ETAF Statement

Digital Omnibus Proposal

Introduction

The European Tax Adviser Federation (ETAF) would like to thank the European Commission for the opportunity to provide feedback on its proposal for a Digital Omnibus (COM(2025) 837), published on 19 November 2025. The Digital Omnibus is a horizontal simplification package designed as the first "targeted and technical" simplification step in a broader effort to stress-test the EU's digital rulebook.

The Digital Omnibus proposal amends, consolidates and repeals several legislative instruments. It introduces amendments to Regulation (EU) 2016/679 (General Data Protection Regulation- GDPR), Directive 2002/58/EC (ePrivacy Directive- ePD, of which article 4 is fully repealed and article 5(3) is amended to migrate personal data rules into the GDPR), Regulation (EU) 2018/1724 (Single Digital Gateway Regulation- SDGR), Regulation (EU) 2018/1725 (EU Institutions Data Protection Regulation- EUIDPR), Regulation (EU) 910/2014 (Regulation on Electronic Identification and Trust Services- eIDAS Regulation), Regulation (EU) 2022/2554 (Digital Operational Resilience Act- DORA), Directive (EU) 2022/2555 (Network and Information Security Directive- NIS2), and Directive (EU) 2022/2557 (Critical Entities Resilience Directive- CER Directive). At the same time, the proposal repeals Regulation (EU) 2018/1807 (Free Flow of Non-Personal Data Regulation- FFNDR), Regulation (EU) 2019/1150 (Platform-to-Business Regulation- P2B Regulation), Regulation (EU) 2022/868 (Data Governance Act-DGA), and Directive (EU) 2019/1024 (Open Data Directive -ODD), consolidating select provisions from those instruments into Regulation (EU) 2023/2854 (Data Act- DA).

As regulated tax professionals, ETAF members handle sensitive financial and personal data on behalf of their clients on a daily basis and are therefore directly affected by the rules governing data protection, data sharing and cybersecurity incident reporting. The fragmentation and complexity of the current digital rulebook translate into significant compliance costs for tax advisory practices, particularly for smaller firms operating across borders, and any effort to streamline and clarify these rules is therefore of direct practical relevance of the tax profession.

Against this background, ETAF welcomes the Commission's initiative to launch the Digital Omnibus as part of the broader Digital Package for "*simpler EU digital rules and new digital wallets to save billions for businesses and boost innovation*", and fully supports its ambition to make "*business in the EU simpler, less costly and more efficient*".

This statement focuses exclusively on the Digital Omnibus proposal. It does not address the parallel proposal Digital Omnibus on AI (COM (2025 836), or the separate proposal on the establishment of the European Business Wallets (COM (2025) 838). ETAF will address the European Business Wallet in a separate statement.

1. Reinforcing the protection of trade secrets in the context of data access and data sharing requests in the Data Act

The current Chapter II of the Data Act mandates holders to provide access to data, including trade secrets to users and third parties within the EU. However, there are significant concerns about the potential leakage of trade secrets to entities in third countries, such as unlawful access and misuse by third-country entities and trade secret exposure.

The Digital Omnibus proposal introduces clarifications intended to reinforce the protection of trade secrets within the framework of the Data Act. It creates a new rule under article 4(8) of the Data Act that allows data holders to refuse disclosure of trade secrets to a user when there is a high risk of unlawful acquisition, use, or disclosure to third countries, or entities under their control, that are subject to jurisdictions with weaker protections than those available in the EU. It also introduces the same rule for article 5(11), concerning data holders disclosing trade secrets to third parties. These rules therefore strengthen safeguards in situations where compliance with data access or sharing obligations could expose undertakings to an increased risk of unlawful access by entities located in third countries.

ETAF welcomes this direction. The associated risks of data espionage make enhanced trade-secret protection a legitimate and necessary regulatory priority. At the same time, the framework should ensure that undertakings are able to invoke trade secret protection through mechanisms that remain proportionate and operational in practice. In particular, the possibility for companies to object to data access or data sharing requests where legitimate trade secret concerns arise should be designed in a manner that avoids disproportionate administrative or procedural burdens.

This consideration is particularly relevant for small and medium-sized enterprises (SMEs). For many such undertakings, commercially valuable know-how and other forms of confidential business information constitute a core component of their economic value and competitive position.

ETAF therefore recommends the following:

- **General right of objection as a safeguard clause:** A general right to object to data access and data sharing requests should be established. This safeguard should not rely on narrowly defined exceptions, case-by-case justifications or complex procedural requirements.

2. Narrowing down the scope of B2G only to public emergencies in the Data Act

The Digital Omnibus proposes to narrow the scope of Chap. V of the Data Act from "exceptional need" to "public emergency". The intention is to reduce the burden on businesses, addressing private sector concerns regarding the lack of clarity of the business-to-government (B2G) data sharing regime. The proposal therefore intends to streamline the B2G framework by concentrating exclusively on public emergencies.

In light of the above, the proposal deletes articles 14 and 15 of the Data Act, and creates a new article 15(a) of the Data Act, which becomes the sole article for requesting during public emergencies under the B2G regime. Article 15a thus establishes the conditions under which public authorities may request data during a public emergency, covering emergency response (articles 15a(1)-(2)), as well as mitigation and recovery measures (article 15a(3)).

While this limitation is welcome, it is notable that article 15a(2) allows personal data to be requested where non-personal data proves insufficient to address the public emergency. In a business context, personal data may often be closely linked to confidential client information or commercially sensitive material, including professional and trade secrets. Such information therefore requires a particularly high level of protection. The proposal establishes a number of baseline safeguards, including the obligation for public authorities to demonstrate the necessity of the request, the requirement to apply pseudonymisation where feasible, and the implementation of appropriate technical and organisational measures to protect the data. However, these safeguards may not fully address the heightened sensitivity of information relating to clients or company-specific operations.

Furthermore, the regulatory framework set out in article 15a appears to lack internal consistency. While requests connected to preparedness, mitigation or recovery measures under article 15a(3) are subject to additional limitations, notably restrictions to certain categories of non-personal data and an exemption for micro and small enterprises, comparable safeguards do not appear to apply to requests made in the context of immediate emergency response under article 15a(1) and (2). This discrepancy may give rise to concerns in terms of legal certainty and proportionality.

ETAF therefore recommends the following:

- **Strengthened safeguards for requests involving personal data:** requests for personal data under article 15a(2) should be subject to robust protection mechanisms, including explicit carve-outs for data covered by professional secrecy, going beyond the minimum safeguards currently proposed.
- **Ensuring consistent protection logic with article 15a(3):** the exemption of micro and small enterprises in article 15a(3) should be reflected in article 15a(1) and (2). Requests in emergency situations should provide comparable safeguards, including size-based exclusions and protections for data subject to professional secrecy.

3. The processing of personal data for AI development in the GDPR

The proposal inserts a new article 88c GDPR, which clarifies that in situations 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(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) GDPR, where appropriate. The exceptions are where other EU or national law explicitly requires 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.

The provision additionally requires that such processing be subject to appropriate technical and organisational safeguards to protect the rights and freedoms of data subjects, including measures ensuring data minimisation, preventing disclosure of residual data, enhancing transparency, and granting data subjects an unconditional right to object.

ETAF supports the introduction of this provision in principle, as it provides a useful legal clarification for developers and users. However, article 88c must not operate in practice as a presumption that a personal data processing for AI training is automatically justified under legitimate interest.

ETAF therefore recommends the following:

- **No automatic reliance on legitimate interest:** The Commission should clarify in the operative text or recitals of article 88c GDPR that controllers must be able to demonstrate and document the necessity of such processing and the balancing test under article 6(1)(f) GDPR in each case.
- **Personal data as a *ultima ratio* measure:** Article 88c GDPR should clarify that controllers must prioritise non-personal, synthetic or pseudonymised data for AI training. Identifiable personal data should only be used where less intrusive alternatives have been demonstrably exhausted.

4. Right of access by the data subject in the GDPR

Article 15 GDPR gives individuals the right to access their personal data held by an organisation. It allows them to ask whether their data is being processed, obtain a copy of it, and receive information about how and why it is used, with whom it is shared, how long it is stored, and what rights they have regarding that data.

According to its wording, the scope of this right is very broad, which may significantly complicate the enforcement of professional rights of retention recognised under national law. Such rights of retention exist in various forms throughout the jurisdictions represented by ETAF members. For example, under § 66(3) of the German Tax Consultancy Act

(Steuerberatungsgesetz- StBerG), a tax adviser may refuse to release the client file until payment for fees and expenses has been received.

However, the right of access under article 15 GDPR extends very far in practice. Under article 15(3), the controller must provide the data subject with a copy of the personal data undergoing processing. The European Court of Justice (ECJ) clarified in Case C-487/21 that this obligation may require the provision of entire documents or extracts thereof where this is necessary to enable the data subject to understand the personal data concerned. As a result, in the context of professional services such as tax advice, compliance with such requests may effectively require the disclosure of large parts of the client file, even where national law recognises a professional right of retention pending payment of fees. In such situations, the right of retention risks being rendered ineffective, thereby restricting the professional's ability to enforce civil-law claims for remuneration.

Furthermore, it also remains unclear whether the "rights and freedoms of others" referred to in article 15(4) GDPR integrates professionally recognised rights of retention of the kind described above. According to recital 63 GDPR, the exercise of the right of access must not adversely affect the rights and freedoms of others. Nevertheless, the scope of this limitation has not been clarified in relation to professional retention rights, leaving practitioners across the EU in a state of ongoing legal uncertainty.

There is therefore a significant risk that the right of access under article 15 GDPR, and the right to obtain a copy under article 15(3) GDPR, may be invoked abusively, effectively circumventing a professionally and legally recognised protective mechanism.

Furthermore, compliance with broad access requests imposes a disproportionate administrative burden on tax professionals. Processing such requests requires the identification and redaction of personal data relating to third parties, including other clients, employees, and counterparties, across potentially voluminous file records. This entails significant human and financial resources and creates a burden that is plainly inconsistent with the European Commission's stated objective of reducing unnecessary administrative costs, particularly for SME practices.

Article 23(1)(e), (i) and (j) GDPR provides Member States with opening clauses to establish a necessary balance of interests at national level. However, the extent to which Member States have exercised these options varies considerably across the EU, resulting in a fragmented legal landscape that undermines consistent application of data protection rights and professional obligations alike.

ETAF considers that this issue requires clarification at the EU level. A harmonised clarification would provide legal certainty for tax professionals across all Member States and ensure that the right of access does not operate in a manner that systematically undermines legitimate professional rights recognised under national law.

ETAF therefore recommends the following:

- **Legislative clarification preserving the right of retention:** The Commission should introduce an explicit provision clarifying that the right of access under article 15 GDPR does not apply insofar as the controller may invoke a

professionally recognised right of retention whose exercise serves one of the objectives referred to in article 23(1) GDPR. Only a clear legislative clarification can achieve a balanced and workable reconciliation of those competing interests. In ETAF's view, a new paragraph could be inserted that reads that, "*the right of access shall not apply insofar as the controller may invoke a right of retention whose exercise serves one of the objectives referred to in article 23(1) of this Regulation*".

5. Right of data portability in the GDPR

Article 20 GDPR gives individuals the right to receive the personal data they provided to an organisation in a structured, commonly used, and machine-readable format. It also allows them to transfer that data to another organisation without interference, and where technically possible, request that it be sent directly between the two controllers.

In practice, tax professionals regularly encounter requests from clients, particularly following the termination of a mandate, to transfer all client-related data by invoking article 20 GDPR. Such requests often extend to work products generated by the tax adviser in the course of providing services, including tax returns, financial statements, bookkeeping records and payroll documentation.

However, article 20 GDPR does not generally apply to such work products. Under article 20(1) GDPR, the right to data portability is limited to personal data that the data subject has provided to the controller. It does not extend to data generated or processed by the controller while fulfilling its professional mandate, even where such data is derived from information originally supplied by the client.

Work products of the kind described above constitute the contractually owed professional service and therefore cannot be regarded as data "provided by" the data subject within the meaning of article 20 GDPR. Moreover, because these work products are directly linked to the tax adviser's remuneration claim, they may fall within the scope of professionally recognised rights of retention under applicable national law.

Even where the applicability of article 20 GDPR might otherwise be arguable, the right to data portability is expressly limited by article 20(4) GDPR, which provides that its exercise must not adversely affect the rights and freedoms of others. It remains unclear, however, whether this limitation encompasses professionally recognised rights of retention. This lack of clarity creates ongoing legal uncertainty for practitioners. There is therefore a considerable risk that the right to data portability may be invoked in a manner that effectively circumvents retention rights recognised under national professional law.

Furthermore, compliance with broad data portability requests may impose a disproportionate administrative burden on tax professionals. Even isolating the data originally provided by the client may require significant technical effort, particularly given the high level of digitalisation in modern tax advisory practices. The further requirement to identify and protect personal data relating to third parties compounds this burden considerably.

Article 23(1)(e), (i) and (j) GDPR provides Member States with opening clauses to establish a necessary balance of interests at national level. However, the extent to which these options have been exercised differs between Member States, resulting in legal uncertainty. For this reason, clarification at the EU level appears necessary to ensure consistent application across the Union.

ETAF therefore recommends the following:

- **Legislative clarification preserving the right of retention and professional confidentiality:** The Commission should introduce an explicit provision clarifying that the right of data portability under article 20 GDPR does not apply insofar as the controller may invoke a professionally recognised right of retention whose exercise serves one of the objective referred to in article 23(1) GDPR. Only a clear legislative clarification can ensure a balanced and workable reconciliation of these competing interests.

Conclusion

ETAF welcomes the Digital Omnibus initiative as an important step towards simplifying and streamlining the EU's digital regulatory framework. To ensure that these objectives are achieved in practice, the proposal should provide a clear general right to object to data access and data sharing requests under the Data Act. Additionally, where trade secrets are at risk, the proposal should strengthen and align safeguards for B2G data requests under article 15a of the Data Act. It should also be clarified that the new article 88c GDPR does not create a presumption of legitimacy for personal data processing in the context of AI development.

The proposal should equally introduce explicit legislative clarifications to ensure that the rights of access and data portability under articles 15 and 20 GDPR do not operate in a manner that systematically undermines professionally recognised rights of retention under national law; only a harmonised EU-level solution can provide the legal certainty that tax professionals across Member States currently lack.

Addressing these elements will help ensure that the Digital Omnibus effectively delivers a more coherent, predictable and workable EU digital rulebook. ETAF is ready and looking forward to engaging further with the Commission to ensure a streamlined implementation of this proposal.

Annex: Summary of ETAF recommendations

Issue	Concerned article(s)	ETAF Recommendation
Trade secret protection in data access and sharing	**Articles 4(8) and 5(11) Data Act**	Establish a general right to object to data access and sharing requests without disproportionate procedural burdens
B2G data sharing scope and safeguards	**Article 15a Data Act**	Strengthen safeguards for personal data and professional secrecy; align size-based exemptions across all paragraphs of article 15a
Personal data processing for AI development	**Article 88c GDPR**	No automatic presumption of legitimacy; require necessity test and balancing in each case; personal data as ultima ratio
Right of access vs professional right of retention	**Article 15 GDPR**	Insert new article 15(5) GDPR: right of access shall not apply where controller may invoke a professionally recognised right of retention
Right to data portability vs professional right of retention	**Article 20 GDPR**	Insert new article 20(5) GDPR: right to data portability shall not apply where controller may invoke a professionally recognised right of retention

Notes
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About ETAF
The European Tax Adviser Federation (ETAF) is a European umbrella organisation for tax professionals whose activities are regulated by law. It is set as an international not-for-profit organisation (AISBL) governed by Belgian law, based in Brussels and was launched on 15th December 2015. It represents more than 215 000 tax professionals from France, Germany, Belgium, Romania, Hungary, Austria and Croatia. ETAF is a registered organisation in the EU Transparency Register, with the register identification number 760084520382-92.