Digital Omnibus – Joint industry call to delete Article 88b

Brussels, 28.10.2026

Dear Members of the European Parliament,

Simplification should mean fewer burdens, greater legal certainty and a more competitive European digital economy. Article 88b of the Digital Omnibus delivers the exact opposite.

We, the undersigned associations, therefore call on you to delete the proposed Article 88b in its entirety. We share the objective to reduce consent fatigue and give people meaningful control over their data where it matters the most. However, Article 88b addresses this problem through a mechanism that is economically distortive, legally uncertain and technically unworkable.

There are three key reasons why Article 88b should be deleted:

1. **Fair competition must be preserved**

Article 88b risks distorting competition and undermining Europe's digital economy. Preventing businesses from seeking consent directly from their users in the relevant context could: (a) reinforce the position of a small number of dominant digital players; (b) create new intermediaries with significant influence over users' privacy choices; and (c) put businesses, especially smaller and independent ones, at a competitive disadvantage. National competition authorities have already sanctioned a consent mechanism designed by a gatekeeper for distorting competition. Those most exposed to the consequences mentioned are businesses that rely on the open web to reach and serve their customers: publishers, retailers and e-commerce businesses, advertisers, marketing service providers, app developers and SMEs across all sectors.

2. **Privacy protection must not be weakened by legitimising generalised consent**

Article 88b risks weakening individuals' privacy protection by legitimising the collection of generalised consent through browser settings. A general acceptance chosen once and applied across services would replace meaningful decisions about specific data processing activities with an advance authorisation detached from the circumstances and context in which personal data are actually used. Individuals could consequently be treated as having agreed to data processing whose purposes, scope and implications they could not understand when making that choice. Moreover, the negative impact of such generalised consent on business models relying on advertising (particularly smaller and independent businesses) must not be overlooked.

The GDPR's requirements for consent are designed to prevent precisely this situation where people lose control of their data. Consent must be specific and informed, and controllers must be able to demonstrate that valid consent was given. A general browser setting cannot, by itself, satisfy those requirements for every service and processing purpose to which it may subsequently be applied. Detaching consent from the relevant processing context would also make it harder for individuals to understand what they have authorised, while uncertainty over which choice prevails when a browser setting conflicts with a choice made directly with a service would further undermine their effective control. As Article 88b would allow such a setting to stand in for specific and informed consent, it would therefore substantially lower the existing standard of privacy protection rather than merely simplify how individuals communicate their choices.

3. **Fragmentation must be avoided**

People deal with businesses across websites, apps, connected devices, email and physical shops, often through a single customer account. A signal sent from a browser or other software covers only part of that relationship. The same person could send one signal from a laptop, another from a phone and make a different choice in their customer account. Businesses would not know which choice applies, and people could not be sure their preferences are respected everywhere. Instead of reducing consent fatigue, Article 88b would leave consent more fragmented and confusing for people and businesses alike.

Taken together, Article 88b would add cost and uncertainty for businesses of every size, with smaller businesses hit hardest, while making privacy choices more confusing for the very people it is meant to help.

We therefore call on you to support the full deletion of Article 88b from the Digital Omnibus proposal, in line with the approach taken by the Council in its position. Removing this provision would keep the Digital Omnibus true to its simplification objective, avoid introducing additional legal and technical uncertainty, safeguard a competitive and diverse European digital ecosystem, and ensure that privacy choices remain clear and meaningful for individuals.

Solving consent fatigue remains possible

Deleting Article 88b should not mean abandoning the objective of simpler and more meaningful privacy choices. Consent fatigue could be addressed at its source. The legal framework should distinguish between high-risk processing activities and low-risk activities. Consent is appropriate for high-risk processing activities. A genuinely risk-based framework would reduce unnecessary consent requests, strengthen the significance and meaningfulness of the choices that remain and create incentives for privacy-preserving business models.

Yours sincerely,

The undersigned associations: