



Restore the Balance in the GDPR to Enhance Competitiveness, Including a Review of the EDPB's Role

The current legislative term has begun with a decisive shift toward prioritizing the EU's competitiveness, including a focus on long-term productivity growth.

Digitalization in general, and AI in particular, are key factors in achieving the goal of increased competitiveness and productivity growth. From a productivity perspective, the ability of European companies to process and use data responsibly is crucial for success. For Europe to succeed in AI it is necessary that the EU's regulatory framework does not unduly restrict data processing compared to competitors in other parts of the world – a goal that requires well-balanced legislation.

Simplification initiatives, including the upcoming specific initiative on the EU's digital policies, are important steps forward. These, combined with proper analyses of how new legislation affects competitiveness, will help to ensure that EU laws are shaped with competitiveness as a key starting point.

Beyond reviewing legislation itself, we must also assess how key digital laws have been implemented – particularly their practical impact on competitiveness, which is often overlooked.

In this context, the GDPR occupies a central position. Although the principles of the GDPR were designed to strike an acceptable balance between businesses' legitimate need to process data and the need to protect sensitive data, an inherent imbalance in its application has existed from the outset – one that has increasingly led to competitiveness issues over time. A key part of this imbalance lies in the role assigned to the European Data Protection Board (EDPB) and the fact that its guidelines, in effect, has no counterpart that takes its starting point in interpreting the GDPR through the lens of European competitiveness.

To achieve such a trade-off within the present regulation it would need for the EDPB to be careful in striking a balance that would allow also for other interests than privacy to be factored in. This is not the case today. Instead, we have seen the EDPB to assume a de facto role as a policymaker, with its ambition to regulate business models like Pay or Consent being a clear example, as well as its refusal of accepting the risk-based approach which lies at the very heart of balance of interest.



The EDPB's systematic position to narrow the use of personal data such as GDPR's rules on contractual basis and legitimate interest – which are crucial for businesses' use of data are in direct contrast to any attempts to increase European competitiveness.

In the next phase, it is likely that the EDPB's guidelines will further hinder European businesses from utilizing AI in a manner comparable to competitors in other regions.

Given these developments, there is a strong rationale for reassessing how the GDPR should be applied as part of broader efforts to improve EU competitiveness. The objective should be to restore balance. By ensuring a more balanced approach, we can align data protection with innovation and economic growth while maintaining strong safeguards for individuals.

It is also worth noting that any changes to the GDPR itself risk being ineffective should the EDPB continue in its line of expansive interpretations and restrictive guidelines. The core issue is also how the legal text itself is applied in practice.

Concrete measures to achieve better application of the legislation could include limiting the EDPB's mandate. Other options could inter alia include new mechanisms to ensure that competitiveness plays a much greater role in the interpretations, including the legitimate data needs of European businesses.

We recognize that the application of the GDPR is only one of many factors that need to be addressed to resolve the EU's competitiveness challenges related to digital legislation. However, as GDPR is the heart of the digital toolbox, we strongly believe that revisiting the GDPR's application is one important step towards achieving the goal of a more competitive Europe.

It is our hope that the GDPR, and particularly its application, will be part of the Commission's upcoming efforts to enhance competitiveness and drive productivity growth – hopefully addressed already in the digital simplification initiative later this year.

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NDM

The Stockholm based Business Delegation (NDM) consists of 24 Swedish industry and interest organizations. Through NDM, they work to promote fair rules of play, equitable competition, and high standards of consumer and privacy protection in marketing, including sales activities.

ASML

ASML Represents Finland's data driven business and marketing ecosystem. Member companies are among the most advanced and prominent players across various sectors such as retail, finance, insurance, telecom, media, e-commerce, energy and various service providers supporting the growth of data driven business.

SMB

Polish Direct Marketing Association (SMB) is a leading non-profit organization bringing together companies involved in shaping the direct and interactive marketing market. For nearly 30 years, we have supported the development of effective communication between brands and customers, promoting omnichannel strategies as the standard for effective customer experience building and long-term relationships.

BVDW

The German Association for the Digital Economy (BVDW) is the advocacy group for companies that operate digital business models or whose value creation is based on the use of digital technologies. With its members from the entire digital economy, the BVDW is already shaping the future today through creative solutions and state-of-the-art technologies. As a catalyst, guide, and accelerator for digital business models, the association relies on fair and clear rules and advocates for innovation-friendly framework conditions.