

# “Forum Shopping” for IT Companies?

## LOBBY PAPER:



Amazon (supported by eBay)  
Article 4 – point 13

*(13) ‘main establishment’ means the location as designated by the undertaking or group of undertakings, whether controller or processor, subject to the consistency mechanism set out in Article 57, on the basis of, but not limited to, the following optional objective criteria:*

- (1) the location of the European headquarters of a group of undertakings;*
- (2) the location of the entity within a group of undertakings with delegated data protection responsibilities;*
- (3) the location of the entity within the group which is best placed in terms of management functions and administrative responsibilities to deal with and enforce the rules as set out in this Regulation; or*
- (4) the location where effective and real management activities are exercised determining the data processing through stable arrangements .*

*The competent authority shall be informed by the undertaking or group of undertakings of the designation of the main establishment.*

## OPINION (IMCO COMMITTEE):



Amendment 65  
Article 4 – point 13

*(13) ‘main establishment’ means the location as designated by the undertaking or group of undertakings, whether controller or processor, subject to the consistency mechanism set out in Article 57, on the basis of, but not limited to, the following optional objective criteria:*

- (a) the location of the European headquarters of a group of undertakings;*
- (b) the location of the entity within a group of undertakings with delegated data protection responsibilities;*
- (c) the location of the entity within the group which is best placed in terms of management functions and administrative responsibilities to deal with and enforce the rules as set out in this Regulation; or*
- (d) the location where effective and real management activities are exercised determining the data processing through stable arrangements.*

*The competent authority shall be informed by the undertaking or group of undertakings of the designation of the main establishment.*

**Problem:** This amendment allows companies to “*designate*” its main establishment. The previous version of the law would make the member state of the factual “main establishment” responsible for enforcing the law. This amendment allows massive “forum shopping” – companies can choose the member state with the weakest data protection authority or the least enforcement (e.g. UK or Ireland) while actually being situated in a totally different member state. Even Peter Fleischer (Google’s Privacy Officer) has recently criticized Microsoft for “forum shopping” in Luxemburg ([Link](#)).

# Limiting the Application of the Law?

## LOBBY PAPER:



American Chamber of Commerce and EuroISPA  
Article 4 – point 2a (new) and point 3 (new)

### AmCham:

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

### EuroISPA:

*or that identifiability would require a disproportionate amount of time, cost and effort.*

## OPINION (IMCO COMMITTEE):



Amendment 61  
Article 4 – point 3 b (new)

(3b) *'pseudonymous data' means any personal data that has been collected, altered or otherwise processed so that it of itself cannot be attributed to a data subject without the use of additional data which is subject to separate and distinct technical and organisational controls to ensure such non attribution,*

*or that such attribution would require a disproportionate amount of time, expense and effort.*

**Problem:** The proposed amendment allows for much weaker protection for “pseudonymous data”. But what is a “pseudonym”? Twitter e.g. allows nicknames, but in reality it is easy to find out the person behind the “pseudonym”. The amendment says that the exception should cover data if it takes “disproportionate amount of time, expense and effort” to attribute data to a person. In reality new technology often allows to attribute much of the “anonymous” or “pseudonymous” data to a person (at least with a very high statistical chance). At the same time users will be unable to find out and verify such factual attribution, because it might happen in a US server farm of some tech giant. In summary a low bar for “pseudonym data” is a giant loophole in the law.

**AmCham EU:** The American Chamber of Commerce represents the interest of US businesses in the United States and abroad. It represents about 3 million businesses ([www.amcham.eu](http://www.amcham.eu))

**EuroISPA:** Represents European associations of Internet Service Providers (ISP), but also companies like Google, Facebook, Microsoft or eBay ([www.euroispa.org](http://www.euroispa.org))

Source (IMCO Opinion): <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-496.497%2b02%2bDOC%2bPDF%2bV0%2f%2fEN> (Page 41)

Source (AmCham): [http://www.laquadrature.net/wiki/images/0/00/AmCham\\_EU\\_Proposed\\_Amendments\\_on\\_Data\\_Protection.pdf](http://www.laquadrature.net/wiki/images/0/00/AmCham_EU_Proposed_Amendments_on_Data_Protection.pdf) (Page 11)

Source (EuroISPA): [http://www.laquadrature.net/wiki/images/a/a7/1212\\_EuroISPA\\_contribution.pdf](http://www.laquadrature.net/wiki/images/a/a7/1212_EuroISPA_contribution.pdf) (Page 2)

# Limitless Processing for “Credit Agencies” and for “Fraud Detection”?

## LOBBY PAPER:



European Banking Federation  
Article 6 – paragraph 1 – point c

1. Processing of personal data shall be lawful only if and to the extent that at least one of the following applies:

(...)

(c) processing is necessary for compliance with *a EU or national* legal obligation *or legal right* to which the controller is subject *notably processing carried out on the basis of orders, recommendations of competent organizations as well as the requirements of supervisory authorities including the performance of a task carried out for assessing creditworthiness or for fraud prevention and detection purposes.*

## OPINION (IMCO COMMITTEE):



Amendment 68  
Article 6 – paragraph 1 – point c

1. Processing of personal data shall be lawful only if and to the extent that at least one of the following applies:

(...)

(c) processing is necessary for compliance with *or to avoid breach of an EU or national* legal obligation *or legal right* to which *a the* controller is subject

*including the performance of a task carried out for assessing creditworthiness or for fraud prevention and detection purposes.*

**Problem:** The amendment blankly allows *all* processing of citizens’ data for “fraud prevention or detection” and for “assessing creditworthiness”. Even companies that have nothing to do with a person could thereby collect the citizens’ data to assess her/his creditworthiness. “Processing” also includes the sharing of information between different companies (e.g. local merchants, banks and credit agencies). Prevention of fraud online is also covered by the text, allowing companies to build large profiles about users to sort out users that bear a bigger “risk” for merchants. Overall this amendment is a blanket allowance to do “anything” with peoples’ data when it comes to data processing around fraud and creditworthiness.

**EBF:** The “European Banking Federation” claims to be “the voice of European banks”. It represents 4.500 banks in Brussels ([www.ebf-fbe.eu](http://www.ebf-fbe.eu))

Source (IMCO Opinion): <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-496.497%2b02%2bDOC%2bPDF%2bV0%2f%2fEN> (Page 45)

Source (EBD): <http://www.laquadrature.net/wiki/images/2/26/D1391E-2012-EBF-Amendments-to-EC-Proposal-for-a-Regulation-on-Data-Protection-31.10.12.pdf> (Page 13)

# Sharing Data with Anyone Who has a “Legitimate Interest”?

## LOBBY PAPER:



EBF and eurofinas  
Article 6 – paragraph 1 – point f

1. Processing of personal data shall be lawful only if and to the extent that at least one of the following applies:

(...)

(f) processing is necessary for the purposes of the legitimate interests pursued by a controller *or by the third party or parties to whom the data are disclosed*, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject (...)

## OPINION (IMCO COMMITTEE):



Amendment 70  
Article 6 – paragraph 1 – point f

1. Processing of personal data shall be lawful only if and to the extent that at least one of the following applies:

(...)

(f) processing is necessary for the purposes of the legitimate interests pursued by a controller *or controllers or by the third party or parties to whom the data are disclosed*, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject (...)

**Problem:** A company can process citizens’ data not only in its own interest, but also for “legitimate interests” 1. of “third parties” or 2. of “parties to whom the data [is] disclosed”. This means that a company can share citizens’ data with anyone that has a “legitimate interest” in them. This could arguably be the content industry that has a “legitimate interest” in data from telecom providers. In fact no one knows what a “legitimate interest” really is. Especially not when it comes to the “legitimate interests” of “third parties” (which is in fact anyone in the world). The essence of this allowance currently exists in the law of many member states, but was intentionally replaced, given the problems described above.

**EBF:** The “European Banking Federation” claims to be “the voice of European banks”. It represents 4.500 banks in Brussels ([www.ebf-fbe.eu](http://www.ebf-fbe.eu))

**eurofinas:** “eurofinas” claims to be the voice of the specialized consumer credit providers in Europe. ([www.eurofinas.org](http://www.eurofinas.org))

Source (IMCO Opinion): <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPART%2bPE-496.497%2b02%2bDOC%2bPDF%2bV0%2f%2fEN> (Page 46)

Source (EBD): <http://www.laquadrature.net/wiki/images/2/26/D1391E-2012-EBF-Amendments-to-EC-Proposal-for-a-Regulation-on-Data-Protection-31.10.12.pdf> (Page 13-14)

Source (eurofinas): <https://dataskydd.net/wp-content/uploads/2013/01/Eurofinas-amendments-final.pdf> (Page 14)

# Further Lowered Penalties?

## LOBBY PAPER:



American Chamber of Commerce and Digital Europe  
Article 79 – point 2a & 2b

*2(a) Aggravating factors (...) shall include in particular:*

- (i) repeated violations committed in reckless disregard of applicable law,*
- (ii) refusal to co-operate with or obstruction of an enforcement process,*
- (iii) violations that are deliberate, serious and likely to cause substantial damage.*

*2(b) Mitigating factors (...) shall include*

- (i) measures taken ... ensure compliance with ... obligations,*
- (ii) genuine uncertainty as to whether the activity constituted a violation of the relevant obligations,*
- (iii) immediate termination of the violation upon knowledge, and*
- (iv) Co-operation with any enforcement processes.*

## OPINION (IMCO COMMITTEE):



Amendment 206 & 207  
Article 79 – point 2a & 2b

*2a. Aggravating factors shall include in particular:*

- (a) repeated violations committed in reckless disregard of applicable law;*
- (b) refusal to co-operate with or obstruction of an enforcement process;*
- (c) violations that are deliberate, serious and likely to cause substantial damage;*
- (d) a data protection impact assessment has not been undertaken;*
- (e) a data protection officer has not been appointed.*

*2b. Mitigating factors shall include:*

- (a) measures having been taken .. to ensure compliance with .. obligations;*
- (b) genuine uncertainty as to whether the activity constituted a violation of the relevant obligations;*
- (c) immediate termination of the violation upon knowledge;*
- (d) co-operation with any enforcement processes;*
- (e) a data protection impact assessment has been undertaken;*
- (f) a data protection officer has been appointed.*

**Problem:** These provisions force authorities to overall lower penalties if the law is breached. It seems questionable that “measures to ensure compliance” or “termination of the violation” should be a mitigating factor, they just seem like a normal reaction when processing data or if being caught breaking the law. In reality this provision ensures that companies never have to pay the full fine.

**“AmCham EU”:** The “American Chamber of Commerce” represents the interest of US businesses in the United States and abroad. It represents about 3 million businesses ([www.amcham.eu](http://www.amcham.eu))

**“DIGITALEUROPE”:** Represents IT Industry operating in Europe, many members are US or Asian technology companies like Microsoft, Apple, Dell, Samsung or LG. ([www.digitaleurope.org](http://www.digitaleurope.org))

Source (IMCO Opinion): <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONGM%2f%2fCOMPARL%2f%2fPE-496.497%2f%2fDOC%2f%2fPDF%2f%2fV0%2f%2fEN> (Page 107)

Source (AmCham): [http://www.laquadrature.net/wiki/images/0/00/AmCham\\_EU\\_Proposed\\_Amendments\\_on\\_Data\\_Protection.pdf](http://www.laquadrature.net/wiki/images/0/00/AmCham_EU_Proposed_Amendments_on_Data_Protection.pdf) (Page 47-48)

Source (DIGITALEUROPE): [http://www.laquadrature.net/wiki/images/c/c4/DIGITALEUROPE\\_Amendments-to-Data-Protection-Regulation\\_final.pdf](http://www.laquadrature.net/wiki/images/c/c4/DIGITALEUROPE_Amendments-to-Data-Protection-Regulation_final.pdf) (Page 95-96)

# Elimination of Enforcement by Consumer Organisations?

## LOBBY PAPER:



EBF  
Article 73 – paragraph 2

~~2. Any body, organisation or association which aims to protect data subjects' rights and interests concerning the protection of their personal data (...) shall have the right to lodge a complaint with a supervisory authority in any Member State on behalf of one or more data subjects if it considers that a data subject's rights under this Regulation have been infringed as a result of the processing of personal data.~~

EBF and eurofinas  
Article 76 – paragraph 1

~~1. Any body, organisation or association referred to in Article 73(2) shall have the right to exercise the rights referred to in Articles 74 and 75 on behalf of one or more data subjects~~

## OPINION (IMCO COMMITTEE):



Amendment 198  
Article 73 – paragraph 2

~~2. Any body, organisation or association which aims to protect data subjects' rights and interests concerning the protection of their personal data (...) shall have the right to lodge a complaint with a supervisory authority in any Member State on behalf of one or more data subjects if it considers that a data subject's rights under this Regulation have been infringed as a result of the processing of personal data.~~

Amendment 201  
Article 76 – paragraph 1

~~1. Any body, organisation or association referred to in Article 73(2) shall have the right to exercise the rights referred to in Articles 74 and 75 on behalf of one or more data subjects.~~

**Problem:** One of the advantages of the proposed regulation is the possibility for NGOs to enforce the rights for users – just like consumer organizations are already enforcing rights of consumers. Normal users have no time and money to sue e.g. Google. The amendment removes the possibility for collective enforcement - this means that millions of users have to sue “tech giants” individually.

**EBF:** The “European Banking Federation” claims to be “the voice of European banks”. It represents 4.500 banks in Brussels ([www.ebf-fbe.eu](http://www.ebf-fbe.eu))

**eurofinas:** “eurofinas” claims to be the voice of the specialized consumer credit providers in Europe. ([www.eurofinas.org](http://www.eurofinas.org))

Source (IMCO): <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-496.497%2b02%2bDOC%2bPDF%2bV0%2f%2fEN> (Page 103 and 105)

Source (EBD): <http://www.laquadrature.net/wiki/images/2/26/D1391E-2012-EBF-Amendments-to-EC-Proposal-for-a-Regulation-on-Data-Protection-31.10.12.pdf> (Page 60, 61)

Source (eurofinas): <https://dataskydd.net/wp-content/uploads/2013/01/Eurofinas-amendments-final.pdf> (Page 54)

# Elimination of “Data Protection Officer”?

## LOBBY PAPER:



Lobby-Paper by “EBF” and “AmCham”  
Article 35 – paragraph 1

EBF

1. The controller and the processor ~~shall~~*may* designate a data protection officer in ~~some any~~ case where:  
(a) ...

AmCham

1. The controller and the processor ~~shall~~*may* designate a data protection officer.  
(a) – (c) deleted

## OPINION (IMCO COMMITTEE):



Amendment 180  
Article 35 – paragraph 1

1. The controller and the processor ~~shall~~ *should* designate a data protection officer in any case where: ...

- (a) the processing is carried out by a public authority or body; or
- (b) the processing is carried out by an enterprise employing 250 persons or more; or
- (c) the core activities of the controller or the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects.

**Problem:** The “Data Protection Officer” should be a form of internal control within a company and replaces public registers that currently exists in many member states. According to this amendment a “DPO” should become optional, leaving us with no permanent internal or external control. “Should” instead of “shall” - just one word that makes the difference.

**EBF:** The European Banking Federation claims to be “the voice of European banks” and represents 4.500 banks in Brussels ([www.ebf-fbe.eu](http://www.ebf-fbe.eu))

**AmCham EU:** The American Chamber of Commerce represents the interest of US businesses in the United States and abroad. It represents about 3 million businesses ([www.amcham.eu](http://www.amcham.eu))

Source (IMCO Opinion): <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-496.497%2b02%2bDOC%2bPDF%2bV0%2f%2fEN> (Page 94)

Source (EBF): <http://www.laquadrature.net/wiki/images/2/26/D1391E-2012-EBF-Amendments-to-EC-Proposal-for-a-Regulation-on-Data-Protection-31.10.12.pdf> (Page 50)

Source (AmCham): [http://www.laquadrature.net/wiki/images/0/00/AmCham\\_EU\\_Proposed\\_Amendments\\_on\\_Data\\_Protection.pdf](http://www.laquadrature.net/wiki/images/0/00/AmCham_EU_Proposed_Amendments_on_Data_Protection.pdf) (Page 41)

# Limiting Independence of “Data Protection Officers”?

## LOBBY PAPER:



EBF  
Article 35 – paragraph 7

7. The controller or the processor shall designate a data protection officer for a period of at least two years. The data protection officer *shall have a level of management autonomy and* may be reappointed for further terms.

~~During their term of office, the data protection officer may only be dismissed, if the data protection officer no longer fulfils the conditions required for the performance of their duties.~~

*(AmCham, Nokia, Digital Europe and eurofinas lobbied to delete the entire paragraph)*

## OPINION (IMCO COMMITTEE):



Amendment 184  
Article 35 – paragraph 7

7. The controller or the processor shall designate a data protection officer for a period of at least two years. The data protection officer may be reappointed for further terms.

~~During their term of office, the data protection officer may only be dismissed, if the data protection officer no longer fulfils the conditions required for the performance of their duties.~~

**Problem:** The “Data Protection Officer” should be a form of internal control and replaces external (government) control that currently exists in some member states. If the “DPO” can be fired at any time there is little chance that he will enforce the law against the management. It is usual that such functions (e.g. representation of employees) are protected from dismissal. This amendment removed this protection for the “DPO”.

**“EBF”:** The European Banking Federation claims to be “the voice of European banks” and represents 4.500 banks in Brussels ([www.ebf-fbe.eu](http://www.ebf-fbe.eu))

Source (IMCO Opinion): <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONGML%2bCOMPARL%2bPE-496.497%2b02%2bDOC%2bPDF%2bV0%2f%2fEN> (Page 96)

Source (EBD): <http://www.laquadrature.net/wiki/images/2/26/D1391E-2012-EBF-Amendments-to-EC-Proposal-for-a-Regulation-on-Data-Protection-31.10.12.pdf> (Page 52)



## “Consent” without Alternative?

### LOBBY PAPER:



Amazon and eBay  
Article 7 – paragraph 4

~~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.~~

### OPINION (IMCO COMMITTEE):



Amendment 81  
Article 7 – paragraph 4

~~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.~~

**Problem:** The original version ensured that companies cannot factually force users to a “freely given” consent to data processing when there is a significant imbalance (e.g. in an employer-context). This is already the law in many member states and is a concept in other fields of consumer laws as well. The amendment deletes this protection for European citizens and allows companies to process data based on “consent” even in situations where users have no real possibility to say “no”.

Source (IMCO Opinion): <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-496.497%2b02%2bDOC%2bPDF%2bV0%2f%2fEN> (Page 50)

Source (Amazon): <http://www.laquadrature.net/wiki/images/7/71/AMAZON-amendments.pdf> (Page 15)

Source (eBay): [http://www.laquadrature.net/wiki/images/1/12/Position-paper\\_eBay-Inc\\_JURI-opinion-on-data-protection-regulation.pdf](http://www.laquadrature.net/wiki/images/1/12/Position-paper_eBay-Inc_JURI-opinion-on-data-protection-regulation.pdf) (Page 2)

# Lowering the Bar for “Consent”?

## LOBBY PAPER:



EBF

“specific, isolated and informed expression of will, either by a statement or an action, which, in view of the *context* and circumstances at the time consent is required, signifies the data subject’s agreement...”

Amazon

“...consent' means any freely given specific and informed and ~~explicit~~ indication of his or her wishes by which the data subject, either by a statement or clear action or *any other appropriate method commensurate to the context of and risk involved with the respective processing activity,...*”

eBay

“...an action, which, in view of the *context* and circumstances at the time consent is required, signifies the data subject’s agreement...”

## OPINION (IMCO COMMITTEE):



Amendment 63  
Article 4 – point 8

(8) ‘the data subject's consent’ means any freely given indication that must be specific, informed and ~~explicit~~ *as explicit as possible according to the context,...*

*(In this case only the key concept of “context based consent” turns up in the final opinion. It is unclear if this is directly linked to the lobby papers.)*

**Problem:** There are many situations when companies can process peoples’ data, e.g. when users give their “consent”. But the opinions of what a valid “consent” is defer widely. Some even claimed that as long as users’ do not actively say “no” there is some form of consent. The European Commission has proposed to ask for “explicit” consent, so an “active yes”. This is already the law in most member states, but the lobbyists ask for less: They wanted to attach the “level of consent” according to the “*context*”. But what level of consent is now necessary in a given context? How “explicit” must consent be in a context where an explicit consent is impossible? In practice the amendment makes the requirement for an “explicit consent” useless.

Source (IMCO Opinion): <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPPE-496.497%2b02%2bDOC%2bPDF%2bV0%2f%2fEN> (Page 42)

Source (EBF): <http://www.laquadrature.net/wiki/images/2/26/D1391E-2012-EBF-Amendments-to-EC-Proposal-for-a-Regulation-on-Data-Protection-31.10.12.pdf> (Page 10)

Source (Amazon): <http://www.laquadrature.net/wiki/images/7/71/AMAZON-amendments.pdf> (Page 12)

Source (eBay): [http://www.laquadrature.net/wiki/images/1/12/Position-paper\\_eBay-Inc\\_JURI-opinion-on-data-protection-regulation.pdf](http://www.laquadrature.net/wiki/images/1/12/Position-paper_eBay-Inc_JURI-opinion-on-data-protection-regulation.pdf) (Page 2)

# Replacing Rules on “Profiling”?

## LOBBY PAPER:



American Chamber of Commerce  
Article 7 – paragraph 4

### Old:

~~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.~~

### New:

1. A data subject shall not be subject to a decision which is unfair or discriminatory, and which is based solely on automated processing intended to evaluate certain personal aspects relating to this data subject.

## OPINION (IMCO COMMITTEE):



Amendment 130  
Article 20 – paragraph 1

### Measures based on ~~Profiling~~ Automated Processing

### Old:

~~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.~~

### New:

1. A data subject shall not be subject to a decision which is unfair or discriminatory, and which is based solely on automated processing intended to evaluate certain personal aspects relating to this data subject.

**Problem:** The broader protection against the negative effects of “profiling” were replaced by a very narrow right. It is again unclear what is meant by “unfair” or “discriminatory” – what might be perfectly fair in the view of a company might be seen as rather “unfair” by a user.

**AmCham EU:** The “American Chamber of Commerce” represents the interest of US businesses in the United States and abroad. It represents about 3 million businesses ([www.amcham.eu](http://www.amcham.eu))

Source (IMCO Opinion): <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONGM%2bCOMPARL%2bPE-496.497%2b02%2bDOC%2bPDF%2bV0%2f%2fEN> (Page 72)

Source (AmCham): [http://www.laquadrature.net/wiki/images/0/00/AmCham\\_EU\\_Proposed\\_Amendments\\_on\\_Data\\_Protection.pdf](http://www.laquadrature.net/wiki/images/0/00/AmCham_EU_Proposed_Amendments_on_Data_Protection.pdf) (Page 7)

# Limiting the Duties of “Cloud” Providers?

## LOBBY PAPER:



Amazon  
Article 26 – paragraph 1, 2 and 3a (new)

1. Where a processing operation is to be carried out on behalf of a controller *and which involves the processing of data that would permit the processor to reasonably identify the data subject*, the controller shall choose a processor providing sufficient guarantees (...)

*The controller remains solely responsible for ensuring compliance with the requirements of this Regulation.*

(...)

~~2. (d) enlist another processor only with the prior permission of the controller;~~

(...)

*3a. The controller is deemed to have fulfilled the obligations set out in paragraph 1 when employing a processor who has voluntarily self-certified or voluntarily obtained a third party certification, seal or mark*

*showing the implementation of appropriate standard technical and organizational measures in response to the requirements set out in this Regulation.*

## OPINION (IMCO COMMITTEE):



Amendment 144, 145 and 147  
Article 26 – paragraph 1, 2 (d) and 3a (new)

1. Where a processing operation is to be carried out on behalf of a controller *and which involves the processing of data that would permit the processor to reasonably identify the data subject*, the controller shall choose a processor providing sufficient guarantees (...)

*The controller remains solely responsible for ensuring compliance with the requirements of this Regulation.*

(...)

~~2. (d) enlist another processor only with the prior permission of the controller;~~

(...)

*3a. The controller is deemed to have fulfilled the obligations set out in paragraph 1 when choosing a processor who has voluntarily self-certified or voluntarily obtained a certification, seal or mark pursuant to Articles 38 or 39 of this Regulation showing the implementation of appropriate standard technical and organizational measures in response to the requirements set out in this Regulation.*

**Problem:** The law tried to ensure that EU citizens' data is secure when stored in non-EU “clouds”. Cloud providers (like Amazon) want to limit the duties to protect EU citizens' data in “clouds”. It makes no sense to have binding rules for “users” of such services (e.g. EU businesses), but no or less rigid rules for “cloud” providers which actually control the servers where the data is held.

# No more “Data Minimization”?

## LOBBY PAPER:



EBF and eurofinas  
Article 5 – point c

Personal data must be:

(c) adequate, relevant, and ~~limited to the minimum necessary~~ *not excessive* in relation to the purposes for which they are processed; (...)

## OPINION (IMCO COMMITTEE):



Amendment 66  
Article 5 – point c

Personal data must be:

(c) adequate, relevant, and ~~limited to the minimum necessary~~ *not excessive* in relation to the purposes for which they are processed; (...)

**Problem:** The wording is originally from the current law, but what is “excessive”? Is 1 Gigabyte of data for the purpose of targeted advertising “excessive”? ...are 10, 50 or 100 Megabyte “excessive”? The new definition originally proposed by the European Commission “limited to the minimum necessary” makes more sense by essentially saying every “bit” that is not necessary must be deleted.

**EBF:** The “European Banking Federation” claims to be “the voice of European banks” and represents 4.500 banks in Brussels ([www.ebf-fbe.eu](http://www.ebf-fbe.eu))

**eurofinas:** “eurofinas” claims to be the voice of the specialized consumer credit providers in Europe. ([www.eurofinas.org](http://www.eurofinas.org))

Source (IMCO Opinion): <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPPE-496.497%2b02%2bDOC%2bPDF%2bV0%2f%2fEN> (Page 44)

Source (EBD): <http://www.laquadrature.net/wiki/images/2/26/D1391E-2012-EBF-Amendments-to-EC-Proposal-for-a-Regulation-on-Data-Protection-31.10.12.pdf> (Page 11)

Source (eurofinas): <https://dataskydd.net/wp-content/uploads/2013/01/Eurofinas-amendments-final.pdf> (Page 11)

# “Criminal Records” at every Bank?

## LOBBY PAPER:



EBF  
Article 9 – paragraph 2 – point a (new)

The prohibition as described in paragraph 2 shall not apply with respect of

*processing of personal data concerning criminal convictions or related security measures in the context of databases which contain data on fraud committed against the credit institutions or members of other financial groups regulated by EU or national legislation and set up by financial institutions to prevent fraud.*

*The restrictions on the processing of data relating to criminal convictions should not apply to data relating to criminal offences.*

## OPINION (IMCO COMMITTEE):



Amendment 96  
Article 9 – paragraph 2 – point ja (new)

1. The processing of personal data, revealing race or ethnic origin, political opinions, religion or beliefs, trade-union membership, and the processing of genetic data or data concerning health or sex life or criminal convictions or related security measures shall be prohibited.

2. Paragraph 1 shall not apply where:

...

*(ja) processing of personal data concerning criminal convictions or related security measures is carried out in the context of databases which contain data on fraud committed against the credit institutions or members of other financial groups regulated by EU or national legislation and set up by financial institutions to prevent fraud;*

*The restrictions on the processing of data relating to criminal convictions should not apply to data relating to criminal offences.*

**Problem:** This amendment is a prime example for exemptions for special interest groups: The first sentence allows financial institutions to process even highly sensitive personal data (like sexual orientation, genetic data or data concerning health) when they can claim that they are processed “in the context” of fraud detection. The second sentence is even broader and is circular in the sense that it allows any processing of data relating to criminal offences in any context. Why don’t we just remove the special protection for data relating to “criminal convictions” in general?

**EBF:** The “European Banking Federation” claims to be “the voice of European banks” and represents 4.500 banks in Brussels ([www.ebf-fbe.eu](http://www.ebf-fbe.eu))

Source (IMCO Opinion): <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-496.497%2b02%2bDOC%2bPDF%2bV0%2f%2fEN> (Page 56)

Source (EBF): <http://www.laquadrature.net/wiki/images/2/26/D1391E-2012-EBF-Amendments-to-EC-Proposal-for-a-Regulation-on-Data-Protection-31.10.12.pdf> (Page 17/18)

# Electronic Access Requests are “Risk for Fraud”?

## LOBBY PAPER:



ASSOCIATION OF CONSUMER  
CREDIT INFORMATION SUPPLIERS

ACCIS  
Article 12 – paragraph 2

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

The information shall be given in writing. Where the data subject makes the request in electronic form, the information shall be provided in electronic form, unless otherwise requested by the data subject *or unless the controller has reason to believe that providing the information in electronic form would create a significant risk of fraud.*

## OPINION (IMCO-COMMITTEE):



Amendment 102  
Article 12 – paragraph 2

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

The information shall be given in writing. Where the data subject makes the request in electronic form, the information shall be provided in electronic form, unless otherwise requested by the data subject *or unless the controller has reason to believe that providing the information in electronic form would create a significant risk of fraud.*

**Problem:** This amendment is limiting the right of citizens to obtain a copy of their personal data in an “electronic form”. It is totally unclear how providing data in a digital form would be any more likely to create risk for fraud than answering access requests in a written form – on the other hand it makes it totally clear how absurd some of the amendments by lobby groups are.

The “Justification” to the Amendment talks about the necessity of “authentication checks” which is necessary no matter if an access request is responded to in writing or electronic form.

“**ACCIS**”: The “Association of Consumer Credit Information Suppliers” currently brings together 37 consumer credit reference agencies in 27 European countries. It is a registered International non-profit association under Belgian law. ([www.accis.eu](http://www.accis.eu))

Source (IMCO Opinion): <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONGML%2bCOMPARL%2bPE-496.497%2b02%2bDOC%2bPDF%2bv0%2f%2fEN> (Page 60)

Source (ACCIS) [https://dataskydd.net/wp-content/uploads/2013/01/ACCIS-DP-Amendments-Position-Paper\\_FINAL.pdf](https://dataskydd.net/wp-content/uploads/2013/01/ACCIS-DP-Amendments-Position-Paper_FINAL.pdf) (Page 3)

