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**LIMITE**

**DATAPROTECT**

**JAI**

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## **WORKING DOCUMENT**

From:	Presidency
To:	Delegations
Subject:	Joint discussion on the application of the GDPR and the AI Act - Discussion paper

Ahead of the joint discussion between the Working Party on Data Protection (WP DATAPROTECT) and the Working Party on Telecommunications and Information Society (WP TELECOM) on 14th March 2025, delegations will find in the Annex a discussion paper on the application of the GDPR and the AI Act.

## Discussion paper

### Joint discussion between the Working Party on Data Protection (WP DATAPROTECT) and the Working Party on Telecommunications and Information Society (WP TELECOM)

on the 14th March 2025 (morning)

The development of AI is one of the most important challenges of our times and in the next generations it will impact billions of lives in a profound way. It is also a technological phenomenon that is being created before our eyes as AI technologies are undergoing constant growth and changes, revolutionizing various industries, thus creating previously unimaginable possibilities. At the same time, this rapid advancement has brought about complex challenges regarding not only technological robustness and economic feasibility, but also data protection and privacy, transparency, and accountability.

As part of its comprehensive AI strategy, the EU should be ready to harness the many opportunities and address challenges of AI in a future-proof manner. The EU should implement its ambitious plans: being an AI Continent while ensuring that AI is human-centric and trustworthy.

AI depends on large amounts of high-quality data. Collection, refining, and utilization of data is the essence of the paradigm shift launched by machine learning. The training of AI algorithms to learn will play a fundamental role in the shape of Europe's digital future. At the same time data is not only a resource allowing creation of new systems and models. It has to be considered how data – both personal and non-personal – is used and whether it is adequately protected. In the context of machine learning, the processing of personal data for the development of AI models needs to take place in compliance with Union data protection law.

The Polish Presidency proposes a joint discussion on the 14<sup>th</sup> March 2025 between members of the Working Party on Data Protection (WP DATAPROTECT) and of the Working Party on Telecommunications and Information Society (WP TELECOM). The purpose of the meeting is **to explore best practices to ensure synergies in the application of the GDPR and the AI Act.**

The EU has taken ambitious steps towards a comprehensive regulation of the development and use of AI systems. The Artificial Intelligence Act, which entered into force on 1 August 2024, aims to foster the development and uptake of AI systems across the EU, following a risk-based approach with targeted and proportionate guardrails to address the risks, while fostering innovation. At the same time, a key objective of the AI Act is to protect fundamental rights, including the right to the protection of personal data and privacy, by addressing the risks of AI systems and powerful AI models. While the majority of the rules of the AI Act will be applicable in August 2026, the first provisions on prohibitions already apply as of February 2025 and the national governance will have to be in place in August 2025.

As such, various stakeholders: the providers and deployers of AI systems – including both big companies and SMEs, legal professionals, technical experts and public administrations face a two-fold challenge.

First, there is a need to ensure that the AI systems and models on which they are built are compliant with the GDPR which remains fully applicable. The heavy reliance of AI systems on large amounts of personal data, and the rapid evolution of such systems, is bound to lead to

questions on the correct application of the GDPR – as evidenced in the recent opinion of the EDPB which has provided guidance to the data protection authorities.<sup>1</sup>

Second, the providers and deployers of AI systems will need to simultaneously apply both the GDPR and the AI Act. Both acts include several, complementary obligations – regarding e.g. risk assessment, rights of data subjects, redress mechanisms or safeguards. The Polish Presidency believes that now is the time to discuss how to maximise synergies in simultaneous implementation of the two acts, provide adequate guidance and minimise administrative burden.

An approach based on a constructive, future-oriented dialogue is needed to help to find clearer guidance for various stakeholders in the EU legislative system. This approach requires engagement of multiple actors: policy makers, representatives of public administrations, regulators, entrepreneurs, innovators, and societal stakeholders involved in AI development and deployment.

We believe that such an open, dynamic and constructive discussion is the best way forward, ensuring a robust AI development and deployment which takes full account of data protection rules.

For the sake of getting an overview and having a discussion, the Polish Presidency would like to invite Member States to answer the following questions:

- **What do you expect to be the main challenges for the competent national authorities under the AI Act and the supervisory data protection authorities regarding the application of both the AI Act and the GDPR?**
- **What are the main challenges for providers and deployers of AI systems, regarding compliance with both the AI Act and the GDPR? (i.e. lack of understanding of the provisions and their correlation, complementarity of obligations)? What are ways to minimize the burden for providers and deployers of AI systems for obligations which may have similar elements (e.g. the fundamental rights impact assessments)?**
- **Smooth and effective implementation of the AI Act and GDPR with regard to AI systems will require close cooperation of multiple actors representing both the AI and the data protection domains. How do you intend to ensure it at the national level? Please share possible best practices and examples of existing cooperation between authorities at the national level, which could be built upon to ensure a consistent implementation of the AI Act and the GDPR in the future.**
- **How can the cooperation between the future AI Act market surveillance authorities and GDPR authorities be facilitated (guidelines, collaborative approach in the administration, practical examples, IT tools etc.)? What actions would you see at the EU level?**
- **How can the AI regulatory sandboxes be implemented in a way that enables collaboration between the AI Act market surveillance authorities and data protection supervisory authorities to bring legal certainty and support AI innovation?**

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<sup>1</sup> Opinion 28/2024 on certain data protection aspects related to the processing of personal data in the context of AI models, adopted on 17 December 2024