

Spotlight Talk

AI & Data protection –
already in harmony?



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AI and Data Protection – already in harmony ?

Europe's Orchestra of Digital Rules



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GDPR Chapter I



Brussels, 19.11.2025
COM(2025) 837 final

2025/0360 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulations (EU) 2016/1679, (EU) 2018/1724, (EU) 2018/1725, (EU) 2023/2854, (EU) 2024/1689 and Directives 2002/58/EC, (EU) 2022/2555 and (EU) 2022/2557 as regards the simplification of the digital legislative framework, and repealing Regulations (EU) 2018/1807, (EU) 2019/1150, (EU) 2022/868, and Directive (EU) 2019/1024 (Digital Omnibus)

{SWD(2025) 836 final}

„Taking into account the case-law of the Court of Justice of the European Union concerning the definition of personal data, it is necessary to provide further clarity on when a natural person should be considered to be identifiable.” [EW 27]

Current Text

(1) ‘personal data’ means any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

Proposed Text

(1) ‘personal data’ means any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. **Information relating to a natural person is not necessarily personal data for every other person or entity, merely because another entity can identify that natural person. Information shall not be personal for a given entity where that entity cannot identify the natural person to whom the information relates, taking into account the means reasonably likely to be used by that entity. Such information does not become personal for that entity merely because a potential subsequent recipient has means reasonably likely to be used to identify the natural person to whom the information relates.**

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GDPR Chapter II



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{SWD(2025) 836 final}

Article 88c

Processing in the context of the development and operation of AI

Where the processing of personal data is necessary for the interests of the controller in the context of the development and operation of an AI system as defined in Article 3, point (1), of Regulation (EU) 2024/1689 or an AI model, such processing may be pursued for legitimate interests within the meaning of Article 6(1)(f) of Regulation (EU) 2016/679, where appropriate, except where other Union or national laws explicitly require consent, and where such interests are overridden by the interests, or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

Any such processing shall be subject to appropriate organisational, technical measures and safeguards for the rights and freedoms of the data subject, such as to ensure respect of data minimisation during the stage of selection of sources and the training and testing of AI an system or AI model, to protect against non-disclosure of residually retained data in the AI system or AI model to ensure enhanced transparency to data subjects and providing data subjects with an unconditional right to object to the processing of their personal data.'



Opinion 28/2024 on certain data protection aspects related to the processing of personal data in the context of AI models

Adopted on 17 December 2024

3.4 On the possible impact of an unlawful processing in the development of an AI model on the lawfulness of the subsequent processing or operation of the AI model

109. This section of the Opinion addresses Question 4 of the Request. This Question seeks clarification on the possible impact of an unlawful processing in the development phase on the subsequent processing (for instance in the deployment phase of the AI model) or on the operation of the model. The question seeks to address both the situation where such an AI model processes personal data which is retained in the model (Question 4(i) of the Request), as well as the situation where no personal data processing is involved anymore in the deployment of the AI model (i.e. the model is anonymous) (Question 4(ii) of the Request).
129. **SAs should take into account whether the controller deploying the model conducted an appropriate assessment, as part of its accountability obligations⁸⁹ to demonstrate compliance with Article 5(1)(a) and Article 6 GDPR, to ascertain that the AI model was not developed by unlawfully processing personal data.** Such evaluation by SAs should take into account whether the controller has assessed some non-exhaustive criteria, such as the source of the data and whether the AI model is the result of an infringement of the GDPR, particularly if it was determined by a SA or a court, so that the controller deploying the model could not ignore that the initial processing was unlawful.

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Article 9 is amended as follows:

(a) in paragraph 2, the following points are added:

‘(k) processing in the context of the development and operation of an AI system as defined in Article 3, point (1), of Regulation (EU) 2024/1689 or an AI model, subject to the conditions referred to in paragraph 5.

(l) processing of biometric data is necessary for the purpose of confirming the identity of a data subject (verification), where the biometric data or the means needed for the verification is under the sole control of the data subject.’

In Article 22, paragraphs 1 and 2 are replaced by the following:

‘1. A decision which produces legal effects for a data subject or similarly significantly affects him or her may be based solely on automated processing, including profiling, only where that decision:

- (a) is necessary for entering into, or performance of, a contract between the data subject and a data controller regardless of whether the decision could be taken otherwise than by solely automated means;
- (b) is authorised by Union or Member State law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests; or
- (c) is based on the data subject's explicit consent.’

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GDPR Chapter III



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Any such processing shall be subject to appropriate organisational, technical measures and safeguards for the rights and freedoms of the data subject, such as to ensure respect of data minimisation during the stage of selection of sources and the training and testing of AI an system or AI model, to protect against non-disclosure of residually retained data in the AI system or AI model to ensure enhanced transparency to data subjects and providing data subjects with an unconditional right to object to the processing of their personal data.’

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GDPR Chapter III – Interplay with Chapter II ?



JUDGMENT OF THE COURT (Ninth Chamber)

4 October 2024 [\(C\)](#)

(Reference for a preliminary ruling – Protection of natural persons with regard to the processing of personal data – Regulation (EU) 2016/679 – Article 5(1)(a) – Lawfulness of processing – Point (f) of the first subparagraph of Article 6(1) – Necessity of processing for the purposes of the legitimate interests pursued by the controller or by a third party – Concept of ‘legitimate interests’ – Commercial interest – Sports federation – Disclosure, for consideration, of the personal data of the members of a sports federation to sponsors without the consent of those members)

In Case C-621/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the rechtbank Amsterdam (District Court, Amsterdam, Netherlands), made by decision of 22 September 2022, received at the Court on 29 September 2022, in the proceedings

Koninklijke Nederlandse Lawn Tennisbond

v

50 Where such an interest is regarded as legitimate, it is also necessary, in order for the pursuit of that interest to allow the processing of personal data pursuant to point (f) of the first subparagraph of Article 6(1) of the GDPR, that the controller comply with all its other obligations under that regulation.

Judgment of the Court (First Chamber) of 9 January 2025 (request for a preliminary ruling from the Conseil d’État - France) – Mousse v Commission nationale de l’informatique et des libertés (CNIL), SNCF Connect

(Case C-394/23, [Mousse](#))

(Reference for a preliminary ruling – Protection of natural persons with regard to the processing of personal data – Regulation (EU) 2016/679 – Article 5(1)(c) – Data minimisation – Article 6(1) – Lawfulness of processing – Data relating to title and gender identity – Online sale of travel documents – Article 21 – Right to object)

52 As regards the first condition, referred to in paragraph 46 of the present judgment, it will be for the referring court to ascertain whether SNCF Connect informed its customers of a legitimate interest, in accordance with Article 13(1)(d) of the GDPR, at the stage of collecting the data at issue in the main proceedings. As the Advocate General observed in point 58 of his Opinion, that provision requires the controller directly to inform the data subjects of the legitimate interest pursued at the time when the data is collected, otherwise that collection cannot be justified on the basis of point (f) of the first subparagraph of Article 6(1) of that regulation. From the file before the Court, it is not possible to assess whether that requirement was complied with in the case in the main proceedings.

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GDPR Chapter III



Entschließung

der Konferenz der unabhängigen Datenschutzaufsichtsbehörden
des Bundes und der Länder vom 12. Dezember 2025

DSGVO-Reform: Rechtssicherheit und Innovation gehen Hand in Hand
- Anpassungen für KI erforderlich

Betroffenenrechte mitdenken

Zur Einhaltung des Datenschutzes bei der Verarbeitung personenbezogener Daten im Zusammenhang mit KI-Modellen und -Systemen gehört auch, Transparenzvorgaben und Betroffenenrechte der DSGVO nach der Rechtsprechung des Europäischen Gerichtshofs zu gewährleisten.¹ Bei der Entscheidung zur Einführung eines KI-Systems, also möglichst frühzeitig, sollte die Sicherung der Rechte der betroffenen Person eine Rolle spielen, quasi als “Betroffenenrechte by Design”. Gleichwohl zeigt sich, dass die Gewährleistung der Betroffenenrechte beim Einsatz vieler KI-Systeme in der Praxis schwierige Fragen aufwerfen kann, wenn die Umsetzung aufgrund der zugrundeliegenden Modelle kaum möglich erscheint.

Um die Rechte der Betroffenen zu wahren und einen eindeutigen rechtssicheren Rahmen für KI zu schaffen, sollten daher im Rahmen des europäischen Reformprozesses zum Datenschutzrecht und den Digitalrechtsakten auch Anpassungen in Form von funktionsäquivalenten oder kompensatorischen Schutzmaßnahmen in den Blick genommen werden.

Bislang sind Verantwortliche im Rahmen der datenschutzrechtlichen Transparenzpflichten nicht explizit verpflichtet, Betroffene ausdrücklich darüber zu informieren, dass ihre personenbezogenen Daten in einem KI-System verarbeitet werden. Daher wird die Aufnahme einer entsprechenden Informationspflicht in die Art. 13 Abs. 2 und Art. 14 Abs. 2 DSGVO vorgeschlagen. Entsprechendes ist für das Recht der Betroffenen auf Auskunft festzustellen. Um diese Regelungslücke zu schließen, wird die Einführung einer entsprechenden Ergänzung in Art. 15 Abs. 1 DSGVO vorgeschlagen.

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GDPR Chapter IV



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‘5. For processing referred to in point (k) of paragraph 2, appropriate organisational and technical measures shall be implemented to avoid v the collection and otherwise processing of special categories of personal data. Where, despite the implementation of such measures, the controller identifies special categories of personal data in the datasets used for training, testing or validation or in the AI system or AI model, the controller shall remove such data. If removal of those data requires disproportionate effort, the controller shall in any event effectively protect without undue delay such data from being used to produce outputs, from being disclosed or otherwise made available to third parties.’

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Outlook

CHAPTER I

General provisions

Article 1

Subject-matter and objectives

1. This Regulation lays down rules relating to the protection of natural persons with regard to the processing of personal data and rules relating to the free movement of personal data.
2. This Regulation protects fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data.
3. The free movement of personal data within the Union shall be neither restricted nor prohibited for reasons connected with the protection of natural persons with regard to the processing of personal data.

