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From: General Secretariat of the Council
To: Antici Group (Simplification)

Subject: Omnibus VII (Digital Omnibus) - Presidency discussion note for the AGS on 16 January 2026

Delegations will find enclosed a note by the Presidency with a view to steering the discussion on the proposal of Omnibus VII (Digital Omnibus), parts on GDPR and P2B, at the meeting of the Antici Group (Simplification) on 16 January 2026.

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Presidency Discussion Paper

Digital Omnibus

In view of the meeting of the Antici subgroup on Simplification (AGS) of 16 January 2026, the Presidency prepared this discussion note as a basis for a first exchange between delegations on the Commission proposal. Also, in view of the urgency for regulatory simplification that supports the competitiveness of EU companies, the Presidency intends to proceed swiftly with the adoption of the proposal and invites Member States to indicate their initial views on the Commission's proposal. **The Presidency seeks to understand whether Member States initially support the proposals made by the Commission and/or identify suggestions to further fine-tune the text in light of simplification objectives** and support the Presidency in its progress towards a compromise text.

Even though both further analysis and processes with national parliaments are most likely still ongoing, the Presidency finds it necessary to have a first exchange of views on the matter given the urgency.

1) Amendments to the General Data Protection Regulation

The Presidency would like to have a first exchange between delegations on the Commission proposals to amend the General Data Protection Regulation (GDPR), as part of its Digital Omnibus¹. The Presidency intends to initiate discussions on the GDPR with a view to identify a way forward on specific proposals, building upon the approach followed by Polish and Danish Presidencies in examining the different Omnibus proposals so far, focusing exchanges on targeted amendments allowing for the reduction of regulatory burdens and the swift delivery of simplification gains, in particular for small and medium-sized organisations.

This discussion note takes into account preliminary questions formulated by delegations², as well as the detailed feedback provided by the Commission, during the Q&A sessions held under the Danish Presidency. The Presidency also took note of the remarks made by several delegations to preserve the core principle of the GDPR and maintain a high level of protection of the fundamental right to data protection.

¹ ST 15698 2025

² WK 16524 2025; WK 17004 2025

Article 3(1) – Amendment to Article 4 GDPR on definitions; Article 3(10) – New Article 41a GDPR

The Commission proposes an amendment to the definition of personal data as laid down in Article 4(1)a GDPR, adding that information is not to be considered personal data for a given entity where that entity does not have the means reasonably likely to be used to identify the natural person to whom the information relates. The proposal further clarifies the conditions under which the information is not personal data for a specific recipient, as a result of which it does not fall within the scope of application of Regulation (EU) 2016/679 regarding the processing of that data. In the staff working document accompanying the Digital Omnibus proposal³, the Commission states that this proposal takes into account the recent case law of the Court of Justice of the European Union (CJEU) and would bring clarity to this GDPR key notion.

In addition, and complementing this amended definition of personal data, the Commission proposes to introduce a new Article 41a in order to further support entities in their efforts to use pseudonymisation, putting forward a mechanism to further clarify the technical means and criteria to determine whether data resulting from pseudonymisation can be considered non-personal for certain entities.

Several delegations raised questions and concerns as to the proposed amendment to the definition of personal data, expressing doubts as to the appropriate codification of CJEU case law. Some delegations flagged that, in a preliminary statement prior to the adoption of their joint opinion on the Digital Omnibus (expected to be adopted on 11 February 2026), the EDPB and the EDPS considered that *“the proposed modification of the definition of personal data seems to go further than the recent CJEU case law, and beyond a targeted modification of the GDPR, which may risk to adversely affect the fundamental right to data protection”*⁴. Several delegations also pointed in their questions that amending the definition of personal data could constitute a substantial change to EU data protection rules, affecting the scope of application of the GDPR, which would require a thorough assessment.

As expressed by several delegations in their written questions and remarks, beyond matters related to the codification of CJEU case law, the amended definition also raises issues in relation to its practical implementation and application, as well as compliance and enforcement considerations.

³ ST 15698 2025 ADD 2

⁴ https://www.edpb.europa.eu/news/news/2025/edpb-gives-recommendations-make-online-shopping-more-respectful-users-privacy_en

Delegations also pointed at possible challenges for the continuity of accountability and contractual obligations in multiple processors and sub-processors chains in data intensive sectors such as online advertisement or data brokering, the application of rules on data transfers to third countries in this context, the traceability of pseudonymised data sets or the evolving nature of (technological) means to identify individuals. Some delegations also addressed questions related to the interplay between the new definition proposed and other amendments to the GDPR introduced with the Digital Omnibus.

Concerning the proposed new Article 41a GDPR on pseudonymisation techniques, questions from delegations focused on the empowerment of the Commission to adopt implementing act to specify means and criteria to determine whether data resulting from pseudonymisation no longer constitute personal data for certain entities. A delegation noted that the EDPB already adopted Guidelines 01/2025 on Pseudonymisation in which they emphasise that pseudonymisation is a risk-mitigation measure. In this context, the Presidency recalls that in its position and findings on the application of the GDPR adopted in December 2023, the Council considered that *"requirements related to anonymisation and pseudonymisation, given their importance in reducing or mitigating risks associated with the processing of personal data and references to such notions in other pieces of EU law, would benefit from further clarification so that they can be effectively implemented by controllers and processors"*⁵.

Given the above, the Presidency considers essential to first consider the proposed amendment to the definition of personal data and the related provision on pseudonymisation technics, considering the substantial nature of the changes envisioned and the potential impact on and interplay with other proposals from the Digital Omnibus, as well as with provisions already applicable under the GDPR.

- **Question 1:** Keeping in mind the overall objective of simplification, delegations are invited to indicate their preference among the following options:
- a) pursue discussions on an amended definition of personal data and assess impacts in terms of implementation and application, with a view to propose an appropriate updated wording.

⁵ ST 15507/23

- b) maintain the definition of personal data as currently laid down in the GDPR.
- c) maintain the definition of personal data as currently laid down in the GDPR and pursue discussions on whether to address pseudonymisation techniques through legislative provisions (e.g. dedicated article building upon the proposed new Article 41a, amendment to the tasks of the Board under Article 70 GDPR, and so forth).

Delegations will also be invited to send their comments in written, as well as possible drafting proposals, after the AGS meeting of 16 January 2026.

Article 3(15) – New Article 88a GDPR (cookie rules)

The Commission proposal introduces a new Article 88a on processing of personal data in the terminal equipment of natural persons. With this new article, the Commission proposes to update the rules on storing of or on gaining access to information stored on devices, regulating amongst others the use of cookies and other similar technologies, with a view to reduce the number of cookie consent banners by reducing the cases where consent will need to be obtained. The proposal moves the protection already laid down in the ePrivacy Directive under the General Data Protection Regulation and maintains the consent requirement as a rule when accessing a natural person's device.

In addition, the proposal aims to clarify that accessing the device and processing of personal data from connected devices which is necessary for certain specific low-risk purposes is considered lawful: carrying out the transmission of an electronic communication over an electronic communications network, provision of service explicitly requested by a data subject, creating aggregated information to measure the audience when carried out by the provider of a service for its own use, and maintaining or restoring the security of the provided service.

In their written questions, delegations asked about the overall legal and operational impact of moving under GDPR provisions currently laid down under the ePrivacy Directive, as well as on the type of processing activities resulting from the storing of or gaining access to information on devices covered by the new Article 88a - some delegations noting that the scope appears to be broader than the processing activities currently covered under Article 5(3) ePrivacy. Other specific questions raised by delegations include the exceptions to the consent requirements, the relationship with the lawful grounds for processing under Article 6 GDPR, in particular consent, and the

conditions for further processing, and the impact on default setting for connected devices.

Given the above and the proposed change of applicable framework for cookies and other similar technologies, the Presidency considers important to initiate a discussion on the new Article 88a and its legal and operational implications prior to the examination of the subsequent new Article 88b.

→ **Question 2:** delegations are invited to share their views and position on the principle of moving under the GDPR provisions currently laid down under the ePrivacy Directive, resulting in the application of all rules of the GDPR (notably its territorial scope (Article 3), principles and lawful grounds for processing (Articles 5 and 6), rules on the exercise of data subjects' rights (Chapter III) and enforcement mechanism (Chapter VII).

→ **Question 3:** delegations are invited to share their views and position on the provisions laid down under the new Article 88a on processing of personal data in the terminal equipment of natural persons. Delegations are notably invited to indicate whether they support the proposal to extend the current exceptions of the consent requirement under Article 5(3) ePrivacy Directive to two additional grounds when personal data are processed under Article 88a (aggregated information to measure the audience and ensuring the security of the service when personal data are processed).

Delegations will also be invited to send their comments in written, as well as possible proposals, after the AGS meeting of 16 January 2026.

The Presidency notes that delegations raised substantive questions on many other proposed amendments to the GDPR as part of the Digital Omnibus, and that further dedicated discussions and assessment seem to be necessary to identify a way forward on these provisions. The Presidency also recalls its intention to advance swiftly towards a compromise text on the overall Digital Omnibus proposal, for a rapid regulatory simplification supporting the competitiveness of EU companies.

Given the above, the Presidency considers important to distinguish between the provisions where Member States do not see major difficulties and those to be

discussed and addressed in more detail, with a view to move swiftly towards a compromise text on the proposed amendments to the GDPR.

→ **Question 4:** delegations are invited to indicate which proposed amendments to the GDPR appear to them as being tailored and targeted enough in order to allow for the reduction of regulatory burden and the swift delivery of simplifications gains for organisations in their application of the GDPR and which ones still need a more detailed substantial discussion, to this end.

Delegations will also be invited to send their comments in written, as well as possible proposals, after the AGS meeting of 16 January 2026.

2) On P2B

The 2019 Platform-to-Business Regulation ('P2B') was the first step at Union level towards specifying the obligations that online platforms bear vis-à-vis the business users of their services. It was the initial framework imposing transparency obligations applicable to online platforms (called 'online intermediation services') and search engines. However, the entry into application of the Digital Markets Act (DMA) and Digital Services Act (DSA) in 2023 and 2024, respectively, significantly reinforced the set of rules imposing stronger due diligence obligations on such services and including prohibitions and obligations for the most impactful platforms and search engines. The Commission proposes, through the Digital Omnibus, a repeal of the P2B Regulation in two steps, allowing a transitional period until 2032 to ensure legal certainty for acts containing cross-references to certain of the P2B provisions.

→ **Question 5:** Do Member States support the approach put forward in the Digital Omnibus proposal regarding the repeal of the P2B Regulation?

Delegations will also be invited to send their comments in written, as well as possible proposals, after the AGS meeting of 16 January 2026.