



Council of the European Union
General Secretariat

Brussels, 20 August 2026

Interinstitutional files:
2025/0360 (COD)

WK 12980/2026 INIT

LIMITE

**SIMPL
ANTICI
DATAPROTECT
CYBER**

**TELECOM
CODEC
PROCIV
COMPET
MI**

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Antici Group (Simplification)
N° Cion doc.:	ST 15698 2025 ADD 1 + ST 15698 2025 ADD 2 + ST 15698 2025 INIT
Subject:	Non-paper from Poland on Open Data Directive - Omnibus VII (Digital)

Please find below Poland's non-paper on the proposed changes to the Open Data Directive under the Digital Omnibus.

Non-paper by Poland

on the proposed changes to the Open Data Directive under the Digital Omnibus

As the works on Digital Omnibus are ongoing, we remain concerned about the proposed way of integration of the Open Data Directive (ODD) into the Data Act.

We share the goal of streamlining and simplifying existing EU data legislation. However, the proposed consolidation requires further amendments of the respective ODD provisions to adjust its wording for directly applicable EU regulation.

In line with the principles of legislative drafting in the EU, “the various legal acts each have their own standard presentation and standard formulations” and “the drafting style should take account of the type of act (...) and, in particular, to whether or not it is binding (regulation, directive, decision, recommendation, or other act).” “Since regulations are directly applicable and are binding in their entirety, their provisions should be drafted in such a way that the addressees have no doubts as to the rights and obligations resulting from them (...).”¹

Unfortunately, the proposal included in the Digital Omnibus does not implement these principles. Instead, it amounts to a mechanical transfer of the provisions of the ODD into the Digital Omnibus Regulation, without adapting them to the nature of a directly applicable legal instrument. This change will have a significant impact on Member States’ legal systems. The provisions copied from the directive are not sufficiently clear or precise for direct application. As a result, significant interpretative difficulties may arise and the provisions could prove difficult, or even impossible, to apply effectively in practice.

Moreover, repealing the ODD and transferring its provisions into a regulation would result in the loss of some of the achievements of national legislation, as many Member States have adopted measures that go beyond the Directive's minimum requirements to promote open data, such as well-developed open data portals, open data officers' networks and the development of multiannual open data strategies.

To address these challenges, the Digital Omnibus should provide Member States with greater flexibility, allowing them to preserve their national specificities introduced under the ODD and currently working in practice. This is particularly important because, unlike a directive, which gives Member States a degree of discretion as to the form and methods of implementation, a directly applicable regulation leaves no room for manoeuvre. Therefore, the Digital Omnibus

¹ European Commission: Legal service, *Joint practical guide of the European Parliament, the Council and the Commission for persons involved in the drafting of European Union legislation*, Publications Office of the European Union, 2015, p. 11 <https://data.europa.eu/doi/10.2880/5575>

should allow Member States to further specify and clarify the general provisions laid down in the Regulation.

This is also justified by the fact that re-use is a secondary right dependent on national access regimes. From the very beginning the ODD builds on and is without prejudice to Union and national access regimes. The organisation of access-to-information systems remains within the competence of Member States, and the relevant arrangements may therefore differ across Member States, as may the systems governing re-use.

Therefore we would like to propose the following drafting suggestions. The amendments are consistent with the spirit and objectives of the reform and would not impose any additional obligations or constraints on other Member States. At the same time, they would facilitate smooth implementation of the extended Data Act.

We remain committed to working constructively with the Presidency and all delegations to achieve a final outcome that delivers genuine simplification and legal certainty.

DRAFTING SUGGESTIONS

Recital (22)

(22) Since both Directive (EU) 2019/1024 and Regulation (EU) 2022/868 share the goal of enhancing the re-use of public sector information, and in order to simplify rules from the perspective of both public sector bodies and re-users of public sector information, it is rational to repeal Directive (EU) 2019/1024 and Regulation (EU) 2022/868, align the two regimes and consolidate the rules in a single Chapter under this Regulation. This solution will increase harmonisation of those rules across the Union, reduce the administrative burden associated with interpreting and implementing national legislation and make it easier for businesses to develop cross-border services and products. However, the consolidation respects and allows to maintain national organisational specificities to ensure flexibility for national, regional and local administrations. **To this end, the current approach should be maintained, and it should be ensured that Member States are able to adopt policies, practical arrangements and rules that exceed the minimum standards laid down in this Regulation, thus allowing for more extensive re-use. In particular Member States should be able to adopt more advanced regulatory frameworks and instruments such as well-developed open data portals, open data officers' networks or multiannual open data strategies.** When designating competent bodies, Member States should ensure that even where sector-specific competent bodies are designated, all relevant sectors are ultimately covered. The amendments in this Regulation should be understood not to alter the interpretation of the different definition and terms, unless clearly specified. In line with this rationale, it should be recalled that the intellectual property rights of third parties are not affected by Chapter VIIc. The term 'intellectual property rights' refers to copyright and related rights only, including sui generis forms of protection.



Section 2 of Chapter VIIc does not apply to data or documents covered by industrial property rights, such as patents and registered designs and trade marks.

Article 1 par.13

13. With regards to data and documents in scope of Section II of Chapter VIIc, Chapter VIIc of this Regulation establishes a set of minimum rules governing the re-use and the practical arrangements for facilitating the re use of data and documents and does not affect the possibility for Member States to **establish practical arrangements and** adopt more detailed or stricter rules, provided that those **arrangements and** rules allow for more extensive re-use of data and documents. **In particular Member States may adopt such arrangements and rules allowing for more extensive re-use with regards to conditions for re-use, principles governing charging and procedure for re-requests for re-use.**

Article 32i par. (10)

10) This Chapter shall enter into application as of [~~18~~ **24** months after the publication in the Official Journal of the European Union of this Regulation.]

Article 32la par. (3)

(3) In the event of a negative decision, the public sector bodies shall communicate the grounds for refusal to the applicant on the basis of the relevant provisions of the access regime in that Member State or the provisions of this Regulation. **Member States may adopt national provisions laying down the grounds for refusal.** Where a negative decision is based on point (d) of paragraph 3 of Article 32i, the public sector body or competent body shall include a reference to the natural or legal person who is the rightsholder, where known, or alternatively to the licensor from which the public sector body has obtained the relevant material. Libraries, including university libraries, museums and archives, shall not be required to include such a reference.

Article 32q

After par. (7) add par. (8):

8. Member States may adopt more detailed or stricter rules as regards principles governing charging allowing for more extensive re-use. In particular Member States may restrict the ability to charge fees higher than those set forth in paragraph 1.

Article 32r

After par. (4) add par. (5):

(5) Member States may adopt more detailed or stricter rules as regards conditions for re-use allowing for more extensive re-use. In particular Member States may specify a detailed list of conditions for re-use.

Agence Europe