

Comparison of Key Provisions in the Draft Texts of the Proposed EU Data Protection Regulation as of June 15, 2015

	Provision	European Commission	European Parliament	Council of Ministers
1	Remedies and Sanctions [Ch.VIII, Arts.77 & 79]	<ul style="list-style-type: none"> - Fines up to €1 million or 2 percent of annual worldwide turnover (whichever is greater) - Compensation awarded for damages 	<ul style="list-style-type: none"> - Fines up to €100 million or 5 percent of annual worldwide turnover (whichever is greater) - Compensation awarded for damages (including non-pecuniary damage) 	<ul style="list-style-type: none"> - Fines up to €1 million or 2 percent of annual worldwide turnover (whichever is greater) - Compensation awarded for damages
2	Judicial Redress [Ch.VIII, Arts.74 & 75]	<ul style="list-style-type: none"> - A right to a judicial remedy against decisions of a DPA and a controller or processor - Anybody which aims to protect data subjects' rights or interests can lodge a complaint with a DPA on behalf of a data subject 	<ul style="list-style-type: none"> - A right to a judicial remedy against decisions of a DPA and a controller or processor - Anybody which acts in the public interest can lodge a complaint with a DPA on behalf of a data subject 	<ul style="list-style-type: none"> - A right to a judicial remedy against decisions of a DPA and a controller or processor - A data subject can mandate a statutory body which aims to protect data subjects' rights or interests to lodge a complaint with a DPA on its behalf
3	Territorial Scope [Ch.I, Art.3]	<ul style="list-style-type: none"> - Applies to (i) businesses established in the EU and (ii) to non-EU businesses offering goods or services to individuals within the EU or monitoring their behavior 		
4	One Stop Shop [Ch.VII, Arts. 54 - 58]	<ul style="list-style-type: none"> - Lead DPA is controller/processor's main establishment 	<ul style="list-style-type: none"> - Lead DPA is controller/processor's main establishment - Lead DPA to consult with other DPAs - EDPB can intervene 	<ul style="list-style-type: none"> - Lead DPA is controller/processor's main establishment - Lead DPA to consult with 'concerned' DPAs - 'Concerned' DPAs can refer cases to EDPB
5	Definition of Personal Data [Ch.I, Art.4]	<ul style="list-style-type: none"> - Information relating to a data subject 	<ul style="list-style-type: none"> - Information relating to an identified or identifiable natural person 	
6	Consent [Ch.I, Arts.4 & 7]	<ul style="list-style-type: none"> - Must be explicit and signified by a statement or clear affirmative action 		<ul style="list-style-type: none"> - Must be unambiguous. Explicit consent only required for sensitive personal data
7	Data Protection Officer ("DPO") [Ch.IV, Art.35]	<ul style="list-style-type: none"> - Required where > 250 employees 	<ul style="list-style-type: none"> - Required where processing personal data of > 5,000 individuals in 12 months or sensitive personal data 	<ul style="list-style-type: none"> - May be required by national law
8	Privacy Impact Assessments ("PIA") [Ch.IV, Art.33]	<ul style="list-style-type: none"> - Required where processing presents specific risks to data subjects 	<ul style="list-style-type: none"> - Required where processing personal data of > 5,000 individuals in 12 months or sensitive personal data 	<ul style="list-style-type: none"> - Required where using new technologies or where processing likely to result in high risk for data subjects
9	Personal Data Breach Notification [Ch.IV, Arts.31 & 32]	<ul style="list-style-type: none"> - Notify DPA without undue delay and where feasible within 24 hours - Notify the individual without undue delay 	<ul style="list-style-type: none"> - Notify DPA without undue delay (which is presumed to be no later than 72 hours) - Notify the individual without undue delay 	<ul style="list-style-type: none"> - Notify DPA without undue delay and where feasible within 72 hours - Notify the individual without undue delay

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10	Right to Erasure / Right to be Forgotten [Ch.III, Art.17]	- Controller obligated to erase personal data where: (i) data is no longer necessary for purpose collected; (ii) consent is withdrawn or storage period consented to has expired; (iii) data subject objects to the processing; or (iv) processing is not in compliance with the Regulation	- Controller obligated to erase personal data (and third parties to erase links or copies of such data) where: (i) data is no longer necessary for purpose collected; (ii) consent is withdrawn or storage period consented to has expired; (iii) data subject objects to the processing; (iv) processing is not in compliance with the Regulation; or (v) at the request of a EU court / regulatory authority	- [As per Commission's text] plus (v) where required to comply with a legal obligation of the controller
11	Data Portability [Ch.III, Art.18]	- Where personal data is processed by electronic means, in a structured and commonly used format and is based on consent or on a contract, the data subject has the right to transmit those personal data into another automated processing system without hindrance from the original controller	- [Deleted]	- Where personal data is processed in a machine-readable, structured and commonly used format and is based on consent or on a contract, the data subject has the right to transmit those personal data to another controller without hindrance from the original controller
12	Profiling [Ch.III, Art.20]	- A right not to be subject to measures which produces legal effects or significantly affects data subject and which is based solely on automated processing unless this is: (i) in the course of performance of a contract; (ii) expressly authorized by law; or (iii) based on the consent of the data subject. Profiling based solely on sensitive personal data is prohibited	- A right to object to profiling which produces legal effects or significantly affects data subject and which is based solely on automated processing unless this is: (i) necessary for performance of a contract; (ii) expressly authorized by law; or (iii) based on the consent of the data subject. Profiling based solely on sensitive personal data that discriminates against an individual is prohibited	- A right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects or significantly affects data subject unless: (i) necessary for performance of a contract; (ii) authorized by law; or (iii) based on the <u>explicit</u> consent of the data subject. Profiling based solely on sensitive personal data is prohibited unless with the explicit consent of the data subject or where in the public interest
13	International Transfers [Ch.V, Arts. 40 - 45]	- Transfers permitted where the Commission has determined a third country, or processing sector, or an international organization is adequate - Where no adequacy decision transfers are permitted if appropriate safeguards are implemented by way of BCRs, Standard Data Protection Clauses or contractual clauses between the controller/processor and the recipient, authorized by a DPA - Where no decision of adequacy and no appropriate safeguards transfers are permitted where necessary for the legitimate interests of the controller/processor providing the transfer is not frequent or massive and the controller has adduced appropriate safeguards	- Transfers permitted where the Commission has determined a third country, or processing sector, or an international organization is adequate - Where no adequacy decision transfers are permitted if appropriate safeguards are implemented by way of BCRs, European Data Protection Seal, Standard Data Protection Clauses or contractual clauses between the controller/processor and the recipient, authorized by a DPA	- Transfers permitted where the Commission has determined a third country, or specified sector, or an international organization is adequate - Where no adequacy decision transfers are permitted if appropriate safeguards are implemented by way of BCRs, Standard Data Protection Clauses, approved code of conduct or an approved certification mechanism - Where no decision of adequacy and no appropriate safeguards transfers are permitted where necessary for the legitimate interests of the controller/processor providing the transfer is not large scale or frequent, the controller has adduced appropriate safeguards and the interests of the data subject are not overridden
14	Transfers not Authorized by Union Law [Ch. V, Art. 43a]		- No judgement of a court or authority in a non-EU country that requests personal data will be enforceable, although without prejudice to existing international agreements - Where such a request is made the controller/processor must obtain authorisation from the relevant DPA	

15	Data Protection Seals and Certifications [Ch.IV, Art.39]	To be encouraged by Member States and the Commission	DPAs can certify using European Data Protection Seal (valid for five years)	DPAs and accredited certification bodies can certify (valid for three years)
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