



**Anu Talus**

Chair of the European Data Protection Board

**Wojciech Rafał Wiewiórowski**

European Data Protection Supervisor

Commissioner Michael McGrath  
Democracy, Justice, the Rule of Law  
and Consumer Protection  
European Commission  
Rue de la Loi 200  
B-1049 Brussels

Brussels, 8 May 2025

***Subject: Commission draft proposal on the simplification of record-keeping obligation under Regulation (EU) 2016/679 (GDPR)***

Dear Commissioner McGrath,

With this letter, we are jointly replying to the letters which you sent to us on 6 May 2025 concerning the Commission draft proposal on the simplification of record-keeping obligations under the GDPR (“draft Proposal”) which is planned to be part of the Fourth Omnibus to be adopted in May 2025.

The EDPB and EDPS understand that the Commission is considering to propose extending the derogation provided under Article 30(5) GDPR to the obligation to maintain records of processing that is currently applicable to enterprises or organisations with less than 250 employees (including small and medium-sized enterprises or SMEs) to cover “small mid-cap companies” (SMCs) i.e. companies with fewer than 500 employees and with a certain annual turnover, as well as organisations such as non-profits with fewer than 500 employees.

In addition, the Commission considers modifying Article 30(5) GDPR to provide that the derogation would not apply if the processing is “likely to result in a high risk to the rights and freedoms of natural persons”, whereas the current provision merely refers to processing likely to result in a risk”. Furthermore, we understand that certain exceptions to the derogation to maintain a record of processing activities would be removed, in particular by deleting the references to occasional processing and possibly also the reference to processing of special categories of data <sup>1</sup>.

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<sup>1</sup> Your letter explicitly states that “The condition relating to occasional processing would be deleted”, without explicitly referring to deletion of the following wording “unless [...] the processing includes special categories of data as referred to in Article 9(1) or personal data relating to criminal convictions and offences referred to in Article 10”. We understand, however, that the recitals for the draft Proposal would be intended to narrow the exemption relating to special categories of data, stating that it is not intended to restrict the derogation if the processing is done for compliance with a legal obligation in the field of employment, social security or social protection law.

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We also understand that a recital would clarify that the processing of special categories of personal data to comply with a legal obligation in the field of employment, social security or social protection law (in accordance with Article 9(2)(b) GDPR) would not be subject to the obligation to maintain a record of these processing activities.

Based on the information available, and subject to a full analysis of the specific proposal, the EDPB and EDPS can express preliminary support to this targeted simplification initiative, bearing in mind that this would not affect the obligation of controllers and processors to comply with other GDPR obligations. Nevertheless, in order to better evaluate the impact of the proposed modification, the EDPB and EDPS consider it useful to understand, among other elements, the number of companies and organisations that would benefit from the simplification in the draft Proposal and its impact on the protection of personal data through an analysis carried out by the Commission. This would help assessing whether the draft Proposal ensure a proportionate and fair balance between the protection of personal data and the interests of organisations with less than 500 employees.

Given the importance of protecting data subjects under the GDPR, and of ensuring a balanced approach to the simplification, the EDPB and EDPS welcome that the obligation to keep records would in any event still be required for “likely high risk” processing. As you underlined, the EDPB Guidelines on Data Protection Impact Assessment (DPIA) provide useful information on the notion of processing “likely to result in a high risk”<sup>2</sup>. The EDPB and EDPS recall that even very small companies can still engage in high-risk processing and it is therefore important to retain a risk-based approach. In this regard, the EDPB and EDPS also understand that non-occasional processing and processing of special categories of personal data may still result in a likely high risk, depending on the outcome of the assessment of all the relevant criteria<sup>3</sup>.

While this letter provides our preliminary feedback, the EDPB and EDPS understand that a formal consultation will take place after the publication of the draft legislative change, in line with Article 42(2) of Regulation 2018/1725. This will also provide us with an opportunity to comment in more detail the legislative change you intend to make on Articles 40(1) and 42(1) GDPR.

Yours sincerely,

Anu Talus

Wojciech Rafał Wiewiórowski

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<sup>2</sup> Article 29 Working Party Guidelines on Data Protection Impact Assessment (DPIA) and determining whether processing is “likely to result in a high risk” for the purposes of Regulation 2016/679, (wp248, rev.01), adopted on 13 October 2017 and endorsed by the EDPB on 25 May 2018.

<sup>3</sup> Article 29 Working Party Guidelines on Data Protection Impact Assessment (DPIA) and determining whether processing is “likely to result in a high risk” for the purposes of Regulation 2016/679, (wp248, rev.01), adopted on 13 October 2017 and endorsed by the EDPB on 25 May 2018, p. 8-13.