



Digital Omnibus: A call to correct course and safeguard legal certainty and simplicity for AI development in Europe

Open Letter to the Council of the European Union

For years, public debate on Europe's AI competitiveness has largely focused on the AI Act. However, as highlighted in the Draghi report, our prescriptive data protection framework has proven an even more significant constraint on innovation. Against this backdrop, the Digital Omnibus proposed by the European Commission - in response to calls from industry - was widely welcomed as a modest but much-needed first step toward restoring regulatory balance. It reflected a growing recognition of Europe's declining competitiveness and a shared determination to take bold and decisive action to reverse this trend.

However, the direction taken in the Council's compromise texts raises serious concerns. Instead of simplifying rules and improving clarity, the current proposal introduces additional complexity, increases compliance costs, and perpetuates legal uncertainty. This sends a clear and troubling signal: where simplification requires decisive action, the response is greater caution and added layers of formalism. Such an approach does not support Europe's digital ambitions - it constrains them.

The direction taken by the Cyprus Presidency also directly contradicts the EU Council's own March 2025 conclusions, which unequivocally called to "give priority to simplification and reducing regulatory and administrative burdens", as well as for "efforts at all levels – EU, national and regional – to ensure a clear, simple, smart and innovation-friendly regulatory framework".

We therefore call on the Council and Member States to correct this course before adopting a general approach. The final text must deliver genuine simplification, harmonised rules, and a framework that effectively supports innovation and global competitiveness.

Clarifying critical concepts such as personal data and rules for pseudonymization

The removal of the proposed clarification on the definition of personal data represents a missed opportunity to resolve one of the most persistent sources of legal uncertainty in the GDPR. The original proposal offered a pragmatic and necessary distinction: where identification is not realistically possible, data should not be treated as fully personal data. This distinction is critical for companies and researchers who currently operate under persistent legal uncertainty,

particularly when using safeguarded or pseudonymised data. This definition can complement, rather than oppose, the EU's broader efforts to reduce fragmented approaches to GDPR implementation. It enables companies to grow and scale within the EU without being subject to complex, conflicting interpretations across Member States.

By removing this clarification, the current text preserves ambiguity and maintains a fragmented interpretative landscape - undermining the objective of clearer and more workable rules.

The Council should reinstate a clear and operational definition of personal data, including explicit guidance on pseudonymisation, to ensure legal certainty and harmonized application across the EU.

Preserving legal clarity in the definition of scientific research

The narrowing of the concept of "scientific research" risks undermining Europe's innovation ecosystem at its core. This definition determines whether research and innovation activities, including those in the private sector, can operate under clear and predictable rules under the GDPR. Narrowing or diluting this concept reopens fundamental uncertainty over what qualifies as research, which legal bases may be used, and which rules apply to innovation-driven activities - precisely the ambiguity the Digital Omnibus was meant to resolve.

The EU has long struggled from a systemic inability to translate world-leading scientific excellence into real economic outcomes. The legal framework should support and encourage research that leads to innovative products and services, rather than penalise them with additional risk and legal restrictions.

We call on the Council to retain a broad, clear, and binding definition of scientific research in the operative provisions of the text, ensuring legal certainty and preventing divergent interpretations across Member States.

Restoring a clear legal basis for AI training and operation

The proposed clarification to the GDPR in the initial European Commission proposal - specifically confirming that development and training of AI systems can rely on **legitimate interest** as a legal basis - was perhaps the single most important step toward establishing a supportive legal framework for genuinely European AI. The removal of this clarification (Art. 88c) in the latest compromise text reverses that progress, reintroduces legal uncertainty, and risks fragmenting the Single Market through divergent national interpretations, ultimately deterring investment and weakening Europe's research and innovation capacity.

In practice, the ability to rely on legitimate interest is today the most effectively exercised by large - often non-European - companies with substantial legal resources, financial capacity, and a high tolerance for regulatory risk. By contrast, many European companies face lengthy, costly, and uncertain assessments that discourage them from developing and scaling their products within the EU. This asymmetry runs counter to the EU's broader ambition of a genuine Single Market,

coherent and harmonised regulatory framework, and the enhancement of European competitiveness.

We therefore urge the Council to reinstate an explicit, harmonised legal basis confirming legitimate interest for AI training and operation, including clear recognition of innovation as a legitimate purpose.

Browser-level consent: Risk to the European digital economy and user experience

The European Commission rightly identified the issue of “consent fatigue”. However, the browser-level consent mechanism proposed in Article 88b of the Digital Omnibus, and retained Cyprus Presidency text, does not solve this problem in practice. Instead, it risks creating “consent chaos”, leading to significant economic consequences, disrupting the functioning of the EU digital economy, and worsening the consumer experience. It could result in less relevant content, poorly tailored or irrelevant advertising, and, over time, reduced availability of free online services and content. From a legal perspective, browser-level consent also fails to fully meet GDPR requirements for consent to be “specific” and informed.

We therefore strongly recommend removing Article 88b from the proposal in its entirety and explore alternative options for reducing cookie fatigue.

Incidental sensitive data: restoring a risk-based approach

The Council’s approach to incidental processing of sensitive data in Article 9(5) replaces a risk-based logic with a formalistic and burdensome regime. It imposes stricter conditions for relying on the derogation while layering on additional monitoring, documentation, and verification obligations - even where such data are not intentionally processed. This formalistic approach increases compliance burdens without providing clear, workable rules, shifting the focus from effective risk mitigation to box-ticking exercises and hindering AI development in the EU.

The Council should replace the current “identify-to-avoid” approach with a proportionate, risk-based framework that focuses on mitigating real risks, ensures operational feasibility, and avoids unnecessary burdens on AI development.

Ensuring balanced governance and institutional proportionality

Last but not least, in order to achieve a truly competitive digital landscape, it is essential to reinstate the Commission’s competences within the proposed standard-setting mechanisms. While the European Data Protection Board (EDPB) provides valuable expertise and improves the uniform interpretation of the law, its mandate is inherently focused on a single objective of maximising personal data protection. Furthermore, the issuance of various guidelines and recommendations does not match the speed necessary for fast-developing technologies and European businesses that wish to compete globally. In contrast, the Commission possesses a broad mandate and institutional legitimacy required to balance data protection with the EU’s wider strategic objectives, including innovation and economic growth. Relying solely on a body with a

narrow interpretative focus risks a "maximalist" approach that may inadvertently stifle the digital economy.

We therefore urge the Council to favor a governance structure that reflects the full spectrum of European interests. Decisions regarding technical standards and implementation should be driven by the best interests of EU citizens and entrepreneurs, ensuring that innovation remains a primary pillar of our regulatory framework.

We stand ready to assist you in this essential mission.

Respectfully,

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