

KEEP EUROPE GROWING

14 September 2015

Balance fundamental rights more effectively – or they will suffer!

Dear GDPR triologue stakeholders of the European Institutions,

The European Data Coalition acknowledges and respects the need to protect EU citizens' data. The chapters on Principles and Rights of the Data Subject in the draft Regulation (GDPR) are central to the safeguarding of the interests and rights of all data subjects, and indeed of all Europeans.

This paper contains key observations made by Coalition members of Chapters II and III of the GDPR. It is our intention to both identify areas of concern, and also suggest solutions that could guarantee the success of a data-driven innovation economy in Europe. All this with the dual aim to achieve objectives of the EU's Digital Single Market, as well as enhancing trust and maintaining or even improving privacy standards.

1. Processing conditions

In Chapter II, the three most relevant issues are the new general requirement of explicit consent, the more constraining interpretation of legitimate interest as a legal ground for lawful data processing and a restrictive implementation of the principle of purpose limitation.

1.1 Explicit consent

We believe that the requirement for explicit consent in any data processing activity would in fact, perhaps counter-intuitively, undermine efforts to protect privacy. This measure would blur the distinction between contract and consent, incentivise companies to greatly increase fully identified or authenticated data subject experiences of digital/data driven services, and result in massive 'consent fatigue' among consumers.

In the long term, the companies best able to manage such an environment would be the largest global organisations with established value propositions and the largest numbers of authenticated customers. Today, these global organisations are overwhelmingly not European and not SMEs. European based start-ups trying to convince users to place their personal data with them would clearly struggle. Moreover, many European innovative business to business companies providing services to companies providing consumer-facing services would falter and fade, lacking the well-developed consumer relationships needed to obtain explicit consent.

Consequently, the Coalition fully supports the Council's General Approach in maintaining the current standard of 'unambiguous consent'. This formulation leaves room for the use of 'explicit' consent in specific circumstances – notably when sensitive personal data is processed.

1.2 Legitimate interest

The inclusion of legitimate interests as a grounds for processing is welcomed, given that it can prevent controllers from being overly reliant on the notion of consent. The combination of legitimate interest with the balancing test allows a certain degree of flexibility into the GDPR, essential to ensuring that emerging technologies and future needs are accounted for. This is important to facilitate European based data-driven innovation economy in line with DSM ambitions.

There is disagreement between the institutions, however, on how broadly “legitimate interest” should be defined. An overly restrictive definition should be resisted. The Parliament favours a definition whereby the legitimate interest must also meet the “reasonable expectation” of the data subject. The inclusion of this vague term as an additional requirement risks sowing confusion among controllers concerning which interests they are able to claim as justification for processing. This will result in decreased investor confidence due to increased legal uncertainty, resulting in decreased levels of investments in data driven businesses.

To resolve this dispute, the trilogue negotiators should come to a compromise in which “reasonable expectation” is understood as just one of the factors that could be taken into account within the balancing test. This would avoid placing undue emphasis on this nebulous concept and guarantee the flexibility required to deliver a future-proof regulation. Furthermore, the concerns that the “reasonable expectation” test addresses tackles are already addressed by the proposed Privacy Impact Assessment provision.

1.3 Further processing

The innovations and offerings of big data initiatives are generally dependent upon the reuse of data; upon finding correlations and links within huge datasets that were not previously suspected. Although the principle of purpose limitation is not in dispute, a GDPR that comes down too harshly and restrictively on the ways that data can be further processed risks stifling the nascent data driven industry just as it begins to offer real returns.

Under the proposed GDPR, personal data can generally only be used for those purposes that are “compatible” with the purpose for which they were initially collected. The Commission provides certain exceptions to this, recognising that so long as adequate safeguards are maintained, this sole condition is unnecessarily restrictive.

The Commission rightly suggests that if the potential reuse of the data is incompatible with the original purposes, the data controller should still be able to justify the processing through recourse to the grounds that can justify initial processing (e.g. consent, carrying out a legal contract, etc). However, unfortunately, the Commission omits “legitimate interest” as a grounds for further processing.

We believe the failure to include “legitimate interest” is an important oversight by the Commission. The use of this legal basis automatically provides protection to the data subject as it can only be used in conjunction with a balancing test ensuring that the interests of the data subject are not overridden. Its inclusion would represent an important addition to the efforts to ensure that the GDPR is genuinely forward looking. It would enable European businesses to adapt to the new and largely unpredictable ways in which data is used and reused in the big data era. Finally, this provision would help European companies to become global leaders in the field, while maintaining Europe as their home base. In light

of these considerations, we strongly support the Council’s approach which includes “legitimate interest” as a ground for further processing but only in situations where the data controller’s interests override those of the data subject.

European Commission	European Parliament	Council	Coalition’s Proposed Compromise
ARTICLE 6 Lawfulness of processing			
<p>1. Processing of personal data shall be lawful only if and to the extent that at least one of the following applies:</p> <p>(a) the data subject has given consent to the processing of their personal data for one or more specific purposes;</p> <p>(b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;</p> <p>(c) processing is necessary for compliance with a legal obligation to which the controller is subject;</p> <p>(d) processing is necessary in order to protect the vital interests of the data subject;</p> <p>(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;</p> <p>(f) processing is necessary for the purposes of the legitimate interests pursued by a controller, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.</p>	<p>1. Processing of personal data shall be lawful only if and to the extent that at least one of the following applies:</p> <p>(a) the data subject has given consent to the processing of their personal data for one or more specific purposes;</p> <p>(b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;</p> <p>(c) processing is necessary for compliance with a legal obligation to which the controller is subject;</p> <p>(d) processing is necessary in order to protect the vital interests of the data subject;</p> <p>(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;</p> <p>(f) processing is necessary for the purposes of the legitimate interests pursued by the controller or, in case of disclosure, by the third party to whom the data is disclosed, and which meet the reasonable expectations of the data subject based on his or her relationship with the controller, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require</p>	<p>1. Processing of personal data shall be lawful only if and to the extent that at least one of the following applies:</p> <p>(a) the data subject has given unambiguous consent to the processing of their personal data for one or more specific purposes;</p> <p>(b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;</p> <p>(c) processing is necessary for compliance with a legal obligation to which the controller is subject;</p> <p>(d) processing is necessary in order to protect the vital interests of the data subject or of another person;</p> <p>(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;</p> <p>(f) processing is necessary for the purposes of the</p>	<p>1. Processing of personal data shall be lawful only if and to the extent that at least one of the following applies:</p> <p>(a) the data subject has given unambiguous consent to the processing of their personal data for one or more specific purposes;</p> <p>(b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;</p> <p>(c) processing is necessary for compliance with a legal obligation to which the controller is subject;</p> <p>(d) processing is necessary in order to protect the vital interests of the data subject or of another person;</p> <p>(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;</p> <p>(f) processing is necessary for the purposes of the legitimate interests pursued by a the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require</p>

<p>This shall not apply to processing carried out by public authorities in the performance of their tasks.</p> <p>2. Processing of personal data which is necessary for the purposes of historical, statistical or scientific research shall be lawful subject to the conditions and safeguards referred to in Article 83.</p> <p>3. The basis of the processing referred to in points (c) and (e) of paragraph 1 must be provided for in:</p> <p>(a) Union law, or</p> <p>(b) the law of the Member State to which the controller is subject.</p> <p>The law of the Member State must meet an objective of public interest or must be necessary to protect the rights and freedoms of others, respect the essence of the right to the protection of personal data and be proportionate to the legitimate aim pursued.</p>	<p>protection of personal data, in particular where the data subject is a child. This shall not apply to processing carried out by public authorities in the performance of their tasks.</p> <p>2. Processing of personal data which is necessary for the purposes of historical, statistical or scientific research shall be lawful subject to the conditions and safeguards referred to in Article 83.</p> <p>3. The basis of the processing referred to in points (c) and (e) of paragraph 1 must be provided for in:</p> <p>(a) Union law, or</p> <p>(b) the law of the Member State to which the controller is subject.</p> <p>The law of the Member State must meet an objective of public interest or must be necessary to protect the rights and freedoms of others, respect the essence of the right to the protection of personal data and be proportionate to the legitimate aim pursued. Within the limits of this Regulation, the law of the Member State may provide details of the lawfulness of processing, particularly as regards data controllers, the purpose of processing and purpose limitation, the nature of the data and the data subjects, processing measures and procedures, recipients, and the duration of storage.</p>	<p>legitimate interests pursued by a the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. This shall not apply to processing carried out by public authorities in the performance of their tasks.</p> <p>2. Processing of personal data which is necessary for archiving the purposes in the public interest, or of for historical, statistical or scientific research purposes shall be lawful subject also to the conditions and safeguards referred to in Article 83.</p> <p>3. The basis of for the processing referred to in points (c) and (e) of paragraph 1 must be provided for established in accordance with:</p> <p>(a) Union law, or</p> <p>(b) National the law of the Member State to which the controller is subject.</p> <p>The purpose of the processing shall be determined in this legal basis or as regards the processing referred to in point (e) of paragraph 1, be necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. This legal basis may contain</p>	<p>protection of personal data, in particular where the data subject is a child. This shall not apply to processing carried out by public authorities in the performance exercise of their tasks</p> <p>2. Processing of personal data which is necessary for archiving the purposes in the public interest, or of for historical, statistical or scientific purposes shall be lawful subject to the conditions and safeguards referred to in Article 83.</p> <p>3. The basis of the processing referred to in points (c) and (e) of paragraph 1 must be provided for in:</p> <p>(a) Union law, or</p> <p>(b) the law of the Member State to which the controller is subject.</p> <p>The law of the Member State must meet an objective of public interest or must be necessary to protect the rights and freedoms of others, respect the essence of the right to the protection of personal data and be proportionate to the legitimate aim pursued.</p> <p>3a. In order to ascertain whether a purpose of further processing (...) is compatible with the one for which the data are initially collected, the controller shall take into account, unless the data subject has given consent, inter alia:</p> <p>(a) any link between the purposes for which the data have been collected and the purposes of the intended further processing;</p>
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		<p>specific provisions to adapt the application of rules of this Regulation, inter alia the general conditions governing the lawfulness of data processing by the controller, the type of data which are subject to the processing, the data subjects concerned; the entities to, and the purposes for which the data may be disclosed; the purpose limitation; storage periods and processing operations and processing procedures, including measures to ensure lawful and fair processing, including for other specific processing situations as provided for in Chapter IX.</p> <p>3a. In order to ascertain whether a purpose of further processing (...) is compatible with the one for which the data are initially collected, the controller shall take into account, unless the data subject has given consent, inter alia:</p> <p>(a) any link between the purposes for which the data have been collected and the purposes of the intended further processing;</p> <p>(b) the context in which the data have been collected;</p> <p>(c) the nature of the personal data, in particular whether special categories of personal data are processed, pursuant to Article 9;</p> <p>(d) the possible consequences of the intended further processing for data subjects;</p>	<p>(b) the context in which the data have been collected;</p> <p>(c) the nature of the personal data, in particular whether special categories of personal data are processed, pursuant to Article 9;</p> <p>(d) the possible consequences of the intended further processing for data subjects;</p> <p>(e) the existence of appropriate safeguards</p>
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		<p>(e) the existence of appropriate safeguards</p> <p>The law of the Member State must meet an objective of public interest or must be necessary to protect the rights and freedoms of others, respect the essence of the right to the protection of personal data and be proportionate to the legitimate aim pursued.</p>	
<p>4. Where the purpose of further processing is not compatible with the one for which the personal data have been collected, the processing must have a legal basis at least in one of the grounds referred to in points (a) to (e) of paragraph 1. This shall in particular apply to any change of terms and general conditions of a contract.</p>	<p>4. Where the purpose of further processing is not compatible with the one for which the personal data have been collected, the processing must have a legal basis at least in one of the grounds referred to in points (a) to (e) of paragraph 1. This shall in particular apply to any change of terms and general conditions of a contract.</p>	<p>4. Where the purpose of further processing is not incompatible with the one for which the personal data have been collected by the same controller, the further processing must have a legal basis at least in one of the grounds referred to in points (a) to (e) of paragraph 1. This shall in particular apply to any change of terms and general conditions of a contract. Further processing by the same controller for incompatible purposes on grounds of legitimate interests of that controller or a third party shall be lawful if these interests override the interests of the data subject.</p>	<p>4. Where the purpose of further processing is not <i>incompatible</i> with the one for which the personal data have been collected by the same controller, the further processing must have a legal basis at least in one of the grounds referred to in points (a) to (e) of paragraph 1. This shall in particular apply to any change of terms and general conditions of a contract.</p> <p>Further processing by the same controller for incompatible purposes on grounds of legitimate interests of that controller or a third party shall be lawful if these interests override the interests of the data subject.</p>
<p>5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the conditions referred to in point (f) of paragraph 1 for various sectors and data processing situations, including as regards the</p>	<p>5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the conditions referred to in point (f) of paragraph 1 for various sectors and data processing situations, including as regards the processing of</p>	<p>5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the conditions referred to in point (f) of paragraph 1 for various sectors and data processing situations, including</p>	

processing of personal data related to a child.	personal data related to a child.	as regards the processing of personal data related to a child.	
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European Commission	European Parliament	Council	Coalition's Proposed Compromise
ARTICLE 7 Conditions for consent			
<p>1. The controller shall bear the burden of proof for the data subject's consent to the processing of their personal data for specified purposes.</p> <p>2. If the data subject's consent is to be given in the context of a written declaration which also concerns another matter, the requirement to give consent must be presented distinguishable in its appearance from this other matter.</p> <p>3. The data subject shall have the right to withdraw his or her consent at any time. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal.</p> <p>4. Consent shall not provide a legal basis for the processing, where there is a significant imbalance between the position of the data subject and the controller.</p>	<p>1. Where processing is based on consent, the controller shall bear the burden of proof for the data subject's consent to the processing of their personal data for specified purposes.</p> <p>2. If the data subject's consent is given in the context of a written declaration which also concerns another matter, the requirement to give consent must be presented clearly distinguishable in its appearance from this other matter. Provisions on the data subject's consent which are partly in violation of this Regulation are fully void.</p> <p>3. Notwithstanding other legal grounds for processing, the data subject shall have the right to withdraw his or her consent at any time. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal. It shall be as easy to withdraw consent as to give it. The data subject shall be informed by the controller if withdrawal of consent may result in the termination of the services provided or of the relationship with the controller.</p> <p>4. Consent shall not provide a legal basis for the processing, where there is a significant imbalance between the position of</p>	<p>1. Where Article 6(1)(a) applies the controller shall bear the burden of proof for the data subject's consent to the processing of their personal data for specified purposes be able to demonstrate that unambiguous consent was given by the data subject.</p> <p>1a. Where Article 9(2)(a) applies, the controller shall be able to demonstrate that explicit consent was given by the data subject.</p> <p>2. If the data subject's consent is to be given in the context of a written declaration which also concerns other matters, the requirement to give request for consent must be presented in a manner which is clearly distinguishable in its appearance from this the other matters, in an intelligible and easily accessible form, using clear and plain language.</p> <p>3. The data subject shall have the right to withdraw his or her consent at any time. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal. Prior to giving consent, the data subject shall be informed thereof.</p>	<p>1. Where processing is based on consent, the controller shall bear the burden of proof for the data subject's consent to the processing of their personal data for specified purposes.</p> <p>2. If the data subject's consent is to be given in the context of a written declaration which also concerns another matter, the requirement to give request for consent must be presented in a manner which is clearly distinguishable in its appearance from this the other matter, in an intelligible and easily accessible form, using clear and plain language.</p> <p>3. The data subject shall have the right to withdraw his or her consent at any time. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal.</p> <p>4. Consent shall not provide a legal basis for the processing, where there is a significant imbalance between the position of the data subject and the controller.</p>

	<p>the data subject and the controller be purpose-limited and shall lose its validity when the purpose ceases to exist or as soon as the processing of personal data is no longer necessary for carrying out the purpose for which they were originally collected. The execution of a contract or the provision of a service shall not be made conditional on the consent to the processing of data that is not necessary for the execution of the contract or the provision of the service pursuant to Article 6(1), point (b).</p>	<p>4. Consent shall not provide a legal basis for the processing, where there is a significant imbalance between the position of the data subject and the controller.</p>	
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European Commission	European Parliament	Council	Coalition's Proposed Compromise
ARTICLE 9 Processing of special categories of personal data			
<p>(...)</p> <p>2. Paragraph 1 shall not apply where:</p> <p>(b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller in the field of employment law in so far as it is authorised by Union law or Member State law providing for adequate safeguards; or</p> <p>(...)</p> <p>(j) processing of data relating to criminal convictions or related security measures is carried out either under the control of official authority or when the processing is necessary for compliance with a legal or regulatory obligation to which a controller is subject, or for the performance of a task carried out for important public interest</p>	<p>(...)</p> <p>2. Paragraph 1 shall not apply where if one of the following applies:</p> <p>(b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller in the field of employment law in so far as it is authorised by Union law or Member State law providing for adequate safeguards for the fundamental rights and the interests of the data subject such as right to non-discrimination, subject to the conditions and safeguards referred to in Article 82; or</p> <p>(...)</p> <p>(j) processing of data relating to administrative sanctions, judgments, criminal offences, convictions or related security measures is carried out either under the control of official authority or when the processing is necessary for compliance with a legal or regulatory obligation to which a controller is subject, or for the performance of a task carried out for important public interest reasons, and in so far as authorised by Union law or Member State law providing for adequate</p>	<p>(...)</p> <p>2. Paragraph 1 shall not apply where if one of the following applies:</p> <p>(b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law in so far as it is authorised by Union law or Member State law or a collective agreement pursuant to Member State law providing for adequate safeguards; or</p> <p>(...)</p> <p>ARTICLE 9a (new) Processing of data relating to criminal convictions and offences</p>	<p>(...)</p> <p>3. Paragraph 1 shall not apply where:</p> <p>(b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller in the field of employment law in so far as it is authorised by Union law or Member State law providing for adequate safeguards, or for fulfillment of non-discrimination laws protecting residents in third countries; or</p> <p>(...)</p> <p>(j) processing of data relating to criminal convictions or related security measures is carried out either under the control of official authority or when the processing is necessary for compliance with a legal or regulatory</p>

<p>reasons, and in so far as authorised by Union law or Member State law providing for adequate safeguards. A complete register of criminal convictions shall be kept only under the control of official authority.</p>	<p>safeguards for the fundamental rights and the interests of the data subject . Any register of criminal convictions shall be kept only under the control of official authority.</p>	<p>Processing of data relating to criminal convictions and offences or related security measures based on Article 6(1) is may only be carried out either under the control of official authority or when the processing is necessary for compliance with a legal or regulatory obligation to which a controller is subject, or for the performance of a task carried out for important public interest reasons, and in so far as authorised by Union law or Member State law providing for adequate safeguards for the rights and freedoms of data subjects. A complete register of criminal convictions may be kept only under the control of official authority.</p>	<p>obligation to which a controller is subject, or for the performance of a task carried out for important public interest reasons, and in so far as authorised by Union law or Member State law providing for adequate safeguards. A complete register of criminal convictions shall be kept only under the control of official authority. Processing of personal data in legitimate investigations for breach of law or employer internal rules, for example in whistle-blower investigations, shall not be prevented by this Article, and such investigations shall be subject to restrictions laid down in Member State law.</p>
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2. Data subject's rights

The GDPR aims at strengthening the rights of individuals by retaining rights that already exist under the 1995 Directive and introducing new rights on data portability, the right to be forgotten and in relation to profiling. For businesses seeking to benefit from data analytics, the provisions dealing with profiling are of vital importance.

Profiling

Profiling and big data analytics are set to play a pivotal role in the growth of the digital economy. The proposed Regulation strongly discourages the use of any personal data. For instance, if anonymised data is used, the GDPR simply does not apply. The disadvantage is that if data is not anonymised (including if it is only pseudonymised) any profiling will be subject to severe restrictions and requirements. While protecting the rights of individuals is of great importance, the proposed changes will stifle innovation and business.

The Coalition welcomes the progress made by the Parliament and the Council addressing some of the concerns arising from the European Commission's proposals. The Council has considered the risks inherent in overzealously restricting data analysis in Europe and recognised its many positive uses such

as reducing healthcare costs by analysing readmission data¹ or improving road safety by identifying uneven road surfaces in need of repair.²

The Parliament has sought to exclude pseudonymous data from the scope of Article 20. However, there is still a major risk that Europe will forego the benefits of big data and predictive analytics without making meaningful improvements to data protection. To help resolve this, it is essential to include a robust harm test that, if passed, would allow for predictive analytics to be carried out without jeopardizing data subjects' rights.

European Commission	European Parliament	Council	Coalition's Proposed Compromise
ARTICLE 20			
Measures Based On Profiling	Profiling	Automated Individual Decision Making	
<p>1. Every natural person shall have the right not to be subject to a measure which produces legal effects concerning this natural person or significantly affects this natural person, and which is based solely on automated processing intended to evaluate certain personal aspects relating to this natural person or to analyse or predict in particular the natural person's performance at work, economic situation, location, health, personal preferences, reliability or behaviour.</p> <p>2. Subject to the other provisions of this Regulation, a person may be subjected to a measure of the kind referred to in paragraph 1 only if the processing:</p> <p>(a) is carried out in the course of the entering into, or performance of, a contract, where the request for the entering into or the</p>	<p>1. Without prejudice to the provisions in Article 6 every natural person shall have the right to object to profiling in accordance with Article 19. The data subject shall be informed about the right to object to profiling in a highly visible manner. shall have the right not to be subject to a measure which produces legal effects concerning this natural person or significantly affects this natural person, and which is based solely on automated processing intended to evaluate certain personal aspects relating to this natural person or to analyse or predict in particular the natural person's performance at work, economic situation, location, health, personal preferences, reliability or behaviour.</p> <p>2. Subject to the other provisions of this Regulation, a person may be subjected to a measure of the kind referred to in paragraph 1 profiling which leads to measures producing legal effects</p>	<p>1. Every natural person The data subject shall have the right not to be subject to a measure decision based solely on automated processing, including profiling, which produces legal effects concerning this natural person him or her or significantly affects this natural person him or her, and which is based solely on automated processing intended to evaluate certain personal aspects relating to this natural person or to analyse or predict in particular the natural person's performance at work, economic situation, location, health, personal preferences, reliability or behaviour.</p> <p>2 1a. Subject to the other provisions of this Regulation, a person may be subjected to a measure of the kind referred to in paragraph 1 only if the processing Paragraph 1 shall not apply if the decision:</p> <p>(a) is carried out in the course of the necessary</p>	<p>1. Every natural person shall The data subject may be subject to a measure decision which produces legal effects concerning this natural person or significantly affects this natural person, and which is based solely on automated processing intended to evaluate certain personal aspects relating to this natural person him or her or to analyse or predict in particular the natural person's his or her performance at work, economic situation, location, health, personal preferences, reliability or behaviour only if the decision:</p> <p>2. Subject to the other provisions of this Regulation, a person may be subjected to a measure of the kind referred to in paragraph 1 only if the processing:</p> <p>(a) does not significantly harm him or her or produce legal effects concerning him or her; or</p> <p>(ab) is carried out in the course of necessary for the</p>

¹ <https://go.sap.com/docs/download/2014/07/64b47923-0a7c-0010-82c7-eda71af511fa.pdf>

² http://data-now.eu//case_study/4/spothole-identifying-roads-in-need-of-repair

<p>performance of the contract, lodged by the data subject, has been satisfied or where suitable measures to safeguard the data subject's legitimate interests have been adduced, such as the right to obtain human intervention; or</p> <p>(b) is expressly authorized by a Union or Member State law which also lays down suitable measures to safeguard the data subject's legitimate interests; or</p> <p>(c) is based on the data subject's consent, subject to the conditions laid down in Article 7 and to suitable safeguards.</p> <p>3. Automated processing of personal data intended to evaluate certain personal aspects relating to a natural person shall not be based solely on the special categories of personal data referred to in Article 9.</p> <p>4. In the cases referred to in paragraph 2, the information to be provided by the controller under Article 14 shall include information as to the existence of processing for a measure of the kind referred to in paragraph 1 and the envisaged effects of such processing on the data subject.</p> <p>5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for suitable measures to safeguard the data subject's legitimate interests referred to in paragraph 2.</p>	<p>concerning the data subject or does similarly significantly affect the interests, rights or freedoms of the concerned data subject only if the processing:</p> <p>(a) is carried out in the course of necessary for the entering into, or performance of, a contract, where the request for the entering into or the performance of the contract, lodged by the data subject, has been satisfied or where provided that suitable measures to safeguard the data subject's legitimate interests have been adduced, such as the right to obtain human intervention; or</p> <p>(b) is expressly authorized by a Union or Member State law which also lays down suitable measures to safeguard the data subject's legitimate interests; or</p> <p>(c) is based on the data subject's consent, subject to the conditions laid down in Article 7 and to suitable safeguards.</p> <p>3. Automated processing of personal data intended to evaluate certain personal aspects relating to a natural person Profiling that has the effect of discriminating against individuals on the basis of race or ethnic origin, political opinions, religion or beliefs, trade union membership, sexual orientation or gender identity, or that results in measures which have such effect, shall be prohibited. The controller shall implement effective protection against possible discrimination resulting from profiling. Profiling shall not be based solely on the special</p>	<p>for entering into, or performance of, a contract, between the data subject and a data controller where the request for the entering into or the performance of the contract, lodged by the data subject, has been satisfied or where suitable measures to safeguard the data subject's legitimate interests have been adduced, such as the right to obtain human intervention; or</p> <p>(b) is expressly authorized by a Union or Member State law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests; or</p> <p>(c) is based on the data subject's explicit consent, subject to the conditions laid down in Article 7 and to suitable safeguards.</p> <p>1b. In cases referred to in paragraph 1a (a) and (c) the data controller shall implement suitable measures to safeguard the data subject's rights and freedoms and legitimate interests, at least the right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision:</p> <p>3. Automated processing of personal data intended to evaluate certain personal aspects relating to a natural person Decisions referred to in paragraph 1a shall not be based solely on special categories of personal data referred to in Article 9(1), unless</p>	<p>entering into, or performance of, a contract, where the request for the entering into or the performance of the contract, lodged by the data subject, has been satisfied or where provided that suitable measures to safeguard the data subject's legitimate interests have been adduced, such as the right to obtain human intervention; or</p> <p>(bc) is expressly authorized by a Union or Member State law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests; or</p> <p>d) is based on the data subject's consent subject to the conditions laid down in Article 7 and to suitable safeguards.</p> <p>2. In cases referred to in paragraph 1(b), 1(c), and 1(d), the data controller shall implement suitable measures to safeguard the data subject's rights and freedoms and legitimate interests, at least the right to obtain human intervention on the part of the controller, and to obtain an explanation of the decision.</p> <p>3. Automated processing of personal data intended to evaluate certain personal aspects relating to a natural person shall not be based solely on Profiling that has the effect of discriminating against data subjects on the basis of the special categories of personal data referred to in Article 9, or that is reasonably likely to have such effects, shall be prohibited.</p> <p>4. In the cases referred to in paragraph 2, the information to be provided</p>
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	<p>categories of personal data referred to in Article 9.</p> <p>4. In the cases referred to in paragraph 2, the information to be provided by the controller under Article 14 shall include information as to the existence of processing for a measure of the kind referred to in paragraph 1 and the envisaged effects of such processing on the data subject.</p> <p>5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for Profiling which leads to measures producing legal effects concerning the data subject or does similarly significantly affect the interests, rights or freedoms of the concerned data subject shall not be based solely or predominantly on automated processing and shall include human assessment, including an explanation of the decision reached after such an assessment. The suitable measures to safeguard the data subject's legitimate interests referred to in paragraph 2 shall include the right to obtain human assessment and an explanation of the decision reached after such assessment.</p> <p>5a. The European Data Protection Board shall be entrusted with the task of issuing guidelines, recommendations and best practices in accordance with point (b) of Article 66 (1) for further specifying the criteria and conditions for profiling pursuant to paragraph 2.</p>	<p>points (a) or (g) of Article 9(2) apply and suitable measures to safeguard the data subject's rights and freedoms and legitimate interests are in place.</p> <p>4. In the cases referred to in paragraph 2, the information to be provided by the controller under Article 14 shall include information as to the existence of processing for a measure of the kind referred to in paragraph 1 and the envisaged effects of such processing on the data subject.</p> <p>5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for suitable measures to safeguard the data subject's legitimate interests referred to in paragraph 2.</p>	<p>by the controller under Article 14 shall include information as to the existence of processing for a measure of the kind referred to in paragraph 1 and the envisaged effects of such processing on the data subject.</p> <p>5. The Commission shall be empowered to adopt delegated acts Recommendations in accordance with Article 86 for the purpose of further specifying the criteria and conditions for suitable measures to safeguard the data subject's legitimate interests referred to in paragraphs 1 and 2.</p>
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Conclusion

The Coalition supports practical legal bases that protect data subjects, avoid 'consent fatigue' and ensure legal certainty for companies. **The Coalition's proposal in this document offers concrete suggestions to triologue stakeholders to protect fundamental rights while at the same time making significant qualitative improvements to the GDPR thereby allowing European companies to Keep Europe Growing!**



Rene Summer

Coalition Spokesperson

ABOUT THE COALITION

Our Coalition is made up of twenty European companies, from SMEs to Global Multinationals and non-profit organisations operating in a variety of sectors on a national, regional and global scale. With an aggregate turnover (2013) of over € 158 billion and some 752,000 employees worldwide, our footprint allows us to bring growth, progress and jobs to the EU's economy. Our membership includes...

- ... a global leader in power and automation solutions...*
- ... the leading Central and Eastern European e-commerce company...*
- ... a productivity solutions provider of compressors, vacuum solutions, construction and mining equipment...*
- ... a non-profit organisation dedicated to collecting money to prevent and combat child cancer diseases...*
- ... a global leader in household appliances...*
- ... two providers of communications technology and services...*
- ... a designer, engineer, manufacturer and distributor of outdoor power products...*
- ... an investment company...*
- ... a SME provider of online marketing through search engine marketing, conversion and lead generation...*
- ... an e-commerce company providing payment services for online storefronts...*
- ... an engineering group in tooling, materials technology, mining and construction ...*
- ... an enterprise software corporation...*
- ... a global provider of heavy trucks and buses, engines and services...*
- ... a provider of assured, secure cloud services to the UK public sector...*
- ... a global provider of renewable solutions in packaging, biomaterials, wood and paper...*
- ... the leading university in technology and digital arts programmes...*
- ... a provider of business software and services to more than 340 000 business in the Nordics...*
- ... a producer and distributor of trucks, buses and construction equipment...*
- ... the leading company in advanced mobile services...*

Our businesses are profoundly different but deeply united by the need for clear roles and responsibilities, open cross-border data flows, balanced codified sanction guide lines, effective one stop shop and absence of overly prescriptive rules as fundamental conditions for long-term growth, competitiveness and prosperity, for both us and the economies in which we operate.

For further information please visit us www.europeandatacoalition.eu or contact us at info@europeandatacoalition.eu