

Subject: Urgent follow-up on the Digital Omnibus Council compromise

Dear Representatives,

I hope you are doing well.

We are increasingly concerned that Member States appear to be getting very close to settling the Council position on the so-called 'Data Omnibus.' The reason I am following up is that the latest text is, in some important respects, more concerning than the versions discussed before the summer.

- The biggest issue for us is the new Article 25a on pseudonymisation and identifiability and accompanying Recitals 27-27c. Although Article 4(1) itself is no longer amended, the new text creates a much more developed actor-relative regime under which pseudonymised data may be treated as non-personal for some actors while remaining personal for others. This risks blurring the distinction between pseudonymisation and anonymisation and creating major uncertainty about when the very GDPR applies across ordinary digital processing chains.
- We are also very concerned about Article 88bis. It is true that it does not make all AI-related processing automatically lawful, but it expressly states that personal data processing for AI development and operation 'may be carried out for a legitimate interest' under Article 6(1)(f). This risks turning what should be a case-by-case assessment into a broad legislative endorsement of legitimate interest for AI, normalising large-scale reuse of personal data in a technology-neutral, fundamental-rights framework.

There are other serious issues too, including weaker transparency safeguards, changes negatively impacting the extra layer of protection of 'sensitive' and biometric data, the deletion of the standalone privacy-signals provision, and new ePrivacy consent exemptions.

What makes this particularly hard to square is the wider political context. Governments are warning about AI risks, online safety, cybersecurity and the need to protect children, while at the same time considering changes that weaken the horizontal rules meant to protect people's data (also children's!) and communications. That not only creates new risks and legal uncertainty, but it also does little for a level playing field, because the actors best placed to benefit from looser rules are precisely the largest data empires, which already control the biggest datasets, infrastructures and AI systems.

In addition to that, we are also concerned that parts of the current drafting are not legally sound and raise serious questions of consistency with the GDPR's existing concepts, structure and case law. Provisions that redefine, even indirectly, when data fall within the scope of the GDPR or that single out broad categories of AI processing for special treatment should not be adopted without very careful legal scrutiny. We would therefore strongly encourage the Council Legal Service and the legal services of Member States to examine the text in detail before any political agreement is reached, including its compatibility with Articles 7 and 8 of the Charter and with the existing interpretation of the GDPR by the CJEU.

Allow me to emphasise that there is no obvious need to rush this (as various representatives of the industry made it clear mere weeks ago). The European Parliament is still developing its position and will do so for months, so there is time to look properly at the legal, practical, economic and fundamental-rights implications before the Council locks in a mandate. For changes touching the scope of the GDPR itself and the conditions under which people's data can and will be reused (but also abused), that extra scrutiny is warranted.



I am following up on the EDRi analysis I shared last week, which I am attaching again here for convenience.

I know how busy things are, and I very much appreciate you taking the time to read this. If useful, I would be very happy to discuss any of these points at very short notice. I can hop on an online call pretty much whenever convenient for you, or meet in person in Brussels. Please do not hesitate to get in touch if any additional detail would be useful.

Many thanks again, best wishes, and a lovey (and clearly well-deserved) weekend ahead,

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