Europe's Progress in the Digital Single Market: A Proposal for Consistency

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Executive Summary

Europe has made significant strides in establishing the Digital Single Market (DSM). Since launching the DSM strategy in 2015, the EU has adopted several digital regulations to harmonise rules across Member States, promoting regulatory consistency.

However, the DSM remains incomplete. Businesses still face market fragmentation and regulatory challenges due to inconsistent implementation of regulations across Member States and overlapping regulatory regimes, which could lead to duplication and inconsistencies.

This report provides a proposal to advance regulatory coherence across Europe. It evaluates the coherence of digital regulations and examines the EU law-making process shaping these frameworks.

Achieving consistency across Member States requires stronger cooperation. Inconsistencies often stem from diverging interpretations and limited coordination among national authorities within their cooperation networks. Therefore, national authorities should enhance cooperation networks to promote regulatory coherence (Recommendation 1) and maximise the use of cooperation tools for more efficient enforcement (Recommendation 2).

Ensuring consistency across regulatory regimes requires an established cross-regulatory framework. Regulatory overlaps create both synergies and challenges, while newly implemented cross-regulatory cooperation mechanisms are still in the early stages. Accordingly, national authorities and cooperation networks should foster coordination by embracing a unified cross-regulatory culture (Recommendation 3) and improve enforcement through joint action in cross-regulatory cases (Recommendation 4).

Lastly, consistency in the EU law-making process demands greater uniformity among EU institutions. The current process is often ineffective and inefficient, with EU institutions inconsistently applying Better Regulation principles and infrequently conducting regulatory reviews. In line with the Commission's agenda to streamline the EU law-making process under the Commissioner for Simplification, EU policymakers should consistently use Better Regulation principles for sound policymaking (Recommendation 5) and systemise *ex-post* evaluations to strengthen regulatory frameworks (Recommendation 6).

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AI	Artificial Intelligence
AIA	Artificial Intelligence Act
ATT	App Tracking Transparency
BEREC	European Regulators for Electronic Communications
CDRF	Canadian Digital Regulators Forum
CMA	Competition and Markets Authority
CPC	Consumer Protection Cooperation Network
DA	Data Act
DCB	Digital Cluster Bonn
DGA	Data Governance Act
DMA	Digital Markets Act
DPAs	Data Protection Authorities
DPRF	Digital Platform Regulators Forum
DRCF	Digital Regulation Cooperation Forum
DRG	Digital Regulators Group
DSA	Digital Services Act
DSM	Digital Single Market
EAIB	European Artificial Intelligence Board
EBDS	European Board for Digital Services
ECJ	European Court of Justice
ECN	European Competition Network
EDIB	European Data Innovation Board
EDPB	European Data Protection Board
EDPS	European Data Protection Supervisor
EDRCF	European Digital Regulation Cooperation Forum

ENISA	European Union Agency for Cybersecurity
ERGA	European Regulatory Group of Audiovisual Media Regulators
EU	European Union
FCA	Financial Conduct Authority
GDPR	General Data Protection Regulation
GenAI	Generative Artificial Intelligence
HLG of the DMA	High-Level Group of the DMA
ICO	Information Commissioner's Office
INDRC	International Network for Digital Regulation Cooperation
LLMs	Large Language Models
MFN clauses	Most-Favoured Nation clauses
MoUs	Memorandums of Understanding
NCAs	National Competition Authorities
OECD	Organisation for Economic Cooperation and Development
SDT	Digital Regulation Cooperation Platform
SMEs	Small and Medium-Sized Enterprises
TFEU	Treaty of the Functioning of the European Union
VLOPs	Very Large Online Platforms
VLOSEs	Very Large Online Search Engines

1. Introduction

Europe has made significant strides in establishing a Digital Single Market (DSM). Since the launch of the DSM strategy in 2015 (COM(2015)192, A Digital Single Market Strategy for Europe), this vision has progressed over the past decade through several digital regulations that uniform rules in Europe[1]. These regulations aim to protect Europeans online and facilitate the seamless trade of products and services across the 27 Member States, serving a vast user base exceeding 450 million individuals.

During the 2019-2024 mandate, President Ursula Von der Leyen prioritised the DSM (Von der Leyen, 2019). In this mandate, the Commission proposed and negotiated 23 legislative files to reform the digital policy landscape (European Commission, 2024a). These include crucial legislations related to content moderation (Regulation (EU) 2022/2065, Digital Services Act (DSA)), contestability and fairness in digital markets (Regulation (EU) 2022/1925, Digital Markets Act (DMA)), governance of data (Regulation (EU) 2022/868, Data Governance Act (DGA)), data-sharing of connected products and related services (Regulation (EU) 2023/2854, Data Act (DA)), and the governance of artificial intelligence (Regulation (EU) 2024/1689, Artificial Intelligence Act (AIA)). These regulations often work together, forming a bundle of digital regulations with different objectives and requirements.

As a result, businesses operating in Europe have faced a surge of digital regulations in a relatively short period. They must keep track of these overlapping regulations and ensure coherent compliance among them. Meanwhile, the Commission and the Member States must ensure proper and consistent implementation and enforcement across Member States and regulatory regimes through a coordinated approach to avoid market fragmentation arising from inconsistencies (Council conclusion 9957/24, The Future of EU Digital Policy).

Consistency in EU regulations is essential for the effective functioning of the DSM. Small and Medium-Sized Enterprises (SMEs) have highlighted the need for harmonised EU regulations to facilitate exports (Implement Consulting Group, 2024). Although harmonisation increases the number of European regulations, it also significantly reduces legal uncertainty, transaction costs, and compliance expenses. Harmonisation fosters consistency and scalability by replacing 27 national laws with a single EU regulation, creating a more accessible market for businesses across the EU (Visscher, 2010).

[1] Kai Zenner, Scott Marcus, Kamil Sekut, A Dataset on EU Legislation for the Digital World, *Bruegel*, 6 June 2024 (accessed 12 July 2024). Available at: https://www.bruegel.org/dataset/dataset-eu-legislation-digital-world

However, implementing and enforcing regulations can sometimes lead to duplication, inconsistencies, and tensions within and across regulatory frameworks. This adds regulatory burden, increases compliance costs, and creates legal uncertainty for firms, particularly SMEs, which may lack the resources to navigate these complexities (Implement Consulting Group, 2024).

A range of political reports and statements, including the Letta report on the single market (Letta, 2024), the members of the innovation club report on Europe's digital future (Estonian Ministry of Economic Affairs and Communications et al., 2024), the D9+ ministerial declaration on effective and coherent digital regulation as a foundation for innovation and growth in the EU (D9+, 2024), and the Draghi report on European competitiveness (Draghi, 2024), underscore the urgent need for greater regulatory coherence and harmonisation. These reports highlight that the incomplete single market hinders firms from achieving the scale needed to grow and compete within the EU and globally. They collectively emphasise the importance of enhancing regulatory consistency to realise the vision of a DSM and bolster European competitiveness.

Coherence, speed, and simplification will be key priorities of re-elected Commission President Von der Leyen for the 2024-2029 Commission's mandate (Von der Leyen, 2024). The mission letters for Commissioners in charge of simplification and digital matters stress the need for consistent implementation and enforcement of the digital policy landscape (European Commission, 2024e, 2024d, 2024f).

Against this background, this report provides a proposal for regulatory consistency within the EU. It evaluates the coherence of digital regulatory frameworks and the EU law-making process responsible for these frameworks.

The report begins by assessing consistency across Member States. On a substantive level, it examines the application and enforcement of data protection and competition laws. Procedurally, it maps the cooperation mechanisms established to enforce these laws. The findings reveal inconsistencies often stem from divergent interpretations and inadequate cooperation among national authorities. **Therefore, the report recommends national authorities enhance cooperation networks to promote regulatory coherence (Recommendation 1) and maximise the use of cooperation tools for more efficient enforcement (Recommendation 2).**

Next, the report evaluates coherence across different regulatory regimes. Substantively, it identifies overlaps within digital regulations, particularly concerning personal data and Artificial

Intelligence (AI). Procedurally, it highlights the cooperation mechanisms between competent authorities at both the European and national levels. The findings show that overlaps create both synergies and tensions, while new cross-regulatory cooperation mechanisms are still in the early implementation phases. **The report thus urges national authorities and their cooperation networks to foster coordination by embracing a unified cross-regulatory culture (Recommendation 3) and improve enforcement through joint action in cross-regulatory cases (Recommendation 4).**

Finally, the report examines the EU law-making process. It assesses how EU institutions develop regulations and finds that the process often lacks efficiency and effectiveness, which could lead to duplication and inconsistencies. Better Regulation principles are inconsistently applied, and *ex-post* evaluations are rare. **Accordingly, the report recommends that EU policymakers consistently use Better Regulation principles for sound policymaking (Recommendation 5) and systemise ex-post evaluations to strengthen regulatory frameworks (Recommendation 6).**

2. Coherence Across Member States

Member States are often in charge of implementing and enforcing digital regulations. This decentralised approach leads to more enforcement but might lead to diverging interpretations and enforcement practices across national authorities (Section 2.1). They coordinate their actions thanks to cooperation mechanisms to ensure consistency but are sometimes insufficient to fully address inconsistencies (Section 2.2). National authorities should thus enhance cooperation networks to promote regulatory coherence (Recommendation 1) and maximise the use of cooperation tools for more efficient enforcement (Recommendation 2) (Section 2.3).

2.1. Diverging Interpretation

Digital regulations establish uniform rules across Member States, yet their implementation and enforcement rely on national authorities' interpretations. However, these interpretations are not always uniform, resulting in inconsistencies that increase transaction and compliance costs and ultimately undermine the vision of the DSM and European competitiveness. To illustrate these challenges, this section examines regulations pertaining to data protection (Section 2.1.1) and competition (Section 2.1.2).

2.1.1 Data Protection

The General Data Protection Regulation (Regulation (EU) 2016/679, General Data Protection Regulation (GDPR)) aims to protect personal data while facilitating its free flow across Europe, harmonising data protection laws by replacing the 1995 Directive, which previously resulted in inconsistent rules among Member States (Recital 9 GDPR). However, the GDPR establishes only minimum harmonisation. It allows Member States discretion to specify certain provisions within their national laws (Recital 10 GDPR), including aspects like the age threshold for a child's consent (Article 8 GDPR).

In its second report on the application of the GDPR, the Commission stresses that these specification provisions have led to fragmentation in national application (European Commission, 2024c). For instance, countries have set different ages for children to consent to data processing, forcing firms operating in Europe to adapt their compliance plan to national laws. These provisions ultimately result in market fragmentation and legal uncertainty for economic actors (Draghi, 2024).

However, the Commission noted that stakeholders identify fragmentation issues as arising principally from diverging interpretations of the GDPR by data protection authorities (DPAs) rather than specification clauses by Member States (European Commission, 2024c). DPAs diverge views on key data protection concepts, which stakeholders diagnose as the principal obstacle to the consistent application of the GDPR, as exemplified by the interpretation of cookie banners (**Box 1**). Accordingly, the Commission noted that this inconsistency creates legal uncertainty and increases compliance costs, thus disrupting the free flow of personal data in Europe, hindering cross-border trade, and hampering research and innovation on urgent societal challenges (European Commission, 2024c).

Box 1: Interpretation of cookie banners

Cookie banners, which require freely given, informed, specific, and unambiguous consent (Article 4(11) GDPR), are interpreted differently by DPAs. The French DPA allows "pay-or-consent" banners under certain conditions[2]. In contrast, Belgium prohibits this practice[3]. Moreover, the practice is currently under review by several DPAs regarding a proceeding against Meta's "pay-or-consent" model[4].

Moreover, DPAs have different enforcement priorities. Criticism has particularly focused on cross-border enforcement cases against large online platforms, arguing a lack of enforcement in jurisdictions where large online platforms have their headquarters (Irish Council for Civil Liberties, 2023). The Irish and Luxembourg DPAs, overseeing the data processing practices of Alphabet, Apple, Meta, Microsoft, and Amazon, whose European headquarters are in those countries, have issued 9 and 30 cross-border final decisions, respectively, compared to 60 in Germany. Ireland argues it resolves most complaints amicably rather than through formal investigations. However, most decisions by the Irish DPA in cross-border investigations are

[2] Commission Nationale de l'Informatique et des Libertés, Cookie Walls : La CNIL Publie des Premiers Critères d'Évaluation, 16 May 2022 (accessed 17 July 2024). Available at: https://www.cnil.fr/fr/cookie-walls-la-cnil-publie-des-premiers-criteres-devaluation

[3] Autorité de protection des données, Check List Cookies, 20 October 2023 (accessed 17 July 2024). Available at: https://www.autoriteprotectiondonnees.be/citoyen/actualites/2023/10/20/lapd-publie-une-checklist-pour-une-utilisation-correcte-des-cookies

[4] Noyb, Noyb Files GDPR Complaint Against Meta Over "Pay or Okay", 28 November 2023 (accessed 17 July 2024). Available at: https://noyb.eu/en/noyb-files-gdpr-complaint-against-meta-over-pay-or-okay

See also, BEUC, European Consumer Groups Take Action Against Meta for Breaches of GDPR, 29 November 2024 (accessed 17 July 2024). Available at: https://www.beuc.eu/sites/default/files/publications/BEUC-X-2024-023_Consumer_groups_take_action_against_Meta_breaches_of_GDPR_EDPS.pdf

See also, EDPB, Opinion 08/2024 On Valid Consent in the Context of Consent or Pay Models Implemented by Large Online Platforms, 17 April 2024 (accessed 17 July 2024). Available at: https://www.edpb.europa.eu/system/files/2024-04/edpb_opinion_202408_consentorpay_en.pdf

overruled by the EDPB in the context of dispute resolution mechanisms raised to solve diverging views between DPAs (Irish Council for Civil Liberties, 2023).

2.1.2 Competition

European competition laws safeguard the competition process by prohibiting anticompetitive agreements between firms (Article 101 TFEU) and abusive practices by dominant firms (Article 102 TFEU). These Treaty provisions are directly applicable in the Member States, and their implementation is covered by the Antitrust Procedural Regulation (Regulation (EC) 1/2003, Implementation of the Rules on Competition Laid Down in Articles 81 and 82 of the Treaty).

After 20 years of the Antitrust Procedural Regulation, its evaluation in 2024 shows that in most cases, national competition authorities (NCAs) and the Commission enforce European competition laws consistently (European Commission, 2024b). In some rare cases, they had diverging views on the same case or practice, as shown by the interpretation of Most-Favoured Nation (MFN) clauses in the *online Booking* cases (**Box 2**).

Box 2: Interpretations of MFN clauses in the *online Booking* cases

NCAs have different interpretations of MFN clauses, which include wide MFNs and narrow MFNs. Wide MFNs require suppliers to offer the same or better prices and conditions on any other retailer, while narrow MFNs impose similar terms only on the supplier's own website. In the 2015 *online Booking* antitrust cases, France, Italy, and Sweden, in cooperation with the Commission, found that wide MFN clauses are illegal, but narrow MFN clauses are legal[5]. By contrast, in 2015, Germany found both wide and narrow MFN clauses illegal in the same case[6].

This inconsistent enforcement is problematic because Booking committed to replacing wide MFN clauses with narrow MFN clauses in France, Italy, and Sweden, leading to different conditions in different Member States, thus increasing compliance costs and market

[5] Autorité de la concurrence, 21 April 2015: Online Hotel Booking Sector,23 April 2015) (accessed 23 July 2024). Available at: https://www.autoritedelaconcurrence.fr/en/communiques-de-presse/21-april-2015-online-hotel-booking-sector

[6] Bundeskartellamt, Narrow 'Best Price' Clauses of Booking also Anticompetitive, 23 December 2015) (accessed 22 July 2024) Available at: https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2015/23_12_2015_Booking.com.html

fragmentation. The Commission did not open an investigation to solve this inconsistency, and NCAs did not reach a consensus.

In 2024, Spain also found that narrow MFN is illegal in a similar case[7]. Ultimately, the European Court of Justice (ECJ) has provided a uniform interpretation of clauses in a ruling in 2024, thereby playing a key role in ensuring consistency and legal certainty on complex substantive matters subject to interpretation by NCAs[8].

In digital markets, the DMA seeks to ensures contestability and fairness by establishing competition-like rules for large online platforms designated as gatekeepers in certain core platform services (CPSs) due to their unavoidable position (Article 1 DMA)[9]. Through harmonised rules, the DMA creates a consistent framework defining acceptable business practices for gatekeepers across Europe by imposing a list of positive and negative obligations. However, this list is not tailored for the specificity of each CPS, whereas they each have unique market characteristics and business practices. The European Commission is the sole enforcer in public enforcement (Article 38 DMA). However, NCAs can assist the Commission by gathering complaints (Article 27 DMA), supporting market investigations (Article 38 DMA), and investigating potential non-compliance (Article 38 DMA). Additionally, national courts play a role in private enforcement (Article 39 DMA). While national authorities, including NCAs and national courts, must collaborate with the Commission to ensure enforcement is consistent, effective, and complementary (Article 37 DMA), they retain the authority to apply European and national competition laws and interpret the DMA within their investigations. This structure raises the possibility of divergent interpretations of the DMA and related practices across jurisdictions (Komninos, 2024).

2.2. Insufficient Cooperation

Digital regulations have cooperation mechanisms designed to promote consistency across Member States. However, national authorities often do not sufficiently coordinate their actions, leading to cooperation gaps and inconsistent enforcement. This section examines

[7] Comisión Nacional de los Mercados y la Competencia, The CNMC Fines Booking.com €413.24 Million for Abusing its Dominant Position During the Last 5 Years, 30 July 2024 (accessed 24 October 2024). Available at: https://www.cnmc.es/sites/default/files/editor_contenidos/Notas%20de%20prensa/2024/20240730_NP_%20Sancionador_Booking.com_eng.pdf

[8] Case C-264/23, *Booking.com and Others*, ECLI:EU:C:2024:764, 19 September 2024.

[9] As of February 2025, Alphabet, Amazon, Apple, Booking, ByteDance, Meta, and Microsoft are designated. European Commission, Digital Markets Act (DMA) (accessed 23 July 2024). Available at: https://digital-markets-act-cases.ec.europa.eu/search

these cooperation mechanisms within data protection (Section 2.2.1) and competition laws (Section 2.2.2) to highlight the impact of these coordination challenges.

2.2.1. Data Protection

The GDPR has a decentralised enforcement approach. The DPA of the main establishment is competent in handling national (Article 55 GDPR) and cross-border (Article 56 GDPR) cases. In the latter, the DPA becomes the lead DPA in the context of the one-stop shop enforcement mechanism aimed at ensuring a harmonised interpretation and enforcement of the GDPR by DPAs (European Commission, 2024c). The lead DPA is competent to handle cross-border cases unless it decides not to handle them in favour of other DPAs (Article 56 GDPR).

The regulation has a chapter dedicated to cooperation and consistency (Chapter VII GDPR). DPAs must provide mutual assistance (Article 61 GDPR) and do joint operations (Article 62 GDPR) when necessary. Moreover, unless the matter is urgent (Article 66 GDPR), the GDPR provides a cooperation mechanism to handle cross-border cases between the lead DPA and other DPAs, mandating them to cooperate to reach a consensus (Article 60 GDPR). In the absence of consensus due to relevant and reasoned objections by one or more DPAs, the lead DPA must trigger the consistency mechanism aimed at ensuring the consistent application of the GDPR (Article 63 GDPR). In that case, the European Data Protection Board (EDPB) will open the dispute resolution mechanism and adopt a binding decision to solve the issue (Article 65 GDPR)[10]. The EDPB is in charge of ensuring the consistent application of the GDPR (Article 70 GDPR) through various tasks, including monitoring and ensuring the correct application of the regulation by issuing non-binding opinions (Article 64 GDPR). It can also issue guidelines, recommendations, and best practices (Article 70 GDPR).

In practice, DPAs cooperate with each other. DPAs have triggered nearly 1,000 formal mutual assistance requests and around 12,300 informal requests. They have also initiated five joint operations with the participation of seven Member States. The lead DPAs have issued around 1,500 draft decisions, of which 990 resulted in final decisions finding a GDPR infringement. Besides, in the context of the consistency mechanism, the EDPB has adopted 190 consistency opinions and nine binding decisions following the dispute resolution mechanism (European Commission, 2024c). Finally, in its 2024-2027 strategy, the EDPB plans to continue to foster

[10] As of July 2023, the EDPB has adopted 8 binding decisions under the dispute resolution mechanism. (COM(2023) 348, Proposal Laying Down Additional Procedural Rules Relating to the Enforcement of Regulation (EU) 2016/679).

cooperation amongst DPAs to ensure consistency through cooperation and enforcement tools, including experience-sharing, staff secondment and best practices (EDPB, 2024b).

Nonetheless, the consistency mechanism has serious limitations, leading to inconsistencies. Indeed, in its second report on the application of the GDPR, the Commission stressed that DPAs sometimes depart from EDPB guidelines and even adopt conflicting national regulatory guidance (European Commission, 2024c), as shown by the interpretation of the "pay-or-consent" business models (**Box 3**).

Box 3: Interpretation of the "pay-or-consent" business models

The EDPB has issued guidelines on consent (EDPB, 2020). It explicitly states that consent is freely given when not conditional on the user's consent for data collection. In other words, it implies a potential prohibition of the "pay-or-consent" models, as users who do not use the paid version can only consent, depriving them of the ability to give consent freely. However, as noted above, DPAs have different interpretations of the guidelines as some consider the "pay-or-consent" models legal under certain conditions, while others do not.

The EDPB further clarifies in a non-binding opinion that "pay-or-consent" models implemented by large online platforms are likely illegal (EDPB, 2024a). It remains to be seen whether DPAs will follow the EDPB opinion in the context of the ongoing proceedings against Meta's "pay-or-consent" business model. The EDPB will draft guidelines on the models following stakeholder consultation[11].

Moreover, the cooperation mechanism in cross-border cases is inefficient and not harmonised due to the lack of consistent national procedural rules. In its first and second reports on the application of the GDPR, the Commission has identified procedural differences as obstacles to the efficient resolution of cross-border cases (European Commission, 2020, 2024c). The EDPB pointed out the same issue (EDPB, 2022). Consequently, the Commission proposes new procedural rules to better enforce the GDPR in cross-border cases by harmonising procedural rules (COM(2023) 348, Proposal Laying Down Additional Procedural Rules Relating to the Enforcement of Regulation (EU) 2016/679).

[11] Julia Tar, Guidelines On 'Consent or Pay' Models to be Developed by EDPB After November Meeting, *Mlex*, 31 October 2024 (accessed 1st November 2024). Available at: https://www.mlex.com/mlex/articles/2254647/guidelines-on-consent-or-pay-models-to-be-developed-by-edpb-after-november-meeting

2.2.2. *Competition*

European competition laws operate through a decentralised system of parallel competences between the Commission and NCAs, established by the Antitrust Procedural Regulation. This framework sets up a cooperation mechanism via the European Competition Network (ECN), which relies on non-binding principles governing a case allocation system (Commission Notice (2004/C 101/03) on Cooperation within the Network of Competition Authorities). Unless reallocation to a better-suited authority is required, the authority that receives a complaint or initiates a proceeding is responsible for the case. Additionally, when the Commission opens proceedings, NCAs are prohibited from applying European competition laws against the same practice by the same undertaking in the same relevant geographic and product market. When an NCA has an ongoing proceeding, the Commission must consult the NCA before initiating its own (Article 11(6) Regulation 1/2003). NCAs can suspend or terminate proceedings if another NCA already deals with the same case (Article 13 Regulation 1/2003). NCAs can also share information, including confidential information (Article 12 Regulation 1/2003).

The ECN extends beyond the powers provided by the Antitrust Procedural Regulation, acting as an active network for discussing general competition policy issues. This is achieved notably through the establishment of working groups on particular issues and sectors. These discussions promote the coherence of EU competition laws through experience-sharing and best practices. They can also lead to the development of soft law harmonisation, such as the common model for leniency applications, the joint statement on the application of competition laws during the COVID-19 pandemic, and new legal instruments like the ECN+ Directive. The ECN+ Directive harmonises EU competition laws, enhances cooperation between NCAs, and grants more enforcement powers to NCAs (OECD and ICN, 2021).

In practice, the ECN functions effectively. Between 2004 and 2023, NCAs and the Commission launched 3,230 investigations, with the vast majority (2,772) conducted by NCAs[12]. The system of parallel competences has led to the efficient enforcement of European competition law across the European Union and an efficient allocation of competition authorities' resources (European Commission, 2024b). However, the case allocation system has flaws, as it can impose regulatory burdens on undertakings and lead to inconsistency, as exemplified by the *Apple App Tracking Transparency (ATT)* antitrust cases (**Box 4**).

[12] ECN, ECN Statistics Data from 2004 to 2023 (accessed 31 July 2024). Available at: https://competition-policy.ec.europa.eu/antitrust-and-cartels/european-competition-network/statistics_en

Box 4: The *Apple ATT* antitrust cases

Competition authorities in France [13], Germany [14], Poland [15], and Italy [16] have initiated investigations into Apple, alleging that the company may favour its own services by imposing stringent privacy requirements on third-party developers while exempting its own services from these same standards. Although the Commission Notice on Cooperation allows for parallel investigations to promote efficient division of labour among authorities, the Commission's review of 20 years of the Antitrust Procedural Regulation highlights potential downsides. Specifically, parallel investigations may lead to inefficient resource use among competition authorities and increase the risk of conflicting decisions (European Commission, 2024b).

In addition to case allocation, the Antitrust Procedural Regulation ensures consistency of European competition laws through the uniformity rule (Article 16 Regulation 1/2003). National courts and NCAs cannot make decisions that contradict a Commission decision, and national courts must avoid decisions that would conflict with an ongoing Commission proceeding.

In digital markets, the DMA provides three cooperation mechanisms. First, there is cooperation with national authorities to ensure coherence, allowing the Commission to consult national authorities on the application of the DMA (Article 37 DMA). Additionally, national authorities must not make decisions that contradict a decision adopted by the Commission under the DMA (Article 1(7) DMA).

[13] Autorité de la concurrence, Advertising On iOS Mobile Applications: The General Rapporteur Confirms Having Notified the Apple Group of an Objection, 27 July 2023 (accessed 31 July 2024). Available at: https://www.autoritedelaconcurrence.fr/en/press-release/advertising-ios-mobile-applications-general-rapporteur-confirms-having-notified-apple

[14] Bundeskartellamt, Bundeskartellamt Reviews Apple's Tracking Rules for Third-Party Apps, 14 June 2022 (accessed 31 July 2024). Available at: https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2022/14_06_2022_Apple.html

[15] Office of Competition and Consumer Protection, Apple - The President of UOKiK Initiates an Investigation, 13 December 2021 (accessed 31 July 2024). Available at: https://archiwum.uokik.gov.pl/aktualnosci.php?news_id=18092

[16] Autorità Garante della Concorrenza e del Mercato, A561-A561B Italian Competition Authority: Investigation Opened Against Apple for Alleged Abuse of Dominant Position in the App Market, 11 May 2023 (accessed 4 November 2024). Available at: https://en.agcm.it/en/media/press-releases/2023/5/A561-A561B

Second, there is cooperation with NCAs through the ECN (Article 38 DMA). NCAs must share information with the Commission and other NCAs about their intentions to launch investigations and impose obligations on gatekeepers under national competition laws. This information mechanism is solely for coordinating DMA and national competition law enforcement. NCAs must cease their investigations for non-compliance under the DMA if the Commission opens a proceeding into non-compliance and must report their findings to support the Commission.

Lastly, there is cooperation with national courts. The Commission can exchange information and be represented in proceedings before national courts to ensure it can present its interpretation, reducing the risk of the Court issuing decisions that conflict with the Commission's perspective. Besides, national courts cannot make decisions that contradict a Commission decision and must avoid decisions that would conflict with ongoing Commission proceedings (Article 39 DMA).

As of January 2025, the DMA is still in its infancy. Therefore, it remains too early to conclude the effectiveness of its cooperation mechanisms. However, more than a year after the Commission released its first list of gatekeepers in September 2024, there is evidence of close collaboration between NCAs and the Commission to ensure consistent handling of competition issues that intersect with the DMA. A notable instance is in Germany, where the Commission and the German competition authority have coordinated to designate large online platforms under German digital competition regime (Section 19a GWB) and the DMA (European Commission, 2024b)[17]. They also cooperated when the German competition authority applied its regime to require Google to obtain user consent for processing data from users accessing services outside the DMA's scope[18].

[17] As of February 2025, Alphabet, Amazon, Apple, Meta, and Microsoft are designated under the German DMA-like competition law. Bundeskartellamt, Proceedings Against Large Digital Companies (last updated: September 2024) (accessed 24 October 2024). Available at: https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Downloads/List_proceedings_digital_companies.html?nn=50112

[18] Bundeskartellamt, Bundeskartellamt Gives Users of Google Services Better Control Over their Data, 5 October 2023 (accessed 23 October 2024). Available at: https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2023/05_10_2023_Google_Data.html

2.3 Policy Recommendations

This section highlights inconsistencies stemming from both divergent interpretations and insufficient cooperation among national authorities despite their duty of sincere cooperation under Article 4(3) TFEU. In the *Meta Platforms and Others* judgment, the ECJ emphasised that Member States, including their administrative authorities, must support one another, adopt necessary measures to fulfil EU obligations and refrain from actions that could undermine EU objectives[19]. However, the imperfect cooperation among national authorities sometimes hinders firms from fully benefiting from the DSM, making it harder for them to expand across borders and compete effectively within and outside of Europe due to regulatory complexities and costs. While remedies are necessarily specific to each regulatory framework, enhancing coherence across Member States will require national authorities to strengthen cooperation networks and fully use available cooperation tools.

Recommendation 1: Strengthen cooperation networks to promote regulatory coherence.

Cooperation networks are essential for ensuring authorities implement and enforce regulations consistently across Member States. However, current collaboration within these networks often falls short of achieving optimal consistency.

First, networks should be more active in promoting uniform interpretations of regulations. They could achieve this by issuing guidance on regulatory interpretations and monitoring their adherence among member authorities. When deviations arise, authorities should be required to provide reasoned explanations to the network. The network, in turn, should facilitate dialogue to address discrepancies and encourage a consistent approach.

Furthermore, networks should foster coherence by encouraging authorities to share national guidance with the network. When inconsistencies emerge, the network should intervene by issuing overarching guidance at the European level.

Lastly, when drafting guidance, networks should systematically engage in regulatory dialogue with stakeholders through robust consultation mechanisms at both the conceptual stage (prior to drafting) and the proposal stage (the first draft). These

[19] C-252/21 *Meta Platforms and Others*, para. 53.

mechanisms should include public consultations and workshops, with outcomes such as published summaries of consultation responses and workshop recaps made available on official websites.

While networks like the EDPB and authorities such as the Commission already conduct consultation processes, they often do not publish comprehensive summaries of consultation feedback. More critically, they do not provide well-reasoned explanations for the inclusion or rejection of stakeholder input in the final adopted texts. This lack of transparency undermines the consultation process, as stakeholders are unable to assess how their feedback has contributed to improving the final guidance, particularly when the final text shows little to no material change following consultations, as seen in several EDPB final guidelines.

To address this, networks and authorities should ensure that consultation outcomes include detailed summaries and clear, well-reasoned justifications for the inclusion or rejection of stakeholder feedback in both the proposal and the final adopted text. This process would enhance transparency, foster trust, and ensure that stakeholder engagement meaningfully contributes to the drafting process.

Second, networks should enhance engagement with authorities. Inspired by the ECN, cooperation networks should foster discussions on general policy issues, facilitate information exchange, and align on best practices. Establishing working groups on specific topics and sectors would also support the development of cohesive policies across Member States. Additionally, where appropriate, networks and their working groups should engage in regulatory dialogues with stakeholders, gathering input through public consultations and workshops on specific issues.

Recommendation 2: Enhance the use of cooperation tools for cost-effective enforcement.

Authorities have access to various cooperation tools under EU regulations and national laws, yet these tools are underutilised. This limited use results in inefficient resource allocation and potential inconsistencies in enforcement.

Firstly, authorities should maximise the use of both formal and informal cooperation methods. This could include mechanisms like mutual assistance, sharing public and confidential information, and conducting joint operations, such as joint investigations and

enforcement actions, to tackle shared challenges, particularly in cross-border cases. To ensure transparency and accountability, networks should publish detailed statistics on their official website, including the number of joint operations conducted and the number of formal and informal mutual requests handled.

Secondly, to prevent unnecessary duplication, authorities should work together to avoid parallel investigations on the same issue. Ideally, a designated lead authority would initiate a single investigation, with other relevant authorities providing support through a joint investigative team. If the investigation scope is confined to the lead authority's jurisdiction, that authority should aim to negotiate a commitment with the implicated firm, ensuring remedies at the national or EU level. In cases where no commitment can be reached, other authorities should recognise and enforce the lead authority's decision, as allowed under national law. Networks should publish a comprehensive register of public cases handled by authorities on their official websites, ensuring transparency for stakeholders regarding ongoing and concluded cases. Where feasible, the case register should be updated to include information on judicial reviews before European and national courts. Additionally, the register should cross-reference similar cases to facilitate the identification of parallel investigations and enable comparative assessments.

3. Coherence Across Regulatory Regimes

The DSM strategy has resulted in overlapping digital regulations that either complement or clarify each other. While a complete mapping of these overlaps is beyond this report's scope, the analysis reveals that these overlaps have generated both synergies, which can enhance overall regulatory effectiveness, and tensions, which may lead to contradictory outcomes due to differing legal objectives and requirements (Section 3.1). In this context, legislators seek to ensure coherence through new cross-regulatory cooperation mechanisms, although these are still in the early stages of implementation (Section 3.2). National authorities and their cooperation should foster coordination by embracing a unified cross-regulatory culture (Recommendation 3) and improve enforcement through joint action in cross-regulatory cases (Recommendation 4) (Section 3.3).

3.1. Synergies and Tensions

Digital regulations frequently overlap, creating both synergies and tensions. This section illustrates these dynamics by examining specific intersections in cases involving personal data (Section 3.1.1) and AI (Section 3.1.2).

3.1.1 Personal Data

In digital markets, data serves as the primary input for developing products and services. Consequently, companies gathering personal data establish privacy policies to collect and process personal data.

Privacy is a legal constraint, requiring firms to adhere to data protection and consumer protection rules to ensure users are properly informed about data practices (Costa-Cabral and Lynskey, 2015). Additionally, privacy is increasingly viewed as a competition parameter, particularly in zero-price markets where consumers often receive digital services and products without a direct monetary cost (OECD, 2018). The Commission has thus recognised privacy as a competition factor in several cases, such as the *Microsoft/LinkedIn* merger[20], and has also considered data protection laws as limitations on data combination practices that may impact

[20] M.8124 *Microsoft/LinkedIn*, December 6, 2016, para. 350 and footnote 330.

competition, as seen in the *Meta/Kustomer* merger[21]. Several landmark digital cases also rely on various legal frameworks, as shown by the German *Facebook* antitrust case (**Box 5**).

Box 5: The German *Facebook* antitrust case

In 2019, the German competition authority found that Facebook abused its dominant position under German competition law by combining data from Facebook with data from third-party sources, including Meta-owned services Instagram and WhatsApp, and third-party websites and applications, without the user's voluntary consent. The competition authority assessed Facebook's privacy terms under the GDPR to determine the abuse. It required Facebook to obtain user consent for data combination to solve the competition concern[22]. Meta challenged this case before the German courts and the ECJ.

In the *Meta Platforms and Others* judgment, the ECJ ruled that a competition authority can assess compliance with rules beyond competition laws, like data protection, when evaluating an abuse of a dominant position[23]. The Court imposed a duty of cooperation between competition and data protection authorities to ensure consistency in the application of the GDPR[24]. Competition authorities cannot deviate from an assessment already made by data protection authorities or the Court but can derive their conclusions from a competition law perspective. In the absence of an existing assessment, they must consult and cooperate with data protection authorities[25].

However, the Court did not establish a framework for cooperation among competent authorities regarding consultation and coordination. Furthermore, in its *AstraZeneca*[26] and *Servizio Elettrico Nazionale*[27] rulings, the ECJ clarified that compliance or non-compliance with data protection laws does not automatically imply compliance or non-compliance with competition laws. In essence, adherence to one legal regime neither ensures nor exempts compliance with another.

[21] M. 10262 *Meta (formerly Facebook)/Kustomer*, 27 January 2022, paras. 514-528.

[22] Bundeskartellamt, B6-22/16 *Facebook*, 6 February 2019.

[23] C-252/21 *Meta Platforms and Others*, ECLI:EU:C:2023:537, 4 July 2023, paras. 48 and 62.

[24] *Ibid*, paras. 52, 54 and 62.

[25] *Ibid*, paras. 56, 57 and 63.

[26] C-457/10 *AstraZeneca AB and AstraZeneca plc v. European Commission*, ECLI: EU: C:2012:770, 6 December 2012, para. 132.

[27] C-377/*20 Servizio Elettrico Nazionale SpA and Others v Autorità Garante della Concorrenza e del Mercato and Others*, ECLI:EU:C:2022:379, para. 103.

In 2024, the German competition authority finally closed the case, considering Meta offered sufficient remedies[28].

Digital regulations also explicitly highlight the overlap between legal regimes. Drawing from the German *Facebook* antitrust decision, gatekeepers under the DMA are permitted to engage in certain data processing practices, including personalised advertising and cross-using personal data, only with users' voluntary consent (Article 5(2) DMA), aligned with GDPR standards for consent (Articles 4(11) and 7 GDPR). The DMA also mandates that interface design should be neither deceptive nor misleading (Article 13 DMA). The Commission is currently investigating Meta's "pay-or-consent" model under this provision, primarily finding that the model is not compliant with the DMA because it does not allow users to opt for less personalised equivalent service and fails to respect the right to freely consent[29]. Consistent with the *Meta Platforms and Others* judgment, the Commission has been coordinating with relevant data protection authorities. Additionally, the Consumer Protection Cooperation (CPC) Network has considered that Meta's business model is likely to breach consumer protection laws due to misleading, confusing, and pressuring tactics[30]. Meanwhile, as noted in the previous section, data protection authorities continue to investigate the practice under the GDPR, with varying interpretations of its legality. In another case involving this DMA provision, the Italian competition authority has opened an investigation under consumer protection laws, alleging that Google's interface for obtaining consent for cross-using data under the DMA is misleading and deceptive[31].

These cases highlight the complex interplay between data protection, consumer protection, competition, and digital market laws. While these regulations can create beneficial synergies, they may also generate tensions, necessitating careful trade-offs by firms and authorities. In a joint declaration, the French competition and data protection authorities underscored how

[28] Bundeskartellamt, Facebook Proceeding Concluded, 10 October 2024 (accessed 24 October 2024). Available at:https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2024/10_10_2024_Facebook.html?nn=48916

[29] European Commission, Commission Sends Preliminary Findings to Meta Over its "Pay or Consent" Model for Breach of the Digital Markets Act, 1st July 2024 (accessed 17 July 2024). Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3582

[30] European Commission, Commission Coordinates Action by National Consumer Protection Authorities Against Meta on 'Pay or Consent' Model, 22 July 2024 (accessed 22 July 2024). Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3862

[31] Autorità Garante della Concorrenza e del Mercato, PS12714 Italian Competition Authority: Investigation Launched Against Google for Unfair Commercial Practices, 18 July 2024 (accessed 29 October 2024). Available at: https://en.agcm.it/en/media/press-releases/2024/7/PS12714

they leverage the synergies between data protection and competition to benefit consumers, protecting both privacy and undistorted competition, as illustrated in the German *Facebook* antitrust case (Autorité de la concurrence and Commission nationale de l'informatique et des libertés, 2023). In contrast, a joint statement by the UK competition and data protection authorities also cautioned that without careful coordination, these trade-offs could lead to tensions and inconsistencies in the application and enforcement of these laws (Competition and Markets Authority and Information Commissioner's Office, 2021).

The mandate for data sharing of personal data underscores this tension. The DMA requires gatekeepers to provide third-party business users with real-time access to personal data, subject to user consent (Article 6(10) DMA). This data portability right aims to enhance market contestability by lowering entry barriers, but it conflicts with the GDPR's aim of safeguarding personal data. Access seekers might misuse shared personal data and breach data security in ways beyond gatekeepers' control, creating legal and reputational risks. The French competition and data protection authorities thus outlined that the design of portability and interoperability measures must consider the technical feasibility and risks regarding the security and confidentiality of personal data, requiring coordination between both authorities (Autorité de la concurrence and Commission nationale de l'informatique et des libertés, 2023). Consequently, gatekeepers might want to impose security and privacy requirements to prevent misuse, thereby restricting data sharing for privacy reasons. However, the DMA explicitly prohibits gatekeepers from using contractual or other restrictions to prevent business users from accessing relevant data (Recital 60 DMA). The DMA further mandates that gatekeepers provide end-users with real-time access to data (Article 6(9) DMA), extending the GDPR's data portability right (Article 20 GDPR) for gatekeepers, which allows users access to their personal data. This overlap between the two data portability rights raises questions about which right should take precedence when users have access to both options (Gerardin, Bania, and Karanikioti, 2022).

Similar tensions arise with data sharing of personal data for the re-use of certain categories of protected data held by public sector bodies under the DGA (Article 3 DGA) and the re-use of data from connected devices and related services under the DA (Chapter II DA). The DGA explicitly states that it does not prejudice data protection laws, including the GDPR, and provides solutions for conflicts between the DGA and the GDPR, stating that the GDPR prevails (Article 1(3) DGA). As data sharing might restrict competition by exchanging competitively sensitive information, the DGA specifically mentions that it is without prejudice to the application of competition laws (Article 1(4) DGA). The DA contains similar provisions regarding the GDPR (Article 1(5) DA) and competition laws (Recital 116 DA).

The phasing out of third-party cookies further illustrates this tension. Cookies that track users' online activities and measure ad effectiveness enable personalised advertising. However, cookies are often intrusive and placed on the user's browser without users' voluntary consent and informed knowledge due to deceptive practices, such as dark patterns that steer users to consent to cookies, in contradiction with both data protection and consumer protection laws (Carugati, 2023). In response, Google proposed removing third-party cookies from its browser, Google Chrome, through the "Google Privacy Sandbox" project. This move likely complies with the objective of safeguarding personal data but raises competition concerns, as outlined by the coordinated investigation by the UK competition and data protection authorities[32]. The removal might negatively impact rivals in the online advertising sector, as they would not be able to track users, while giving Google a competitive advantage due to its access to first-party data, potentially breaching competition laws. To address privacy and competition concerns, Google offered commitments, but in July 2024, Google abandoned its plan to phase out third-party cookies over industry concerns and instead will introduce a user-choice prompt, allowing users to choose whether to allow third-party cookies via the browser[33]. The UK competition and data protection authorities are now investigating the impact of the user-choice prompt on competition and data protection[34].

3.1.2 Artificial Intelligence

In AI markets, model developers require access to large, diverse, and high-quality datasets containing both personal and non-personal data. Public datasets are commonly used for initial training (pre-training phase). Additionally, developers may use AI-generated synthetic data, proprietary datasets from their own services (first-party data), or third-party data. These proprietary datasets are also crucial for fine-tuning (fine-tuning phase) and deriving outputs from external data sources (grounding phase) (Competition and Markets Authority, 2024).

The advancement of Generative AI (GenAI) presents cross-regulatory challenges for model development and deployment. These include intersections with data protection, consumer protection, intellectual property rights, AI, competition, content moderation and digital markets laws (Carugati, 2024). These intersections also create synergies and tensions.

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[32] Competition and Markets Authority, Investigation into Google's 'Privacy Sandbox' Browser Changes (accessed 1st August 2024). Available at: https://www.gov.uk/cma-cases/investigation-into-googles-privacy-sandbox-browser-changes

[33] Anthony Chavez, A New Path for Privacy Sandbox on the Web, *Google Blog*, 22 July 2024 (accessed 1st August 2024). Available at: https://privacysandbox.com/news/privacy-sandbox-update/

[34] Competition and Markets Authority, Investigation into Google's 'Privacy Sandbox' Browser Changes (accessed 1st August 2024).

At the development stage, model developers must first properly inform users about the use of personal data for training, complying with data protection and consumer protection laws. In Europe, data protection authorities are increasingly scrutinising how models use personal data and the regulatory implications. For instance, the French DPA's consultations on model development[35], the Hamburg DPA's discussion paper on Large Language Models (LLMs) [36] and the EDPB's opinion on AI models [37] highlight ongoing concerns. Despite these discussions, several data protection issues remain unresolved at the European level, creating significant legal uncertainty and impacting competition in AI, as exemplified by the delay of Meta AI services in Europe (**Box 6**).

Box 6: The delay of Meta AI services in Europe

Meta has delayed the launch of its AI models and AI-powered services in Europe due to regulatory concerns raised by the Irish DPA about using public personal data of European users collected from Meta services for model training[38]. According to Meta's CEO, DPAs disagreed on addressing the concerns in Europe, thus preventing Meta from launching its services across the continent[39].

This delay directly impacts competition in the GenAI sector, as it deprives European developers of opportunities to innovate with Meta models and European users of access to new technologies. Data protection considerations can thus act as an entry barrier, potentially preventing firms from entering the market.

[35] Commission Nationale de l'Informatique et des Libertés, Artificial Intelligence: The CNIL Opens a New Public Consultation on the Development of AI Systems, 2 July 2024 (accessed 1st August 2024). Available at: https://www.cnil.fr/en/artificial-intelligence-cnil-opens-new-public-consultation-development-ai-systems

[36] Der Hamburgische Beauftragte für Datenschutz und Informationsfreiheit, Discussion Paper: Large Language Models and Personal Data, July 2024 (accessed 1st August 2024). Available at: https://datenschutz-hamburg.de/fileadmin/user_upload/HmbBfDI/Datenschutz/Informationen/240715_Discussion_Paper_Hamburg_DPA_KI_Models.pdf

[37] EDPB, Opinion 28/2024 on Certain Data Protection Aspects Related to the Processing of Personal Data in the Context of AI Models, 18 December 2024 (accessed 17 January 2025). Available at : https://www.edpb.europa.eu/our-work-tools/our-documents/opinion-board-art-64/opinion-282024-certain-data-protection-aspects_fr

[38] Stefano Fratta, Building AI Technology for Europeans in a Transparent and Responsible Way, *Meta Blog*, 10 June 2024 (accessed 1st august 2024). Available at: https://about.fb.com/news/2024/06/building-ai-technology-for-europeans-in-a-transparent-and-responsible-way/

[39] Mark Zuckerberg and Daniel Ek, Mark Zuckerberg and Daniel Ek on Why Europe Should Embrace Open-Source AI, *Meta Blog*, 23 August 2024 (accessed 28 October 2024). Available at: https://about.fb.com/news/2024/08/why-europe-should-embrace-open-source-ai-zuckerberg-ek/

Additionally, developers using personal data must comply with overlapping GDPR and AIA provisions when developing AI systems. One area of overlap involves the handling of sensitive data. While Article 9 of the GDPR generally prohibits processing sensitive data, the AIA introduces an exception when such data is essential for detecting and correcting biases in high-risk AI systems (Article 10 AIA). With the AIA now in force, some data protection authorities, such as the French authority, have already issued guidance to assist developers in navigating compliance with the GDPR and the AIA[40].

Moreover, the use of third-party copyrighted data for model training raises regulatory uncertainties around whether developers need rightsholder consent. This uncertainty has led to multiple lawsuits[41]. In Europe, copyright discussions and potential reforms are ongoing[42]. In response, model developers increasingly establish data partnerships with rightsholders, compensating them for access[43]. However, competition authorities caution that this trend could heighten entry barriers and harm competition, sparking tensions between copyright and competition law.

From a competition perspective, issues in relation to copyright laws could potentially hinder competition. The Portuguese competition authority, for example, has highlighted the risks associated with exclusive data partnerships, which could restrict other developers from similar data access (Autoridade da Concorrencia, 2024). Even in non-exclusive data partnerships, the French competition authority warns that high licensing fees might exclude some developers from accessing essential content, which could be viewed as an abuse of dominance (Autorité de la concurrence, 2024). Additionally, in a G7 discussion paper, the Italian competition authority noted that future copyright and data protection rules could hinder late entrants from accessing web-scraped data, disadvantaging them relative to early movers (Autorità Garante della Concorrenza e del Mercato, 2024).

[40] Commission Nationale de l'Informatique et des Libertés, AI System Development: CNIL's Recommendations to Comply with the GDPR, 7 June 2024 (accessed 29 October 2024). Available at: https://www.cnil.fr/en/ai-system-development-cnils-recommendations-comply-gdpr

[41] Michael M. Grynbaum and Ryan Mac, The Times Sues OpenAI and Microsoft Over A.I. Use of Copyrighted Work, *The New York Times*, 27 December 2023 (accessed 25 January 2024). https://www.nytimes.com/2023/12/27/business/media/new-york-times-open-ai-microsoft-lawsuit.html

[42] Théophane Hartmann, French MPs Want to Amend EU's Copyright Rules to Cover Generative AI, *Euractiv*, 20 January 2024 (accessed 1st August 2024). Available at: https://www.euractiv.com/section/artificial-intelligence/news/french-mps-want-to-amend-eus-copyright-rules-to-cover-generative-ai/

[43] Platforms and Publishers: AI Partnership Tracker (accessed 28 October 2024). Available at: https://petebrown.quarto.pub/pnp-ai-partnerships/

Conversely, competition laws could influence copyright practices. Under certain conditions, dominant rightsholders may be obligated to share data with rivals under competition law precedents (Graef, Tombal, and de Streel, 2019). Additionally, the DMA mandates that gatekeepers providing online search engines must share search data with competitors (Article 6(11) DMA).

Some authorities are imposing transparency requirements on model developers to address competition and copyright concerns. For instance, the French competition authority fined Google for failing to inform publishers about its chatbot Google Bard's use of their content, violating previous commitments regarding related rights[44]. Furthermore, the AIA requires general-purpose AI providers to comply with copyright laws and offer detailed summaries of training data, ensuring rightholders can enforce their rights (Article 53 and Recital 107 AIA). However, such requirements may inadvertently raise entry barriers, leading to data partnerships or market exclusion when developers cannot compensate. Recognising these trade-offs, G7 competition authorities advocate for a competitive market for copyrighted data to support a compensation and consent model that encourages data investment for model training (G7 competition authorities, 2024).

At the deployment stage, model developers must ensure that the content generated does not harm consumers by ensuring content moderation rules. In this context, developers designated as Very Large Online Search Engines (VLOSEs) and Platforms (VLOPs) under the DSA must conduct risk assessments and implement mitigation measures against illegal and harmful content, including deepfakes (Articles 34 and 35 DSA), complementing transparency requirements under the AIA (Article 50 AIA)[45]. The Commission, which is the competent authority for VLOSEs and VLOPs, has already requested Microsoft to provide information on generative AI risks, including deepfakes, on its search engine, Microsoft Bing, under the DSA[46].

[44] Autorité de la concurrence, Related Rights: The Autorité Fines Google €250 Million for Non-Compliance with Some of its Commitments Made in June 2022, 20 March 2024 (accessed 1st August 2024). Available at: https://www.autoritedelaconcurrence.fr/en/press-release/related-rights-autorite-fines-google-eu250-million-non-compliance-some-its

[45] As of February 2025, AliExpress, Amazon Store, Apple App Store, Pornhub, Boooking.com, Google Search, Google Play, Google Maps, Google Shopping, YouTube, Shein, LinkedIn, Facebook, Instagram, Bing, XNXX, Pinterest, Snapchat, Stripchat, TikTok, X, Temu, XVideos, Wikipedia, and Zalendo are designated as VLOPs and VLOSEs under the DSA. European Commission, Supervision of the Designated Very Large Online Platforms and Search Engines under DSA (accessed 6 August 2024). Available at: https://digital-strategy.ec.europa.eu/en/policies/list-designated-vlops-and-vloses

[46] European Commission, Commission Compels Microsoft to Provide Information Under the Digital Services Act on Generative AI Risks on Bing, 17 May 2024 (accessed 5 August 2024). Available at: https://digital-strategy.ec.europa.eu/en/news/commission-compels-microsoft-provide-information-under-digital-services-act-generative-ai-risks

Additionally, models may generate false or misleading content due to hallucination issues, potentially breaching consumer protection and data protection laws (Article 5 GDPR). Moreover, the DMA requires providers of application stores, online search engines, and social networking services to apply fair, reasonable, and non-discriminatory access conditions for business users, with the possibility to impose content moderation requirements to comply with the DSA (Article 6(12) and Recital 62 DMA). However, in a joint statement on online safety and competition, the UK competition and telecommunication authorities warned that moderation requirements might restrict competition, as it might exclude businesses (Competition and Markets Authority and Ofcom, 2022). As an illustration of the potential exclusionary effect, the French competition authority found that Google abused its dominant position in 2019 by imposing non-objective, non-transparent and discriminatory content moderation conditions on advertisers, leading to market exclusion[47].

Beyond content moderation, model and application developers impose safety requirements to protect against harmful behaviours, such as scams and fraud. However, safety requirements might also create tensions with competition. For example, while open-source models promote competition, they raise safety concerns as they can be used maliciously (OECD, 2023). Safety restrictions on open-source models might limit follow-on innovation, negatively impacting competition. Similarly, safety requirements mandating information exchange under the AIA (Articles 23, 24, and 25 AIA) might harm competition as they create risks of anticompetitive agreements (Schrepel, 2024).

3.2. New Cross-Regulatory Cooperation

The overlaps between digital regulations require new cross-regulatory cooperation mechanisms to ensure consistency. Legislators have created forums between various national authorities at both the European (Section 3.2.1) and national levels (Section 3.2.2).

3.2.1 At the European Level

At the European level, digital regulations set new structures to ensure consistency and coordination with other competent authorities.

[47] Autorité de la concurrence, The Autorité de la concurrence Hands Down a €150M Fine for Abuse of a Dominant Position, 20 December 2019 (accessed 28 October 2024). Available at: https://www.autoritedelaconcurrence.fr/en/communiques-de-presse/autorite-de-la-concurrence-hands-down-eu150m-fine-abuse-dominant-position

The DMA establishes a High-Level Group (HLG) to assist and advise the Commission on implementation and enforcement (Article 40 DMA). This group includes the European Regulators for Electronic Communications (BEREC), the European Data Protection Supervisor (EDPS), the EDPB, the ECN, the CPC Network, the European Regulatory Group of Audiovisual Media Regulators (ERGA), and the Commission. The HLG is the first formal forum between competent authorities that promotes a consistent cross-regulatory approach at the European level, as shown by ongoing works (**Box 7**).

Box 7: Ongoing works under the HLG of the DMA

The HLG of the DMA has already issued a joint statement on AI, detailing plans to coordinate efforts to ensure coherence in AI markets. These initiatives include monitoring regulatory advancements in AI, sharing enforcement experiences and regulatory expertise, and developing strategies to facilitate effective cooperation[48].

The EDPB is also preparing guidance on the interplay between the DMA and the GDPR. The EDPB and the Commission work closely together to pursue a coherent approach. This guidance builds on ongoing collaboration between the Commission, the EDPB, and the EDPS within the HLG framework, addressing data-related and interoperability obligations[49].

The DGA and DA establish the European Data Innovation Board (EDIB) (Articles 29 and 30 DGA and Article 42 DA). The EDIB is an expert group composed of representatives from the competent authorities for data intermediation services and data altruism organisations of all Member States, the EDPB, the EDPS, the European Union Agency for Cybersecurity (ENISA), the Commission, the EU SME Envoy, and other relevant bodies and experts. The EDIB assists and advises the Commission to support the consistent application of the DGA and DA.

The DSA establishes the European Board for Digital Services (EBDS) (Articles 61-63 and Recitals 131-134 DSA) as an advisory group of Digital Services Coordinators (DSCs). Composed solely of DSCs and the Commission, the EBDS supports the consistent

[48] European Commission, High-Level Group for the Digital Markets Act Public Statement on Artificial Intelligence, 22 May 2024 (accessed 6 August 2024). Available at: https://digital-markets-act.ec.europa.eu/high-level-group-digital-markets-act-public-statement-artificial-intelligence-2024-05-22_en

[49] European Commission, Commission Services and EDPB Will Start Joint Work on Guidance on the Interplay Between DMA and GDPR, 10 September 2024 (accessed 29 October 2024). Available at: https://digital-markets-act.ec.europa.eu/commission-services-and-edpb-will-start-joint-work-guidance-interplay-between-dma-and-gdpr-2024-09-10_en

implementation of the DSA and can cooperate with other competent authorities, including those for data protection, consumer protection, and competition, as relevant.

The AIA establishes the European Artificial Intelligence Board (EAIB), composed of representatives from the Member States, the EDPS, and the AI Office (Articles 65 and 66 AIA). The EAIB oversees the consistent application of the AIA and can cooperate with other competent authorities, including those for data protection, consumer protection, and competition.

Beyond formal structures, national competent authorities also engage in informal cooperation. For example, DPAs participate in joint workshops with the CPC network. Additionally, in July 2023, the EDPB established a task force to explore the interplay between data protection, consumer protection, and competition (European Commission, 2024c). The EDPS is also proposing a "Digital Clearinghouse 2.0" to promote cross-regulatory cooperation between various competent authorities (EDPS, 2025).

These formal and informal forms of cooperation explicitly mention the tasks of the forums. However, they do not provide rules on how they should cooperate, leaving this duty to the forums, as the HLG is doing to ensure coherence on AI.

3.2.2 At the National Level

At the national level, Member States in the Netherlands (Digital Regulation Cooperation Platform, SDT)[50], Ireland (Digital Regulators Group, DRG)[51], Germany (Digital Cluster Bonn,

[50] Autoriteit Consument & Markt, The Digital Regulation Cooperation Platform (SDT) (accessed 6 August 2024). The SDT is composed of the Authority for Consumers and Markets (ACM), the Authority for the Financial Markets (AFM), the Data Protection Authority (AP), and the Media Authority (CvdM). Available at: https://www.acm.nl/en/about-acm/cooperation/national-cooperation/digital-regulation-cooperation-platform-sdt

[51] Competition and Consumer Protection Commission, 2022 Annual Report, 18 August 2023 (accessed 6 August 2024). The DRG is composed of the Data Protection Commission, Competition and Consumer Protection Commission, Commission for Communications Regulation, and the Irish Media regulator. Available at: https://www.ccpc.ie/business/wp-content/uploads/sites/3/2023/08/2023.06.29_CCPC_Annual-Report-2022.pdf.

DCB)[52], and France (National Network of Cooperation of Digital Regulations, NNCDR)[53] have established cooperation forums among national competent authorities to ensure consistency in the digital economy. As of January 2025, these forums are still in early development and have not yet produced tangible works.

These forums draw inspiration from the UK Digital Regulation Cooperation Forum (DRCF). Composed of the UK Competition and Markets Authority (CMA), the Financial Conduct Authority (FCA), the Information Commissioner's Office (ICO), and Ofcom, the DRCF aims to ensure a cross-regulatory approach in the digital economy (**Box 8**).

Box 8: The DRCF

The DRCF is the most active forum of its kind. Since its launch in 2021, it has published several joint statements between authorities[54], including a joint statement between the CMA and ICO on competition and data protection, papers[55], including a paper on harmful design in digital markets, and a hub[56], including the AI and Digital Hub. This hub supports innovators by providing informal advice on cross-regulatory issues with the backing of DRCF members.

The DRCF has delivered positive impacts, noting several benefits: it produces positive results for users, shapes industry directions through forward-looking assessments, influences the digital regulatory landscape internationally, shares experiences and reduces costs by pooling resources and expertise, funds research collaboratively, enables timely and cost-effective delivery of work programmes, increases engagement with stakeholders (including

[52] Digital Cluster Bonn (accessed 12 August 2024). The DCB is composed of the Federal Financial Supervisory Authority (BaFin), the Federal Office of Justice (BfJ), the Federal Office for Information Security (BSI), the Federal Commissioner for Data Protection and Freedom of Information (BfDI), the Federal Cartel Office (Bundeskartellamt), and the Federal Network Agency (BNetzA). Available at: https://www.digitalclusterbonn.de/DCB/start.html

[53] Loi n° 2024-449 du 21 Mai 2024 Visant à Sécuriser et à Réguler l'Espace Numérique, Article 7.4. The network is composed of the Media Authority (Arcom), the Data Protection Authority (CNIL), the Electronic and Postal Authority (Arcep), the Competition Authority (Adlc), the Informatics Security Agency (ANSSI), the Authority for Social Relations on Employment Platforms (ARPE), and the competent State services.

[54] DRCF, Joint Statements (accessed 6 August 2024). Available at: https://www.drcf.org.uk/publications/joint-statements

[55] DRCF, Papers (accessed 6 August 2024). Available at: https://www.drcf.org.uk/publications/papers

[56] DRCF, AI and Digital Hub (accessed 6 August 2024). Available at: https://www.drcf.org.uk/ai-and-digital-hub

internationally), and enhances the development and implementation of cross-regulatory digital and AI policies[57].

Furthermore, the DRCF hosted the inaugural meeting of the International Network for Digital Regulation Cooperation (INDRC). Composed of the Australian Digital Platform Regulators Forum (DPRF), the Canadian Digital Regulators Forum (CDRF), the Irish DRG, the Dutch SDT, and the UK DRCF, the INDRC aims to ensure international coordination among forums to promote coherence in digital regulation both domestically and internationally[58].

Beyond cooperation networks, some national competent authorities collaborate through Memorandums of Understanding (MoUs), which formally outline the legal obligations and mechanisms for cooperation. These MoUs typically cover areas such as case allocation, information sharing (including confidential information), and expertise sharing (including staff secondments). For example, in France, the French DPA has a MoU with the Media Authority, the DPA, and the Directorate General for Consumer Affairs, Competition, and Fraud Prevention to facilitate the implementation of the DSA[59]. Additionally, they engage in joint statements, such as the joint statement on data protection and competition issued by the French DPA and NCA (Autorité de la concurrence and Commission nationale de l'informatique et des libertés, 2023).

3.3. Policy Recommendations

This section highlights overlaps between digital regulations, creating both synergies and tensions between legal regimes. Legislators have introduced new cross-regulatory cooperation mechanisms at the European and national levels to facilitate consultation and

[57] DRCF, DRCF: Delivering Impact through Cooperation, 23 July 2024 (accessed 6 August 2024). Available at: https://www.drcf.org.uk/publications/blogs/drcf-delivering-impact-through-cooperation2

[58] DRCF, Launch of the International Network for Digital Regulation Cooperation (INDRC), 22 June 2023 (accessed 6 August 2024). Available at: https://www.drcf.org.uk/news-and-events/news/launch-of-the-international-network-for-digital-regulation-cooperation-indrc

See also, OECD, OECD-INDRC Workshop "The Interplay Between Digital Regulatory Frameworks - Challenges and Opportunities of Structural Collaboration", 8 November 2024 (accessed 17 January 2025). Available at: https://www.oecd.org/en/events/2024/11/oecd-indrc-joint-workshop-on-the-interplay-between-digital-regulatory-frameworks.html

[59] Commission nationale de l'informatique et des libertés, Mise en Œuvre du Règlement Européen sur Les Services Numériques : l'Arcom, la CNIL et la DGCCRF Signent une Convention de Coopération, 27 June 2024 (accessed 8 August 2024). Available at : https://www.cnil.fr/fr/mise-en-oeuvre-du-reglement-europeen-sur-les-services-numeriques-arcom-cnil-dgccrf-signent

cooperation among authorities. However, while these mechanisms align with the *Meta Platforms and Others j*udgment, they lack an operational framework detailing how authorities should coordinate[60]. This gap undermines the effectiveness of cross-regulatory efforts. To enhance consistency and effectiveness, national authorities should embrace a unified cross-regulatory culture (Recommendation 3) and improve enforcement through joint action in cross-regulatory cases (Recommendation 4).

Recommendation 3: Foster cooperation by embracing a common cross-regulatory culture.

Authorities often operate in silos with minimal cross-policy engagement, limiting their ability to identify synergies and address tensions across legal frameworks.

To build a unified cross-regulatory culture, authorities should first implement practical frameworks that clarify collaboration arrangements within cooperation networks. These frameworks, developed in the context of existing or new EU and national laws, should cover essential aspects such as case notifications and consultation, information sharing (including confidential data), and expertise exchange (including staff secondments and training).

Moreover, authorities should develop comprehensive work plans and establish dedicated working groups within these networks to tackle complex cross-regulatory issues. Work plans and working groups are critical for identifying and resolving challenges and fostering synergies while reducing tensions between regulatory regimes. Drawing from the UK DRCF, networks could enhance transparency and stakeholder engagement by publishing joint statements, research papers, blogs, and annual reports. When relevant, networks should promote their work through public conferences with stakeholders. They should also gather stakeholder feedback on cross-regulatory challenges through public consultations and workshops. Finally, they should issue cross-regulatory guidance when relevant.

Additionally, establishing a European Digital Regulation Cooperation Forum (EDRCF) could further streamline cross-regulatory collaboration. This forum could be formed by expanding the remit of the HLG of the DMA, which already comprises European regulatory groups and has the mission to ensure a consistent regulatory framework. Established by a new EU legislative act, the HLG would become the EDRCF and the primary cross-regulatory cooperation framework in each new legislation. In addition to the participating members of the HLG, the

[60] C-252/21 *Meta Platforms and Others*, paras. 52 and 63.

EDRCF should invite similar fora at the national level to be observer members to ensure consistency and best practices nationally. The EDRCF should have a practical framework of cooperation among members, as well as adequate human and financial resources to fulfil its mission effectively, funded by a dedicated budget, such as membership fees from participating members or a dedicated EU budget. Drawing on the UK DRCF's experience, the EDRCF should support cooperation among members through work plans and working groups, provide opinions to EU institutions, and engage formally and informally with businesses facing complex cross-regulatory challenges through publications, public consultations, conferences, workshops and a Hub similar to the UK AI and Digital Hub.

Finally, the EDRCF should support the DSM and strengthen competitiveness. A specialised economics unit within the EDRCF would focus on identifying DSM obstacles and addressing competitiveness challenges posed by digital regulations.

Recommendation 4: Strengthen effectiveness through joint enforcement of cross-regulatory cases

When authorities cooperate, they rarely undertake joint enforcement in cases that span multiple legal regimes, which can lead to fragmented and potentially inconsistent regulatory outcomes.

To improve coherence, authorities should engage in close consultation, from initiation through resolution. Effective cross-regulatory cooperation would include sharing opinions and information (including confidential data) and pooling expertise via staff exchanges. Ideally, when a single remedy can address all cross-regulatory issues, authorities should conduct a unified investigation. This investigation would be led by the authority best equipped for the task, considering its human resources and expertise in the issue at stake, with active support from other relevant authorities. Such an approach would increase regulatory effectiveness and help ensure consistent outcomes across legal frameworks. A notable example of this model is the UK *Google Privacy Sandbox* case, where the competition authority closely coordinates the investigation with the data protection authority. Given the complexity of cross-regulatory issues and when relevant, authorities should adopt a participative approach with stakeholders, as the UK competition and data protection authorities do in the UK *Google privacy Sandbox*. However, this participative approach should establish clear and transparent engagement rules while acknowledging that resolving cross-regulatory issues may not satisfy all stakeholders. These rules and statements would ensure a transparent process and avoid endless discussions arising from attempts to capture the regulators and keep the status quo.

In cases where a single remedy cannot fully address all regulatory concerns, authorities should consult to design remedies that maximise synergies across legal regimes. Authorities should strive to avoid remedies that could introduce conflicts or misalignments with the objectives and requirements of other regulatory frameworks.

4. Coherence in the EU Law-Making Process

Regulations result from a structured law-making process in which EU institutions are expected to follow Better Regulation principles. These principles aim to ensure that policies are evidence-based. However, in practice, this process is often inefficient and fails to consistently apply these principles (Section 4.1). As part of the Commission's agenda to review the EU law-making process under the Commissioner for Simplification, EU policymakers should consistently use Better Regulation principles for sound policymaking (Recommendation 5) and systemise *ex-post* evaluations to strengthen regulatory frameworks (Recommendation 6) (Section 4.2).

4.1. Ineffective and Insufficient Process

The EU regulatory process begins with a proposal from the Commission, which follows the Better Regulation Guidelines and Toolbox. These guidelines emphasise evidence-based policymaking through comprehensive evaluations, cost-effective regulations, and stakeholder consultations (SWD(2021) 305, Better Regulation Guidelines)[61]. Key instruments include *ex-ante* impact assessments, stakeholder feedback, compliance promotion tools designed to make regulations effective and transparent, and *ex-post* evaluations.

However, the Better Regulation Guidelines face significant limitations. *Ex-ante* Impact assessments are not systematic for all initiatives, including delegated and implementing acts, and sometimes imperfectly assess impacts, notably on the European economy and competitiveness. In the period between 2022 and 2023, the Commission published approximately 40 per cent of its initiatives without an accompanying impact assessment. Moreover, out of 598 delegated acts issued during this period, only three were supported by an impact assessment (Meyers, 2024). The Council calls on the Commission to improve these assessments, particularly to reduce regulatory duplication and inconsistencies (Council Conclusions 10298/24, A Single Market for the Benefit of All, 2024). Moreover, the Better Regulation Guidelines apply only to Commission officials, explicitly excluding the European Parliament and the Council from these standards. This limitation reduces the Guidelines' effectiveness, as co-legislators frequently amend Commission proposals without adhering to the Better Regulation principles, compromising the quality of the final legislation.

[61] European Commission, Better Regulation Toolbox, July 2023 (accessed 13 August 2024). Available at: https://commission.europa.eu/document/download/9c8d2189-8abd-4f29-84e9-abc843cc68e0_en?filename=BR%20toolbox%20-%20Jul%202023%20-%20FINAL.pdf

To address this, the Commission has emphasised the need for collaboration across EU institutions, formalised in an Interinstitutional Agreement (L 123/1, Interinstitutional Agreement on Better Law-Making). This framework aims to enhance the quality of EU legislation through shared tools like *ex-ante* impact assessments, stakeholder consultations, and *ex-post* evaluations of existing regulations.

Despite the existing framework, notable gaps persist. Although the Agreement emphasises the importance of *ex-ante* impact assessments, the European Parliament and the Council are not obligated to conduct them. These institutions may assess major amendments to Commission proposals, but only if deemed necessary. The interpretation of a "substantial amendment" varies by institution, adding complexity. Additionally, the Commission may supplement its *ex-ante* impact assessments when needed. Finally, the lack of a standardised methodology across EU institutions for conducting *ex-ante* impact assessments can lead to inconsistencies despite a mandate to share best practices and methodologies. Consequently, several Commission proposals have undergone significant changes during the legislative process without any accompanying *ex-ante* impact assessments (Marcus, 2024).

The Letta report underscores this issue, noting that the Interinstitutional Agreement often fails in practice. The pressure to reach compromises leads to laws shaped more by power balances than by sound, evidence-based policymaking. This compromises coherence and increases the risk of unintended consequences (Letta, 2024). A clear illustration of this problem is the DMA, where the absence of thorough ex-ante impact assessments during the legislative process has compromised both the quality and credibility of the regulation (**Box 9**).

Box 9: The DMA amendments

The Commission initially proposed the DMA with an *ex-ante* impact assessment, which had to be redrafted twice in response to reviews by the Regulatory Scrutiny Board (RSB), which is responsible for assessing the quality of such evaluations. While the RSB's second opinion was positive, it included reservations. The RSB has highlighted significant shortcomings, including insufficient justification for the selection of core platform services covered by the initiative[62]. This is a critical issue, as the DMA's scope only applies to gatekeepers providing core platform services.

[62] Regulatory Scrutiny Board, Regulatory Scrutiny Board Opinion Proposal for a Regulation of the European Parliament and of the Council on Contestable and Fair Markets in the Digital Sector (Digital Markets Act), 10 December 2020.

While co-legislators are not subject to the RSB's recommendations, they have substantially amended the Commission's proposal by adding new core platform services, such as web browsers and virtual assistants, without an accompanying *ex-ante* impact assessment. These additions lacked justification that these services exhibit weak contestability and unfair practices, which are central criteria to the DMA's objectives of ensuring contestability and fairness (Article 2 of the Commission's proposal and Article 2 of the final DMA text).

Moreover, co-legislators significantly revised the list of positive and negative obligations under the Act without substantiating these changes through accompanying *ex-ante* impact assessments. Notably, some amendments, such as the unsuccessful attempt to include remuneration for rightsholders, were introduced at the final stages of the trilogue negotiations[63].

The trilogue process itself exemplifies a broader issue with EU legislative procedures. As an informal negotiation among EU institutions to achieve a common position on a final text, trilogues often lack transparency and fail to engage stakeholders meaningfully. Justifications for amendments are not published, resulting in final legislation that is politically motivated rather than grounded in evidence. This opacity undermines the perceived quality and legitimacy of the resulting laws.

Once regulations are enacted, they should often undergo ex-post evaluations to assess their effectiveness in achieving objectives and to identify opportunities for improvement. These evaluations can be mandated by legal provisions within the legislation or guided by policy principles, such as the "evaluation first" principle, designed to inform future policy actions. According to the European Parliamentary Research Service (EPRS), the Commission primarily publishes evaluations of legal acts and fitness checks as Staff Working Documents (SWDs), prepared by the lead Commission directorate (EPRS, 2023). Fitness checks provide a holistic assessment of entire policy areas, identifying gaps, overlaps, inconsistencies, burdens, and the cumulative impact of legislation within the domain. In rare cases, the Commission publishes external studies as final evaluations without accompanying SWDs (EPRS, 2023).

However, in practice, such ex-post evaluations are infrequent and often focus narrowly on specific provisions rather than evaluating whether the regulations address underlying issues effectively (Marcus, 2024). Between 2020 and 2023, the Commission published 159

[63] Luca Bertuzzi, DMA: EU Negotiators Split on Whether text Covers Remuneration for Rightsholders, *Euractiv*, 28 March 2022 (accessed 20 December 2024). Available at https://www.euractiv.com/section/digital/news/dma-eu-negotiators-split-on-whether-text-covers-access-conditions-for-rightsholders/

SWDs, including five fitness checks, and issued 52 external studies without SWDs (EPRS, 2023). Notably, the evaluations of the GDPR serve as successful examples of *ex-post* evaluations driving policy improvements (**Box 10**).

Box 10: The GDPR Evaluations

The Commission is required to review the application of the GDPR and publicly publish a report to the European Parliament and the Council by 25 May 2020 and every four years thereafter (Article 97 GDPR). The first report, published on 24 June 2020, and the second report, released on 25 July 2024, have provided critical insights (European Commission, 2020, 2024c).

As noted above, the first report identified procedural discrepancies that hindered the efficient resolution of cross-border cases. This finding prompted the Commission to propose harmonised procedural rules to streamline enforcement in such cases.

Meanwhile, the second report highlighted the interplay between the GDPR and other digital regulations, identifying cross-regulatory issues. In response, the EDPB and EDPS have called for greater coherence across digital regulations and alignment with the GDPR to address these challenges (EDPB, 2024c) (EDPS, 2025).

4.2. Policy Recommendations

This section highlights inefficiencies in the EU law-making process, leading to regulations that lack sound evidence-based policymaking, potentially resulting in duplication and inconsistencies across frameworks. The Commission will tackle these issues by proposing a better law-making process through a new Interinstitutional Agreement and engaging in *ex-post* evaluations of regulations through stress testing the entire EU acquis and progress reports aimed notably at identifying and addressing duplication and inconsistency among legal frameworks (Von der Leyen, 2024). To support this goal, EU policymakers should consistently use Better Regulation principles for sound policymaking (Recommendation 5) and systemise *ex-post* evaluations to strengthen regulatory frameworks (Recommendation 6).

Recommendation 5: Consistently use Better Regulations principles for sound policymaking.

While EU institutions possess robust tools for sound policymaking, these are not consistently applied, which undermines the effectiveness and efficiency of regulatory processes. The inconsistent application of Better Regulation principles could lead to duplication and inconsistency in legislative outcomes.

To address this, EU institutions should be required to support their legislative proposals on independent, objective *ex-ante* impact assessments. A fully independent body, akin to the European Court of Auditors, should be established to conduct such assessments. This institution would significantly improve the current system, where impact assessments are conducted internally by the lead Commission directorate or externally by expert contractors. Unlike these approaches, an independent body would provide evidence-based assessments of proposed legislative acts throughout the legislative process, free from the political constraints faced by Commission directorates or the financial limitations of external contractors.

For this institution to effectively carry out its mandate, it must be equipped with adequate human and financial resources through a dedicated budget. Additionally, it should engage with a wide range of stakeholders, including civil society organisations, national authorities, cooperation networks, trade associations, and experts, during the drafting process of *ex-ante* impact assessments. This could be achieved through public calls for evidence, and when relevant, workshops.

To ensure transparency, the institution should publicly publish the *ex-ante* impact assessments, the RSB's opinions, the calls for evidence, stakeholder responses, and a complete list of meetings with interest representatives on its official website. Such measures would bolster the quality, credibility, accountability, and trust of the legislative process.

Furthermore, all EU institutions should be bound to adhere uniformly to Better Regulation principles. The planned new Interinstitutional Agreement on Better Law-Making should establish a consistent legislative process across all EU bodies, requiring adherence to the same principles. Specifically, the Agreement should introduce mandatory Dynamic Impact Assessments (DIAs) conducted by the aforementioned independent institution at each stage of the legislative process to ensure its continuity and quality. This would include assessments for the Commission's proposal, proposals by the European Parliament and the Council, and the final compromise text.

The revised Agreement should also mandate the publication of DIAs, stakeholder consultations, and non-confidential meeting minutes on the European Parliament's legislative

observatory website to promote transparency and accountability. Additionally, EU institutions should be required to provide sound, evidence-based justifications for amendments introducing new legal obligations, including those introduced during the informal trilogue process. This would reduce the risk of legislation being shaped primarily by political considerations rather than robust evidence.

Recommendation 6: Systematise *ex-post* evaluations to enhance regulatory frameworks.

***Ex-post* evaluations of EU regulations are infrequent and often narrowly scoped to the legislative act at issue.** Moreover, except for evaluations of fitness checks, they usually overlook interactions with other regulatory frameworks**.** This lack of comprehensive assessment can lead to regulatory overlap, resulting in duplication and inconsistencies across legal regimes.

To address these challenges, EU regulations should include legal provisions mandating *ex-post* evaluations every four years. The aforementioned independent institution should conduct these evaluations. Each regulation should include key performance indicators (KPIs) in its legal provisions, supported by an annexe outlining qualitative and quantitative metrics. To the greatest extent possible, these metrics should rely on publicly available data. These incorporations in the legislative act and its annexe would ensure predictability and consistency throughout the evaluation process. The institution could use additional metrics and KPIs when necessary, provided they are relevant and fully justified.

The evaluations should assess whether the regulation has achieved its intended objectives and effectively resolved the issues it was designed to address. Where applicable, they should also consider the broader regulatory landscape, examining interactions with related European and national frameworks. Based on these assessments, the institution should deliver targeted recommendations to inform future policy improvements.

Additionally, the Commission should establish a cooperation Agreement with relevant bodies to support a comprehensive review of legislative packages. Through this Agreement, cooperation networks would submit opinions to the Commission in advance of the stress test of the EU acquis and the drafting of progress reports. These networks would monitor and report on the implementation and enforcement of regulations within their scope. To promote transparency and encourage stakeholder engagement, the Commission should publish

evaluation metrics and facilitate feedback on regulatory practices on the Have Your Say portal. It should also establish working groups with relevant stakeholders to discuss specific issues.

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