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

Subject:	Omnibus VII (Digital): Written comments and drafting suggestions from Member States on the Presidency revised compromise text
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Delegations will find attached additional comments and drafting suggestions on the Presidency revised compromise text set out in document ST 10677/2026 (deadline: 28 July 2026) submitted by DE in free format text.

Commission Proposal	GER Drafting suggestions
Article 88c	<u>Art. 88c</u>
Processing in the context of the development and operation of AI	<u>Processing in the context of the development and technical operation of AI</u>
Where the processing of personal data is necessary for the interests of the controller in the context of the development and operation of an AI system as defined in Article 3, point (1), of Regulation (EU) 2024/1689 or an AI model, such processing may be pursued for legitimate interests within the meaning of Article 6(1)(f) of Regulation (EU) 2016/679, where appropriate, except where other Union or national laws explicitly require consent, and where such interests are overridden by the interests, or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.	<u>(1) Where the processing of personal data is necessary for the interests of the controller in the context of the development and <u>technical</u> operation of an AI system as defined in Article 3, point (1), of Regulation (EU) 2024/1689 or an AI model, such processing may be pursued for legitimate interests within the meaning of Article 6(1)(f) of Regulation (EU) 2016/679, where appropriate, except where other Union or national laws explicitly require consent or where such interest are overridden by the interests, or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. <u>The processing of personal data for the training and technical operation of an AI system as defined in Article 3, point (1), of Regulation (EU) 2024/1689 or an AI model shall be presumed as a legitimate interest within the meaning of this provision.</u></u> <u>This provision shall not apply to processing carried out by public authorities in the performance of their tasks.</u> <u>(2) The processing pursuant to paragraph 1 of data which has been collected or recorded for other purposes than those pursuant to paragraph 1 shall be presumed to be compatible with the initial purposes and be subject to the application of appropriate safeguards,</u> <u>(3) Paragraph 1 does not apply where the processing is specifically directed at certain identified or identifiable natural persons, or where the system is designed for the identification, monitoring, or evaluation of natural persons, or where the system is specifically designed for the</u>

	<u>synthetic generation of the voice, image or other personal characteristics of a certain identified or identifiable natural person.</u>
Any such processing shall be subject to appropriate organisational, technical measures and safeguards for the rights and freedoms of the data subject, such as to ensure respect of data minimisation during the stage of selection of sources and the training and testing of AI an system or AI model, to protect against non-disclosure of residually retained data in the AI system or AI model to ensure enhanced transparency to data subjects and providing data subjects with an unconditional right to object to the processing of their personal data.’	<u>(4) Any such processing shall be subject to appropriate organisational, technical measures and safeguards for the rights and freedoms of the data subject, such as to protect against disclosure of residually retained data in the AI system or AI model.</u> such as to ensure respect of data minimisation during the stage of selection of sources and the training and testing of AI an system or AI model, to protect against non-disclosure of residually retained data in the AI system or AI model to ensure enhanced transparency to data subjects and providing data subjects with an unconditional right to object to the processing of their personal data.’ <u>(5) The processing of special categories of personal data within the meaning of Article 9 is permitted if [insert content of Art. 9 (2) k, Art. 9 (5)].</u> <u>(6) The obligations and rights set out in Art. 14 and 16 to 18 shall not apply if compliance proves impossible or would involve a disproportionate effort. In such cases the controller shall take appropriate measures to protect the data subject’s rights and freedoms and legitimate interests, including making the information publicly available before training that personal data will be used for AI training and explaining how an objection or rectification can be effectively filed, and, following training, applying all technically available measures that prevent the disclosure of personal data or the identification of the data subject. The Commission shall in line with Art. 96 of Regulation (EU) 2024/1689 develop guidelines on the practical implementation of this provision by issuing recommendations for AI Training that leads to models that are able to comply with the obligations and rights set out in Art. 14 and 16 to 18 with proportional efforts.</u>

	<u>(7) Other provisions of this Regulation remain unaffected by the fact that a controller relies on this legal basis.</u>
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