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From:	General Secretariat of the Council
To:	Antici Group (Simplification)
Subject:	Omnibus VII (Digital Omnibus) – explanatory note of the Presidency compromise text – AGS meeting on 27/02/2026

Delegations will find attached an explanatory note by the Presidency regarding the Presidency compromise text on GDPR (ST 6406/26) for the meeting of the Antici Group (Simplification) of 27 February 2026 on Omnibus VII (Digital Omnibus).

Explanatory note

The purpose of this explanatory note is to provide delegations with additional information, clarifications and reasoning for the Presidency drafting proposal (ST 6406 2026) in relation to the amendments to the General Data Protection Regulation (GDPR) proposed by the Commission as part of the Digital omnibus proposal.

Based on the Q&A sessions and discussions already held within the AGS, as well as on the feedback and drafting suggestions received from delegations, this first Presidency proposal does not cover all GDPR-related provisions but instead focuses on provisions for which discussions and positions seem to be advanced enough in order to initiate discussions on drafting and explore possible compromises, or where there seems to be a sufficiently broad consensus to move forward with a drafting proposal.

- This first Presidency proposal does not address provisions related to the processing of personal data in the context of the development and operation of an AI system, nor on the processing of personal data in the terminal equipment of a natural person and other ePrivacy related provisions. Several delegations maintained their scrutiny reservations on these provisions or expressed the need to have further discussions. A steering note for the discussion on these matters during the AGS meeting of 27 February has been circulated (WK 2802/2026).

- The Presidency highlights that, while several of the GDPR-related provisions remain untouched at this stage, it intends to make concrete drafting suggestions in a further proposal, after the AGS meeting of 27 February and a new written consultation.

In preparing this proposal, the Presidency also considered the recently adopted EDPB-EDPS Joint opinion 2/2026 on the Digital omnibus[1]. An exchange of views with the EDPB and the EDPS is foreseen during the AGS meeting of 27 February.

The Presidency is aware that some delegations may not have finalised their position on all provisions proposed by the Commission and took good note of the scrutiny reservations expressed. This first Presidency proposal therefore also aims at triggering discussions, and identifying further avenues for compromise or possible improvement of the wording proposed.

General overview and main reasoning

1. Definition of personal data and pseudonymisation
Article 3(1), Article 3(10), Article 3(11), Recital 27, Recital 27a

The Presidency took note of the concerns and strong reservations from an important number of delegations concerning the proposed amendments to the definition of personal data, notably expressed during the dedicated discussion within the AGS on 16 January 2026[2]. Several delegations have also expressed strong concerns as to the proposal to introduce a new Article 41a GDPR empowering the Commission to adopt an implementing act specifying the means and criteria to determine whether data resulting from pseudonymisation no longer constitutes personal data for certain entities.

In their joint opinion, the EDPB and the EDPS urged the co-legislators to not adopt the proposed changes to the definition of personal data and suggested to delete the proposed new Article 41a.

The Presidency also recalls that, in its judgment in Case C-413/23 P EDPS v SRB, the Court of Justice of the European Union (CJEU) was very clear in stating that " (…) *pseudonymisation is*

[1] WK 2859 2026
[2] WK 250 2026

therefore not part of the definition of 'personal data', but refers to the establishment of technical and organisational measures to reduce the risk of a data set being correlated with the identity of data subjects"[3].

- ➔ Given the above, the Presidency proposes to delete the amendment to the definition of personal data proposed in Article 3(1) as well as the proposed new Article 41a GDPR under Article 3(10).

- ➔ In order to address the need to provide further clarity to data controller in the application of pseudonymisation under the GDPR and take into account further relevant CJEU case law, the Presidency proposes to amend the tasks of the Board under Article 70 GDPR to include the issuing of a dedicated guideline on pseudonymisation, clarifying circumstances whether a natural person is identifiable and means reasonably likely to be used to identify a natural person, and specifying means and criteria to determine whether data resulting from pseudonymisation may no longer constitute personal data for certain entities. This Presidency proposal under Article 1(15) is to be read in conjunction with the proposed new recital 27a.

The Presidency considers that this proposal, as an attempt to build compromise, maintains legal certainty and a continuous level of protection by preserving the definition of personal data as established under the GDPR, while provide further support and guidance to data controllers in implementing effective pseudonymisation and seizing related opportunities in terms of simplification.

2. **Scientific research and purpose limitation**
   Article 3(1), Article 3(2), Recital 28, Recital 29, Recital 32

The Presidency notes that some delegations have expressed concerns about the proposed definition of 'scientific research' under Article 3(1) and opposed related further provisions due to the broad scope implied by the Commission proposal. Other delegations have suggested amendment to the proposed definition with a view to further clarify and delineate the scope of scientific research.

While the EDPB and EDPS, as well as several delegations, welcomed the introduction of a common definition of 'scientific research' under the GDPR, the Presidency considers that agreeing on such a definition might be challenging through discussions on an Omnibus proposal, considering the fact that there is no common definition of scientific research established under EU law and that definitions of 'scientific research' may differ from one Member States to the other, and may even vary from one field of research to another, when such definitions exist under national law[4].

With regard to purpose limitation, the Presidency also took note that some delegations expressed support for the presumption of compatibility for scientific research purposes proposed under Article 3(2) while others raised concerned or expressed scrutiny reservation for this provision.

- ➔ Given the above and in an attempt to find an acceptable compromise, the Presidency proposes not to introduce a common definition of 'scientific research' and instead further clarify and delineate the scope of scientific research activities in an amended recital 29, which includes detailed elements to be assessed in establishing the qualification of processing as being carried out for scientific research purpose. It is also clarified that scientific research can be carried by both public and private entities, thus covering entities which may use the result of scientific research for commercial purposes.

[3] Judgment of 4 september 2025 in case C-413/23 P EDPS v SRB, paragraph 72
[4] See Study on the secondary use of personal data in the context of scientific research, October 2020, p.17 and annex 1 (20250401_study_on_the_secondary_use_of_personal_data_in_the_context_of_scientific_research_23102020_en.pdf)

The Presidency proposal retains the presumption of compatibility for research purposes as proposed by the Commission with Article 3(2) while adding an explicit reference the appropriate safeguards under Article 89 GDPR and deleting the reference to the conditions under Article 6(4) GDPR.

3. **New derogation from the prohibition to process biometric data**
   Article 3(3), Recital 34

A few delegations have already provided written suggestions in relation to the new derogation from the prohibition to process biometric data, proposing adjustments to the Commission proposal or suggesting clarifications and additional safeguards. The Presidency notes that the EDPB and the EDPS welcomed the introduction of this new derogation while recommending the inclusion of additional safeguards.

➔ The Presidency suggests complementing the Commission proposal in Article 3(3) with additional safeguards, clarifying in the operative part of the text that the derogation applies to 'one-to-one' verification and making the application of the new derogation conditional to an authorisation under Union or Member State law.

➔ The Presidency also suggest amending and further developing the corresponding recital 34, including a reference to less intrusive verification methods as recommended by the EDPB and EDPS.

4. **Exercise of the individual's right of access and exemption from information obligations**
   Article 3(4), Article 3(5), Article 3(6), Recital 35, Recital 36, Recital 37

Several delegations have made specific wording suggestions concerning the proposed amendment to Article 12(5) GDPR related to the exercise of data subjects' rights, in order to address any possible negative impact on the level of protection and concerns in relation to some of the wording introduced by the Commission's proposal. The Presidency also notes that the EDPB and the EDPS considered in their joint opinion that the future legislation should refrain from linking the notion of abuse of rights with the exercise of the right to access for purposes other than data protection.

Some delegations also made specific wording suggestions to further clarify the proposed amendment to Article 13(4) GDPR, to further define the condition under which a data controller may be exempted from its information obligation under GDPR and notably avoid the use of vague and undefined terms such as "data-intensive".

Concerning the proposal to introduce a new paragraph (5) to Article 13, laying down the condition for an exemption from information obligation when processing takes place for scientific research purposes, the Presidency took note of the support and wording suggestions made by some delegations as well as the reservation or strong concerns expressed by others.

➔ Given the above, the Presidency suggests under Article 3(4) to further frame and clarify the circumstances where, following a request for the exercise of data subjects' rights, a controller may either charge a reasonable fee or refuse to act on the request, in particular by referring to cases where an abusive intension on the part of the data subject can be demonstrated. The proposed wording aligns with the EDPB and EDPS recommendation to link the notion of abusive request with the existence of an abusive intension, in line with CJEU case law. The Presidency also suggests maintaining the level of burden of the proof for the controller as currently laid down the GDPR, as recommended by the EDPB and EDPS.

➔ The Presidency also suggests, under Article 3(5), to clearly define circumstances under which controllers may be exempted from information obligation under Article 13, notably by

referring to a 'direct, limited and clearly circumscribed relationship' between data subjects and the controller'. The Presidency proposes to complement the described circumstances by adding that the activity is 'not likely to result in a high risk to the rights and freedoms of data subjects nor involve the processing of large amounts of personal data, special categories of personal data or complex processing operations'.

➔ Concerning the exemption from information obligation when processing takes place for scientific research purposes, the Presidency suggests limiting the exemption from information obligation under Article 13 to the further processing for scientific research purposes by the same controller. Since Article 13 applies when data is collected directly from the data subject, this would cover for example situations where a hospital would further process patients' data for scientific research purposes, provided the other conditions under this provision are met.

5. **Automated decision making**
   Article 3(7), Recital 38

The Presidency notes that several delegations have suggested wording proposal in order to maintain the initial principle of Article 22 GDPR of a prohibition with limited exception, as also recommended by the EDPB and EDPS in their joint opinion. Some delegations also raised concerns or objections concerning the Commission proposal to clarify that the exception for the entering or performance of a contract would apply regardless of whether the decision could be taken otherwise than by solely automated means. On this last point, the EDPB and the EDPS recommended that the clarification added by the Commission proposal ("regardless of whether the decision could be taken otherwise than solely automated means") should be kept only in Recital 38.

As highlighted in the comments received, the Presidency also took into consideration the fact that the right not to be subject to a decision based solely on automated processing, as currently laid down in Article 22 GDPR, is also enshrined in the text of the Council of Europe Convention 108+ for the protection of individuals with regard to the processing of personal data.

➔ Given the above, the Presidency suggests deleting the Commission proposal amending Article 22 GDPR, thus maintaining the provisions as currently laid down in the GDPR and, preserving the principle of a prohibition with limited exceptions.

6. **Data breach notification and data protection impact assessment**
   Article 3(8), Article 3(11), Recital 39
   Article 3(9), Article 3(11), Recital 40

The Presidency noted a rather broad support for the Commission's proposal to raise the threshold for notifying a data breach to the supervisory authority in order to align it with the threshold for communicating a personal data breach to the data subject, i.e. when the personal data breach is likely to result in a 'high risk'.

Suggestions were made however to consider maintaining the 72 hours deadline for the notification to be made, noting in particular that the maximum deadline for incident reporting obligations under other pieces of EU law, such as NIS 2 and DORA, is also aligned with a 72 hours timeframe.

➔ Given the above, the Presidency proposes to support the Commission proposal to raise the threshold for notifying a data breach while maintaining the notification deadline of 72 hours as currently laid down under Article 35 GDPR. The Presidency also considered that the notification obligation would now be limited to high-risk data breaches, thus reducing the number of breaches to be notified.

➔ The Presidency also suggests tasking the EDPB for the establishment of a common template for the notification of data breaches, instead of empowering the Commission to

adopt delegated act on the matter. In addition to a list of the circumstances in which a personal data breach is likely to result in a high risk to the rights and freedoms of a natural person, the Presidency proposes to task the Board to also establish a list of the circumstances in which it is not likely to result in such a high risk.

The Presidency considers that there is a broad support for the Commission proposal to establish a common list of processing operations which are subject and not subject to the requirement for a data protection impact assessment (DPIA), as well as a common template and methodology for conducting DPIAs. The Presidency noted however that some delegations objected to the conferring of power to the Commission for the adoption of an implementing act establishing the lists and template and methodology for conducting DPIA.

Given the above, the Presidency suggests tasking the EDPB for the establishment of the lists and the common template and methodology for conducting DPIAs, instead of empowering the Commission to adopt delegated act on the matter.

- ➔ The Presidency wishes to clarify that the deletion under Article 3(9) of the deadline for the establishment of the lists and the common template and methodology, as well as the deletion of the review clause, are editorial mistakes in document ST 6406 2026. These provisions should be considered as maintained and applicable to the Board, as part of the Presidency proposal.

7. P2B

Taking into account the Member States' interventions at our previous AGS meeting on 16 January, and written comments, the Presidency takes that most delegations support the Commission proposal on the repeal of the P2B Regulation. Therefore, no changes were made to Article 10(1) and (2). In order to further clarify the text, recital 59 was amended to provide reasons for the need repeal Articles 4 and 11 and certain provisions of Article 2 at a later stage.

Detailed explanatory table

Recitals	
Recital 27	Deletion of the recital corresponding to the Commission proposal to amend the definition of personal data.
Recital 27a	New recital addressing pseudonymisation and the need to provide further clarity in relation to the case-law of the Court of Justice of the European Union. This recital clarifies and further develops the Presidency proposal to task the European Data Protection Board with the adoption of specific guidelines on pseudonymisation. It is also clarified that while controllers remain fully responsible to determine whether data resulting from pseudonymisation is personal, the guidelines should support controllers in implementing such measures and criteria, and provide guidance to demonstrate whether pseudonymised data do not lead to re-identification of data subjects.
Recital 28	Deletion of the recital corresponding to the Commission proposal to introduce a definition of 'scientific research'. Most of the deleted text is merged into the following recital 29 (Article 3(14)).
Recital 29	Merging of recitals 28 and 29, with additional wording clarifying and delineating the scope of scientific research activities, including references to well-established key principles. The Presidency proposal also clarifies that scientific research activities can be conducted by both public and private entities, and can support innovation including technological developments. The recital includes clarifications and refers to safeguards, as well as detailed elements to be assessed in establishing the qualification of processing as being carried out for scientific research purpose. It is also clarified that scientific research can be carried by both

	public and private entities, thus covering entities which may use the result of scientific research for commercial purposes.
Recital 32	Revision to ensure correct alignment with the wording of Article 6(1)(f) GDPR and avoid misleading confusion between general principles derived from EU primary law and the choice of legal basis for the processing of personal data under Article 6 GDPR.
Recital 34	Additional clarifications and safeguards in the application of the proposed new derogation from the prohibition of processing of special categories of personal data for the purpose of biometric verification. The recital is amended to mirror the Presidency proposal in Article 3(3), including refences to provisions under Union or Member State law, and to limit examples to cases where the biometric data or the means needed for the verification are under the sole control and possession of the data subject.
Recital 35	Redrafting to align the recital with the Presidency proposal in Article 3(4) amending Article 13, with a focus on clarifications and examples related to the demonstrated abusive intension of a request.
Recital 36	Redrafting to align the recital with the Presidency proposal in article 3(5), further clarifying and delineating the application of the exemption from information obligation.
Recital 37	Redrafting to align the recital with the Presidency proposal in Article 3(6) limiting the exemption from information obligation under Article 13 to the further processing for scientific research purposes by the same controller.
Recital 38	Deletion of the recital corresponding to the Commission proposal to amend Article 22 GDPR on automated individual decision making.
Recital 39	Redrafting to align the recital with the Presidency proposal in Article 3(8), tasking the EDPB to establish and make public the common template and lists for the notification of personal data breaches.
Recital 40	Redrafting to align the recital with the Presidency proposal in Article 3(9), tasking the EDPB to establish and make public the common DPIA lists and template.
Recital 59	Redrafting to add a reference on keeping the necessary level of protection for business users and fixing a fixed date for the enforcement application of Article 15.
Recital 61	Redrafting to provide clarity on the legal basis.
Article	
Article 3(1)	Deletion of the Commission proposal to amend the definition of personal data, thus maintaining the current definition as laid down in the GDPR. Deletion of the Commission proposal to introduce a definition of 'scientific research'.
Article 3(2)	Addition of an explicit reference to the related appropriate safeguards in Article 89(1) GDPR and deletion of the reference to the conditions under Article 6(4) on compatible purposes (which is maintained in recital 29).
Article 3(3)	Wording clarification to specify that the new derogation from the prohibition of processing of special categories of personal data would apply where the processing of biometric is needed for 'one-to-one' verification and where the personal and means remain under the sole control 'and possession' of the data subject. The Presidency proposal also introduces an additional safeguard, making the application of the new derogation conditional to an authorisation under Union or Member State law.
Article 3(4)	Redrafting in order to further frame and clarify the circumstances where, following a request for the exercise of data subjects' rights, a controller may either charge a reasonable fee or refuse to act on the request. The Presidency proposes to delete references to "abuses the rights conferred by the regulation" and "purposes other than the protection of their data", which may be at odds with CJEU case-law and would not provide controllers with clear and circumscribed circumstances where they can refuse to act on a data subject request. Instead, the Presidency

	proposes to refer to cases where an abusive intension on the part of the data subject can be demonstrated. This proposed wording aligns with the EDPB and EDPS recommendation to link the notion of abusive request with the existence of an abusive intension, in line with CJEU case law.
Article 3(5)	Redrafting in order to clearly define circumstances under which controllers may be exempted from information obligation under Article 13 where personal data are collected directly from the data subject. The Presidency proposes to refer to a 'direct, limited and clearly circumscribed relationship' between data subjects and the controller' and avoid referring to undefined terms such as 'not data intensive'. Instead, the Presidency proposes to complement the described circumstances by adding that the activity is 'not likely to result in a high risk to the rights and freedoms of data subjects nor involve the processing of large amounts of personal data, special categories of personal data or complex processing operations'. The Presidency also include additional wording to clarify that the exemption should not apply where the controller intends to process the data collected from the data subject for other purposes.
Article 3(6)	Redrafting in order to limit the exemption from information obligation under Article 13 to the further processing for scientific research purposes by the same controller. While more limited, this exemption from information obligation in case of further processing for scientific research purposes is also to be considered in light of the amendment to Article 5(1)(b) and the presumption of compatibility of further processing for such purposes.
Article 3(7)	Deletion of the Commission proposal to amend Article 22 GDPR in order to maintain the provisions as currently laid down, thus preserving the principle of a prohibition with limited exceptions.
Article 3(8)	Redrafting supporting the Commission proposal to raise the threshold for data breach notification obligation to cases likely to result in a high risk to the rights and freedoms of natural persons. The Presidency however proposes to maintain the notification deadline of 72 hours as currently laid down under Article 35 GDPR, as suggested by some delegations. It could indeed be considered that since the notification obligation would now be limited to high-risk cases, the number of breaches to be notified will be reduced and therefore adapted to the current 72 hours timeframe. Introducing further delay for high-risk data breaches to be notified may in some circumstances negatively impact on the protection of individuals' personal data and the security of information systems (eg. Individuals bank/financial data, health data). The Presidency also notes that the maximum deadline for incident reporting obligations under other pieces of EU law, such as NIS 2 and DORA, is also aligned with the 72 hour timeframe. The Presidency also suggests to tasks the EDPB to establish and make public a common template for the notification of data breaches, instead of empowering the Commission to adopt delegated act on the matter. In addition to a list of the circumstances in which a personal data breach is likely to result in a high risk to the rights and freedoms of a natural person, the Presidency proposes to task the Board to also establish a list of the circumstances in which it is not likely to result in such a high risk.
Article 3(9)	Redrafting supporting the Commission proposal to establish common lists of kind of processing operations which are subject and not subject to the requirement for a data protection impact assessment (DPIA), as well as a common template and methodology for conducting DPIAs, but tasking the EDPB to establish and make public these lists and template, instead of empowering the Commission to adopt delegated act on the matter.
Article 3(10)	Deletion of the Commission proposal for a new Article 41a on pseudonymisation empowering the Commission to adopt an implementing act specifying means and criteria to determine whether data resulting from pseudonymisation no longer constitutes. The Presidency proposes instead to task the EDPB to adopt specific guidelines on the matter (see proposal in Article 3(11)).

Article 3(11)	Update of the wording amending Article 70 GDPR on the tasks of the Board, mirroring the new tasks conferred to the EDPB as per the Presidency proposal on Article 3(8) and Article 3(9). In addition, and in order to ensure further clarity for data controllers, the Presidency proposes to task the EDPB to adopt guidelines clarifying circumstances whether a natural person is identifiable and means reasonably likely to be used to identify a natural person, and specifying means and criteria to determine whether data resulting from pseudonymisation may no longer constitute personal data for certain entities.

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