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THE EUROPEAN UNION**

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REV 1**

**LIMITE**

**DATAPROTECT 114  
JAI 672  
MI 603  
DRS 113  
DAPIX 119  
FREMP 119  
COMIX 550  
CODEC 2304**

**NOTE**

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from: General Secretariat of the Council  
to: Working Group on Information Exchange and Data Protection (DAPIX)

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No. Cion prop.: 5853/12 DATAPROTECT 9 JAI 44 MI 58 DRS 9 DAPIX 12 FREMP 7  
COMIX 61 CODEC 219

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Subject: 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 movement of such data (General Data Protection Regulation) - Replies to questionnaire on delegated/implementing acts

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The annex sets out a compilation of the replies to Annex II of 12918/1/12 REV 1  
DATAPROTECT 97 JAI 551 MI 515 DRS 101 DAPIX 94 FREMP 110 COMIX 460  
CODEC 1978, received at 10 October 2012.

Below are a number of general remarks which have been made by Member States:

## **BELGIUM:**

By way of introduction, Belgium wishes to make the following remarks:

- These questions cannot be answered properly until other fundamental issues have been resolved, and in particular the degree of flexibility which the public sector will enjoy in implementing the European legislation. Consequently, the questions are being answered only on a provisional basis pending agreement on the other aspects of the system. Regardless of its replies, Belgium is maintaining its general reservation on the Commission proposal.
- From a methodological viewpoint, the Belgian delegation regrets the fact that, given the impact which the Regulation will have on all sectors of activity, delegations have not been given more time to examine the precise consequences of the provisions concerned before replying to the questions. It also has concerns about the advisability of discussing delegated and implementing acts before analysing the substance of those articles. Consequently, the replies to the questions on the delegated or implementing acts laid down in certain articles may under no circumstances be construed as agreement as to the content of those articles.
- Generally speaking, the use of delegated acts presents problems in terms of legal certainty. How can those concerned comply with European legislation which has yet to be finalised? The Commission proposal fails to provide a satisfactory answer to this question.
- Court of Justice judgment 355/10 provides an important clarification as to what must be regarded as an essential element of legislation: it stipulates that measures affecting fundamental rights must be defined in the legislation itself. Obviously, this judgment limits the possibility of making use of delegated acts. As far as Belgium is concerned, the extent of the delegations proposed by the Commission exceeds those limits in several cases. It would be useful to know whether the Commission intends to reassess its proposal in the light of that judgment.

## **CZECH REPUBLIC:**

The Czech Republic would like to thank the Presidency for preparation of this horizontal discussion with relation to particular provisions. The Czech Republic believes that this will help all delegations to consider the implications of each delegated power. However, the Czech Republic also believes that more general and horizontal discussion would be appropriate to help the Working Party develop constructive consensus.

As for now, the Czech Republic approaches the issue of delegated powers with these considerations in mind:

- requirements of Article 290 TFEU on non-essential elements and requirements of C-355/10 on the relation between contents of legislative acts and delegated acts would often advocate for specification of the provision in Regulation rather than for broad delegated powers;
- in certain cases the specification might be too burdensome, or might be more suitably be reached by other means, such as court decision-making or specific/sectoral legislation or Member State law;
- in certain cases the situation might be that technological or other advances would force us to change the text of Regulation in future. But that is certainly preferable to creating questionable situation with regard to legal certainty.

Therefore, the general Czech position is that while in some cases delegated acts may be an appropriate solution; in the end in other many cases the delegation of powers is not appropriate.

## **GERMANY:**

- Germany welcomes the approach of horizontal discussions. An analysis of authorizations of delegated acts and implementing rules in the draft regulation will provide a clearer view on fundamental questions which have to be solved. That said Germany prefers a horizontal debate rather than another article by article discussion for each authorization of a delegated act by dint of the table. Regardless of the following assessment Germany retains its scrutiny reservation to all Articles and paragraphs concerned.
- Germany prefers a clear distinction in the legislative act between data processing in the public sector on the one hand and in the non-public (private) sector on the other. The aim is to preserve margins for national legislatures in the public sector and to create a level playing field across Europe in the non-public sector through stronger harmonization. This also affects the paragraphs concerning delegated and implementing acts and is not differentiated in every case.
- With regard to certain provisions Germany prefers more detailed rules through regulated self regulation (Codes of Conduct). Germany is currently preparing a proposal for a new Article 38.

## **ESTONIA:**

Our considerations about delegated or implementing acts are based on following criteria:

- delegated or implementing acts should clearly stipulate the purpose of the delegation, its content and limits;
- delegated or implementing acts should not regulate the essential questions of the data protection framework. Those questions should be stipulated in regulation;
- therefore, delegated or implementing acts should not be imposed in questions that concern human rights and freedoms, especially when delegated act defines the essence of a certain human right and freedom. For example, if delegated act specifies the conditions for processing personal data for legitimate interests. Also, when delegated act regulates procedure of data processing, for example how a public authority should conduct its proceedings;

- delegated or implementing acts should not allow to make exemptions from general legal framework. Legal framework and its exemptions should be stipulated in regulation and can be both specified in delegated act, if necessary and appropriate;
- delegated or implementing acts should not encourage the over-regulation of the data protection area of law.

## **SPAIN:**

### 1. General remarks

The Spanish position on delegated acts is based on our general position draft paper, which is currently at its final stage, and we do expect to get it released by the end of October.

Accountability is one of the pillars of our position. According to this approach we'd like to see more flexible tools that focus on the desired outcomes, giving the controllers and processors different choices concerning the means and the procedures.

We also encourage a building of a true privacy culture through training and awareness. We're convinced that fostering training and certifications could give additionally room for a less bureaucratic approach.

The result should be a substantial reduction of administrative burdens, with no harm for the privacy rights.

Additionally, an accountability-based approach requires less bureaucratic regulation by the Commission through delegated acts. A large amount of this kind of provisions that deal with how to do things (establishing criteria, requirements, conditions and measures) can be avoided.

Nonetheless, not every delegated act deals with procedures. There is another set of provisions acting as true "development provisions" for the completeness of the regulation. As far as these provisions are intended to supplement or amend certain essential elements of the legislative act, the article 290 of the TFEU is concerned and should be replaced by more detailed rules in the substantive provisions.

Concerning implementing acts, our assessment is in general terms quite more positive, and we are only expressing some problems with some specific provisions that are either exceeding the institutional limits or in conflict with the main pillars of our position.

## 2. Methodological remarks

We believe that a sound methodological approach for discussing horizontal issues should be established by the working party.

According to our point of view the above-mentioned methodology should build on these principles:

- Open mind discussion including a brainstorming session
- Using of powerful tools (questionnaires should not be the only one): comparative law, stakeholder's suggestions, impact and risk assessments, etc.
- Consistent evaluation and documentation of findings

### **FRANCE:**

By way of a general remark, the French delegation would note that the proposed Regulation contains many referrals to delegated or implementing acts, including for essential articles such as the right to be forgotten, and in particular for determining the criteria applicable to such rights, in clear violation of Article 290(1) of the Treaty on the Functioning of the European Union, pursuant to which a "legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act". The same principle is referred to in the case-law of the EU Court of Justice and was recently reiterated in the judgment of 5 September 2012 (C-335/10), in which the Court ruled on the concept of essential elements which may not be determined by a delegated act. Consequently, such criteria should clearly form part of the main body of the Regulation.

As far as recourse to delegated acts is concerned, the French delegation is not, as a matter of principle, in favour of the use of such a delegation of power in connection with this proposal for a Regulation. Many investments will depend on the provisions of this Regulation, and many stakeholders in both the public and private sectors will find their activities circumscribed by those rules: bearing in mind the impact of the future Regulation in legal, organisational, technical and financial terms, such a delegation of power would create a significant degree of economic risk and legal uncertainty for the many stakeholders concerned by referring to acts necessary for its implementation which would subsequently be adopted without the Member States being directly involved in their development and validation, and would only further increase legal uncertainty and place Member States in a situation in which compliance with the Regulation would be virtually impossible. For example, a data processing operation which satisfies the provisions of the Regulation could subsequently become unlawful as a result of a delegated act.

Furthermore, the French delegation takes the view that it is neither appropriate nor constructive to hold detailed discussions on articles in respect of which the Commission has chosen to refer to a delegated or implementing act at this stage in the negotiations, given that an initial examination of the proposal for a Regulation has yet to be completed (only one third of the articles have been reviewed) and several questions remain unresolved regarding the actual meaning of certain articles which have already been discussed. It therefore seems inappropriate and pointless to undertake an article-by-article examination of the referrals to delegated or implementing acts while the articles themselves are still open to amendment.

The French delegation therefore considers that such a discussion is premature, and wishes to enter a general scrutiny reservation on all the provisions which allow for recourse to a delegated or implementing act.

Finally, as regards the duration of delegations of power, France takes the view that the Commission has chosen to systematically provide for delegations for an indeterminate period of time. As a matter of principle, France also rejects such a choice insofar as the standard clauses contained in 18039/11 of 6 December 2011 provide for two options in addition to delegation for an indeterminate period of time<sup>1</sup>: delegation for a limited period of time, which may be tacitly extended, and delegation for a limited period of time. Given the implications of this text and the innovative nature of a Regulation in this area, delegation for an indeterminate period of time does not in any case seem appropriate.

## **LUXEMBOURG:**

### General remarks:

- These comments are without prejudice to any further positioning, particularly on those articles that have not yet been discussed at the Council (scrutiny reserve).
- Luxembourg wonders about the timing of these delegated acts, as it is important to avoid as much as possible periods of legal uncertainty. It is important to find the right balance between a future-proof legislation, and legal certainty and predictability.
- Luxembourg also insists that the delegation of powers to the Commission should outline more precisely the objectives of each delegated act, as foreseen in Art 290 TFEU.

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<sup>1</sup> Article a – Exercise of the delegation.

## THE NETHERLANDS:

The Netherlands would like to draw the attention of the Presidency to other horizontal subjects that need to be discussed in the course of the first reading of the Regulation. These issues were touched upon in the article by article discussions but have not been not discussed in depth so far. The Netherlands identified the following subjects that need to be discussed further:

### Public sector issues:

- Data sharing arrangements between public sector data controllers and public sector recipients. Should the Regulation offer a separate legal basis for these arrangements with adequate safeguards for data subjects?
- The delineation between the Regulation and the Directive appears not to be completely adequate yet. Law enforcement services not belonging to a police force or public prosecution services, but closely associated to police and prosecutors, such as customs, special enforcement services (e.g. tax enforcement) and border guards. These services apply both criminal law and administrative law. Consequently, these services are expected to work with separate data protection regimes.

### Private sector issues:

- Defining closer a relation between self-regulatory instruments such as prior data protection impact assessments, certification schemes, codes of conduct and the introduction of risk based concepts in the Regulation.
- Defining a clear distinction between the duties and responsibilities of the data controller, the processor and the data protection officer.

### Overarching issues:

- The role of cloud computing and the need to give answers to questions arising from cloud computing issues.
- The role of the context principle and the way it can influence the status of personal data and the rules governing personal data.

Of course, we do realise that not all the issues can be discussed during the Cyprus Presidency, but it would be most helpful if the Presidency could open the way to further discussions on horizontal issues.

## SLOVENIA:

The Republic of Slovenia welcomes the Cyprus Presidency's initiative to prepare this document concerning the systemic issues of delegated and implementing acts, which might prove to be useful in respect to designate solutions to some major problems in Draft General Data Protection Regulation. As a matter of general principle, we opine that delegated and implementing acts under this draft legal act are nearly completely inappropriate, with exception of some really technical or very important political issues (exchanges of personal data with third countries). We arrive at this conclusion from the viewpoint that data privacy is primarily, as it should be, an individual human right and it should be developed or regulated at the closest level to individuals (data subjects), data controllers, data processors and supervisory bodies.

Furthermore, even taking slightly into account the Slovenia's known position and related arguments, that the Draft Regulation should be changed into the Directive, we opine that reasons of transparency and good cooperation require that we note that some issues that are highly contentious, are inter-related and stem from the same decision on drafting the Regulation, and not a Directive (type of legal act). Even in the long term these issues might keep re-appearing and re-connecting. These issues, from our viewpoint, are at least: delegated acts, implementing acts, suspected high new administrative burdens, detailed rules on sums of fines, data protection officers etc. And also, the issue of the non-amended or possibly amended Convention No. 108 of the Council of Europe shows, that at the end there shall be no total compatibility of provisions of this draft legal act with provisions of the Convention No. 108 of the Council of Europe, and we shall be left with at least three<sup>2</sup> competing data protection regimes (under this draft legal act, under the Convention No. 108, even if amended and under the future Data Protection Directive on Justice and Home Affairs), which is an impossible legal result.

So Slovenia's positions below can also be understood in the light of the comments above, especially from the viewpoint that it is clear, that also an assessment of existence of projected delegated and implementing acts should be done in the light of more general and therefore at least symbolically more safeguarding provisions of the Convention No. 108 of the Council of Europe - from the viewpoint if such acts are even compatible with the rules and the spirit of rules of this detailed Convention.

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<sup>2</sup> Or even four, if we take into account other areas, regulated only by national law - like national security issues.

And from systemic viewpoint, we also opine that delegated acts in this case are in fact not restricted to nonessential elements of the draft legal act, they are de facto perceived to be a substantive addendum to it, and this draft legal act can be assessed to be - to some extent - an amended Directive with a lot of loopholes, that are to be filled by delegated and implementing acts. Provisions of the draft legal act should be amended accordingly, to express clear legal solutions (legal clarity and legality), since it is an individual human right regulated upon. And we opine also that delegated and to a minor extent, implementing acts, do try to replace (substitute) the future implementing case law of the judiciary or supervisory bodies, in a sort of administrative procedure manner, which also has a relationship to the issue of increased administrative burdens.

At the end - the requested political assessment from this document - whether the delegation by delegated and implementing acts is necessary - is to be understood as also expressing at the same time the Republic of Slovenia's positions as a policy one in the expert sense. And the positions expressed in this document are thought to be preliminary ones, until the time when provisions can be discussed in detail, article by article.

### **SWEDEN:**

Sweden welcomes the Presidency's initiative to prepare this document aimed at furthering the discussions on inter alia the proposed empowerments for the Commission. There certainly is a need for a horizontal approach to address the issues raised in the Presidency's document. In our view the discussions should focus first on the principles of assessment before actually going through the empowerments article by article.

There are several factors that have to be considered when determining if it is appropriate to empower the Commission to adopt delegated acts;

- Naturally, it primarily has to be decided if the delegated act is in fact restricted to nonessential elements of the legislation in accordance with Article 290 of the TFEU.
- It has to be decided if delegated acts truly are necessary to further clarify the relevant provision. Amending the provision itself for added clarity could be enough.

- Considering that the right to data protection is a fundamental right according to the Charter, it only seems natural that the development of the specific substance of this right should in some aspects be left to case-law, deriving from the supervisory authorities, the proposed European Data Protection Board, national courts and of course the ECJ. We must avoid being overly prescriptive.
- When it comes to specifying the provisions to suit the needs and particularities of different sectors, we believe that it is often preferable to adopt such sectoral legislation in the form of separate legislative acts – comparable with the current Directive 2002/58/EC.
- In many cases it could be preferable to allow for further clarification by the means of member state law (e.g. law pursuant to Article 6.3) guidelines or even codes of conduct.

Unfortunately, time has only allowed us to make preliminary remarks regarding the necessity of the specific empowerments. On a general note, as we have already stated in earlier written comments, we question if the Commission should be empowered to adopt delegated acts in the extent proposed in the draft Regulation. We therefore retain our scrutiny reservation regarding the proposed empowerments.

#### **UNITED KINGDOM:**

The United Kingdom welcomes this opportunity to respond on the horizontal issue of delegated and implementing acts in respect of the proposal for a General Data Protection Regulation and we are grateful to the Cyprus Presidency and the Council Secretariat for devising and facilitating this process. The UK also welcomes the forthcoming opportunities to comment in a similar way on administrative burdens and the application of data protection rules to the public sector.

The UK position on the proposed Regulation is in every case (with the exception of Article 79), that the power to adopt delegated acts does not conform with Article 290 of the treaty on the functioning of the European Union (TFEU). This is because the power to adopt delegated acts goes beyond supplementing or amending non-essential elements of the legislative acts. In addition, the objectives, content or scope of the delegation of power is not sufficiently defined. Further, the UK does not consider that the power to adopt implementing acts, with the exception of Articles 38 and 41, conforms with Article 291 of the TFEU. This is because uniform conditions are not needed to implement a legally binding act. We are also concerned that many of the acts conferred on the Commission are for indeterminate periods of time even though the treaty states that the duration of the delegation of power should be explicitly defined. We would therefore suggest that a 5 year limitation is placed on every instance of delegated and implementing acts with a recommendation for retention, amendment or termination of the act being made at the end of that period.

Although the UK acknowledges that an article-by-article process in working groups is needed in order to that the Council can critically examine the specific text of the proposals, we would also request that the Council be given the opportunity to discuss the fundamental issue of the choice of instrument as the numerous instances of delegated and implementing acts in the proposals are a direct consequence of the decision by the European Commission to propose a Regulation. Therefore the UK's comments on the individual delegated and implementing acts contained in this response are without prejudice to our overarching position that a Directive is the best and most appropriate choice of instrument for an updated general data protection framework.

Given the link between choice of instrument and the abundant and, indeed, excessive use of delegated and implementing acts throughout the draft Regulation, we would like to take this opportunity to restate our arguments in favour of legislating by way of Directive as this is a fundamental point which needs to be considered before detailed commentary on the acts themselves can commence. The UK favours a Directive for the following reasons:

**1. A Directive allows for a more nuanced instrument, with detail where it is needed, and flexibility where it is needed.**

- A Regulation must necessarily have a level of detail that allows all of its provisions to be directly binding on data controllers. However in data protection, a “one size fits all” approach does not work for every provision.

**2. The subject matter is not well-suited to a Regulation.**

- A Regulation needs subject matter that lends itself to technical prescriptive regulation across the board – data protection is not such an area. The choice of a Regulation means that while some areas are too prescriptive, others by their very nature are not capable of being sufficiently prescriptive for purposes of Regulation that is directly effective. This point was raised recently by the Council Legal Service, who noted that some of the provisions pushed at the boundaries of what could properly be included in a directly effective Regulation.
- Some flexibility at national level is beneficial and need not make the playing field too uneven.

**3. A Directive would be easier to implement and more user-friendly.**

- This is particularly so for individuals, small businesses and charities trying to understand their rights and obligations.
- Looking at the package as a whole – a package consisting of two Directives (general scope, and police and law enforcement scope) could be implemented in one piece of national legislation so everything is in the one place for users.

At the meeting of the JHA Informal Council meeting in Nicosia on 24 July 2012, the Council Legal Service made an intervention which noted that some of the problems with the Commission's proposals arose from the choice of a Regulation and indeed the only way to introduce required flexibility within this form of instrument was by way of delegated acts. However, using a Regulation was pushing the boundaries of that legal form as more provisions were being inserted which would better belong in a Directive. Given this intervention, we consider it important that the Commission reflects further on this view.

We would agree with the point raised by the European Parliament's Rapporteur for the Regulation in that the Commission must justify the inclusion of each and every instance of a delegated and implementing act on a case-by-case basis. We therefore reject the argument of the Commission that all these delegated and implementing acts need to be included in the Regulation on the basis that they might be enacted at some unspecified point in the future just in case there is a need for them. This creates uncertainty and in any case would concede an unknown and potentially unacceptable amount of competence to the Commission in areas which would be better and more swiftly regulated either at national level, or through codes of conduct or best practice guidance. We are also particularly concerned about the impact of delegated acts on SMEs given that they may be adversely affected by the legal uncertainty that will arise from these acts

Once again, we are grateful to the Presidency and the Council Secretariat for offering this opportunity to comment on delegated and implementing acts as a horizontal topic and we look forward to constructive and fruitful discussions on this matter.

**SWIZERLAND:**

We would welcome a differentiation between provisions for the public sector and provisions for the private sector. In particular, there should be enough room for specific national solutions with respect to the public sector. It must remain possible that states have some leeway so that they can implement specific provisions in their national legislation. A more limited delegation of competences to the Commission as regards non-legislative acts and a more limited power of the Commission to uniform conditions for implementing the Regulation would, in our view, offer more flexibility for the implementation of the EU data protection law in the Schengen States.

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**Delegated Acts in the proposed General Data Protection Regulation**

Article	Considerations on the proposed DA: objectives, content, scope, likely duration of delegation <sup>3</sup>	Political assessment: is the delegation necessary? (YES/NO)	If not, which alternative solution would you accept? a) Retain the provision, but with stricter conditions on COI b) Replace with: <sup>4</sup> c) Delete the provision
<p><b>6. Lawfulness of processing</b>  <b>6.5</b> The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of <u>further specifying the conditions referred to in point (f) of paragraph 1 for various sectors and data processing situations, including as regards the processing of personal data related to a child.</u></p>	<p>Point (f) of Article 6(1) deals with the “balance of interests” as a legitimate ground for processing. The provision, already present in Directive 1995/46/EC (Article 7(f)), is further specified in the proposal (e.g.: when the data subject is a child; non application of this ground to processing carried out by public authorities in the performance of their tasks).<sup>5</sup> Should the need for further clarification arise also in light of technological developments, there</p>	<p><b><u>NO</u></b>: CZ, ES, IE, LI, LT, NL, SI, DE, SE, PL, FR, RO, BE, NO, FI, DK, UK, LU, EE   <b><u>YES</u></b>: PT</p>	<p>b) ES + DE + FI + LI + DK (More detailed rules in the substantive provisions (Article 6 (1) (f)) or by MS)  c) BE, CZ, EE, SE, PL, RO, SI, IE, LU, LT, IE (There are safeguards in Articles 14.1(b) and 19.1), NL (As a matter of principle it must be left to the data controller or relevant third party to determine which purposes justify the processing of the data concerned and to make a primary assessment as to whether the interests of the data subject are overriding. Delegated acts would be a major and unnecessary constraint to business. EDPB guidance, DPA oversight and judicial control are compensating safeguards. As an alternative examples could be listed in a recital), NO, UK (This deals with an essential element of the Regulation, and is unclear on scope; it is therefore out</p>

<sup>3</sup> According to Article 86(2) of the proposal the "delegation of power conferred on the Commission in [*the relevant Articles of the Regulation*] shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of the Delegation."

<sup>4</sup> Options to replace the suggested provision with:  
<sup>1</sup> More detailed rules in the substantive provisions;  
<sup>2</sup> Codes of conduct;  
<sup>3</sup> Other (please specify).

<sup>5</sup> See also provisions on information and documentation (Article 14, Article 28) as regards Article 6(1)(f).

Article	Considerations on the proposed DA: objectives, content, scope, likely duration of delegation <sup>3</sup>	Political assessment: is the delegation necessary? (YES/NO)	If not, which alternative solution would you accept? a) Retain the provision, but with stricter conditions on COI b) Replace with: <sup>4</sup> c) Delete the provision
	is the possibility to supplement the “balance of interests” clause of Article 6(1)(f) by further specifying the conditions for particular cases/contexts.		with scope of article 290 (TFEU))
<p><b>8. Processing of personal data of a child</b></p> <p><b>8.3</b> The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of <u>further specifying the criteria and requirements for the methods to obtain verifiable consent</u> referred to in paragraph 1. In doing so, the Commission shall consider specific measures for <u>micro, small and medium-sized enterprises</u>.</p>	<p>Article 8 specifies the conditions for consent for children below the age of 13 years in relation to the offering of information society services directly to a child.</p> <p>Possibility to supplement Article 8 with further specifications e.g. for practical arrangements for verifiable consent by child's parents, taking into account technological developments (e.g. communication by fax, e-mail, new mobile applications).</p>	<p><b><u>NO</u></b>: CZ, ES, IE, LI, LT, NL, SI, DE, PL, FR, RO, BE, NO, FI, DK, PT, UK, LU, EE</p> <p><b><u>Questionable</u></b>: SE</p>	<p>a) PT</p> <p>b) BE, PL, DE + LI + LT + DK (More detailed rules in the substantive provisions or by Member states), IE + FI + RO(Replace with codes of conduct and/or certification; Article 7 on conditions for consent should apply as such with regard to parents’ consent and no further criteria and requirements should be established. It should be up to the controller to decide on the methods for obtaining parents’ consent, given the fact that, according to article 7, they bear the burden of proof for having obtained such consent), NL (Delegation can be replaced either by Member State law in order to ascertain conformity with MS contract law, or by instruments of self-regulation, like a code of conduct drawn up in collaboration with civil society organisations promoting child welfare and child interests, or by a combination of both instruments), EE (general exemptions in the regulation for SMEs and micro entrepreneurs)</p> <p>c) ES, LU, CZ (prefers deletion of whole Art. 8), SI (Impossible to regulate precisely, current experience from similar legislation and its application from other country does not show a possibility of successful regulation.), NO, UK (Scope is uncertain and could have far-reaching effects on the way information society</p>

Article	Considerations on the proposed DA: objectives, content, scope, likely duration of delegation <sup>3</sup>	Political assessment: is the delegation necessary? (YES/NO)	If not, which alternative solution would you accept? a) Retain the provision, but with stricter conditions on COI b) Replace with: <sup>4</sup> c) Delete the provision
			services function, particularly those aimed at children. In practice the methods for securing verifiable and meaningful consent will vary depending on the different circumstances (for example, services being offered to children via mobile phones, and those for desktop-based applications). It is difficult to see how the Commission will be able to legislate for all these different circumstances. Further, if it is intended that the delegated act should specify the technology to be used for obtaining verifiable consent then this conflicts with the requirement that the instrument is technology neutral and risks stultifying potential economic growth by permitting only specified technology to be used for obtaining verifiable consent. The relationship between the power to adopt a delegated act under Article 8(3) and an implementing Act under 8(4) is not clear and in particular what the difference is between “further specifying the criteria and requirements for methods” and “standard forms for specific methods”)
<p><b>9. Processing of special categories of personal data</b></p> <p><b>9.3</b> The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of <u>further specifying the criteria, conditions and appropriate safeguards</u> for the processing of the special categories of</p>	<p>This Delegated Act <u>cannot extend the list of sensitive data</u> provided for by Article 9(1)).</p> <p>The situations (exhaustive list) where processing of special categories of data is allowed are foreseen in Article 9(2).</p> <p>Possibility to supplement Article</p>	<p><b>NO:</b> CZ, ES, LI, LT, IE, NL, SI, DE, SE, FR, RO, BE, NO, FI, DK, UK, LU, EE</p> <p><b>YES:</b> PL, PT</p>	<p>b) ES, BE + FI + RO + DE + LI + LU (More detailed rules in the substantive provisions)</p> <p>c) BE (§2) CZ, DE, EE, IE, SE, SI, LT, NL (Article 9, § 1 and 2, already offer a relatively broad and necessary discretion to Union and Member State law to fill in the particularities of special data processing operations. Further delegation to Union or Member State legislatures can be considered), LU, NO, DK, UK (This deals with an essential element of the Regulation in altering the general prohibition on the processing of special categories of</p>

Article	Considerations on the proposed DA: objectives, content, scope, likely duration of delegation <sup>3</sup>	Political assessment: is the delegation necessary? (YES/NO)	If not, which alternative solution would you accept? a) Retain the provision, but with stricter conditions on COI b) Replace with: <sup>4</sup> c) Delete the provision
<p>personal data <u>referred to in paragraph 1</u> and the <u>exemptions laid down in paragraph 2</u>.</p>	<p>9 in order to, for example:</p> <ul style="list-style-type: none"> <li>- provide safeguards in view of technological developments, e.g. for the processing of sensitive data in the context of health information for flights;</li> <li>- clarify which situations could be covered, and which are not, by “manifestly made public” in Article 9(2)(e);</li> <li>- further clarify when processing is necessary “for the establishment of legal claims” under Article 9(2)(f).</li> </ul>		<p>personal data. For example, the ability to “further specify” the “criteria” in § 1 is so broadly drafted so as to allow further categories of data to be listed as special category. This is a further example of the ability of delegated acts to alter the ground which controllers are standing on. This adds uncertainty for controllers who process as type of data which could be designated as being special by the Commission, thereby making it harder for them to do business. The Scope is not made clear. It is therefore out with scope of article 290 (TFEU). The wording is vague but could substantially alter the scope of the operation of the prohibition in § 1 and the derogations in § 2. There is a potential for new and onerous conditions or criteria to be added before sensitive personal data can be processed. There is also a risk that the further conditions, criteria or safeguards could cut across those provided for by Member State law under Article 9(2)(g), which is not exempt from the power to make delegated acts)</p>
<p><b>12. Procedures and mechanisms for exercising the rights of the data subject</b>  <b>12.5</b> The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of <u>further specifying the criteria and conditions</u> for the <u>manifestly excessive requests</u> and the <u>fees</u></p>	<p>The principle of "free of charge access" and the possibility to impose a fee in case of manifestly excessive requests are set in Article 12(4).  Supplementing Article 12 might be necessary for example:</p> <ul style="list-style-type: none"> <li>- for further specifying what constitutes a “manifestly excessive” access request by a</li> </ul>	<p><b>NO:</b> CZ, IE, LI, LT, NL, SI, DE, SE, PL, FR, BE, FI, DK, UK, LU, EE</p> <p><b>YES:</b> ES, RO, PT</p> <p>NO: We feel it might be necessary</p>	<p>a) FI (The core provisions on what is meant with manifestly excessive (for ex. the prohibition to collect excessive should be laid down in the regulation))  b) CZ, LU, LT + DE + SE + LI (Replace with more detailed rules in the substantive provisions), FI (The criteria already laid down in the regulation could be further specified with codes of conduct), DK  c) BE, EE, IE, PL, NL (Experience with Directive 95/46/EC and implementing provisions learns that "manifestly excessive" (and accessory criteria such as</p>

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referred to in paragraph 4.	data subject, e.g. by a certain number of requests in a certain period, and - for providing minimum and maximum fees which controllers receiving such "manifestly excessive requests" from a data subject may charge for providing the information or taking the action requested.	to include a delegation concerning the fees referred to in § 4, but we do however not feel that it is necessary to specify the criteria and conditions for the manifestly excessive requests	"manifest abuse of right") can only be applied on a case by case basis by controllers, DPA's and courts respectively. Member State law setting a maximum fee could be considered), SI (Clear provisions should be introduced in this draft legal act.), NO, UK (Our policy position is that the ability to charge a fee for subject access requests should be retained. In any case the definition of manifestly excessive is subjective and would be very difficult to specify. It would be more desirable for the definition of "manifestly excessive" to be clarified in recitals, or in guidance issued by supervisory authorities/the EDPB. A technical complication for non-eurozone countries is that the minima and maxima for charging fees would change with the daily exchange-rate)
<p><b>14. Information to the data subject</b>  <b>14.7</b> The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of <u>further specifying the criteria for categories of recipients referred to in point (f) of paragraph 1</u>, the requirements for the notice of potential access referred to in point (g) of paragraph 1, the <u>criteria for the further</u></p>	<p>The elements as regards the information that must be provided to the data subject are enshrined in Article 14(1) points (a)-(h).</p> <p>Supplementing Article 14 might be necessary in particular in view of technological developments for example to:  - further define the details for specifying "categories of recipients";</p>	<p><b>NO:</b> CZ, ES, IE, LI, LT, NL, SI, DE, SE, FR, RO, BE, NO, FI, DK, UK, LU, EE</p> <p><b>YES:</b> PL, PT</p>	<p>a) FI (As regards points F and G delegation of powers to COM ok but not considered necessary)  b) ES + LI (Replace with more detailed rules in the substantive provisions), FI (points H and 5(b), as it reads now, might need further specification. However, final opinion as regards the delegations of powers to COM hard to give because the intended provision unclear particularly as regards Art 5(b)), IE (Replace with codes of conduct), NL (Delegation can be replaced by a variety or combination of self-regulatory instruments such as a prior Privacy Impact Assessment, certification or codes of conduct, since specific sectors will almost certainly differ very much and overregulation must be avoided)</p>

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<p><u>information</u> necessary referred to in point (h) of paragraph 1 for <u>specific sectors and situations</u>, and the conditions and appropriate safeguards for the exceptions laid down in point (b) of paragraph 5.</p> <p>In doing so, the Commission shall take the appropriate measures for micro, small and medium-sized-enterprises.</p>	<p>- specify the level of information to data subjects as regards transfers of data to recipients in third countries;</p> <p>- specify the situations where specific information on the right to object is necessary, e.g. in the marketing sector.</p>		<p>c) BE, LU, LT (Delete at least references to 1(f) and 1(h)), SI, DE, RO, SE (delete at least “further specifying criteria for categories of recipients ”and ”criteria for the further information ... for specific sectors and situations”), NO, DK, UK (The scope of this power has not been set out clearly. This delegated power creates uncertainty for controllers who may have to make costly changes in the future if the Commission exercises this power. Specific measures for SMEs should be on the face of the Regulation; it would not appear possible for a delegated act to exempt them from the substantive requirement), EE</p>
<p><b>15. Right of access for the data subject</b>  <b>15.3</b> The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the <u>criteria and requirements for the communication</u> to the data subject of the <u>content of the personal data</u> referred to in point (g) of paragraph 1.</p>	<p>Article 15 provides the elements (information included under points (a) to (h)) to be provided to the data subject in case of an access request.</p> <p>Supplementing Article 15 might be necessary in particular to further clarify the criteria and requirements to easily communicate personal data to the data subject in an online environment, e.g. by online-forms, specific software and secure interface, taking into</p>	<p><b>NO:</b> CZ, IE, LI, LT, NL, NL, DE, SE, FR, RO, BE, NO, FI, DK, UK, LU, EE</p> <p><b>YES:</b> ES, PL, PT</p>	<p>b) LI, FI (Codes of Conduct)  c) BE, CZ, DE, IE, SE, RO, LU, LT, NL (It appears arbitrary to adopt delegated acts on the specification of only one of the elements of Article 15, § 2, only), SI, NO, DK, UK (Providing personal data to individuals is a fundamental part of data protection law; this would therefore be dealing with an essential element of the instrument. This delegated power creates uncertainty for controllers who may have to make costly changes in the future if the Commission exercises this power. This provision could result in measures which are not technically neutral and could hinder data controllers providing personal data to data subjects quickly. There is a question as to whether the derogation in Article 21 covers delegated acts because it is not clear that a</p>

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	account technological developments.		delegated act is included in the “rights and “obligations” from which Member States may derogate. There is, therefore, the potential for a conflict between the delegated act and the Member State law under Article 21), EE
<p><b>17. Right to be forgotten</b>  <b>17.9</b> The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying: (a) <u>the criteria and requirements for the application of paragraph 1 for specific sectors and in specific data processing situations;</u> (b) <u>the conditions for deleting links, copies or replications of personal data from publicly available communication services</u> as referred to in paragraph 2; (c) <u>the criteria and conditions for restricting the processing of personal data referred to in paragraph 4.</u></p>	<p>The conditions for application of the right to be forgotten are provided for in Article 17(1) – (3).</p> <p>Supplementing Article 17 might be necessary for example to clarify:  - technical conditions for ensuring the erasure of personal data, e.g. rules for deleting http links, meta data and cached data, dead links and other links, copies or replications of personal data, taking into account technological developments.</p>	<p><b>NO:</b> CZ, ES, IE, LI, LT, NL, SI, DE, SE, FR, RO, BE, FI, DK, UK, LU, EE</p> <p><b>YES:</b> PL, PT, NO (The delegation in Article 17 § 9 (b) may be necessary in order to ensure that the processor is confident on how to deal with data that has been published e.g. on the internet. We do however believe that the delegations in (a) and (c) are unnecessary)</p>	<p>b) BE (Article 17 needs to be redrafted in its entirety), CZ, ES, DE + LI + DK (More detailed rules in the substantive provisions or by Member States), FI (point (b): a stricter or more accurate provision: If the intention with the delegated act is to specify technical condition in the text, the delegation of powers should be formulated accordingly (the <i>technical</i> condition...); point c) presumably the same), UK (This delegated power deals with elements which are fundamental to the scope of the deletion right in article 17. It could make obligations more onerous and may cut across restrictions which Member States may wish to provide for under Article 21. We consider that further substantive discussion is required on the scope and extent of the right to be forgotten but this should be set out in the text of the instrument and not in a delegated act), LU (right to be forgotten needs to be reformulated with more legal certainty and practicability in the regulation)  c) IE, LU, SE (delete at least 17.9(a) and (b)), RO, LT, NL (The delegations under a and c appear to be very broad and consequently not in accordance with Article 290 TFEU. If technical standards for deleting links etc could be set, delegated or implementing acts to refer to</p>

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			these standards might be considered), SI (But it is probably needed to regulate specific data processing situations in this draft legal act in a detailed manner and then maybe a reassessment of the position on relevant delegated act would be possible.), NO, FI (Unnecessary to specify further when the data subject shall have the right to obtain the rectification since the core rules when the controller shall carry out the erasure in laid down in § 3), EE
<p><b>20. Measures based on profiling</b></p> <p><b>20.5</b> The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of <u>further specifying the criteria and conditions for suitable measures to safeguard the data subject's legitimate interests</u> referred to in paragraph 2.</p>	<p>Article 20 regulates what constitutes "profiling", as well as the conditions under which a person may be subjected to a measure based on profiling. Article 20(5) provides for the possibility to further specify in particular cases/contexts how to safeguard the data subject's legitimate interests in view of emerging new technologies allowing individual profiling.</p>	<p><b><u>NO:</u></b> CZ, ES, IE, LI, LT, NL, SI, DE, SE, FR, RO, BE, NO, DK, PT, UK, LU, EE</p> <p><b><u>YES:</u></b> PL</p> <p><b><u>UNDETERMINED:</u></b> FI (Given the unclear motivation behind this provision, some examples would formulate our position)</p>	<p>a) PT</p> <p>b) BE (Criteria and conditions for suitable measures to safeguard the data subject legitimate interest are essential elements) + CZ + DE +LT + LI (More detailed rules in the substantive provisions), ES, UK (Specific text on the face of instrument. Criteria and conditions are potentially wide and could include further hurdles which controllers may need to satisfy in order, for example, to conduct profiling on a data subject's consent by could also specify certain technical conditions. Such acts could cut across the derogations Member States have put in place under Article 21 or may cut across MS law a set out in Article 20(2)(b). The types of conditions should be spelt out in the instrument)</p> <p>c) IE, SE, RO, SI, NL (Delegated acts are per se incompatible with Union or MS law, referred to in Article 20, § 2 (b). Suitable measures and safeguards referred to in Article 20, § 2 (a) and (c) for private sector processing could be set by self-regulatory instruments such as codes of conduct or certification after a preliminary Data Protection Impact Assessment), NO, DK, EE</p>

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<p><b>22. Responsibility of the controller</b>  <b>22.4</b> The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of <u>specifying any further criteria and requirements for appropriate measures</u> referred to in paragraph 1 other than those already referred to in paragraph 2, <u>the conditions for the verification and auditing mechanisms</u> referred to in paragraph 3 and as regards the criteria for <u>proportionality</u> under paragraph 3, and considering <u>specific measures for micro, small and medium-sized-enterprises</u>.</p>	<p>Article 22 describes the obligations of the controller as regards the demonstration of the compliance with the Regulation.</p> <p>Supplementing Article 22 might be necessary for example to:</p> <ul style="list-style-type: none"> <li>- provide further clarification to controllers on what could be “appropriate measures” in different circumstances (e.g. criteria/minimum requirements for privacy programs in large companies);</li> <li>- provide criteria for audit controls in large companies, taking into account technological developments.</li> </ul>	<p><b>NO:</b> CZ, ES, IE, LI, LT, NL, SI, DE, SE, PL, FR, BE, FI, DK, PT, UK, LU, EE</p> <p><b>YES:</b> PL, RO</p>	<p>a) PT</p> <p>b) BE (Specifying any further criteria and requirements for appropriate measures referred to in § 1 other than those already referred to in § 2 have to be in the text of the regulation itself) + DE + IE + LI + DK (detailed rules in substantive provisions), CZ (remedial measures imposed by DPA seem better), ES, , NL (Article 22 should be based on the prior assessment of risks or special circumstances such as cloud computing associated with the specific processing operations. When the risks are properly assessed, appropriate responsibilities of controllers can be formulated. Instruments of a self-regulatory nature will ensure a higher level of acceptance by controllers. However, if generally accepted standards for data processing audits could be formulated, a delegated act can be acceptable in order to refer to these standards), FI (replacement with codes of conduct - laying down provision further specifying the condition for mechanisms to verify the effectiveness of the Regulations seem to be over-regulation)</p> <p>c) BE (Concerning the conditions for the verification and auditing mechanisms referred to in § 3 and as regards the criteria for proportionality under § 3, we are waiting the new text that COM promised in DAPIX), LT, SI (But probably needed to regulate conditions for the verification and auditing mechanisms in this draft legal act in a detailed manner and then maybe a</p>

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			reassessment of the position on relevant delegated act would be possible), SE, UK (The scope of this power is very wide and could add significant, further and unspecified burdens on data controllers. The power to specify the verification and auditing methods (and the proportionality-test for bringing in external auditors) in § 3 represents a disproportionate micro-management of organisations' governance. The delegated act could not be used to remove obligations contained in the basic act, so it appears the idea behind the specific measure for SMEs is to supplement what is in the basic act, but in a different way to what applies to other data controllers. This, therefore, adds to the level of burdens on SMEs in a way which is currently unspecified and therefore represents a potential cost, adding to the lack of legal certainty), LU, EE
<p><b>23. Data protection by design and by default</b></p> <p><b>23.3</b> The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of <u>specifying any further criteria and requirements for appropriate measures and mechanisms referred to in paragraph 1 and 2, in particular for data protection by design requirements</u></p>	<p>The obligations of the data controllers as regards data protection by design and default are set out in Article 23(1) and (2).</p> <p>Supplementing Article 23 might be necessary to specify the requirements for appropriate data protection by design and data protection by default measures and mechanisms for specific</p>	<p><b>NO:</b> CZ, ES, IE, LI, LT, SI, DE, SE, PL, FR, RO, BE, NO, FI, DK, UK, LU, EE</p> <p><b>YES:</b> PT</p>	<p>a) EE</p> <p>b) DE + LT, LI + DK (More detailed rules in the substantive provisions. Supplementary specific criteria and requirements could be established by a bottom-up approach (based on self-regulation mechanisms as well as well-established procedures for technical standardization and harmonization); particular cases should be subject to sector-specific regulation, if necessary)</p> <p>c) BE, CZ, IE, SE, PL, RO, ES (We support an accountability based system, focusing results and objectives, and giving a necessary amount of flexibility on means), NL (Article 23 should be based on the prior</p>

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<p><u>applicable across sectors, products and services.</u></p>	<p>sectors and/or specific processing operations, in particular in view of technological developments, for example specify minimum requirements for compliance for electrical appliances (cf. Commission recommendation 2012/148/EU on preparations for the roll-out of smart metering systems) or for Radio-frequency identification (RFID) (cf. Commission recommendation C(2009) 3200 final).</p>		<p>assessment of risks associated with the specific processing operations. When the risks are properly assessed, appropriate types of data protection by design or default can be implemented. Instruments of a self-regulatory nature will ensure a higher level of acceptance by controllers. Additional regulation by Union or Member State legislatures may have a serious negative effect on technical innovation), SI (An extremely contentious proposition of this delegated acts - on data protection by design - it is clear that the legal framework cannot remain technologically neutral, as it probably already isn't; additionally - this provision on more detailed rules might prescribe too much or even proscribe technological and business progress), NO, FI (The delegation of power would give to COM the power to define the core provision by regulating the controller's obligations. If the delegations of powers remains, more accurate provisions. Furthermore, it is unclear what would be the nature of the criteria and measures given the delegation of powers to give implementing acts laying down technical standards), UK (The scope of this power is not clearly defined and could deal with an essential element of the Regulation (therefore outside scope of 290 (TFEU)). Requirements for data protection by design and default could add significant burdens on controllers and the scope of the power is very wide. Depending on the level of detail envisaged, the acts could also represent a disproportionately prescriptive approach to data protection</p>

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			which could inhibit growth and innovation. It is unclear how the power to adopt delegated acts “for any further criteria and requirements for appropriate measures and mechanisms” is to be distinguished from technical standards for the requirements laid down in § 1 and 2 (see Article 23(4) which confers a power to adopt implementing acts), LU (risk of defining standards which stifles innovation. The two principles should be market-based)
<p><b>26. Processor</b>  <b>26.5</b> The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of <u>further specifying the criteria and requirements</u> for the <u>responsibilities, duties and tasks</u> in relation to a processor in line with paragraph 1, and <u>conditions which allow facilitating the processing of personal data within a group of undertakings</u>, in particular for the purposes of control and reporting.</p>	<p>The specific obligations and criteria regarding the choice of a processor by a controller, the contract or other legal act governing the relationship between the controller and the processor, are provided for in Article 26.</p> <p>Supplementing Article 26 might be necessary, for example, to further clarify:</p> <ul style="list-style-type: none"> <li>- processor’s duties when outsourcing IT services (service, infrastructure or software),</li> <li>- the conditions under which data protection compliance can be ensured when facilitating the processing activities within a</li> </ul>	<p><b>NO:</b> CZ, ES, IE, LI, LT, NL, SI, DE, SE, PL, FR, RO, BE, NO, FI, DK, UK, LU, EE</p> <p><b>YES:</b> PT</p>	<p>a) PL, EE (keep only delegation for conditions of reporting)</p> <p>b) DE + DK + LT + LI + LU (More detailed rules in the substantive provisions), UK (This provision is very wide and could be used to fundamentally change one of the essential aspects of the instrument: the distinction between a data controller and a data processor. Under the ECJ case law the power to delegate must be clearly defined and the exercise thereof is subject to strict review in light of objective criteria. The use of “in particular for the purposes of control and reporting” is insufficiently precise)</p> <p>ES (support an accountability based system, focusing results and objectives, and giving a necessary amount of flexibility on means), CZ, IE (Replace with codes of conduct, NL (Further specification of the duties and responsibilities of processors should be based on assessment of specific risks associated with the processing. Best left to self-regulatory instruments such as contracts or for public sector operations Member State law to lay</p>

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	group of undertakings and how control would be secured in relation to such facilitations, taking into account technological developments.		down these additional specifications. However, NL supports the idea of further clarifying the position of data controllers and processors within groups of undertakings. This should be done by introducing a separate provision in the Regulation), SI (But it is probably needed to regulate conditions for the data processor in this draft legal act in a detailed manner and then maybe a reassessment of the position on relevant delegated act would be possible.) c) BE, RO, NO (Delete the provision or replace with other form of norms. Codes of conduct can be encouraged where appropriate, otherwise the obligations can be specified through the practice of supervisory authorities and courts), FI (Delegation of powers touches upon the responsibilities and duties of the processors), LU (leave to accountability)
<p><b>28. Documentation</b></p> <p><b>28.5</b> The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of <u>further specifying the criteria and requirements for the documentation</u> referred to in paragraph 1, to take account of in particular the <u>responsibilities of the controller and the processor</u> and, if any, the</p>	<p>The obligations regarding documentation are listed in Article 28.</p> <p>Supplementing Article 28 might be necessary for example to further tailor and clarify the regular requirements for controllers/processors/controller's representatives as regards documentation, taking into account technological</p>	<p><b>NO:</b> CZ, IE, LI, LT, NL, DE, PL, FR, BE, NO, FI, DK, UK, LU, EE</p> <p><b>YES:</b> SI, SE, RO, PT, ES (Assuming our accountability based</p>	<p>b) CZ (as far as necessary in view of § 2), DE + LI + DK (More detailed rules in the substantive provisions), FI (If considered necessary: codes of conduct)</p> <p>c) BE, CZ, EE, IE, LU, PL, LT, NL (added value of Article 28 in its proposed form should be examined in greater detail before any definitive assessment of Article 28(5) (6) can be given. An approach based on an assessment of risks associated with specific processing operations and specific circumstances such as cloud computing should offer more flexibility for data controllers and processors in order to minimize administrative burdens), NO, FI, UK (This requirement would add further burdens on</p>

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controller's representative.	developments.	approach for this provision),	controllers. Further the use of “in particular for the responsibilities of the controller and the controller’s representative” is insufficiently precise for a delegated act)
<p><b>30. Security of processing</b></p> <p><b>30.3</b> The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the <u>criteria and conditions for the technical and organisational measures</u> referred to in paragraphs 1 and 2, including the determinations of <u>what constitutes the state of the art, for specific sectors and in specific data processing situations</u>, in particular taking account of developments in technology and solutions for privacy by design and data protection by default, unless paragraph 4 applies.</p>	<p>The obligations regarding security of processing, including the fact of having a risk based approach, are listed in Article 30.</p> <p>Supplementing Article 30 might be necessary for example to provide conditions for encryption requirements when transmitting sensitive data in the health sector, taking into account technological developments.</p>	<p><b>NO:</b> CZ, ES, IE, LI, LT, NL, SI, DE, SE, PL, FR, RO, BE, NO, FI, DK, UK, LU, EE</p> <p><b>YES:</b> PT</p>	<p>a) PL</p> <p>b) IE (Replace with certification), CZ (if considered necessary) + DE + LI (More detailed rules in the substantive provisions. Particular cases should be subject to sector-specific regulation, if necessary)</p> <p>c) BE, EE, ES (We support an accountability based system, focusing results and objectives, and giving a necessary amount of flexibility on means), CZ, LT, NL (It is primarily a duty of the controller to assess and determine the appropriate level of security. It will be very difficult, if not impossible, to cover the area of data security with a "one size fits all" approach. However, delegated acts can be useful in order to refer to generally accepted encryption standards or other technical standards to be used in specific processing operations), SI, SE, RO, NO (A certain further supplementation of the provision on security of processing might prove feasible. Such additional rules may however be more suitably given through other means, e.g. soft law instruments, codes of conduct etc. If the provision is retained, the power given should be further assessed in the light of Article 30, § 4), FI (The provision is new and very general in nature. The delegation of power would give to COM the power to define the core provisions in paras 1 and 2. In the light of the example given, the necessity of the</p>

Article	Considerations on the proposed DA: objectives, content, scope, likely duration of delegation <sup>3</sup>	Political assessment: is the delegation necessary? (YES/NO)	If not, which alternative solution would you accept? a) Retain the provision, but with stricter conditions on COI b) Replace with: <sup>4</sup> c) Delete the provision
			delegation seems more logical but the motivation is not reflected in the text of Art 30.3), DK, UK (Such measures are unlikely to be technologically neutral. The scope of this power is not clear (contrary to article 290) and could be used to place a considerable burden on controllers. The delegation of powers to the Commission must be strictly circumscribed and the use of the words such as “in particular” and other imprecisely defined formulae for delegated powers should be avoided. Therefore, taking into account developments in technology and solutions for privacy by design and data protection by default is insufficiently precise)
<p><b>31. Notification of a personal data breach to the supervisory authority</b></p> <p><b>31.5</b> The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of <u>further specifying the criteria and requirements for establishing the data breach</u> referred to in paragraphs 1 and 2 and for the <u>particular circumstances</u> in which a controller and a processor is required to notify the personal data breach.</p>	<p>The requirements regarding the notification of a breach to the supervisory authority are listed in Article 31.</p> <p>To further specify criteria and conditions for establishing the data breach and with a view to ensuring consistency with the e-privacy Directive 2002/58/EC and its subsequent implementation, this empowerment follows the approach of Article 4(5) of the e-privacy Directive, in order to, in particular:</p> <ul style="list-style-type: none"> <li>- provide criteria to assess the severity of a breach;</li> </ul>	<p><b><u>NO</u></b>: CZ, ES, IE, LI, LT, NL, SI, DE, PL, FR, BE, FI, DK, PT, UK, LU, EE</p> <p><b>YES</b>: RO</p> <p><b><u>Questionable</u></b>: SE, NO</p>	<p>a) PL, PT</p> <p>b) BE (the criteria and requirements for establishing the data breach referred to in §§ 1 and 2 and for the particular circumstances in which a controller and a processor is required to notify the personal data breach are essential elements: they to be in the text of the regulation itself. Only the data breach causing a significant prejudice to the data subject have to be notified) + DE + IE + LT + LI + DK (More detailed rules in the substantive provisions), NL (A more convincing limitation of the notion of data breaches to be reported to the DPA is more important than further specifying the criteria and requirements for establishing data breaches. This limitation should lead to a better drafting of Article 31, § 1 and 2. A risk based approach, preferably based on prior privacy impact assessments made by the controller is a viable option)</p>

Article	Considerations on the proposed DA: objectives, content, scope, likely duration of delegation <sup>3</sup>	Political assessment: is the delegation necessary? (YES/NO)	If not, which alternative solution would you accept? a) Retain the provision, but with stricter conditions on COI b) Replace with: <sup>4</sup> c) Delete the provision
	- define/clarify in which situations the controller is to be held to be “aware” of the breach, taking into account technological developments.		c) EE, ES (We support an accountability based system, focusing results and objectives, and giving a necessary amount of flexibility on means), SI (More detailed provisions in the Article itself would be needed from the viewpoint of legal clarity and legality <i>per se</i> , but no delegated act, due to differences in practical situations, it would be hard to prescribe special provisions that would cover all or most situations.), NO, FI (as regards the specifying the criteria and requirements for establishing the data breach, is Art. 31 the right Art taking into consideration that “data breach” is regulated in Art 30? How can the “particular circumstances” for notification be provided in delegated act when according to Art 31(1) the supervisory authority must <i>always</i> be notified?), UK (This power deals with an essential element of the Regulation, namely when to report a data breach (therefore outside Article 290). This requirement would add further disproportionate burdens on controllers. § 3 of this article already sets out a long list of requirements so further additional specification is not needed)

Article	Considerations on the proposed DA: objectives, content, scope, likely duration of delegation <sup>3</sup>	Political assessment: is the delegation necessary? (YES/NO)	If not, which alternative solution would you accept? a) Retain the provision, but with stricter conditions on COI b) Replace with: <sup>4</sup> c) Delete the provision
<p><b>32. Communication of a personal data breach to the data subject</b>  <b>32.5</b> The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of <u>further specifying the criteria and requirements</u> as to the <u>circumstances</u> in which a personal data breach is <u>likely to adversely affect</u> the personal data referred to in paragraph 1.</p>	<p>The requirements regarding the notification of a breach to the data subject are listed in Article 32 (risk based approach).</p> <p>To further specify the criteria and requirements as to the circumstances in which a personal data breach is likely to adversely affect an individual's personal data and with a view to ensuring consistency with the e-privacy Directive 2002/58/EC, this empowerment follows the approach of Article 4(5) of the e-privacy Directive, in order to, in particular:</p> <ul style="list-style-type: none"> <li>- outline relevant categories of breaches in relation to their adverse effects, e.g. the kind of breach, and whether or not the data was actively used by an intruder;</li> <li>- establish a 'de minimis list' of breaches which would not be considered likely to adversely affect the protection of the personal data or the privacy of the</li> </ul>	<p><b>NO:</b> CZ, ES, IE, LI, LT, NL, SI, DE, PL, FR, BE, NO, FI, DK, UK, EE</p> <p><b>YES:</b> RO, FI, PT, LU</p> <p><b>Questionable:</b> SE</p>	<p>a) PL, FI (should the end of the provision read “ adversely affect the data <i>subject</i>”?; - “adversely affect” is not defined in any way in para 1 and therefore the delegation would mean that COM would define the obligations of the controller. Art 32(1) should be more accurate, example could be taken from Rec. 67, only than the some delegation of powers could be considered &gt; a) more accurate rules)</p> <p>b) BE (The criteria and requirements as to the circumstances in which a personal data breach is likely to adversely affect the personal data referred to in the paragraph are essential elements: they need to be in the text of the regulation itself. Only the data breach causing a significant prejudice to the data subject have to be notified), CZ (but flexible), DE + ES + LT + LI + DK (More detailed rules in the substantive provisions)</p> <p>c) EE, ES (This is a substantive issue, to be clarified by the supervisory authorities and the courts. At least we could accept a code of conduct), IE, NL (A more convincing limitation of the notion of data breaches to be reported to the data subjects is more important than further specifying the criteria and requirements for establishing data breaches. This limitation should lead to a better drafting of Article 32, § 1 and 2, instead of establishing a separate "de minimis" list. A risk based approach, preferably based on prior privacy impact assessments made by the controller is a viable option), SI, NO (The delegated powers could be limited to specify when the circumstances in which a</p>

Article	Considerations on the proposed DA: objectives, content, scope, likely duration of delegation <sup>3</sup>	Political assessment: is the delegation necessary? (YES/NO)	If not, which alternative solution would you accept? a) Retain the provision, but with stricter conditions on COI b) Replace with: <sup>4</sup> c) Delete the provision
	data subject, taking into account technological developments.		personal data breach is <u>not</u> likely to adversely affect, such as the example regarding a ‘de minimis list’ given by the Commission in the considerations on the proposed delegated act), UK (As with the power in article 31, this deals with an essential element of the Regulation, i.e. the trigger for reporting a data breach to affected data subjects. This requirement would add further burdens on controllers. The scope is extremely broad and could prescribe a whole range of circumstances in which a personal data breach would adversely affect the protection of personal data or the privacy of the data subject. It is also a blunt instrument because a piece of data might be innocuous by itself, but coupled with other data could represent a risk. The problem cannot be solved by adding further criteria as to when a personal data breach is likely to adversely affect an individual’s personal data. The drafting is not clear but the reference to requirements may refer to additional obligations imposed on controllers in circumstances where the data breach adversely affects the protection of personal data of data subjects. If so, this would encompass any range of matters from requiring a controller to set up a 24 hour hotline to a compensation scheme. Again, this is insufficiently precise to be the subject of a delegated act)

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<p><b>33. Data protection impact assessment</b></p> <p><b>33.6</b> The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of <u>further specifying the criteria and conditions for the processing operations likely to present specific risks</u> referred to in paragraphs 1 and 2 and the <u>requirements for the assessment</u> referred to in paragraph 3, including <u>conditions for scalability, verification and auditability</u>. In doing so, the Commission shall consider specific measures for micro, small and medium-sized enterprises.</p>	<p>The situations where data protection impact assessments have to be carried out are described in Article 33 (risk based approach).</p> <p>As risks to personal data evolve with time, supplementing Article 33 might be necessary in particular to further clarify the criteria for processing operations “likely to present specific risks” and to further clarify, for example, the typical steps for conducting a DPIA (compare with Point I.4 Commission recommendation 2012/148/EU on preparations for the roll-out of smart metering systems), taking into account technological developments.</p>	<p><b>NO:</b> CZ, LT, DE, FR, LI, RO, BE, NO, FI, DK, UK, EE</p> <p><b>YES:</b> ES, LU SE (Assuming our accountability based approach for this provision), IE, NL, SI, PL, PT</p>	<p>b) BE (Criteria and conditions for the processing operations likely to present specific risks referred to in §§ 1 and 2 and the requirements for the assessment referred to in paragraph 3, including conditions for scalability, verification and auditability are essential elements: they need to be in the text of the regulation itself), DE + LT + RO + LI + DK (More detailed rules in the substantive provisions. With the Privacy Impact Assessment Framework for RFID -Applications exists a generic and technological neutral approach resulting from extensive stakeholder consultations which could possibly be used for guidance), FI (“specific risk” is not defined in any way in § 1 and therefore the delegation would mean that COM would define the obligations of the controller. “conditions for scalability, verification and auditability”&gt; codes of conduct), EE (general exemptions in the regulation for SMEs and micro entrepreneurs)</p> <p>c) LU, NL (The fundamental question which should be answered first is the position of a DPIA in the Regulation as a whole. The relation between DPIA, risk based assessments, and the self-regulatory instruments should be discussed further. Provided Article 33 of the Regulation offers a better applicable criterion than "specific risk" (such as "high degree of risk") a delegated act could specify minimum conditions on the content of a DPIA or categories of DPIA's), NO, UK (The power deals with an essential element of the Regulation both</p>

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			in terms of the “trigger” for conducting a data protection impact assessment and what is required as part of that assessment. Specifying the conditions for scalability, verification and auditability appears to be disproportionate. It would not appear that consideration of SMEs can exempt them from the general requirement to conduct a data protection impact assessment. Risk will be a matter of context and ultimately the controller will be required to make a judgment call on this. Codes of conduct or good practice guidance would be a better alternative to a delegated act. The use of the words “in particular” at the start of § 2 suggests that what is set out in paragraph 2 is a list of examples. It seems strange therefore to have a delegated power to list further criteria and conditions. This makes the exercise of the power insufficiently limited and specific)
<p><b>34. Prior authorisation and prior consultation</b></p> <p><b>34.8</b> The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of <u>further specifying the criteria and requirements</u> for determining the <u>high degree of specific risk</u> referred to in point (a) of paragraph 2.</p>	<p>The principles and conditions for prior authorisation and consultation are listed in Article 34.</p> <p>Supplementing Article 34 might be necessary for example to:</p> <ul style="list-style-type: none"> <li>- further clarify what a risky processing activity is, also in view of technological developments, by identifying specific criteria, i.e. referring to the category of processed data, the degree of risk</li> </ul>	<p><b>NO:</b> CZ, LI, LT, NL, SI, DE, PL, FR, RO, BE, NO, FI, DK, PT, UK, EE</p> <p><b>YES:</b> IE, ES, LU, SE (Assuming our accountability based approach for this provision)</p>	<p>a) PL, PT</p> <p>b) BE (Criteria and requirements for determining the high degree of specific risk referred to in point (a) of § 2. are essential elements: they to be in the text of the regulation itself), LT + LI (Replace with more detailed rules in the substantive provisions), FI (Would give too broad powers to COM; could define what is meant with “high degree of specific risk”&gt; define the obligations of the controller and the processor), NL (The fundamental question is whether ex ante instruments offering DPA intervention are instruments that fit within the framework of revised EU data protection law. The use of ex ante instruments of a</p>

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	the processing itself presents in terms of data security, as well as the purpose of processing.		self-regulatory nature such as prior DPIA, certification schemes or codes of conduct can offer much more flexibility on terms of assessing specific risks and determining safeguards for data subjects), DK (More detailed rules in the substantive provisions) c) EE, SI, RO, NO, UK (Risk will be a matter of context and ultimately the controller will be required to make a judgment call on this)
<p><b>35. Designation of the data protection officer</b></p> <p><b>35.11</b> The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of <u>further specifying the criteria and requirements for the core activities of the controller or the processor</u> referred to in point (c) of paragraph 1 and the <u>criteria for the professional qualities of the data protection officer</u> referred to in paragraph 5.</p>	<p>The requirements and conditions governing DPOs are set out in Article 35.</p> <p>Supplementing Article 35 might be necessary for example to:</p> <p>- specify further what constitutes ‘core activities’ of a controller or processor (risk based approach) requiring the designation of a DPO, in particular in the context of technological developments.</p>	<p><b>NO:</b> CZ, ES, IE, LI, LT, NL, SI, DE, SE, PL, FR, RO, BE, NO, FI, DK, UK, LU, EE</p> <p><b>YES:</b> PT</p>	<p>a) PL, EE (professional qualities of the data protection officer should be left out)</p> <p>b) BE (Criteria and requirements for the core activities of the controller or the processor referred to in point (c) of § 1 are essential elements and need to be in the text of the Regulation itself) + CZ + DE + LI (More detailed rules in the substantive provisions), RO, FI (COM could define what is meant with the “core activities” of the controller &gt; b) codes of conduct)</p> <p>c) BE (Criteria for the professional qualities of the data protection officer referred to in § 5 are not necessary), CZ, ES (We support an accountability based system, focusing results and objectives, and giving a necessary amount of flexibility on means), IE, LT, LU, NL (It should be left to the data processor to determine whether there is a need to designate a DPO, after an initial DPIA which must assess the risks associated with the processing operations. Since there are no generally accepted standards for the professional qualities of a DPO a delegated act seems premature), SI (We oppose in principle the introduction of</p>

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			<p>obligatory data protection officers, since no special added value can be expected by their introduction, due to current experience; costs are also a problem.), NO (Entitlement to further specify the criteria and requirements for the core activities of the controller or the processor may be deleted. Empowerment to give delegated acts concerning the criteria for the professional qualities of the data protection officer may also be deleted. Alternatively guidance on these matters could more suitably be given through other means, e.g. soft law instruments, codes of conduct etc.), FI (as regards the “professional qualities), UK (This deals with an essential element of the Regulation (contrary to article 290). It would also add further detail on what is already a prescriptive article)</p> <p>DK (b) and c) The definition of “core activities” should be detailed in the substantive provisions. The Commission should not be authorized to supplement “the criteria for the professional qualities of the data protection officer”)</p>

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<p><b>37. Tasks of the Data protection officer</b>  <b>37.2</b> The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of <u>further specifying the criteria and requirements for tasks, certification, status, powers and resources</u> of the data protection officer referred to in paragraph 1.</p>	<p>The tasks of the DPO are listed in Article 37.</p> <p>Supplementing Article 37 might be necessary for example to specify further the professional qualities of the data protection officers to avoid fragmentation in the Internal Market.</p>	<p><b>NO:</b> CZ, IE, LI, LT, NL, SI, DE, SE, PL, FR, RO, BE, NO, FI, DK, UK, LU, EE</p> <p><b>YES:</b> ES, PT</p>	<p>a) PL  b) CZ + DE + LI (More detailed rules in the substantive provisions)  c) BE, EE, CZ, IE, LU, SE, RO, LT, NL (The most important issue at stake is the concept of DPO within the framework of the Regulation as a whole. Has the DPO the more or less independent role the Regulation envisages, or should he have a role which aligns him more with the data controller while accepting a more accentuated role for the controller. In addition: Article 37, § 1, is quite elaborate. Adding more rules can easily lead to overregulation), NO (The provision should be deleted, alternatively be replaced with a provision which allows for other means of guidance), FI (The requirements for tasks, status. power etc must be regulated with the Regulation. Question as regards this delegated power and the on in Art 35(11). The <i>professional qualities</i> of DPO are mentioned in the ART 35(11) as well as in example describing the possible supplementation of this Art 37), DK, UK (This deals with an essential element of the Regulation (contrary to article 290). For example, it seeks to add a data protection officer and could significantly change or add to the role. It would also add further detail on what is already a prescriptive article)</p>

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<p><b>39. Certification</b>  <b>39.2</b> The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of <u>further specifying the criteria and requirements for the data protection certification mechanisms</u> referred to in paragraph 1, including <u>conditions for granting and withdrawal</u>, and <u>requirements for recognition within the Union and in third countries</u>.</p>	<p>Article 39 introduces the possibility to establish certification mechanisms and data protection seals and marks.</p> <p>Supplementing Article 39 might be necessary for example to define specific requirements regarding the monitoring and renewal of certification standards, taking into account technological developments.</p>	<p><b><u>NO</u></b>: NL, DE, FR, LI, RO, UK</p> <p><b><u>YES</u></b>: EE, IE, LU, ES (Assuming our accountability based approach for this provision), LT, SI, SE, PL, BE, NO, PT</p> <p><b><u>Flexible</u></b>: CZ</p> <p><b><u>Needs further discussion</u></b>: DK, FI (This Article does not contain any legally binding provision &gt; we have not absolute opinion on this)</p>	<p>a) CZ (as the use of seals is voluntary and subject to private initiative, delegated powers are necessary to provide for quality certifications that may be relied upon by general public)</p> <p>b) CZ (replace by Member State law and mutual recognition (preferred)) + LI</p> <p>c) NL (Article 39, § 1, states that MS and COM shall <i>encourage</i> certification mechanisms, seals and marks. Encouragement should not be influenced by additional <i>regulation</i> by Union or Member State legislatures, since this may have a serious negative effect on technical innovation), RO, DE (More detailed rules in the substantive provisions), UK (Although we support the principle of Certification, we would be concerned that the Commission would prescribe provisions without due regard or consultation with industry)</p>

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<p><b>43. Transfers by way of binding corporate rules</b>  <b>43.3</b> The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of <u>further specifying the criteria and requirements for binding corporate rules</u> within the meaning of this Article, in particular as regards <u>the criteria for their approval</u>, the application of points (b), (d), (e) and (f) of paragraph 2 to <u>binding corporate rules adhered to by processors</u> and on <u>further necessary requirements</u> to ensure the protection of personal data of the data subjects concerned.</p>	<p>Requirements regarding binding corporate rules are listed in Article 43.</p> <p>Supplementing Article 43 might be necessary to ensure uniform interpretation of the criteria and requirements used to declare binding corporate rules valid, for example further specifying the criteria and the evaluation procedures of BCRs for processors (e.g. duration, minimum documentation requirements).</p>	<p><b>NO:</b> IE, LI, LT, DE, PL, FR, BE, FI, DK, UK, LU</p> <p><b>YES:</b> ES, NL, SI, SE, RO, NO, PT, EE</p> <p><b>Flexible:</b> CZ</p>	<p>a) CZ  b) CZ (soft method of coordination by EDPB (preferred)), DE + LI + DK (More detailed rules in the substantive provisions), FI (codes of conduct / good practices)  c) BE (The system working now (guidance by the DPA's is satisfying), IE, LU, PL, LT, NL (Article 43, § 2, is already very elaborate. We should not negatively affect international business by overregulation. Moreover, the Article 29 WP already offered guidance on BCR's on substance and procedures. The EDPB can offer guidance in the future), FI (As regards the "criteria and requirements for binding corporate rules" &gt; if the intention is to supplement the what should be specified in the binding corporate rules (as mentioned in the example), the delegation can not be accepted), UK (This may cut across the discretion of supervisory authorities in approving BCRs. It is not clear why the Commission needs this power as supervisory authorities are tasked with approving BCRs. The scope of the power is also unclear (i.e. "...and on further necessary requirements to ensure the protection of personal data of the data subjects concerned")), contrary to article 290)</p>

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<p><b>44. Derogations</b></p> <p><b>44.7</b> The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of <u>further specifying 'important grounds of public interest'</u> within the meaning of point (d) of paragraph 1 as well as the <u>criteria and requirements for appropriate safeguards</u> referred to in point (h) of paragraph 1.</p>	<p>The derogations for a data transfer to a third country are listed in Article 44.</p> <p>Supplementing Article 44 might be necessary for example to:</p> <ul style="list-style-type: none"> <li>- publish a list of examples of recognised public interests with references to the underlying EU legislation;</li> <li>- provide further clarity on whether and when the involvement of a national data protection authority could constitute an “appropriate safeguard” to allow the transfer.</li> </ul>	<p><b>NO:</b> CZ, ES, IE, LI, LT, NL, SI, DE, SE, PL, FR, RO, BE, NO, FI, DK, PT, UK, LU, EE</p>	<p>a) PT</p> <p>b) BE + ES (Important grounds of public interest' within the meaning of point (d) of § 1 as well as the criteria and requirements for appropriate safeguards referred to in point (h) of § 1 are essential elements and need to be in the Regulation itself) + DE + LI, DK (More detailed rules in the substantive provisions)</p> <p>c) CZ (with regard to § 1(d)), EE, IE, PL, LT, SI, RO, NL (Important grounds of public interest can in practice only be determined on a case by case basis. The alternative would be an improved text of the Regulation), NO, FI (The delegation means COM could define “important ground of public interest” &gt; too broad delegation and can not be accepted in the suggest formulation), UK (All derogations should be on the face of the instrument. This delegated act has the potential to cut across Union or Member State law because the public interest at Article 44(1)(d) must be recognised by law. In “further specifying” the public interest there is a risk of inconsistency between the delegated act and the relevant law. The content and scope of the delegated act is therefore insufficiently precise)</p>

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<p><b>79. Administrative sanctions</b>  <b>79.7</b> The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of <u>updating the amounts of the administrative fines</u> referred to in paragraphs 4, 5 and 6, taking into account the criteria referred to in paragraph 2.</p>	<p>The conditions and maximum amounts for fines are defined in Article 79.</p> <p>Supplementing Article 79 might be necessary to adjust the absolute amounts of the fines in line with inflation.</p>	<p><b>NO:</b> CZ, IE, LI, LT, NL, SI, DE, SE, RO, FI, DK, LU, EE</p> <p><b>YES:</b> ES, PL, FR, PT, BE, NO  (Provided that the updating is confined to minor adjustments (e.g. in line with inflation) and do not comprise material changes to the provision), UK</p>	<p>a) UK (This could potentially allow the Commission to widen the scope of sanctions to a very large extent and make the scheme far more complex. We suggest that the power be limited to uprating the maxima (which are still subject to negotiations) in line with inflation)</p> <p>b) BE (Amounts of the administrative fines referred to in §§ 4, 5 and 6 are essential elements: they to be in the text of the regulation), NL (It could be questioned whether amending maximum amounts in delegated acts of fines is in accordance with Article 290 TFEU. The amount could be considered as an essential part of Article 79), DE (The need to adjust the absolute amounts of the fines in line with inflation in the future should be met by amending the regulation, if necessary), LI</p> <p>c) CZ (no "updating" of sanctions acceptable), IE, RO, LT, SI, FI, DK, EE</p>

Article	Considerations on the proposed DA: objectives, content, scope, likely duration of delegation <sup>3</sup>	Political assessment: is the delegation necessary? (YES/NO)	If not, which alternative solution would you accept? a) Retain the provision, but with stricter conditions on COI b) Replace with: <sup>4</sup> c) Delete the provision
<p><b>81. Processing of personal data concerning health</b>  <b>81.3</b> The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying <u>other reasons of public interest in the area of public health</u> as referred to in point (b) of paragraph 1, as well as <u>criteria and requirements for the safeguards</u> for the processing of personal data for the purposes referred to in paragraph 1.</p>	<p>The specific conditions for processing personal data concerning health are listed in Article 81.</p> <p>This empowerment is <u>limited</u> to adding items to the list of examples given in point (b) of Article 81(1), and can only be used to specify the reasons of public interest in the area of public health, such as for the surveillance of wide-spread serious diseases.</p> <p>The Commission may also specify related safeguards, such as appropriate security measures and access rights, taking into account technological developments.</p>	<p><b>NO:</b> CZ, ES, IE, LI, LT, NL, SI, DE, SE, FR, RO, BE, NO, FI, DK, PT, UK, LU, EE</p> <p><b>YES:</b> PL</p>	<p>a) PT (is still considering this option. If considered more appropriate an alternative wording shall be defined)</p> <p>b) LT + LI (Replace with substantive provisions), CZ (as regards chapeau of § 1), ES, DK (more detailed rules in the substantive provisions), PT (is still considering this option. If it is considered more appropriate an alternative wording shall be defined)</p> <p>c) BE, EE, CZ (as regards § 1(b) - in fact this power may exclude some reasons by specifying them out)IE, RO, NL (The relation between delegated acts and Member State law as referred to in Article 81, § 1, is problematic. The adoption of delegated acts as lex posterior to existing Member State law will terminate Member State powers and affect legal certainty for data controllers and data subjects alike), SI, DE (As Art. 168 (7) TFEU reads, Union action shall respect the responsibilities of the MS for the definition of their health policy and for the organisation and delivery of health services and medical care. Specific safeguards may hinder or facilitate necessary data processing procedures. By specifying criteria and requirements for the safeguards, the Commission might get rather strong influence on the organisation of health services. Therefore, the provision should be deleted), NO, FI (If the delegation is left as it reads now, COM would de facto have the power to define safeguards for the processing of personal data), UK (There is a potential difficulty if the criteria and requirement for safeguards specified in the delegated act</p>

Article	Considerations on the proposed DA: objectives, content, scope, likely duration of delegation <sup>3</sup>	Political assessment: is the delegation necessary? (YES/NO)	If not, which alternative solution would you accept? a) Retain the provision, but with stricter conditions on COI b) Replace with: <sup>4</sup> c) Delete the provision
			cut across member state law. In any case there is no need for a delegated act for this purpose as sub- § 1(b) is non-exhaustive)
<p><b>82. Processing in the employment context</b>  <b>82.3</b> The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of <u>further specifying the criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1.</u></p>	<p>Supplementing Article 82 might be necessary for example to specify requirements for safeguards in the context of IT systems for human resource management, taking into account technological developments.</p>	<p><b><u>NO</u></b>: CZ, ES, IE, LI, LT, NL, SI, DE, SE, FR, BE, NO, FI, DK, UK, LU, EE</p> <p><b><u>YES</u></b>: PL, RO, PT</p>	<p>b) CZ + ES + LT + LI (replace with substantive rules)  c) BE, IE, NL (The relation between delegated acts and Member State law as referred to in Article 82, § 1, is problematic. The adoption of delegated acts as lex posterior to existing Member State law will terminate Member State powers and affect legal certainty for data controllers and data subjects alike)  c) DE, EE, SI, SE (Special legal act on data protection in employment context would be needed.), NO, FI (If the delegation is left as it reads now, COM would de facto have the power to define safeguards for the processing of personal data), UK (There is a potential difficulty if the criteria and requirement for safeguards specified in the delegated act cut across member state law)</p>

Article	Considerations on the proposed DA: objectives, content, scope, likely duration of delegation <sup>3</sup>	Political assessment: is the delegation necessary? (YES/NO)	If not, which alternative solution would you accept? a) Retain the provision, but with stricter conditions on COI b) Replace with: <sup>4</sup> c) Delete the provision
<p><b>83. Processing for historical, statistical and scientific research purposes</b></p> <p><b>83.3</b> The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of <u>further specifying the criteria and requirements for the processing of personal data for the purposes referred to in paragraph 1 and 2 as well as any necessary limitations on the rights of information to and access by the data subject and detailing the conditions and safeguards for the rights of the data subject under these circumstances.</u></p>	<p>The specific conditions for processing personal data for historical, statistical and scientific purposes are listed in Article 83.</p> <p>Supplementing Article 83 might be necessary for example to clarify the application of pseudonymisation (key-coding) and anonymisation of personal data in specific medical research cases, taking into account technological developments.</p>	<p><b>NO:</b> CZ, ES, IE, LI, LT, NL, SI, DE, SE, PL, FR, BE, FI, PT, UK, LU, EE</p> <p><b>YES:</b> RO</p> <p><b>YES/NO:</b> NO</p>	<p>a) PL, NL (Delegated acts on technical issues such as pseudonymisation or anonymisation are acceptable), CZ, b) DE + ES + LT + CZ+ NL + LI + DK (More detailed rules in the substantive provisions), c) BE, EE, IE, SE, SI (Impossible to regulate in general context - might stifle the freedom of expression and freedom of research in the wider sense), NO (We believe that the Commission should be empowered to adopt delegated acts on necessary limitations on the rights of information and access by the data subjects, but not on specifying the criteria and requirements under Article 83, § 1 and 2), FI (If the delegation is left as it reads now, COM would de facto have the power to define safeguards for the processing of personal data. The considerations put forward by the Commission are not reflected in the text), PT (The opinion of the EDPS is that limitations on the rights of individuals should be included in the basic act text itself (cf. the letter from the Chair of the Working Party on Statistics to the President of DAPIX: 10428/12), UK (This deals with an essential element of the Regulation and The scope is unclear. It is therefore outside the scope of Article 290. There is a potential for the conditions under which research can be carried out to be fundamentally altered)</p>

## Implementing Acts in the proposed General Data Protection Regulation

Article	Consideration for proposed IA	Political assessment: is this empowerment necessary? (YES/NO)	If not, which alternative solution would you propose? a) Retain the provision, but with stricter conditions on COM b) Delete the provision c) Other (please specify)
<p><b>8. Processing of personal data of a child</b></p> <p><b>8.4</b> The Commission may lay down <u>standard forms for specific methods to obtain verifiable consent</u> referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).</p>	<p><u>Example(s):</u> - provide for a EU model form which can be used to obtain parental consent online</p>	<p><u>NO</u>: ES, IE, NL, SI, DE, PL, FR, RO, BE, DK, PT, UK, LU, EE</p> <p><u>YES</u>: LI, NO</p> <p><u>Questionable</u>: SE</p>	<p>a) PT</p> <p>b) BE, EE, ES, IE, LU, DE, PL, RO, NL (The most important question is whether methods to verify parental consent can be developed), SI</p> <p>c) DK, UK (Not entirely clear how uniformity will achieve verifiable consent. Indeed uniformity may have the opposite effect by making it easier for the system to be by-passed), LU (specify in regulation)</p>

Article	Consideration for proposed IA	Political assessment: is this empowerment necessary? (YES/NO)	If not, which alternative solution would you propose? a) Retain the provision, but with stricter conditions on COM b) Delete the provision c) Other (please specify)
<p><b>12. Procedures and mechanisms for exercising the rights of the data subject</b></p> <p><b>12.6</b> The Commission may lay down <u>standard forms</u> and specifying <u>standard procedures for the communication</u> referred to in paragraph 2, including the <u>electronic format</u>.</p> <p>In doing so, the Commission shall take the <u>appropriate measures for micro, small and medium-sized enterprises</u>. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).</p>	<p><u>Example(s):</u></p> <ul style="list-style-type: none"> <li>- specify a standard EU format which can be used for access requests</li> <li>- specify a commonly used electronic format (like plain text, html, pdf, etc.) in order to reduce cost and provide for interoperability, in view of technological developments.</li> </ul>	<p><b><u>NO</u></b>: IE, LI, SI, DE, FR, BE, DK, UK, LU, EE</p> <p><b><u>YES</u></b>: ES, NL, SE, PL, RO, NO, PT</p>	<ul style="list-style-type: none"> <li>a) LI</li> <li>b) BE, IE, DE, SE, SI, LU</li> <li>c) DK, UK (Specification of the format of a response would erode flexibility and potentially place expensive obligations on controllers. Uniform conditions are therefore not needed), EE (general exemptions are needed in the regulation for SMEs and micro entrepreneurs/public sector)</li> </ul>

Article	Consideration for proposed IA	Political assessment: is this empowerment necessary? (YES/NO)	If not, which alternative solution would you propose? a) Retain the provision, but with stricter conditions on COM b) Delete the provision c) Other (please specify)
<p><b>14. Information to the data subject</b></p> <p><b>14.8</b> The Commission may lay down <u>standard forms</u> for providing the <u>information</u> referred to in paragraphs 1 to 3, taking into account the <u>specific characteristics and needs of various sectors and data processing situations</u> where necessary. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).</p>	<p><u>Example(s)</u>:</p> <ul style="list-style-type: none"> <li>- EU standard model forms for providing the information to the data subjects online (compare with the ‘model instructions on withdrawal’ set out in Annex I(A) of Directive 2011/83/EU of 25 October 2011 on consumer rights).</li> <li>- EU standard forms in the context of airline ticket booking</li> </ul>	<p><b><u>NO</u></b>: SI, DE, SE, FR, RO, BE, DK, UK, EE</p> <p><b><u>YES</u></b>: ES, IE, LI, NL, PL, NO, PT</p>	<ul style="list-style-type: none"> <li>a) LI</li> <li>b) BE, EE, DE, SE, RO, SI</li> <li>c) DK, UK (There is a conflict between uniformity and taking into account specific needs of the sector or situations. In any case, specifying either would result in additional administrative burdens)</li> </ul>

Article	Consideration for proposed IA	Political assessment: is this empowerment necessary? (YES/NO)	If not, which alternative solution would you propose? a) Retain the provision, but with stricter conditions on COM b) Delete the provision c) Other (please specify)
<p><b>15. Right of access for the data subject</b></p> <p><b>15.4</b> The Commission may specify <u>standard forms and procedures for requesting and granting access</u> to the information referred to in paragraph 1, including for <u>verification of the identity of the data subject and communicating the personal data</u> to the data subject, taking into account the <u>specific features and necessities of various sectors and data processing situations</u>. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).</p>	<p><u>Example(s):</u></p> <p>- specify how controllers may use official identification documents for verification of the data subject's identity, in the light of technological developments.</p>	<p><b><u>NO</u></b>: IE, LI, NL, SI, DE, SE, PL, FR, RO, BE, DK, UK, EE</p> <p><b><u>YES</u></b>: ES, NO, PT</p>	<p>a) LI</p> <p>b) BE, EE, IE, DE, DK, SE, PL, RO, NL (It is doubtful whether data subjects will be helped much by requiring them to fill in forms), SI</p> <p>c) UK (As for Article 14, there is a conflict between uniformity and taking into account specific needs of the sector or situations. In any case, specifying either would result in additional administrative burdens)</p>

Article	Consideration for proposed IA	Political assessment: is this empowerment necessary? (YES/NO)	If not, which alternative solution would you propose? a) Retain the provision, but with stricter conditions on COM b) Delete the provision c) Other (please specify)
<p><b>18. Right to data portability</b>  <b>18.3</b> The Commission may specify the <u>electronic format</u> referred to in paragraph 1 and the <u>technical standards, modalities and procedures for the transmission</u> of personal data pursuant to paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).</p>	<p><u>Example(s):</u>  - specify an electronic format which can be used as default standard.</p>	<p><b><u>NO</u></b>: IE, SI, DE, SE, FR, RO, BE, NO, DK, UK, EE  <b><u>YES</u></b>: ES, LI, NL, PL, PT</p>	<p>b) BE, DK, EE, IE, SE, RO, SI, NL (Within the concept of the current text of Article 18 an electronic format is a necessity. However, it is highly questionable whether successive data controllers will be able to process transmitted data if the data is confined to an electronic format which does not necessarily fit into every system. Data controllers should not be burdened with possible costs of re-engineering systems)  c) DE (Article 18 as a whole needs further discussion. If Article 18 is retained with more detailed rules in its substantive provisions, Article 18.3 should be deleted), SI, NO (Delegated powers to specify the electronic format and the technical standards for transmission of personal data appear feasible, however we are not sure the example regarding defining a default standards lies within the limits of the provision itself), UK (This would not be technologically neutral and potentially costly for controllers)</p>

Article	Consideration for proposed IA	Political assessment: is this empowerment necessary? (YES/NO)	If not, which alternative solution would you propose? a) Retain the provision, but with stricter conditions on COM b) Delete the provision c) Other (please specify)
<p><b>23. Data protection by design and by default</b></p> <p><b>23.4</b> The Commission may lay down <u>technical standards</u> for the requirements laid down in paragraph 1 and 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).</p>	<p><u>Example(s):</u></p> <p>- define a technical standard, taking into account the work of technical standardization bodies, in the light of technological developments.</p>	<p><b><u>NO</u></b>: ES, IE, LI, NL, SI, DE, SE, PL, FR, RO, BE, NO, DK, UK, LU, EE</p> <p><b><u>YES</u></b>: PT</p>	<p>a) LI</p> <p>b) BE, ES, IE, DE, DK, EE, SE, PL, RO, SI, NL (Article 23 should be based on the prior assessment of risks associated with the specific processing operations. When the risks are properly assessed, appropriate types of data protection by design or default can be implemented. Instruments of a self-regulatory nature will ensure a higher level of acceptance by controllers. Additional regulation by Union or Member State legislatures may have a serious negative effect on technical innovation), NO</p> <p>c) UK (This would not be technologically neutral and potentially costly for controllers), LU (This should be left to market, risk of stifling innovation)</p>

Article	Consideration for proposed IA	Political assessment: is this empowerment necessary? (YES/NO)	If not, which alternative solution would you propose? a) Retain the provision, but with stricter conditions on COM b) Delete the provision c) Other (please specify)
<p><b>28. Documentation</b>  <b>28.6</b> The Commission may lay down <u>standard forms for the documentation</u> referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).</p>	<p><u>Example(s):</u>  - define for a standard model which can be used in relation to the documentation of human resource management systems.</p>	<p><b><u>NO</u></b>: LI, NL, DE, PL, FR, BE, DK, UK, LU, EE   <b><u>YES</u></b>: ES  (Assuming our amendments proposed for this provision), IE, SI, SE, RO, NO, PT</p>	<p>a) LI  b) BE, DE, PL, DK, EE  c) NL (The added value of Article 28 in its proposed form should be examined in greater detail before any definitive assessment of Article 28, § 5 and 6 can be given. An approach based on an assessment of risks associated with specific processing operations and specific circumstances such as cloud computing should offer more flexibility for data controllers and processors in order to minimize administrative burdens),  UK (There is potential for significant extra costs. The principle contained within article 5(f) captures what Article 28 is trying to achieve and there is no need to create extra layers of bureaucracy by bringing in Article 28 and requiring uniformity through bringing in an implementing act as well)</p>

Article	Consideration for proposed IA	Political assessment: is this empowerment necessary? (YES/NO)	If not, which alternative solution would you propose? a) Retain the provision, but with stricter conditions on COM b) Delete the provision c) Other (please specify)
<p><b>30. Security of processing</b>  <b>30.4</b> The Commission may adopt, where necessary, implementing acts for <u>specifying the requirements</u> laid down in paragraphs 1 and 2 to <u>various situations</u>, in particular to:</p> <p>(a) prevent any unauthorised access to personal data;  (b) prevent any unauthorised disclosure, reading, copying, modification, erasure or removal of personal data,  (c) ensure the verification of the lawfulness of processing operations.</p>	<p>This implementing power might be necessary to give effect to Article 30 in a uniform way by way of regulating how the requirements set according to Article 30(3) can be fulfilled.</p> <p><u>Example(s)</u>:  - define standards for specific processing operations, taking into account work of technical standardization bodies, in the light of technological developments.</p>	<p><u>NO</u>: ES, IE, SI, DE, SE, FR, BE, NO, DK, PT, UK, EE</p> <p><u>YES</u>: LI, NL, PL, RO, LU</p>	<p>a) LI, PT  b) BE, ES, IE, DE, SE, RO, SI, DK  NL (Delegated (in stead of implementing) acts can be useful in order to refer to generally accepted encryption standards or other technical standards to be used in specific processing operations),  NO (Provision could be deleted or replaced with a possibility to implement other form of guidance on the requirements for security of processing. If the provision is retained, the power given should be further assessed in the light of Article 30, § 3)  c) UK (This would not be technologically neutral and potentially costly for controllers. The requirement for uniform conditions could also stifle innovation and therefore economic growth. The outcome for data subjects would potentially also be worse, where the implementing act prescribed technical requirements which were out of date/ would quickly become so),  EE (this stipulation is rather delegated act)</p>

Article	Consideration for proposed IA	Political assessment: is this empowerment necessary? (YES/NO)	If not, which alternative solution would you propose? a) Retain the provision, but with stricter conditions on COM b) Delete the provision c) Other (please specify)
<p><b>31. Notification of a personal data breach to the supervisory authority</b></p> <p><b>31.6</b> The Commission may lay down the <u>standard format</u> of such notification to the supervisory authority, the <u>procedures</u> applicable to the notification requirement and the <u>form and the modalities for the documentation</u> referred to in paragraph 4, including the <u>time limits for erasure</u> of the information contained therein. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).</p>	<p>Ensuring consistency with the e-privacy Directive 2002/58/EC, this empowerment follows the approach of Article 4(5) of the e-privacy Directive.</p> <p><u>Example(s)</u>:</p> <p>- define a form/template to be filled in, and clarify for how long it has to be kept.</p>	<p><b>NO</b>: SI, DE, FR, BE, DK, UK, EE</p> <p><b>YES</b>: ES (Assuming our amendments proposed for this provision), IE, LI, NL, SE, PL, RO, NO, PT</p>	<p>b) BE, DK, EE</p> <p>c) DE (Procedure should be specified in the regulation. Beyond that delete the provision, including the time limits for erasure. As intended in Article 89(2), Directive 2002/58/EC could be adapted where necessary), SI, UK (Standard format may be cumbersome, irrelevant and add to delay and cost. The focus should be on outcome, not process)</p>

Article	Consideration for proposed IA	Political assessment: is this empowerment necessary? (YES/NO)	If not, which alternative solution would you propose? a) Retain the provision, but with stricter conditions on COM b) Delete the provision c) Other (please specify)
<p><b>32. Communication of a personal data breach to the data subject</b>  <b>32.6</b> The Commission may lay down <u>the format of the communication</u> to the data subject referred to in paragraph 1 and the <u>procedures</u> applicable to that communication. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).</p>	<p>Ensuring consistency with the e-privacy Directive 2002/58/EC, this empowerment follows the approach of Article 4(5) of the e-privacy Directive.  <u>Example(s):</u>  - define a standard online form to be filled in by the controller.</p>	<p><b>NO:</b> NL, SI, DE, FR, BE, DK, UK, EE   <b>YES:</b> ES  (Assuming our amendments proposed for this provision), IE, LI, SE, PL, RO, NO, PT</p>	<p>b) BE, NL (It should be left to the data controller to determine the way the data subjects should be informed on the data breach and the possible consequences), SI, DK, EE  c) DE (Procedure should be specified in the regulation. Beyond that: b). Delete the Provision. As intended in Article 89(2), Directive 2002/58/EC could be adapted where necessary),  UK (Standard format may be cumbersome, irrelevant and add to delay and cost. The focus should be on outcome, not process)</p>
<p><b>33. Data protection impact assessment</b>  <b>33.7</b> The Commission may specify <u>standards and procedures</u> for carrying out and verifying and <u>auditing the assessment</u> referred to in paragraph 3. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).</p>	<p>Implementing acts might be necessary to give effect to Article 33 in order to facilitate and streamline the preparation of data protection impact assessments.  <u>Example(s):</u>  - define templates developed at Union level.</p>	<p><b>NO:</b> DE, FR, LI, RO BE, NO, DK, UK, LU   <b>YES:</b> ES, IE, NL, SI, SE, PL, PT, EE</p>	<p>a) LI, NL (Provided the IA does not limit itself to define one type of DPIA of a one size fits all basis)  b) BE, DE, RO, DK  c) UK (Standard format may be cumbersome, irrelevant and add to cost. The focus should be on outcome, not process. A uniform approach may reduce scalability and undermine accountability. Perhaps the format for the data protection impact assessment could be set out in guidance rather than an implementing act)</p>

Article	Consideration for proposed IA	Political assessment: is this empowerment necessary? (YES/NO)	If not, which alternative solution would you propose? a) Retain the provision, but with stricter conditions on COM b) Delete the provision c) Other (please specify)
<p><b>34. Prior authorisation and prior consultation</b>  <b>34.9</b> The Commission may set out <u>standard forms and procedures for prior authorisations and consultations</u> referred to in paragraphs 1 and 2, and <u>standard forms and procedures for informing the supervisory authorities</u> pursuant to paragraph 6. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).</p>	<p><u>Example(s):</u>  - establish a standard form which can be used for the electronic transmission and acknowledgement of receipt of data protection impact assessments to Data protection authorities.</p>	<p><b><u>NO</u></b>: LI, NL, SI, DE, FR, RO, BE, NO, DK, UK, EE   <b><u>YES</u></b>: ES, IE, SE, PL, PT</p>	<p>a) DE (in regard to standard forms for the consistency mechanism, but with stricter conditions on COM), LI  b) BE, DK, DE (beyond standard forms), RO, SI, NO, EE  c) NL (This is to be left to the Data Protection Authorities to decide on), UK (Standard format may be cumbersome, irrelevant and add to cost. The focus should be on outcome, not process. A uniform approach may reduce scalability and undermine accountability)</p>
<p><b>38. Codes of conduct</b>  <b>38.4</b> The Commission may adopt implementing acts for <u>deciding that the codes of conduct and amendments or extensions to existing codes of conduct</u> submitted to it pursuant to paragraph 3 have <u>general validity within the Union</u>. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).</p>	<p>This might be used to give general validity to codes of conducts within the EU.</p>	<p><b><u>NO</u></b>: ES, DE, FR, DK, EE   <b><u>YES</u></b>: IE, LI, NL, SI, SE, RO, BE, NO, PT, UK, LU</p>	<p>b) DK, EE  c) DE (This question needs to be further discussed against the background of the new institutional framework created by the Regulation), NL (There must be an instrument to validate the applicability of codes of conduct on an EU wide scale)   UK (We would support decisions which recognise the validity of codes of conduct within the Union)</p>

Article	Consideration for proposed IA	Political assessment: is this empowerment necessary? (YES/NO)	If not, which alternative solution would you propose? a) Retain the provision, but with stricter conditions on COM b) Delete the provision c) Other (please specify)
<p><b>39. Certification</b>  <b>39.3</b> The Commission may lay down <u>technical standards for certification mechanisms and data protection seals and marks and mechanisms to promote and recognize certification mechanisms and data protection seals and marks.</u>  Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).</p>	<p>This might be used to support and promote technical standards, taking into account the work carried out by EU technical standardisation bodies, and to ensure that data subjects are informed about those standards and consider them when disclosing their personal data.</p>	<p><b>NO:</b> NL, DE, PL, FR, RO, DK, UK, LU, EE   <b>YES:</b> ES, IE, LI, SI, SE, BE, NO, PT</p>	<p>a) PL  b) DE, RO, DK, EE, LU (This should be left to market, risk of stifling innovation)  c) UK (Uniformity in this context carries the Risk of inhibiting industry led initiatives)</p>
<p><b>41. Transfers with an adequacy decision</b>  <b>41.3</b> The Commission may decide that a <u>third country, or a territory or a processing sector within that third country, or an international organisation ensures an adequate level of protection within the meaning of paragraph 2.</u> Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).</p>	<p>Essentially in line with the current adequacy procedures in the context of the current Data protection Directive (see for example Decision 2012/484/EU: Commission Implementing Decision of 21 August 2012 on the adequate protection of personal data by the Eastern Republic of Uruguay with regard to automated processing of personal (OJ L 227 , 23/08/2012, p.11))  The proposal creates some flexibility as it would allow for sectoral and/or geographical adequacy.</p>	<p><b>NO:</b> DE (Article 41.5), FR, BE (41.5), DK (art. 41.5), EE   <b>YES:</b> ES, IE, LI, NL, SI, DE (Article 41.3, 41.4), SE, RO, BE (41.3), NO, DK (art. 41.3 and 41.4), PT, UK, LU</p>	<p>a) DK (Retain the provision, but with stricter conditions on COM)  b) BE (41.5) , NL (Article 39, § 1, states that MS and COM shall <i>encourage</i> certification mechanisms, seals and marks. Encouragement should not be influenced by additional <i>regulation</i> by Union or Member State legislatures, since this may have a serious effect on technical innovation)  Regarding Article 41.5 (“urgency procedure”):  No “duly justified imperative grounds of urgency”,  DE (Could be very disruptive to ongoing transfers, especially regarding the public sector.  Not included in Article 25(4) of Directive 5/46/EC)  c) EE (this stipulation is rather delegated act)</p>

Article	Consideration for proposed IA	Political assessment: is this empowerment necessary? (YES/NO)	If not, which alternative solution would you propose? a) Retain the provision, but with stricter conditions on COM b) Delete the provision c) Other (please specify)
<p><b>41.4</b> The implementing act shall specify its geographical and sectoral application, and, where applicable, identify the supervisory authority mentioned in point (b) of paragraph 2.</p> <p><b>41.5</b> The Commission may decide that a third country, or a territory or a processing sector within that third country, or an international organisation <u>does not ensure an adequate level of protection</u> within the meaning of paragraph 2 of this Article, in particular in cases where the relevant legislation, both general and sectoral, in force in the third country or international organisation, does not guarantee effective and enforceable rights including effective administrative and judicial redress for data subjects, in particular for those data subjects residing in the Union whose personal data are being transferred. Those implementing acts shall be adopted in accordance with the examination procedure</p>			<p>UK (We would support implementing acts which confirm adequacy decisions. It is however not clear when or why such decisions would need to be made as a matter of extreme urgency)</p>

Article	Consideration for proposed IA	Political assessment: is this empowerment necessary? (YES/NO)	If not, which alternative solution would you propose? a) Retain the provision, but with stricter conditions on COM b) Delete the provision c) Other (please specify)
referred to in Article 87(2), or, in cases of extreme urgency for individuals with respect to their right to personal data protection, in accordance with the procedure referred to in Article 87(3).			
<p><b>43. Transfers by way of binding corporate rules</b></p> <p><b>43.4</b> The Commission may specify the <u>format and procedures for the exchange of information by electronic means between controllers, processors and supervisory authorities</u> for binding corporate rules within the meaning of this Article. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).</p>	<p><u>Example(s):</u> - define formats and procedures for an online workflow for the fast validation of binding corporate rules.</p>	<p><b><u>NO:</u></b> IE, LI, NL, SI, DE, SE, FR, BE, DK, UK, LU</p> <p><b><u>YES:</u></b> ES, PL, RO, NO, PT, EE</p>	<p>b) BE, IE, NL (It could be left to the supervisory authorities to develop a standardised format), SI, LU</p> <p>c) DE (Procedure should be specified in the regulation. Supervisory authorities could use the Internal Market Information System. No need to specify the format), DK (Procedure should be specified in the regulation. No need to specify format), UK (It is not clear why the Commission should specify formats and procedures for exchanges by way of binding corporate rules)</p>

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<p><b>55. Mutual assistance</b>  <b>55.10</b> The Commission may specify the <u>format and procedures for mutual assistance</u> referred to in this article and the arrangements for the <u>exchange of information by electronic means</u> between <u>supervisory authorities</u>, and between <u>supervisory authorities and the European Data Protection Board</u>, in particular the <u>standardised format</u> referred to in paragraph 6. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).</p>	<p><u>Example(s):</u>  - define formats and procedure for an online secure workflow for the fast exchange of relevant information between data protection authorities for the purpose of mutual assistance.</p>	<p><b>NO:</b> NL, SI, DE, SE, FR, BE, DK, UK   <b>YES:</b> ES, IE, LI, RO, NO, PT, EE</p>	<p>b) BE, SE, SI, NL (It could be left to the supervisory authorities to develop a standardised format)  c) DE (Procedure should be specified in the regulation. Supervisory authorities and European Data Protection Board could use the Internal Market Information System.  No need to specify the format), DK (Procedure should be specified in the regulation. No need to specify format), UK (The definition of formats and procedures may reduce the ability to take a more flexible approach which suits the requirements of individual authorities)</p>
<p><b>62. Implementing acts</b>  <b>62.1</b> The Commission may adopt implementing acts for:  (a) <u>deciding on the correct application of this Regulation</u> in accordance with its objectives and requirements in relation to matters communicated by supervisory authorities pursuant to Article 58 or 61, concerning a matter in relation to which a reasoned decision has</p>	<p>Implementing acts might be necessary, as a last resort measure, to give effect to the consistency mechanism and Article 62 in a uniform way by way of :</p> <p>- deciding on the correct application of this Regulation in the specific cases, on specific matters, in line with the obligation of the Commission to ensure a correct, consistent and effective application of EU law;</p>	<p><b>NO:</b> DK, EE (subparagraph a), ES, IE, LI, NL (partly), SI, DE, SE, FR, PT, RO, NO: (We do not believe that the empowerment in Article 62, § 1 (a) is necessary, and hence also § 2,</p>	<p>a) LI, PT  b) IE, SE, SI, RO, NO, EE (subparagraph a)  c) ES, SI, NL (The fundamental question that must be decided first is whether it is appropriate to delegate powers to the Commission that could intervene with powers of the independent DPA's. It remains questionable whether a decision in substance pursuant to Article 62, § 1 (b) is a "uniform condition" referred to in Article 291, § 2, TFEU). It remains questionable whether a decision in substance pursuant to Article 62, § 1 (b) is a "uniform condition" referred to in Article</p>

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<p>been adopted pursuant to Article 60(1), or concerning a matter in relation to which a supervisory authority does not submit a draft measure and that supervisory authority has indicated that it does not intend to follow the opinion of the Commission adopted pursuant to Article 59;</p> <p>(b) deciding, within the period referred to in Article 59(1), whether it declares <u>draft standard data protection clauses</u> referred to in point (d) of Article 58(2), <u>as having general</u> validity;</p> <p>(c) specifying <u>the format and procedures for the application of the consistency mechanism</u> referred to in this section;</p> <p>(d) specifying the arrangements for the <u>exchange of information by electronic means between supervisory authorities</u>, and between supervisory authorities and the European Data Protection Board, in particular the standardised format referred to in</p>	<p>- decide on the general validity for the EU of draft standard data protection clauses;</p> <p>- providing the format and procedures for swift information exchange.</p> <p>Article 62.2 is a safeguard clause to give guidance in situations in which otherwise data subjects would be left without protection due to a possibly inconsistent, ineffective or incorrect application of the Regulation.</p>	<p>but we support the rest of the Article), UK</p> <p><b><u>YES</u></b>: EE</p>	<p>291, § 2, TFEU. This could possibly be regulated by a delegated act. It remains questionable whether a decision in substance pursuant to Article 62, § 1 (a) is a "uniform condition" referred to in Article 291, § 2, TFEU), DE (The consistency mechanism as a whole, its practicability and the role of the Commission needs further discussion, especially regarding Article 60 and 62 in relation to the independent authorities in Article 16(2)(2) TFEU and Article 8(3)</p> <p>Article 62.2: The “duly justified imperative grounds of urgency” are not further specified. The twelve month period exceeds the six months regularly provided for in Article 8(2) of Regulation (EU) Nr. 182/2011), DK (Needs further discussion),</p> <p>UK (Binding the consistency mechanism and exchanges between authorities in delegated acts may reduce flexibility to adapt processes to changing circumstances, particularly if the prescribed system does not work as originally envisaged. We would want to consider the implementing act in this article further)</p>

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<p>Article 58(5), (6) and (8). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).</p> <p><b>62.2</b> On duly justified imperative grounds of urgency relating to the interests of data subjects in the cases referred to in point (a) of paragraph 1, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 87(3). Those acts shall remain in force for a period not exceeding 12 months.</p>			