Seizing the data and AI opportunities in Europe

Dr Christophe Carugati

Data and AI boost Europe's economy and foster business opportunities. Thanks to Europe's digital regulations, businesses can efficiently develop and deploy digital and AI-powered products, encouraging businesses and their investors to capitalise on these frameworks.

1 Introduction

Data and Artificial Intelligence (AI) play a pivotal role in boosting Europe's economy and fostering business opportunities. Over the past four years, European policymakers have crafted a comprehensive framework of digital regulations, enabling businesses operating within Europe to efficiently and safely develop and deploy digital and AI-powered products and services across 27 Member States, serving a user base of over 450 million individuals.

These digital regulations facilitate data access and entry into digital markets and ensure user trust. They establish conducive market conditions for businesses and safeguard users against potential data and AI misuse. Moreover, they streamline compliance processes by implementing graduated regulatory requirements tailored to the size of the firm or the risks posed by its services and products, thereby offering a level of legal certainty.

The "*Brussels effect*" further enhances these regulations' impact, as it often encourages countries and regions outside Europe to adopt similar regulatory frameworks, thus promoting trade both within and beyond Europe.

This analysis delves into how businesses and their investors can capitalise on these regulations from the inception phase, exploring the opportunities they present and addressing potential challenges along the way.

2 Benefits

Data is primordial for businesses seeking to innovate with digital and AI-powered products and services. While Europe has valuable data spanning various economic sectors and countries, a coherent regulatory framework to harness this potential has been lacking. In response, the Commission initiated a European data strategy in 2020 to forge a unified data market by facilitating data access[1].

This strategy materialised into digital regulations. These include the Data Governance Act (DGA), which establishes a framework for data governance; the Digital Markets Act (DMA), enabling access to personal and business data from major online platforms; and the Data Act (DA), facilitating access to industrial data. Furthermore, the Commission is actively streamlining access to sector-specific data, such as health data through the forthcoming European Health Data Space (EHDS), and data in sectors like agriculture, energy, transport, and the environment.

These regulations facilitate data access and ensure user privacy, security, and equitable relationships between access seekers and providers. Businesses can capitalise on these regulations by swiftly requesting data access without significant time or resource investments. Indeed, access is often provided free of charge and in real-time via data transfer solutions like Application Programming Interfaces (APIs) developed by the access provider.

For instance, a company developing a digital health solution can leverage personal health data from health records through the EHDS, industrial data from IoT devices via the DA, advertising and sales data from online marketplaces through the DMA, and coordinate data reuse with third parties through the DGA. Moreover, developers can use this data to train and refine AI models, subsequently offering users innovative AI-powered applications like chatbots. These opportunities are available to all developers operating within Europe.

In addition to data access, the DMA mandates large online platforms designated as gatekeepers, including Alphabet, Amazon, Apple, ByteDance, Meta, and Microsoft, to open up certain digital markets, enabling third-party businesses to compete and complement their

[1] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions A European strategy for Data COM/2020/66 final, 19 February 2020.

products and services[2]. This allows businesses to explore alternative distribution and payment channels, enhance visibility in search results, and request access to functionalities for offering innovative products and services, such as Near-Field Communication (NFC) for contactless payments[3]. Furthermore, the DMA ensures fairer dealing conditions, empowering businesses to steer users to their websites for better offers and prohibiting gatekeepers from impeding businesses' ability to offer better prices and conditions on alternative platforms.

Last, the forthcoming AI Act (AIA) will provide a comprehensive legal framework for developing and deploying AI applications, emphasising transparency and governance requirements to mitigate risks from certain AI models and high-risk AI systems before putting them to market[4]. While the AIA imposes regulatory obligations, it also fosters upfront legal certainty and trustworthiness in AI applications, accelerating responsible AI development.

3 Issues

Businesses and their investors are tasked with navigating novel and complex regulatory changes amid rapidly evolving markets. This presents a time management challenge as they have to deal with copious amounts of complicated and technical information, whereas they focus on application development and deployment.

Compounded by upfront regulatory requirements like those outlined in the AIA, compliance demands significant human and financial resources. However, by embracing digital regulations

[2] *See* the DMA tracker. Christophe Carugati, DMA tracker, *Digital Competition* (accessed 11 April 2024). Available at: https://www.digital-competition.com/dmatracker.

As of April 2024, the Commission is still investigating whether Apple iPadOS and some services from Booking, ByteDance, and X should be designated as gatekeepers. European Commission, Booking, ByteDance and X Notify their Potential Gatekeeper Status to the Commission Under the Digital Markets Act, *European Commission*, 1st March 2024 (accessed 11 April 2024). Available at: https://digital-markets-act.ec.europa.eu/booking-bytedance-and-x-notify-their-potential-gatekeeper-status-commission-under-digital-markets-2024-03-01_en

[3] In Europe, Apple has committed to grant access to the NFC technology, aligning with the DMA, amid an ongoing antitrust case. As of April 2024, the Commission continues to evaluate feedback received from various market participants. European Commission, Antitrust: Commission Seeks Feedback on Commitments Offered by Apple over Practices Related to Apple Pay, *European Commission*, 19 January 2024 (accessed 11 April 2024). Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_24_282

[4] High-risk AI systems in the AIA refer to biometrics, critical infrastructure, education and vocational training, employment, access to essential public and private services, law enforcement, immigration, and administration of justice and democratic processes.

at the development stage, they reap long-term benefits, including quicker, safer, and more efficient digital and AI-powered products and services.

Moreover, they encounter legal and policy issues when dealing with cross-regulatory regimes. For instance, while businesses can access personal data under the DMA, user consent under the General Data Protection Regulation (GDPR) is essential. Additionally, navigating cross-regulatory regimes in the digital sector often unveils novel and unresolved issues, such as copyright concerns regarding data access for training AI models—a matter still awaiting clarification in many jurisdictions, including Europe. Such challenges may impede innovation unless access seekers and providers reach an agreement akin to partnerships forged between OpenAI and publishers like Alex Springer, Le Monde, and Prisa Media for undisclosed amounts[5].

Furthermore, establishing a comprehensive data and AI strategy from the early development phase is imperative, yet many firms lag in this regard. According to the Commission, only 19 per cent of firms in Europe analysed Big Data from any source, and 11 per cent used AI technology in 2023[6]. These figures are significantly below Europe's Digital Decade policy programme's target of 75 per cent utilisation of Big Data and AI by 2030[7].

In this context, seizing the opportunities afforded by digital regulations from the development stage becomes imperative. Firms must engage in consultations to craft robust data and AI strategies and address the legal and policy challenges posed by cross-regulatory regimes.

At Digital Competition, our Digital Innovation Hub aims to support firms and their investors in their digital transformation endeavours. Our mission encompasses assisting digital firms in defining comprehensive data and AI strategies while providing guidance on navigating complex legal and policy across regulatory issues, including those on competition and privacy.

[5] *See* for Axel Springer, OpenAI, Partnership with Axel Springer to Deepen Beneficial Use of AI in Journalism, *OpenAI*, 13 December 2023 (accessed 12 April 2024). Available at: https://openai.com/blog/axel-springer-partnership

See for Le Monde and Prisa Media, OpenAI, Global News Partnerships: Le Monde and Prisa Media, *OpenAI*, 13 March 2024 (accessed 12 April 2024). Available at: https://openai.com/blog/global-news-partnerships-le-monde-and-prisa-media

[6] European Commission, 2023 Report on the State of the Digital Decade, 27 September 2023.

[7] Decision (EU) 2022/2481 of the European Parliament and of the Council of 14 December 2022 Establishing the Digital Decade Policy Programme 2030.

About

Digital Competition

Digital Competition (digital-competition.com) is a research and advisory firm. Our mission is to advance open digital and competition policies for better innovation. We inform our members and clients on emerging and global digital and competition issues through impartial, forward-looking analyses, shaping policies that foster innovation for all. This analysis did not receive any funding.

This paper is part of our Digital Innovation Hub (https://www.digital-competition.com/digitalinnovationhub). The Hub aims to support digital firms and their investors in their digital transformation endeavours, ensuring rapid and responsible technological development that benefits all. We assist digital firms and their investors in defining comprehensive data and AI strategies while providing guidance on navigating complex legal and policy issues across regulatory regimes, including those on competition and privacy. We also support digital firms working with regulators in the context of regulatory sandboxes, when feasible, to test their innovative products and services before bringing them to market. Finally, we contribute to the discussion in designing digital policies that foster digital innovations, especially in the context of the 2024 European elections.

To advance this Hub, we are launching the Digital Innovation Series, providing research to support digital firms with regulators. We also offer consultations, training sessions, and conferences on the forthcoming European AI Act and EU AI Pact. Contact us to join the Hub as a member and/or for consultation/press inquiries.

Dr. Christophe Carugati

Dr. Christophe Carugati (christophe.carugati@digital-competition.com) is the founder of Digital Competition. He is a renowned and passionate expert on digital and competition issues with a strong reputation for doing impartial, high-quality research. After his PhD in law and economics on Big Data and Competition Law, he is an ex-affiliate fellow at the economic think-tank Bruegel and a lecturer in competition law and economics at Lille University.