Germany Should Push Further on the Digital Omnibus

Making supervisory discretion accountable for its effects on Europe's data economy

Dr M.R. Leiser (Mark)
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Germany wants the Digital Omnibus to go further. noyb claims the Council has already gone too far. I explain what Germany actually seeks, show where noyb's attack misrepresents the agreed text, and argue for the institutional reform the negotiation still lacks: a statutory Innovation Mandate and an enforceable duty to cooperate for the EDPB and other digital regulators.

This builds on my assessment of the Council mandate, legal certainty report, Innovation Mandate and Duty to Cooperate paper. Clearer permission for responsible data use will achieve little if supervisory practice leaves organisations unable to rely on it.

What Germany Actually Wants

Germany's 21 October statement, reported by Agence Europe on 23 October, welcomes restoring an operative AI provision but demands a stronger legal basis, including a presumption that training and operating AI constitute legitimate interests, alongside changes to Article 9. Berlin also seeks relief for low-risk controllers, stronger trade-secret protection, and a three-month cookie-consent re-prompt interval, with criteria for earlier requests. The Council's interval is four months.

Germany reserves its positions for negotiations and the Digital Fitness Check.

These are demands for further reform. They do not describe the agreed mandate. Germany's AI proposal also leaves an important question: would its presumption establish only the legitimacy of an interest, or would it also alter necessity and balancing? Legislators must answer that in the operative text.

I support affirmative permission for AI development using lawfully accessible data. Developers need a predictable starting point. Necessity must still connect the processing to a defined purpose, and balancing must account for the people affected. Better access and enforceable safeguards can coexist; drafting should explain how.

Three Positions on AI Processing

Position	Legal Proposition	Qualification
Council mandate	Conditional reliance on Article 6(1)(f).	Case-specific assessment of the underlying purpose.
Germany's demand	Presume a legitimate interest in training and operating AI, alongside further Article 9 changes.	The effect on necessity and balancing needs clarification.
noyb's claim	AI processing would become lawful by default.	The article disputes this reading of the mandate.

Neither a German proposal nor a campaign claim changes the agreed text.

noyb Should Argue With the Text

noyb's 23 October statement describes the Council settlement as "digital expropriation" and claims that AI processing would become "automatically lawful". That allegation deserves a direct answer because it misstates the provision around which the political campaign now revolves.

Article 88 bis expressly refers to Article 6(1)(f), preserves the overriding-rights qualification and respects other laws requiring consent. Recital 33a says AI development and operation do not themselves constitute a legitimate interest: assessment remains case-specific and concerns the underlying purpose. These are proposed rules in a negotiating mandate, not an enacted amendment.

noyb can argue that the provision adds little, that enforcement will prove difficult, or that particular reuse would fail the test. Those arguments require evidence and legal analysis. Its stronger claim depends on treating qualifications as though the Council had deleted them. A campaigning organisation with noyb's expertise should meet a higher standard.

A legitimate political argument concerns who benefits from easier access to data. Incumbents hold large datasets and can quickly exploit new permissions. But maintaining uncertainty also favours incumbents: they can afford litigation, specialist advice and delayed deployment. European entrants need usable rules too. noyb's distributional objection therefore calls for an access strategy, rather than assuming uncertainty protects the weaker party.

Its pseudonymisation criticism makes a related mistake. The Council retains Article 4(1) and introduces a separate recipient-relative provision. That distinction has substantive consequences, but pseudonymous identifiers do not become anonymous merely because a company says so. The means of identification, relationships between actors and onward disclosures remain central. Legislators should strengthen auditable reliance and anti-circumvention rules rather than abandon contextual assessment.

The Assessment AI Processing Still Requires

Stage	Requirement
Defined legitimate interest	Identify the actual purpose.
Necessity	Justify the processing for that purpose.
Balancing	Assess the interests and rights of affected people.

Article 88 bis refers to Article 6(1)(f); recital 33a preserves assessment by purpose. Consent requirements in other laws and other GDPR obligations still apply.

Put the Innovation Mandate Into Law

The Council deserves credit for advancing reform despite this rhetoric. Germany is right that the settlement should go further. Yet changing permissions alone leaves much of the uncertainty intact. Regulatory interpretation will still determine whether a European research consortium or developer can use those permissions with confidence.

My Innovation Mandate addresses that institutional problem. Legislators should impose a binding secondary duty on supervisors when Union law permits materially different approaches. Major guidance and other consequential discretionary choices should identify the risk, test credible safeguards, compare lawful alternatives and explain effects on legal certainty, smaller firms and deployment. A short public supervisory impact statement should record that reasoning.

The duty must preserve statutory protections and supervisory independence. It should require an authority to explain why it rejected a less burdensome, equally protective alternative. A developer should be able to discover which safeguards could change the conclusion, rather than encounter an objection that remains unchanged whatever evidence it supplies.

Industry must supply evidence as well. Claims about lost competitiveness should identify the affected activity, the disputed requirement, the proposed safeguards and the practical consequence. The mandate would make both sides substantiate their positions. Parliament and Council should enact it through targeted amendments to supervisory tasks, EDPB functions and reporting obligations.

Reform the EDPB Under a Duty to Cooperate

The second reform concerns overlapping authority. Privacy expertise cannot settle every question raised by AI, competition, consumer protection or data access. Each regime has its own objectives and competent institutions. Businesses and individuals need those institutions to address the same facts coherently.

My Duty to Cooperate proposal would require early notice of material overlap, lawful information exchange, timed consultation and reasons for rejecting another authority's material view. Authorities should coordinate remedies and protect confidentiality and defence rights. Urgency must permit action; silence must not create a veto.

EDPB reform should also clarify institutional responsibility. The EDPS supplies its secretariat while exercising separate advisory, supervisory and AI functions. Statutory reporting lines, controlled access to files and auditable separation would make responsibility traceable. Major guidance needs a proportionate procedure, a clear account of its legal status and effective scrutiny where it produces legal effects. Material cooperation failures should carry consequences that can be reviewed.

Two Duties for Accountable Supervision

Proposed Duty	Requirements
Innovation Mandate	Operate within lawful discretion; compare protective alternatives; explain evidence and burdens.
Duty to Cooperate	Address material overlap between mandates; consult within defined periods; explain divergence and coordinate remedies.

The proposed reforms preserve statutory rights and independence while requiring public reasons, traceable responsibility and effective scrutiny.

Without these reforms, useful amendments could lose much of their value through conflicting guidance, duplicated demands and unresolved institutional disputes. Universities and smaller developers would continue paying to reconstruct answers that a coherent supervisory system should make public. That is a foreseeable cost of stopping halfway.

Germany has opened the argument about how much further the Omnibus should go. Parliament should take it up: preserve necessity and balance, make responsible data use predictably available, and bind supervisory institutions to evidence, reasons, and cooperation. Europe needs the permission and the administrative machinery to make that permission usable.

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