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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) - comments from LV
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Delegations will find attached the comments from Latvia on GDPR.

Written comments from Latvia on the proposed amendments to the GDPR of the Digital Omnibus Package

Explanation of the problem

In Latvia, the media sector operates in a historically small, fragmented market, where economic viability largely relies on advertising revenues and the possibility of accessing comparable, independently verified audience data. The amendments to the GDPR proposed by the Digital Omnibus – in particular Articles 88a and 88b – have a significant impact on this environment and pose potential risks.

The proposed exception in Article 88a(3)(c) for audience measurement without the need for consent is formulated narrowly, only for aggregated information on the use of an online service, where the data controller makes the measurements 'solely for its own purposes'. Such a formulation has several legal consequences with a direct practical impact on the functioning of the media market:

- independent audience measurement providers of multiple publishers – including the JIC (*Joint Industry Committee*) models, which provide a neutral market measurement standard – are not covered by the proposed exception, as their measurements cover multiple publishers and are carried out in the common interest of the industry. Such providers remain completely dependent on obtaining consent, while large-closed ecosystems (e.g. Google, Meta) may benefit from this exception without restriction;
- this creates a structural imbalance of competition between independent media and dominant platforms, which have a significant share of the advertising market and will be able to use this exception for data processing in the future, while not participating in independent market measurements;
- this runs counter to the principles of transparency, non-discrimination and independent verification of audience measurement enshrined in Article 24 of the EMFA. Article 24 of the EMFA recognises audience measurement as part of the media market infrastructure with a public interest. If the exception in Article 88a *de facto* favours self-measurement over independent market measurements, the very independent verification that the EMFA is required to provide is undermined;
- the comparability of data between publishers will decrease, as independent measurement providers will face increasing barriers to data collection. Advertisers will be forced to rely on self-provided, independently unverified and unverifiable data provided by the platform, thereby increasing fraud risks and reducing market transparency;
- As the ability to earn from advertising revenue decreases, small and niche media will experience a relatively larger drop in revenue than large platforms, threatening their economic viability and content diversity. In the Latvian media market, where

several niche publications operate with limited resources, this risk is especially acute.

In relation to Article 88b, Latvia draws attention to the fact that media freedom and pluralism are essential elements of democracy, but considers that the protection of these values is compatible with high standards of data protection if media service providers retain the possibility to communicate directly and transparently with the user about the conditions of data processing, rather than subordinating this communication to mediation through browser providers with competing commercial interests. Thus, Latvia points to additional practical risks:

- Asymmetry of infrastructure control: the owners of the largest browsers (for example, *Google* and *Apple*) simultaneously operate in the advertising market and are in direct competition with independent media. Article 88b(6) gives them effective powers to technically restrict independent audience measurement and third-party advertising technologies before the user reaches the media site.
- Weakening of direct relationships: if the browser globally determines the refusal of the use of data, the medium does not have the opportunity to explain to the user the specific purpose of using the data or to obtain specific consent for its analytics. The control of consent is transferred from the direct relationship between the media and the user to the owner of the browser, a third party with their own commercial interests.
- Threat to the free content funding model: The independent media revenue model relies on the ability to offer advertisers verified, independently verified audience data. If this ability is limited at the browser level, the funding model that ensures the availability of free content and is the economic basis of independent journalism is undermined.

Recommendation

The introduction of a new 'legal basis' in Article 88a of the GDPR cannot be supported, as the legal bases for processing are exhaustively defined in Article 6 of the GDPR. If the legislator's intention is to provide for exceptions to the consent requirement in certain data processing scenarios, such exceptions should be formulated as separate conditions that explicitly refer to one of the legal bases already laid down in Article 6 of the GDPR, rather than constituting an autonomous legal basis outside the framework of Article 6 of the GDPR.

If the legislator chooses to maintain the proposed regulation 88a, it would need to be clarified. In its current form, the first paragraph of Article 88a regulates only the initial acquisition of data from the user's equipment, while the third paragraph already lays down rules for further processing. This discrepancy creates a legal loophole, so the first paragraph should be supplemented by explicitly extending it to further processing.

It is recommended to amend the proposed version of Article 88a as follows:

- Extend the audience measurement exception in Article 88a(3)(c) to cover independent multi-issuer measurement providers operating in accordance with the principles of transparency, non-discrimination and independent verification set out in Article 24 of the EMFA.

- Ensure that the application of the exception is subject to clear conditions, in particular the requirement that measurements are carried out in an aggregated form, without the possibility of identifying specific data subjects, and that the measurement methodology is publicly available and independently verifiable.
- Ensure that the planned framework is consistent with the requirements and objectives of the EMFA to avoid a situation where two simultaneously applicable EU legislation creates conflicting obligations in the media sector.

In the context of Article 88b, media service providers must retain the possibility to establish a direct relationship with the user, including by offering a choice between consent to data processing and a paid subscription ('agree or pay' model), which the European Data Protection Board (EDPB) has recognised as permissible in principle under certain conditions in its opinion 08/2024¹.

It is recommended to amend the proposed version of Article 88b as follows:

- Article 88b(3) should be supplemented by a regulation that would include in the legislative act a clear and unambiguous indication of the permissibility and applicability of the 'agree or pay' model to the situation governed by Article 88b.
- Article 88b(6) should be supplemented by safeguards preventing its use as an anti-competitive tool by browser owners operating simultaneously on the advertising market.

¹ Available: [Opinion 08/2024 on Valid Consent in the Context of Consent or Pay Models Implemented by Large Online Platforms](#) | European Data Protection Board