in the sense that they should override the generic balancing of interests under Article 6.1(f). This amendment restores the system of the right of objection as mentioned in Directive 95/46.

Amendment

Proposal for a regulation

Article 19 – Paragraph 2

Text proposed by the Commission

2. Where personal data are processed for direct marketing purposes, the data subject shall have the right to object free of charge to the processing of their personal data for such marketing. This right shall be explicitly offered to the data subject in an intelligible manner and **shall be** clearly distinguishable from other information.
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.

Amendment

2. Where personal data are processed for direct marketing purposes, the data subject shall have the right to object free of charge to the processing of their personal data for such marketing. This right shall be explicitly offered to the data subject **at the time of the collection of the data by the controller**, in an intelligible manner and clearly distinguishable from other information.

Justification

In order to be able to implement the second sentence of Art. 19.3, it is important to determine at what moment in time the obligation exists.

Amendment

Proposal for a regulation

Article 19 – Paragraph 3

Text proposed by the Commission

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.

Amendment

Deleted

Justification

Paragraph 19.3 wrongly suggests that in case the data subject objects against a certain processing of his data, the controller can no longer process the personal data concerned. The Article should recognise that the controller can no longer process data for the specific purpose the data subject has objected to. Processing is “any operation...”, so the right to object can and should be applied in a granular way. For example, if the data subject objects to the use of his postal address for direct marketing, the controller should still be allowed to process the address for billing purposes. Therefore, Article 19.3 has been deleted. The correct objective has been added to Article 19.1a (new).

Amendment

Proposal for a regulation

Article 24 – new paragraph 2

Text proposed by the Commission

Amendment

2. Where no arrangement has been established, the data subject may exercise his rights as referred to in Articles 15 to 20 against any of the controllers involved in the processing.

Justification

The addition would only be logical in view of the protection of the interests of the data subject.

Amendment

Proposal for a regulation

Article 25 – paragraph 2 (d)

Text proposed by the Commission

(d) a controller **offering only occasionally** goods or services to data subjects residing in the Union.

Amendment

(d) a controller, **who does not direct** goods or services to data subjects residing in the Union

Justification

The addition 'who does not direct' exempts controllers established outside the Union that are not targeting their services at data subjects residing in the EU. This way a non-EU website offering services to non-EU data subjects but is occasionally visited by EU data subjects should not comply with the regime. As soon as any targeting occurs (for instance, by offering a service in a specific EU-language or otherwise), the controller will have to apply EU data protection regime.

Amendment

Proposal for a regulation

Article 26 – paragraph 1

Text proposed by the Commission

1. Where a processing operation is to be carried out on behalf of a controller, 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.

Amendment

1. Where a processing operation is to be carried out on behalf of a controller, 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 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.

Justification

The deleted text is superfluous.

Amendment

Proposal for a regulation

Article 26 – new paragraph 3a

Text proposed by the Commission

Amendment

3a. The processor shall provide the controller with all information necessary for the controller to meet his obligations under this Regulation.

Justification

It is very important that processors provide the controller with all information necessary for the controller to meet his obligations under the Regulation. Such information may include: information about the security measures taken by the processor, information about any subcontractors working for the processor, information about internal policies and instructions to employees of the processor, the locations of the processing, etc.

Amendment

Proposal for a regulation

Article 26 – paragraph 4

Text proposed by the Commission

4. If a processor processes personal data other than as instructed by the controller, the processor shall be considered to be a controller in respect of that processing and shall be subject to the rules on joint controllers laid down in Article 24.

Amendment

4. If a processor processes personal data other than as instructed by the controller, the processor shall be considered to be a controller in respect of that processing and **where relevant** shall be subject to the rules on joint controllers laid down in Article 24.

Justification

There may be cases where the processor processes personal data contrary to the controller's instructions. In such cases, the processor should be the only controller for such (illegal) processing. The requirement of Art. 24 should not apply to such situation.

Amendment

Proposal for a regulation

Article 31 – paragraph 7

Text proposed by the Commission

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.

Amendment

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. **This obligation shall also apply to the processor insofar as he is responsible for the personal data breach.**

Justification

In order to allow the controller to review the processor's activities which led to the breach, the processor should also be required to document the breach.

Amendment

Proposal for a regulation

Article 32 – new paragraph 1a

Text proposed by the Commission

Amendment

1a. In case of joint controllers or where the controller is part of a group of undertakings, the personal data breach may be communicated by the main establishment, if any, or by any other controller or undertaking designated by the joint controllers or group of undertakings.

Justification

In order to avoid multiple notifications for the same personal data breach, the data subject may be notified by the main establishment, which is likely to have the expertise, or by the controller designated by the group or joint controllers in case the controller responsible for the personal data breach is part of a group of companies or where multiple controller are responsible for the personal data breach.

Amendment

Proposal for a regulation

Article 34 – paragraph 1

Text proposed by the Commission

1. The controller or the processor as the case may be shall obtain an authorisation from the supervisory authority prior to the processing of personal data, **in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects** where a controller or processor adopts contractual clauses as provided for in point (d) of Article 42(2) or does not provide for the appropriate safeguards in a legally binding instrument as referred to in Article 42(5) for the transfer of personal data to a third country or an international organisation.

Amendment

1. The controller, or the processor as the case may be, shall obtain an authorisation from the supervisory authority prior to the processing of personal data, where a controller or processor adopts contractual clauses as provided for in point (d) of Article 42(2) or does not provide for the appropriate safeguards in a legally binding instrument as referred to in Article 42(5) for the transfer of personal data to a third country or an international organisation.

Justification

Deleted wording is superfluous.

Amendment

Proposal for a regulation

Article 38 – paragraph 2

Text proposed by the Commission

2. Associations and other bodies representing categories of controllers or processors in one Member State which intend to draw up codes of conduct or to amend or extend existing codes of conduct may submit them **to an opinion of** the supervisory authority in that Member State. The supervisory authority **may** give an opinion whether the draft code of conduct or the amendment is in compliance with this Regulation. The supervisory authority shall seek the views of data subjects or their representatives on these drafts.

Amendment

2. Associations and other bodies representing categories of controllers or processors in one Member State which intend to draw up codes of conduct or to amend or extend existing codes of conduct may submit them **for approval to** the supervisory authority in that Member State. The supervisory authority **shall** give an opinion whether the draft code of conduct or the amendment is in compliance with this Regulation. The supervisory authority shall seek the views of data subjects or their representatives on these drafts.

Justification

The supervisory authority should formally approve the code, not just give an opinion. This gives the submitting party judicial remedies and provides legal clarity to the data subjects whose personal data are covered by the code, therefore increasing legal certainty as to the status of the code. Furthermore, the supervisory authority should always give an opinion, regardless of the outcome of its review.

Amendment

Proposal for a regulation

Article 40

Text proposed by the Commission

Any transfer of personal data which are undergoing processing or are intended for processing after transfer to a third country or to an international organisation may only take place if, subject to the other provisions of this Regulation, the conditions laid down in this Chapter are complied with by the controller and processor, **including for onward transfers of personal data from the third country or an international organisation to another third country or to another international organisation.**

Amendment

Any transfer of personal data which are undergoing processing or are intended for processing after transfer to a third country or to an international organisation may only take place if, subject to the other provisions of this Regulation, the conditions laid down in this Chapter are complied with by the controller and processor.

Justification

The words "including organization" have been deleted because they do not add anything to or clarify in any way the main sentence.

Amendment

Proposal for a regulation

Article 75 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Justification

To ensure that this right is applied in accordance with the definition of personal data, the term 'data subject' needs to be used.