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Europe pioneered digital regulation. Now it is time to pioneer regulatory maturity

AN OPEN LETTER TO THE EU CO-LEGISLATORS, THE COMMISSION, NATIONAL GOVERNMENTS, AND THE BROADER EU POLICY COMMUNITY FOR MAKING THE DIGITAL OMNIBUS A BENCHMARK OF A DEMOCRATIC RESPONSE TO UNCLEAR RULES

For nearly a decade, the GDPR has been more than a regulation; it has been a global mark of quality, safety, and trustworthiness. As the Director General of BusinessEurope, I speak for a community of more than 20 million cross-sectoral enterprises that believes **data protection and the freedom to conduct business are not competing goals**. We believe that trust is the bedrock of the economy, and trust is built when rules are respected, and boundaries are clear.

However, we must be honest about our current situation. Today, we face a digital acquis that is often too complex to apply consistently. Rules that are hard to interpret are inevitably hard to enforce, which ultimately leads to uneven protection, weakening the fundamental rights and freedoms. **We see the Digital Omnibus proposal not as a step back from protection, but a step forward toward effectiveness regulation**. Where rules lack clarity, it is not only companies that face uncertainty, but citizens also face inconsistent outcomes.

Furthermore, the weight of regulatory complexity is most crushing for local enterprises: a bookstore or a local farm, analysing its sales and personalisation marketing, a local gym tracking attendance and providing personal training insights, a small research institute conducting sociological studies, a local security provider, and so on.

Treating a local SME as if it possesses the same capabilities as a multinational company introduces disproportionate compliance expectations and burdens without corresponding privacy gains. According to the 2024 Draghi report on competitiveness, GDPR compliance costs may reach EUR 500,000 for SMEs and 10 million for larger organizations.

The EU Commission proposal hence was a democratic response to many calls that the GDPR misses the mark on risk proportionality. Regrettably, the Council compromise texts are reducing the omnibus to a symbolic change inconsistent with the calls in numerous European Council conclusions to improve business environment, to stimulate digital transformation in the EU. There is also a logical inconsistency in the Council's approach: removing certain parts arguing they lack impact assessment (e.g. personal data definition, legitimate interest for AI training and development), while keeping others despite also missing an impact assessment on them (e.g. automated consent indications).



Legal codification as a prerequisite for the Rule of Law

The explicit anchor of personal data to a relative¹ practical identifiability test is a clear acknowledgement that the absolute theoretical identifiability standard has never been supported by the European Court of Justice (CJEU), and hence there shall be no room for other interpretations by the national data protection authorities or national courts.

If identifiability is assessed against any hypothetical third party, how is a company ever meant to reach legal certainty? And how is a citizen meant to rely on their rights if their scope depends on abstract possibilities rather than realistic risks?

Clarity matters more than the volume of rules. If legal clarity is not codified, then an SME or a single entrepreneur will be expected to go through all the court cases on the GDPR. By having the changes directly into the legal text is how the legislators preserve fairness for businesses of all sizes and predictability for citizens.

Reducing the debate to a binary opposition between citizens and large corporations risks oversimplifying a complex policy discussion. The GDPR is a horizontal regulation that applies across sectors, business models, and organisations of all sizes, with stakeholders holding a wide range of views across the political spectrum. A balanced, evidence-based and constructive discussion is necessary to ensure outcomes that work effectively for citizens, businesses and regulators alike. **Without such an approach, the Digital Omnibus burden reduction efforts risk becoming largely declaratory, eventually undermining business confidence in the EU's ability to provide clear, workable and enabling regulatory framework for the whole economy.**

Europe's capacity for innovation depends on a framework that enables research while safeguarding fundamental rights. According to Eurostat, R&D expenditure in the EU for 2023 by source of funds comes from the business sector (more than 56%). Furthermore, *EU Industrial R&D Investment [Scoreboard](#)* shows that EU-headquartered companies alone invest well above €200 billion annually in R&D.

By confirming a clearer understanding of scientific research, Omnibus VII (Digital Omnibus) seeks to remove redundant compatibility assessments. Consequently, this step levels the playing field allowing **smaller players to move forward at the same speed as larger ones**. This will only be beneficial as the economy strives to reach its Digital Decade targets.

The Digital Omnibus is consequential for the whole economy

In all domains and especially in cybersecurity, health, and artificial intelligence, legal clarity has direct implications for societal resilience. Security research

¹ In Case C-413/23 P (SRB), the Court affirmed that whether a person is identifiable depends on the actual technical, organisational, and legal capabilities of the entity. In line with the “means reasonably likely to be used” asserted in C-582/14 Case.



depends on real-world conditions, the ability to identify and analyse threats, share information, and so on. Similarly, trustworthy AI development requires large-scale data use, testing, validation, and bias detection. Where the legal framework is unclear, these activities may be delayed, limited, or fragmented, and as a result affect the level of protection or opportunities individuals receive in practice.

Finally, we must address the interplay of our laws. The **Data Act builds on the portability rights of the GDPR**, yet if data obtained under these bases remains locked in silos due to rigid purpose limitations, or absolute identifiability assessments, the digital rulebook will stand in a way of European AI development and the data economy of 21 century.

Europe has rightfully pioneered digital regulation. Now, Europe must pioneer regulatory maturity – moving past the artificially created friction “*innovation vs protection*” and building a framework that enables all European companies to innovate, compete, and above all earn and maintain the trust of citizens in Europe and beyond.

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