

Microsoft Reflections on the Digital Omnibus - Proposals regarding GDPR and ePrivacy

Microsoft welcomes the EU's Digital Omnibus package as a constructive step to clarify and modernize Europe's data protection framework¹. In our view, the **Digital Omnibus proposals on data protection mostly clarify, rather than rewrite, the GDPR framework that is largely fit for purpose**. We wish to share the following specific observations:

- **Acknowledging AI and Sensitive Data:** We welcome the new provisions on special categories of personal data in AI context (**articles 9 (2)(k) & 9 (5)**), which recognise that in developing AI models and systems, exposure to special categories of data is in some circumstances unavoidable. This approach aligns with the CJEU caselaw in the landmark Costeja case and with the CNIL's [guidance](#) on sensitive data processing in an AI context.
 - While we acknowledge that such processing should be done under solid safeguards, it is challenging to capture such safeguards in a single and static legal provision, which could easily become too restrictive or outdated. We therefore recommend keeping sufficient flexibility in the formulation of the safeguards.
- **New research definition:** We support the new concept of scientific research (**article 4(38)**), which clarifies that the GDPR rules on academic research also apply to projects with commercial involvement. This is aligned with GDPR recital 159 and will help stimulating Europe's innovative potential, by ensuring valuable R&D by companies can proceed under the same conditions as academic research, while maintaining protective safeguards.
 - We see room to fine-tune the text, which could now be read to only cover research carried out for the "sole" aim of contributing to the growth of society's general knowledge and wellbeing – which would appear contradictory to the goal of the provision and/or lead to an overly narrow interpretation².
- **Codification efforts:** The amendments to the definition of personal data (**article 4 (1)**) and the recognition of "legitimate interests" to develop and operate AI systems & models (**article 88c**) aim to respectively codify the SRB caselaw and the EDPB guidance on AI training.
 - While we welcome the intention to bring more clarity and harmonization, it is important to ensure that political negotiations on these provisions do not backpedal on established case-law or guidance, as this would risk further complicating the legal framework.
- **Clarity on Data Protection Impact Assessments (DPIAs):** We support the ambition to create more clarity on DPIAs, as well as EU-wide consistency on when they are required.
 - However, we emphasize that DPIA methodologies and templates **should remain non-binding** rather than prescriptive, as this could add new costs for controllers to adapt their existing frameworks and would reduce their ability to adapt DPIAs to specific aspects of processing.

¹ Ahead of the Digital Omnibus Package, Microsoft's simplification recommendations in this area focused mainly on ensuring a more consistent and harmonized enforcement under the GDPR and across other digital regulations, and on modernizing and simplifying the ePrivacy Directive.

² See, e.g., [Section 67](#) of the [UK Data \(Use and Access\) Act 2025](#).

- Other changes are positive to neutral, whereas the proposed changes to articles 13 (on transparency duties), 22 (on automated decision making) and 41 a) (on implementing acts clarifying the impact of pseudonymisation) would in our view provide limited benefits.

The ePrivacy simplification does not go far enough: We however regret that the proposal misses an opportunity to efficiently simplify the ePrivacy framework. While we appreciate the intention of the Commission to integrate article 5 of the ePrivacy Directive (ePD) partially under the GDPR (in new articles 88a and 88b), the simplification unfortunately does not go far enough and adds new complexities.

- The ePrivacy Directive is over 20 years old and was designed for a different era; the Digital Omnibus is the ideal moment to modernize it comprehensively, by merging most of its provisions with the GDPR (e.g., those on traffic data processing), or other legal instruments such as the EECC/DNA.
- Second, the newly proposed article 88a foresees only very narrow exemptions to the consent requirement for processing personal data on a device: the exemption for security purposes should at a minimum cover: **security, fraud, and related software updates**.
 - Hence, we propose adding the words “*including preventing and combatting fraud*” after “*maintaining or restoring the security*”, in section d) of the new article 88 a).
- Third, with regard to the proposed article 88b GDPR, we question the feasibility of imposing the consent mechanism on the browser community and on how this might impact a wide range of European online publishers and service providers.

Opportunities for clarifying International Data Transfers: The digital omnibus package does not include any simplification proposals in the data transfers space, where legal uncertainty is causing significant transaction costs that are duplicated across all processors who export data. We would welcome greater legal certainty on extra EU data transfers, e.g. around when the Commission’s standard contractual clauses (“SCCs”) apply, or through greater involvement of public stakeholders in assessing the adequacy of data protection regimes in third countries, and guidance on when and which “supplementary measures” are truly necessary for transfers. These steps would significantly reduce duplicative compliance efforts and uncertainty for businesses, without lowering the level of protection for Europeans’ data.
