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

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Subject: Omnibus IV (GDPR, Critical Entities Resilience) - Compilation of written comments

Delegations will find enclosed questions and comments as received, by 20 June, from CZ, ES, FR, IT, NL, LV, AT, FI and SE on the Omnibus IV package (GDPR, Critical Entities Resilience).

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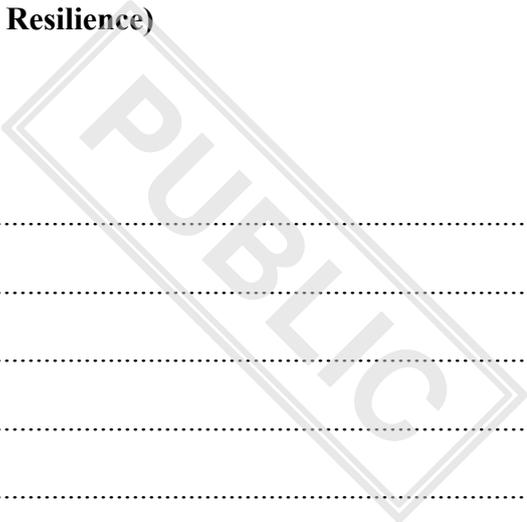
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**MS comments on
(GDPR, Critical Entities Resilience)**

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CZECHIA

- *As regards the amendments to GDPR, we support the proposal but would like the Commission to explain the legislative technique. We understand that there is hard limit of 750 persons in Article 30(5) to avoid legal uncertainty for controllers and processors. In Articles 40 and 42, we probably can afford to refer to definitions that refer back to Commission Recommendation, because it relates only to enterprises. In the text of GDPR in force, we use only recital 13. Could this recital be changed as well, to include reference to SMCs? Or do we need new definitions in Article 4? Could the Commission confirm this?*

SPAIN

Please find below our questions regarding the GDPR proposal in Omnibus IV.

“With regard to the proposed amendment to Article 30.5 of the GDPR (in which the obligation to register processing activities is limited to processing that poses a ‘high risk’ and that this register is required from 750 workers), we have doubts as to which we need to clarify.

First, the recording of processing activities is not merely a document describing the processing of personal data that meets the requirements of Article 30 of the GDPR, as well as constituting a formal obligation, as it also serves to define, describe and explain the processing being a determining factor in compliance with the accountability of Article 5.2 GDPR (decisions taken are documented and why).

The assessment of high-risk activities may create difficulties for companies that have to undertake it, and they should have adequate tools in place to do so.

On the other hand, raising the threshold to 750 workers means considering the business fabric of each Member State. In our case, this number of companies with more than 750 employees is not generally reached. We are therefore in doubt as to what happens, for example, if a company that has a small number of employees but has a large number of customers if it will be forced to dispense with this register of processing activities could lead to a reduction in the guarantees of the rights of customers or data subjects.”

FRANCE

- **(i) S'agissant du Règlement (UE) 2016/679 relatif à la protection des données à caractère personnel (RGPD)**
 - La proposition de révision de l'article 30(5) RGPD présenté par la Commission dans le cadre de l'omnibus IV est une initiative que la France soutient dans la direction de la simplification des obligations au titre du RGPD pour les entreprises européennes : celle-ci permet d'alléger les démarches à entreprendre par des entreprises auparavant considérées comme de grandes entreprises, et sur lesquelles l'obligation de tenue de registre des traitements avait un impact disproportionné au regard des ressources internes dévolues à la mise en conformité réglementaire ; et la limitation des exceptions à cette dérogation est à souligner, car dans sa rédaction actuelle, la dérogation était de facto seulement applicable aux traitements « occasionnels », la rendant inutilisable pour les TPE/PME, dont elle était pourtant censée réduire la charge réglementaire.

- **(vii) S'agissant de la directive REC (directive UE 2022/2557)**
 - Les autorités françaises s'interrogent sur la plus-value attendue en termes de simplification pour les entreprises de la modification proposée dans la directive REC et émet une réserve d'examen sur l'opportunité de cette modification qui crée in fine du travail supplémentaire pour les services ;
 - Pour mémoire, les autorités françaises ont interrogé la Commission afin de savoir si les groupes dans lesquels a été négociée la directive REC (PROCIV REC) ont été sollicités sur l'opportunité de cette modification, et ce qui était prévu pour les associer. Les Etats membres sont actuellement en train de transposer la directive dans leur droit national.

ITALY

ITALY has received one comment/request for clarification on **Omnibus IV – Critical Entities Resilience**, that you can find hereafter.

We would be grateful to the Commission if they could give us details on this specific issue:

Italy has already transposed the CER Directive with Legislative Decree no. 134 of 4 September 2024. The modifications included in the Omnibus, therefore, will call for a need for adaptation of the national laws.

In this regard, we would be grateful if the Commission could kindly provide us with information on the expected timeframe for the adoption of the Omnibus amendment, as well as on the possible adaptation deadlines for Member States that have already transposed the Directive.

I will be making the same point during our next meeting on June 25th so if already in that occasion the issue could be clarified I'd be extremely grateful.

NETHERLANDS

Netherlands - Written comments on Omnibus IV (GDPR, Critical Entities Resilience)

GDPR - comments and questions

Article 40(1) & 42(1)

The NL welcomes the COM's proposal to amend Articles 40(1) and 42(1) GDPR to address the specific needs of small mid-caps (SMCs). Stakeholders report that businesses regard codes of conduct as effective compliance tools but that certain elements of the procedure remain complex and discouraging, including the requirement to establish an accredited monitoring board, the lack of proactive engagement by supervisory authorities during code development, and lengthy approval timelines, which hamper timely adoption of codes of conduct.¹

Did the Commission consider simplifying or streamlining the procedure for the adoption of codes of conduct to increase the uptake and added value of codes of conducts for small companies through simplification, for instance by:

- Allowing alternative oversight mechanisms in place of a formal monitoring body;
- Strengthening DPA engagement by offering clear approval timelines; or
- Introducing a fast-track procedure for sector-specific or SME-targeted codes?

Article 30(5) and article 35 (5) GDPR

The NL supports the proposal to simplify the requirement in Article 30(5) GDPR for maintaining records of processing such that it applies only to organizations with fewer than 750 employees, unless the processing is likely to result in a "high risk" to data subjects, as defined in Article 35 GDPR. However, smaller organizations may still struggle to apply this exemption as stakeholders report uncertainty about which activities are "high risk," leading them to err on the side of caution.

Article 35 (5) GDPR empowers supervisory authorities to publish lists of the kind of processing operations for which no data protection impact assessment is required. These lists could also help smaller organizations identify low-risk processing operations. Clearer guidance about such processing would greatly assist small organizations who wish to make use exemption under Article 30(5). In practice, however, authorities seldom use this power—resulting in limited practical benefit. The NL therefore proposes making the publication of such lists a mandatory obligation for supervisory authorities, ensuring that SMCs have access to authoritative, low-risk examples of data processing that is "not considered high risk", reducing uncertainty.

To support this proposal, NL suggests amending Article 35(5) GDPR as follows:

*"The supervisory authority **shall** ~~may~~ also establish and make public a list of the kind of processing operations for which no data protection impact assessment is required. The supervisory authority shall communicate those lists to the Board."*

Critical Entities Resilience - comments and questions

No written from the Netherlands comments regarding Critical Entities Resilience from the Netherlands.

¹ Second Report on the application of the GDPR, COM 2024 357 final, 25 July 2024. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52024DC0357>

LATVIA

Please see below **the comments of Latvia on Small mid-caps and GDPR part:**

The Omnibus proposal suggests amending the GDPR to extend the exemption from the requirement to maintain a record of processing activities to also cover SMEs and organizations with fewer than 750 employees. Additionally, the proposal aims to simplify this exemption by limiting the obligation to maintain records only for "high-risk" processing in accordance with Article 35 of the GDPR. Any processing of personal data constitutes an interference with the fundamental rights of the data subject guaranteed under Article 8 of the Charter of Fundamental Rights of the European Union, namely the right to data protection. Therefore, any new exemptions from the requirement to maintain a record of processing activities—which serves as one of the mechanisms for protecting the rights of data subjects—should be assessed with caution, as they could pose unwarranted risks of infringing upon these rights. The proposal emphasizes that the amendments to the GDPR, which would extend the exemption from the obligation to maintain records of processing activities to SMEs and SMCs, could reduce the administrative burden and generate potential savings. However, the current savings estimates are based on insufficient empirical data and reflect only indicative potential savings. As a result, it is not possible to accurately determine the actual benefits that SMEs and SMCs would gain, which is essential for conducting a proportionate risk assessment. Moreover, it is important to consider that SMEs and SMCs process not only employee data but also data of other individuals, such as customers. If the exemption from the record-keeping requirement is applied without a clear definition of "high-risk" criteria, and the risk assessment is left to the subjective judgment of SMEs and SMCs themselves, there is a significant risk to the effective protection of data subjects' fundamental rights. Applying the same exemption to both SMEs and SMCs fails to account for differences in the volume and categories of personal data processed, as well as the varying levels of technical safeguards in place. This could lead to an unjustified reduction in documentation and hinder supervisory authorities' ability to prevent or respond swiftly to potential violations. Therefore, any new exemptions should be introduced only after a thorough assessment, based primarily on the risks posed to data subjects' rights by the specific processing activities.

AUSTRIA

Comments on Omnibus IV regarding GDPR and resilience of critical entities directive by the Federal Republic of Austria

regarding GDPR

Based on the references to the GDPR contained in document COM(2025)501 and document COM(2025)502 (draft Regulation and Directive on the extension of minimum safeguards for SMEs to SMCs), and subject to the final definition of “small mid-caps (SMCs)” (see document COM(2025)3500: “Recommendation on the definition of small mid-caps (SMCs)”), which is still to be finalized, the following comments can be made from a data protection point of view:

- There is no fundamental objection to the proposed extension of the exemption from the obligation to keep a processing record for SMC, in particular as the basic documentation and accountability obligations of the data controller under the GDPR remain in place.
- There are also no fundamental objections with regard to the counter-exceptions apparently provided for “high risk” processing operations, which corresponds to the risk-based approach also standardized in other contexts in the GDPR (cf. e.g. Art. 35 GDPR on impact assessment).
- Furthermore, there are no fundamental objections to the extension of the rules on codes of conduct to SMCs (Art. 40 para. 1 GDPR) and the extension of the rules on certification to SMCs (Art. 42 para. 1 GDPR).

regarding Resilience critical entities

- Art. 4 para. 1 CER Directive (2022/2557) currently obliges all MS to integrate the existing measures to facilitate the implementation of obligations for SMEs into the national strategy. The EC proposal also provides for the inclusion of the definition of SMCs in Art. 4 para. 2 lit. h CER Directive. As a result, companies that exist as SMCs at national level should also benefit from the facilitation measures. However, there is currently no definition of SMCs in AT.
- The inclusion of SMCs in Art. 4 para. 2 lit. h of the CER Directive would entail a certain amount of additional work in the preparation of the national strategy. However, due to the restriction to national measures that already exist for SMCs and the small number of companies that would fall under the SMC category in AT (around 1% according to the Austrian Federal Economic Chamber), this is considered manageable.
- In view of the fact that the national strategy already has to be drawn up by January 2026, it ultimately depends on the speed of adoption of the amendment to the Directive as to whether this can already be reflected in the AT strategy.

FINLAND

Proposal to amend Regulation (EU) 2016/679 as regards the extension of certain mitigating measures available for small and medium sized enterprises to small mid-cap enterprises and further simplification measures – FI preliminary comments

Finland thanks the Presidency for the opportunity to provide written comments on the Proposal to amend Regulation (EU) 2016/679 (hereinafter the GDPR). Finland kindly invites the Presidency to note that the following written comments are preliminary. Therefore, Finland reserves the opportunity to present official, more detailed positions at a later stage.

Finland presents respectfully the following comments and observations concerning the proposal (COM(2025) 501 final):

General comments

- In general, Finland supports the aim to minimize the burden on SMEs and preliminarily on SMCs as well.
- However, Finland emphasizes that this cannot lead to a situation where the uniform and high level of data protection is endangered (see also recital 13 of the GDPR).
- Therefore, Finland remains cautious to add any further derogations from the GDPR for SMEs and SMCs to what the COM has now proposed.

Article 30(5) of the GDPR and recital 10

- Concerning the amendments proposed to Article 30(5) of the GDPR, Finland considers that it is important that paragraph 5 contains the limitation concerning "high risk" processing.
- However, it remains somewhat why the references to Articles 9 and 10 of the GDPR have been left out. Pursuant to the GDPR this type of personal data is sensitive and should be appropriately protected and is likely to result in high risk to data subjects, especially when this processing is large-scale.
- Concerning the accompanying recital 10, Finland has questions how the proposed recital interplays with Article 35(3)(b) of the GDPR and large scale processing of personal data referred in Article 9(1) and Article 10 of the GDPR:
 - Finland would welcome clarifications why there is a specific recital concerning Article 9(2)(b). Finland considers that, taking account of recital 91 and Article 35(3)(b) of the GDPR, it seems clear that *large-scale processing* of special categories of data referred to in Article 9(1) or personal data relating to criminal convictions and offences referred to in Article 10 results in high risk processing.
 - Finland points out that there are no derogations in Article 35(3)(b) of the GDPR and therefore all large-scale processing of special categories should be considered high

risk – regardless of the purpose of processing. (i.e. there are no special derogations concerning *the large scale processing* pursuant to Article 9(2)(b) of the GDPR).

- In this regard, the proposed recital 10 does not seem to be fully in line with the GDPR and should be amended appropriately.
- In addition recital 10 seems to be somewhat contradictory with the proposed recital 9 as well, as recital 9 indicates that high risk should be interpreted pursuant to Article 35 of the GDPR (“*unless the processing is likely to result in a ‘high risk’ to data subjects’ rights and freedoms, within the meaning of Article 35 of Regulation (EU) 2016/679*”).

SWEDEN

General Data Protection Regulation (GDPR) - Regulation (EU)

2016/679

- In order to better assess the impact of the proposed amendments, how many companies and organisations are expected to benefit from the proposed simplification measures (or more specifically, expected to fall within the scope of Article 30.5 GDPR)?