Getting the Digital Omnibus right: The last chance to restore a clear legal basis for AI development in Europe

Letter to the Council of the European Union

Meeting in Prague alongside the **CEE AI Summit**, business and consumer associations call on Ministers of Digital Affairs to join forces and speak with a united voice in Brussels, in support of genuine simplification, harmonised rules, and a framework that effectively supports innovation and global competitiveness as the negotiations enter their final and decisive stage.

With the general approach now within reach, we restate the priorities that remain critical to Europe's competitiveness and AI development - and that must be resolved before the text is locked in.

We welcome the progress made to date, notably the deletion of Article 88b on browser-level consent and the preservation of a derogation for incidental and residual processing of special categories of data in the context of AI development. But on the issues most decisive for Europe's AI development and competitiveness, the latest compromise text does not correct course - and on several key points, it moves further still from the Digital Omnibus's own objectives.

Restoring a clear legal basis for AI training and operation remains the priority

The removal of Article 88c remains one of the most consequential departures from the Commission's proposal. Relegating the recognition of legitimate interest for AI development and deployment to a recital does not give businesses the certainty they need, and risks divergent interpretation across Member States - precisely the fragmentation the Digital Omnibus was meant to eliminate. European developers, particularly SMEs and startups across Central and Eastern Europe, face lengthy, costly, and uncertain assessments that discourage them from building and scaling AI products within the Union. Restoring the provision should also address the caveat that subordinates it to consent requirements under other Union or national law, as this qualification risks rendering it inoperative in practice.

We call on the Council to restore an explicit and harmonised legal basis for AI development and operation in the operative provisions of the GDPR, building on the Commission's original proposal.

Clarifying personal data and pseudonymisation: still unresolved

Legal uncertainty around identifiability and pseudonymised data remains unresolved. The essential criteria for assessing identifiability and pseudonymisation should be established in binding law and should not be left predominantly to non-binding EDPB interpretation. Without clear and operational criteria in the Regulation itself, companies and researchers working with pseudonymised data are left where they started: with persistent legal uncertainty and fragmented interpretation across Member States.

We reiterate our call for a clear and operational framework for personal data and pseudonymisation, anchored in the operative provisions of the Regulation.

Preserving a workable definition of scientific research

While the definition of scientific research remains in the operative text, it has been narrowed. The requirement that research be conducted "in an autonomous and independent manner" has been added, and the express recognition that research can support innovation, - including technological development and demonstration, and may pursue commercial interests - has been removed from the definition and relegated to recitals. For the private-sector research on which Europe's ability to translate scientific excellence into economic outcomes depends, this reintroduces the very ambiguity the proposal was meant to resolve.

We call on the Council to restore these elements to the operative definition.

Incidental sensitive data: a risk-based approach is still missing

The conditions attached to the derogation for incidental and residual processing of special categories of data retain the "identify-to-avoid" logic: controllers must implement measures to avoid the collection of such data, identify it, erase it without undue delay, and, where erasure proves technically impossible or disproportionate, apply layered protection obligations. This formalistic regime shifts the focus from effective risk mitigation to documentation and verification exercises, and burdens AI development without a corresponding benefit for data subjects. The derogation has also narrowed as the text progressed: earlier drafts excluded only personal data contained in prompts, whereas the current text excludes any data provided to the model during deployment - despite the fact that operators cannot control what users choose to disclose to a live system.

We reiterate our call for a proportionate, risk-based framework focused on mitigating real risks and ensuring operational feasibility across the full AI lifecycle.

Institutional balance has deteriorated further

The latest revision reinforces the concern we raised in May. Under the current text, the European Data Protection Board alone establishes and makes public the lists of processing operations subject to data protection impact assessments, the common DPIA template and methodology, and the common template for data breach notifications. The Commission's role has been reduced to the optional adoption of instruments "as established by the Board", without the ability to shape their content. Entrusting standard-setting exclusively to a body with a

single-objective mandate risks a maximalist interpretative approach that no institution with a broader view of the Union's strategic interests can correct.

We urge the Council to reinstate meaningful Commission competences within the standard-setting mechanisms of the Regulation.

Further simplification is still needed

These issues are not exhaustive. Further work is also needed on risk-based rules for terminal-equipment data, a secure and federated Single Entry Point for incident reporting, stronger trade-secret and cybersecurity safeguards under the Data Act, and proportionate contractual and switching rules. More broadly, the Digital Omnibus should reduce duplication and improve coherence across the GDPR, AI Act, CRA, NIS2, DORA and sector-specific legislation.

Conclusion

The Digital Omnibus was proposed to restore regulatory balance and support European competitiveness. As the Irish Presidency takes forward work on a revised compromise, we call on Member States to ensure that the final text delivers on that objective - beginning with the reinstatement of a clear, binding legal basis for AI development. Member States asked in June for time to examine this package properly. That time is only well spent if it now produces a better text. This is the last opportunity to get it right before the general approach is set, and we stand ready to assist you in this essential task.

Respectfully,

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