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

Subject:	Omnibus VII (Digital Omnibus) - Presidency discussion note on GDPR - AGS 27.02.26
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Delegations will find enclosed a Presidency discussion note on GDPR on the proposal of Omnibus VII (Digital Omnibus), relating to the AGS meeting on 27 February 2026.

Presidency discussion note

Digital omnibus (GDPR) – AGS meeting of 27 February 2026

In view of the meeting of the Antici subgroup on Simplification (AGS) of 27 February 2026, the Presidency prepared this discussion note as a basis for further exchanges between delegations on the Digital omnibus proposal and the related proposed amendments to the General Data Protection Regulation (GDPR).

Following previous discussions within the AGS and the positions expressed in writing by delegations, the Presidency notes that several delegations have maintained their scrutiny reservations, or requested further discussions, concerning the provisions related to the processing of personal data in the context of the development and operation of AI systems, as well as to the processing of personal data in the terminal equipment of a natural person and other ePrivacy-related provisions.

The Presidency therefore suggests holding further discussions on these two thematics with a view to support future drafting proposals and possible compromises.

Processing of personal data for the development and operation of AI systems

Article 3 (3) – new point 9(2)(k) GDPR, new paragraph 9(5) GDPR

Article 3(15) – new Article 88c GDPR

The Commission proposes to introduce specific provisions under the GDPR to clarify and support conditions for the processing of personal data in the context of the development and operation of AI systems and AI models. The proposal for a new Article 88c notably aims at clarifying when a controller may rely on Article 6(1)(f) GDPR to pursue a legitimate interest in the context of development and use of AI systems and models (Article 3(15)). It provides for a non-exhaustive list of technical and organisational measures and safeguards including an unconditional right to object to the processing and enhanced transparency.

In addition, the Commission proposes to introduce a derogation from the prohibition on processing special categories of personal data in the context of the development and operation of AI. The derogation should only apply where the controller does not aim to process special categories of personal data, but such data are nevertheless residually processed, subject to appropriate measures and safeguards.

Delegations already had the opportunity to be provided with further explanations from the Commission during the Q&A session, and the EDPB and EDPS also addressed these specific provisions in their joint opinion 2/2026 on the Digital Omnibus.

The Presidency highlights that the proposed provisions amending the GDPR are to be considered and discussed separately from the ongoing discussion on the AI Omnibus proposal.

Given the above, and in order to support the preparation of drafting suggestions, the Presidency considers important to further understand delegations' positions on the concerned provisions.

- **Question 1:** delegations are invited to express their views on the proposed provisions relating to
- the processing of personal data in the context of the development and operation of AI systems based on the lawful ground of legitimate interest (Art 88c).
 - the proposed new derogation from the prohibition on processing special categories of personal data (Article 9 (2)(k) and (5)).

Processing of personal data in the terminal equipment of a natural person and other ePrivacy related provisions

Article 3(15) – new Articles 88a and 88b GDPR

Article 5

During the AGS meeting of 16 January 2026, delegations already had the opportunity to express their views on the proposed new Article 88a GDPR updating the rules on storing of or on gaining access to information stored on devices and on the principle of moving the protection already laid down in the ePrivacy Directive under the General Data Protection Regulation.

The Presidency is aware that some Member States have not yet adopted a position or have maintained a scrutiny reservation for the proposed amendments and notes that some Member States have raised serious concerns about the moving of the rules to the GDPR.

However, the Presidency has also noted that other aspects of the proposal – in particular the proposed extension of the exemptions from the consent requirement (aggregated information for audience measurement and security of a service or device) – have found broader support among delegations.

In their joint opinion, the EDPB and the EDPS seems to be generally supportive of this extension, while recommending to clearly delimit the processing in scope of the security exception to what is strictly necessary.

Given the above and in order to better understand delegations' views and identify avenues for possible compromises, the Presidency considers necessary to hold a further discussion on the proposed extension of the exemptions from consent requirements.

- **Question 2:** delegations are invited to express their views and possible suggestions on the additional exemptions from consent requirement for aggregated information for measuring the audience and for maintaining or restoring the security of a service or the terminal equipment. In particular, the Presidency invites delegations to share their positions on the two following points:
- Should the exemption for audience measurement remain limited to its originally intended scope (e.g. the controller of a service requested by a data subject) or more open, in particular concerning to the actors it should cover (other parties in the measurement value chain that are not processors of the controller)?
 - Should the exemption for safeguarding the security of a service or a device be further specified and delineated?

The Commission proposal also introduces a new Article 88b GDPR on automated and machine-readable indications of data subject's choices with respect to processing of personal data in the terminal equipment of natural persons, with a view to oblige controllers of online interfaces (i.e. web browsers or a mobile application) to respect a signal expressing data subjects' preferences, that were set centrally – for example via a browser or a third party browser plug-in.

To facilitate compliance with this new obligation, the Commission proposes to develop dedicated standards. The obligation for controllers of online interfaces to accept centrally set machine-readable preferences would not apply to the providers of media services.

Given that the Commission proposal would introduce a new provision in relation to the automated and machine-readable indication of data subject's choice, the Presidency deems important to assess delegations' positions in this regard prior to examining the proposed provision in further details.

→ **Question 3:** Delegations are invited to share their views and overall position on the proposed new Article 88b GDPR on automated and machine-readable indications of data subject's choices with respect to processing of personal data in the terminal equipment of natural persons.