

Subject	EC proposed text	Council, 5 November	Parliament (IMCO), 19 November	ICCL's suggested amendments	Justification
1. Conditions of data combination	<p>Article 5(1)a refrain from combining personal data sourced from these core platform services with personal data from any other services offered by the gatekeeper or with personal data from third-party services, and from signing in end users to other services of the gatekeeper in order to combine personal data, unless the end user has been presented with the specific choice and provided consent in the sense of Regulation (EU) 2016/679;</p>	<p>Article 5(1)a not combine personal data sourced from any of these core platform services with personal data from any further core platform service or further services offered by the gatekeeper or with personal data from third-party services, and not sign in end users to other services of the gatekeeper in order to combine personal data, unless the end user has been presented with the specific choice and provided consent in the sense of Article 6(1) point (a) of Regulation (EU) 2016/679. The gatekeeper may also rely on the legal basis included under Article 6(1) points (c), (d) and (e) of Regulation (EU) 2016/679, where applicable;</p>	<p>Article 5(1)a refrain from combining and cross-using personal data sourced from these core platform services with personal data from any other services offered by the gatekeeper or with personal data from third-party services, and from signing in end users to other services of the gatekeeper in order to combine personal data, unless the end user has been presented with the specific choice in a explicit and clear manner, and has provided consent in the sense of Regulation (EU) 2016/679;</p>	<p>Article 5(1)a not combine or cross-use personal data initially or primarily sourced from any of its core platform services with personal data from any other service offered by the gatekeeper or with personal data from third-party services, nor sign in or register end users to other services of the gatekeeper, unless the end user has been given a clear request for each processing purpose that states the specific processing purpose, and the sources of the data, and the result of the combination or cross-use of the personal data, in line with the requirements under Article 4(11), Article 6(1) point (a), and Article 7 of Regulation (EU) 2016/679.</p>	<p>A flaw in Article 5(1)a would have the opposite effect to the Commission's intended limiting of gatekeeper data combining. The Commission and Council's use of "the specific choice" in the singular creates an ambiguity, or may entirely negate, the GDPR "purpose limitation" principle (GDPR, Article 5(1)b).</p> <p>Gatekeepers can claim this allows them to combine their data with a single consent, as opposed to requiring a lawful basis for each processing purpose. (Note that combination is itself a "processing purpose", too).</p> <p>The anti-circumvention provisions in the Council and Parliament text do not adequately address this risk. Our experience of the supervision of gatekeeper firms gives no confidence that monitoring will adequately safeguard against this risk.</p> <p>This, and the Council's addition of other lawful bases in the final sentence of that paragraph, is a danger to fundamental rights – and to a contestable and fair digital sector that allows nascent competitors to introduce superior and better rights respecting innovations.</p>

				<p>Article 5(1)(aa) NEW In the event that the end user has been presented with the choice of giving consent to the combination of data for any processing purpose and has not provided consent, or has withdrawn consent, or the end user’s terminal equipment signals his or her objection to the processing of personal data pursuant to Article 21(5) of Regulation (EU) 2016/679, the gatekeeper shall not prompt again a consent request and shall not exclude access to the services nor offer different or degraded services compared to the services offered to a business user or end user that provided consent.</p>	<p>We propose the addition of Article 5(1)(aa) to avoid people being harassed by unending consent prompts.</p>
<p>2. Combination of data for advertising</p>			<p>Article 6(1)(aa) NEW for its own commercial purposes, and the placement of third-party advertising in its own services, refrain from combining personal data for the purpose of delivering targeted or micro-targeted advertising, except if a clear, explicit, renewed, informed consent has been given to the gatekeeper in line with the procedure foreseen in the Regulation (EU) 2016/679 by an end-user that is not a minor.</p>	<p>Article 6(1)(aa) NEW for its own commercial purposes, and the placement of third-party advertising in its own services, refrain from combining personal data for any processing purposes related to advertising, except if the end user has been given a clear request for each processing purpose that states the specific processing purpose, in line with the requirements under Article 4(11), Article 6(1) point (a), and Article 7 of Regulation (EU) 2016/679.</p>	<p>There are three reasons for this ICCL’s suggested amendment.</p> <ol style="list-style-type: none"> 1. IMCO’s amendment would allow gatekeepers to lawfully combine any data for any processing purposes related to advertising, after a single consent is given. This would accidentally negate an essential principle of the fundamental right to data protection, GDPR (the “purpose limitation principle” in Article 5(1)(b), GDPR). It would also allow gatekeepers to increase their market dominance, which will harm

				<p>The use of special categories of personal data in the meaning of Article 9 (1) of Regulation (EU) 2016/679 is prohibited for any processing purposes related to advertising, unless the person concerned has given explicit consent to each processing purpose, and to party that will receive these sensitive data. Explicit consent requires consent by the user and confirmation of that consent by the user, before the data can be processed.</p>	<p>publishers and media plurality, and prevent the emergence of superior and better rights-respecting competitors.</p> <ol style="list-style-type: none"> 2. ICCL believes there should be a prohibition against using a person’s health, sexual orientation, religion, political views, etc. for advertising. 3. IMCO mistakenly uses the broad term “targeted advertising”, rather than “behavioural” or “tracking-based”. This prohibition should be narrowed to include only advertising that relies on the processing of personal data.
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