03/11/2026

POSITION ON THE PROPOSAL FOR REGULATION ON SIMPLIFICATION OF THE DIGITAL LEGISLATION

The Digital Omnibus proposal published by the European Commission on 19 November 2025[1] ("Draft Regulation") aims at stimulating competitiveness by simplifying the EU digital legislation on selected key rules, without compromising on the level of compliance within the EU.

The Good Advertising Project (the "GAP") is in line with this objective set by the EU Commission and welcomes the initiative. In order to achieve this goal, particularly on GDPR and ePrivacy Directive aspects, six amendment proposals to the Digital Omnibus draft are proposed herein.

Proposal 1: Harmonizing trackers rules for personal and non-personal data

Harmonization of trackers rules. The Draft Regulation introduces Article 88(a) GDPR on the processing of personal data when accessing and storing information in the terminal equipment of data subjects, while maintaining a provision in the ePrivacy Directive to regulate the processing insofar as the user is not a natural person, and the information stored or accessed does not constitute or lead to the processing of personal data. The GAP welcomes the European Commission's initiative to address the interplay between ePrivacy and GDPR in the context of tracking devices. **However, maintaining two separate and non-harmonized regimes defeats the simplification purpose**. For example, Wi-Fi access point storage technologies could be used with personal data (home) or non-personal data (businesses), creating regulatory confusion on which regime is applicable.

- ☐ **The GAP recommends in priority merging all tracker-related provisions into the GDPR. Alternatively, the GAP suggests aligning both GDPR and ePrivacy regimes to ensure consistency.**

[1]Proposal for a Regulation of the European parliament and of the Council amending Regulations (EU) 2016/679, (EU) 2018/1724, (EU) 2018/1725, (EU) 2023/2854 and Directives 2002/58/EC, (EU) 2022/2555 and (EU) 2022/2557 as regards the Simplification of the digital legislative framework, and repealing Regulations (EU) 2018/1807, (EU) 2019/1150, (EU) 2022/868, and Directive (EU) 2019/1024 (Digital Omnibus) (Link)

Proposal 2: Introducing legitimate interest, as an alternative legal basis to consent, under Article 88(a) GDPR, subject to the implementation of strong privacy-enhancing technologies (PETs).

An amendment proposal aiming at improving the level of privacy of users while incentivizing online advertising industry players to implement PETs. Taking into account the technological innovations that have occurred since ePrivacy Directive was drawn up (differential privacy, synthetic data, trusted execution environments…), **the aim of the proposed amendment is to offer an alternative legal basis - legitimate interest - that would not entail the limitations resulting from the all-consent system currently in force.** Relying on legitimate interest would be **subject to strong privacy by design commitments and robust transparency** and accountability measures with the aim of reconciling high consumer protection objectives with effective guarantees in practice.

A two levels approach. To ensure the effectiveness and sustainability of such a framework, a two-level approach is recommended:

- **Level 1:** an amendment to draft Article 88(a) GDPR, introducing the principle of legitimate interest as a legal basis, subject to the implementation of strong technology safeguards;
- **Level 2**: the EU Commission could be granted the competence to take delegated acts specifying, among the PETs, which technologies and standards should be considered as the most relevant technology safeguards, which could evolve over time and adapt to technologies developments. The Commission shall closely involve the EDPB in the preparations of the implementing acts.

In comparison with the proposed wording of Article 88(a) GDPR, **this approach is more innovative**. Instead of limiting the use of legitimate interest to the four listed exemptions, it opens this option to all use cases, subject to strong technical safeguards. Consequently, it provides a more sustainable solution to solving user consent fatigue

- ☐ **The GAP recommends introducing a new paragraph under Article 88(a) GDPR, that would be without prejudice to paragraph 3 (exemptions), stating that the legitimate interest is a valid legal basis if the controller has implemented PETs in compliance with European Commission delegated acts to minimize the impact of the processing on the user.**

Proposal 3: Widening the scope of exemptions to consent under Article 88(a) GDPR for activities recognised as low-risk

Broadening the scope of consent exemptions. In order to solve user consent fatigue, the GAP propose broadening the scope of exemptions listed in proposed Article 88(a) GDPR. Establishing a whitelist for low-risk activities is shared by numerous stakeholders (including the CNIL), across contributions to the public

consultation on Draft Regulation. **The following purposes could be expressly exempted from prior user consent,** in addition to the 2 existing exemptions (communication transmission and service explicitly requested):

- **Draft Regulation new exemption 1** about audience measurement through aggregated information is helpful. But its restriction '*where it is carried out by the controller of that online service solely for its own use*" ignores the reality for many providers of apps which rely on third party technologies to provide this functionality and should be amended to reflect the market practices;
- **Draft Regulation new exemption 2** is about fraud detection and prevention;
- **Additional exemption proposals regarding low-risk measurements**: the measurement of the frequency of user exposure to an advertising (frequency capping), and the audience measurement with the purpose of generating analytics with low risks for data subjects. The EDPB and the EDPS, in their joint opinion 2/2026, also suggest that "*the co-legislators consider introducing an additional use case in proposed Article 88a (3) GDPR to provide an incentive to use less intrusive forms of advertising online"* (§104) and refer explicitly to contextual advertising and related capping cookies, advertising audience measurement cookies, or cookies to combat click fraud as cases not requiring consent;
- **Additional exemption proposals regarding the functioning of the advertising eco-system** such as user attribution and invoicing, to measure the conversion rate of an ad and objectivize related invoicing;
- **Additional exemption proposals regarding compliance with legal obligations**: regarding the protection of minors and regulated sectors such as gambling.

Relying on other legal bases than consent. For these exemptions, controllers could rely either on legitime interest or on legal obligations (for eg. respect minor protection laws) or the performance of a contract.

☐ **The GAP recommends widening the scope of exemptions under Article 88(a) GDPR, by including more low-risk exemptions.**

Proposal 4: Removing the unworkable browser consent mechanism proposed under Article 88(B) GDPR

Forcing web browsers to become gate keepers for trackers is not realistic. Proposed Article 88(b) GDPR complicates potential cookie consent solutions rather than simplifying them. It poses significant risks to business models funded by online advertising, and was one of the reasons for the previous deadlock in negotiations on the abandoned ePrivacy Regulation. Practically, this mechanism creates many technical and practical issues:

- The inability for browsers to differentiate between essential and non-essential cookies;
- The need for standardization implies lengthy procedures and creates a heavy burden on providers in the meantime, as well as competition risks;

- The expression of consent via a centralized mean would not be specific or informed, in violation of Article 4(11) GDPR;
- The generation of a higher overall rate of refusal, leading to significant economic considerations.

The GAP recommends abandoning the centralized browser consent mechanism.

Proposal 5: Enhancing the risk-based approach of the definition of personal data and incentivizing the use of PETs

Welcoming the subjective and risk-based approach definition of personal data. The GAP welcomes the proposed definition of personal data under Article 4(1) GDPR taking into account the "SRB Ruling" of the European Court of Justice[2] with a reference to the perspective of the entity processing data and the means reasonably likely to be used to identify natural persons.

Incentivizing the use of privacy-enhancing technologies (PETs) in general, including pseudonymization techniques. Article 41(a) of the Draft Regulation introduces an incentive to the use of pseudonymization techniques by stating that data resulting from pseudonymization may no longer constitute personal data for certain entities. Pseudonymization techniques are one among many techniques that constitutes PETs and can achieve the same goal of maintaining high standards of privacy. Several PETs have an impact on the nature of the data itself (differential privacy, k-anonymity) or enable to secure who can access the data (trusted execution environments, secure multi-party computation…). Therefore, **Article 41(a) of the Draft Regulation should be amended to cover PETs in general and not be limited to pseudonymization**, to enable the EU Commission to adopt implementing acts specifying means and criteria to determine whether data no longer constitutes personal data for certain entities based on PETs in general. Such an amendment would enable to foster the development of robust PETs, which requires significant ongoing investment and research. Legal incentives—specifically the certainty that these technologies will be recognized as valid "state of the art" measures to fall out of the qualification of personal data —are critical to stimulate their development.

The GAP recommends widening the scope of Article 41(a) and related implementing acts to be adopted by the European Commission to include all types of PETs, not only pseudonymization.

Proposal 6: Recognizing PETs as appropriate data security tools

The lack of concrete improvements in data security in the Draft Regulation. Although the Draft Regulation entails several proposals involving data

[2] European Court of Justice, 4 September 2025, case C-413/23.

security in various contexts, (e.g. pseudonymization under Article 41(a) or AI models developments and operations under Article 88(c)), **there is no overall improvement in technical security measures under Article 32 GDPR.**

Establishing higher security standards. Article 32 GDPR obliges data controllers and processors to implement state-of-the-art security measures and establishes a non-exhaustive list of measures such as pseudonymization and encryption. **This Article is not amended in the actual Draft Regulation while new data security techniques and cyber risks have emerged**. The GAP suggests amending Article 32 to mention PETs without jeopardizing the technology-neutral approach of this Article. Such amendment would provide additional indications to enhance the security of personal data, improving legal certainty for data controllers and processors. Additionally, Article 32 GDPR could enable the EU Commission to adopt implementing acts setting a taxonomy for PETs, clarifying their role and impact on privacy. Again, such an amendment would foster the development of robust PETs, which requires significant ongoing investment and research by providing legal incentives on which technologies will be recognized as valid "state of the art" measures.

- ☐ **The GAP recommends amending the wording of Article 32 GDPR to introduce the concept of PETs and increase the level of data security and refer to an EU Commission implementing act.**