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From:	General Secretariat of the Council
To:	Antici Group (Simplification)
Subject:	Consultation on Omnibus VII (GDPR/P2B/ePrivacy) digital rules - related to AGS meeting of 27.02.26 (deadline 18.03.26) - additional compiled comments: HR

Delegations will find attached the compiled written comments from Croatia on GDPR / P2B and ePrivacy.

Consultation on Digital Omnibus (GDPR/P2B) - deadline 18/03/26

Comments for HR (Delegates Portal)

Primarily we would suggest **deletion of the last sentence in the recital 27a** : „*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.*

Clarification: A statement that is repeated and has no added value to the previous sentence

We also suggest to delete the following sentence of the recital 29: „*Such further processing should be considered compatible, provided that it is carried out in compliance with the principle of purpose limitation and subject to appropriate safeguards laid down in Regulation (EU) 2016/679, in particular Article 89.*“

Clarification: A statement that is repeated and has no added value to the previous sentence

Also, in **the recital 36**, we suggest to delete a part of the text which states: „**should not undermine the principle of transparency and“.**

Croatia - comments

Recital (38) “scientific research” + Article 4

Croatia welcomes the Proposal’s initiative of harmonising the notion of ‘scientific research’ in the context of the GDPR as this may enhance legal certainty. A clear, precise, and well-defined definition is essential because it will influence the interpretation and application of all other GDPR provisions governing the processing of personal data for scientific research purposes, including Articles 5(1)(b) and (e), 14(5)(b), 17(3)(d), 21(6) and 89 GDPR.

Therefore, we oppose the deletion of the definition of "scientific research" from the operative part of the text, because practice has shown that this definition, which we do not have in the GDPR, is very important for a certain group of respondents, and therefore we believe that there is a legal gap in the current text of the GDPR.

For these reasons we recommend further refining the proposed definition of “scientific research” by:

a) specifying that it covers research carried out using a methodical and systematic approach consistent with the relevant scientific field;

b) clarifying that “scientific research” aims to produce results that are verifiable and transparent. The recitals should explain that transparency may, among other things, involve making results available. Publication of results may also support the objective of advancing society’s general knowledge and wellbeing; and

c) deleting from the definition the phrases “any research which can also support innovation, such as technological development and demonstration” and “[t]his does not exclude that the research may also aim to further a commercial interest“

Proposal of the new definition:

"scientific research" means research conducted using a methodical and systematic approach that is consistent with the standards of the relevant scientific field and is aimed at producing results that are verifiable and transparent. Transparency may, among other things, include making methods, data (where appropriate), and results available. Such research shall either contribute to existing scientific knowledge or apply that knowledge in novel ways, be undertaken with the aim of advancing society's general knowledge and well-being, as opposed to serving primarily one or several private interests, and comply with applicable ethical standards in the relevant area of research.

Replies to questions (WK 2802/2026 INIT)

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).

Croatia acknowledges that when collecting data for the training of certain AI models or systems it is not always possible for controllers to avoid (residual) processing of special categories of data. In this respect, Croatian DPA welcomes the Proposal's aim of addressing this situation by introducing a specific derogation covering the residual processing of special categories of data for the development and operation of AI systems, subject to specific conditions .

In order to ensure legal certainty for data subjects, as well as for developers and providers of certain AI models and systems, we suggest some improvements to the current Proposal.

The proposed new Article 9(2)(k) GDPR, read together with Recital 33 of the Proposal, is intended to cover situations where a primary processing operation results only in incidental and residual processing of special categories of data. To prevent an overly broad reading of Article 9(2)(k), Croatian DPA recommends explicitly referring to such incidental processing in the operative provisions.

Article 9(5) GDPR should make clear that a controller's conclusion that deletion would involve disproportionate effort must be supported by properly documented evidence, taking into account the state of the art and the potential impact on data subjects. We propose including, in the recitals, illustrative examples of safeguards that ensure effective protection of special categories of data where deletion would entail disproportionate effort. The text should also clarify that "effective protection" includes preventing the re-use of those data for other purposes. We recommend reflecting this point as well in the final sentence of the new Article 9(5) GDPR.

We understand that Article 4a of the AI Act, as introduced by the Omnibus Proposal, is narrower in scope and would apply only to a specific dataset of special categories of data intentionally processed solely for bias detection and correction. By contrast, Article 9(2)(k) addresses residual processing of special categories of data and requires deletion where such processing cannot be avoided, alongside other safeguards. To avoid confusion between these two regimes, it would be neccessary to clarify their relationship and clearly delineating the scope of the new Article 9(2)(k), as noted above. We consider necessary adding cross-references in the relevant recitals, explaining the differences in scope, regime, and conditions under each provision

Croatia is not in favour of the proposal of article 88c

The legitimate interest aleary could be used as a legal basis for the development and deployment of AI models subject to certain conditions, explained in more detail. Against this background, it may not be necessary to codify this opinion. As recalled many times by the CJEU and specified further in the EDPB Guidelines 1/2024, controllers wishing to rely on the legal basis of 'legitimate interest' under Article 6(1)(f) GDPR should, prior to that, carry out a three-step test to assess whether this legal basis is appropriate based on the circumstances of the concerned processing activity. Article 88c could encourage controllers into assuming that 'legitimate interest' is by default the most appropriate legal basis in the context of the development and operation of AI, without feeling compelled to carry out the necessary case-by-case assessment to verify that their legitimate interest is not overridden.

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?

Croatia welcomes the inclusion, within the GDPR, of a provision on the protection of terminal equipment, given its close link to data protection rules. However, Croatian DPA doesn't support splitting the rules on access to and storage of information in terminal equipment, currently governed by Article 5(3) of Directive 2002/58/EC (the ePrivacy Directive) - between the GDPR and the ePrivacy Directive. This would create two parallel regimes depending on whether the stored data are personal or non-personal. In our view, such an approach would not deliver the intended simplification or legal certainty, nor would ensure supervision by a single authority.

In addition, to ensure legal certainty, it should be clarified that data obtained for the purposes of audience measurement, whether collected by the website/app provider or by a third party, must not be reused for any other purpose, combined with other services or analytics data from other websites or apps, or disclosed to third parties. The data should be used solely to generate aggregated, general insights into the performance and use of the online service, and any retained information should not relate to an identifiable individual, for example by anonymising the data immediately after collection.

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.

Croatia welcomes that under proposed Article 88b(4) GDPR, standards will be developed for the interpretation of machine-readable indications of data subjects' choices. To ensure that the standards deliver their intended effect and that all relevant actors rely on the same automated, machine-readable signals, it would be recommended clarifying that the standards referred to in Article 88b(4) lay down requirements applicable to all actors involved in enabling data subjects to express choices under proposed Article 88b(1) GDPR. This includes, in particular, controllers under proposed Article 88b(2) GDPR, as well as web browsers under proposed Article 88b(6) GDPR.

Furthermore, in line with the principle of data protection by design and by default, and given that valid consent requires a clear affirmative action by the data subject, it would be recommended that the default settings under these standards should not indicate consent. Alternatively, the browser should, upon first use, prompt the data subject to make an active choice.